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Standards and Market Access under EPAs
Implications and Way forward for EAC

Introduction

In order for developing countries to achieve significant export growth rates, there is need to increase the range of their processed agricultural products accessing developed country markets. However, this has not been the case due to many supply and demand-side challenges, among which is the lack of capacity to meet increasingly more stringent food safety and other private standards as well as consumer preferences in the developed countries.

Yet, given the advances in knowledge about health hazards, food processing technologies, environmental protection, strict observance of human rights and rises in consumers' incomes, it is expected that more demands will continuously be placed on food safety standards, technical requirements and production techniques that have to be complied with along the entire production and distribution chains. However, these standards are prone to being used as trade-impeding protectionist tools, mostly by developed countries. Many standards have emerged in the global trading arena that have no bearing on the legitimate aim of protecting animal welfare and human and plant health.

Ideally, the World Trade Organisation, (WTO) through its Sanitary and Phyto-sanitary (SPS) Agreement, Technical Barriers to Trade (TBT) and its Dispute Settlement Mechanism (DSM), could help resolve some of the observed abuses and protectionist tendencies in the usage of trade standards. In practice, however, developing countries are disadvantaged, when it comes to making use of the available WTO procedures. What is more, the WTO allows its members to have own justifiable national standards which oft times are stricter than negotiated under its Authority that impede the developing country potential to access developed country markets. As a result, standards-related issues will forever remain a source of major tension and sharp friction in international trade negotiations.

EAC-EC EPA and Negotiations on Standards

In line with Article 37 of the Framework Economic Partnership Agreement (EPA), the East Africa Community (EAC) and the European Community (EC) have embarked on negotiations for a comprehensive EPA, of which a broad road map was adopted in March 2008. It was agreed that this road map shall take into account the progress of the negotiations and can be adapted accordingly. Based on this, the EAC and the EC met at the technical level in April 2008 and considered, among others, SPS and TBT measures.

In the area of SPS, the parties agreed to cooperate, with the aim of safeguarding human, animal and plant health or life, ensuring transparency in application of SPS measures to trade, promoting technology transfer and, more fundamentally, establishing and enhancing the EAC member states' capacity to implement and monitor SPS standards in accordance with international best practice. In this regard, the EAC and the EC agreed to co-operate in helping and facilitating the compliance of EAC products with formal standards of the EU and other markets. This will include support for harmonisation of SPS standards, promoting capacity in both public and private sector for sanitary control through development and implementation of quality programmes, technical assistance, harmonising appropriate regulatory frameworks and policies between and within the parties, training and information exchange. The EAC and the EC have agreed to identify and prioritise the necessary technical infrastructure, but the issue of providing such infrastructure is still subject to further negotiations.

As regards the TBT, the EAC and the EC agreed that the EC would provide support for capacity building in the fields of standardisation, technical regulations, conformity assessment among and metrology, quality management and assurance in selected sectors of importance to the EAC. The EC and EAC also agreed on promotion of greater use of international standards in technical regulations and conformity assessments, including sector specific measures, in the Parties' territories. As on April 17, 2009, a joint EAC-EC text on the SPS and the TBT was complete. It is now time for development commentators to review and help in refining it into a development tool.

Functions of Standards in International Trade

Standards, in many cases, are public goods. In this case, they must serve to solve common problems, generating joint consumption benefits for the public.

Standards facilitate comparisons by consumers across products with common essential characteristics (Maskus & Wilson, 2000). Product and process standards are required because they contribute to ***the provision of public*** *goods* for which people have preferences. Standards can also improve information flows between suppliers and consumers about the characteristics and the quality of products, thereby facilitating market transactions. In this regard, standards *are* ***designed to facilitate information exchange and ensure quality***. For example, sanitary standards contribute to public health. SPS requirements can improve health and the quality of life, with spill over benefits into higher productivity, as well as expanded export opportunities (Wilson, 2001).

The role of standards in the value chain has been discussed as important in not only improving efficiency through quality, cost and delivery (QCD), but also through meeting demands of high-income economies which are largely the "drivers" of these standards (Kaplinsky, 2006). These result in firms not only demanding quality performance from their suppliers and the threat of exclusion for non-performance, but also raised costs for complying firms.

Standards, therefore, play a vital role ***in the regulation of food production and trade and improve market access*** by creating a framework for communication among different actors at each end of the value chain. When products and processes become more standardised, transparency increases and trade becomes more predictable and easy to control, thus reducing costs involved in transactions (Kaplinsky, 2006; Tander & Tilburg 2007; Busch, 2000). Implementing standards can, therefore, improve operational and managerial efficiency.

Standards also have technological and innovative features embedded in them and, hence, the process of complying ***with standards lies in the transfer of advanced production capabilities to low-wage economies,*** which, in turn, gain by acquiring knowledge through spill-over and 'learning by doing' (Grossman & Helpman, 1989). This process enables small firms/farmers to *upgrade* their production, thereby resulting in increased incomes.

On the other hand, however, with the emerging and increasingly demanding health and safety standards, over and above the governmental standards imposed by the EU, private sectors are imposing additional standards in order to protect their safety reputation and also to ***differentiate themselves from competitors*** (Dever, 2007). Buyers have also imposed many requirements informally through individual supply chains (Jaffe & Henson, 2004; Dever, 2007). Hence, exporters have become concerned about the cost of monitoring a large number of smallholders for compliance with increasingly strict regulations. These safety standards have thus created immense constraints for existing exporters/suppliers, while raising the bar for new entrants into the market. Therefore, as standards increase in number, complexity and stringency, these have a direct impact on competition and market access. Hence, firms unable to fulfil all the requirements are faced with export supply constraints and risk exclusion (Tander & van Tilburg 2007).

Some authors (Wilson, 2001; Wilson & Abiola 2003) have also pointed out that ***countries use regulation for protectionist purposes***. Technical regulations may discriminate against foreign suppliers, both in their construction and in their outcomes. They may be used to gain strategic trade advantages for domestic firms over foreign competitors. Standards are often non-transparent and, in some cases, needlessly force firms to duplicate testing and certification costs. Regulations may be drafted to exclude both domestic and foreign entrants into a particular market, which then serves to support entrenched monopolies.

Standards — particularly those that require independent certification — intrinsically fulfil many of the broader requirements for producers to participate in global supply chains or compete in high-value products. For example, detailed record keeping of production inputs, traceability and third party monitoring that are required for independent certification are also useful for improving chain competitiveness and ensuring more effective participation in lucrative markets.

Sustainability-oriented standards appear to have some additional benefits for farmers. For example, several recommend diversification away from dependence on a single cash crop, thereby reducing a producer's risk of crop failure. Environmental standards also help to ensure sustainable production and are beneficial to farmers (Okello, 2005).

More recently, ***ethical standards, like fair trade,*** have also been used to promote social justice. Fair trade standards resulted from developed country consumer concerns over the progress of development, through global trade. It is, therefore, a market-based mechanism to improve lives of producers in developing countries. Fair trade has been seen as a mechanism through which producer's needs can be addressed. It incorporates equity in supply chains by addressing market failures and their social impacts at source (Nicholls & Opal, 2004). Other recent ethical standards have also included labour standards that ensure conducive and humane working conditions, fair wages and non-exploitation of children in farms.

In view of this, EAC producers and exporters operate in an environment full of uncertainties. Concerns related to food quality and safety, resource use, land degradation and pollution of the environment as well as labour and worker welfare continue to dog the sector in many ways. While standards may, at the same time, pass knowledge and information necessary for producers to participate in global chains, they may also act as "barriers" to trade and increase transaction costs for exporting firms.

The Nature and Extent of EU Standards

In the aftermath of the Bovine Spongiform Encephalopathy (BSE) crisis and several other food

scandals, the European Union (EU) published its *White Paper on Food Safety*, setting out a legislative action plan for a pro-active new food policy. The key elements in the new approach were the establishment of a framework regulation, and of an independent body providing scientific advice to the legislators, the development of specific food and feed safety legislation, including a major overhaul of the existing hygiene legislation and the creation of a framework for harmonised food controls. As a result of this, in January 2002, the European Parliament, together with the council of the EU, passed the EC Regulation number 178/2002 laying down the general principles and requirements of food law and establishing the European Food Safety Authority and laying down procedures in matters of food safety.

The new legislation adapted an integrated approach to food safety (*"from farm to fork"*), which lays the primary responsibility on producers and retailers, while encompassing traceability as the basic principle, others being transparency, risk analysis and risk assessment using best scientific evidence and precautionary principles. This legislation also gave responsibility to the European Food Safety Authority for scientific and technical advice as well as information to the community members. Implementation of the legislation, therefore, resulted in frequent import checks and inspection in third countries exporting to the EU.

The white paper on food safety outlines a radical revision of the EU food hygiene rules. It developed a "hygiene package", with the aim of merging, harmonising and simplifying very detailed and complex hygiene requirements, scattered over 17 directives. The overall aim was to create a single hygiene regime, covering food and food operators in all sectors, together with effective instruments to manage food safety and any possible food crises, throughout the food chain. Food producers would bear primary responsibility for the safety of food, through the use of a "Hazard Analysis and Critical Control Points" (HACCP) system. It also had requirements for food establishments to be registered or to be approved by the competent authorities. These need to have control systems in place, in order to comply with food law in general and with food hygiene in particular. These requirements came into force on January 01, 2006.

Voluntary and Private Standards in the EU

Consumer pressure, protection of brand image and stricter food regulation in the EU and the need for access to due diligence defence drove retailers to develop strict commercial standards. Governments tended to respond by adopting stricter legislation, placing the liability for food contamination on the industry and retailers (e.g., the 'due diligence' requirements in the UK) etc. In turn, retailers and food manufacturers sought to make their suppliers responsible for the safety of their products, notably through the development of standards for good agricultural practices and good manufacturing practices and the requirement that suppliers be certified. In some cases, firms have developed standards individually (e.g., Carrefour's *"filière qualité"*), while in others these have acted collectively (e.g., the Sustainable Agriculture Initiative was created by leading global agri-food firms, such as Nestlé and Danone, to pursue mutual sustainability interests; and some European supermarket chains formed the Euro-retailer Produce Group to develop the European System Related to Good Agricultural Practice (EurepGAP) standard).

Other Private Voluntary Standards

Organic Standards are particularly process standards whereby certification covers several important areas of agriculture and, more recently, of aquaculture as well. There are preliminary conversion requirements that help to ensure that the cultivation medium and the area are reasonably free of contaminants or synthetic agro-chemicals. Then, certification addresses the processes of cultivation, particularly issues of fertilisation, crop protection and risks of contamination. Within the EU, it encompasses such standards as *EU organic*, a standard for labelling of all organic foods sold in the EU.

Fair Trade standards are for socially conscious product labelling, mainly dealing with human and worker rights. These guarantee minimum prices considered as fair to producers and provide a Fair-trade Premium that the producer must invest in projects enhancing its social, economic and environmental development. These strive for mutually beneficial long-term trading relationships and set clear minimum and developmental criteria and objectives for social, economic and environmental sustainability.

Table 1: Typology of EU Standards

Field of Application	*Quality Assurance; Environmental; Health; Labour; Social; and Ethical*
Form Coverage	Codes of Conduct; Label; Standards Firm/Value chain-Specific; Sector-specific; Generic
Key Drivers	Lead Firms; International NGOs; International organisations
Certification process	First party; Second party; Third party; Private sector; NGOs; Government
Regulatory Implications	Mandatory; Voluntary; Market Competition Requirement

Source: Nadvi & Waltring, 2002

Nature of EAC Exports and Experiences with EU Standards

EAC exports are mainly agricultural in nature. Kenya's top exports to the EU include horticulture, tea, coffee and fish. In Uganda, fish is the main export to the EU, followed by coffee, and, most recently, roses and cut flowers are increasingly becoming an important commodity in the Ugandan export basket. Tanzania's main exports include tea, cashew nuts and cloves. Rwanda and Burundi enjoy preferential treatment in the EU and mainly export tea and coffee, which comprise 70

Table 2: Main EAC Exports to the EU by Country and Commodity (2007)				
Country	***Commodity exports as percent of total exports***			
	Coffee	***Tea***	***Horticulture***	***Fish***
Kenya	3.8	17.03	20.66	1.5
Tanzania	20.8	11.3	*Potential*	25.7
Uganda	23	4.2	2.1	10.8
Rwanda	70	5.9	*Potential*	-
Burundi	73.3	7.0	*Potential*	-

percent of their exports (Table 2). Horticulture is considered a priority sector, with great potential, especially in Uganda, Rwanda and Burundi.

Consequently, EAC exports to the EU are subject to a number of standards, both SPS related as well as private. Therefore, despite the duty-free and quota-free access of EAC goods into the EU, as negotiated in the EPAs, EAC exports will still face restrictions in accessing the EU market. This is further exacerbated by the fact that standards are constantly changing and, therefore, require constant upgrading of both skills and premises and might result in an addition to transaction costs of EAC exporters.

Conclusion and the Way Forward

The economic costs associated with meeting high EU standards when a country has only a limited volume of production is particularly important for developing countries. This could come to constitute a barrier to trade. In this context, derogation provisions will need to be developed, which allow greater use to be made of non-originating raw materials, where this allows the unit costs of SPS-compliance in the countries concerned to be reduced to an economically viable level.

A further concern is the growing burden of compliance, with the increasingly strict standards being applied by private-sector-based bodies in the EU. These standards often go beyond the formal legal requirement, since the legal obligation to ensure the safety of food imported into the EU market is placed on the importer, leading to increased pressure on EAC suppliers from EU importers to ensure that all foodstuffs exported to the EU market are safe and subject to traceability requirements.

On the other hand, compliance with strict market food safety and quality standards may, however, serve as a stimulus for developing country investments in supply chain modernisation, while providing incentives for the adoption of better safety and quality control practices in agriculture and food manufacturing. Additionally, opportunities may be provided for clarifying the appropriate and necessary roles of both public and private sectors in food safety and agricultural health management. Rather than degrading the comparative advantage of developing countries, the compliance process can result in new forms of competitive advantage and contribute to more sustainable and profitable trade over the long term. There are numerous benefits associated with compliance with market food safety and quality standards at grower, industry and country levels. So far, in Kenya, some EurepGAP-compliant smallholders have already realised benefits such as: improved quality of produce both for the local and export markets; increases in numbers of employees associated with and acreage devoted to export and vegetables for the local market; better environmental conservation and management; marketing contracts with major exporters as well as considerable savings on pesticide use.

The issues to be addressed and considered for further EPA negotiations include:

Ensuring support for technical and capacity building of exporters, producers and relevant institutions.

- Harmonising standards within the EAC and the EU in order to reduce costs of transactions.
- The inclusion of small producers in standard-setting (or is it only about helping them comply with externally imposed standards?) Can they be assisted in the process to set their own standards?
- How can we ensure that capacity building programmes are all-inclusive and they reach the grass roots, especially to small-scale producers?
- How do we develop non-exclusionary standards?
- Can we have supportive groups of actors (NGOs, Chambers of Commerce, etc.) that can act as advocates and watchdogs to make sure there are fair deals between the producers and retailers?

This Briefing Paper is adapted from the Research Paper entitled **"Standards and Market Access under EPAs: Implications and Way Forward for EAC"** written by **Gloria Othieno** and **Victor Ogalo** as part of a project, 'Building an Inclusive East African Community' (BIEAC) with the support of the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ).