

Response from Civil Society Organisations on the first ESA EPA draft text to Ministers and African EPA negotiators

1. **ALTERNATIVES & REVIEW - CSOs urge Ministers and the ESA secretariat to thoroughly review the proposed form of an EPA and to seriously consider and propose alternatives to solve the problem of retaining preferential trading arrangements with the EU.**

1.1 Consider the alternatives

Civil Society Organisations (CSOs) in the Eastern and Southern Africa (ESA) region suggest a radical rethink to the issue of retaining preferences that still exist with the EU. As such we advocate for **an alternative** to the Free Trade Agreement (FTA) and the proposed current text for an Economic Partnership Agreement with the EU.

Such an alternative is allowed for in the Cotonou Agreement - the EU should "*examine all alternative possibilities, in order to provide these countries with a new framework for trade, which is equivalent to their existing situation and in conformity with WTO rules*". In April, AU trade ministers in Nairobi also stated "*...alternatives to EPAs should be fully explored.*"ⁱⁱ

CSOs believe that there are other options that would not require a Free Trade Agreement (i.e. reciprocity) with the EU, but that these are being ignored by the EC.

We propose an alternative **Fair Trade Agreement** between ESA and the EU that would need to cover the following:

- be based on the principle of non-reciprocity, as instituted in the Generalised System of Preferences and special and differential treatment in the WTO;
- protect African producers in domestic and regional markets;
- reverse the pressure for trade and investment liberalisation;
- allow for the necessary policy space and support for ACP countries to pursue their own development strategiesⁱⁱⁱ; and
- protect and enable the fulfilment of all human rights.

1.2 A full review

CSOs continue to support the AU Commission, the ACP Secretariat, the ESA negotiating secretariat and COMESA in their efforts to achieve a **comprehensive and formal review of EPAs** in terms of content, alternatives and process from the EU. CSOs support the AU in calling for a review that is "all inclusive and consultative with all stakeholders including civil society and parliamentarians ... 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."^{iv}

1.3 Focus on the solution to the problem and not new issues

Africa and EU need to find a solution to the trade aspects only of the Cotonou agreement, with the waiver on preferences expiring at the end of 2007. The current

ESA text goes much further than it needs to. The Cotonou agreement itself runs until 2020 – by introducing issues such as development into an FTA with the EU, ESA runs the risk of reinventing the wheel and renegotiating development aspects of Cotonou before its time. Cooperation with the EU on development issues such as infrastructure, transport, energy, ICT, water, biodiversity, environment, tourism and SMEs etc ought to be linked to development assistance *alone* from the EU, rather than tied to *reciprocity* and a *Free Trade Agreement*.

2. MULTILATERALISM - CSOs are concerned that EPAs with the EU will undermine efforts made by African countries at the multilateral level to secure fair trade rules.

2.1 Unfair trade rules lead to unfair trade agreements

CSOs believe that African Ministers and negotiators should continue to try to change the WTO rules to make them fairer, rather than allowing the EC to hold Africa to unfair WTO rules and negotiate an EPA. We support the recent declaration by AU Ministers in Nairobi in April this year that called for such changes in Article XXIV, but in practice there has been no change to Article XXIV to reflect African countries needs.

The EPA is trying to make the preferential treatment it offers ACP goods compatible with WTO Article XXIV of GATT, via an FTA. Yet this article does not allow for the huge differences in wealth and health between Africa and the EU to be reflected in such an FTA – as found elsewhere within the WTO (special and differential treatment).

2.2 Big issues like non-tariff barriers and subsidies are unlikely to be reduced through EPAs where this has failed in the WTO Doha Round

The EU is likely to make gains from EPAs in terms of an expanded market for finished and agricultural products through liberalisation - gains that Africa is unlikely to make into the EU market because of existing barriers and subsidies that have still been left untouched by WTO negotiators.

Real and new market access for ESA products into the EU will be hard to achieve through an EPA because it will be unlikely that the ESA block alone will be able to reduce non-tariff barriers and domestic subsidies within the EU where the Doha Round failed. Even with market access, direct competition between subsidised EU farmers and non-subsidised African farmers means it will be hard to convert this into sales e.g. meat products.

2.3 EPAs will be WTO+

The current ESA EPA draft text and statements from the EC confirm that the EC aims to reintroduce WTO+ rules into the EPA negotiations including investment, competition policy and transparency in government procurement - issues that ACP countries strongly resisted at the WTO. The EU would like to negotiate stringent, far reaching and substantive liberalised rules for investment with ACP countries as part of EPAs^v as well as liberalisation on public procurement on the basis of non-discrimination.^{vi} Trade facilitation and trade related issues are also being introduced. Further areas also up for negotiation include services and intellectual property rights that have been contentious issues for Africa at the WTO.

The multilateral arena, where developing countries are better able to defend the interests of their populations and of the poor, is the place to negotiate an effective system of fairer trade rules between developed and developing countries. In bi-lateral agreements, between two such hugely unequal partners, both the capacity and

political clout to negotiate for a good deal on a whole range of areas is substantially reduced.

3. IMPACT OF AN FTA - CSOs are of the view that a Free Trade Agreement, as outlined within the EPA with the EU, will undermine development in this region, reduce government's policy space and their ability to use tariffs as a tool to regulate and protect our economies.

We reiterate here, as we have before in various joint statements from CSOs on EPAs^{vii}, why we believe that EPAs as envisaged in this draft text could undermine development in our region and believe that the ESA block should push for an alternative to an EPA. FTAs between developing and developed countries often end up reinforcing imbalances between countries. They also restrict the space for the adoption of national and regional policies designed to ensure that trade and investment create opportunities and promote development for our region's men and women, rather than undermining them.

3.1 Do as we say, not as we did

Most economies in East Asia did not start to liberalise imports until export growth was already well established^{viii}. The Republic of Korea and Taiwan both achieved their phenomenal growth rates in the second half of the 20th century through state-led development and the use of tariffs and other policy measures. Average tariffs in these countries were in the region of 30-40 per cent until the 1970s. Each used high tariffs strategically to promote new or main industries. They had government regulation to actively discourage imports of goods that competed with domestic products^{ix}. In China and Viet Nam, successful examples of trade-driven development, high tariffs and state intervention have been widely used. As late as 1992, China's average tariff was over 40 per cent, and Viet Nam, a country with an impressive rate of GDP growth of more than 8 per cent a year since the mid 1980s, still has tariffs of between 30 and 50 per cent. The EU also took many years to develop behind protective barriers before opening up its markets to competition – and yet the EC are asking ESA to do the exact opposite.

3.2 Trade liberalisation is not a substitute for a development strategy

Further, trade liberalisation should not be seen as a substitute for a sound development strategy. Moreover, it needs to be timed and sequenced carefully, and at our own pace. There are different optimal degrees of openness at different stages of development, and it is generally agreed that, in order for an open trade regime to bring growth and development, countries must first have certain necessary conditions in place such as healthy economic sectors, potentially competitive producers, reasonably well-developed market institutions, and effective state capacity.^x It seems highly unlikely that by 2018 (as proposed in this ESA draft) that this kind of development in the agricultural and industrial sectors, within the COMESA or ESA block, will have taken place.

Moreover, in an evaluation of its trade policies over the past 25 years, the World Bank states that it underestimated the importance of complementary policies and the adjustment costs of trade liberalization and that maximizing gains from trade liberalization requires a cross-sectoral approach that explicitly takes welfare and distributional factors into account.^{xi} Factors that EPA impact assessments have not considered.

3.3 EPA is forcing further liberalisation before its time

The EU argues that existing imbalances can be addressed through 'asymmetrical liberalisation', which would mean a differential approach to product coverage and to the pace and timing of liberalisation (as this first draft suggests). However, proposals

for longer timeframes, combined with slightly lower percentages of liberalisation for ACP countries, do not solve the problem. Many ACP countries are poorer today than they were two decades ago and could be in worse shape in 10 or 20 years time. Yet the EU insists on tying reciprocity to pre-determined timelines and that a development component would only come in parallel with opening of markets. This current approach to EPAs as a reciprocal FTA means that ESA countries are being asked to open up to goods before they are in a position to compete or properly establish a regional market; this could be devastating to ESA countries' economies and livelihoods.

At the very least the EC must support ESA in its efforts to secure effective and real development benchmarks or thresholds within an EPA, as well as the Review Clause to ascertain whether or not development benchmarks have been met (Article 19).

3.4 EPAs reduces country sovereignty and policy space

An FTA such as the proposed EPA will further undermine the ability of ESA government economic regulatory bodies to use tariffs to protect livelihoods, jobs, industries and agriculture. This reduces the policy space of governments, their sovereignty and their ability to use the tools of economic policy to effectively regulate the market and plan their economies.

Long term industrialisation policies and plans of ESA governments will face serious challenges with direct competition from EU manufactured goods as a result of reciprocity and zero tariffs.

CSOs have serious concerns with the Standstill clause (Article 13) in the current ESA EPA text on tariffs. This will seriously restrict the ability of ESA governments to raise tariffs or set any new tariffs in order to develop infant industries of the present, of the future, or to protect sectors that face competition from EU imports.

The reference to a ten-year moratorium on tariff reduction (Article 10) is also misleading. Even though there might be no tariff abolition or reduction for capital goods and raw materials (10 years), intermediate goods (11 years) and finished goods (16 years), the text would bind the tariffs at the currently applied levels at the entry into force of the agreement – i.e. the basic duty in 2008, which would subsequently be the basis for tariff reduction. This gives no leeway for governments to raise tariffs if needed.

At the very least the EC must support ESA in its efforts to secure an effective Safeguards clause that includes workable trigger mechanisms and covers both agriculture and industry.

4. AGRICULTURE - CSOs are mindful that there is no guarantee that agriculture, food security/sovereignty and rural livelihoods will be improved or protected within an EPA.

Whilst an EPA may secure some existing agricultural exports to the EU and jobs for farm workers in export led agriculture, there is no guarantee that EPAs will secure or improve food security/sovereignty within the region.

4.1 Increased competition in ESA - Small scale subsistence farmers and national or regional agricultural industries could be faced *with increased competition* from the EU from agricultural commodities such as maize, wheat, cereal, milk and milk products, rice, sugar, flour, even meat and meat products and cotton.^{xii} Competition from other goods such as tomato paste and poultry (as in South Africa and West Africa) could also occur.

The EU has an unfair advantage in the production of these products due to subsidises, with agriculture that is highly subsidised through the CAP compared to farmers in the ESA region.

4.2 No guaranteed protection - There is no guarantee that key food security crops will be protected within an EPA – currently food security does not appear as one of the criteria for selecting sensitive products for a sensitive or negative list for the region. This is because by restricting the level of protection that can be offered under an EPA, negotiators are being forced to choose between the competing interests of manufacturing, government revenue, jobs and agriculture for those protected products. Kenya recently raised tariffs in agriculture to support and revive the dairy industry against cheap imports from 35% to 60%. Unless dairy is specifically protected, such actions would not be possible under an EPA from 1st Jan 2008.

In any case CSOs are of the view that any criteria to determine an EPA sensitive list should be, at minimum, based on the criteria for determining the special products under the WTO negotiations in Agriculture (that are based on issues such as food security). There needs to be a coherent approach to the EPA, informed by the positions that African countries have taken at the WTO and not undermining these, for example on Special and Differential treatment.

Furthermore a sensitive list that covers as many product lines in agriculture as possible and effective tariffs which prevent dumping of cheap EU imports into the ESA market will be essential to sustaining the welfare of farmers in the ESA region if the EPA is not to undermine agricultural producers.

4.3 Food security and sovereignty

A large part of the ESA region is severely affected by systemic drought that leads to food insecurity for a large number of people in rural areas. The export led model encouraged through the proposed FTA with the EU does not focus on food production and redistribution within the ESA region and therefore undermines the food sovereignty of the region. The draft ESA EPA text recognises the importance of this problem in the region and CSOs support ESA governments in their efforts to tackle these problems. However, solutions to food insecurity should be tackled as a development issue, and not dependent on an FTA with the EU.

4.4 Ability of small scale farmers to reap any benefits of an EPA

Studies undertaken assessing the impact of the Doha Round on developing countries show that sub-Sahara's low productivity small scale farming is largely not competitive on the global market, and thus even in those countries which export some crops, the majority of small-scale farmers livelihoods are hurt by the types of reforms presented in the Doha round.^{xiii} EPAs are likely to go further than the Doha round with liberalisation that is required as part of an FTA adversely affecting independent small-scale farmers rather than agribusiness. Furthermore any possible benefits offered such as improved rules of origin, SPS requirements or investment in agro processing within an EPA are unlikely to be captured by small-scale farmers, rather by richer agribusiness. At the very least, resources and the relevant technology, should, as a priority, be made available to small-scale farmers to ensure food security and improvements in the quality of food produced.

5. MANUFACTURING - CSOs believe an EPA with the EU could threaten rather than strengthen the domestic and regional export manufacturing market base of ESA countries

5.1 Binding manufacturing tariffs

The current ESA EPA text requires ESA countries to **bind all tariffs at their current basic customs duty level** levied on the import or at the proposed COMESA Common External Tariff structure (Article 10). This will include both manufactured and agricultural goods.

The current ESA EPA text goes well beyond NAMA negotiations at the WTO, in that in the EPA all ESA tariffs to the EU will have to be bound at their applied or basic duty rates as of 1st Jan 2008. This goes much deeper than was suggested in NAMA for countries in this region, where tariffs could be bound at a ceiling level that may be higher than existing currently applied rates, rather than at the basic level. ACP countries including Kenya have expressed concerns about binding at the WTO because it would seriously limit Kenya's ability to protect sensitive industries.

5.2 Tying manufacturing tariffs

The ESA EPA text also **prevents ESA countries from being able to introduce new tariffs or raise tariffs above the basic (applied) levels**. This means that if ESA countries wanted to protect industries from import surges through raising tariffs to EU goods, from 1st Jan 2008 they would be unable to do so due to Article 10 Basic duty and 13 Standstill clause of the current ESA EPA text. The vast weight of historical evidence suggests that it is absolutely necessary for countries to be able to raise and lower tariffs according to changing circumstances if they are to successfully promote growth and industrialisation yet an EPA would eliminate this necessary flexibility, and remove ESA governments ability to use rolling tariff protection as a development tool.^{xiv}

5.3 Reducing manufacturing tariffs

As the ESA EPA text outlines, ESA would hope that basic or COMESA CET manufacturing tariffs (intermediate goods and finished goods) under an EPA would start to be reduced from year 11 and year 16 (respectively) after entry into force of an EPA i.e. following a ten year moratorium to enable COMESA tariffs to establish themselves (Article 15 Tariff elimination by ESA).

There is no guarantee that the EU will accept such an interpretation of an FTA in terms of a ten-year moratorium for COMESA and tariff reduction time frames stretching from 20 years to 25 years. Even if these were to be secured from the EU there is no guarantee that COMESA manufactured goods will be able to become sufficiently competitive in either ten years or twenty-five years with EU goods. Nor that the margin of preferences that Africa currently holds with the EU will be maintained - the EU is also negotiating bi-laterals with Latin American and other countries on issues of improved market access, which could undermine ACP preferences in the future.

Furthermore COMESA CET levels may end up being much lower than actual tariff levels within ESA countries, which could require real and serious cuts across tariffs on all sectors when the COMESA CET comes into force. The pace of EU EPA negotiations is forcing COMESA time frames and deadlines for agreeing such CET levels.

Proposed NAMA binding, tying and actual tariff reductions that ACP countries have fought so hard at a multilateral level to reduce the impact on their manufacturing sectors, will be a *required* part of an EPA as of Jan 1st 2008. Again, as within the WTO, voluntary cuts that those countries have already made in manufacturing tariff lines, as a result of structural adjustment, are unlikely to be recognised or credited within an EPA.

In *Kenya* manufactured products such as fertilizer, cement, salt, medicaments, paper and paper products, footwear and insecticides are likely to face competition from EU producers once tariffs in intermediate and finished goods come down.^{xv} Currently Kenya is trying to revive its manufacturing sector including textiles, leather and construction. In *Uganda* there is likely to be a shrinking of the local manufacturing sector due to competition from EU.^{xvi} In *Mauritius* the production for the domestic market of manufacturing and primary products will decline by 24% with the bulk in manufacturing, resulting in a fall in employment of around 12% (the bulk in manufacturing and on female employment).^{xvii}

Increased competition with EU products as a result of reducing tariffs on manufactured goods is unlikely to lead to greater efficiency but more likely to lead to deindustrialisation as in the past.

5.4 What has been lost already ...

The current EPA text does not recognise the voluntary liberalisation that has already taken place within ESA countries during the 1980s and 1990s, or the impact of this liberalisation. This experience of liberalisation in the past should not be forgotten and should inform the current negotiating positions of ESA now.

For example in the 1980s important manufacturing sectors were thriving in *Kenya*, with clear Government policies that protected specific sectors. The Structural Adjustment Programmes (SAPs) introduced in the mid 1980s to the early 1990s, and the IMF/World Bank loans with conditionality (liberalisation and reduction of tariffs), all had negative implications. By the mid 1990s sectors such as textiles and footwear were threatened by cheap imports against which the local products could not compete. The textiles industry in Kenya used to account for 30% of labour in the manufacturing sector. After liberalisation, approximately 70,000 jobs were lost and this in turn had backward-linkages, e.g. cotton production also impacting on entire families. The collapse of the leather industry also had backward-linkages to the livestock industry. In *Zambia* manufacturing as a share of GDP fell from about 18.5 per cent in 1980 to 10 per cent in 2002 following liberalisation, and poverty rose after such reforms.^{xviii}

EPA requirements in manufacturing from reciprocity – binding, tying and reducing, as with NAMA, threaten ESA with de-industrialisation and unemployment, as SAPs have done in the past. EU policy that purports to support development could actually end up undermining what little development and industrialisation already exists within ESA.

6. REGIONAL INTEGRATION & MARKETS - CSOs envisage threats from an EPA with the EU to the development of regional markets and regional integration, rather than a strengthening of these.

6.1 Regional manufacturing and agricultural market competition

Further penetration of regional markets (like COMESA and the EAC) by the EU is likely to take place with the onset of an EPA, and an increase in competition for the ESA regional market between the EU and ESA countries themselves. This will make it more difficult to use truly regional trade between countries that are physically close to one another for development.

An EPA will make ESA more dependent on agricultural export markets to the EU, rather than the development of domestic or regional markets in agriculture and manufacturing as an alternative to North South trade dependency.

An EPA will undermine industrial manufacturing by increasing competition against nationally produced products. This competition will also depress the further development of local manufacturing industry, which has significant implications for development in the ESA region. For example the main markets for Kenya's exports today are COMESA and the EAC, accounting for around 36% of total exports. Kenya's exports to Uganda and Tanzania increased rapidly from 7% of total exports in 1990 to 29% in 2004. During the same period, Kenya's exports to the EU decreased from 46% to 30%.

Whereas most exports to the European Union are primary products, manufactured goods dominate exports to the EAC and COMESA. Given most ESA countries' goal of diversifying exports away from traditional products, the COMESA and EAC markets should be safeguarded.^{xix} Kenya is already facing increasing competition in Ugandan and Tanzanian markets from increases in EU prepared cereal products, prepared tomatoes, concentrated milk and cream. Competition in regional markets is only likely to increase with an EPA.^{xx}

6.2 Regional integration

Countries in the region are already engaged in regional integration processes into blocks other than the ESA region for economic, development, political and social objectives.

The ESA EPA configuration forces countries into a difficult alliance that emphasises *differences between one another such as development status (LDC or DC)* in relation to the EU rather than to one another, and with this access to options like the 'Everything But Arms' (EBA) initiative. This pits neighbours against one another as competitors within the EPA negotiating process rather than encouraging closer integration between neighbours.

EPAs are being imposed on a process that was already taking place. Furthermore regional energies, resources and systems are being employed for the agreement of EPAs rather than into existing regional processes such as COMESA or the EAC e.g. COMESA's development of its own investment strategy and development priorities could be undermined by an agreement in EPA on investment.

The actual process of agreeing a product list of goods excluded from liberalisation with the EU within the ESA block will be extremely difficult, as there is little natural overlap based on current tariff levels of ESA countries.^{xxi} There may also be unintended consequences of an ESA regional block that is not harmonized fully with COMESA or EAC countries in terms of border controls and smuggling of goods that fall between different EPA blocks and therefore different liberalisation schedules.^{xxii}

The EPA negotiations are re-writing traditional economic groupings. For example the parties to the SADC trade protocol have split into two groups; 16 of the states in SADC and COMESA are negotiating as ESA and the rest of SADC (Angola, Mozambique and Tanzania) are negotiating a different EPA. The three EAC states are split between these groups also.

The timetable for concluding an EPA is rapid – by the end of 2007. Although the EAC has been implementing a customs union since January 2005, the development of a COMESA customs union by 2008 is moving more slowly than this. The EPA is forcing the pace of regional integration e.g. pushing agreement of COMESA CET closer than it had been planned for originally.

Rather than *supporting* regional markets or integration processes in ESA, an EPA would seem to be *undermining* these.

7. FINANCIAL COSTS - CSOs are wary of the significant adjustment costs that ESA economies will face as a result of an EPA.

7.1 Lost government revenue from tariffs and trade diversion

Many ACP countries depend upon import duties for around one third of their national revenue, and in some cases the proportion is far higher. For example, in Uganda, trade taxes represent 48 per cent of total government revenue.^{xxiii} Studies have predicted that EPAs would cause major declines in government income through lost tariff revenue depending on the level of liberalisation. Based on 80% liberalisation three quarters of ACP countries could lose 40% or more of their theoretical tariff level from the EU, and for over one third of ACP countries it could be 60% or more.^{xxiv} This revenue would need to be replaced in full over the EPA implementation period. Reduction of government revenues leads to a reduction in spending on both planned spending (health, education, social service provision) and on salaries and pensions of government workers.

Kenya could lose Ksh 9.6 billion in Government revenue through decreases in revenue from imports, trade diversion, and trade creation, or a reduction of revenue as a share of GDP from 21% to 19%, while import duty as a share of total revenue declines from 8% to 6%.^{xxv} Other estimates from the EC's own sustainability impact assessment estimate that under a reciprocal EPA with the EU, Kenya would lose as much as 82% of its total customs revenue or a loss of 12% of government revenue.^{xxvi}

In Uganda revenue lost from just 20 imports from the EU would be equal to 35.9 billion Ugandan shillings. While for all imports from the EU the expected loss in revenue is expected to be at about 40.4 billion Ugandan shillings when the EPA comes into full effect.^{xxvii} In Mauritius customs revenues will be reduced by Rs1.6 billion equivalent, a 54% reduction. In Zambia the tariff revenue loss is estimated to be about US\$15 million with complete liberalisation with the EU.

In other regions the impact of the CET in SACU had unintended consequences on Botswana, Lesotho, Namibia and Swaziland with a reduction on tariff revenues equivalent to between 10% to 21% of total national income.

7.2 Government revenue clawed back through regressive taxes

Reduction in tariffs due to liberalisation results in the loss of government revenue and increases pressure on governments to raise revenue from alternative sources. This could result in VAT increasing which taxes the poor more than the rich. Where governments are unable to increase VAT, the pressure is to tax the poor more through alternative taxation avenues.^{xxviii} It is also unlikely that money lost through import revenues will be fully recouped through an increase in VAT.

7.3 Pay offs will be once off, and will be monetary

Any compensation from the EC to ESA in the form of adjustment costs for loss in government revenue, manufacturing or trade diversion will be a once off, static monetary payment. The EC are insisting that this come through the European Development Fund (EDF). The EC will not compensate Africa in terms of the wealth lost through lost industries that might have been generated over time – i.e. tens of years, or in terms of replacing job losses.

7.4 Balance of payments problems

EPA could lead ESA into further indebtedness and inflation with balance of payments problems due to increased spending on imports, decreased spending on domestic goods and stationary earnings from exports. Balance of payments problems might lead to IMF loan offers and increased external debt to support the balance of

payments, including associated conditionality such as inflation targets, control and reduction of fiscal deficits. Conditionality that could lead, once again, to reduced government expenditure, and even devaluation of the currency.

7.5 Tying EPA to EDF is wrong

Tying EPA adjustment and extra investment funds for compliance costs to the EDF, will cement the link between the EU as a huge donor in the region with its dual role as a powerful trade block negotiating a free trade deal – this is tantamount to giving ESA countries no option or negotiating space at all with regard to the EPA. It ties development issues to a free trade deal, issues that are approached differently by different parts of the Commission (DG Trade and DG Development) and issues that ought to be kept separate.

The EC is encouraging a false hope of an increase in new European development assistance to ACP countries, but it is using *existing* development funding as a basis for EPA negotiating process. The EC is also using different forms of pressure including aid conditionality to continue to override the reluctance of ACP groups to yield to its interests.

7.6 Accessing EU funding through EDF is hard

Accessing any funding made available by the EU either in the form of adjustment costs for the damage caused by EPAs or in the form of money required for tackling supply side constraints will, from past experience, be hard to access. Conditionality on funding, bureaucracy both within the EC and then through government structures will mean that funding designed to soften the blow of EPAs or invest in agro processing are unlikely to trickle down to the right people and organisations.

7.7 Funding will not reach the poor

Furthermore any funding made available is unlikely to be used to improve welfare of the poor. For example EU money that Mauritius obtained for accompanying measures due to the fall in sugar prices is being used to destroy employment, proliferate precarious jobs, encourage agricultural land conversion for the construction of luxurious villas and privatise electricity production. It is unlikely that EU funding for EPAs adjustment will reach the unemployed due to loss of jobs in manufacturing, or small-scale farmers for improvements in agro-processing, but rather be captured by agribusiness.

8. WTO + ISSUES - CSOs argue that issues that remain outside the ambit of WTO negotiations should not be introduced through the back door onto ESA countries via an EPA with the EU – we should try and solve the retention of trade preferences with the EU rather than introducing new contentious issues.

The EU is seeking agreement in the EPA on investment, government procurement and competition policy. These are areas that developing countries collectively rejected at the WTO, and removed from the Doha Work Programme, and therefore should not be reintroduced within an FTA with the EU.

Furthermore the AU countries (including ESA ministers) recently reiterated that they do not wish to be forced to negotiate bi-regional agreements on investment and other Singapore issues.^{xxix} Therefore ESA should not enter into negotiations on WTO+ issues until the AU has explicitly agreed to enter into such negotiations.

9. SERVICES - CSOs are concerned that any emerging text covering trade in Services could lead to rapid liberalisation of key public services in Africa

There should be no agreement on trade in services with the EU as this further expands the remit of EU ambitions within ESA. There is no doubt about the fact that service sectors in most African countries are not as developed or competitive as in the EU. It would hence be extremely dangerous to embark on a path of liberalisation of these sectors.

Liberalisation of essential services, in sectors such as energy, water (through environmental services) and health (through financial services) could pose serious threats to affordability of and accessibility to these services by poor and vulnerable people in our countries. Liberalisation of services is highly complex and problematic especially where we do not have the negotiating capacity and proper regulatory environments in place to protect the poor and ensure that they do not lose out from liberalisation.^{xxx}

ESA countries should focus on the establishment of cooperation programmes to build the institutional, policy and legislative framework around services, given the importance of these issues to economic governance, but not link this to an FTA with the EU.

10. SPS and standards

SPS and standards have manifested themselves as non-tariff barriers to trade for key ESA exports and potential exports such as fisheries, livestock and horticulture. SPS and standards should not be used as non-tariff barriers against ESA exporters; rather they should be simplified, transparent, scientifically based and not arbitrary or unilateral. They should be dealt with as a development issue with the EU and at a multilateral level, rather than be used as a bargaining chip within an FTA.

ESA countries should be provided with the necessary resources, including technology transfer and facilitation for participation in standard setting bodies, to meet and comply with SPS standards in country.

Specifically CSOs raise concern and ask for more investigation around the following issues that have been used and continue to be used as non-tariff barriers against our farmers, pastoralists and fisher folk:

- Maximum residue levels, especially in tropical horticultural products
- Focus on reaching the appropriate standards on the basis of equivalence (i.e. the acceptance of different measures that achieve similar protection levels), especially in relation to BSE, HPAI, RVF and FMD disease-free zones i.e. through compartmentalisation and commodity-based trade that could enable safe exports from “infected zones”;
- Private additional standards used by multinational agri-business that ratchet up requirements on ESA countries above and beyond EU/WTO requirements;
- Specific uni-lateral standards set by individual countries above and beyond EU/WTO requirements
- Expensive and difficult traceability requirements (e.g. on livestock) with more of a focus on the essential information that is required for trade and why, in terms of actual risk to human or animal health.

11. Intellectual Property Rights

ESA should refuse to negotiate on Intellectual Property Rights issues in a Free Trade Agreement like EPA. It is imperative that countries seek to retain and improve upon the existing flexibilities under the WTO TRIPS agreement. Any TRIPS Plus standards tabled for discussion at the EPAs by the EC should be rejected.^{xxxi}

12. Rules of Origin (ROO)

CSOs believe that unduly complex or burdensome, ROO can constitute yet another barrier to the exports of the ESA region. For example, a vegetable exporter from Uganda who uses imported packaging from Kenya would not be eligible for the duty-free access to the EU under the Everything But Arms scheme. This is because the value of the Kenyan packaging outweighs the value of the products originating in Uganda. More favourable ROO should investigate simple value addition of 25%, changes in tariff classification and full cumulation for developing countries.

Simplifying rules of origin could greatly benefit African exporters, and as such ROO as non-tariff barriers ought to be discussed and simplified with the EU in terms of improving market access for agricultural and non-agricultural commodities. Again, simplifying ROO with the EU should not be used as a bargaining chip by the EU to get ESA to sign an EPA, but rather tackled separately and as a development issue.

13. Trade facilitation

CSOs recognise that trade facilitation is an important tool that can enhance competitiveness of exporting sectors. It does so by addressing the transaction costs that traders – especially exporters – have to incur in order to trade, which adds to the cost, thus reducing their competitiveness. However, implementation of trade facilitation measures implies huge costs that ought to be addressed outside an FTA with the EU, or, in any case, as part of the current negotiating process. Especially if government institutions in ESA have to face the cost of implementing changes whilst also facing huge budgetary constraints.

14. Trade and environment

The health and economic well-being of people living in the ESA countries, the majority of whom depend on a wide range of environmental resources: fresh water for drinking, sanitation and agriculture; fertile soil and healthy fisheries for production of food; and the diverse products of forest and marine ecosystems, should be the focus of ESA governments. Environmental resources should not be linked to a Free Trade Agreement with the EU but rather protected for the benefit of future generations within the region and the world. ESA country policy-makers should assess the potential environmental and development impact of any new trade rules to be negotiated on the region before they are agreed. Where environmental resources are traded with the EU (or any other partner) this should be for the benefit of those in the region – in terms of economic and human development, as well as securing such resources for future generations.

For all these reasons, we ask our governments and negotiators to focus on finding an alternative to the proposed EPA. The current ESA EPA draft text is damaging to the region and undermines development because it must be a free trade agreement (and this *before* text based negotiations with the EC). We urge our governments to stop EPA in this current form and instead focus on non-reciprocal solutions to the ending of preferences with the EU.

- ACORD
- Action Aid Kenya
- Bridge-Africa
- Christian Aid
- Civil Society Trade Network of Zambia (CSTNZ)
- Cooperation for Fair Trade in Africa (COFTA)
- CUTS – International
- East & Southern Africa Small Scale Farmers' Forum (ESAFF)
- EcoNews Africa
- Farmers' Union of Malawi
- Food & Trade Network for East Africa (FATNEA)
- Gender Sensitive Initiatives
- Kenya Small Scale Farmers Forum (KESSFF)
- Malawi Economic Justice Network (MEJN)
- Missionary Sisters of Our Lady of Africa Eastern Africa (MSOLA)
- MWENGO
- MVIWATA
- Norwegian Church Aid
- Oxfam International
- Participatory Ecological Land Use Management (PELUM) Association
- Resistance and Alternatives
- Resources Orientated Development Initiatives (RODI) Kenya
- Sustainable Agriculture Trainers Network (SATNET)
- SEATINI – Kenya and Uganda
- Uganda Small Scale Farmers' Forum (USSAFF)

- ⁱ Cotonou Partnership Agreement Article 37.6.
- ⁱⁱ Nairobi Ministerial Declaration on Economic Partnership Agreements, AU 14th April 2006.
- ⁱⁱⁱ Global Call For Action to STOP EPAs Harare Meeting Outcome 28-30 March
- ^{iv} Nairobi Ministerial Declaration on Economic Partnership Agreements, AU 14th April 2006.
- ^v No EPA without investment rules and Full Reciprocity, Falkenberg Insists! TWN, 30th June 2006
- ^{vi} EC Directives for the Negotiation of Economic Partnership Agreements with ACP countries and regions.
- ^{vii} Six Reasons to Oppose EPAs in their Current Form Nov 2004 and Global Call For Action to STOP EPAs Harare Meeting Outcome 28-30 March
- ^{viii} Rodrik, D (2001a) 'Trading in illusions', Foreign Policy Magazine March/ April 2001.
- ^{ix} Ha Joon Chang (2005) Why Developing Countries Need Tariffs.
- ^x UNDP (2001), 'The global governance of trade as if development really mattered'; Dani Rodrik (1999) 'Making Openness Work: The New Global Economy and the Developing Countries', Washington DC: Overseas Development Council. Ajit Singh (2003), 'Elements for a New Paradigm on Special and Differential Treatment – Special and Differential Treatment, The Multilateral Trading System and Economic Development in the 21st Century', Cambridge: Cambridge University Press.
- ^{xi} "Assessing World Bank Support for Trade 1987-2004", 2006. World Bank.
- ^{xii} Assessment of the Potential Impact of Economic Partnership Agreements (EPAs) on the Kenyan Economy (KIPPRA) September 2005.
- ^{xiii} Winners and Losers Sandra Polaski The Carnegie Endowment for International Peace
- ^{xiv} Yilmaz Akyüz (2005) The WTO Negotiations on Industrial Tariffs: What is at Stake for Developing Countries, TWN; Ha Joon Chang (2005) Why Developing Countries Need Tariffs, South Centre; Paul Bairoch (1993) Economics of World History: Myths and Paradoxes, University of Chicago Press; Kevin O'Rourke and Jeffrey Williamson (1999) Globalization and History: The Evolution of a Nineteenth Century Atlantic Economy, MIT Press.
- ^{xv} Assessment of the Potential Impact of Economic Partnership Agreements (EPAs) on the Kenyan Economy (KIPPRA) September 2005.
- ^{xvi} Uganda Study of the Impact and Sustainability of Economic Partnership Agreement for the Economy of Uganda Trade and Development Studies [TRADES] Centre July 2004
- ^{xvii} Capacity Building in Support of Preparation of Economic Partnership Agreement February 2004 CREDIT University of Nottingham for the Ministry of Industry, Commerce and International Trade Mauritius.
- ^{xviii} African examples taken from Khor, Martin and Goh Chien Yen (2004) The WTO Negotiations on Non Agricultural Market Access: A Development Perspective TWN; UNCTAD (2005) Coping with Trade Reforms: Implications of the WTO Industrial tariff negotiations for Developing Countries.
- ^{xix} "Kenya- Weak Governance Hobbles Economy" Chapter 5 of Economic Report on Africa 2002: Tracking Performance and Progress Economic Commission for Africa 2002.
- ^{xx} EPAs: Through the Lens of Kenya EcoNews Africa and Traidcraft Exchange September 2005
- ^{xxi} EU-ACP Economic Partnership Agreements: The Effects of Reciprocity Institute of Development Studies, Sussex Christopher Stevens and Jane Kennan.
- ^{xxii} The EU, Africa and Economic Partnership Agreements: unintended consequences of policy leverage. Christopher Stevens Journal of Modern African Studies Vol. 44 No. 3
- ^{xxiii} World Bank World Development Indicators 2003: figures for 2000.
- ^{xxiv} EU-ACP Economic Partnership Agreements: The Effects of Reciprocity Institute of Development Studies, Sussex Christopher Stevens and Jane Kennan.
- ^{xxv} KIPPRA based on 100% liberalisation.
- ^{xxvi} Qualified Preliminary EU-ACP SIA of the EPAs: Phase One (Final Draft), Price Waterhouse Coopers February 2004.
- ^{xxvii} Uganda Study of the Impact and Sustainability of Economic Partnership Agreement for the Economy of Uganda Trade and Development Studies [TRADES] Centre July 2004
- ^{xxviii} S. Szepesi (2004) 'Coercion or Engagement? Economics and Institutions in ACP-EU Trade Negotiations (ECPDM Discussion Paper 56), Maastricht: ECPDM, p. 13.
- ^{xxix} Nairobi Ministerial Declaration on Economic Partnership Agreements, AU 14th April 2006.
- ^{xxx} OECD policy brief (Sept 2005) Opening Up Trade in Services.
- ^{xxxi} Health Action International Briefing Paper Will Access to Medicines be Ensured in the EPAs? A Background Paper on Intellectual Property Provisions in the EU's Free Trade Agreement Negotiations in Africa. June 2005.