AID FOR TRADE AND FUNDING MECHANISMS UNDER ECONOMIC PARTNERSHIP AGREEMENTS: CHALLENGES AND POLICY OPTIONS FOR IMPLEMENTING THE PROPOSED DEVELOPMENT MATRIX UNDER THE EAST AFRICAN COMMUNITY/ EUROPEAN UNION AGREEMENT

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1.0 Introduction

The conduct of trade requires economic infrastructure and tools to facilitate the doing of business in an efficient manner. Poor infrastructure and lack of technical trade-related skills have made developing countries unable to properly integrate into the global economy. In an attempt to address this challenge, Aid for Trade (AfT) is the response mechanism that has been designed to expand the trade capacity of developing economies through the development of technical trade-related skills as well as infrastructure so as to enhance their trade competitiveness. AfT has become an important component of the discourse of international trade and development as it portends an opportunity for developing countries to pursue development through trade.

The East African Community (EAC has been carrying out trade negotiations under the proposed Economic Partnership Agreement (EPA) with the European Union (EU). One of the fundamental issues that have become contentious relates to funding mechanisms to address the EAC's adjustment costs in the EPA as well as enhance its competitiveness by addressing the supply-side constrains that impair trade between the region and the EU. The negotiations have been fraught with disagreements over the nature and extent of obligations that each party should commit with the EU being accused of imposing a compliance burden on the EAC without offering adequate funding to facilitate such compliance and enable the EAC to benefit from the established trade framework.

One of the contentious issues under negotiation relates to the chapter on economic and development cooperation where proposals have been developed for a comprehensive infrastructural and non-infrastructural development program to address constrains identified as being impediments to industrial and agricultural competitiveness in the EAC. The point of divergence relates to the EU's reluctance to make binding financial commitments to fund the development aspects in the EPA negotiations. While the EAC has insisted that the development text and its accompanying matrix must be included in the EPA, the EU insists that the internal regulations regarding development assistance only contemplate the EU's instruments of development support as being those reflected within the framework of the European Development Fund (EDF), the EU budget as well as through standalone bilateral cooperation with the EU Member States.

It is therefore the aim of this paper to examine the draft development text for the EAC/EU EPA, the development matrix and the various proposals and positions developed by both parties. The proposals will be evaluated against key AfT pillars identified under the World Trade Organization (WTO). The EPA funding mechanism will also be evaluated as to the extent by which it addresses the development priorities, fiscal losses and adjustment cost implications of the EAC. It will also examine the policy options for the EAC in benefitting from a comprehensive EPA. The first section provides a background to the EPA negotiations between the EAC and the EU. The second part examines the aspect of development cooperation and the financing mechanisms contemplated under the EPA. The third section of this paper analyses the EAC/EC development cooperation text and the accompanying matrix. Here, the challenges in financing the EPA are identified. A comparative outlook of other EPA

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financing mechanisms is tackled in the fifth chapter. The sixth chapter brings this work to a close with a number of conclusions and recommendations.

2.0 Background to the Negotiation of Economic Partnership Agreements

The negotiation of EPAs between the EU and African, Caribbean and Pacific (ACP) countries marked a significant paradigm shift in ACP/EU relations. This marked a departure from the previous Lomé Convention IV framework; a 25-year trade and aid support framework which expired on February 29, 2000. The Lomé framework provided preferential trade status to ACP countries along with development aid. Towards the expiry of Lomé IV, a paradigm shift emerged informed by various factors including a challenge to the ACP/EU trade relationship at the WTO in the famous EC Bananas Cases[i] as well as the EU Green Paper which bemoaned the failure of the Lomé Conventions to address poverty and enable ACP countries to take advantage of the opportunities offered by the special preferences under the framework.[ii]

These factors eventually led to the signing of the Cotonou Partnership Agreement (CPA) on June 23 2000 to succeed the Lomé IV framework for 20 years. The chapter on trade under the CPA allowed for trade negotiations until 2007 when it was expected that comprehensive agreements would have been developed to succeed the Lomé Conventions and ensure compliance with WTO principles as well as a framework that sought to develop the trade capacity of ACP countries. A WTO waiver was obtained to facilitate trade in the interim period which was to expire on 31st December 2007. This was the framework for the conclusion of EPAs.

The CPA was a shift from a Lomé mandate that only sought to promote trade between the ACP states and the EU[iii] by establishing mechanisms to "*improve the conditions of access of [ACP] products to the market"* to one that was aimed at fostering the smooth and gradual integration of ACP states into the world economy and thereby promoting their sustainable development and contributing to poverty eradication in the ACP states.[iv] Under articles 34(2) and 34(3), it was stated that the broader objective of cooperation was to "*enhance the production supply and trading capacity of the ACP countries as well as their capacity to attract investment by creating new trade dynamics between the parties with a view to facilitate their transition to the liberalized economy*."

The negotiation of EPAs was structured in three main phases beginning with the first phase (2002-2003) where the negotiations were launched at the entire ACP level and discussions with the EU through the European Commission (EC) that were centred on general issues and principles of the EPAs as well as issues of common interest to all ACP countries. The second phase (2003-2007) involved substantive negotiations at regional levels while the third phase (July 2009) was expected to entail the finalisation of negotiations. The EPA negotiations were to be undertaken in six groups based on geographical configuration including: Eastern and Southern Africa (ESA), Southern African Development Community (SADC), Economic Community of West African States (ECOWAS), Central African Monetary Union (CEMAC), the Caribbean Community (CARICOM) as well as adjacent countries and the Pacific group of countries. This is the structure upon which the negotiations have been carried out although there have been some variations and changes in the negotiating blocs.

2.1 Negotiations under the EAC/EC Economic Partnership Agreement

The EAC did not commence negotiating EPAs as a bloc. At the beginning, four EAC countries (Burundi, Kenya, Rwanda and Uganda) were negotiating under the ESA configuration.[v] Tanzania, on the other hand, was negotiating under the SADC configuration since it belongs to that Regional Economic Community (REC). Such a disjointed negotiating framework posed a challenge of policy disarticulation given that the EAC Partner States were implementing the Customs Union Protocol through the binding obligations as contained in the EAC Customs Management Act. To address the foregoing concern, the EAC Ministers of Trade on October 13th 2007 directed the Partner States to harmonise their positions on the EPA and submit a harmonised market access offer to the EC, the body tasked with the mandate to negotiate trade agreements on behalf of the EU. It was emphasised that a strong collaboration between the EAC and the other RECs be maintained to ensure that the positions advanced by the EAC were in tandem with the COMESA and SADC regional integration processes. A framework EPA has since been signed to that effect.

2.1.1 The EAC/EC Framework Economic Partnership Agreement (FEPA)

The EAC/EC FEPA was initialled on 27th November 2007 pursuant to the commitment made between the ACP and EU on the conclusion of an EPA by 31st December 2007. The FEPA is to be replaced by a comprehensive agreement after negotiations have been concluded. It was expected that the process would be concluded by 1st July 2009 but contentious issues still remain unresolved.[vi] The FEPA contains chapters on trade in goods, fisheries as well as the development clause. The pending chapters are included in the 'rendez-vous clause' in the agreement. It is important to briefly examine the chapters of the framework agreement.

2.1.1.1 Trade in Goods

With regard to the chapter on trade in goods, the EAC and the EC have both made offers to each other with a total of about 5,429 tariff lines being opened.

a) The EC Offer on Goods

In the case of trade in goods, the EC has offered the EAC Partner States Duty-Free-Quota-Free (DFQF) market access for all products. An exception is made in the case of rice and sugar which will undergo a gradual tariff reduction. The tariff dismantling was structured such that rice was slated to be fully liberalised by 1st January 2010 while sugar was to extend to 30th September 2015. The offer also includes an automatic derogation that sets an annual quota of 2000 tonnes for tuna loins[vii]; and until EC customs duties are entirely eliminated, and in addition to the allocations of tariff rate quotas at zero duty as set out in the Sugar Protocol, the EC set a tariff rate quota of 15,000 opened for the marketing year 2008/09 for products under sub-heading 1701 11 10, white sugar equivalent, originating in the EAC Partner States.[viii]

b) The EAC Offer on Goods

On its part, the EAC has made a Market Access offer to the EC that entails the liberalisation of trade as well as a number of exceptions as stated below:

- The liberalisation of trade in goods to the extent of 80 percent of the EAC market for EU imports over a 15 year period. This category of products includes raw materials and capital goods (65.4%) that already enjoy duty free status and large intermediate products (14.6%) which attract a 10 percent import duty. The tariff phase down for intermediate products is slated to begin in 2015 and end in 2033. The products under this category are considered as being important in promoting competitiveness in agricultural and industrial sectors.
- An exclusion of sensitive products that account for about 17.4 percent of total trade with the EC and account for 25 percent of the total tariff lines. Tariffs applicable to this category of products are the same as for third countries. These products are included in an elaborate list of sensitive products containing 1390 tariff lines.[ix]

- An additional liberalisation of 2 percent of the EAC market for imports from the EU within a 25 year period in the case of final products. The schedule for tariff phase down for these products is set to commence in 2020 and end in 2033.
- A two year moratorium between January 2008 and December 2009 to allow Burundi and Rwanda to complete the process of implementing the provisions of the EAC Customs Union.

Table 1: A Summary of the EAC Offer under the Framework EPA

YEAR	Value Liberalised (USD)	% of Trade Liberalised (USD	Excluded Value (USD)	EAC Exclusion	EC Liberalisation	SAT	No. of Tariff Lines
2010	1,615,331,216	65.4 %	428,818,834	**17.4%**	100%	83%	1,950
Within 15 yrs	361,011,102	14.6%				90%	1,129
2033	64,864,376	2.6%				91%	960
Exclusion							1,390
Total trade liberalised by EAC	2,041,206,694	**82.6%**					
Total EAC Imports from EU	**2,470,025,527**						
TOTAL TARIFF LINES							**5,429**

Source: EAC, 2009

c) The Fisheries Agreement

The Framework EPA also includes a chapter on fisheries that covers marine and inland fisheries as well as aquaculture development. The objectives of cooperation under this chapter include the promotion of sustainable development and management of fisheries; development of regional and international trade based on best practices; creation of an enabling environment, including infrastructure and capacity building, for the EAC countries to cope with the stringent market requirements for both industrial and small scale fisheries; supporting national and regional policies that are aimed at increasing productivity and competitiveness in the fisheries sector; as well as building links with other economic sectors.

d) The Development Text

The Framework EPA text also contains a clause for economic and development cooperation. Under this chapter, the parties reaffirm their commitment to ensuring that the EPA is a tool for development which will promote and consolidate regional integration and aid the EAC's integration into the global economy. The EC under Article 36 of the FEPA makes commitments to the effect that it will contribute towards the resources required under the 10th EDF Regional Indicative Programme, Aid for Trade and the EU budget. This chapter form one of the areas where contention still exists as to how the EPA ought to be funded and the structures and modalities within which that is to be done. The EAC has gone ahead and developed a text on development complete with an accompanying matrix. These shall form the crux of the discussion in this paper.

e) Areas of Future Negotiations

Under Article 37 of the Framework EPA, the text sets out areas of future negotiations under the '*rendezvous'* clause. The clause seeks to build on the Cotonou Agreement and sets out areas of negotiations towards a full EPA to include the following:

a) Customs and trade facilitation;
b) Outstanding trade and market access issues;
c) Technical barriers to trade and sanitary and phytosanitary measures;
d) Trade in services;
e) Trade related issues namely:
    i. Competition policy;
    ii. Investment and private sector development;
    iii. Trade, environment and sustainable development;
    iv. Intellectual property rights;
    v. Transparency in public procurement;
f) Agriculture;
g) Current payments and capital payments; and
h) Any other areas that the parties find necessary.

The text also contains a chapter on dispute avoidance and settlement as well as institutional and final provisions. This part sets out various rules on consultations, dispute settlement, general exceptions, security exceptions, taxation, entry into force, territorial application and also sets up various institutions including the EPA Council and the Special Committee on Customs Cooperation.

2.1.1.1 Economic and Social Impact of the EAC/EC EPA

The EPA is expected to result to significant economic and social impact on the EAC which will require concrete and targeted intervention to ensure optimal benefit for the EAC. The EAC/EC EPA is expected to result to significant impact on the economic conditions of the EAC. Some of the likely impact on the EAC could include the growth or decline of manufacturing industries; particularly in the case of agro-processing and textile industries, reduced revenues owing to trade creation or diversion and other welfare implications. Key social issues that could possibly result from such liberalisation include issues relating to employment and poverty incidences; the economic participation of various segments of society including gender and youth patterns; the impact on agriculture, rural livelihoods and food security.

There are different empirical methodologies that are used to estimate the potential effects of EPAs. Some studies use the Computable General Equilibrium (GCE) model to estimate whereas others employ the Partial Equilibrium (PE) model. While the GCE model is arguably the most appropriate approach in estimating the impact of EPAs, it is not best suited for analysing trade in Africa. This is because although it is possible to capture the interaction between various factors and take the linkages of the economy into account, the GCE model requires detailed data that is not readily available in many African economies. Further, it does not allow for sectoral disaggregation on a 6 digit HS code level which is important when carrying out trade negotiations. The PE model is appropriate in the sense that it is possible to get more detailed information on possible effects at the sectoral level. This disaggregation creates the possibility of getting improved results that examine welfare effects by sectoral coverage. The WITTS/SMART model is one PE model that has been used to estimate the impact of EPAs.[x] Under this model, the welfare effects are computed based on the current level of trade, the size of tariff reductions as well as the import demand elasticity.

A number of studies have been carried out on EPAs addressing policy issues on the one hand and welfare effects on the other. In a study to investigate the gains and losses associated with EPAs for ACP countries (Karingi, et al. 2005), it was observed that this would lead to a decrease in the production of natural resources, energy and cotton with a converse increase in fishing, animal products, livestock, crops, sugar, oilseeds, vegetables and cereals for Sub-Saharan Africa (SSA) countries. With regard to manufacturing in SSA, the study estimates an increase in clothing, textiles and agricultural production under the EPA but a decline in heavy industry, medium and low technology industries as well as clothing and textiles sectors if full reciprocity is factored in. The same applies fishing, livestock and vegetables when full reciprocity is considered.

An impact study analysing the impact of EPAs on Kenya, Uganda and Tanzania (Milner et al 2005) established that there are gains for consumers but losses in the production sector. In the case of Kenya, the losses outweigh any benefits of liberalising under EPAs. This can be attributed to the production sector's decline as the manufacturing industry will be negatively affected by EU competition. These findings seem to mirror those of another study on Trade in Services liberalisation under EPAs (Hinkle & Schiff 2004) which established benefits to SSA with regard to consumer gains with transport, telecommunication and financial sectors. Another study covering the entire ACP region makes findings to the effect that this will result to significant decreases in tariff revenues to the extent of between 70 to 80 percent with the exception of the Pacific region which has no significant effect on tariff revenue. Therefore, the implementation and adjustment costs of implementing the EPAs would include, among other things, costs that will impact greatly on the ability of these countries to maintain competitiveness even as they integrate into the global economic system. These include:

- tariff revenue losses and the associated costs of creating new forms of tax administration;
- adjustment measures for loss of competitiveness and restructuring of domestic industries;
- the costs of establishing a framework and institutions to address the harmonisation and coordination of customs procedures, standards, and border controls among other issues;
- implementing social safety net spending schemes to mitigate the losses incurred as a result of EU competition

The tables in the following page indicate the empirical indices of some of the potential effects of trade liberalisation under EPAs for some EAC countries. These include long- run and short-run welfare effects of a full liberalisation over various phases as well as potential fiscal losses.

Table 2: Welfare Effects of a Full Liberalisation (all tariffs equal zero)

ALL PRODUCTS			
	Kenya	**Tanzania**	**Uganda**
Consumption	2100.62	2051.05	255.62
Diversion	-76760.92	-34380.72	-29559.79
Creation	46416.89	57062.36	63250.91
Total	-28243.41	24732.69	33946.74
in %	-0.55%	1.01%	2.06%

Revenue	-228347.2	-124062.5	-90611.12
NON MANUFACTURING			
	Kenya	**Tanzania**	**Uganda**
Consumption	392.53	803.24	64.01
Diversion	-18658.82	4166.82	-9814.55
Creation	33953.27	30997.74	38892.14
Total	15686.97	35967.8	29141.6
in %	0.97%	5.93%	5.36%
Revenue	-63662.65	-25342.99	-24412.88
MANUFACTURING			
	Kenya	**Tanzania**	**Uganda**
Consumption	1957.71	1259.08	193.23
Diversion	-74954.16	-49647.93	-26536.35
Creation	15487.02	33311.55	29379.43
Total	52250.47	-15077.31	3036.31
in %	4.72%	-0.65%	0.21%
Revenue	-202989.4	-121830.8	-80569.24

Table 3: Short-Run Welfare Effects of a Tariff Reduction According to the EAC Interim Agreement (after 5 years)

ALL PRODUCTS			
	Kenya	**Tanzania**	**Uganda**
Consumption	689.34	27.35	29.23
Diversion	-26641.35	-20998.8	-3702.75
Creation	5520.45	4754.79	3883.86
Total	-20431.56	-16216.65	210.34
in %	-0.36%	-0.55%	0.01%
Revenue	-78259.52	-44151.47	-8585.84

NON MANUFACTURING			
	Kenya	**Tanzania**	**Uganda**
Consumption	1	13.2	0
Diversion	-73.26	-106.34	-118.94
Creation	675.66	16.14	619.1
Total	603.41	-76.99	500.16
in %	0.03%	-0.01%	0.08%
Revenue	-169.6	-400.74	-242.44
MANUFACTURING			
	Kenya	**Tanzania**	**Uganda**
Consumption	688.34	14.15	29.23

Diversion	-26568.09	-20892.46	-3583.81
Creation	4844.78	4738.65	3264.76
Total	-21034.97	-16139.66	-289.82
in %	-0.53%	-0.72	-0.02%
Revenue	-78089.91	-43750.73	-8343.4

Table 4: Long-Run Welfare Effects of a Tariff Reduction According to the Interim Agreement (end of transition period – 28 years)

ALL PRODUCTS			
	Kenya	**Tanzania**	**Uganda**
Consumption	1347.27	74.09	116.85
Diversion	-40832.61	-28107.73	-15822.8
Creation	10849.89	17725.59	11739.78
Total	-28635.44	-10308.06	-3966.17
in %	2.17%	-0.35%	-0.20%
Revenue	-5681.96	-61453.07	-38126.76
NON MANUFACTURING			
	Kenya	**Tanzania**	**Uganda**
Consumption	349.96	34.8	4.5
Diversion	-1481.43	-905.99	-818.37
Creation	1249.85	2126.61	1533.12
Total	118.38	1255.43	719.25
in %	0.01%	0.18%	0.12%
Revenue	-6907.59	-2483.71	-2071.51

MANUFACTURING			
	Kenya	**Tanzania**	**Uganda**
Consumption	997.31	39.29	112.36
Diversion	-39351.18	-27201.75	-15004.42
Creation	9600.04	15598.98	10206.65
Total	-28753.83	-11563.48	-4685.42
in %	-0.73%	-0.51%	-0.34%
Revenue	-110846.2	-58969.35	-36055.25

Note: Units are 1000 USD

Source: Vollmer, S., Martinez-Zarzosoy, I., Nowak-Lehman, F., and Nils-Hendrik, K., (2009) 'EU-ACP Economic Partnership Agreements Empirical Evidence for Sub-Saharan Africa'. *Background Paper to the World Development Report 2009.*

These proposed changes to the existing trade regime come will come with attendant costs in the short to medium term periods. Such costs could be attributed to the implementation of new rules, establishment of institutions as well as the adjustment of economic operators to the new regulatory framework contemplated under the EPAs. While the EU market is intended to be opened to regional goods, structural deficiencies and supply-side constrains may prevent local industries from fully exploiting the EU market albeit facing stiff competition from EU goods within the regional markets.

It is to the foregoing challenge that the chapter on development cooperation within the EPAs is to address itself to. It is meant to address the foremost objective of ensuring that the EPA does not leave the countries worse off that they were before making commitments under the EPA. This will involve the deployment of resources to the EAC states to strengthen their ability to benefit from the implementation of the trade framework. It is therefore imperative to examine the proposals developed under the Framework EPA on how financing is to be channelled to the EAC states. This paper shall therefore proceed to examine the financial mechanism developed under the EAC/EU FEPA.

3.0 Development Cooperation and Financing Mechanisms under Economic Partnership Agreements

One fundamental aspect of the Cotonou Agreement was to shift the ACP/EU partnership from a limited market access framework to one that emphasised development cooperation. The cooperation envisaged under the CPA was stated at Article 21.1 as one aimed at supporting *'the necessary economic and institutional reforms and policies at national and/ or regional level, aiming at creating a favorable environment for private investment, and the development of a dynamic, viable and competitive private sector".* The cooperation, with regard to economic and trade cooperation, sought to deploy a comprehensive approach that laid particular emphasis on addressing the supply-side constrains through trade development measures as a means of enhancing competitiveness. This is the premise upon which the EPA texts included a chapter on economic and development cooperation. Under Article 36 of the FEPA, the parties *'reaffirm their recognition of development needs of the EAC region, and their commitment to ensure that EPA is a tool for development which will promote and consolidate regional integration and aid the integration of EAC into the global economy.'*

The intended objective of the cooperation is to '*promote sustained growth, strengthen regional integration and foster structural transformation and competitiveness to increase production, supply capacity and value addition of the countries concerned*.' With regard to the financing process, the EC restates its commitment to contribute towards the resources required for development through the 10th European Development Fund (EDF) Regional Indicative Programme, Aid for Trade and the EU budget. It is important to briefly examine these financing mechanisms and how they are channelled to EAC countries.

3.1 The European Development Fund (EDF)

The EDF is the main financial vehicle by which the EU channels funds for aid for development cooperation to the ACP states. The fund was established under the 1957 Treaty of Rome to grant technical and financial assistance to African countries but later expanded to include the ACP configuration. It has been operational since 1958 and is financed through voluntary contributions from EU countries with five year financial cycles known as 'envelopes'. This fund has had several instruments including the National Indicative Programmes (NIP), Regional Indicatives Programmes (RIP), the structural adjustment facility, the emergency relief facility and the refugee support facility. EDF has also phased out some facilities such as the System of Stabilization of Export Earnings from Mining (SYSMIN) and the *Système de Stabilisation des Recettes d'Exportation* (STABEX) which were used to support agriculture and mining activities. The EDF is managed by the European Commission on behalf of the EU Member States which in turn gets direction on its usage through an established committee named the EDF Committee. Disbursement is made through Country Strategy Papers and Indicative programmes made by each country.

The Cotonou Agreement made fundamental changes to the EDF and introduced a long-term facility for development cooperation that was to finance NIPs, a facility to support regional cooperation and integration of ACP states, as well as an investment facility. The EDF is a cumulative facility that provides assistance for a wide range of development programmes apart from trade related aid. The argument advanced by ACP countries against the utilisation of the EDF to finance EPAs through trade-related assistance is that such would require a shift of resources from focal areas like health, education, rural development or water.[xi] This has been countered by the EC with the assurance that the resources allocated under EDF would be substantially increased under the 10th EDF.

3.1.1 Implementing the 10th EDF

The implementation period for the 10th EDF covers the period between 2008 and 2013. The EU has committed €22.6 billion towards financial assistance under the 10th EDF. While the EU has pledged to factor in the needs of ACP countries stemming from negotiation and implementation of EPAs, the framework of such agreement remains inconclusive. This is indicated by the fact that the amount earmarked under this period is a cumulative sum and does not state the amounts set aside for trade-related development support. While it could be said that the amount is € 7.4 billion or 48.6 percent above the previous period, this falls short of the commitments made by the EU at the 2002 EC Meeting in Barcelona and the July 2005 G8 Summit to increase its development assistance flows as a percentage of its Gross National Income (GNI) to 0.39% in 2006, 0.56% in 2010 and 0.7% in 2015. The allocation marks a marginal increase as opposed to an amount of € 27,623 going by the EU's previous commitment. The amount allocated falls within the scope of a 'business as usual' approach that has been the hallmark of aid disbursement.

Considering that the ACP states would require greater amounts to adjust[xii], the allocated amount falls below what might be necessary especially since the amount committed does not necessarily translate to the actual disbursed amount. Further, an adjustment to the Cotonou Agreement that changed the commencement date of the 9th EDF from the '*date of signing*' to the *'date of ratification'* of the agreement exposes the financial instrument to a long and arduous process of EU states ratification.[xiii] Making commitments on the premise of adjustment support from the EDF under such an unpredictable regime would be detrimental to ACP states especially in light of the global financial crisis.

3.2 Aid for Trade

Financial support under the AfT mechanism entails development assistance being provided to support the efforts of developing countries to develop their basic economic infrastructure and enhance their trade-related skills to effectively benefit from trade opening. AfT came into being at the sixth WTO Ministerial Conference with the intention to '*help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade*.'[xiv] A taskforce was created to provide recommendations on how to operationalise AfT. The taskforce identified six main components of AfT as including trade policy and regulations, trade development, trade-related infrastructure, building productive capacity, trade-related adjustment as well as other trade-related needs. It can be categorised into two categories namely Trade-Related Capacity-Building (TRCB) and Trade Related Technical Assistance (TRTA).

In the case of the former (TRCB), it entails key issues including provision of physical infrastructure[xv], the establishment of productive capacity for trade and the adjustment by enterprises and households to developments in trade and trade policy. In the latter case (TRTA), it is intended to enable a recipient country in formulating and implementing a trade development strategy and create a conducive environment for increasing the volume and value addition of exports, diversifying export products and markets and increasing foreign investment to generate jobs and trade; stimulate trade by domestic firms and encourage investment in trade-oriented industries; and participate in and benefit from the institutions, negotiations and processes that shape national trade policy and the rules and practices of international commerce. The key 'missions' of AfT initiatives is understood as being a catalyst for trade reforms, facilitating the expansion of trade, and mobilising fresh funds for development.

The global initiative for AfT was launched in 2005 at the G8 Summit in Gleneagles, Scotland. During this meeting, the EU Member States made commitments to increase the percentage of their GNI to finance development cooperation. As earlier stated, this would involve a shift from 0.38 percent in 2005 to 0.56 percent in 2010 and 0.70 percent in 2015. However, commitments made have not been matched by actual action. In many cases, there has been cases where commitments are made but actual disbursements fall short of the stated commitments.

3.2.1 Aid for Trade and the European Union's AfT Strategy

The AfT programme forms part of the EU's officials Development Assistance (ODA) and is financed through the regular EC budget as well as the EDF facility. The ODA levels for the EU have fallen short of its 2005 commitments for a while. In furtherance of the objective of adhering to the stated commitments, the EU, on 15 October 2007, developed its AfT strategy in a joint policy initiative aimed at '*providing for a double and complementary focus on more resources to AfT and better impact on development objectives*.' This AfT strategy centres on actions organised under five key pillars including:

1. Increasing the collective volumes of EU AfT within the ambitious development commitments to raise overall EU aid gradually[xvi];
2. Enhancing the pro-poor focus and quality of EU AfT;
3. Increasing EU-wide and Member States' donors capacity in line with globally agreed aid effectiveness principles;
4. Building upon, fostering and supporting ACP regional integration processes with an ACP-specific angle of the Joint EU AfT Strategy; and
5. Supporting effective AfT monitoring and reporting

It should be noted that the commitments made under this strategy do not constitute binding commitments that need to be followed by the EU Member States. In fact, the text makes it clear that the wording '*the EU will*' is to be understood as referring to the Member States and the EC '*acting on a voluntary and flexible basis*'. The EU has pledged to allocate €1 billion from the Community and €1 billion from EU Member States to cover the first two categories for trade policy and regulations and trade development under trade-related Assistance (TRA). However, no financial commitments have been made for the 'wider aid for trade agenda' which includes trade-related infrastructure, the building of productive capacity, trade-related adjustment and other trade-related. Although the EU makes justification for this that the Organisation for Economic Co-operation and Development (OECD) figures list it as '*a major donor in trade-related infrastructure and productive capacity*.' As a strategy to promote an effective response to the wider AfT agenda, the EU then proposes to '*contribute to the absorption of net fiscal impact resulting from tariff liberalisation in the context of EPAs in full complementarily with fiscal reforms*.' The EU states that its contribution to regional funds is on a 'voluntary' basis.

3.3 The European Union Budget

The EU management and regulation of the EU's budget system is done through the Treaty on the functioning of the EU (the Treaty of Lisbon) which sets out the general principles[xvii], the principle of funding the budget from own resources[xviii], the multiannual financial framework which caps expenditure ceilings for at least five years[xix], a schedule for each financial year[xx], and procedures for budget implementation and discharge.[xxi] This budget is mainly financed through the Community's own resources[xxii]; taxes on EU staff salaries; contributions from non-EU countries for certain programmes; as well as fines on companies for the breach of EU competition laws. The community sets out its spending priorities through the multiannual financial framework that is developed to cover phases in the budget cycle. The current framework contains three parts with provisions relating to definition and implementation provisions, improvement of inter-institutional collaboration during the budgetary procedure[xxiii]; as well as provisions relating to the sound financial management of EU funds that binds all institutions in the entire period the agreement is in force.

The 2007-2013 financial framework identifies three main priorities for EU expenditure including harnessing European economic integration (headings 1 and 2) to the broader goal of sustainable growth, by mobilising economic, social, and environmental policies; strengthening the concept of European citizenship (heading 3) by creating an area of freedom, justice, security and access to basic public goods and services; and establishing a coherent role for Europe on the global stage (heading 4), inspired by its core values, in the way it assumes its regional responsibilities, promotes sustainable development and contributes to civilian and strategic security. The fourth heading covers all external action relating to foreign policy by the EU. However, it does not include the EDF as the European Council and Parliament rejected a proposal by the EC to include it in the EU budget.[xxiv] The other two headings relate to administration and compensations.

To make provision for flexibilities to the strict disciplines in the financial framework, the EU budget contains flexibility instruments. These include the Emergency Aid Reserve[xxv] that is designed to respond to specific aid requirements for non-EU countries that were unforeseeable when the budget was drawn up. The fund affords priority to humanitarian operations, but could also be used for civil crisis management and protection if need be. The other instruments are the EU Solidarity Fund that releases financial aid following major disasters in an EU member State or aspiring member, the Flexibility Instrument (€ 200M) to provide funding in a financial year for clearly identified expenses that could not be covered by one or more budget headings without exceeding the expenditure ceilings, and the European Globalisation Adjustment Fund (€ 500M) that aims to help workers reintegrate into the labour market where they have been displaced by major structural changes in world trade patterns. Having examined the financial structure that is being proposed by the EU to fund the EAC/EC EPA, it is prudent to now examine the development text and matrix proposed for funding within the broader context of the EAC.

4.0 The EAC/EC EPA Development Cooperation Text and Development Matrix

In an attempt to address the challenges of implementing a comprehensive EPA and make use of the market access opportunities attendant to it, the EAC proposed the inclusion of an elaborate text on economic and development cooperation with an accompanying development matrix. Under the text, it is acknowledged that there are '*new challenges derived from the implementation of the EPA and that supporting the implementation of the EPA is a priority.*'[xxvi] To address the stated challenges, the parties agree to mobilise '*additional*' resources to the financial framework of the EC from EU Member States and other donors as well as expanding AfT commitments relating specifically to EPA support requirements and adjustment costs. Financing under this framework is to be carried out within the framework of the rules and relevant procedures provided for by the Cotonou Agreement specifically within the programming procedures of the EDF and within the framework of the relevant financial instruments under the general budget of the EU.

The mobilisation of sufficient resources in that respect is to be done on a '*predictable, timely and sustainable basis*.'[xxvii] The EAC commits to establish an EAC EPA Fund for channelling and coordinating resources to facilitate the implementation of the EPA. The EC is to contribute to this fund and the parties are to carry out joint monitoring and coordination of the resources. The agreement is to be implemented according to the development cooperation strategy that will be measured against jointly agreed development benchmarks annexed to the agreement. The scope of economic and development cooperation is stated to include, *inter alia*, infrastructure; agriculture and livestock; private sector development; trade in services; fisheries; natural resources and the environment; Trade Related Issues[xxviii]; mobilization of resources; EPA adjustment costs; as well as cross-cutting issues such as capacity building and EPA institutional development, policy and regulatory reforms, and research and development.

It is acknowledged that the implementation of EPAs will have challenges on the economies of the EAC Partner States. To that extent, cooperation with regard to support to EPA adjustment costs is to include social, economic and environmental areas.[xxix] This is to be done with the objective of facilitating mitigation against instabilities in the EAC Partner States resulting from implementation of the EPAs. In order to support the mitigation of the adverse effects of implementation, it is proposed that the EC supports such mitigation. This is to be done subject to the development clause and horizontal issues. The proposed areas of cooperation to that effect include:

i. Providing financial resources to cover loss of government revenue;
ii. Supporting establishment of a compensatory framework to cover loss of competitiveness of productive sectors within EAC Partner States;
iii. Providing financial resources to compensate for possible income loss and increased poverty within the populations of EAC Partner States; and
iv. Providing resources to the EAC Partner States to mitigate against adverse impacts on environment associated with EPA implementation.

The cooperation framework also contemplates that capacity building, institutional development, policy and regulatory reforms and research and development are important aspects that cut across the entire cooperation agenda. Capacity building and institutional support is therefore proposed to entail all aspects of trade related capacity building under the agreement.[xxx] The remaining provisions cover on policy and regulatory reforms as well as research and development. With regard to mobilisation of resources, the text proposes a financial undertaking by the EC to put at the disposal of the EAC financial assistance to contribute to the implementation of the programmes and projects to be developed under the areas of cooperation as detailed in the agreement and the development matrix.[xxxi]

4.1.1 The EAC/EC EPA Development Matrix

As part of the EAC/EU EPA text on economic and development cooperation, the EAC Partner States have developed a draft matrix of core development projects to be earmarked for financing under the EPA. The matrix identifies 12 core areas to which funding is to be channelled. These include dredging and expansion of the EAC ports and navigation aids; development of inland ports and the Lake Victoria basin infrastructure; development of the missing road links to the EAC corridors; development of the East African railway network; development of the EAC air transport systems; development and expansion of the EAC energy infrastructure; development of gas, petroleum and wind energy infrastructure; trade facilitation; Information and Communication Technology (ICT); fisheries infrastructure development; development of agricultural, livestock and supporting industrial services; as well as tourism development.

The matrix identifies approximately 83 projects with each indicating the estimated cost as well as the financing gap to enable implementation of the project. These projects could be categorised into various aspects including trade policy and regulations, trade development, and building productive capacity. The matrix does not provide any estimates in relation trade-related adjustment or other trade needs. Each of the projects identified by the EAC countries indicates the contributions of the EAC partner States, other donors' contributions and the proposed implementation period for the project. The matrix also gives an indication of the status of the project that gives information as to whether the project is at the feasibility stage, it has been initiated or whether it is yet to be initialled. The tables below indicate the projects, estimated costs and the gap to be financed as indicated by the EAC states.

The EAC/EC EPA Draft Development Matrix Summary

	Kenya			Tanzania			Rwanda			Burundi		
	Number of Projects	Total Estimated Cost ($ Million)	Gap To Be Financed	Number of Projects	Total Estimated Cost ($ Million)	Gap To Be Financed	Number of Projects	Total Estimated Cost ($ Million)	Gap To Be Financed	Number of Projects	Total Estimated Cost ($ Million)	Gap To Be Financed
A	2	118.42	118.42	4	667.32							
B				1	160	159.85				3	15.92	15.92
C	5	1054.49	264.33	8	1049.7	2779.69	3	298.45	236	4	121	121
D	1	421.05	421.05	2								
E	1			3	671.12	302.7				1		
F	2			3	1868.5	1360	3	1300	1300	2	1.92	
G	3	818.63	818.63	1	70	70	1	502	502	1		
H	2	307.7	307.7	6	137.54							
I	1	179.5	179.5			152.55	4	58				
J	3	353.1	353.1	2	8.198	8.198						
K				6	18.96	14.82						
L	1	29.4	29.4									
TOTALS	**21**	**3,282.29**	**2,492.13**	**36**	**4,651.34**	**4,847.81**	**11**	**2,158.45**	**2,038.00**	**11**	**138.84**	**136.92**

KEY

A - Dredging & Expansion of East African Coastal Ports and Navigation Aids
B - Development of Inland Ports and the Lake Victoria Basin Infrastructure
C- Development of the Missing Road Links to the East African Corridors
D- Development of the East African Railway Network
E- Development of EAC Air Transport Systems
F- Development and Expansion of EAC Energy Infrastructure
G- Development of Gas, Petroleum and Wind Energy Infrastructure
H- Trade Facilitation
I - Information Communication and Technology
J- Fisheries Infrastructure development
K- Development of Agricultural, Livestock & Supporting Industrial Services
L- Tourism Development

Source: Author's compilation from the EAC/EC EPA Draft Development Matrix Summary

	Uganda			Joint Project (KEN,UG,TZ)			Joint Project (TZ,RWA)		
	Number of Projects	Total Estimated Cost ($ Million)	Gap To Be Financed	Number of Projects	Total Estimated Cost ($ Million)	Gap To Be Financed	Number of Projects	Total Estimated Cost ($ Million)	Gap To Be Financed
A									
B	1	31.32	28.83	1	157.89				
C									
D	2	1028.3	752.5				1	3800.00	3800.00
E									
F	3	2928.8	1776.84						
G									
H	1	96.41	96.41						
I									
J									
K	1	34.88	14.56						
L									
M	2	837.21	604.6						
TOTALS	**10**	**4,956.92**	**3,273.74**	**1**	**157.89**	**157**	**1**	**3,800.00**	**3,800.00**

KEY

A - Dredging & Expansion of East African Coastal Ports and Navigation Aids
B - Development of Inland Ports and the Lake Victoria Basin Infrastructure
C- Development of the Missing Road Links to the East African Corridors
D- Development of the East African Railway Network
E- Development of EAC Air Transport Systems
F- Development and Expansion of EAC Energy Infrastructure
G- Development of Gas, Petroleum and Wind Energy Infrastructure
H- Trade Facilitation
I - Information Communication and Technology
J- Fisheries Infrastructure development
K- Development of Agricultural, Livestock & Supporting Industrial Services
L- Tourism Development
M- Promote and strengthen industrial development

NB: The figures for Uganda are not from the composite matrix but from a different source; SEATINI Uganda (2010), *Financing the EPAs: An Assessment of the Viability of Aid for Trade, EDF and EU Budget Funding Initiatives for the EAC EPA*. SEATINI Uganda

4.1.2 Challenges in Financing the EAC/EC Economic and Development Cooperation Chapter of the EAC/EC Partnership Agreement

While the EAC's proposals on the economic and development cooperation text seeks to include binding commitments on the part of the EC to finance development under the EPAs, this has not been accepted by the EC. The proposal for the inclusion of the matrix as part of the binding commitments has been rejected with the EC insisting that it is not possible to fund the EAC/EC EPA beyond the resources made available under the EDF, the EU budget and AfT modalities. The EU has also insisted that the matrix need not be included in the final text as it is an EAC document that may provide reference during EPA negotiations but should not form part of the comprehensive text agreed upon by the parties. It is further contended that the matrix could be financed through the modalities set up to promote cooperation. This has formed part of the contentious issues that have dragged the EPA negotiations beyond the contemplated deadline.

During the 8th negotiations session of the technical officials of the EAC/EC EPA held from the 23-24 February 2010 in Brussels, Belgium, this was reiterated. Article 36 of the interim EPA was proposed to read;

> ...the parties agree to cooperate in the implementation of this Agreement on the basis on the EAC [EPA] development matrix. The parties shall periodically jointly review the EAC development matrix to address the changing needs of the EAC party; the EC party and the EU Member States confirm that they shall contribute towards the resources required for development from EDF resources, the EU budget and Aid for Trade. The parties agree to jointly work together to mobilise additional resources including form the EU Member States and multilateral donors. The EAC party shall contribute to the implementation of development programmes through its regional financial support mechanisms

This could be interpreted as meaning that the matrix is an EAC document that complementary to the EPA text but should not form part of binding commitments in the comprehensive text. However, the stated sources of financing are also fraught with complications starting with the fact that predictability of funding is not a given in these instruments as there are a number of challenges that come with the process. These are addressed in the following part.

4.1.2.1 Challenges in Funding the EPA through the EDF Framework

The EDF facility has been the hallmark of ACP/EU cooperation from 1957. However, its implementation, even after the amendment under the Cotonou Agreement has been fraught with complications. Among the challenges of funding EPAs include:

- The EDF facility is a basket fund that funds many other initiatives. It is therefore difficult to ascertain the exact amount set aside for trade-related development support. Therefore, a cumulative allocation may pose the danger of failing to adequately allocate funds for trade-related adjustment to the detriment of EAC countries.
- There is a significance variance between funds usually allocated and the actual funds that are disbursed. The 'de-allocation' process usually takes funds back to the EU. This therefore means that while allocations may indicate certain amounts, in most cases the funds could also includes funds that have been brought forward from a previous implementing phase.

- The amendment brought under the Cotonou Agreement that changed the date of commencement of the EDF cycle from the ‘date of signing’ to the ‘date of ratification’ means that the financial instruments of the EU have to first undergo ratification before being effected. This could lead to delays and unpredictability in the release of funds. The 9th EDF is clear testament to this complication. Securing ratification at a time of the global financial crisis could possibly be more difficult.
- The true cost of adjustment remains a disputed issue but it is not clear that the funds allocated under the EDF will be sufficient to cover for trade-related adjustment support.
- The EDF is not a component of the EU budget and financing under the framework may increasingly face challenges in the long-term. This is evident by the fact that the European Council and Parliament rejected a proposal by the EC to include it in the EU budget.

4.1.2.2 Challenges in Funding the EPA through Aid for Trade

The challenge of securing funding for the EPA is equally present in the case of AfT. This must be interpreted with the EU’s AfT strategy in mind. The challenges of funding the EAC/EC EPA through AfT include:

- The EU AfT strategy understands the participation of EU Member States as being one where they act ‘on a voluntary and flexible basis.’ This precludes binding financial commitments on the part of the EU.
- The establishment of the EAC EPA Fund for channelling and coordinating resources offers a legal ‘loophole’ that may complicate the possibility of a binding agreement. This is because under the EU AfT strategy, the EU states that it will ‘participate on a voluntary basis in regionally-owned funding mechanisms, such as regional funds.’[xxxii] By establishing this fund as an EAC fund, this may present the challenge where the EU could state that its participation is to be done on a voluntary basis.
- The understanding of the AfT component is not very clear[xxxiii] and this results to the disbursed AfT funds being reallocation of existing resources rather than additional resources. They also create debt and are usually unpredictable and conditional in nature. This would make such funds unsuitable given that they are meant to fund a predictable pattern of liberalisation that may, however, lack the financial backing to cushion the EAC countries. It is for the foregoing reason that the Hong Kong Ministerial conference asked that AfT funds should be new, untied, predictable and not debt creating.
- The EU’s AfT strategy focuses on Trade Related Assistance which is understood to include AfT areas of trade policy and regulations as well as trade development. However, no specific financial commitments are made in the case of the ‘wider aid for trade agenda’[xxxiv] which is understood to include trade-related infrastructure, building productive capacity, trade –related adjustment and other trade needs. Although this is justified by stating that OECD figures indicate that the EU is a major donor in this respect, the failure to specifically allocate funds towards the wider AfT agenda may serve to reduce the funds available for the EAC development matrix given that it mostly comprises of trade-related infrastructure.

4.1.2.3 Challenges in Funding the EPA through the EU Budget

The EU budget makes allocations relating to foreign policy in its fourth heading, the Emergency Aid Reserve and the Flexibility Fund under the flexibilities in its budget.

However, some challenges still remain if trade-related support is to be factored. These include:

- The EU budget system involves a complex interplay of inter-institutional bureaucracy that may not be able to provide funds on a timely and predictable basis.
- Although the Emergency Aid Reserve facility is designed to respond to specific and unforeseen aid requirements for non-EU countries, it affords priority to humanitarian operations, civil crisis and protection hence trade support may not be possible.
- The current financial crisis in Europe puts different priorities in the EU's budget structures and hence it may be difficult to secure funding for trade support in an increasingly strained budget that covers bailouts.
- The Country Strategy Papers which usually make provision for some funds to be sourced from the EC budget do not cover trade-related support and are usually stated to be available 'subject to special procedures and availability.'

4.2 A Comparative Outlook of Other EPA Financial Instruments

The challenges identified above call for a concrete strategy that will address the concerns and interests of the EAC Partner States in the implementation of the EPA. Such must put into consideration the various intricacies of EU funds and seek to establish an adequate and timely financial delivery framework to ensure that the intended objective that EPAs should leave countries in a better situation than they were is achieved. For the above reason, this paper will briefly explore some of the financial architecture that has been developed with respect to EPAs. Two structures; the Caribbean Aid for Trade and Regional Integration Trust Fund and the West African EPA Development Program will be examined.

4.2.1 The Caribbean Aid for Trade and Regional Integration Trust Fund

The Caribbean Aid for Trade and Regional Integration Trust Fund (CARTFund) is a trust Fund that is financed by the Department for International Development (DFID) of the United Kingdom. It is administered by the Caribbean Development Bank. The key functions of the fund include supporting the implementation of the CARICOM Single Market and Economy (CSME) and helping the Caribbean countries signatory to the EPA between the Caribbean Forum (CARIFORUM) and the EC (CARIFORUM/EC EPA) to effectively benefit from implementation of the agreement.

The CARIFORUM states concluded an EPA with the EC in 2007 that posed significant implementation challenges to the CARIFORUM states. The agreement contained far-reaching obligations that included reciprocal trade in trade in goods and services and as undertakings with regard to competition, intellectual property, transparency in public procurement, as well as data protection. Some of the disciplines contained in the agreement extend well beyond WTO obligations. In the course of negotiations, effort had been made to identify strategic areas for support under the Regional Preparatory Task Force (RPTF). The RPTF developed a work programme that set out nine areas considered to be strategic for support to the region. These included fiscal adjustment and reform, Intellectual Property, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Competition and Innovation, Customs and Trade Facilitation, Trade in Services and E-commerce, Agriculture, Fisheries and Investment and Business Facilitation.

The Trust Fund was established with the objective to provide non-refundable resources to finance key national, sub-regional and regional projects in four areas namely:

a) EPA Implementation Support:
    i. Support for work planning and implementation by CARIFORUM and the European Community's taskforce, fast-tracking effective proposals as necessary;
    ii. Developing the EPA implementation monitoring policy, mechanism and institutional framework;
    iii. Completing the regional competition policy and institutional framework; and
    iv. Completing the regional customs and trade facilitation policy and institutional framework.
b) Deepening CARICOM Economic Integration
    i. Completing the legal and institutional policy and institutional framework for the implementation of the CSME;
    ii. Completing the regime for free movement of people; and
    iii. Establishing a framework for macro-economic and sectoral policy coordination.
c) Deepening the integration of the OECS member states, including formulation of an OECS trade policy.
d) Assisting potential beneficiaries of the Trust Fund in project preparation in the areas described above.

Under this framework, the EPA implementation process was given priority with 57 percent allocation of resources with CARICOM and OECS integration accounting for 30 percent and 4 percent respectively. The projects are submitted from a range of stakeholders including government ministries and agencies, regional institutions, and private sector agencies with various thematic areas being addressed. The process has come to involve consultants after the initial screening process to improve proposals before an assessment by the CDB. These are then taken to steering committee for approval. Among the key developments in this fund include a shift to new thematic areas beyond the traditional scope of aid.

The challenge of this fund has been with regard to the absence of donor coordination which has resulted in the steering committee and the CDB operating in ignorance of other donor processes hence uncertainty and the possibility of duplication of efforts. This, however, is a model that could be considered by the EAC in setting up modalities of development funding and improvements could be made on it.

4.2.2 The Economic Community of West Africa EPA Development Program

The Economic Community of West African States (ECOWAS) commenced EPA negotiations on October 5, 2003. The implementation of the agreement was intended to gradually create a free trade area that is consistent with WTO rules between ECOWAS and the EU; establish a trade and economic relation between the parties that prioritises development and poverty reduction; deepen regional integration in West Africa; improve the competitiveness of West African economies through capacity building and enhancement of production facilities; and improve market access for west African exports by ensuring compliance with standards and dismantling non-tariff barriers.

In furtherance of the above stated objectives, ECOWAS placed prioritised the accompanying measures and priority actions to be taken. In 2007, the parties agreed on the accompanying programs for the EPA and the funding by the EC as being prerequisites for signing of the agreement. In early 2010, in the face of contentious issues blocking the conclusion of an EPA, a development text was agreed upon. The EPADP was thus adopted as a concrete accompanying measure to the EPA. At the last negotiation session held in Brussels from 13-

17 September 2010, contention still remains on the implementation protocol of the EPADP regarding the principles, the sources of funding and the amount of funds to be disbursed under the program.

The overall aim of the EPADP is to build a regional and competitive economy that is integrated into the global economy and can stimulate growth. The EPADP gives five key focal points to address underlying weaknesses. These include:

i. Diversification and increase in productive capacities;
ii. Developing intra-regional trade and facilitating access to international markets;
iii. Improving and strengthening national and regional trade-related infrastructure;
iv. Making the essential adjustments and talking into account other trade-related needs; and
v. Implementation and monitoring and evaluation of the EPA.

The first three focal areas are designed at enhancing the positive impact of the EPA while the fourth seeks to minimise the adverse effects of the EPA. The last focal area seeks to promote the successful implementation of the EPA through a monitoring program. It is expected that at the conclusion of the implementation period of the EPA, the production capacity of the West African region should be diversified and increased to enhance the supply capacity for both region and global markets; intra-regional trade should have improved along with regional products being able to access international markets; the national and regional trade-related infrastructure should be improved with the concomitant lower transaction and production costs; the necessary adjustment by West African countries should have been made.

The proposed funding mechanism is to be phased in five-year programmes. Each of the focal areas has a set of priority activities arranged within a five-year period. These are costed in a matrix over the period. The fit phase of five years has a matrix that is estimated at 9.525 Euros. The program is to be funded through the EPA Regional Fund that is to be set up to channel funds at regional and national levels. The mechanisms or modalities are yet to be agreed upon. The EU has so far agreed to fund upto 6.5 billion Euros under the budget and contention still exists on the remaining deficit. These two financing models provide an insight into how the EPA funding mechanism could be structured. Based on the foregoing discussion, a number of conclusions and recommendations can be made for the EAC/EC EPA.

5.0 Conclusions and Recommendations

This paper set out to examine the development cooperation text and its accompanying matrix against proposals by both the EAC and the EC. This was intended to look at the financial mechanism and establish the legal implications of the provisions. What conclusions and recommendations can we draw then? The next part of this paper draws conclusions and offers a range of recommendations for the EAC. It is hoped that these will contribute to the ongoing debate and process and inform the decision-making process before the conclusion of a comprehensive agreement.

From an analysis of the financial mechanisms of the EU and the proposals under the EAC/EC EPA framework, a number of important conclusions can be made. First, the EDF facility, Aid for Trade and the European budget, although being the EU’s official financial vehicles are not best placed for adequate funding of the EAC EPA development cooperation framework. Further, it is concluded that the design and architecture of these instruments poses a challenge to the EAC when the complete framework and strategy of the EU is factored in when assessing how the funds are to be channelled. Where funds are set aside, they do not adequately cover the issue of trade-related support in some instances or the supporting legal framework and understanding serves to complicate the disbursement of such funds on a timely and predictable basis. This is despite the fact that once trade obligations have been made, it is difficult to reverse the same without offering an alternative since the regime will be based on the WTO framework.

It is also concluded that the setting up of an EAC EPA Fund to be owned by the EAC may also limit the funding mechanism since the EU's AfT strategy precludes compulsory funding for regional funds. From the matrix, it could be concluded that the EAC Partner States have not made any allocation for funds relating to adjustment support. Finally, it can be deduced from the EU's proposals that what is intended is a non-binding financial commitment through its usual financial mechanisms without additional resources to fund implementation of the EPA

In light of the foregoing conclusions on the financial architecture of the EAC/EC EPA, the following specific recommendations are suggested:

1) The EAC Partner States should consider the setting up of a joint trust fund to be administered by the East African Development Bank with contributions from the EU through its various financial mechanisms. The EAC EPA Fund could have its structure established as such.
2) The development text and matrix should be included as part and parcel of the EPA text with binding commitments to the same effect.
3) The EAC states should include an estimate of EPA adjustment funds as part of the matrix as a binding financial commitment on the part of the EU.
4) There should be coordination between the EAC states, the EU and other donors. This is important since some of the projects earmarked under the composite matrix have since been funded by other partners. There could be duplication or loss of value for the EAC is some of the projects under the matrix are funded elsewhere and the market access granted to the EU is not commensurate to the development support.
5) The EAC should consider adopting a framework that closely resembles the CARTFund and strive to address its shortfalls as well as change it to local circumstances.

In conclusion, an attempt has been made in this study to address the objectives that were set out in the first chapter of this work. It cannot be gainsaid that for the EPAs to be meaningful, if at all, it is important that the above recommendations be followed. It is only when these recommendations are followed that it can be safely concluded that the trade liberalisation under the EAC EPA will meet the requirement that is required to propel the region to its rightful place in the global political economy.

ENDNOTES

[i] Panel Reports, EEC – *Import Regime for Bananas*, 156-164, DS38/R (1994) & *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R

[ii] Over the duration of the Lomé Conventions, the ACP share of world exports had fallen from 3.4 percent to 1.1 percent while the total volume of EU imports from the ACP declined from 6.7 percent in 1976 to 2.8 percent in 1999. Further, the levels of Foreign Direct Investment (FDI) from the EU to ACP countries fell from 2.8 in 1996 to 1.7 percent in 1999.

[iii] Article 167 (1) of the Lomé IV Agreement

[iv] Article 34(1) of the Cotonou Partnership Agreement

[v] ESA members included Burundi, Comoros, The DRC, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe.

[vi] Issues that remain unresolved include export taxes, the Most favoured Nation (MFN) clause, development cooperation, and article 37 issues such as Rules of Origin, Trade Related Issues, legal and institutional issues, and agriculture.

[vii] Article 41(8) of the Rules of Origin as contained in Protocol I to the Framework EPA

[viii] The marketing year is used to refer to the period between 1 October and 30 September within a year.

[ix] See Annex II(d) of the EAC/EC Framework EPA

[x] The model was developed by the UNCTAD secretariat and the World Bank as a simple tool to quantify the impact of changes in trade flows as a result of trade partnership agreements.

[xii] The Commonwealth Secretariat estimates that the ACP states would require €3.3 billion for fiscal adjustment support; € 2.1 billion for trade facilitation/export development support; €1.5 billion for production and employment adjustment assistance; and €2.3 billion for skills and productivity enhancement support.

[xiii] It should be noted that it is as a result of this amendment that the 9th EDF run from 2002-2008 since the approval of EU member States' parliaments took a long time. *Supra* (note 24) above

[xiv] WTO Ministerial Declaration, WT/MIN (05)/DEC/W/ 22 December 2005, para. 57

[xv] These include roads, ports, telecommunication, energy and electricity, transport systems, water supply and sanitation as well as trade support institutions including customs, trade finance, marketing and distribution facilities

[xvi] This involves scaling-up total EU AfT in general as well as increasing the specific funding of Trade Related Assistance to reach € 2 billion annually by 2010 (€1 billion from EC, €1 billion from EU MS), as promised by the EU in 2005;

[xvii] Article 310 of the Treaty of Lisbon

[xviii] Article 311 of the Treaty of Lisbon

[xix] Article 311 of the Treaty of Lisbon

[xx] Articles 313-316 of the Treaty of Lisbon

[xxi] Article 317-319 of the Treaty of Lisbon

[xxii] This includes traditional resources including customs duties on imports from outside the EU and sugar levies where EU governments retain 25 percent to cover the cost of collection; a standard percentage levied on a harmonised Value Added Tax base for each EU country; as well as a percentage levied on the GNI of each country.

[xxiii] This part contains rules relating to inter-institutional cooperation in general, establishment of the budget and provisions relating specific matters including issues such as classification of expenditure, incorporation of financial provisions in legislative acts, and maximum rate of increase among others.

[xxiv] See budget explanations on the EC's website on <http://ec.europa.eu/budget/explained/budg_system/fin_fwk0713/fin_fwk0713_en.cfm#content_struct> (accessed 27 July 2011)
[xxv] This fund is currently set at €221M per year (based on 2004 prices)
[xxvi] Paragraph 5 of the General Provisions of the EAC/EC EPA draft text on Economic and Development Cooperation
[xxvii] See paragraph 6 of the General Provisions of the EAC/EC EPA
[xxviii] These are stated to include Sanitary and Phytosanitary Standards (SPS), Non Tariff Barriers (NTB), Technical Barriers to Trade (TBT), customs and trade facilitation, trade development, investment, competition, trade Related Aspects of Intellectual Property Rights (TRIPs), metrology and statistics.
[xxix] See title IX of the EAC/EC EPA draft text on Economic and Development Cooperation
[xxx] These are stated to include institutional and human resources development in both public and private sectors; service standards to facilitate trade, commerce, and business transactions; ICT enabled spectrum management, institutional reforms to enhance electronic information system; sustainable production systems for product producers and service providers; Research and Development; e- commerce; new production technology; technical regulations, metrology, accreditation and conformity assessment; trade issues, and laws on arbitration and dispute resolution.
[xxxi] See title XI of the EAC/EC EPA draft text on Economic and Development Cooperation
[xxxii] Article 5(d) of the EU AfT Strategy
[xxxiii] The data, in some instances, includes Regional Trade Arrangements, bilateral and multilateral aid, funds given under concessional loans, and Official Development Assistance.
[xxxiv] Article 1 of the EU AfT Strategy

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