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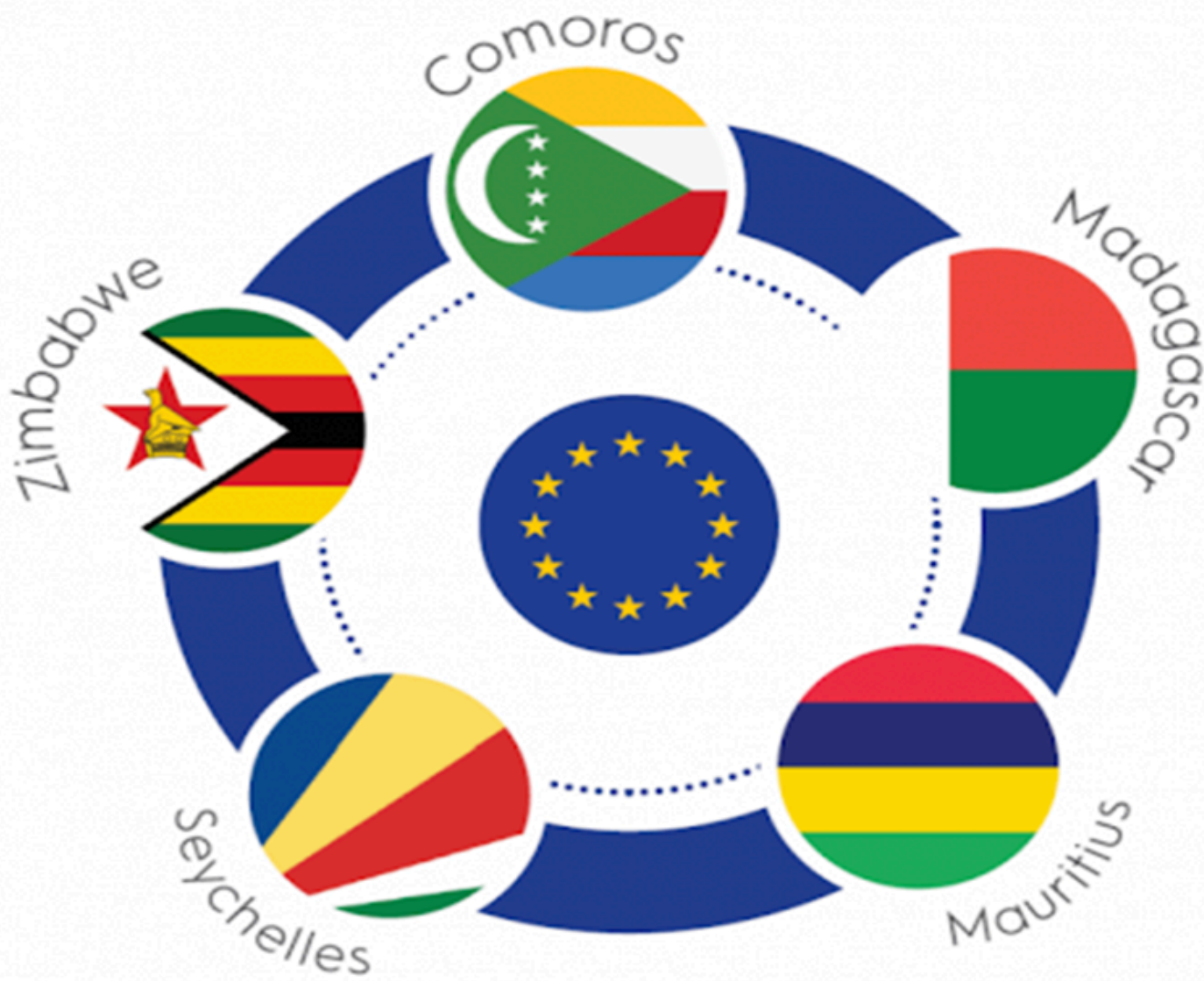
Zimbabwe Council of Churches

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THE INHERENT DANGERS FOR CONCLUDING THE EU-ESA5 EPA NEGOTIATIONS: SOME PROPOSALS ON THE WAY FORWARD

POLICY BRIEF





Abstract

The Brief paper highlights the inherent danger for ESA5 countries to sign the EU-ESA5 comprehensive agreement. The EPAs remains a threat to regional and continental integration given that the signing and ratification is happening at EPA regions not aligned to RECs whilst some countries maintain strong reservations given the agreement's potential to undermine their industries. With the AfCFTA negotiations still ongoing on annexes of key protocols like Investment, Digital Trade, and Intellectual Property, it would be wiser to slow down the ESA5-EU EPA juggernaut and renegotiate the existing EPAs to allow for policy space needed to ensure policy coherence. Under the EPA, the EU is not accepting significant cumulation within the region, insisting cumulation be done by parties that have signed EPA agreements.

This contradicts the stated objective of the EPA that is to promote regional integration in Africa. Under the comprehensive EPA, chapters such as the Trade and sustainable development does not align with the sustainable development priorities identified by the ESA5 in the African Continental Free Trade Area (AfCFTA). Moreso, commitments introduced by the EU such as the Carbon Border Adjustment Mechanism (CBAM) and the Regulation on Deforestation-free Products (EUDR) will affect the access to the EU market by ESA countries. The EU must commit to the reduction and elimination of its ever-increasing domestic subsidies the EU must incorporate measures to reduce domestic subsidies while at the WTO it must desist from shifting its prohibited (red) subsidies into allowable (green) subsidies. The EU must commit to ESA5 countries to live up to what was agreed in the WTO Hong Kong Ministerial Conference to eliminate export and trade-distorting subsidies. While commenting the position of ESA5 countries on the IPR, achieving a self-sustaining and food-secure ESA5 region requires rethinking the provisions under the IP Chapter by prioritizing farmer-managed seed systems, farmers' rights, and agroecology. The Chapter on Investment Liberalization, Trade in Services and Digital Trade has several provisions that, unless amended, may limit the growth of the nascent economies of the ESA5 countries.

The inherent weaknesses of trade institutions in ESA5 and over reliance on technical, financial and other support from the EU to be able to implement safeguards puts the ESA5 in a weak position to trade with the EU reciprocally. The ESA5 countries should not succumb to the pressure of concluding the comprehensive EPA negotiations given that several chapters have terms that will jeopardize regional integration, industrialisation and sustainable development, risking the deepening of unemployment, poverty and food insecurity in ESA countries and other African countries[1].

[1] This Policy Brief published by the Zimbabwe Council of Churches (ZCC) is a culmination of extensive discussions, dialogues and research on the Economic Partnership agreements with various sectors. All the stakeholders engaged and who provided their insights both at individual and institutional capacities are appreciated. The ZCC acknowledges the contributions of African Kiiza and Boniface Mabanza. The production was managed by Mr Admire Mutizwa, the Director of Programme on Church, Peace and Just Societies at the Zimbabwe Council of Churches. The ZCC further acknowledges financial support provided by the Bread for the World.

1.Introduction

Since October 2019, Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe under the Eastern and Southern African Countries (ESA) bloc started negotiating a more comprehensive Economic Partnership Agreement (EPA) with the European Union (EU). Since then, negotiations have progressed under several rounds on several issues and are projected to be concluded on the 15th round scheduled by the end of 2024.

These comprehensive EPA negotiations are enabled by the rendezvous clause in Article 53 of the EU-ESA5 interim EPA whereby the two parties commit to negotiating and concluding a full and comprehensive EPA covering the areas of customs and trade facilitation; outstanding trade and market access issues; technical barriers to trade and sanitary and phytosanitary measures; trade in services; trade-related issues (competition policy; investment and private sector development; trade, environment and sustainable development; intellectual property rights); transparency in public procurement; agriculture; current payments and capital payments; development issues; cooperation and dialogue on good governance in the tax and judicial area; an elaborated dispute settlement mechanism, institutional arrangements; and any other areas that the Parties find necessary (European Commission, 2012).

Like the EPAs with other African, Caribbean and Pacific regions, the stated objectives of the EU-ESA5 deep EPA are to ensure the sustainable development of ESA5 countries; ensure their smooth and gradual integration into the global economy; and eradicate poverty. In practice, the negotiations have so far not adequately addressed these objectives and the remaining contentious issues if not resolved will not only undermine the achievements of these objectives but will also negatively affect the future development of the ESA region.



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2. Overview of the Economic Partnership Agreements (EPAs)

The Africa Caribbean Pacific (ACP)-European Union (EU) EPA Negotiations were launched in 2002 under the Cotonou Partnership Agreement (CPA) where the Parties agreed to conclude new World Trade Organization (WTO) compatible trading arrangements, progressively remove barriers to trade between them, and enhance cooperation in all areas relevant to trade (European Commission, 2007). The stated overall objectives of the EPAs are namely; to ensure the sustainable development of ACP countries; to promote regional integration; to ensure a smooth and gradual integration of ACP countries into the global economy; and to eradicate poverty (ibid).

In Africa, while the negotiations were envisaged to be concluded by 2007 and new trading arrangements to be in place by 2008, apart from the Southern African Development Community (SADC), the EPAs are yet to be fully signed and ratified by a single Regional Economic Community (REC). This stalemate is due to the outstanding issues which individual countries in these RECs argue should be addressed first before the EPA can be signed and ratified. Despite this resistance, the EU has gone ahead to launch negotiations for deeper and more comprehensive EPAs with individual countries and RECs.



Rec	Status of EPA Negotiations
<p>Economic Community of West African States (ECOWAS)[1] [1] The 15 ECOWAS Member States include: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.</p>	<p>Negotiations of the regional EPA covering 16 countries in West Africa were concluded on 30th June 2014. Of these, only Nigeria is yet to sign the EPA, de facto preventing the adoption of the regional EPA. Nigeria is reluctant to sign the EPA because of the need to protect the economy, especially the industries and small businesses that currently provide jobs for the majority of Nigerians from EU Competition (Premium Times, 2018). By evoking the principle of Variable Geometry, Côte d'Ivoire and Ghana signed a provisional EPA on 3rd September 2016 and 15th December 2016 respectively to apply in the interim as they await the adoption of a full regional EPA (European Commission, 2024). Ultimately, Ghana started tariff liberalisation in 2020 and implemented the first tariff cuts in July 2021, while for Ivory Coast, effective liberalisation started officially on 6th December 2019 (ibid).</p>
<p>East African Community (EAC)[1] [1] The 6 Member States of EAC include: Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda</p>	<p>The negotiations for the regional EPA were concluded on 16th October 2014. On 1 September 2016, Kenya and Rwanda signed the Economic Partnership Agreement between the East African Community and the EU. All EAC members need to sign and ratify the EPA to be implemented. The EAC Summit of 28th February 2021 concluded that while some EAC members are not ready to sign and ratify the EPA, those members, who wish to implement the EPA should be able to commence engagements with the EU with a view to starting the EAC EU EPA implementation under the principle of variable geometry". Subsequently, on 17th February 2022, the EU and Kenya launched talks on the bilateral implementation by Kenya of the EU-EAC EPA with sustainability provisions (European Commission, 2024). The political conclusion of the negotiations took place on 19th of June 2023 in Nairobi and the agreement was signed on 18th December 2023 also in Nairobi, with the European Parliament gave its consent on 29th February 2024, and Kenya's Parliament ratifying it on 24th April 2024 (ibid). On 1st July 2024, the EU-Kenya EPA entered into force (Schul, 2024). While bilaterally negotiated between the EU and Kenya, other EAC Partner States are allowed to accede to the agreement through writing to the EU and Kenya (European Commission, 2023). There are concerns over the EU-Kenya EPA's impact on the EAC's Common External Tariff (CET) whereby Kenya offers a 25% import tariff on wines and spirits under the EPA, which is lower than the 35% tariff agreed upon under the EAC CET (Economist Intelligence, 2024)</p>
<p>Southern African Development Community (SADC)[1] [1] The 16 Member States of SADC include: Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe</p>	<p>On 15th July 2014, the EPA negotiations were successfully concluded in South Africa. The agreement was signed by the EU and the SADC EPA group on 10th of June 2016. What is interesting is that fifteen[1] EU Member States have not ratified the agreement (European Commission, 2024). Pending ratification by all EU Member States, the agreement came provisionally into force on 10 October 2016 (ibid). On 26 July 2022, the EU-SADC EPA Joint Council adopted the decision on Angola's Accession to the EU SADC EPA, enabling Angola to start negotiations for accession to the EU-SADC EPA (ibid). Another notable observation is the division within SADC concerning negotiations. Out of the 16 Member States that makeup the SADC, only 6 (South Africa, Botswana, Lesotho, Namibia,</p>

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[1] Belgium, Bulgaria, Denmark, Germany, Ireland, Italy, France, Cyprus, Malta, Netherlands, Austria, Poland, Slovenia, Slovakia, Sweden.

Rec	Status of EPA Negotiations
	<p>Swaziland, and Mozambique) negotiated the EPA. Angola is the latest on the road to join the EPA following the EU-SADC EPA Joint Council adopted the decision on Angola's Accession to the EU SADC EPA, enabling Angola to start negotiations for accession to the EU-SADC EPA. Other countries like Malawi and Zambia are not part of the EPA, Tanzania has negotiated under the EAC, while the DRC is supposed to negotiate under Central Africa.</p>
<p>Central Africa</p>	<p>Only Cameroon signed the EPA between the EU and Central Africa as the only country in the region on 15 January 2009. In July 2014, the Parliament of Cameroon approved the ratification of the Agreement and on 4 August 2014, the agreement entered into provisional application. Tariff liberalisation started in 2016 and entered in its 5th phase in 2021.</p>
<p>Eastern and Southern Africa-(ESA5)[1] [1] ESA 5 States include: Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe</p>	<p>ESA5 have signed and ratified the regional EPA. Mauritius, Seychelles, Zimbabwe and Madagascar signed it in 2009, and the ESA EPA has been provisionally applied since 14 May 2012. In 2017, these four countries indicated to the EU their interest to engage in a more comprehensive EPA. Mauritius and Seychelles started liberalising tariffs on EU imports in 2013 and Madagascar and Zimbabwe started liberalising in 2016 and 2017 respectively. Following the ratification and provisional application of the EPA by Comoros in February 2019, the negotiations on the deepening of the ESA5 EPA started in October 2019. The issues under negotiations include a wide range of issues, such as agriculture, technical barriers to trade (TBT), customs and trade facilitation (C&TF), Sanitary and Phytosanitary Standards (SPS) and Rules of Origin (RoO), as well as new issues such as trade in services, investment liberalisation and digital trade, capital movements, payments and transfers and temporary safeguard measures, government procurement, intellectual property rights, a Trade and Sustainable Development (TSD) chapter, consultative bodies for civil society and parliaments, and Economic and Development Cooperation (EDC).</p>
<p>North Africa</p>	<p>The EU is negotiating a Deep and Comprehensive Free Trade Area (DCFTA) with several North African Countries including Morocco and Tunisia. Negotiations have already commenced to add new chapters on investment, services and intellectual property rights.</p>

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3. Outstanding issues in the EU-ESA5 EPA

From the table above, two things stand out. Firstly, while the EPAs were negotiated under RECs, their signing and ratification have not taken the same approach due to the strong reservations some countries like Tanzania and Nigeria have of the agreement's potential to undermine their infant industries. Secondly, what began as Regional EPAs have metamorphosed into National EPAs with the EU negotiating individual agreements with Kenya, Ghana, Ivory Coast, and Cameroon among others, ultimately posing a danger to the much-coveted regional integration in the RECs where these individual countries belong.

3.1 Trade and Sustainable Development (TSD)

The chapter has around 16 Articles covering a wide range of issues including labour, environment, climate change, biodiversity (which includes amongst others wildlife preservation and access to genetic resources and benefit sharing), forest management, marine biological resources and aquaculture management and responsible business conduct. Furthermore, as indicated under Article X (Trade and gender equality) the chapter is about promoting human rights in general, including LGBTQI+ rights with the latter right being insinuated. However, this chapter does not align with the sustainable development priorities identified by the ESA5 in the African Continental Free Trade Area (AfCFTA). For example, while the AfCFTA Investment Protocol covers Local content development, technology transfer, and Investor obligations (e.g. to protect the environment, Indigenous peoples and local communities), these are not included in the EPA's TSD Chapter. Moreover, the cost of implementing these measures falls primarily on ESA5 countries although they require technical and financial support from the EU to implement these provisions. This is despite the ESA5 position that they will not be able to implement legally binding TSD provisions without earmarked funding from the EU. The proposed enforcement mechanisms could lead to trade sanctions for non-compliance with TSD commitments, contrary to the cooperative approach intended in the chapter. Furthermore, the scope of the chapter might limit ESA5's influence over EU policies, such as forest management and sustainable development. This creates a risk that the agreement will primarily reflect EU priorities rather than a balanced partnership.

It is key to note that commitments introduced by the EU such as the Carbon Border Adjustment Mechanism (CBAM) and the Regulation on Deforestation-free Products (EUDR) will affect the access to the EU market by ESA countries. In its Trade and Development Report 2023, UNCTAD expressed concern over the proliferation of unilateral initiatives like the EUDR and the CBAM as they violate the principle of common but differentiated responsibilities enshrined in the Paris Climate Agreement. Moreover, the burden of implementation will fall primarily on ESA5 countries as the norms that the EU is proposing are already largely implemented by the EU. Lastly, while the core focus of the EPA i.e., tariff liberalisation and export taxes can lead to the undermining of the rights to food, work, and health care, the TSD Chapter focuses on the promotion of political rights. Therefore, this chapter in addition to the extensive liberalisation commitments contradicts the very human rights that this chapter is purportedly promoting.

[1] ESA 5 States include: Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe

3.2 Cooperation on Agriculture

Under Chapter XX of the comprehensive EPA, the EU and ESA5 countries commit to combining development cooperation, policy dialogue and promotion of responsible investments as development tools to enhance sustainable production, transformation, intra-regional and continental trade in agricultural products in ESA EPA countries (European Commission, 2022). However, this chapter does not consider measures to address domestic subsidies which is a long-standing trade injustice by the EU. This is different from the EPA with the East African Community whereby under Article 68(2), the EU commits not to grant export subsidies to all agricultural exports to the EAC Partner States (European Commission, 2022). The real challenge to the ESA5 countries' agricultural production and agro-industrialisation is the ever-increasing domestic subsidies in the EU. It is worth recalling that under the comprehensive EPA with the ESA5, the EU has not incorporated measures to reduce domestic subsidies while at the WTO, it has continued to engage in shifting its prohibited (red) subsidies into allowable (green) subsidies. Indeed, the EU has failed to live up to what was agreed on in the WTO Hong Kong Ministerial Conference to eliminate export and trade-distorting subsidies by 2013. To make matters worse the multilateral and bilateral safeguards provided for under Articles 20 and 21 of the EU-ESA iEPA are derived from the WTO and require show of injury. Safeguards should be automatically triggered to address situations of import surges and fluctuations in international prices.

Therefore, the issue of subsidies should be addressed in the comprehensive EPA before the conclusion of the negotiations. This should also entail a rethink of the liberalization scope as the removal of tariffs on goods, including agriculture threatens small farmers and infant agro-industries. Moreover, the fragility of the agricultural sectors in the ESA5 and low mechanisation will constrain their exports to the EU, while the EU will import products of its strategic interests to the ESA countries. It is for this reason that the wider scope of liberalisation be narrowed, and export taxes be granted to ESA5 countries since export taxes are an indispensable development tool that can be used to create incentives for value addition to local products rather than exporting them in their raw form. For the ESA5 region, export taxes are more crucial than ever given the prominence of the extractives sector.

3.3 Intellectual Property

Under Chapter X, the parties commit to ensuring an adequate and effective level of protection and enforcement of intellectual property rights (European Commission, 2022). Other issues under consideration include patents and public health, utility models and technology transfer. On utility models, the ESA countries are calling for exclusion from protecting all those products and processes the prevention within their territory of the commercial exploitation of which is necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

While the parties commit to recognizing the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14th November 2001 by the Ministerial Conference of the WTO at Doha (ibid), it should be noted that during the thirteenth session of the WTO Ministerial Conference, members could not reach consensus on whether to waive patent rights on coronavirus therapeutics and tests. This implies that the TRIPS Agreement is still hijacked by big pharma and cannot serve the interests of the ESA5 countries.

It is not surprising that developing countries in the WTO led by Colombia are seeking a “comprehensive” review of the implementation of the agreement which is replete with numerous controversies since its entry into the WTO's rule book on 1 January 1996 (Third World Network, 2024). Therefore, the commitment to recognizing the importance of the Declaration on the TRIPS Agreement and Public Health needs to be amended to incorporate the need for cooperation in demanding for the amendment of the WTO TRIPS Agreement.

Regarding the protection of plant varieties rights, the parties commit to protect plant varieties rights in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on 19 March 1991 (European Commission, 2022). This is problematic as it could negatively impact the right to food among ESA5 countries given that the UPOV 1991 model consolidates corporate power through tightly defined plant breeders' rights and disregards farmers' rights. UPOV is often criticized for promoting the commodification and privatization of seeds, limiting access to seeds and food by granting plant breeders patent-like exclusive intellectual property rights (IPRs) over seeds (AFSA, 2021). Indeed, the flexibility for farmers to save, reuse, exchange, and sell farm-saved seeds, as provided under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), is constrained by the UPOV 1991 Convention, which prioritizes the interests of commercial plant breeders over farmers (Strba, 2019). Moreover, the UPOV is a colonial agreement, as it was first established in Paris in 1961 by a few European countries, at a time when only 21 African countries had gained political independence. It is no wonder that none of the ESA countries is a Contracting Party to the UPOV Convention (UPOV, 2024). Achieving a self-sustaining and food-secure ESA5 region requires rethinking the provisions under the IP Chapter by prioritizing farmer-managed seed systems, farmers' rights, and agroecology.

Nevertheless, the ESA5 countries should be commended for their position on key issues related to Genetic resources, traditional knowledge and folklore. Under these issues, the ESA5 is proposing to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices. This is commendable as it brings into play the rights of communities and smallholder farmers who comprise the majority in the ESA5 countries.

3.4 Investment Liberalization, Trade in Services and Digital Trade

Under this chapter, the parties commit to undertake progressive reciprocal liberalization of trade in services and investment (European Commission, 2022). This chapter has several provisions that, unless amended, may limit the growth of the nascent economies of the ESA5 countries. Under Article 2.2 (Market Access) of the chapter, neither party is permitted to impose limitations on the number of enterprises that may carry out a specific economic activity, nor require specific types of legal entity or joint venture through which an investor of another Party may perform an economic activity (ibid). This liberalization level circumscribes the policy space that ESA5 countries require to chart their respective development agendas. For example, apart from fostering the transfer of skills and technology to local companies, joint ventures can create national champions in key sectors in the ESA5 e.g. mining, agriculture and ICT by enabling them to benefit from the strengths of foreign investments. Therefore, limiting the application of these provisions undermines the capacity of ESA5 countries to leverage FDIs from the EU to build their local competitive capacities and industries.

Also, under Article 2.3 (National Treatment), each Party is obliged to accord to investors of another Party and to covered enterprises treatment no less favorable than that it accords, in like situations, to its own investors and to their enterprises, with respect to the establishment in its territory (European Commission, 2022). The same interpretation applies to Article 3.3 of the section on services liberalization. This provision constrains the capacity of ESA5 States to promote local investors, local industries and service providers, which doubtlessly need assistance to grow in order to be able to compete with EU companies which are already more established. It can also limit ESA5 countries' ability to enact policies favoring local firms, risking job losses, reduced innovation, and economic dependence on foreign markets.

Furthermore, under Article 2.4 (Most Favoured Nation Treatment), each Party shall accord to investors of another Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to investors of a third country and to their enterprises, with respect to operation in its territory (European Commission, 2022). The same interpretation applies to Article 3.4 of the section on services liberalization. This provision limits the ability of ESA5 States to choose which countries they would like to give preferences, and constrains the much-desired South-South Cooperation. This may also hinder efforts by ESA5 countries to protect strategic industries, reduce policy flexibility, and expose domestic markets to excessive foreign competition.

Under Article 2.6 (Performance Requirements), each Party shall not impose or enforce any requirement, or enforce any commitment or undertaking, in connection with the establishment or operation of any enterprise in its territory (European Commission, 2022). This applies to using performance requirements to achieve a given level or percentage of domestic content and to transfer technology, a production process or other proprietary knowledge (ibid) among others. Limitation of local content requirements undermines industrialization efforts in the ESA5 Countries because the measure is deployed to foster forward and backward linkages to drive diversification of related economic activities i.e., agriculture, industry and services, a key ingredient for structural transformation. Therefore, their limitation in the EU-ESA5 comprehensive EPA undermines these potential benefits to the ESA5 countries.

Under digital trade, the parties commit to ensuring cross-border data flows to facilitate trade in the digital economy and eliminate requirements for localization of computing facilities, localization of data and prohibitions on storage or processing of data in the territory of another Party (European Commission, 2022) among others. This liberal approach to data governance between two unequal blocs where one (the EU) is digitally advanced and the other (ESA5) is playing catch-up creates uneven realization of the economic benefits of data. Regulation of cross-border data flows has a number of benefits to the ESA5 countries who are still catching up in the digital economy. It can encourage the establishment of local data centers, cloud service providers, and other related infrastructure which can lead to the creation of jobs, attract investment, and foster innovation in the digital sector. It can also encourage domestic companies to develop innovative products and services tailored to the specific needs and preferences of their citizens which can lead to the creation of new digital solutions, driving competitiveness and growth in the country's digital economy.



4 Overall implications of the Comprehensive EPA on the ESA5

There are also general negative implications that the comprehensive EPA poses on the ESA5. These include:

A. Policy Space for Regional Integration: It is key to note that like in every other EPA with other RECs, provisions are laid down under the EPAs to maintain policy space for ESA5 States to conclude a free trade area between themselves without necessarily triggering the obligation to extend or deepen preferential treatment to the EU. However, due to significant differences arising from the different negotiations which established different degrees of liberalization commitments and lists of products excluded from liberalization, it may be difficult to align all the commitments when reaching the integration stage leading to an African customs union. Moreover, given that all ESA5 countries are members of SADC, the differences arising from their deepening negotiations with the EU will affect the SADC as a building block for the AfCFTA. As shown in the table above, the SADC as one of the major regional blocks on the continent has been divided throughout the EPA process, further risking the possibility of undermining regional integration. It is not surprising that at the 31st African Union Summit held Mauritania (2018), Heads of State and Government, urged Member States to abstain from entering into bilateral trading arrangements until after the entry into force of the agreement establishing the AfCFTA (African Union, 2018). With the AfCFTA negotiations still ongoing on annexes of key protocols like Investment, Digital Trade, and Intellectual Property, it would be wiser to slow down the ESA5-EU EPA juggernaut and renegotiate the existing EPAs to allow for policy space needed to ensure policy coherence.

Another way in which the EPA undermines regional integration is through its lack of flexibility under the Rules of Origin (cumulation). Under the EPA, the EU is not accepting significant cumulation within the region, insisting cumulation be done by parties that have signed EPA agreements. This contradicts the stated objective of the EPA i.e., to promote regional integration in Africa. Cumulation is an important provision to have if the ESA5 countries are to build their competitive capacities to take up market opportunities in the EU.



B. Weak Multilateral and Bilateral Safeguard Measures: The agreement provides for Multilateral safeguards (Article 20) and Bilateral safeguards (Article 21). However, these measures are very cumbersome to invoke as ESA5 countries have to prove import surges and injury, and also establish a causal relationship between the surges and injury to the whole industry. The country must also have in place an investigative mechanism which is difficult to establish. This is why developing countries have not invoked these remedies in the WTO and are also demanding a special safeguard mechanism for agriculture which is user-friendly. The combination of the extensive liberalisation, the contradictions within the schedules, the weak multilateral and bilateral safeguards on the one hand; and the subsidies in the EU on the other, will further negatively impact industrialisation and food security in the ESA5 region. Moreover, the ESA5 countries have weak trade institutions and are relying on technical, financial and other support from the EU to be able to implement these safeguards. This puts the ESA5 in a weak position to trade with the EU reciprocally.

C. Risk to Industrialisation: The comprehensive EPA is built on the iEPA whose objective 1 (g) aims at supporting a new trading dynamic between the Parties through the progressive, asymmetrical liberalisation of trade between them (European Commission, 2012). While the EU commits to grant 100% duty-free and quota-free access to all imports coming from ESA countries, the latter undertakes different liberalization schedules with Madagascar liberalizing 81% of EU imports, Mauritius 96%, Seychelles 98%, and Zimbabwe 80% (European Commission, 2020). The ESA EPA countries are more competitive than the EU on only 10% of total tariff lines (South Centre, 2012). Of the 1,839 tariff lines where there is local production in the ESA5, the EU is more competitive in 1316 of these (ibid). This implies that 71.6% of local production in the ESA5 could be at risk, without taking into consideration the different exclusion lists. Considering that the EPA will eventually lead to tariff elimination for the majority of future production tariff lines (the majority of 3,662 lines), this could compromise ESA5's production in processed oil products, processed agricultural products, medicines, light industrial products, and cement clinkers (ibid). Indeed, since the comprehensive EPA evolves around the elimination of tariffs and thus to increased competition, this puts local production in the ESA5 that is already not competitive under further strain.

One common argument some European Commission officials have used is that African countries in general and ESA5 in particular should not fear opening up to EU products because there is limited competition between the EU and Africa. They say that the EU produces different products, or products with a high level of sophistication. This argument is flawed as there are in fact many tariff lines for products which Africa produces where the EU also exports to the ESA5, and for the higher value-added products Africa does not currently produce, it aspires to do so. Countries like Zimbabwe produce currently less than they were doing in the 1980s. This liberalisation seems to be taking a static approach to development which does not envisage the ESA5 region graduating to producing either industrial inputs or capital goods.

While the ESA5 may need to zero rate pharmaceuticals at this stage because we need cheap and affordable medicines, we should be looking forward to producing these pharmaceuticals in future. The zero rating and the Standstill clause (Article 14) effectively constrains the policy space for the region to achieve this aspiration. ESA countries need flexibility, which they are compromising with the EPA. Another issue affecting industrialisation is the restriction of export taxes. Industrialising supposes being able to utilise your own raw materials for value-added and beneficiation. As earlier noted, the stringent rules on cumulation i.e., insisting cumulation be done by parties that have signed EPA agreements undermines regional integration in Africa and limits the implementation of the Accelerated Industrial Development for Africa (AIDA) initiative through limiting trading in raw materials and inputs for value addition. This ultimately undermines any chance of developing the much-needed regional value chains in Africa.

D.Revenue Losses: Governments of the ESA5 countries are trying to strengthen and build their production capacities, they are increasingly seeing the importance of trade policy to support industrial development and food security goals. Tariffs are especially important as they do not have resources like the EU to shield domestic producers. These countries are therefore mindful of the role of the state in creating the right conditions for the developmental path ahead.

E.EU Raw Materials dependence and deindustrialisation in ESA5: The defining question in Africa's post-colonial arrangements with Europe, from the Lomé Conventions through the EPA remains who does what with Africa's natural resources as industrial raw materials as well as with Africa's vast market, both real and potential. After all these years, one would be forgiven for thinking that this is self-evident. Judging from their positions and demands throughout various trade negotiations with Africa, Europe can certainly be seen as aware that sustaining its industrialization requires continued, uninterrupted and favourable access to African raw materials and markets. This unlimited access to raw materials has been negotiated under Article 17 (Prohibition of quantitative restrictions) of the iEPA. A closer assessment of the ESA5 countries' exports to the EU reveals a concentration of raw materials including apparel, sugar, coffee, fish, tobacco, vanilla, copper and crude oil among others (European Commission, 2020). Without the imposition of export taxes to limit the exportation of these critical raw materials, ESA5 countries will not be able to undertake value addition and risk being locked in raw material

5 Conclusion and Recommendations

There are numerous efforts in all African countries including the ESA5 countries to structurally transform their economies to promote industrialization, facilitate backward and forward linkages, create employment and subsequently reduce poverty. There are also moves to deepen integration at sub-regional and continental levels through the SADC-COMESA-EAC Tripartite Free Trade Area and the African Continental Free Trade Area (AfCFTA). However, the EPA text being presented for signing will compromise these efforts, even though the ostensible reason for negotiating the EPAs was to promote regional integration and sustainable development. Up to now, the EU, in its relationship with Africa, has been relentlessly pushing for the EPAs as its principal trade policy instrument with Africa. The EU has further been demanding that EPAs cover areas like Investment, Competition Policy and World Trade Organisation (WTO) plus Intellectual Property Rights (IPRs) which were rejected within the context of the WTO. The impacts of the EPAs and the EPA negotiations have been dire on Africa's economy, integration and development aspirations.

Therefore, equitable and transformative EU-Africa trade and investment relations are critical for Africa to achieve its aspirations. Rather than structural adjustment in Africa, structural transformation is critical for promoting industrialization for decent jobs, and value addition, increasing the continent's trade share and developing regional value chains. Achieving this will require discontinuation of the comprehensive EPA with the ESA5 and rescinding of the iEPA. This will allow for the much-needed policy space for ESA5 countries to use the AfCFTA for industrialisation and Structural transformation, and develop competitive regional value chains. This will also allow for a future EU-Africa FTA.

Specifically, the following recommendations should be considered:

Options for the TSD Chapter as a whole: The EU and ESA5 countries should consider three options i.e.;

a) A TSD Chapter that is fair and balanced: The chapter should increase alignment with sustainable Development priorities identified by African countries, for instance as evidenced by sustainable development-related issues identified in the AfCFTA Investment Protocol.

The chapter should entail a commitment to implement provisions of the TSD Chapter subject to available technical and financial assistance to be provided by the EU. Furthermore, the TSD Chapter should not be subject to the regular Dispute Settlement provisions of the ESA EPA with concomitant trade sanctions, in its current form. Rather this requirement could be subject to future negotiations as is currently the case with the EU-Kenya EPA. Lastly, the EU should ratify relevant environmental agreements and support mechanisms like REDD+ carbon credits to align the comprehensive EPA more closely with ESA5 needs.

b)Reject the inclusion of the TSD Chapter into EPA: Depending on progress on proposals that could make the TSD Chapter fairer and more balanced for ESA countries, the inclusion of the TSD Chapter into the EPA should be rejected. Such an approach or outcome would not be without precedent. Not all EU FTAs have TSD Chapters, including for countries with whom the EU already has an existing FTA. Furthermore, the African Continental Free Trade Area (AfCFTA) is anticipated to address key sustainability issues in its negotiations. Therefore, it may be strategically advantageous to delay finalizing a TSD Chapter with the EU until the completion of these continental discussions.

c)Reject the inclusion of the TSD Chapter into EPA but explore a separate bilateral/regional agreement with the EU on labour and/or environment:

In some instances, TSD types of commitments have been included in separate agreements with the EU rather than as part of the (existing) EU FTA. For instance, the EU has concluded “Green Partnerships” with Morocco and South Korea. In the case of the EU-Morocco Green Partnership, according to the European Commission, “the Partnership will also look at ways to bridge Europe and Africa by joining forces with other countries and partners. It is expected to become a model for similar partnerships on the African continent, where Morocco already leads in terms of environmental and climate ambitions.” In these cases, TSD-type commitments were agreed on but as part of a broader package that generally includes investments such as renewable energy. Such an agreement could include elements currently proposed by ESA5 countries, on labour and academic mobility, and could include labour rights on the side of ESA but also the side of the EU particularly relating to immigration/migrants rights. Elements from other labour agreements which the EU or single EU member countries (e.g. Spain with Morocco) could serve as inspiration as well as ESA5 countries.

- **Review the Intellectual Property Chapter:** In line with Articles 66.2 and 67 of TRIPS, the EU-ESA5 comprehensive EPA should be amended to require the EU to facilitate technology transfer, technical cooperation, and legal assistance in the ESA5 countries. These could be key areas for development cooperation, including technical and legal assistance to support ESA5 countries in developing their IPR regimes and capacities. To safeguard the rights of smallholder farmers, the State Parties should disassociate the comprehensive EPA from the UPOV 1991 model on PVP laws, which consolidates the power of seed corporations. The comprehensive EPA IP Protocol should instead align with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) provisions on smallholder farmers’ rights. This can be achieved by introducing a new article on the relationship with other policies and commitments made by ESA5 countries. Nevertheless, in its current form and its broader objective of liberalisation, the EPA is not tailored to facilitate technology transfer, promote indigenous knowledge and safeguard the rights of farmers and communities.

- **Under the Chapter on Investment Liberalization, Trade in Services and Digital Trade,** Performance requirements must be included to ensure that the comprehensive EPA facilitate the growth of industries which then facilitates the growth of other industries (through the supply of products and vice versa); generates social benefits to ESA5 countries; and strengthens the local private sector in ESA5 countries. Performance requirements should also include minimum standards on human rights, environment and labour, corporate governance etc. Under digital trade, to tap into the economic value of data, ESA5 countries should ensure that the comprehensive EPA considers aspects of regulating cross-border data flows and requiring a certain degree of localisation of computing facilities as these are the necessary ingredients to building their domestic digital industries and local data centre markets.
- **ESA5 should develop a Common Strategy on Critical Energy Transition Minerals (CETMs):** Within the context of deepening globalisation and geo-political competition for strategic resources, EPAs have become an instrument of power and influence to advance the ideological and material interests of the EU. These ideological and material interests manifest in the EU's sustained efforts to extract strategic resources and to pressure the ESA5 and African countries to adopt unfavourable neoliberal policy prescriptions. Given the surge in demand for Critical Energy Transition Minerals (CETMs) and Africa and the ESA5's role as a major CETM producer, we urge African and ESA5 leaders to develop a forward-looking common framework to shape the future of critical minerals, including a focus on increasing beneficiation and value addition of these vital resources. We also call upon the ESA5 leaders to protect local food producers from agricultural liberalisation policies which potentially open local food markets to unjust competition from heavily subsidised European farmers.

In conclusion, it is critical to appreciate that the EPA is essentially a Free Trade Agreement. What is more revolutionary is that for the first time, the ESA5, a relatively poor region, is being required, albeit in a phased manner, to enter into a full reciprocal Free Trade Agreement with a much more developed partner with its attendant negative consequences. Furthermore, it is important to note that having an EPA in place does not automatically translate into increased free trade flows, deeper regional integration and poverty reduction. Therefore, the ESA5 countries should not succumb to the pressure of concluding the comprehensive EPA negotiations if the terms will jeopardize the region's Sustainable Development. Specifically, ESA5 countries should consider the following questions before deciding whether to conclude the negotiations or not i.e., will the comprehensive EPAs:

- Help them increase their production capacities?
- Encourage diversification?
- Increase food security?
- Provide quality employment?
- Move their economies from being largely raw natural resource exporters towards being producers of more sophisticated products?
- Strengthen the capacity of their trade institutions to support their local industries to export to the EU whilst safeguarding against the threats?
- Provide answers to the main problems the ESA5 economies in their diversity are facing

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