
CONTENTIOUS ISSUES UNDER THE EAC-EC EPA CONFIGURATION

**Presentation by the EAC Secretariat to the
EABC 2nd Regional Workshop on EPAs
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State of Play

- Upon initialing the Framework EPA on 27th November 2007 the EPA negotiations took two dimensions.
 - The first dimension was to finalise any errors, omissions and corrections in the Framework EPA, have it signed, ratified and notified to the WTO.
 - The Second dimension was to proceed with the full EPA negotiations and this was to be finalised by end of July 2009.
 - None of the two dimensions have so far been achieved.
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Key issues in the Framework Agreement

- Table of Corrections of Errors & Omissions done
 - Review of various articles of the FEPA
 - Most of these articles, known as the “contentious” issues, have been the subject of extensive debate between both Parties
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Key issues in the Framework Agreement

Articles in the FEPA reviewed:

- Standstill Clause (Article 13)
 - Export Taxes (Article 15)
 - MFN Clause (Article 16)
 - Antidumping and countervailing Measures (Article 19.7)
 - Multilateral Safeguards (Article 20.4)
 - Bi-lateral Safeguards (Article 21.5b)
 - Article 34
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Articles in the FEPA reviewed:

(i) Standstill Clause (Article 13)

“ Except for the measures adopted according to Articles 19 and 21, the Parties agree not to increase their applied customs duties for all products subject to liberalization under this Agreement”

- Both Parties agreed on a clause that would allow modification of the level of customs duties in various annexes relating to imports from the EC region to the EAC in the interest of regional integration.
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Articles in the FEPA reviewed:

- Hence, the following additional paragraph on Article 13 would be included in the context of the Comprehensive EPA:

“in order to preserve the prospect for the wider African regional integration processes, the Parties may decide in the EAC EC EPA Council to modify the level of customs duties stipulated in Annexes II(a), II(b) and II(c), which may be applied to a product originating in the EC Party upon its importation into the EAC Partner States. The Parties shall ensure that any such modification does not result in an incompatibility of this Agreement with the requirements of Article XXIV of GATT 1994”

Articles in the FEPA reviewed:

(ii) Export Taxes (Article 15)

- 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 with the authorization of the EPA Council.
 - EAC Concern: the need to get authorization of the EPA Council – instead would rather notify the EPA Council
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Articles in the FEPA reviewed:

Article 15

- Under the WTO EAC Partner States are not even required to notify the EC when they are imposing export taxes. Therefore, we are already offering the EC WTO plus by agreeing to notify them.
 - Negotiations are ongoing with the EC.
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Articles in the FEPA reviewed:

(iii) MFN Clause (Article 16)

Under MFN treatment: **(1)** if EC gives better treatment to a 3rd country, they have to give it to the EAC as well; **(2)** if EAC gives better treatment to a developed country or any country accounting for more than 1% 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 provision with respect to the EAC

Articles in the FEPA reviewed:

Article 16

- **EAC concern:** The MFN clause should not undermine the provisions of the WTO 1979 Enabling Clause that allows bilateral preferences between developing countries in promoting South-South trade.
 - The current provision would have an impact on EAC Partner States' possible bilateral negotiations, since any preference would be automatically extended to the EC.
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Articles in the FEPA reviewed:

Article 16

- EAC Proposed inclusion : use of the language borrowed from the SADC IA and CARIFORUM EPA and modified to place the onus on the EC Party to demonstrate that it has been given less favourable treatment than that offered by the EAC Party to any other major trading economy and that the Parties to enter into consultations on how best to implement the provisions of paragraph 2 on a case by case basis.
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Articles in the FEPA reviewed:

Article 16

- **EC stance:** ACP countries would give further concessions to EU competitors (major emerging economies – Brazil, India, China...) on products that have been excluded from liberalization in the EPAs.
 - EC's argument: if EAC could offer better access to other major trading countries, it would mean that the sector concerned no longer needs specific treatment.
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Articles in the FEPA reviewed:

(iv) Antidumping and countervailing Measures (Article 19.7)

- WTO rules to apply

(v) Multilateral Safeguards (Article 20.4)

- WTO rules to apply to provisions of para 1

(vi) Bi-lateral Safeguards (Article 21.5b)

- Period can be extended by EPA Council for maximum 5 years

(vii) Article 34

- The parties agreed to insert the word, "international", between the words "meet" and "SPS" and to substitute the word "standard" with "measures" and to delete the phrase "in the market of the EC Party".
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Articles in the FEPA reviewed:

- The contents of the above 4 Articles have been agreed upon – but placement is not agreed upon. EAC prefer these to be incorporated into the FEPA whereas EC maintains that these be incorporated in the full EPA.
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Key issues in the Framework Agreement: Economic & Development Cooperation

- Economic and Development Cooperation remains a fundamental and sensitive issue in the EPA negotiations. The major diverging point is the reluctance of the EC to commit to binding financial commitments to fund the development aspects of the EPA negotiations.
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Economic & Development Cooperation

- The development cooperation provisions are part of the EPAs in recognition of the fact that changes to the trade regime will entail certain costs for the EAC in the short to medium term. Costs can be linked to institutional implementation of new rules as well as to the adjustment of economic operators to the new regulatory framework. The development cooperation provisions are also there to ensure that resources are made available to assist EAC Partner States in taking advantage of opportunities stemming from implementation of the agreement – access to new markets.
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Economic & Development Cooperation

- **EAC Concern:** one of the major imperatives identified by the EAC Partner States as a prerequisite for signing the FEPA is the need to entrench the development text and matrix in the FEPA. Upon such entrenchment the EAC Partner States also require the financing of the development matrix to be secured within the framework of the FEPA.
 - The urge by the EAC to ensure that the FEPA at least contains some substantive provision on development cooperation is aimed at ensuring that the post-FEPA signature does not leave the EAC Partner States worse off than they were before the FEPA.
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Economic & Development Cooperation

■ **EC Stance on Development**

Internal regulations of the EC regarding development assistance – EC instruments of development support as reflected within the framework of the EDF, EU budget and standalone bilateral cooperation with the EU Member States.

Comprehensive EPA Negotiations

Deadline:

- Article 3(2) of the FEPA – deadline of 31 July 2009 for the completion of the comprehensive EPA negotiations passed.
 - Both Parties established a programme of work that foresees the conclusion of technical negotiations for the full EPA by 31 December 2010
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Conclusion

- The EPA negotiations have been challenging and imperfect.
 - However, there are opportunities as well as challenges arising from the agreements.
 - Stakeholders must be engaged to ensure that benefits are maximized and interests are catered for in the negotiations.
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- Thank You for Your Kind Attention!
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