



**“Improving EAC Private Sector Awareness on the EPA and
Involvement in Trade Policy”
2nd Regional EAC-EU EPA Sensitisation Workshop**

**Institutional Arrangements, Dispute
Settlement and Trade Remedies**
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Arusha, March 2010



Overview

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Basics and Structure

1. It is an International Agreement
2. It is to be WTO compatible (Art. XXIV GATT)
3. What does WTO compatibility mean?
4. No non-reciprocal Preferences as in Cotonou
5. What does rules-based trade mean?
6. Is it Justiciable? How?
7. What does it cover? What are the further objectives?
8. Who are the parties?
9. What is an Framework/Interim EPA?
10. Other chapters to follow
11. What about own regional Integration?

Negotiating and Implementing an International Agreement

1. The FEPA is an **Int. Agreements**
2. Must enter into force and be implemented
3. Therefore -- Sovereignty of States and National Jurisdiction
4. Int. Agreements: negotiated, signed, ratified, entry into force
5. The parties to international agreements are **States** – how to accommodate private parties?
6. National Constitutions are relevant
7. National executive negotiates and signs.
8. Prior policy by Cabinet.
9. Where and how private sector inputs?
10. Role of Attorney General's Office

Negotiating and Implementing an International Agreement continued

1. Role of Parliament – any oversight function?
2. Domestic incorporation and implementation – int. Agreements are not self-executing
3. How do Int. Agreements become part of the law of the land? Legislation – Parliament -- Regulations.
4. How does private sector capacitate itself?
5. Where to find Int. Agreements in EAC states?
6. **Recommendations:**



Architecture

1. 6 Chapters (with Titles); 54 articles
2. Work in Progress – Interim and Comprehensive EPA
3. Chapter I: General Provisions
4. Chapter II: Trade Regime for Goods
5. Chapter III: Fisheries
6. Chapter IV: Economic and Development Cooperation
7. Chapter V: Areas for future Negotiations
8. Chapter VI: Dispute Avoidance and Settlement
 - ▶ Annex I Customs duties on products originating in the EAC partner states
 - ▶ Annex II Customs duties on products originating in the EC party

Architecturecontinued

- ▶ Protocol 1 Concerning the definition of the concept of "originating products" and methods of administrative cooperation
- ▶ Protocol 2 On mutual administrative assistance in customs matters
- 1. Institutions to follow – e.g. EPA Committee
- 2. Definitions, scrubbing etc still to be finalised
- 3. Art. 37: Rendez-vous Clause
- 4. Importance of Interpretation of legal texts
- 5. **Recommendations:**

- ▶ **ART. 44 *Definition of the Parties and fulfilment of obligations***
- ▶ **Definition of the Parties and fulfilment of obligations**
- ▶ 1. Contracting Parties of this Agreement shall be the Republic of Burundi, Republic of Kenya, Republic of Rwanda, United Republic of Tanzania, Republic of Uganda, contracting parties to the Treaty establishing the East African Community, hereinafter referred to as the "EAC Party", on the one part, and the European Community and its Member States or the European Community or its Member States in their respective areas of competency as derived from the Treaty establishing the European Community, and hereinafter referred to as the "EC Party", on the other part.

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- ▶ 2. For the purpose of this agreement, unless otherwise expressly provided, the EAC Partner States agree to act collectively. Where individual action is provided for or required to exercise the rights and or comply with obligations under this Agreement reference is made to "EAC Partner State".
 - ▶ **Implications and Recommendations:**
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Objectives and General Provisions

1. Note the Preamble
2. Art. 1: *“This Interim Agreement establishes a framework for an Economic Partnership Agreement (“EPA”).”*
3. **General Objectives in Art. 2.**
 - ▶ Economic growth and development ...sustainable development
 - ▶ Regional integration, economic cooperation and good governance in the EAC
 - ▶ Gradual integration of the EAC into the world economy
 - ▶ Structural transformation of EAC economies, diversification, competitiveness
 - ▶ **Specific Objectives: ARTICLE 3**
 - ▶ Consistent with Article XXIV GATT

Objectives and General Provisions.... continued

- ▶ trade no less favourable than those under the Cotonou
- ▶ To establish the framework, scope and principles for ... trade in goods ... rules of origin, trade defence instruments, customs cooperation, trade facilitation, SPS measures, technical barriers to trade, agriculture, economic and development cooperation
- ▶ To establish the framework and scope of **potential** negotiations....other issues....trade in services, trade-related issues as identified in the Cotonou Agreement and any other areas of interest to both Parties
- ▶ The Parties undertake to continue the negotiations with a view to concluding a **comprehensive EPA**, which shall comprise the subject matters listed under Chapter V (see Art. 37), no later than 31 July 2009.

Objectives and General Provisions... continued

- ▶ Improving capacity in trade policy and trade-related issues
- ▶ Transparent regional regulatory framework for trade + investment
- ▶ in the EAC Partner States
- ▶ increasing investment, and private sector initiative
- ▶ Consistent with WTO obligations
- ▶ Enhance commercial and economic relations
- ▶ Asymmetrical liberalisation.

Objectives and General Provisionscontinued

1. **Art. 4: The principles for reaching a full and complete EPA are the following:**
 - ▶ (a) Building on the *acquis* of the Cotonou Agreement;
 - ▶ (b) Strengthening **regional integration** in EAC;
 - ▶ (c) **Asymmetry**, in favour of the EAC Party, in the liberalization of trade...in the application of trade-related measures and **trade defence instruments**; (See also Annex II for timeframes on elimination of customs duties.)
 - ▶ (d) Allowing the EAC Partner States to maintain regional preferences with other African countries and regions without an obligation to extend them to the EC; and
 - ▶ (e) Addressing the production, supply and trading capacity of EAC Partner States.
 - ▶ **Recommendations:**

1. DFQF market access for goods originating in EAC States
2. Commitments only for signatories
3. EC commitments only for goods originating in EAC
4. Others may join later – but note the reference to “transitional measures”
5. Duties: each Party’s Schedule; HS system; review schedules to promote own integration; new schedules later.
6. Rules of origin
7. Standstill : Art 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 liberalisation under this Agreement.*

Trade in Goods continued

- ▶ Export duties
- ▶ Regional MFN
- ▶ Non-tariff Measures e.g. Quantitative restrictions
- ▶ National treatment
- ▶ Infant industry
- ▶ Note role of EPA Committee

- ▶ **Recommendations:**

- ▶ **Anti dumping and countervailing** - WTO rules
- ▶ Example
- ▶ Single form of judicial review - Reg. Integration implications
- ▶ **Multilateral safeguards**
- ▶ **Bilateral safeguards**

- ▶ **Administrative Cooperation** fraud and corruption
- ▶ Suspension possible
- ▶ Publish in Official Journal

- ▶ **Protection of Private Parties**

Dispute Avoidance and Settlement

1. Why have it? Rules-based consequence
2. Procedures and institutions important
3. Consultations first
4. Arbitration – note role of EPA Committee
5. Disputes about what?
6. Disputes between whom?
7. Can private parties complain? How and where?
8. Systemic consequences?
9. For development finance -- Cotonou Art. 98
10. Role of regional courts?

▶ **ARTICLE 38 Consultations**

- ▶ *1. The Parties shall endeavour to resolve any dispute concerning the interpretation and application of this Agreement by entering into consultations in good faith with the aim of reaching an agreed solution.*
- ▶ *2. A Party shall seek consultations by means of a written request to the other Party, identifying the measure at issue and the provisions of the Agreement that it considers the measure not to be in conformity with.*
- ▶ *3. Consultations shall take place under the auspices of the EPA Council and shall be held within 40 days of the date of the submission of the request. The consultations shall be deemed concluded within 60 days of the date of the submission of the request, unless both Parties agree to continue consultations. All information disclosed during the consultations shall remain confidential.*

▶ **ARTICLE 39**

- ▶ *1. If consultations do not succeed in settling the dispute within the 60 days referred to in Article 38, either Party may request settlement of the dispute by arbitration by notifying the other Party and the EPA Council. The request for arbitration shall identify the measure at issue and the provisions of the Agreement that the complaining Party considers the measure not to be in conformity with. To this end, each party shall appoint an arbitrator within thirty days of the request for arbitration. In the event of failure to do so, either party may ask the Secretary-General of the*
- ▶ *Permanent Court of Arbitration to appoint the second arbitrator.*
- ▶ *2. The two arbitrators shall in turn appoint a third arbitrator within thirty days. In the event of failure to appoint the third*

Disputescontinued

- ▶ *2. The two arbitrators shall in turn appoint a third arbitrator within thirty days. In the event of failure to appoint the third arbitrator, either party may ask the Secretary-General of the Permanent Court of Arbitration to appoint the third arbitrator.*
- ▶ *3. Unless the arbitrators decide otherwise, the procedure applied shall be laid down in the optional arbitration regulation of the Permanent Court of Arbitration for International organizations and States. The arbitrators' decisions shall be taken by majority vote within three months.*
- ▶ *4. Each party to the dispute shall be bound to take the measures necessary to carry out the decision of the arbitrators.*
- ▶

1. Why allow exceptions?
2. They are not discretionary
3. **General Exception** clause – Art. 40. (GATT Art. XX)
4. **Security Exceptions Art 41.**
 - ▶ **7. Dispute re Customs: ARTICLE 38, Protocol 2:**
 - ▶ *Where disputes arise in relation to the verification procedures of Articles 36 and 37 which cannot be settled between the customs authorities requesting a verification and the customs authorities responsible for carrying out this verification or where they raise a question as to the interpretation of this Protocol, they shall be submitted to the Special Committee on Customs Cooperation.*
 - ▶ *In all cases the settlement of disputes between the importer and the customs authorities of the importing country shall*

- ▶ **ARTICLE 47: EPA Council**

- ▶ 1. The Parties hereby establish an EPA Council.
- ▶ 2. The EPA Council shall be responsible for the administration of all matters under this Agreement and for the fulfilment of any of the tasks mentioned in this Agreement.
- ▶ 3. The EPA Council shall be composed of representatives of the Parties. Each Party determines the organisation of its representation.



- ▶ **ARTICLE 48: Special Committee on Customs Cooperation**
- ▶ 1. The Parties hereby establish a Special Committee on Customs Cooperation, composed of the representatives of the Parties. The Special Committee shall meet on a date and with an agenda agreed in advance by the Parties. The office of Chairperson of the Special Committee shall be held alternately by each of the Parties. The Special Committee shall report to the EPA Council established in Article 47.

1. Final EPA prevails in case of inconsistency
2. Territorial application : Art. 46.
3. Relationship with other agreements Art. 49
4. Accession Arts. 50
5. Annexes and protocols form an integral part of the Agreement and are also justiciable
6. Technically this is not a complete text
7. **Recommendations:**

- ▶ **ARTICLE 45: Entry into force and denunciation**
- ▶ 1. This Agreement shall be signed, ratified or approved in accordance with the applicable constitutional or internal rules and procedures of the respective Parties.
- ▶ 2. This Agreement shall enter into force the first day of the month following the deposit of the last instrument of ratification, acceptance or approval.
- ▶ 3. Notifications shall be sent to the Secretaries-General of the Council of the European Union and the East African Community Secretariat, who shall be the depositories of this Agreement.

Entry into force.....continued

- ▶ 4. Pending entry into force of the Agreement, the EC Party and the EAC Partner States agree to apply the provisions of this Agreement which fall within their respective competences ("provisional application"). This may be effected either by provisional application where possible or by ratification of the Agreement.
- ▶ 5. Provisional application shall be notified to the depositories. The Agreement shall be applied provisionally 10 days after the latter of the receipt of notification of provisional application from the EC Party or from all the EAC Partner States.
- ▶ 6. Notwithstanding paragraph 4, the EC Party and EAC Partner States may unilaterally take steps to apply the agreement, before provisional application, to the extent feasible.

Entry into force.....continued

- ▶ 7. The EC Party or the EAC Party may give written notice to the other of its intention to denounce this Agreement.
- ▶ 8. Denunciation shall take effect one month after notification to the other Party.

Amendment

- ▶ **ARTICLE 54: Annexes**
- ▶ *The Annexes and Protocols to this Agreement shall form an integral part thereof and may be reviewed and or amended by the EPA Council.*
- ▶ **Protocol I: ARTICLE 43**
- ▶ **Revision and application of rules of origin**
- ▶ *1. In accordance with Articles 12 and 47 of the Agreement, the EPA Council shall examine annually, or whenever the EAC Partner States or the Community so request, the application of the provisions of this Protocol and their economic effects with a view to making any necessary amendments or adaptations.*
- ▶ *The EPA Council shall take into account among other elements the effects on the rules of origin of technological developments*

Amendment continued

- ▶ *The decisions taken shall be implemented as soon as possible.*
- ▶ *2. In accordance with Article 48 of the Agreement, the Special Committee on Customs Cooperation shall, inter alia, take decisions on:*
 - ▶ *(a) cumulation under the conditions laid down in Article 5;*
 - ▶ *(b) derogations from this Protocol, under the conditions laid down in Article 41.*
- ▶ **Protocol 2 (Customs Matters) ARTICLE 14: Amendments**
- ▶ *The Parties may recommend to the competent bodies amendments which they consider should be made to this Protocol.*
- ▶ **Recommendations:**

Consolidated Recommendations

