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### **ECONOMIC PARTNERSHIP AGREEMENTS: A CHALLENGE FOR TRADE JUSTICE**

by

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# **ECONOMIC PARTNERSHIP AGREEMENTS: A CHALLENGE FOR TRADE JUSTICE**

## **INTRODUCTION**

In the last three years, the Debt and Trade Project (now Debt Aid and Trade Programme, DAT) of the Jesuit Centre for Theological Reflection (JCTR) invested in understanding the trade challenges faced by Zambia and other Least Developed Countries (LDC). This has been with the view to developing capacity for effective advocacy on trade arrangements that would contribute to the development of Zambia, especially human development.

It is recognised that trade, if rightly done, can contribute to poverty eradication. In Zambia, poverty levels are well beyond 50 percent, averaging 34 per cent in urban areas and even higher, 80 per cent in rural areas. It is in rural areas where the big policy question of how the largest population that is agriculture-based can benefit from trade arrangements.

A more inclusive concern for trade justice also focuses on a range of small scale producers, manufacturers, traders, etc. What is puzzling is not only why this huge portion of the population contributes very little to the growth of the nation but also why this group cannot move itself up the ladder of human development especially through trade. For example, five clusters of agriculture products including cereals, cotton, tobacco, edible vegetables each contributed less than 1 per cent to the total share of exports in October 2007 (are people growing these products part of the 85% poor?). Together with sugar and sugar confectioneries, these contributed slightly over 5 per cent to Zambia's exports in the same period. While it is agreed that it is not all agricultural produce which is meant for trade, the apparent lack of benefits drawn from agricultural trade by small scale farmers and producers in Zambia must be a source of economic concern. In essence, it must be considered as a pointer to the huge problems faced by small scale farmers and traders.

In comparison to about 500,000 Zambians in formal employment, there are over 800,000 small scale farmers. Zambia's failure to benefit from trade and ensure that the huge population of Zambia is not only food secure but also that it derives tangible benefits from its major source of livelihood (agriculture) requires urgent measures. Every trade negotiation, therefore, should be complementary to this process and ensure that it progressively responds to the problems faced by many small scale farmers and producers.

Part of the challenge faced by the agriculture sector and also others in the transportation and manufacturing sector is that of infrastructure and the daunting supply side problems which include communication, storage and transportation facilities, equipment, acquisition and adaptation of advanced technologies a trading environment perpetually skewed towards the wealthy and rich producers and suppliers, etc.

These challenges will heighten if countries like Zambia fully embrace Free Trade Agreements (FTAs) with rich countries without commensurate investments to resolve the challenges.

One such Free Trade Agreement is being negotiated between Europe and 77 of its former colonies in Africa, the Caribbean and the Pacific (ACP). Negotiations for this FTA which is called Economic Partnership Agreement (EPAs) began over 5 years ago and were expected to be completed by December 31, 2007 but for lack of comprehensive agreements they are now expected to be finalised by the end of 2008. EPAs are part of the trade component of the Cotonou Partnership Agreement which prescribes the political, development and trade relationships between Europe and the ACP countries until 2020.

A number of constituencies including Parliamentarians, Civil Society and the United Nations have already stressed the need for caution in the negotiation and implementation of such indiscriminate market opening trade pacts. Fears have been expressed around the possible dangers of an influx of cheap agricultural and manufactured goods from developed countries in Europe should such an FTA be endorsed and enforced at the end of 2008. Zambia's 800 000 small scale farmers may face stiff competition in their own local market, especially if the challenges cited above are not addressed.

The Economic Partnership Agreement is based on the economic theoretical assumption that increased free trade with Europe will increase competitiveness between the EU producers and producers in ACPs including Zambia. Whether liberalisation to embrace free trade takes place over 15 or more years, it is evidently clear that with the prevailing situations, a small scale farmer in Zambia who is heavily dependent on human and animal draft power cannot equally compete with a farmer in Europe who is well acquainted with the use of heavily mechanised machinery.

The fact that European farmers receive heavy government support and have a better and supportive infrastructural set-up as opposed to farmers from Zambia and other LDCs who are faced with deteriorating infrastructure and reduced support, skews the trade arrangement in favour of the already rich farmers from Europe. In this regard, EPAs are a formidable barrier to trade justice as the market they provide can be easily reached by the rich rather than the poor.

## **BACKGROUND TO ECONOMIC PARTNERSHIP AGREEMENTS (EPAs)**

In 2000, the African, Caribbean, and Pacific (ACP) and European Union (EU) countries replaced an agreement that had governed EU relations with its former colonies since 1975, the Lomé framework (See Box 1 on Page 5), with the Cotonou Partnership Agreement (CPA). The CPA states that it "aims to reduce and eventually eradicate poverty consistent with the objectives of sustainable development and gradual integration of the ACP countries into the world economy." The trade

cooperation dimension of the CPA requires that ACP countries and the EU should by January 2008 begin to implement a new trade regime compatible with World Trade Organisation (WTO) guidelines which should involve the reciprocal trade liberalisation between the two blocks of countries.

Governments of ACP countries re-organised themselves into 6 regional negotiating blocks, namely: the East and Southern Africa (ESA), Southern Africa Development Community (SADC), Economic Community of West African States (ECOWAS), Economic and Monetary Community of Central Africa (CEMAC), the Caribbean, and the Pacific.

These regional blocks have engaged the EU in negotiating the new free trade agreements called "Economic Partnership Agreements (EPAs)."

Zambia has been negotiating EPAs under the ESA group though it belongs to both SADC and COMESA<sup>1</sup>. COMESA is the Secretariat of the Eastern Southern Africa group of countries all of which are members of COMESA regional groupings. It is worth noting that each of the negotiating regional blocks has taken different approaches to the negotiations. For the ESA group, it has been a central focus that the EPA includes development objectives and strategies in all negotiating components of the EPA. These development needs, objectives, and strategies have been articulated in what is known as the "draft EPA text" and its accompanying regional development matrix (list of developmental projects submitted by ESA Member states).

The EPAs are being negotiated on the primary basis that the trade preferences going to developing countries under the Lomé agreement violate key WTO principles and also that ACP countries have become poorer despite preferential (favoured) access to EU markets. The EPAs are essentially a move from the use of the principle of preferences to promote trade to reciprocity<sup>2</sup>. The WTO, the EU and the World Bank consider free trade is an ideal way for ACP countries to make social and economic progress. However, Zambia's experience with liberalisation under the Structural Adjustment Programme refutes this notion. A lot of industries such as Nitrogen Chemicals of Zambia and several textile industries were liquidated which laid off a lot of people from employment.

Considering that increased poverty in ACP countries over the last years cannot be entirely blamed on preferences in the Lomé agreement, the Cotonou Partnership Agreement states that no ACP country should be worse off under an EPA than under the Lomé provisions. Unfortunately there has not been much focus on this key provision that should more vigorously govern EPA negotiations.

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1. COMESA is the Secretariat of the Eastern Southern Africa group of countries all of which are members of COMESA

2. A mutual exchange of privileges or favours. In reciprocal trade agreements, one nation extends certain benefits to another (such as the lowering of tariff duties) and in turn receives the same or similar benefits.

### **Box 1: Explanation of the Lomé Convention**

The Lomé Convention was a trade and aid agreement between the (EU) and 71 African, Caribbean and Pacific (ACP) countries, first signed in February 1975 in Lomé, Togo. This agreement was renegotiated several times, and the fourth and last in the series called Lomé IV was signed in 1989, with a life of 10 years, ending in 1999. Results of the Lomé Convention have been disappointing. In the 25 years between the signature of Lomé I and the expiration of Lomé IV, the share of ACP exports in European markets fell by half, from nearly 8% to about 3%.

In 1975, when the first Lomé Convention between the European Community (E.C.) and the African, Caribbean and Pacific (ACP) states was signed, ACP exports accounted for 3.4 percent of total E.C. imports. However, they failed to keep pace with the growth in E.C. trade, declining to 3.2 percent of E.C. imports by 1985 and to only 1.5 percent of E.C. imports by 1992. Average E.C. import growth between 1985 and 1991 amounted to more than 12 percent per annum, while ACP exports to the European Community expanded less than 7 percent per annum over the same period. The Lomé Convention, therefore, did not provide the essential supporting infrastructure to enable the ACP states to maintain their market share.

Successful experiences of the use of preferences are in fact limited to some sectors and some countries. While it was hoped that they would stimulate exports and boost growth, the incapacity of ACP economies to produce more, better and a greater diversity of products has in fact prevented them from taking advantage of this privileged access. This is the so-called 'supply constraints' argument in which the preferential margin (the difference between levels of customs duties) is only one element of competitiveness.

## **WHAT IS THE FUSS ABOUT EPAs?**

The last few months of 2007 witnessed a period of intense political and technical discussions concerning governments of the ACP countries, Civil Society Organisations (CSOs) and, the EU on principles, scope, timeframes, and substance of EPAs.

Two main divergent views on the possible consequences of EPA have characterised the negotiations. The supporters of EPAs base their argument on theoretical benefits of free trade and the opponents of EPAs foresee negative consequences based on some practical experiences of trade liberalisation in developing countries such as Zambia, Malawi, etc. In Zambia the closure of over 100 textile industries after trade liberalisation of the last decade serves as an example of how cheap imports can take over the market space meant for indigenous productions.

The positive view mainly propagated by the European Commission<sup>3</sup> (EC) is that the EPA will be yet another poverty redeeming tool for ACP countries, as it will bring about competitiveness and efficiency.

3. The European Commission is effectively the EU's civil service or the executive body. It has powers of initiative, implementation, management and control. It is the guardian of the Treaties and the embodiment of the interests of the European Community.

The negative view publicly rose from Kwame Osei-Prempeh, Ghanaian MP at a Joint EU – ACP Parliamentary Assembly in Brussels in 2005 and is strongly shared by a wide range of NGOs in ACP countries and the EU. Mr. Osei- Prempeh pointed out, "I am more convinced that the EPAs stand to knock us back. EPAs stand to harm us.... They will only benefit our European partners. The ACP must sit up and look at this issue critically."

Other prominent leaders and credible institutions have also continued to raise their concerns (See Box 2) and views on the likely consequences of a free trade agreement between two economically unequal partners such as the EU and ESA.

Considering that the EU and ACP are partners of different economic strengths, it has been anticipated that the EU with its economic strength and the huge support it provides to its traders including farmers, is poised to derive more economic benefits from these extensive free trade agreements.

Against this background, EPAs have been a source of uproar especially among CSOs within and across the ACP and European states. In addition, consensus on the content of the agreements has been hard to reach among negotiators in most regions. This lack of progress in negotiations is indicative of the real difficulties ACP countries, especially the poorer ones like Zambia face in making choices on several important political and economic matters within a limited period of time.

It is clear that the trade liberalisation commitments demanded under this new free trade agreement may create losers and winners within individual countries, regions and between regions. Thus, the intra-country, regional and inter-regional tension should be expected to increase. Constructive responses should be responsibly planned-for in accordance with current national and regional objectives.

#### **Box 2- Concerns Raised Around EPAs**

**24 Church groups** meeting in Tanzania in April, 2007 stated that "... we come to the conclusion that they (EPAs) are not in line with our principles. On the contrary, **they are a threat to the well-being of our people and our economic development.** While we appreciate the development objectives of the Cotonou Partnership Agreement, we are mindful that in the current negotiations **the European Union and our governments have lost sight of these objectives.**"

**Ministers of Trade of the African Union** in January 2007 also said they are "Concerned that at this advanced stage of the negotiations, Africa's priorities have not been positively and adequately addressed by the European Commission".

The **United Nations** also added by saying, "There is still no confidence yet in the ability of EPAs to be pro-development." UNECA, December 2006

"A major concern is the impact that the trade liberalisation to be wrought by EPAs would have on fiscal revenue... The prospect of falling government revenue... imposes a heavy burden on your countries and threatens to further hinder your ability to achieve the Millennium Development Goals."

**Former UN Secretary General, Kofi Annan.**

"We are not ready to embark on full market reciprocity ..."  
**Hon. Dora Siliya, Deputy Minister, Ministry of Commerce Trade Industry, Zambia. April, 2007.**

As a result of the call for caution, ACP and EC officials engaged in intense discussions in the seven months prior to the official deadline of December 31, 2007 around the details of the proposals and counter proposals from the negotiating parties. CSOs in ACP and in Europe have also been involved in monitoring the regional and inter-governmental EPA discussions.

In Zambia, the JCTR hosted campaign, Jubilee – Zambia, and its partners the Civil Society Trade Network of Zambia (CSTNZ), Participatory Ecological Land Use Management (PELUM), Consumer Units and Trust Society (CUTS) and Kepa. Zambia have actively engaged in understanding some of the options and implications of signing an EPA for Zambia's development prospects.

These CSOs have engaged in EPA debates at regional level and subsequently have taken concerns to the European Commission (EC). Sensitization work has also been done in some provinces and with some interest groups at national level, to take stock of what an EPA will mean for small scale producers in specific sectors such as cotton and dairy.

In May 2007, these CSOs organised a national consensus building conference under the theme *"EPA: Doom or Boom for Zambia?"* This was prompted by the lack of a full assessment of the micro and macro implications of the EPA which have not been widely discussed by stakeholders in Zambia despite some EPA impact assessment studies which have been done. The conference aimed at helping the stakeholders keep sight of the priorities and key challenges, primarily to Zambian small scale producers, with the aim of identifying the required interventions and safeguards that will ensure a positive developmental impact of an EPA. The result of the conference was the agreement by leading CSOs in a strategising meeting to join the international "Stop EPAs in Their Current Form" campaign.

## **ARE THERE SAFEGUARDS TO THE EPA NEGOTIATION PROCESS?**

The Cotonou Partnership Agreement through its articles provides some safeguards or checks to ensure that the negotiation process does not undermine the ultimate objective of an EPA, which is "sustainable development". This includes a principle that the new trade agreement should not make countries in the ACP region worse off than under the Lomé conventions.

The CPA also makes provision for the consideration of alternatives and for regular reviews under article 37.6 and article 37.4 respectively. It was envisaged that by 2004, appropriate alternatives for countries which would have preferred different trading arrangements should have been considered. Despite numerous calls by the African Union to the EC to determine alternative trade arrangements, the EC has vehemently refuted these appeals, repeatedly declaring that "there is no plan B".

Article 37.4 states that "the Parties will regularly review the progress of the preparations and negotiations and will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries."

## RECENT DEVELOPMENTS AND THE CURRENT CONCERNS

In the latter part of 2007, after having ignored the warnings that emerged from the 2006 regional EPA reviews, the EU finally decided to no longer push for comprehensive EPAs during the course of 2007. However, what is regrettable is the decision for the EU to pursue sub-regional goods agreements called "Interim Agreements". Concerns have steadily been increasing not only from civil society, trade unions, farmers' and employers' organisations and research institutions, but also from international institutions like the United Nations Economic Commission for Africa (UNECA), (United Nations Conference on Trade and Development) (UNCTAD), the World Bank, and foundations like the German Marshall Fund on the implications of such a framework.

The Interim Agreement was unilaterally designed by the EC and offered to regional groups who had the option of signing as economic groupings or as individual countries. The result of this agreement was further disintegrated especially among the 16 ESA countries where five countries signed under the Eastern Africa community.

Zimbabwe, Mauritius, Madagascar and Seychelles individually signed and the rest are still waiting to decide whether to sign or not.

According to an update from the European Commission, only 19 countries out of the 77 ACP countries had initialled (acceded to all or some of the terms of the Interim Agreement) the Interim Agreement by December 12, 2007. A number of countries including Nigeria, Ethiopia, Djibouti, Sudan, South Africa, Angola, Senegal and many others in Africa, and the other two regions (Caribbean and Pacific) have not initialled the Agreement.

Zambia initialled the Agreement on December 5, 2007, alongside Mauritius, Seychelles and Zimbabwe from the Eastern and Southern Africa (ESA) configuration. Zambia however, did not make any obligations on trade particularly relating to the level of liberalisation which the EU has continued to insist that it should be 80 per cent. Zambia has a list of products which it intends to protect from possible competition with EU products on the local market. The list comprises 24.2% the total of EU products exported into Zambia. This implies that the desired level of liberalisation for Zambia is about 76 percent. Zambia has also not nodded the transition period which the EC has reduced to 15 years with a 5 year moratorium opposed to a 25 year period with a 10 year-moratorium<sup>4</sup>. This caution exercised by the Zambian negotiators is commendable.

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<sup>4</sup> A moratorium provides for a period within which no liberalisation will be done.



Zambia acceded to the agreement on account of increased prospects of sugar exports, maintenance of the current Rules of Origin<sup>5</sup> (RoO) which are less stringent than the alternative Everything But Arms<sup>6</sup> (EBA) and the possibility of accessing some 2 billion euros meant for EPA related funding for ACP countries.

However, Zambia's bilateral initialling of this interim agreement implies that regional integration efforts are adversely affected. Zambia belongs to both COMESA and SADC which have plans of becoming Customs Unions in the next 2 years. With the current divisions on EPAs, regional integration efforts are gravely jeopardised. Disappointingly, the Interim Agreement does not explicitly prohibit European Union member countries from providing subsidies which have been a threat to ESA domestic markets. The agreement also constrains policy space as government cannot introduce new taxes or increase customs duties. It is also regrettable that there is an inbuilt agenda for the next phase of the negotiations which will require Zambia and other Least Developed Countries to make reciprocal commitments in liberalising services and trade related issues such as, investments, government procurement, etc, which our governments have consistently rejected at the World Trade Organisation (WTO).

Notably, the Interim Framework Agreements are being negotiated and signed in haste, simply to comply with a deadline, and they also fail to address key concerns regarding rules of origins, safeguards, coverage and sequencing of market opening, flanking measures, cooperation schemes and their financing, fiscal reform, etc.

In response to EC pressure on the agreement, ACP Ministers expressed concerns at their meeting in Brussels on 9 November 2007 "[...] that negotiations should not be conducted in a manner that continues to exert pressure on ACP regions in a take-it-or-leave-it manner", as well as their "dissatisfaction" at the "[un]willingness on the part of the EC to explore such options as GSP (Generalised System of Preferences) plus or enhanced GSP measures – as temporary measures to WTO compatibility."

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<sup>5</sup> Laws, regulations and administrative procedures that determine the origin of a good. They may be designed to determine the eligibility of a good for preferential access under the terms of a free trade agreement, or they may be designed to determine a good's country of origin.

<sup>6</sup> The Generalised System of Preferences (known as GSP for short) is a scheme whereby a wide range of industrial and agricultural products originating in certain developing countries are given preferential access to the markets of the European Union. Preferential treatment is given in the form of reduced or zero rates of customs duties.

Far from seeking to ensure maximum flexibility, the Commission seems to be going for maximum compliance by increasing coverage and reducing transition periods for tariff elimination. These sub-regional agreements will not meet the objectives of regional integration. They enforce built-in accession clauses which will in no way suffice to put together again the sub-regional divisions that are now being created.

## **DIVERGENCES AND CHALLENGES IN THE EPAS**

**Lack of a Concrete Agreement on Development Measures:** What is of greatest concern is the development component with divergent positions between the EU and its ESA partners. While both groups agree that the EU - ESA Economic Partnership Agreement (EPA) has to lead to development, they have different views on what will bring about development. For example, ESA feels development considerations should cover issues such as policy and regulatory framework, production, distribution, marketing and transport, financial cooperation, investment, mining and mineral resource management, natural resource management, technology transfer and knowledge-based systems. The EC's view is that trade is an instrument of development in itself. Therefore, its focus is primarily on securing tariff reduction commitments.

The ESA development matrix, which is a list of regional and national projects required to boost and enhance capacities and production from ESA producers is considered by the EU as "lacking credibility". While the EC and ESA governments have expressed the need for additional resources, no clear commitments have been made and they have both relied heavily on the expectation that other sources can be found. Even though there have been substantial discussions on the matrix, the sources of finance for implementation of the matrix, its accompanying benchmarks and the inclusion of the matrix in EPA are still not very concrete.

The 2006 ESA-EC review notes that EC proposals on development lack the rich detail as included in ESA's. For instance, ESA negotiators have called for inclusion of development indicators, safeguard measures, adequate transition periods for EPA implementation, and indicators to monitor and evaluate implementation of EPAs in the agreement.

As the EPA negotiation has proceeded, a number of reviews have been undertaken by interested agencies such as the United Nations Economic Commission for Africa (UNECA) and the EC and ACP negotiators themselves. If the objectives and outcomes of the reviews are respected by both parties, the development aspect of an EPA may be ensured. But if the objectives and outcomes of the reviews are manipulated and/or downplayed, which seemingly is the case now, as the EU has downplayed the need for development needs of ESA, signing EPAs will most likely spell doom for African producers.

## **NO CLEAR UNDERSTANDING OF TRANSITION PERIOD**

The WTO requirement for a regional Free Trade Agreement is that trade liberalisation should take place over a "reasonable length of time" which is also referred to as a "transition period." There has been contention between the EC and ACPs so far relating to the transition period and product coverage for the progressive realisation of reciprocal trade. The EC was until recently calling for a limited transition period of 10-12 years during which competition would be limited and thereafter 80-90% of trade between Europe and the African countries could be liberalised.

Under the Interim Framework agreement this is varying, ranging from 10 to 15 and 20 years depending on the countries that have negotiated. This expresses a clear lack of standards and uniformity. ESA on the other hand was initially negotiating for a transition period of 25 years. But now, due to the sub-regional group/country negotiations, there are now different transitional periods. These differ not only between groups and countries but also on the basis of products. For example, the East Africa Community (EAC) have negotiated a transition period of 15 years for sugar and rice but 20 years for all other products.

Some ESA countries are of the firm view that for reciprocal trade relations not to damage their economies and people's livelihoods, it should only occur when ESA productive and trade capacity is robust and competitive enough to survive competition with heavily subsidised EU products. Thus, the focus should be on building capacities that will lead to structural transformation of their economies. The transition period should therefore be dependent on how long this will take rather than seek maximum conformity to WTO 10 year transition period which is not realistic.

## **GOING BEYOND WTO REQUIREMENTS**

Contrary to the bone of contention that brought about the challenge at the WTO, which led to the initiation of EPA negotiations, the current negotiations have also included services which are not primarily the issue at question in WTO compatibility.

ESA has also given in to negotiating trade in services, competition, trade facilitation, investment and government procurement which were rejected at the WTO. In the WTO negotiations, all LDCs within ESA have been exempt from having to make commitments on new services liberalisation. Furthermore, the Cotonou Partnership Agreement does not require services liberalisation, and suggests it should only happen "after they have acquired experience in applying the Most Favoured Nation (MFN) treatment under General Agreement in Trade in Services (GATS)."

The Cotonou agreement includes cooperation in a number of other 'trade related' areas, such as trade facilitation, investment, competition policy, intellectual property rights, etc. On most of the issues, Cotonou represents a commitment to talk, but no commitment to include binding agreements in the dialogue.

If the EPAs are signed, obligations of ACP/EU countries may go beyond those

agreed in the WTO (WTO-plus), and introduce into the bilateral context issues that contributed to the failures of Cancun (investment, competition and government procurement) and of Seattle (labour and environment).

## **LACK OF NATIONAL COMMITMENTS TO DELIVER DEVELOPMENT**

In light of the need for more development aid to facilitate faster structural transformation of ESA economies, the ESA countries have proactively developed a comprehensive list of its development needs. But according to the EC, ESA has focused more on asking the EC to fund the structural transformation of ESA economies without similar budget related commitments of ESA governments to resolve some of these structural problems. Therefore, this calls for a deeper engagement on EPAs at national level by both the executive and legislature so that national commitments in this regard are also established. ESA governments own commitment to allocate substantial amounts of resources to address supply side constraints to trade (e.g. infrastructure) is needed as this commitment will not only benefit EU-ESA trade but ESA's trade with the rest of the world.

Only K32 million (equivalent to US\$ 8,000) was set aside in Zambia's 2007 national budget for EPA awareness and sensitisation. There is need to ensure that national priorities are aligned to delivering development financing related to enhancing trade.

However, it should be noted that the demand of increased development aid from ESA could likely be tied to the EU's demand for a tariff reduction within a time frame shorter than would be desirable to ESA governments. Most African governments still significantly depend on revenue from trade taxes to keep governments operations.

In this case, if the EC is not willing to be more flexible in issues of tariff reduction and transition periods for liberalisation, it will have to foot a good portion of the bill with regard to meeting government revenue gaps and funding needed to strengthen ESA capacity to produce and trade competitively.

This level of commitment from the EC is unlikely based upon EC's record of never fully disbursing resources. According to a study by Oxfam, only 34 per cent on average of EDF funds have been disbursed within the EDF funding cycle. To curb this, Anderson and Stevens from the Overseas Development Institute (ODI) suggest that development assistance should be linked to liberalisation trenches, which means that if the EU wants the ACP to liberalise the next set of products, it first has to deliver on assistance for those areas. Also bind the EU to making contributions to the fiscal revenue of countries that will not be able to find alternative tax revenue sources.

## **OTHER CHALLENGES IN GENERAL**

In addition to the very slow progress by ESA and the EU in attaining agreement on the substance of the EPA, major challenges exist within the negotiating block.

These include the lack of agreement among ESA countries on key aspects such as the regional priority list of products to be exempted from liberalisation, overlapping memberships and configuration challenges with the split of the Eastern Africa Community. Other challenges include problems with the funding of the EPA negotiations and implementation, the stringent EDF procedures, the limited information flow about the EPA negotiations, limited negotiating capacity, flaws in the negotiating strategy, problems of the geographical configuration and legal mandate and interpretation of WTO compatibility.

## CONCLUSION

While it is widely acknowledged that a level playing field does not exist in the current world trading system, effectively limiting developing countries' access into markets of the rich north, any further opening up of domestic markets of poor countries without adequate development safeguards under EPAs will also push poor country producers' out of the domestic and regional markets they access today.

Within the EPA, negotiating parties have the burden of ensuring that their demands are realistic and offers in the EPA are reasonable. These should be able to support and safeguard production and trade capacities of ACP producers and not undermining them. Trade liberalisation without deliberate development measures will not lead to poverty eradication. The case of the South African EU Free Trade agreement makes this point, while it includes development and co-operation and volumes of trade have increased as a result of the agreement, no significant development benefits have resulted so far. Thus, the ESA approach in articulating its regional development needs is a key method of ensuring that EPAs are indeed about development and not merely a free trade area for the rich and already highly subsidised European producers.

In line with the spirit and the letter of the Cotonou Agreement and the Doha Development Round (DDR), the EU can choose to use its economic power to enable a pro-development EPA or block it. Thus, at this stage of the negotiations the trade justice challenge is also at the feet of EU member states. A positive aspect of the negotiations is that since September 2006, the ESA countries have spent time talking about their needs and required interventions amid potential threats from market opening for EU products.

The best approach to respecting the Cotonou partnership and its objectives is to provide non-reciprocal alternatives like an improved GSP plus and to, at the least, allow for more time to continue the quest for agreements that serve regional integration and sustainable development, without setting any artificial new deadlines.

It is imperative that EPAs should be signed as development accords, they must among other things: extend the negotiation deadline until grey areas in the negotiations are cleared, EPAs need to be specific on what will be protected, Safeguarded; ESA

Governments should first formulate economic regulations that will strengthen local participation, create instruments to attain food security, expand employment opportunities, encourage industrialization, heighten rural and infrastructure development, before making any liberalisation commitments. The agreement should further safeguard key products in the domestic market for domestic production that cannot afford to reach international markets. These entail fighting for more sensitive products to be excluded from the competition with EU products; Stop negotiating Singapore issues in line with position of LDCs at the WTO; and link EPA reforms to poverty reduction targets.

The hope for many concerned with the effect of a Free Trade Agreement such as an Economic Partnership Agreement is that as the countdown to December 2008 draws near, more reasonable options should be promoted by all stakeholders and taken by decision-makers.

## **RECOMMENDATIONS**

### **General Recommendations**

#### **1. With an extension of one year time frame for the EPA talks, it is essential:**

- To reform the basis for negotiating regional free trade areas so that less than full reciprocity, as well as asymmetric trade rules can be negotiated, reflecting the differences in economic strength and power between Africa and the EU, and addressing the need for adequate market protection instruments against an influx of cheap EU agricultural and food products into Africa.
- To invest in Africa's small producers, allowing them to improve supply capacity and hence take advantage of any trading opportunities.
- To strengthen regional trading networks, as regional trading is more advantageous to development than North-South arrangements. As the UNCTAD Trade and Development Report 2007 is rightly advocating, developing countries should strengthen regional cooperation amongst them, but proceed carefully with regard to North-South bilateral trade.
- That negotiating parties consistently remember that the Cotonou Agreement does not oblige the ACP countries to negotiate either new generation issues such as investment, government procurement or intellectual property rights or the liberalisation of services. Therefore, the pursued interim agreements should not introduce binding obligations in these regards.
- That the WTO, EC and ACP countries should resolve the interpretation of "substantially all trade" of WTO's article 24 and at the same time use existing flexibilities on safeguards to ensure that not less than 30 per cent of ESA products are protected from trade liberalisation.

## **2. Sequencing of EPA, WTO and Intra Regional Developments: EPAs Should Be Subordinate to Multilateral and Regional Trade Treaties**

- The conclusion of the EPA negotiations should be consistent with other multi lateral and intra region trade arrangements.
- EPA negotiations were intended to be finalised three years after the end of Doha negotiations to build on the expected more pro-development multilateral trade rules, including further clarity of flexibilities under WTO/GATT article XXIV. However, in the Doha negotiations, deadlines have been missed by the day. Without clear conclusions from the Doha round, there is no urgency for finalising EPA negotiations.
- Since the EPAs are life-long agreements which will be implemented while some intra regional objectives and policies such as the harmonisation or rationalisation of Regional Economic Communities (RECs) such as COMESA and SADC and the Common Agricultural Policy of the EU will still be under discussions, it is imperative to ensure that EPAs do not go ahead of such important local and international trade agendas. Doing so, bears the risk of being incompatible with such Multilateral and Bilateral Trade arrangements.

## **3. Political Guidance and Impetus should be in line with views of Technocrats and CSOs**

- Recognising the importance of the Joint Ministerial Meetings which have often been held with the objective of providing "political guidance and impetus" to the EPA process. Civil Society has always been concerned that the Joint Ministerial Meetings have often over-ridden the opinions and recommendations of the technocrats who usually have their deliberations prior to the Ministers meeting. In February, the Ministers agreed wide ranging negotiations on WTO plus issues while the technocrats had indicated lack of adequate capacities on these issues. It is our hope that this will not be the case in 2008.

## **4. To the Government of Zambia**

- While it is impressive that the Government of Zambia has provided space for the participation of Civil Society in the negotiations, it is essential that government should design ways for including small scale producers, traders and farmers communities in the process. The fact that the Ministry of Commerce Trade and Industry does not have district structures presents peculiar challenges which would adversely affect participation of local trading communities.
- It is important for the government to remain strong on protecting sectors which are key for food security, e.g., agriculture, rural and infrastructure development and those sectors in which Zambia has got potential to increase its trade such as tourism.

- The terms and conditions of the interim agreements, since they have been negotiated in great haste, should be publicly scrutinised and renegotiated in the eventual agreements to ensure they are coherent with ACP designed and owned development strategies.
- Zambia and other ACP regions require more time to negotiate agreements that are in their development interests rather than hastily follow the divisive sub-regional, market access-only approach which has been offered to them by the EC. The length of the extension was primarily determined by the EC and was not based on WTO recommendation or ACP requests based on the work needed to come up with comprehensive agreements. There is currently no explanation provided to satisfy the rationale used to arrive at an addition of 1 year for ESA and 1 1/2 years for East Africa Community (EAC).
- Our Zambian government should use national instruments which have outlined the development agenda for Zambia as the basis for negotiations. There should be consistent reference and harmonisation between the positions in the EPAs and the contents of Zambia's Fifth National Development Plan (FNDP).

#### **5. To the European Union and Commission**

- The European Union should revisit their EPA approach and assure full compliance with article 37.6 of the Cotonou Agreement by offering equivalent market access to the regions and countries that are not in a position to sign an agreement.
- The EC should cease giving lip service to the need for real development measures included into an EPA.



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Sitali, Muyatwa

Jesuit Centre for Theological Reflection

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