



**Africa, Caribbean, and  
Pacific**



**Economic Commission  
For Africa**



**African Union**

# **EPA Negotiations: African Countries Continental Review**



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African Union

# African Trade Policy Centre

## EPA Negotiations: African Countries Continental Review

### Review Report<sup>S</sup>

19 February 2007

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# Continental Synthesis

## Introduction

Negotiations on an Economic Partnership Agreement (EPA) between the European Union and the ACP (Africa, Caribbean, and Pacific) countries were launched in Brussels on 27 September 2002. The Cotonou Agreement provides for the legal basis of the negotiations, which are expected to end in December 2007 with the new agreement coming into force by 1 January 2008.

In July, the ACP-EU Committee of Ambassadors agreed upon a joint declaration setting out the modalities and terms of reference for the implementation of the Review of the Economic Partnership Agreements (EPAs) negotiations set out in the Cotonou Agreement's Article 37.4. This article states "The Parties will regularly review the progress of the preparations and negotiations and will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries to ensure that no further time is needed for preparations or negotiations." The declaration states that the review will be undertaken jointly in each of the regional EPA negotiations and include the structure, process and substance of the negotiations. It will assess what progress has been achieved on both trade and development issues and the work plan of negotiations, in order to identify any necessary measures to support the timely completion of the negotiations before the January 1st 2008 deadline for entry into force of the new arrangements or if more time is needed to effectively conduct the negotiations. The review will also identify procedures necessary to support the effective implementation of the EPAs.

This report is a synthesis of a survey undertaken as part of the review of EPA negotiations at the different sub -regions in Africa. It therefore reflects the situation at the continental level for Africa. The report is organised as follows. It contains five main sections or chapters. In the first chapter, the methodology of the survey review and a global synthesis of the crosscutting messages emerging from the different sub -regions in Africa are presented. The remaining four chapters then present more detailed analysis of interviews and statistical results from each of the sub -regions negotiating an EPA with the EU.

## Methodology of the review

The terms of reference for the review were agreed jointly, as indicated above, between the European Union and the ACP countries. On the basis of these terms of reference, the ACP Secretariat<sup>1</sup> requested the ECA under the auspices of the African Trade Policy

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<sup>1</sup> The all ACP level negotiating mandate provided for that all regions together in 2006 take stock of the negotiations. Subsequently, the ACP Council mandated that reviews be conducted in all regions. The ACP Secretariat and the African Union Commission requested the ECA to carry out the all Africa review. The draft report was endorsed at the 3<sup>rd</sup> Extra-Ordinary Session of the African Union Ministers of Trade in Addis Ababa on 16 January 2007. This report is therefore expected to feed into the all ACP level process.

Centre (ATPC)<sup>2</sup>. The terms of reference as set out by the ACP Secretariat in its request to the ECA are presented as Annex I to this report.

On the basis of the terms of reference in Annex I, a survey instrument was designed to help gather the required information that would assist in analysing the progress made in the EPAs negotiations. The survey instrument is presented as Annex II to this report.

How was the review data actually collected? Two main modes of data collection were applied. First, face-to-face discussions were conducted with participants in three Regional Negotiating Forums (RNFs)<sup>3</sup>. Besides the face-to-face interviews, the questionnaire in Annex II was also distributed during the RNFs including that of ECOWAS in Abuja. The questionnaires were therefore used to collect information from the representatives of the National Development Trade Policy Forums (NDTPFs) in the sub-regions. In addition to the interviews that were conducted and the distribution of the questionnaires at the RNFs, detailed country missions were undertaken in selected countries<sup>4</sup> in all the four sub-regions. The country visits allowed more detailed discussions with members of the NDTPFs of the selected countries. The representation at the RNFs allowed the data to be collected from majority of countries negotiating the EPAs. By using the RNFs, it also presented the opportunity to gather views from the different actors in the negotiations. The detailed country missions were instrumental to collaborating the messages at the RNFs level with events on the ground.

The statistical data collected through the RNFs and the country missions and during an EPA-focused Expert Group Meeting attended by over 40 African countries is summarised in Annex III. The full sample on which the statistics in this report are based was 94 respondents comprising of sub-regional responses as follows: CEMAC (18); ESA (38); ECOWAS (15); and SADC (23). While Chapters 2-5 capture the differences at the sub-regional level, the remainder of this chapter synthesis should be read hand-in-hand with the statistical data summarised in Annex III which gives the global picture at the Africa ACP level.

## Negotiations process

In general and with a few exceptions such as Kenya, our review found that the process of negotiations is not sufficiently inclusive. Some other countries were indicated to go out of their way to ensure that the Non-State Actors take part in the negotiations. But in general, Non-State Actors (NSAs) such as Civil Society Organizations (CSOs) and private sector representatives, but also the Parliaments are often not informed sufficiently of the negotiation processes. They have also complained of a lack of funds for their participation in the negotiations process, including the NDTPF or at least a lack of transparency in the utilization of these funds. CSOs have also expressed concerns that the array of topics to follow is beyond their capacity, which spreads them thin on

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<sup>2</sup> The African Trade Policy Centre is part of the Trade, Finance and Economic Development Division of the ECA. It is currently undertaking its activities under the generous financial support of the Canadian and Danish Governments.

<sup>3</sup> The focussed interviews were conducted during the November RNFs of ESA in Addis Ababa, SADC in Maputo and CEMAC in Douala.

<sup>4</sup> The countries where these follow-up missions were undertaken include Nigeria, Senegal, Gabon, Burkina Faso, Tanzania, Kenya, Sudan, and Ethiopia.

individual issues and leaves them with little time and capacities for lobbying appropriate government agencies. It was emphasised however that for the EPAs negotiations to succeed and the ratification process to be smooth, there is need for the parliamentarians to be more involved. In addition, a need was expressed especially by Government officials for the non-state actors to pro-actively participate in national forums on EPAs.

In general, Regional Preparatory Tasks Forces (RPTFs) are assessed as not fully efficient. Moreover, their role being only consultative, they do not have the clout to perform in a satisfactory way. All the regions expressed concerns that the secretariat of their RECs lacks sufficient capacities to conduct the negotiations effectively. Both ECOWAS and CEMAC members expressed concerns over the relationship between the RECs secretariats and the Member States in the negotiations process, albeit for very different reasons. ECOWAS Member States expressed concerns over the lack of clarity in the role of both the ECOWAS secretariat and the UEMOA Commissions, both of whom are involved in the negotiations. There are also concerns over the lack of transparency caused by this specific arrangement and the quality of the feedback provided to Member States. On the contrary, in the Central African Region, several interviewees stated that the lack of capacity of the CEMAC secretariat prevented it from operating effectively in the negotiations. The negotiations in this sub-region were almost at a stand-still and more because of capacity constraints. Therefore in that region, Member States are playing a prominent role in the negotiations, sometimes to the detriment of coordination.

Several interviewees from different regions called for an increased coordination among RECs, perhaps at the AU level. This would be necessary to avoid potential competing positions by different RECs also to overcome the problem of overlapping of some RECs. Clearly, there has been insufficient technical and political coordination of the negotiations at the continental level. The idea of negotiating groups having a forum for regularly sharing of experiences was agreed to be invaluable. Beyond that, in order to enhance coordination, it was felt that sub-regions should endeavour to implement the decisions at the African Union Summit level and Declarations by Trade Ministers on EPAs issues.

## **Overall assessment of the negotiations**

In each and every region delays in the negotiations are looking more and more likely. It appears very unlikely that any of the four regions will be able to complete the negotiations and come-up with an EPA agreement before 31<sup>st</sup> December 2007. This means there is a likelihood that there will be need for more time. Looking at the statistical evidence on the question regarding more time, it was clear that whatever additional time is required is not very long. However, it was suggested that any extension of the deadline need to be linked with specific actions. In other words, any more time allocated for the negotiations should be specific on what will be done during the additional time. Subsequently, the extension needs to be mapped with the outstanding issues in each of the sub-regions based on the specific sub-regions review reports on the negotiations.

There are several factors for the current situation where slow progress has been registered.

First and foremost there is clear lack of preparedness at the country and regional level in all the sub-regions. This lack of preparedness is in both important dimensions of the negotiations. To begin with, there is a clear lack of capacities to prepare and conduct the negotiations, at all levels. All the sub-regions are faced with issues of capacity and shortage of financial resources. This is the case of regional secretariats, as noted above, but also of national authorities and of Non State Actors. There is a lack of awareness and involvements in these negotiations from all these actors. The importance of Non States Actor (NSAs) to the EPA negotiation process has been accepted in principle, as can be seen by the procedures that have been recommended to ensure their involvement. Each of the ACP countries has been advised by the EU to set up a National Development and Trade Policy Forum (NDTPF), which would consist of representatives from governmental bodies and from a wide range of NSAs, including CSOs, whose role is to draw up a national position on EPAs. The NDTPF is supposed to provide the structure through which the national position can be developed through a thorough process of consultation.

Representatives from the NDTPF together with a number of other officials, then present these positions to the Regional Negotiating Forums (RNF) at which negotiations relating to regional integration and discussions with the EU take place. At each RNF meeting, NDTPF representatives are mandated to present reports detailing the progress of the NDTPF consultation process. Cotonou states that it is the collective responsibility of both the EU and the ACP countries to ensure effective NSA involvement in Cotonou cooperation activities, such as EPA negotiations. Be that as it may be, the EU is keen to play mainly a financing, consultative and monitoring role with regard to NSA involvement, with ACP countries playing the main role in deciding which NSAs to include in the process. This responsibility has been mandated to the National Authorizing Officer (NAO) of each ACP country, a senior government official appointed to represent it in all the operations financed by European Development Fund. The NAO works in close collaboration with the head of the EC delegation on preparing and appraising projects and programmes. The NAO is also responsible for the tendering of contracts, authorizing expenses and making the necessary adaptations to ensure proper execution of programmes. With much of the resources for NSA involvement in EPA negotiations coming from the EU, the NAO is effectively in charge of deciding which NSAs are involved in the process.

EPA negotiations often take place behind closed doors and those who do not have access to these negotiations have found it difficult to gather detailed information on its progress. This lack of transparency has been displayed not only by ACP negotiators and regional secretariat officials, but also by EU officials as well. EU NGOs have also found it very difficult to monitor negotiations with the EU, displaying an alarming lack of transparency in their mute responses to requests for information from EU NGOs. This point is rather important because at the end of the day, the national parliament will have to adopt the agreement. If the parliament is not really involved, this could delay the process of ratifications if any.

In addition, among all the actors in the negotiations, there was an expression of lack of preparedness at the level of implementation of the EPAs agreement. Thus, private sector appeared hesitant to embrace the EPAs due to uncertainties given the lack of

preparations at the domestic level. It was felt not much has been done or is being done to strengthen the capacities of their economies to face the new competition regimes arising from EPAs implementation.

There are also divergences among countries within the same region that slow down the negotiations process. These divergences have different causes such as culture or the membership of countries within the same negotiating sub-region to other RECs. This is the case with EAC in ESA and SADC, and the UEMOA within ECOWAS. The different levels of development within a given sub-region also tend to limit the progress of negotiations. There is also a dichotomy between LDCs and non-LDCs. LDCs may sometimes feel less hard pressed to commit to EPA negotiations as they already benefit from nearly duty-free quota-free market access to the EU under the Everything But Arms (EBA) initiative. Consequently, the question of developing versus least developed countries appeared to affect the speed of consensus building on some negotiating positions. It did however emerge from talking to the respondents that there is an agreed principle that equal treatment should be overriding everything else when it comes to assessing EU offers. In the spirit of consolidating the regional integration gains, countries negotiating together expected equal treatment in the final EPA agreement. For some countries that are in post-conflict situations, the negotiations of EPA appeared not to be a top priority.

There is also a great amount of frustration in every region, over the fact that the EPA negotiations do not directly involve talks on the issue of the financing of development. Thus, failure to make progress on the trade-related development cooperation framework and funding mechanisms emerged as a major unresolved issue at the continental level. This concern is compounded by the worries of tariff revenue losses while tariff revenue collected on imports from the EU still constitutes a significant amount of government budgetary resources in African countries among other adjustment concerns. The experts interviewed were also the more worried that the EDF resources have a record of being hard to tap due among other things to the administrative burden associated with their use.

The degree of progress in negotiations seems to vary according to the region. In every region there are delays within specific clusters. Sometimes, negotiations have barely begun in specific clusters, for example under the capacity building cluster in Central Africa. In other RECs there may seem to have been progress in some clusters, for example in the market access clusters in SADC, but is hard to guess how much time it might take to conclude the negotiations under this cluster as the thorny issue of sensitive products has not been tackled yet. Suffice to mention that impact studies conducted at the country (though only some of them), regional and continental level especially by the ECA highlight a lot of the challenges that have to be surmounted as part of preparations to conclude and implement the EPAs.

Some trends have started to emerge with regards to the market access configuration that African countries expect under EPAs. African countries expect the EU to grant them total duty-free and quota-free access to its market. On the over hand, African countries expressed their concern that they should benefit from long transition for liberalising their own market, and they should be able to retain a significant amount of flexibility in doing so.

An important element that is contributing to the slow progress in all regions it was felt was the delay by the EU to respond to issues and proposals raised/prepared by the African countries. Several examples were cited at the sub-regional level, leading to the generalisation of this as a crosscutting issue. The first example given was the eleven months that SADC countries had to wait in relation to their proposal on the SADC EPA framework. The ESA countries on their part noted that the EU took a lot of time to respond with regards to the issues relating to fisheries, rules of origin, development and agriculture. And in the case of ECOWAS, the sidelining of the priorities in the sub-regions roadmap in the negotiations with the EU was felt to be contributing to the delay as there were pre-conditions in the roadmap that are now not likely to be met.

## Main challenges

The main challenge to conclude the negotiation may well be the lack of capacity. This is both the capacity to conclude the negotiations and also to implement the agreed EPAs. The negotiating capacities of African countries are stretched thin by the concomitance of WTO negotiations, EPA processes and parallel regional integration talks, not to mention other bilateral trade negotiations with third parties. It is hard to follow these processes at the same time. The difficulties created by the lack of negotiating capacities are compounded by the lack of involvement of non-state actors. All the regions have expressed important concerns with regard to the lack of impact analysis in individual sectors or sub-sector (e.g.: agriculture, tourism). The regions and their Member States usually lack the capacity to conduct this type of analysis. It is felt that such research would have been very helpful for the selection of sensitive products.

The lack of deep sectoral impact analysis appear to also make it hard to be specific on the capacity building measures that should start to be undertaken immediately. This significantly influences the preparedness required for implementation of the EPAs. That the development matrices have taken so long to be drawn at the national and regional level is a clear indication of the lack of depth of sector level understanding. The additional time for negotiations and the long transition periods of implementation of commitments seemed to be directly related to the question of preparedness to implement the EPAs when concluded.

The slow progress of the Doha Development Round (DDR) is also creating challenges for the negotiations. Among other topics, the DDR negotiations cover the clarification of the rather blurred provisions of Article XXIV and its Understanding. More specifically, these negotiations could provide a new definition for "*substantially all the trade*", which is the proportion of trade that a free trade agreement such as EPAs has to liberalise. Hence, with lack of dynamism in the DDR, it was felt like the EPA negotiations now have to continue in a vacuum as regard to the extent of liberalisation that African countries will have to undergo. This does not facilitate the negotiations of EPAs as it leaves a high degree of uncertainty on the flexibility available to the African parties.

As highlighted above the negotiations structure in the West African region is complicated by the participation of both ECOWAS and UEMOA. In the East African region on the other hand, the absence of a legal entity for the ESA is also complicating issues. Moreover, the Common External Tariff (CET) negotiated by ESA, including the sensitive products, will have to take account of the Common External Tariff of COMESA. Egypt and Libya are also members of ESA and are therefore concerned by the CET. In the South African region, the issue of overlapping make things even more complicated. The SADC region is negotiating a CET, while Botswana, Lesotho, Namibia and Swaziland (the so called BNLS group) are already bound in the SACU customs union with South Africa. However, the Trade and Development Cooperation Agreement (TDCA) between South Africa and the EU already determine the SACU external tariff towards EU imports. On the other hand, another member of SADC, Tanzania, is also involved in another customs union, the East African Community alongside Kenya and Uganda, who are negotiating their EPA under a different grouping: ESA. Tanzania therefore applies EAC duties to EU goods and it will be very difficult to coordinate a CET both with SADC and EAC. Moreover, most of the operators met in Tanzania expressed their attachment to the EAC, which is perceived as functioning rather effectively. In such circumstances one may wonder whether it would not be easier for this country to negotiate its EPA under ESA rather than SADC.

## Outstanding issues

At the continental level, the most difficult outstanding issue appears to be the lack of coherence between regional integration and EPA configuration. The actors at the national and sub-regional levels were very emphatic that while development (including aid) was a critical issue of concern, the pressures of EPAs on current regional integration configuration was the most difficult. Analyses of the statistical data at the sub-regions clearly show that regional integration in the context of the EPAs impacts on the configurations have not been dealt with. In addition, it was also clarified that even the development of the regional markets under the framework of the current regional integration has not been addressed. The focus of the development of regional markets was seen to have been on market access rather than the development of the production capacities for the regional integration spaces covered by the EPAs negotiations configurations. The focus of approach on market access vis-à-vis regional integration processes emerged as unresolved issue particularly in the ESA and SADC regions. Putting the view that regional integration in the context of configuration and building regional production capacities is the main outstanding issue that the EPAs negotiations have failed to address so far and the importance of aid as a critical issue as well, then development comes out to be the key concern that is yet to be addressed in the negotiations.

The negotiations are also getting delayed due to a lack of sectoral analysis, which make it difficult to identify sensitive products, for example. There are also outstanding issues and indeed very significant delays in other clusters such as rules of Origins, standards, services and the regional development matrix. Failure to conclude work on the rules of origin was seen also to be delaying progress, even though it is something that the EU could quickly provide a solution to. African countries were keen to have a quick resolution of the issue and it was pointed out that the asymmetric rules of origin

(allowing for both value-addition and change of tariff headings) had been an outcome at the all ACP level and for that reason there is firm starting point. Another important outstanding issue relates to the question of reciprocity. The failure by the EU to concretise its offer of an EBA-equivalent or clarify whether the political statement that it has no market access interest is synonymous to non-reciprocity has made the issue of reciprocity to remain outstanding.

There are also divergences between countries on the so-called Singapore issues (investment framework, competition, and government procurement). On the one hand, there are those who are opposed to the EU insistence on rules. In their mind, the Cotonou Agreement focus on the Singapore issues is on cooperation. Even then, the cooperation framework on the Singapore issues for these countries in their understanding were to be dependent on the outcome of the multilateral process and the capacities at the national and regional level. On the other hand, the Singapore issues discussions are to be informed by the positions taken by African countries in the Doha Round.

The question on alternatives also came out strongly at each of the sub -regions and the majority feels the need for their full exploration. To a large extent, the EBA and GSP+ were felt not to be suitable alternatives in the context of Cotonou. This was the clear message in the review meeting in Nairobi in February 2007. Two options were broached that would address the question of what happens to current trade come January 1, 2008. The first option is the temporary continuation of the Cotonou regime. For this option, two things need to be done. There has to be a commitment from the EU that it will continue with the Cotonou regime. And in order to forestall a challenge at the WTO, the EU should make a notification to the WTO on the state of progress in the EPA negotiations. The second option was to sign agreed areas of the EPA with a provision for continuation of negotiations on outstanding issues. However, it was pointed out that both these options are actually permissible in the Cotonou Agreement, therefore alternatives to EPAs still need more definition.

Last but not least and as highlighted previously, the capacity issue must be addressed seriously in order to accelerate the conclusion of the negotiations and also help prepare the domestic and regional economies to implement the agreements. The Secretariats of RECs appear to have capacity issues, but so do government and non-state actors to help speed up the negotiations and also implement programmes that would prepare the economies for the implementation stage.

## **Measures for timely completion of the negotiations**

In the light of the above, the main messages on what needs to be done appear to be:

- Enhance the capacities of negotiators, including RECs Secretariat, but also state and non-state actors. Information and awareness with regards to EPA, what opportunities and challenges they represent must also be enhanced. More impact studies such as those by the ECA need to be undertaken especially in those countries where they lack. In addition, more sectoral impact studies should be the

focus even in those countries that have previously carried out impact studies but at the general level.

- Start addressing the preparedness of national and regional economies to implement the agreements. This will give reassurance especially to the private sector that the EPAs are committed to developing competitive and diversified regional markets.
- Address the issue of regional integration / EPA configuration. This may entail critical decisions from the top government level. However it has to be noted that the current EPA configuration is not set in stone, as highlighted by the shift of Congo Democratic Republic from the ESA group to the CEMAC one. African countries ought to start thinking of the trade relations among the different RECs and how to facilitate trade flows among RECs. On its part, the EU's efforts to deepen integration should be guided by Article 35.2 of Cotonou Agreement, which foresees building regional integration, and by extension the building of regional markets as a pre-requisite to markets opening.
- Most of the experts interviewed also expressed the wish that EPA offer their country full market access to the EU (duty-free, quota-free), while they should be able to exclude a significant proportion of their imports from liberalisation. They would also want to be allowed long transition periods.
- Due to the slow progress of the Doha Round and the uncertainties with regard to Article XXIV clarification, some actors are recommending that EPA negotiations should not be rushed. They do not perceive the expiration of the waiver as a major issue and doubt that a delay of 2-3 years beyond January 2008 would be a major issue. More time on the other hand may be useful to build a better understanding of sectoral issues and hence a better negotiating platform. But as indicated above, African countries themselves expressed the need for any additional time to be clearly linked with actions that will be undertaken during the extension. There is urgency in the need for the EU and the sub-regions to commit themselves to completing the outstanding work. Negotiations should however remain time-constrained in order to avoid losing momentum.
- There is need for political will to resolve outstanding issues on both sides. The engagement with EU member states could also contribute in the negotiations speed.
- Due to lack of coordination at the continental level, it was felt that correct and timely information acquisition and dissemination for both sides would facilitate faster completion of the negotiations. Specifically for the EU, more coordination with the EC between the DG Trade and DG Development would also help in accelerating the pace of negotiations.
- Given the experience of ESA, especially in the text-based negotiations phase, it was felt that joint drafting sessions with the EC on contentious issues would help in avoiding delays.
- Immediate operationalisation of the aid for trade by the EU was also indicated as a measure that would contribute positively to the timely completion of the negotiations.
- Finally, alternatives to EPA should be fully explored. The possibility to make EBA contractually binding for LDCs, it was indicated would not deal with the concerns of LDCs, especially given the limitations of the rules of origin governing EBA. The proposal that GSP could also be improved for other developing countries, even though this would contain a risk of preference erosion

as compared to the current Cotonou provisions was indicated to be also unsuitable for the non-LDCs. In this respect, an offer from the EU of what would constitute an alternative for the countries not able to sign the EPAs was felt to be overdue and its unveiling could aid in the negotiations speed.

## Regional Review: CEMAC-EU EPA

### 1. Introduction

On 27 September 2002, the ACP countries (Africa, Caribbean, Pacific) and the EU officially launched the negotiations on Economic Partnership Agreements (EPAs). After almost three decades of non-reciprocal preferential access to the EU market, EPAs are meant to replace the existing trade regime by reciprocal agreements that are fully WTO-compatible, while providing for differential and asymmetric treatment. The Cotonou Agreement provides for the legal basis of the negotiations, which are expected to end in December 2007 with the new agreement coming into force by 1 January 2008.

The countries negotiating an EPA with the EC under the central Africa (CA) configuration (Communauté Economique et Monétaire de l'Afrique Centrale or CEMAC + São Tomé and Príncipe), are Cameroon, Central African Republic (CAR), Chad, Congo, Equatorial Guinea and Sao Tomé and Príncipe (STP). **These countries were joined lately by Democratic Republic of Congo (DRC)**, though it is a member of the SADC and COMESA regional economic communities. On 4 October 2003 the EPA negotiations were formally launched. The roadmap for the negotiations of the Economic Partnership Agreement (EPA) between Central Africa and the EU was signed on 16 July 2004.

In Central Africa, CEMAC rather than ECCAS is the negotiating group. The Banjul Summit Decision on RECs designated ECCAS as the regional economic community for Central Africa. In this regard, and in terms of full utilisation of capacities, there is an obvious interest to strengthen **and rationalise the working relations between CEMAC and ECCAS** in the context of regional integration in Africa and the EPAs. The CEMAC group is entering a free trade area with Sao Tome and Principe in order to include this country in the CEMAC negotiating group.

This chapter contributes to the review of the CEMAC+STP+DRC negotiations as mentioned in the article 37.4 and in line with the agreed terms of reference jointly between the ACP and EU. It summarizes main concerns and issues that CA countries currently have to face. This summary is the results of bilateral discussions ECA held with CA countries delegations/respondents and RECs.

### 2. Assessment of the negotiations

According to the discussions during review missions, it appears that the different countries in Central Africa have the same kind of priorities, with a slight specificity for landlocked countries (Chad and CAR) and Small Island and vulnerable economy like Sao

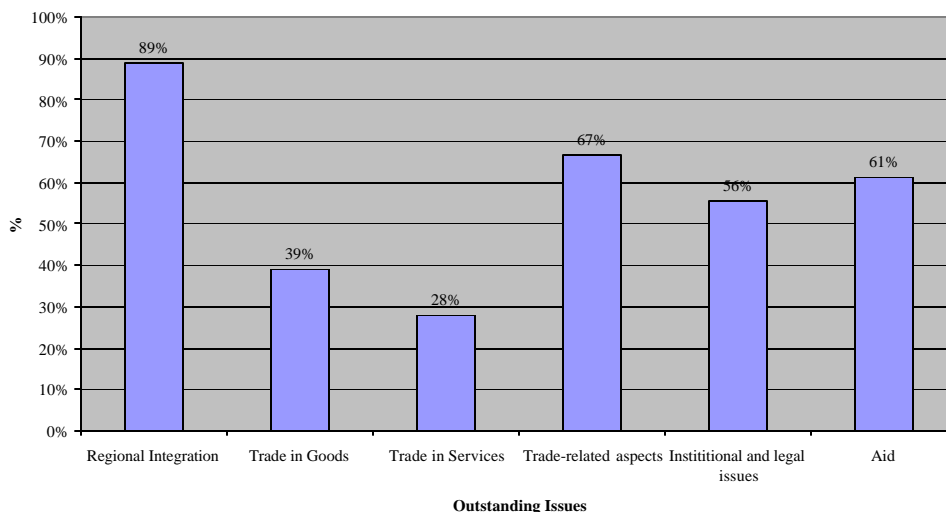
Tome and Principe. Globally there is a huge concern about the deadline of end 2007. All the stakeholders interviewed agreed that **this deadline couldn't be met for concluding the agreement under the current position**. This appeared to be reinforced by the feeling that there is still no confidence yet on the ability of EPAs to be pro-development.

The second great issue is the capacity building and more generally the development aspect of the agreement. The Central African countries are experiencing significant capacity constraints, which impede their ability both to negotiate the agreement with the European Union and to be ready to adequately implement an EPA.

#### **A. Outstanding issues in the current negotiations**

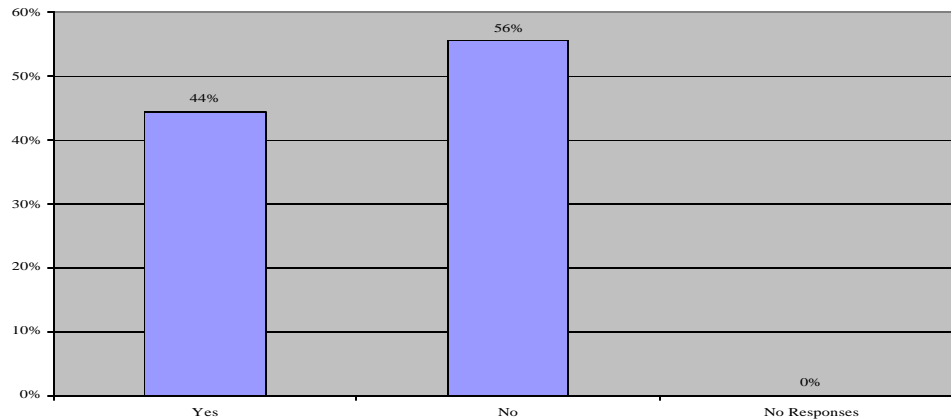
According to the discussions with the different stakeholders, **capacity building is clearly the key issue** in these negotiations. For them, capacity building can take various forms including reinforcing export capacities, tackling supply side constraint, strengthening human resources; improving the level of infrastructures, industry upgrade and other measures aimed at improving the competitiveness of Central African economies. It's in this context that regional integration appears, with 89% of the responses (Figure 1), as the major outstanding issue, followed by trade related issues and aid. For 56% of the stakeholders, the current configuration is not very coherent with regional integration (Figure 2). It is important that the concern with regional integration as an outstanding issue be taken in the right context. In the Central African region, the lack of commitments to build a regional market is the key reason why it is still an issue, in spite of one of the key principle guiding the EPAs negotiations being the deepening regional integration. The respondents, from the point of departure that one of EPAs key principle is to deepen regional integration, felt that the issue of addressing production capacity constraints in the sub-region had not been addressed. The stakeholders underlined the need for more political involvement from central African countries on the regional integration process to make EPAs beneficial for the region. They also highlighted that some sectoral specific issues for the region, as wood and oil products, are not enough considered in these negotiations.

### 1.Outstanding Issues in the current EPAs Negotiations



There was emphasis that incoherence due to regional integration configurations **should not be considered as a fundamental incoherence between the process of regional integration and the EPA**. The stakeholders considered, on the contrary, that the regional integration is a necessary condition that would permit their countries to take advantage of the EPA and thus making it a real instrument of development. It is while reinforcing their competitiveness as they learn in the national and regional markets that the countries of central Africa could then be able to take advantage of the EPA agreement with a zone where the market is so competitive. They consider that **the incoherence due to RECs configurations is noted at the level of the negotiations content and** it should not be seen as a major element of the future agreement. It is not in contradiction with the fact that regional integration in the context of building markets is one of the key EPA principles. So to build capacities, the reinforcement of the regional integration process is clearly the most important concern for CA countries. In other words, the stakeholders perceived it as the key outstanding issue as they indicated to still be concerned with whether the EPA process will help the CA to foster its integration. On the contrary, they were concerned that the EPA process will undermine the regional integration process by reinforcing the economic linkages of the sub-region with the EU to the detriment of the regional partnership.

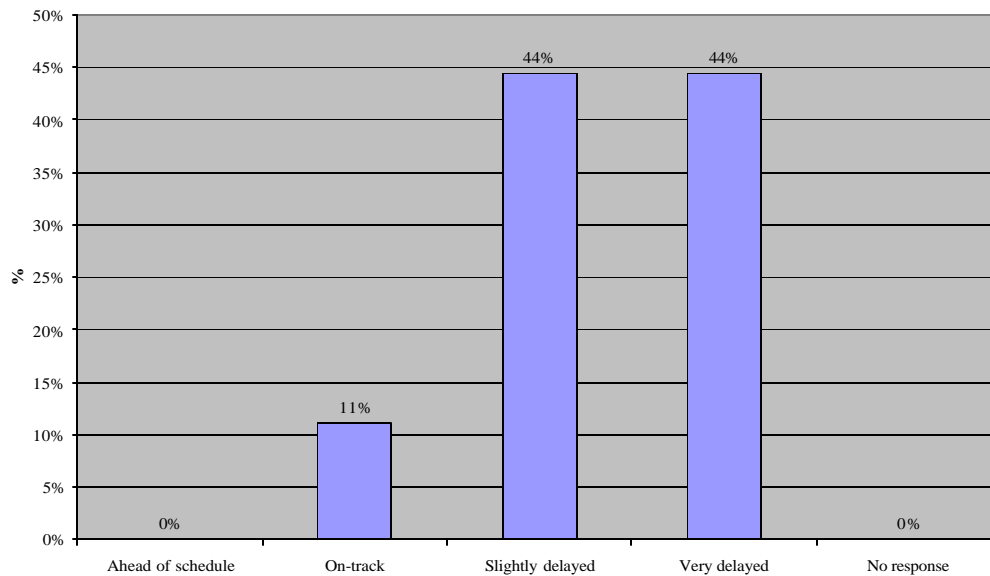
## 2.Coherence in Regional Integration



### B. Road map and time issues

In the region, the roadmap was established late and a lot of stakeholders indicated to not have been involved in its elaboration. There was a consistent theme from the respondents in Central Africa that **the roadmap wasn't precise on capacity building, which is the crucial issue for these countries within these negotiations**, and the deadlines were quite unrealistic. The different stakeholders were integrated very late to the National Negotiation Committees. In addition, it seems that the regional structure (Regional Forum) has also been to a certain extent a "speed bump" to the process. Indeed, no evaluation of the capacities of the regional institutions was assessed up-front. Had this been done, it would have been realised that it was necessary to strengthen the REC Secretariat beforehand so that it can coordinate in an effective way the negotiations process. Thus, the lack of consideration of the ACP regions specificity is one of the reasons of the delay in the negotiations. The expectation that the speed of negotiations in the Central African region would be in tandem with the other sub-regions was a major oversight in the view of the negotiators. Figure 3 shows that **44% of the interviewed stakeholders consider the negotiations slightly delayed, and another 44% consider it very delayed**. Also, the stakeholders underlined in a unanimous way, the lack of coordination at the continental level and asked for a much stronger involvement of the African Union.

### 3.Evaluation of the pace of the negotiations given the agreed work plan/road map

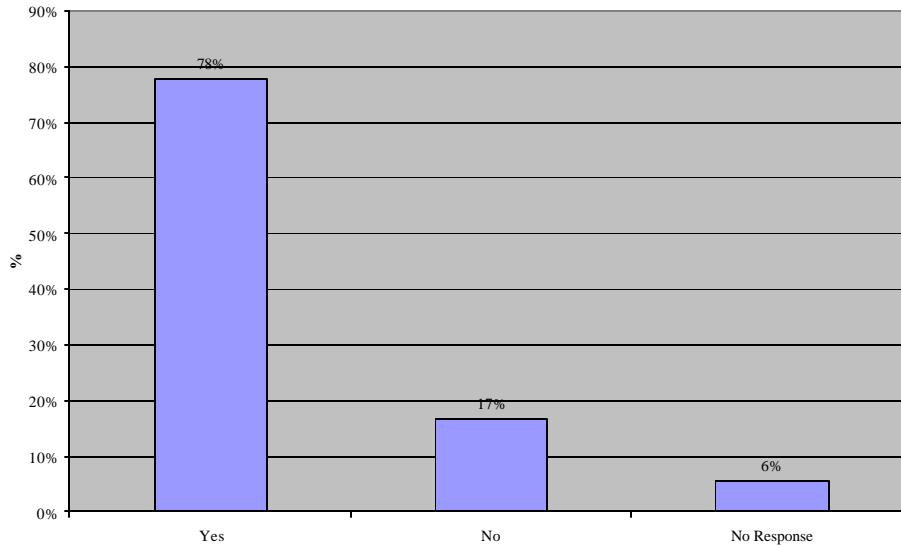


Therefore, it is not surprising that the great majority of the stakeholders (78%) consider that there is a need for more time to conduct effectively the negotiations. They reiterated the necessity of pushing the deadline for the completion of the negotiations of the agreement to between 2 to 5 years beyond 31 December 2007 and this for obvious reasons:

- In Central Africa, the negotiations **began with 2 years of delay** with regard to the foreseen calendar.
- The impacts studies were not all realized: besides national studies, there is a real need of finer sector-based studies, which would allow to assess the financial needs and to **built a real development matrix**.
- There is still a need for EPA popularisation with the civil society and with the informal sector (for example in many countries, the farmer organizations asked to be associated to the national committees only in 2006). There is a real **lack of involvement of the grassroots actors**.
- The non-consideration of the weakness in terms of human and material resources of the regional institutions (CEMAC and ECCAS) implied **an absence of real effective delegation of negotiations mandate from the States towards the RECs**. This problem linked to the negotiation structure has compounded delays with regard to the agreed roadmap.
- Certain stakeholders including civil society and private sectors **joined the negotiation instruments at the national level late**. This was mainly because of the lack of communication, popularisation, scattering of the piece of information and also the absence of financing of the participation of these stakeholders in the regional structure.
- The **creation of the 5th group (capacity building) took a lot of time**. The terms of reference of the group were still not agreed as of November 2006, one

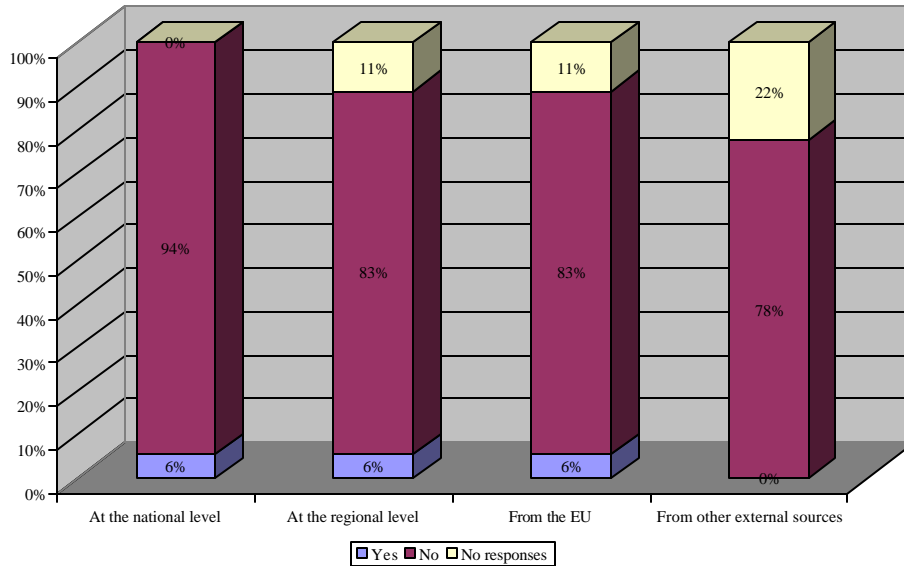
year to the end of the negotiations, while all the stakeholders considers it as the most important.

#### 4. Time to prepare for and Effectively conduct the Negotiations



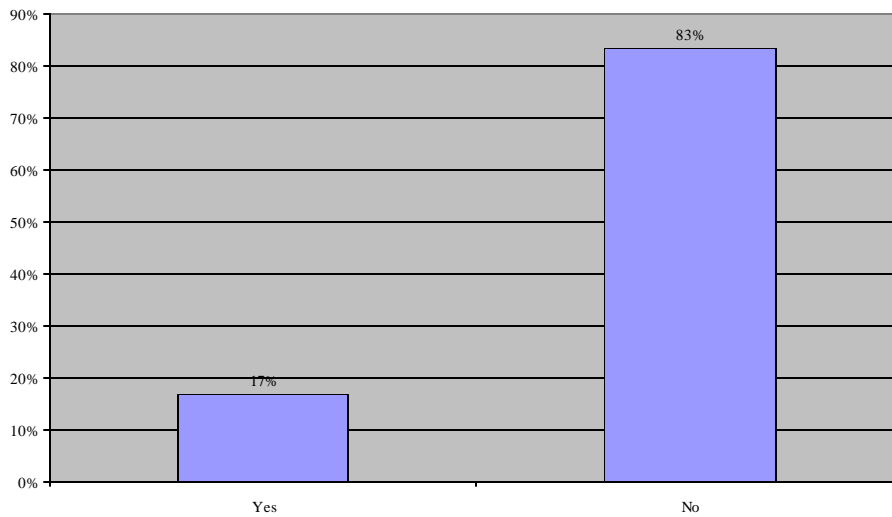
It is also clear from the discussions with those involved with the negotiations at the national and regional level that there is a **clear lack of resources**. At the national level, at the regional level but also at the EU level, the resources set aside to support these negotiations are not enough, or have not been disbursed in an effective manner. Hence due to limitations associated with the resources, there has not been reasonable opportunity to conduct the negotiations adequately and optimally. Therefore, this issue has to be effectively addressed if the CA countries are to finalize the negotiations (Figure 5).

**5.Measures and Resources provided to conduct the Negotiations have been satisfactory**



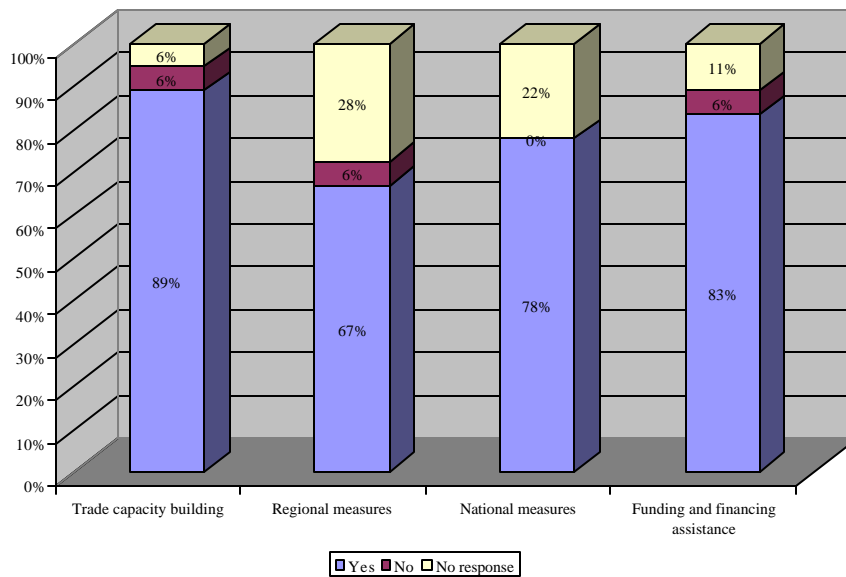
For these reasons it appears that the region will not be able to finalize the negotiations at the due time. Almost **83% of those interviewed highlighted the difficulty of the CA region to finalize the negotiations** before December 2007 (Figure 6). Considering the structural and fundamental problems underlined by the CA negotiators, the signing of an EPA agreement by end 2007 is seriously not foreseeable, irrespective of whatever efforts which could be made in the next 12 months (without considering the necessary time for ratification). Considering the lack of preparation of the region even to implement, let alone to negotiate, a conclusion imposed by the need for the EU to respect commitments with the WTO would be very risky and totally incompatible with the Cotonou spirit.

**6. Whether Region has the capacity and is prepared to timely conclude an EPA agreement**



Others kind of measures necessary to implement the agreements reached are a reinforcement of trade capacity building, a drastic increase of human and financial resources but also regional and national measures to accompany this trade reform (Figure 7).

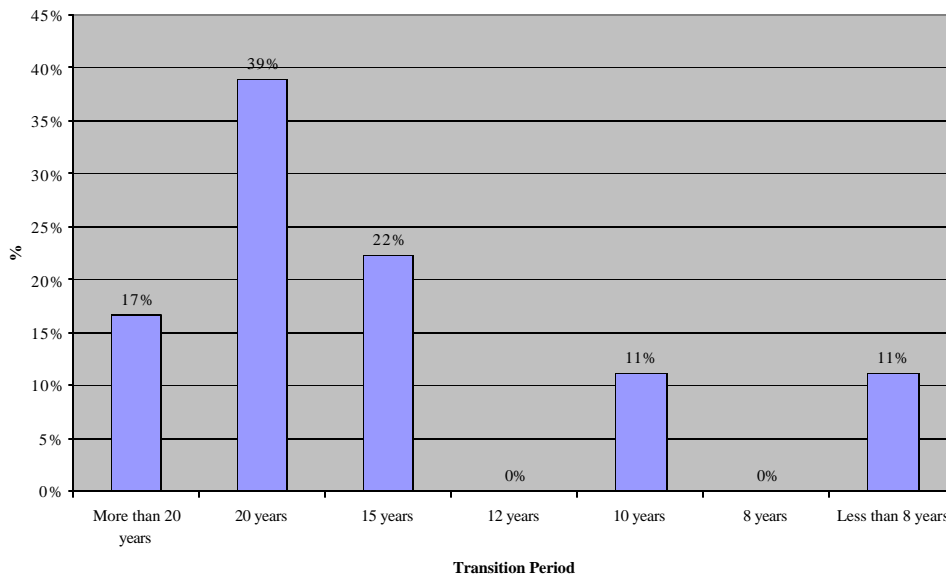
**7. Measures necessary to implement the agreement reached**



In Central Africa it emerged that **20 or at least 15 years were expected to implement this economic partnership agreement**. This further strengthens the notion that clearly a review of Article XXIV of GATT is indispensable. And while there could be arguments that it might be admissible on the basis of past experiences, to avoid challenge at the

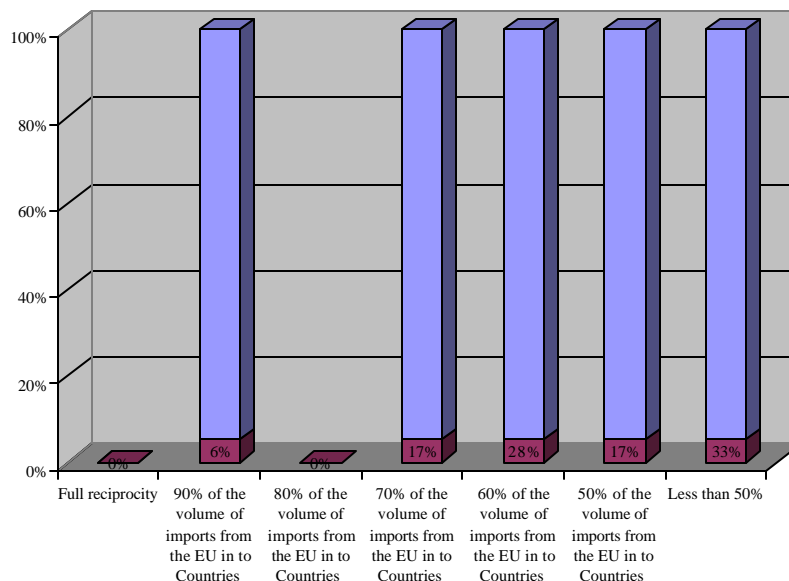
WTO, the rules (or at least their interpretation) must provide the legal certainty required if the EPAs are to attract investments in the regional markets foreseen. Indeed, the current understanding of this article could allow a longer period than 10 years only in particular circumstances, but this transitional period seems shorter in order to limit the foreseen adjustments costs CA countries will face. Different stakeholders highlighted the fact that African countries were very active in the Doha negotiations on this particular issue. However the suspension of the WTO negotiations has a direct impact on the EPA negotiations, as many countries were waiting for significant improvement in article XXIV and other rules, before negotiating and even concluding the EPA transitional period.

#### 8. Transition Period satisfactory to a Country



At the centre of these negotiations is the principle of reciprocity among other principles. The optimal level of reciprocity according to CA countries should be to have less than 50% of the volume of imports from EU according to one-third of the respondents. And an almost similar proportion of respondents at 28% indicated that reciprocity of 60% would be more in line with their development objectives (see Figure 9).

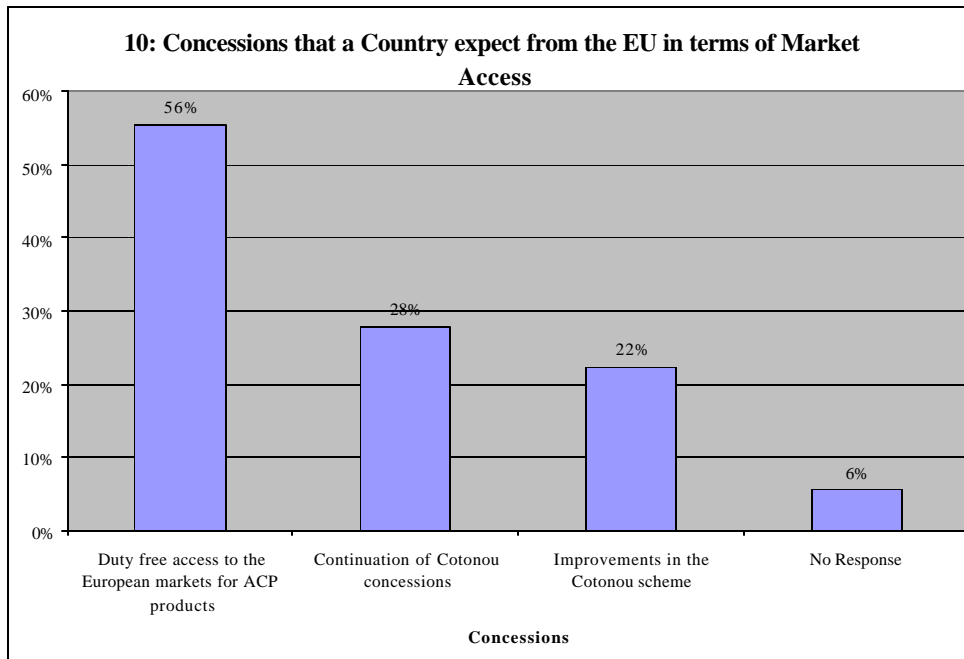
### 9. Level of Reciprocity satisfactory to a Country



### C. The EPA development component and capacity building:

There was a unanimous voice among those who participated in the review that the development part (article 37.3 of the Cotonou agreement) was not sufficiently taken into account. Although constraints are well acknowledged in Europe, the stakeholders felt that the European Commission has been very reluctant to take the approach of discussing and concluding development issues, or at least agreeing to development benchmarks despite numerous formal requests from the ACP to include development support as part of the EPA negotiations. There was also a common stance on the need for flexibility; adjustment mechanism, and sequencing of trade liberalization with regional integration process in that order.

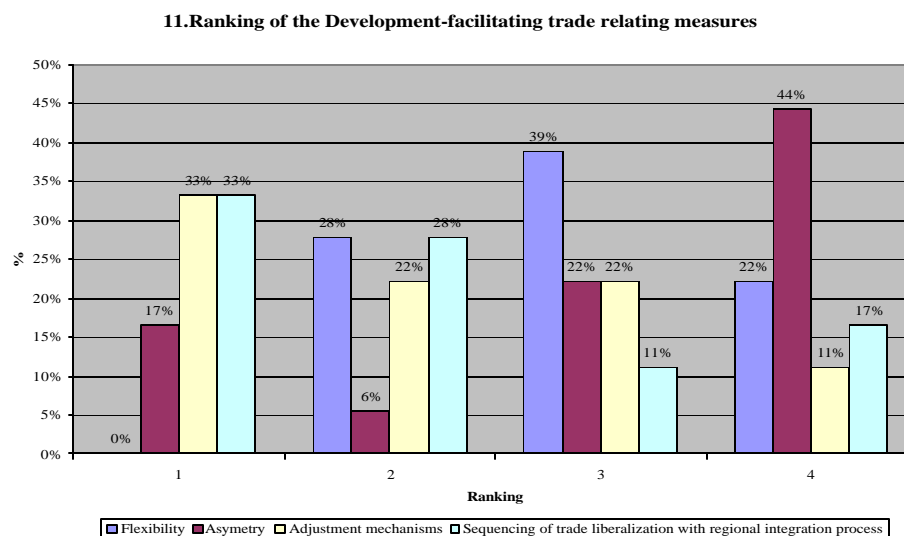
Enhancing capacities of regional organizations—the CEMAC secretariat includes less than 60 persons, while in comparison, the ECOWAS secretariat comprises more than 300—the level of infrastructures, of firms and other measures that allow for enhancement of the competitiveness, remain a priority with regard to the market access issues. The crosscutting message from the different actors in the negotiations was that **no agreement could be envisaged without massive intensification of capacities**. This is in particular, if the development dimension remains the way it is with little ambition and also very remote from the spirit of the Cotonou agreement. In term of concessions, according to the majority of the stakeholders, it is important that the EU grants a total free market access without any limitation (100%), notably for agricultural products (Figure 10).



The incapacities in terms of preparation, underlined previously, beg for an adjournment of the agreement signature. But beyond this, strong constraints press on the economic actors and unless they are dealt with as part of the preparations, the countries cannot benefit from the EPA. The different stakeholders repeatedly underlined the necessity of improving the level of the enterprises, as inspired by the experiences of the North African countries that have already signed bilateral agreements with the EU under the Barcelona process. **Industry upgrade is crucial** to demonstrate a strong commitment from the EU in helping the Central African countries prepare for the EPAs implementation. In the same way, enhancing human capacities is necessary for the implementation of the agreement. Those interviewed from the CA countries deplored the lack of consideration granted to these clusters related with preparations of the national economic production fabrics. To most, if EPAs were really to be pro-development, they would need to address really the capacity building issue in the region. CA countries consider that this issue has still not enough been taken into account.

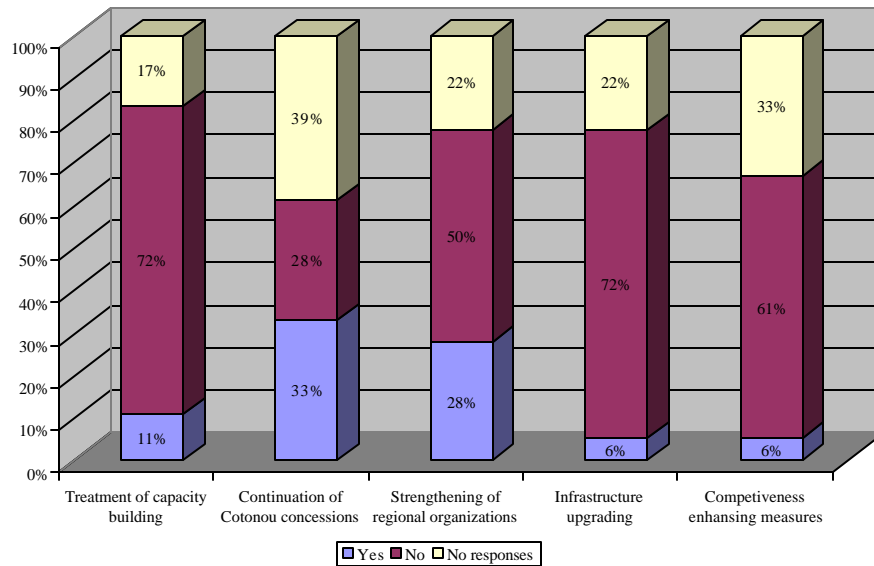
Moreover, most of CA countries are quite **worried about the adjustment cost issue**. They are also unclear of how the EU will partner with them in order to limit the adjustments costs. And more importantly how the partnership will facilitate the economic and social reforms CA countries will have to implement. Therefore, CA region considers that EU should ensure that the costs of liberalization would be compensated by financial assistance but also by a better development package devoted to the agreement. This financial assistance would be needed to make up for shortfalls in the loss of government revenues (in CA, the government revenues are highly related to tariff revenues), and the costs of labour market adjustments as a result of producers displaced by cheaper inputs. The financial assistance should also be delinked from the market access negotiations and should be unconditional (Figure 11). The Central African

countries recognize that there will be economic and social reforms to accompany EPAs implementation. However, these reforms require support.



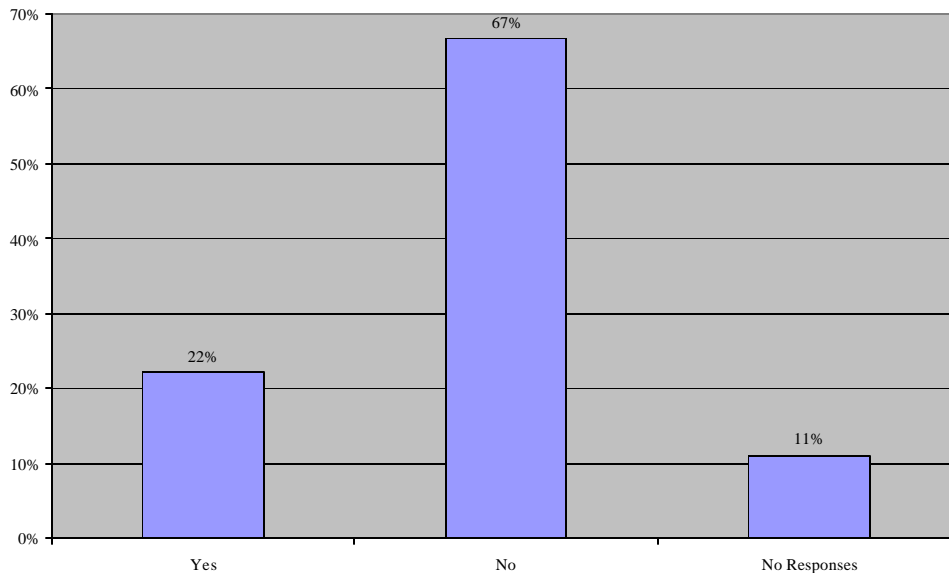
The stakeholders concerned by the EPA negotiations are concerned with the inflexibility of the EU in its positions, especially the DG trade that seems to ignore what the Central African countries consider important and necessary. **The DG Development has also not demonstrated a real willingness** to make the EPA a real instrument of development. For the region, it is considered important to **address the specific supply side constraints** that affect CA economic productivity and competitiveness in trade. The stakeholders consider that treatment of capacity building (72%), infrastructures (72%), competitiveness-enhancing measures (61%) have not been taken into account during the process of negotiation so far (see Figure 12).

**12. Whether Points have been taken into account during the process of the negotiations**



Beyond the issues raised so far, in the region, the delay to conclude a regional development matrix continues to be a problem. And while development is seen as crucial to making EPAs a success, the sub-region has been unable to conclude its regional matrix. At the national level more than two-thirds of the respondents indicated that their countries have not completed their development matrix needs (Figure 13).

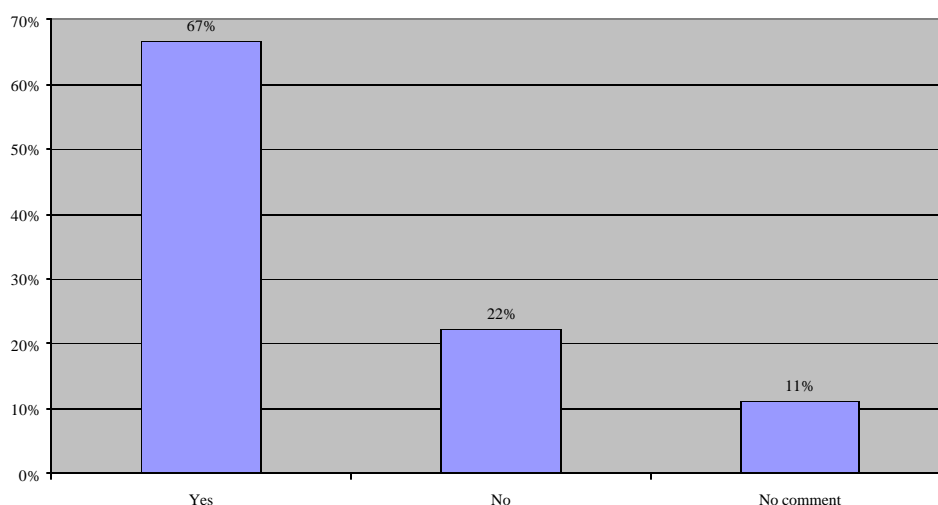
**13. Country's assessment of its Development Matrix Needs**



## D. Alternatives

In the region, two-thirds of those who responded consider that alternatives to EPAs need to be fully explored (Figure 14). They consider that **the de-facto alternatives don't appear credible**. Thus the *GSP plus* would only increase conditionalities to the countries. Non-LDC countries could not benefit from the EBA regime and could not either sign a bilateral agreement, and this for political reasons linked to the regional integration process of in Africa. Many interviewed stakeholders consider that the **absence of alternative, except the GSP regime, underline in fact the non-respect of the Cotonou agreement**, that foresees the exploration in depth of all the alternatives. In their view the European partner has always refused to seriously engage on the issue of alternatives.

14. Whether alternatives to EPA be fully Explored



## 3. Concluding remarks

From this regional review it appears that the current state of negotiations has not adequately addressed all the difficulties and concerns of Central African countries. These concerns are clearly set in quantitative terms. The concerns include: failure of the negotiations to have a development focus; the imbalance in the negotiations towards a focus on trade liberalization; and lack of appreciation of the major adjustment challenges that these countries would face in implementing EPAs. In addition, the pace of negotiations has been greatly slowed by the time it takes for the EU to respond to issues that are formally presented to it. As a result, this negotiating group is falling behind the timeframes for the negotiations. The EU should respond more quickly and should not be as inflexible as it has been, in order to hasten progress in the negotiations. The European Commission should positively respond to the key concerns of CA countries, and should have regard to the pronouncements of European Parliamentarians and some member states calling upon the negotiators to fully take into account and positively respond to the concerns of the different ACP negotiating groups.

# Regional Review: SADC-EU EPA

## I. SADC EU EPA Review: Background information

Negotiations on an Economic Partnership Agreement (EPA) between the European Community and the ACP (Africa, Caribbean, and Pacific) countries were launched in Brussels on 27 September 2002. The Cotonou Agreement provides for the legal basis of the negotiations, which are expected to end in December 2007 with the new agreement coming into force by 1 January 2008.

The countries, which have decided to negotiate an EPA with the EC under the Southern African Development Community (SADC) configuration, are Angola, Botswana, Lesotho, Mozambique, Namibia, Swaziland and Tanzania. South Africa has been participating in an observatory and supportive capacity but there is a possibility of it being enjoined formally as a substantive member and negotiator within the SADC EPA group. SADC-EC EPA negotiations were officially launched on 8<sup>th</sup> July 2004 in Windhoek, Namibia.

The SADC-EC EPA is based on regional integration initiatives of the SADC countries. The negotiations are sequenced so as to complement and support the regional integration process and programmes, the harmonization of regional rules and the consolidation of the SADC regional market. Botswana's Minister of Trade and Industry has been designated to lead the negotiations for SADC at Ministerial level. A chief Negotiator is leading the negotiations at Senior Official level and the EPA Unit of the SADC Secretariat at the technical level.

The European Commission is negotiating on behalf of the EC, represented by the Commissioner for Trade at Ministerial level, and a Senior Official of DG Trade at senior official level and by the DG Trade Unit responsible for SADC-EC EPA coordination at the technical level. The EU Council of Ministers, meeting in Brussels on 12 February, accepted to include South Africa in the SADC EPA negotiations, and at the time writing, the SADC countries were still discussing the reply by the EU on South Africa's inclusion.

This present report contributes to the review of the SADC EU EPA negotiations as mentioned in the article 37.4. It summarizes the main concerns and issues that SADC countries currently have to face. After a general overview of the SADC EU EPA, the second section summarises the results of interviews that benefited from SADC delegations during the last RNTF organized from 04 to 09 November in Maputo, Mozambique. The third section proposes a quantitative review of questionnaire responses on the appreciation of the negotiations process of this partnership agreement. And lastly, some proposals on recommendations and way forwards are presented.

## **II. A qualitative review- The view of the actors**

### **2.1 Inadequacy of the negotiation process**

Both parties agree to establish a SADC-EC Regional Preparatory Task Force (RPTF) in order to enforce the strategic link between EPA negotiations and development cooperation. The RPTF supports the implementation of the provisions of the Cotonou Agreement on the complementary of trade and economic cooperation and development support. The RPTF does not constitute an element of the negotiating structure but is supposed to contribute to the efficient delivery of support to the SADC region in its preparation, negotiation and implementation of the SADC-EC EPA.

At their meeting on 5 July 2005, SADC Trade Ministers agreed on the issues to be included in the EPA: development dimensions and regional integration; Sanitary and Phytosanitary measures and Technical Barriers to Trade; Market Access (Agriculture, Fisheries and nonagricultural goods); Rules of Origin; Trade Facilitation and Customs Cooperation; Trade Remedies including Safeguards, Anti-dumping and Countervailing Measures; Trade Related Intellectual Property Rights; Trade in Services; other legal Provisions including national security clause and dispute settlement; and institutional arrangements and implementation modalities.

The focus of the SADC-EC EPA negotiations has been to identify means of cooperation between SADC and the EC to address SPS and TBT problems affecting both intra and extra SADC trade (3). Technical assistance and effective information exchange particularly on the changes relating to the EU legislation affecting key SADC exports, are seen as important to addressing SADC needs in relation to SPS and TBT. SADC is also calling for longer implementation timeframes to adjust and develop their capacity to meet the constantly changing, complex and costly EC regulations. The need to reinforce efforts towards SADC regional integration is also highlighted as one of the critical areas for the EPA negotiations.

### **2.2. Lack of preparation of the SADC member states**

The SADC-EC EPA negotiations is sequenced in three stages:

- Stages 1: Setting of Priorities and Preparations for Negotiations
- Stage 2: Substantive negotiations
- Stage 3: Finalization

SADC countries have been able to agree on the main modalities of the negotiation issues. However, in market access cluster there is still some difficulties. These difficulties come essentially because 4 countries, Botswana, Lesotho, Namibia and Swaziland have to finalize the sensitive lists of products. Indeed the SACU countries are linked with South

Africa and this sub regional grouping within SADC provokes some difficulties in the market access pillar (BLNS countries).

It is also important to highlight that some countries in the grouping didn't make any independent economic and welfare assessment of the likely impact of the EPA on their economies. Therefore, countries are still identifying their sensitive products lists to be excluded partially or totally from any commitments and any tariff reductions. For example, no sectoral impact assessment has been done for Tanzania. The government lacks resources to do this work and expects the EU to provide some answers to the main challenges. However, more general studies have been done and suggest that Tanzania has little to gain from an EPA.

SADC members mentioned that the ministers did not have an opportunity to meet with the EU since the launch of the negotiations and this point could clearly explained the slow progress of the negotiations. Furthermore, SADC members expressed their frustration concerning the fact that SADC had to wait for a written answer, since March 2006, for their proposed SADC EPA framework. The SADC secretariat also mentioned the persistence of the EU to include the Singapore Issues within the framework of the EPA negotiations. SADC countries are not ready technically and politically speaking ready to include these issues in the draft text of the negotiations. Therefore, SADC countries have proposed so far that discussions on these issues should be on cooperative basis and not binding.

The region has benefited from the more general studies such as one by Imani Development International Ltd Mauritius, which did a study, but at the regional level. There was also an ECA study presented during an expert group meeting organized in Maputo by UNECA last year.

### **2.3 A Sub-optimal negotiation configuration**

During discussions at the last SADC-EPA-RTNF held in Maputo-Mozambique, many delegations highlighted the fact that SADC grouping is still under the first phase of the road-map and needs to identify the main priorities. This situation is in fact partially explained by the configuration of the grouping and the overlapping membership among SADC countries. As many delegations from SADC countries have mentioned during the last RTNF, within each grouping, there are separate regional groups in operation creating problems of overlapping membership e.g. Southern African Customs Union (SACU) within SADC and East African Community (EAC) within the Eastern and Southern Africa (ESA) group. Indeed, since 2000, the SADC countries have been involved in a double process of integration. On the one hand, SADC member states are cutting their tariffs and non-tariff barriers on their sub-regional imports, in order to create a free trade area (FTA) by 2008. By 2010, a common external tariff should be implemented and a single currency created by 2016. On the other hand, they are negotiating through the SADC an Economic Partnership Agreement (EPA) with the European Union (EU), which should lead to a quasi free trade area between SADC and EU in the years

following 2008<sup>5</sup>. The SADC secretariat expressed the fact that EU wants to see the custom union implemented in 2008 and not 2010.

The need for the EPAs to reinforce the regional integration process is the most important concern for SADC countries. This notwithstanding, it is important to recognize that the actors in the SADC EPA negotiations are concerned with the lack of progress in the negotiations to address the regional integration challenges both from a configuration standpoint and also from a developmental point of view. The question of resources came out clearly as an integral part of the status of regional integration as the main outstanding issue.

#### **2.4 The weakness of the developmental dimension in the EPA**

According to the SADC EPA negotiators, the EC has so far provided little information about how the development assistance and trade aspects of EPAs will be integrated, who will carry out the monitoring, what benchmarks the monitoring will be measured against and how the monitoring will be linked to the implementation process. The answers to these questions could be crucial to the impact of EPAs on development and as usual the devil may be in the details as the development framework becomes clearer. The SADC negotiators also mentioned that the benefits that SADC region expects from the three main pillars of EPAs (regionalism, market access and integrated trade and development support as the third pillar of the development agenda) are not guaranteed to be substantial enough to outweigh the potential costs. Therefore, SADC proposes that EC should engage more actively in discussions with the grouping but also with the ACP secretariat in relation to the volume of development assistance that will accompany EPAs.

The next section analyzes some statistics obtained from the questionnaires that were disseminated among SADC countries. Based on a quantitative assessment and using the results of the questionnaires, the following have been identified as the main concerns that SADC EPA countries currently face: (1) the question of overlapping membership and the fact that South Africa has signed the TDCA with EU which implies some constraints for some SADC countries which are also linked with South Africa through the SACU, (2) the diversity of economic structure in the region, (3) the lack of diversification of the region and why EPA is not today tackling properly this issue, (4) the lack of involvement from Non States Actors (NSA) but also and this point is quite worrying for the parliamentarians and (5) the lack of capacities of the SADC Secretariat on this issue.

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<sup>5</sup> The issue of the length of implementation is a sensitive issue in the negotiations of the Economic Partnership Agreement.

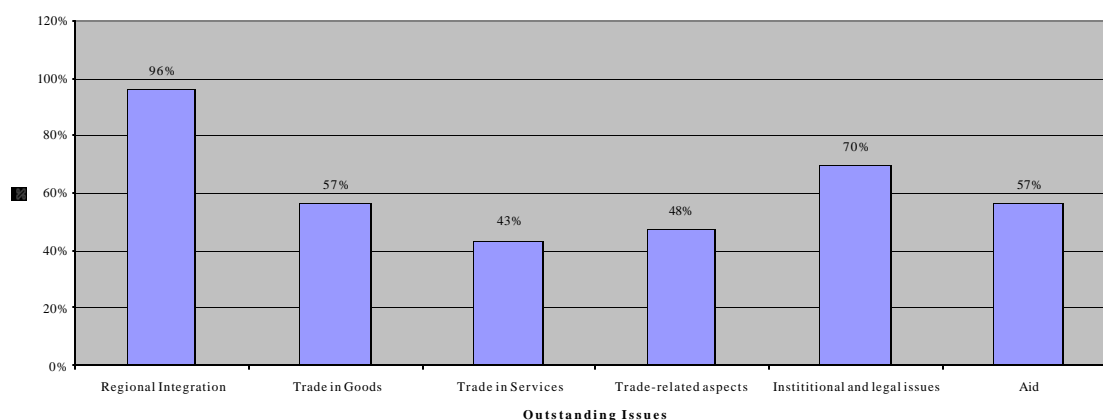
### **III. EPA Review- A quantitative assessment**

#### **3.1 SADC versus SACU, SADC versus ESA, SACU versus TDCA: How to optimise the overlapping membership the trade liberalisation schemes?**

The question of overlapping membership is indeed a serious issue for the SADC grouping negotiating EPA. As can be seen from Figure 15, more than 96% of the respondents highlighted the importance of strengthening regional integration and EPA should be an instrument that favors regional integration process. However, it appears that the current configuration is not very coherent for roughly 50% of the delegates interviewed (Figure 16). It was felt that this duality of the processes raises many questions. First, what will be the effect of each of these integration processes? Concerning EPA, the issue concerns not only the trade creation and diversion in the SADC region and in the partners of the SADC countries, but also the change in welfare of the consumers, as well as in the government revenues. Second, one may wonder whether the EPA process will help the SADC to foster its integration, as claimed by the European Union, or whether, on the contrary, it will compete the regional integration process by reinforcing the economic linkages of the sub-region with the EU, to the detriment of the local partnership.

Very recently, the EU agreed to include South Africa in the SADC EPA Framework. The EU considers that the incorporation of South Africa into the SADC EPA negotiations creates a more consistent framework for the economic integration of the region. However, this is subject to certain conditions regarding Mozambique, Angola and Tanzania, the scope of the future agreement and the definition of tariff offers. This matter is still unresolved emphasising why more time might be needed in this sub-region. Moreover, the response by the EU raises important issues in relation to the question of rules of origin and the sensitive lists that the SADC EPA countries will face should its proposal to have differentiation between South Africa, BNLS, and MAT countries be part of final EPA.

**Figure 15: Outstanding issues in the current EPA negotiations**

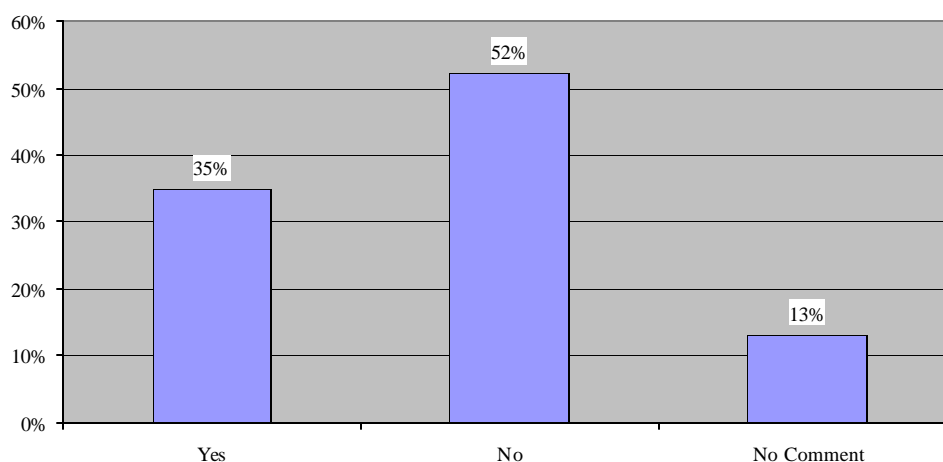


Therefore, harmonization of objectives or abolition of the multiple memberships by SADC in conflicting economic integration or regional blocks such as ESA-EPA, SADC-EPA, TDCA, and SACU will be crucial. Policy choices might have to be made by the SADC countries (Tanzania for instance) given its membership to EAC whose other partners are part of the ESA EPA.

Furthermore, respondents mentioned that the SADC integration process also faces difficulties. There is a concern that the effective pace of liberalization has been slow. Another important issue raised by the respondents is that the rules of origin in SADC have gradually become restrictive and product-specific under pressure from member states. On that issue, negotiations are still ongoing, which is probably indicative of a lack of political commitment to liberalization. Unfortunately, restrictive rules of origin are likely to increase administrative costs and will limit the benefits of the SADC preferences. This is compounded by the serious concern that the EU is pushing regional integration too quickly through EPAs, by asking for a Common External Tariff (CET) when the SADC countries are not ready for this.

In addition, within SADC, members have a very similar production structure, which makes bringing down intra-regional tariffs a very sensitive process especially for the economically weaker members.

**Figure 16. Coherence in Regional Integration processes and EPA Commitments**



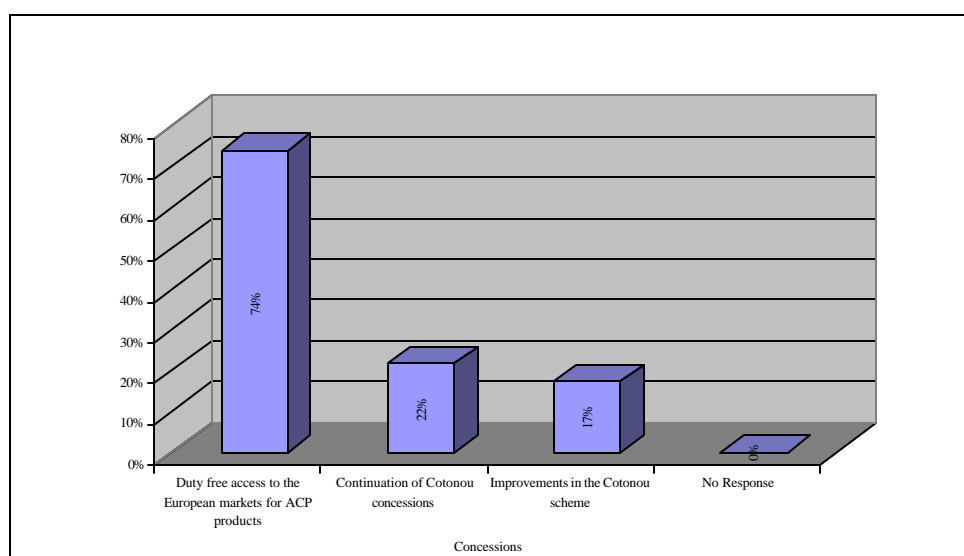
### 3.2 Lack of economic diversification and supply side constraints

In development terms, the SADC is a very diverse region consisting of three least developed countries (LDCs) and four non-LDCs. This diversity poses a major challenge to the EPA negotiations because LDCs can benefit from the Everything but Arms (EBA) initiative, which provides nonreciprocal tariff free and quota-free access to EU markets for all products from LDCs. The non-LDCs stand to lose their current Lome preferences by 2008. Despite the fact that SADC region is probably one of the regions in Africa (below the Sahara) that is most developed, many SADC countries are still suffering from a wide range of supply constraints which include transport, electricity and telecommunications infrastructure, institutional capacity and a shortage of human resources.

On the question of what countries expect from the EU that it is clear from the response that one way to achieve improvements in the diversity of economic structures could be to grant a full duty-free quota free market access for the SADC countries to the EU market (Figure 17). Indeed, it appears from the review that this concession is tremendously important for SADC countries. The SADC EPA countries have requested that they grant a non-reciprocal duty free quota free access to the EU market to Mozambique, Angola and Tanzania in a contractual form. The EU wishes to keep these countries on board of the EPA negotiation and is willing to explore all possible options compatible with WTO standards, taking into consideration the legitimate concerns of these countries, and of least developed countries in general. Furthermore, it seems to be important to address the specific supply side constraints that affect SADC's economic productivity and competitiveness in trade, namely: price volatility, lack of marketing facilities, market access information, processing of agricultural foods and all forms of non tariff barriers. It is worth recalling that like in other African countries, non-tariff barriers are an issue for SADC countries, which are dependent on one or two primary

commodities for the bulk of their export earnings. For such countries, the potential loss of trade through the imposition of higher standards in the export market can run into millions of dollars. It is thus not surprising that product standards are highlighted as one of the two major concerns by African leaders in the 'NEPAD Market Access Initiative' document (2002) (the other being OECD farm subsidies) (Millennium Project, 2005). NTB are applied in a selective way, on particular products rather than across-the-board. That increases the potentially damaging nature of these restraints on trade, for it suggests that they are applied in an arbitrary way to protect particular industries. SADC producers are very much affected by the prevalence of the NTBs, providing an important disincentive to diversification. That is another reason why, many SADC actors strongly believe that EU should give to ACP countries a full market entry (duty free quota free market access) without any commitments from their part.

**Figure 17. Concessions that a Country expect from the EU in terms of Market Access**



### 3.3 Lack of involvement from the Civil Society Organization (CSOs) and parliamentarians

CSOs are finding it quite difficult to procure the information they require to effectively monitor the EPA negotiating process. In the case of the Parliamentarians, regular briefings are not undertaken, yet the ratification process will ultimately have to go to Parliament in most of the countries in SADC like elsewhere. The failure to brief Parliamentarians carries a risk of the EPAs agreement ratification process being protracted, delaying their implementation.

Another problem that CSOs have been facing is in relation to the fact that Cotonou is a multi-faceted cooperation agreement incorporating trade, aid and political issues. This means that there are often a multitude of government ministries involved in EPA

negotiations and it is difficult for CSOs to keep a track of who is making the decisions. This has made it difficult for them to target their lobbying activities in an effective way. The fact that NSA are not really involved in the negotiations could explain the delay of the negotiations that is envisaged (Figure 18).

CSOs have a very important role to play in helping to identify the strengths and weaknesses of the SADC economies, so that decisions can be made as to which sectors are to be opened to greater competition with the EU and what period of time they need to prepare for these reforms. However, CSOs are struggling to play this role due to their lack of awareness on the issues surrounding EPAs and more importantly on a severe scarcity of the necessary resources and human capacity required in order to play an active role in the negotiations. Furthermore, the monitoring processes that are meant to ensure their involvement are not functioning properly due to insufficient resources and also political will from SADC states in making CSOs active partners. For example, it was noted at the SADC RNF meeting in 2005, that many of the NDTPFs had not been properly constituted or were at various stages of formation. This situation had not changed significantly by the last SADC RNF meeting in November 2006. In the RNTF held in Mozambique in November 2006, only one country came with some representative from CSOs. It is noteworthy however that the Trade Law Centre for Southern Africa (TRALAC) is giving a strong support to the SADC countries. In deed, SADC Secretariat commissioned TRALAC to undertake an independent comprehensive review of the current EPA negotiations.

For CSOs to become active partners in the EPAs negotiations process, they need to inform themselves of their rights under the Cotonou agreement (See Box 1) in order to participate in the EPA negotiations process, so that they can hold their governments and institutions to the commitments they have made to consult with them on EPAs. SADC states (and also more generally ACP States), and the EU also need to provide more resources to CSOs and also show greater political will to include them in both the national and regional consultations that should take place during the EPA negotiations process.

It is, therefore, important that CSOs have good links with their respective NAOs and their representatives in the NDTPF. This is so that they can monitor their activities and ensure that they are doing their utmost to provide CSOs with opportunities for active involvement and information relating to the negotiation process. They also need to hold their NDTPFs accountable to their obligation to provide written reports of NSA involvement in EPA negotiations so that the process can be monitored more closely.

It is also important to develop networks of CSOs that can work together to influence the process. This will hopefully allow information to be shared quickly and more widely amongst CSOs and ensure that they work together in a complimentary way. The inclusion in these coalitions of EU CSOs which are committed to taking forward their concerns is also vital as it allows lobbying activities at the ACP level to be coordinated with those taking place at EU level. For the region, the Southern African Non State Actors Forum (ESANAF) was recognised, but this network is much more present for the ESA-EC EPA negotiations. This kind of network could play a huge role in order to assess the likely impact of the EPA at the sectoral level and therefore could really make the difference with the EPA negotiation process. We have noted that it is important that

this kind of network could play an important role for the SADC region. By carrying out this kind of research at the Sectoral level (with the support of international agencies or programmes, (NEPAD) non state actors can display their importance to the process by

#### **Box 1: Cotonou Agreement- Article IV**

The ACP states shall determine the development principles, strategies and models of their economies and societies in all sovereignty. They shall establish, with the community, the cooperation programmes provided for under this Agreement. However, the parties recognize the complementary role of and potential for contributions by Non State Actors (NSAs) to the development process. To this end, under the conditions laid down in this Agreement, NSAs shall, wherever appropriate:

- Be informed and involved in consultation on cooperation policies and strategies, on priorities for cooperation, especially in areas that concern or directly affect them, and on the political dialogue;
- Be provided with financial resources, under the conditions laid down in this Agreement in order to support local development processes;
- Be involved in the implementation of cooperation projects and programmes in areas that concern them or where these actors have a comparative advantage; and
- Be provided with capacity-building support in critical areas, in order to reinforce the capabilities of these actors, particularly as regards organization and representation, and the establishment of consultation mechanisms including channels of communication and dialogue, and to promote strategic alliances.

Tanzania: The main concern

- Lack of capacity to negotiate from a position of strength and improve the capacity of all stakeholders
- Increase the level of collaboration between State actors and Non-State Actors in order to derive better gains from having research/think tanks.
- No appropriate platform for a national consensus to be built. CSOs, private sector and also regional authorities are not consulted sufficiently and their awareness of the EPA negotiations and what challenges it may represent is very shallow.
- Little feedback is provided back to other entities not directly involved in the negotiations, after progress in discussions with the EU.
- CSO's have to participate widely in the negotiations
- Necessity to carry out resource mobilization initiatives including financial, human resources, for the benefits of more stakeholders in the negotiation process.
- Harmonize the RTA processes and address the conflict of interest.
- Carry out lobbying and advocacy roles in the negotiation processes.
- Conduct comprehensive sectoral studies on the capacity of manufacturing sectors and the support they need to benefit from an EPA.
- Identify the gains and loses to Tanzania from EPA negotiations relating to agriculture.

Trade unions as well as national parliament are not really involved adequately in the EPAs crucially important decision-making processes. This makes it extremely hard to monitor the social implications of trade agreements, such as the way they affect workers' rights, impact on gender or any interactions between the current legislations in force. Concerning the gender issue, it seems that this important question is missing in relation to the core areas of negotiations especially trade and trade related areas.

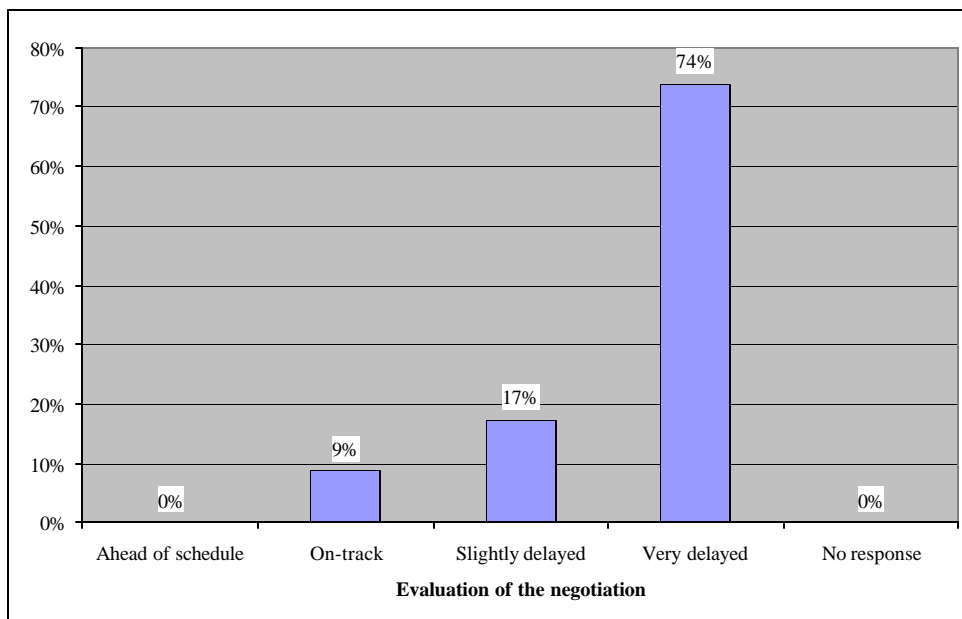
### **3.4 Lack of capacities and resources of the SADC secretariat**

Limited capacity on the side of SADC secretariat is another limitation towards the success of negotiations. Clearly, the capacity constraints are not only in-terms of taking advantages of preferences (supply side constraints) but also capacity to negotiate, both financial and human capacity.

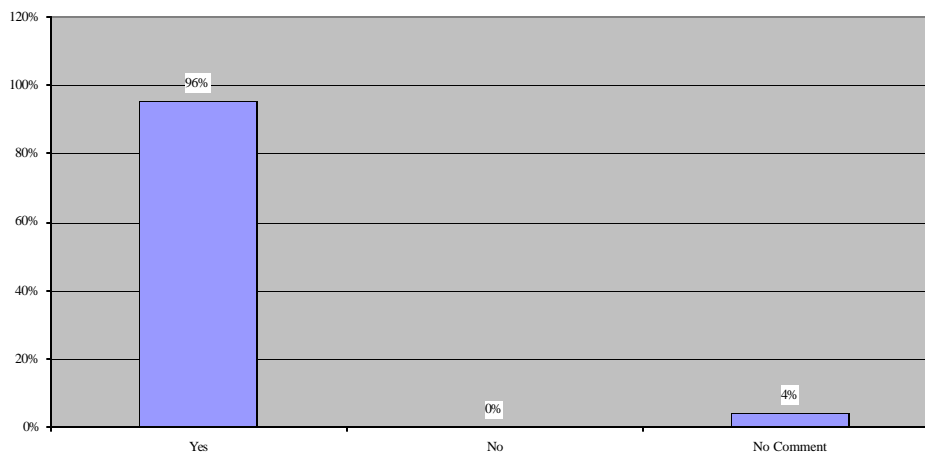
Discussions with respondents indicate that part of the reason for this lack of capacity amongst all the concerned actors is that only a limited amount of resources have been set aside to support capacity building efforts in the Country Support Strategies (CSS). This is possibly due to the lack of involvement of NSA and other actors in the drawing up of Country Strategy Papers. This limited funding has also not been terribly effective in supporting the full participation of the actors and also the difficulty to access these resources. This is because they often have little knowledge of what funding is available and of the necessary application procedures to gain access to it. The funds offered by the EC are also very difficult to get. The complexity of the procedures is one of the main reasons. One of the possibilities that could be explored to tackle this constraint should be to give more flexibility to the EC delegation in the country. It could considerably reduce the processing time of requests and could also increase the incentives to benefit from the EC co laboration in that matter.

An indication of the capacity at SADC Secretariat level could be illustrated by the failure to finalise the constitution of the sensitive lists at this stage of the negotiation, which is very a real concern. It is important to mention upfront that this failure could also be a reflection of lack of capacities at the national level. But it also reflects lack of capacity to mobilize action among member states. Indeed, during the last SADC EPA RTNF, the BLNS countries met two days before the starting of the official SADC EPA meeting in order to finalize the sensitive list of the BLNS and not of the SADC as a grouping. This delay highlights the fact that there is a lack of capacity at the national level to identify in a timely manner the sensitive products and the list for consolidation. This concern is very well captured through the responses to the question regarding pace of negotiations as perceived by those participating in the negotiations as shown in Figure 18. Indeed, we can see that 74% of the representatives from SADC countries interviewed think that the current stage of the negotiations compared to the work plan/ Road Map is very delayed and therefore they need much more time to finalize agreements that take account of all the concerns of SADC countries. This review is seen as timely and welcome and it is hoped that it could allow for much more time in order to prepare adequately and optimally for the final modalities phase. And as Figure 19 shows, almost all respondents see the need more time to achieve the desired outcome of the second phase.

**Figure 18. Evaluation of the pace of the negotiations given the agreed work plan/ road map**

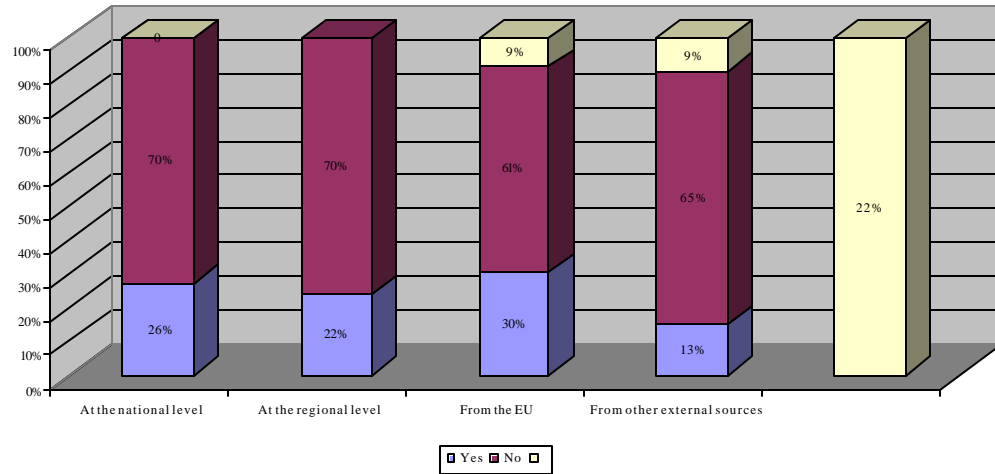


**Figure 19. Whether more time is needed for and effectively to conduct the negotiations**



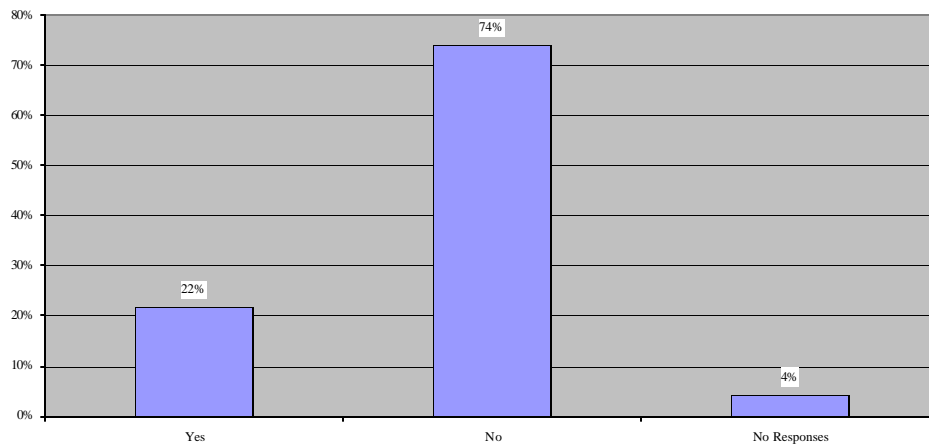
One may question why there is some important delay in the negotiations. From the review, it appears that there is a clear lack of resources. At the national level, at the regional level but also at the EU level, the resources allocated to conduct these negotiations are clearly not enough and do not give the opportunity to conduct the negotiations adequately and optimally. Therefore, this point should be drastically reviewed in order for the SADC secretariat to finalize the negotiations (Figure 20).

**Figure 20. Measures and Resources provided to conduct the negotiations have been satisfactory**



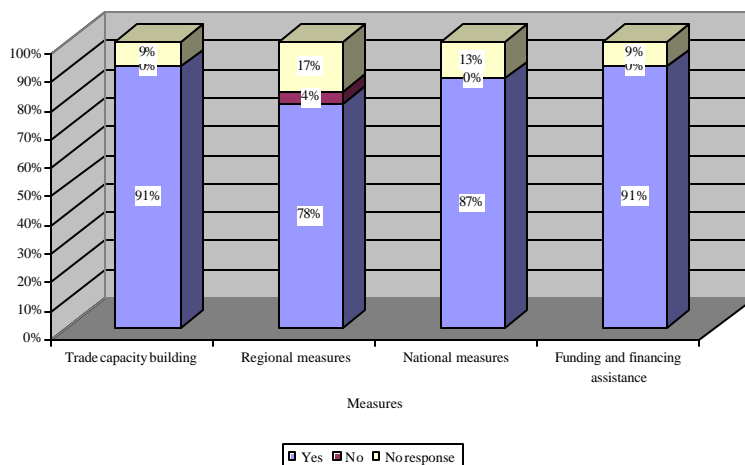
In the same vein, if no major changes are effected in this important issue of human and financial resources, it appears that SADC will not be able to finalize the negotiations at the due time. Almost 75% of the respondents highlighted the difficulty of SADC to finalize the negotiations before December 2007 (see Figure 21).

**Figure 21. Whether the Region has the capacity and is prepared to timely conclude an EPA agreement**

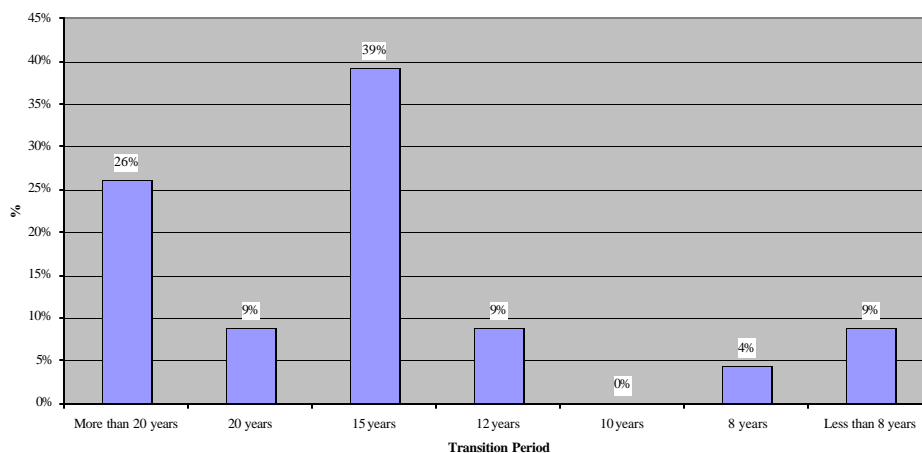


Other kind of measures necessary to implement the agreements reached are a reinforcement of trade capacity building, a drastic increase of human and financial resources allocated to the SADC secretariat but also regional and national measures to accompany this trade reform as Figure 22 indicates.

**Figure 22. Whether Measures necessary to implement the agreement reached**



**Figure 23. Transition Period satisfactory to a Country**



The transitional period is another core issue. It appears that 15 years to implement this economic partnership agreement is expected. This point will clearly necessitate a reform of the Article XXIV of GATT. Indeed, this article could authorize a 12 years period but this transitional period seems shorter in order to limit the potential adjustments costs SADC countries will face, in particular fiscal and industrializations adjustments.

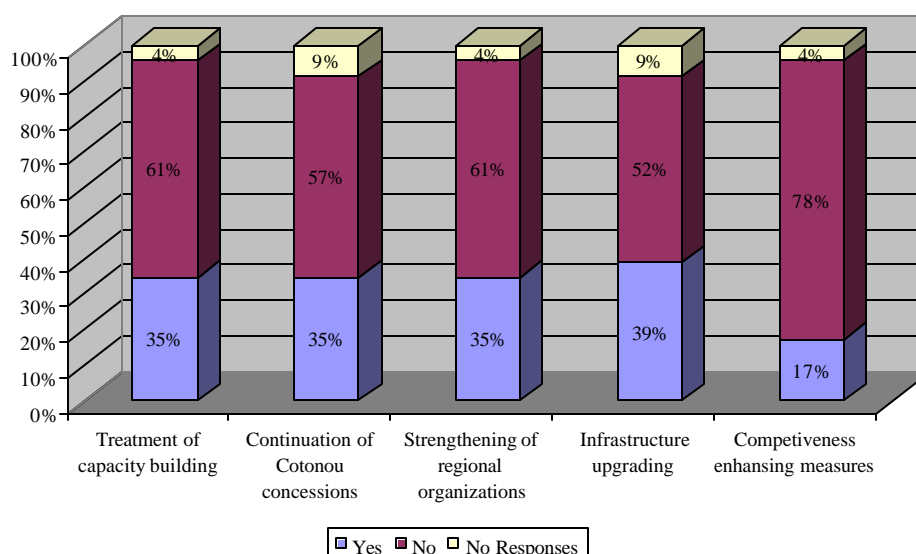
## IV. Policy recommendations and way forward

### 4.1 Aid link to the expected strong adjustment

Many SADC countries are quite worried about required economic and social adjustments that will emanate from the EPAs implementation. The respondents expressed concern on lack of clarity on how the EU proposes to act in order to limit negative consequences of the adjustments challenges. But more importantly to facilitate the trade and social (fiscal) reforms SADC countries will imperatively need to implement.

According to many respondents directly involved in the negotiations, if EPAs were really to be pro-development, they would need to address the issues of lack of diversification in the region. SADC countries consider that this issue is still pending in the negotiations and should be actively put on the table. **Therefore, SADC region considers that EC should ensure that the costs of liberalization would be compensated by financial assistance but also by a better development package devoted to this agreement.** This financial assistance would be needed to make up for shortfalls in the loss of government revenues and the costs of reallocating resources from producers displaced by cheaper inputs. The financial assistance should also be de-linked from the trade negotiations or from economic policy conditionality. The supply side constraints should be also treated in order to reinforce the competitiveness of SADC countries (see Figure 24 for the statistical picture).

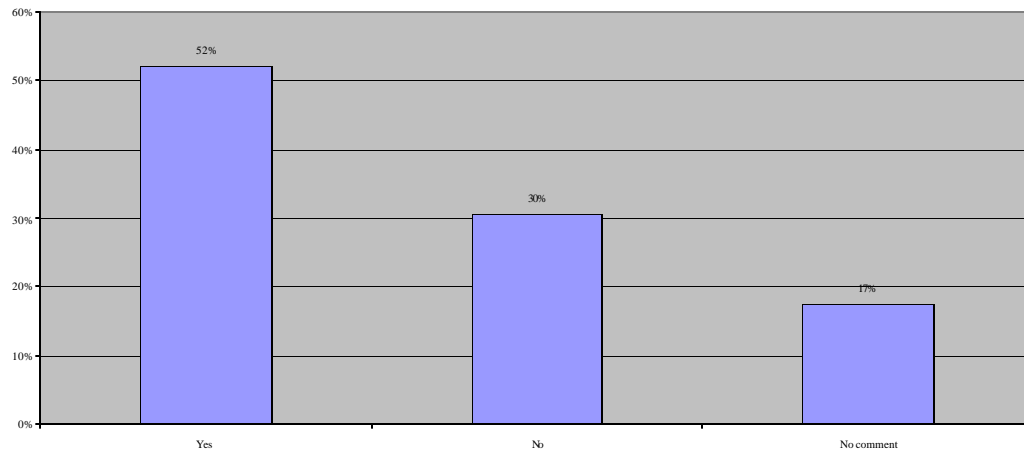
**Figure 24. Whether Points have been taken into account during the process of the negotiations**



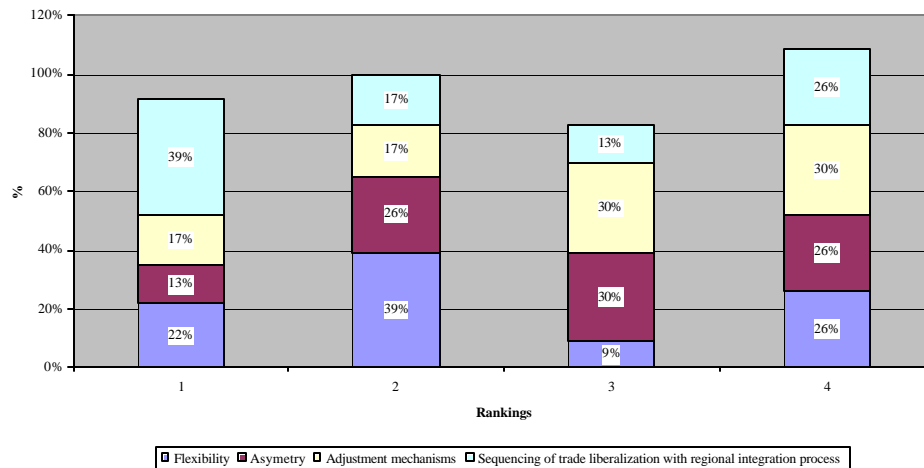
## 4.2 Optimize the implementation period and the level of reciprocity

As we mentioned, flexibilities and strong adjustment period are highly important for many SADC countries in order to limit the adjustments costs (Figure 26). More than fifteen years appear to be the most important request of the SADC countries in order to implement this agreement but much more important to limit the adjustments costs (Figure 27).

**Figure 25. Whether alternatives to EPA be fully explored**

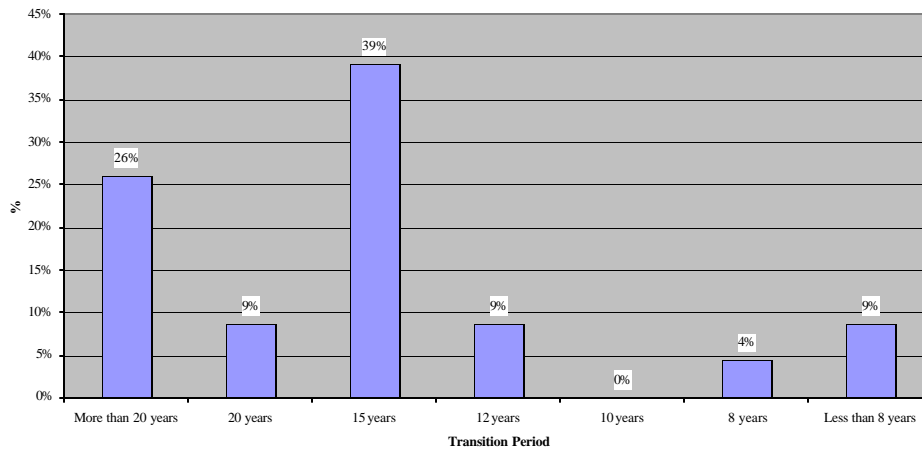


**Figure 26. Ranking of the importance of the Development facilitating trade relating measures**



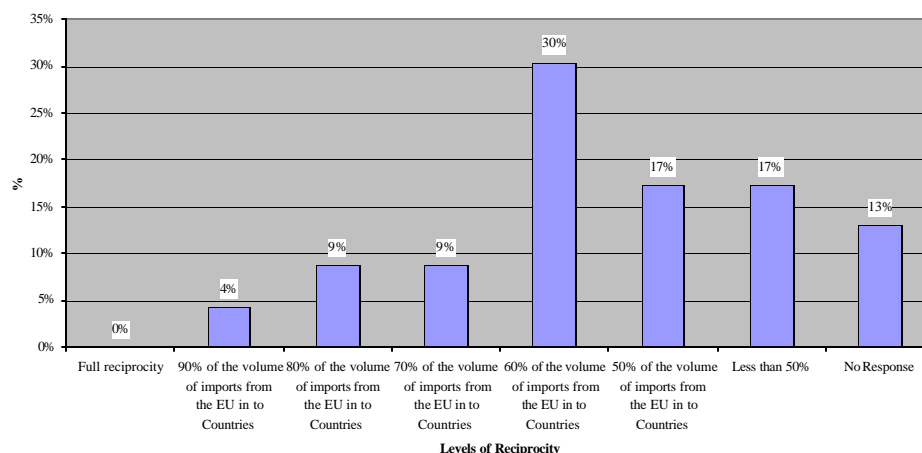
It is worth noting that reciprocity is now at the centre of the on-going Economic Partnerships Agreements negotiations between Africa and the European Union are a case in point. After 25 years of unilateral preferences in favour of African, Caribbean and Pacific countries, the EU in its endeavour to honour obligations at the WTO is negotiating a new partnership agreement with ACP countries. At the centre of these negotiations is the principle of reciprocity among other principles

**Figure 27. Transition Period satisfactory to a Country**



The reciprocity foreseen in the bilateral agreements is governed by the existing multilateral trade rules, in particular Article XXIV of GATT. An optimal level of reciprocity according to SADC countries should be to have 60% of the volume of imports from EU to SADC countries (Figure 28).

**Figure 28. Level of Reciprocity satisfactory to a Country**



### 4.3 The way forward

The following have been identified as some possible measures required for timely completion of negotiations and implementation:

- a. Necessity to have an open debate on the design of the framework to be used to monitor EPAs related assistance.
- b. The fact that EU has accepted South Africa to be included in the SADC EPA negotiations framework will definitely orient the modalities phase and needs to be assessed and more particularly for Tanzania, Mozambique and Angola.
- c. Necessity to review the GSP/EBA and rules of origin and assess their effectiveness. It is also important to review all EPA alternatives as mentioned in the Article 37.6 of the Cotonou Agreement. This point was clearly highlighted from the review as can be seen in the responses indicated in Figure 25.
- d. The EU should provide the SADC countries in particular and ACP in general with genuine alternatives to EPAs that allows them to make an informed and independent choice about signing them.
- e. The EU has promised development assistance to support the ACP to implement and benefit from EPAs. However, this support should not just come from technical assistance as this provides only limited long-term benefits, as usually comes in the form of consultants who are only around for a short period.
- f. Government should not rush into EPAs until the domestic concerns facing producers are solved. It is important that each government of the SADC region take deliberate measures to address the supply side constraints.

- 
- g. CSOs should organize themselves to push government to address the issues and also must be involved in the process of the negotiations.

# Regional Review: ECOWAS-EU EPA Negotiations

## Introduction

The negotiations on an Economic Partnership Agreement (EPA) between the countries of Africa, Caribbean and Pacific (ACP) and the European Union (EU) were launched in Brussels on 27<sup>th</sup> September 2002. Following the decision of the ministerial conference launching these negotiations and according to the Cotonou Agreement (CA), the negotiations are conducted in two phases and are expected to end by December 2007. The first phase consisted of negotiating at the level of all ACP countries with the EC on horizontal issues and the second phase was more focused on negotiations at the regional levels in order to take into account the specificities of the different regions composing the ACP group.

On 2<sup>nd</sup> October 2003, the Ministers of ACP countries and the EC Commissioners for Trade and Development adopted a joint report ACP/00/118/03 Rev.1 –ACP-EC/NG/NP/43 on the first phase of negotiations. This report ended the first phase on the basis of the results displaying a high degree of convergence. Yet, it should be noted that some issues were left pending to be negotiated at a later stage in order to move on with the second phase. This report constitutes the references and guidelines for the negotiations between the EC and the West Africa Region.

On 6<sup>th</sup> October 2003, the second phase of the EPA negotiations were launched in Cotonou for the West Africa region, which includes ECOWAS countries (Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Bissau Guinea, Guinea, Mali, Niger, Nigeria, Liberia, Sierra Leone, Senegal, Togo) and Mauritania. The mandate of the negotiations aimed at the following objectives:

Progressive creation of a Free Trade Area (FTA) between West Africa and the EC starting 1<sup>st</sup> January 2008; priority to development and poverty reduction; cooperation on trade related issues; deepening the West African integration process; improving the competitiveness; improving the market access for West African export products. The two parties adopted the roadmap in Accra on 4th August 2004. The roadmap defines the objectives, processes and strategies of the negotiations including the issues at stake and a suggested schedule.

## State of play of the negotiations

After three years, the negotiations between the EC and the West African Region (WAR) have not registered significant progress. The negotiations are still at the first stage of the regional process, which consists of defining and preparing the framework and modalities of the EPA. It was noted in several instances that the negotiations were supposed to take place in two phases, ACP-wide and regional. There was a feeling that issues in phase 1 had not been sufficiently addressed to justify speedy negotiations at the regional level.

There is a minimum agreement to start the second stage since there are some pending issues. The negotiations have been held under a series of meetings at various levels (Chief negotiators, High Level officials and experts).

The framework for the EPA negotiations between WAR and EC is organized around five technical themes:

1. FTA, Customs Union and Trade Facilitation
2. Norms, quality control and related services, SPS measures and TBT.
3. Intellectual property
4. Services
5. Productive sectors

Five thematic and technical groups have then been established to work on a common clarification of the issues within each theme. Regarding the major achievements during this first stage of negotiations, it should be noted that the roadmap was adopted; the five groups have been set and have started working. The first two thematic reports have been adopted at the Chief negotiators level. The reports of the groups 3 and 4 have been adopted at the experts level and still need to be adopted at the high level officials and at the Chief negotiators levels. There is no agreement yet on the fifth group that concerns the productive sectors (i.e. upgrading the economy, build on competitiveness, capacity building...). The report of this group is said to be dynamic so that it will be updated along the negotiation process and the implementation period.

Concerning the Reference framework of the EPA, a joint draft has been prepared by the WAR and will be presented and discussed with the EC very soon. There is a minimum agreement on the launch of the second stage of these regional negotiations providing that some tasks of the first stage are completed. It has been agreed that the finalization of the reports on group 3, 4, 5 and the reference framework of the EPA will be completed while entering stage 2. Although the EU estimates that the EPA will limit the tariff revenue losses, there is a minimum agreement on the compensation of these losses generated by the EPA liberalization process as well as by the internal tariff dismantlement.

There is an agreement on the set up of three negotiating groups in replacement of the five thematic groups (i.e. Agreement write-up, productive sectors and market access). There is an agreement on the inclusion principle of a revision clause that will allow modifying the EPA according to more favourable results obtained from the Doha round. Concerning the unresolved issues of these negotiations, the following can be highlighted on the basis of discussions with different actors engaged in the WAR EPA negotiations:

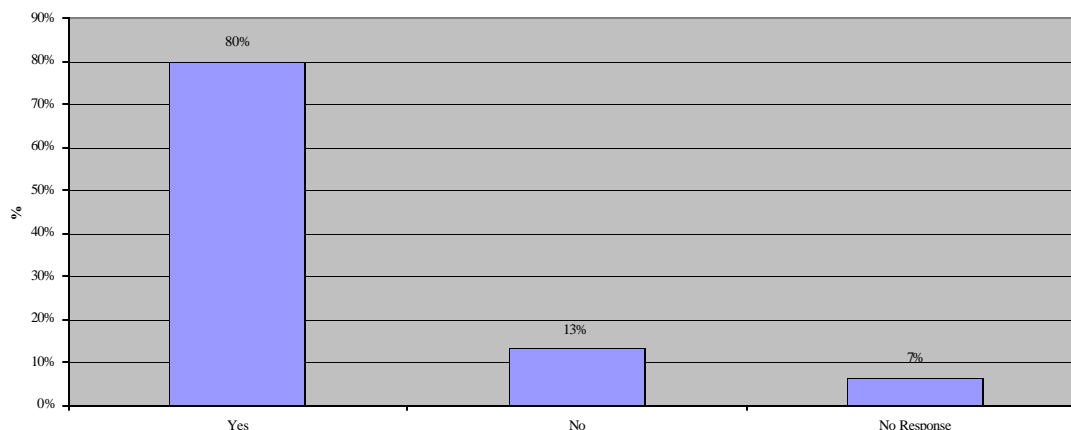
- The region's development concerns are not taken into account in the EPA.
- The modalities for the compensation mechanism for tariff losses, and for the improvement of competitiveness and the upgrading of the economies are not defined.

- The establishment of additional or supplemental resources to fund the different adjustment costs related to the implementation of the EPA.
- Negotiating on competition and investment issues although the parties have agreed to look into these issues to strengthen the regional integration.
- The addition of new issues in the negotiations by the EC such as public procurement, working norms and environment.
- The scope of the EPA reference framework.

## Negotiating time frames and flexibilities

In view of the above state of play, the negotiation process has registered a lot of delays. This may affect the deadline of December 2007 for the signature of the EPA. As of now, there is no clear-cut position on this issue concerning the period of delay. Yet, it is generally perceived that African economies will not be ready to sign the EPA by December 2007 due to calendar issue and due to the lack of progress in issues that are essential for the WAR such as the development concerns and the upgrading of the economy. Four-fifths of the respondents from WAR think that there is a need for more time to prepare for and effectively conduct the negotiations as Figure 29 indicates.

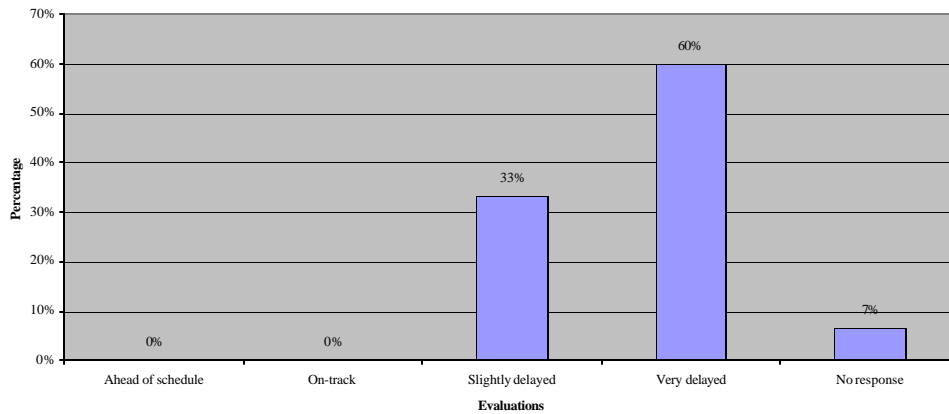
Figure 29. Whether time is needed to prepare for and effectively conduct the negotiations



The general view was that it was unrealistic to expect the EPA negotiations to be completed by the end of 2007. This was ascribed not only to the slow pace of negotiations but also because of a general dissatisfaction with the end date of 2007 which was seen as somewhat arbitrary and also because issues of concern to ACP countries were not being well addressed in the negotiations. There was general concurrence that the degree of reciprocity would have to be less than the 90% because of the huge development gap between the EU and the WAR. Also closely connected to this was the feeling that the transition period given to the WAR should be at least 20yrs. From Figure 30, 60% of the respondents are viewing the pace of the negotiations as lagging behind the agreed roadmap. Indeed, as of today, phase one of the regional negotiations is not

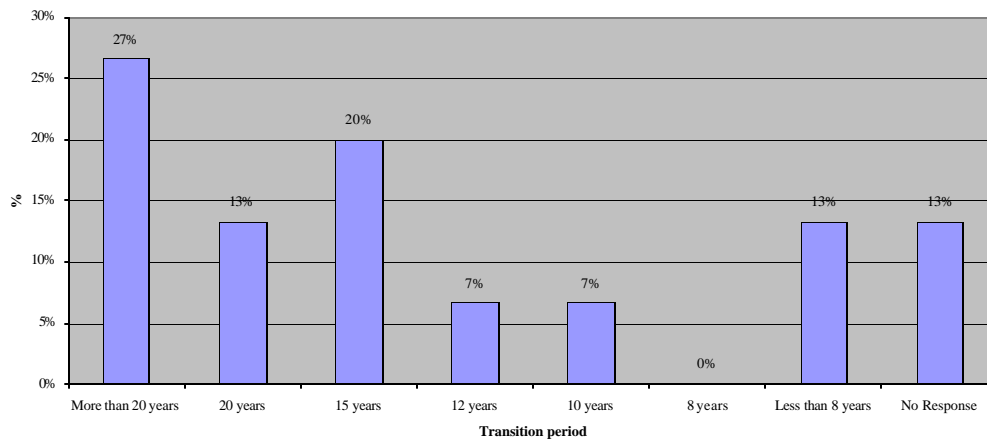
fully completed. Negotiations are still at the stage of discussing the issues to negotiate although little progress has been registered in terms of roadmap approval and establishment of thematic groups working on the issues to negotiate. The EPA reference framework has not yet been finalized as already noted as well as the substance of three technical-thematic groups that include intellectual property, services and productive sectors.

**Figure 30. Evaluation of the pace of the negotiations given the agreed work plan/road map**



The majority of respondents (60%) prefer a longer transition period than the 12 years suggested in the Cotonou Agreement. This preference goes for more than 20 years as a satisfactory transition period.

**Figure 31. Transition Period Satisfactory to a Country**



## EU negotiating stance and tactics

In discussions during one of the detailed review missions, there was a feeling that the negotiating stance taken by the EU was also undermining the negotiations process. These were mainly related to its insistence on separating the negotiation of development and trade issues, its attempts to play ACP negotiating groups against one another and the inflexibility of the mandate given to its negotiators. The prevalent view was that the EPA negotiations could only realistically go forward if there was proper linkage between development and trade issues as the current separation of both processes was not helpful. There was also the feeling that the EU plays the six ACP negotiating groups against each other. It was suggested therefore that the African Union should establish a mechanism for coordinating the negotiations of its four negotiating regions. The point was also made that the mandate of EU negotiators was not flexible enough because they had to go back to consult their individual member States who have oftentimes have different interests. This was seen as contributory to the delays in the negotiations process.

As long as there will not be any clear EC commitments (in writing) on the key issues, mainly development concerns and upgrading of WAR economies as part of preparation for EPAs implementation, progress will be difficult. EC is perceived as having double-talk by promising development within the EPA framework and not providing the necessary funding measures to achieve the development by referring them to the European Development Fund (EDF). From past experience, EDF disbursement is very complex and has a low rate of disbursement record. Therefore tying the development issues and the upgrading of the economies to the EDF will not be practically realistic especially for such a short implementation period of 12 years.

### Institutional issues

Concerning the Regional Preparatory Task Force (RPTF) role, it is criticized for its lack in negotiating mandate and binding as well as its lack of financial and human resources. Any recommendation from the RPTF has no effect or commitment on the negotiations. The fact that there is no funding available makes it weak and considered as a consulting structure that produces studies. Further, it is not clear where to find the funding. There is no dedicated staff to the RPTF since it is an *ad hoc* group that includes representatives of the EC, ECOWAS, UEMOA and representatives of three West African Countries on a rotating basis. Consequently, the follow-up on the issues sent by the five different groups is not comprehensive and is often delayed for absence of some representatives. For instance, the last RPTF meeting in Niamey was cancelled by the EC due to the absence of the ECOWAS Executive Secretary and the UEMOA Commission President. Hence, the RPTF has not efficiently addressed the issues received from the thematic groups. Only 10 solutions in the form of studies have been produced out of the 40 requests sent to the RPTF.

In general, there was dissatisfaction expressed with both the idea of having the RPTF as well as with its functioning. This was linked to the fact that it separated negotiating processes and often did not attract the level and number of required participants. Another area of concern was the weak feedback mechanism between the ECOWAS Secretariat and its member States with respect to developments in the negotiations. For

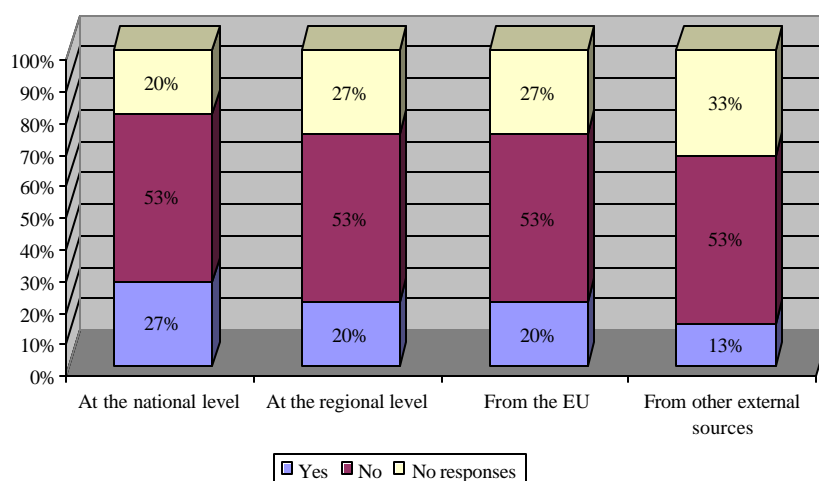
instance in one of the countries in WAR, there was a view that non-state actors were fully involved in the national focal point although they had limited involvement at the regional level.

From these criticisms, it should be clear that there is a misunderstanding on the role of the RPTF. The EC sees this structure as a platform to seek and mobilize external (non-EU) funding to WAR development concerns only. Whereas the WAR views the RPTF as a structure that should find concrete solutions to the development, compensation and upgrading issues along the EPA negotiations. In the view of actors in the EPAs negotiations in the WAR, those who create challenges should also be the ones finding the solutions.

Furthermore, the RPTF is not permanent and will disappear before the end of the implementation of the EPA. It is therefore not a reliable structure and causes delays in addressing the development concerns of the WAR.

**The lack of communication on the EPA issues at the national levels is hampering the process** in two ways. First, one can note the lack of involvement of all the national stakeholders (Administration, Private Sector and Civil society) although they are involved in the process. They rely solely on the ECOWAS Secretariat and the UEMOA Commission for handling all the issues related to the EPA including needs assessment. Consequently, the national stakeholders don't feel really concerned by the EPA. This can be illustrated by the poor attendance in some meetings at the national level and have an impact on meetings at the regional level as well. Second, the lack of communication leads to misunderstandings and simplification of the issues at stake. This could be illustrated by the hostile reaction of the civil society organizations. The focus of their grievances is on the inequalities and unfairness of the EPA to reject it completely. Generally, the measures and resources provided to assist West African Countries in the negotiations are perceived as not satisfactory.

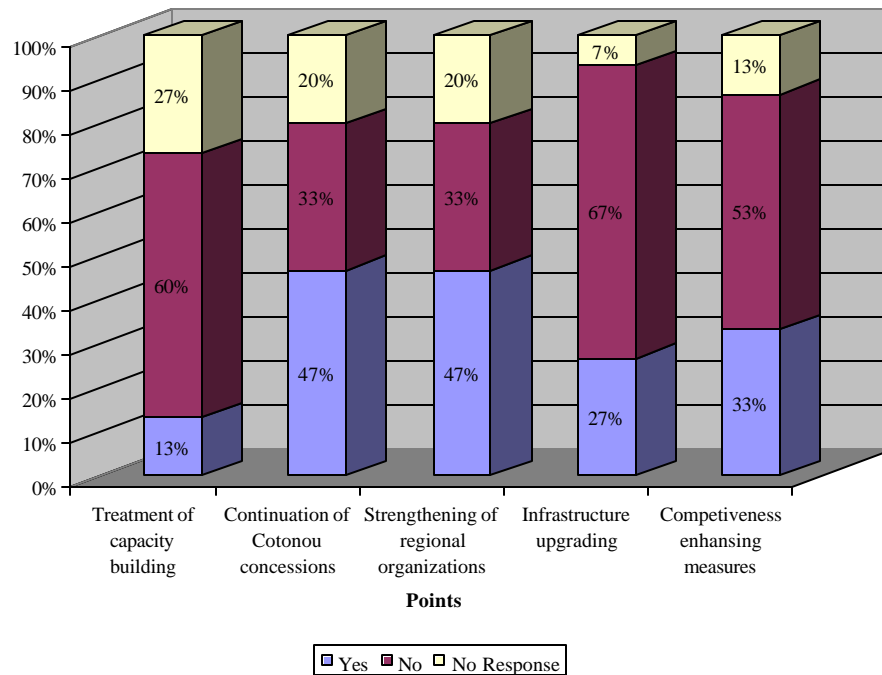
Figure 32. Whether measures and Resources provided to conduct the negotiations have been satisfactory



## Preparedness of the WAR economies to implement the EPAs

From Figure 33, it can be noted that the issues of capacity building, the infrastructure upgrading and the competitiveness enhancement are not given proper consideration in the negotiations. However, more focus is given to the issues on the continuation of Cotonou concessions and the strengthening of regional organizations.

Figure 33. Points taken into consideration during the process of the negotiations

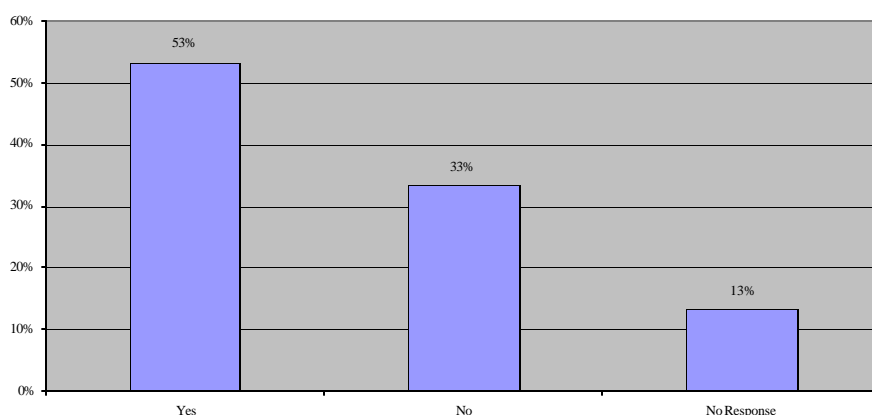


## Outstanding issues in the negotiations in WAR

The full regional integration should be achieved within the WAR before signing the EPA. Although this region is more advanced in the regional integration process compared to other African regions, the WA regional integration suffers on its implementation process. It seems that there is an agreement on superficial issues pertaining to regional integration while the fundamental issues are ignored. Consequently, the implementation phase faces major obstacles. The customs union and the common market are not implemented effectively. The free movement of goods and persons is not respected in all the ECOWAS country members as spelled out in the trade liberalisation schemes. On the monetary side, the process towards getting a unique currency within the sub-region has registered important delays due to the delays in the establishment of the second monetary zone (ZMAO) of West Africa.

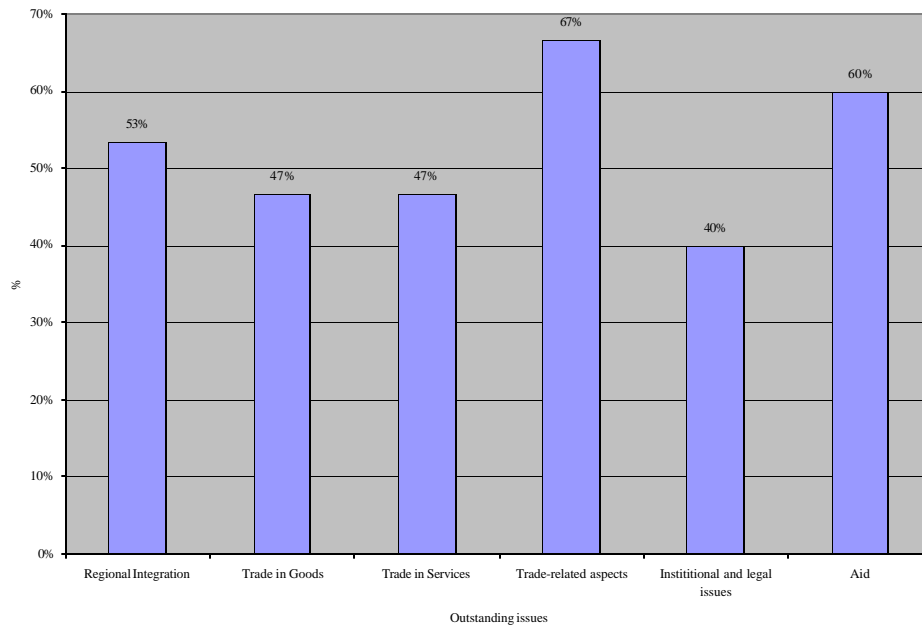
The majority of the respondents feel that there is some coherence between the regional integration process in West Africa and the EPA commitments. But at the same time, there were sentiments that contrary to the stated aim of EPAs helping the process of regional integration several views were expressed that it in fact hampered the process. This was mainly ascribed to the fact that there were few regional policy frameworks and codes existing in areas supposed to be negotiated in the EPAs including investment and competition policy. The point was also made that the situation was compounded by the reality that the EPA negotiations compete for the attention of the limited officials in ECOWAS countries handling the negotiations thereby preventing them from focusing on developing regional policy frameworks.

Figure 34. Coherence in Regional Integration Processes and EPA Commitments



In the context of EPAs negotiations, Figure 35 shows the outstanding issues in the region. These are the issues that the EPAs negotiations have not adequately tackled. It is evident that one-year to the deadline, it is felt by significant majorities that there are still issues in relation to trade-related aspects (67%), aid (60%) and regional integration (53%) which are yet to be addressed. Most West African respondents identify these issues as being of great concern for the EPA negotiations process and these issues should be addressed in order for the region to reap benefits from the EPA.

**Figure 35. Outstanding Issues in the Current EPAs Negotiations**



The fact that the EPAs negotiations so far have not addressed important issues in the sub-region does not help given that the WAR is **not homogenous**. The countries are at various stage of development and therefore have not the same interests and priorities. But these differences should have strengthened the case for early resolutions of the issues that are still being seen as outstanding. The perception that important issues have not been addressed as would have been expected could also be attributed to the fact in the sub-region there is a majority of LDCs and few developing countries. Some are Francophone, others are Anglophone and Lusophone. Within the region, some countries have internal conflicts (Côte d'Ivoire); others are coming out of war and internal turmoil (Liberia and Sierra Leone). These countries have other priorities such as restoring peace and order and building the country and the local economy before focusing on regional issues. For this reason, the EPAs negotiations objectives and roadmap should have been cognizant of these diverse characteristics. And unsurprisingly, **not all the countries have a national institution/committee to follow the EPA negotiations.**

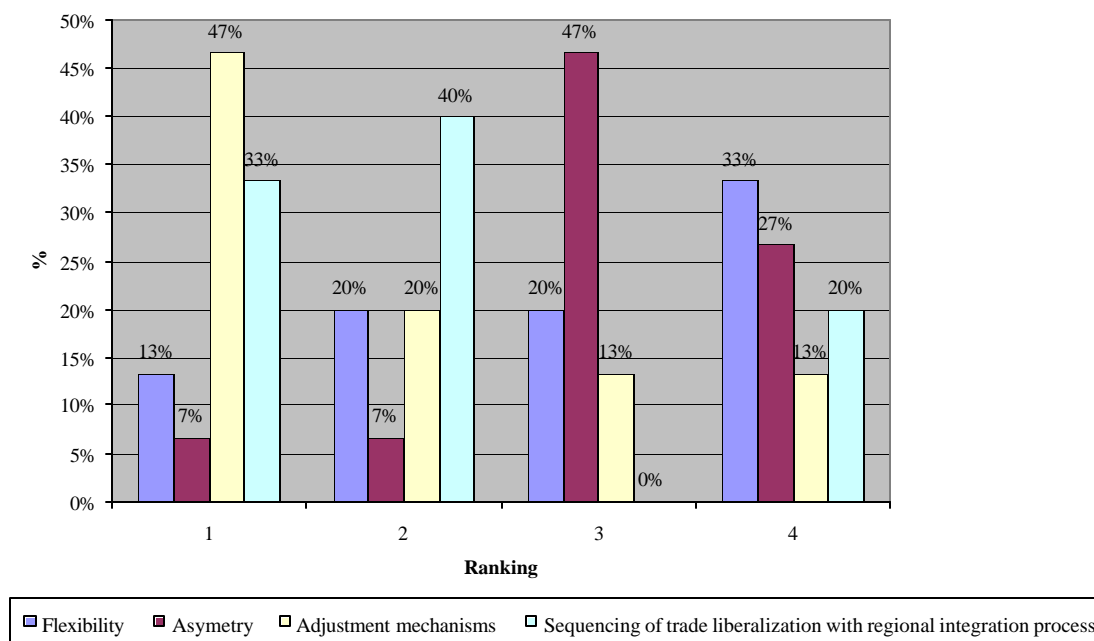
Second, within the WAR, a sense of political and or ideological divergence between the countries of the Franc zone (UEMOA) and the Anglo zone is evident and this could be affecting the pace of the negotiations because of the different levels of integration. This results in competition for regional leadership and is translated some times in some impediments to the regional integration process of WA. But it is noteworthy that the region has an agenda to bridge the integration gap between UEMOA and the rest of the ECOWAS, which has been seen as an example towards rationalisation and harmonisation of integration programmes. The failure to keep pace with the EPAs roadmap is associated to some extent with the roadmap's failure to recognize the issues

underlying this integration gap. Moreover, it should be noted here that **Cape Verde is willing to withdraw from the negotiations.**

All in all, during the review, especially in interviews with some of the respondents, the point was clear in several instances that there were real differences between countries in the West Africa sub-region that had some effect on the negotiations. In addition to linguistic differences, there was the issue of overlapping membership of regional integration bodies such as UEMOA and ECOWAS. Also of concern was the consideration that most countries in the WAR were LDCs who were already eligible to benefit from the Everything But Arms initiative. It was felt that EPAs would have to go beyond EBA to be meaningful to LDCs in the sub-region. It was also felt that the significant number of LDCs meant that non-LDCs who were in a minority might have to begin to consider their own options.

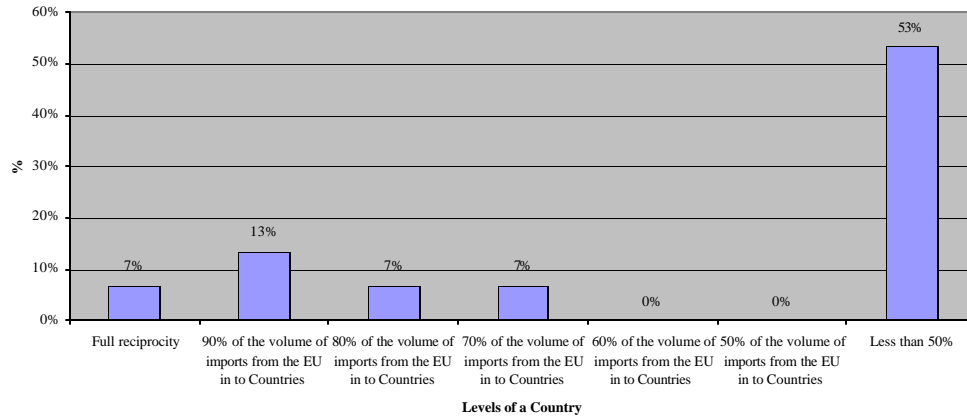
Be that as it may, it is interesting to note that in WAR, adjustment mechanisms and sequencing with regional integration are the two most important development-facilitating trade-related measures (see Figure 36). Both these measures are directly related to the integration and capacity issues in the sub-region.

Figure 36. Ranking by order of importance of the development-facilitating trade relating measures



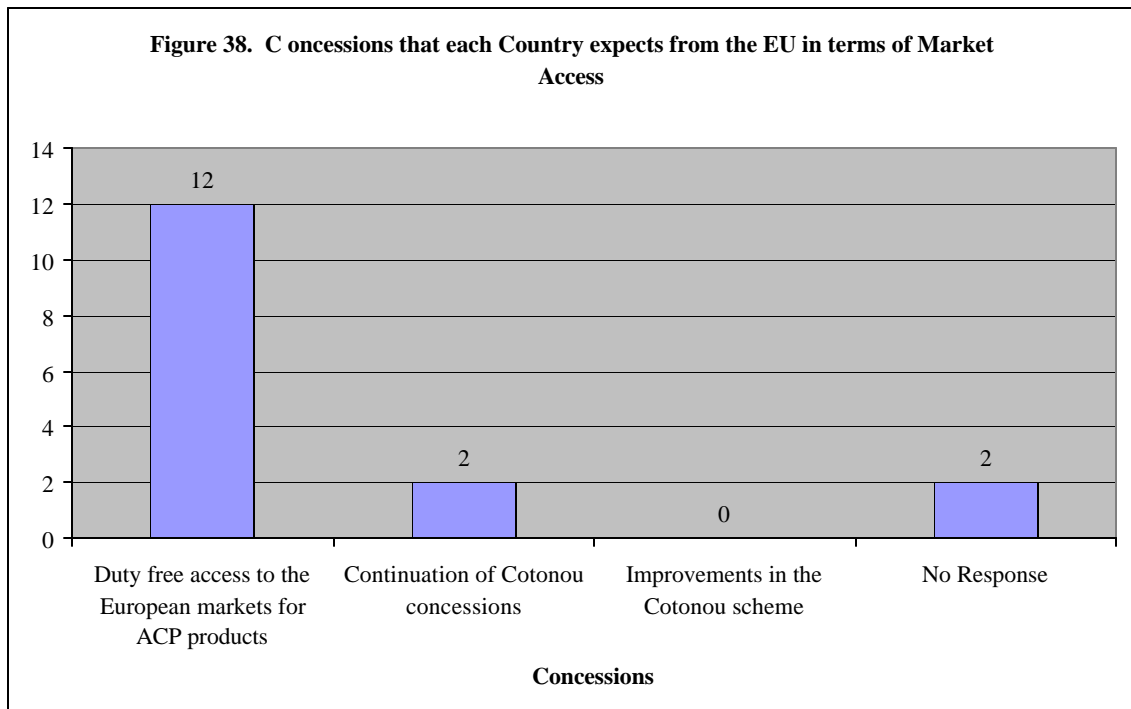
In terms of level of reciprocity to put in place within the EPA, the majority of the respondents (53%) are in favor of a less than 50% scheme for the tariffs dismantlement, which reinforces the issue requiring more asymmetry.

**Figure 37. Level of Reciprocity Satisfactory to a Country**



In terms of market access, most of the West African countries are expecting a duty-free access to European markets for ACP products.

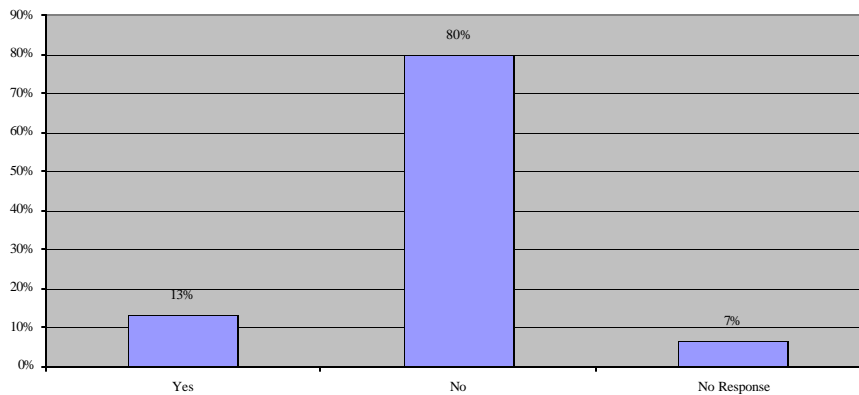
**Figure 38. Concessions that each Country expects from the EU in terms of Market Access**



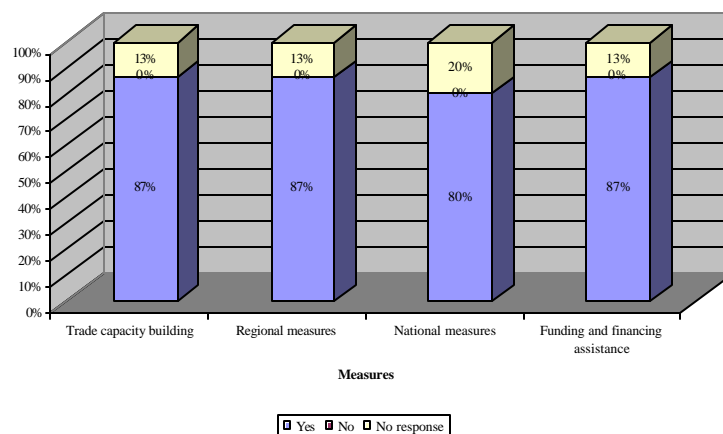
## Other capacity related issues

Capacity related issues were central to the concerns raised about the EPA negotiations. It was felt that there was not sufficient capacity in the sub-region to be able to cover the depth neither of various sectoral issues nor of the wide range of topics. There was a feeling that WAR needed to go beyond impact studies of EPA into sectoral studies that would give a fuller picture to assist negotiations. At the same time, there was the feeling that the WAR needed more technical experts to back up its negotiations. The limited technical capacity of the ECOWAS Secretariat that is conducting the negotiations on behalf of the WAR was also commented upon in this regard. From Figure 39, the West African Region is seen as not having the capacity and the preparation required to conclude an EPA timely with the EU. In order to implement the agreed EPA, the most important measures to implement are trade capacity building, funding and financing assistance, regional measures and national ones.

**Figure 39. Whether Region has the Capacity and is prepared to timely conclude an EPA agreement**



**Figure 40. Measures necessary to implement the agreement reached**



Within the group, there are some divergence about the new issues to negotiate with the EU such as investment, competition and government procurement. One side supports the discussions on these issues since it would facilitate the reforms required to launch the development. The other side is against the negotiations on these issues since they have been dropped out of the Doha Development Agenda. It should be noted that the region is currently working on a regional competition policy and a regional investment policy codes.

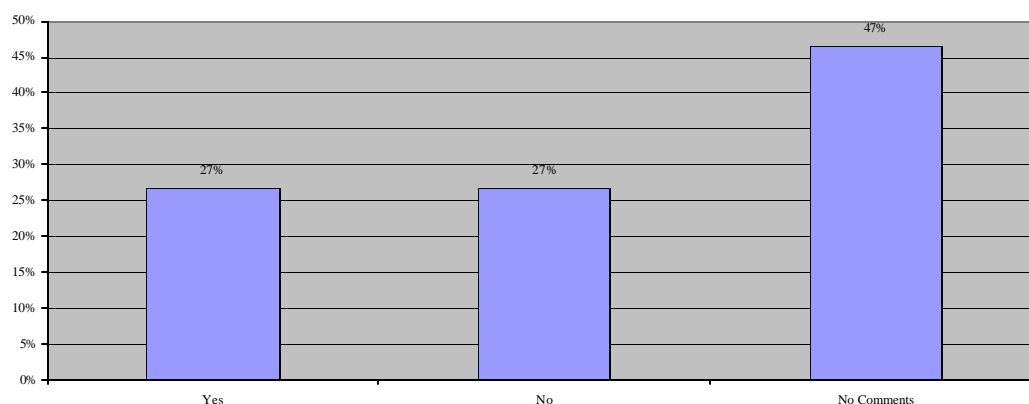
It is recognized that for the EPAs negotiations to be successful, the institutions need to improve efficiency. For instance, the ECOWAS secretariat should complete its internal reform towards becoming a Commission and eventually increase its staff in quantity since meetings and missions overwhelm them. The mandate of ECOWAS has enlarged from economic integration to peace and security. There are more issues to deal with for the same institution.

Another problem raised that is affecting the negotiations is the absenteeism of high level or ministerial level officials to some key meetings. In these situations, no progress can be done since no decision can be made. This was the case with meetings dealing with investment, competition and development concerns. It seems that the problem is related to tight agendas and some political unwillingness. This problem is also observed at the national level. The attendance to the national committee meetings is very low. In this case, it seems that there are funding problems for these meetings. If there is no financial resource to organize the meetings, the attendance is low and the agenda is not moving.

In terms of impact studies and needs assessment, some shortcomings were observed. Although the impact studies were completed, there was no detailed follow-up to dig up further at the sectoral level and analyze the needs. The problem raised here was related to the lack capacity in terms of expertise but also in terms of funding.

As Figure 41 indicates, it is not obvious whether the countries have assessed their development matrix. However, it is evident that most countries could still be doing their assessment reinforced by the fact that the region is currently working on a regional upgrading programme based on country needs assessments that is yet to be completed.

**Figure 41. Whether Country assess its Development matrix needs**



In this respect, the region has not yet presented its needs for improving the production sector (competitiveness, capacity building, productivity). The WAR is currently working on a regional programme for upgrading the West African economies to be ready by the first quarter of 2007. This programme is being prepared at the national levels and will be compiled to feed in to the regional scheme. This programme is meant to provide the detailed needs assessment for the upgrading of economies and budget requirements for implementation. A problem may arise since the process may take some time due to the two-stage process (national-regional).

### **EPAs Ratification and Alternatives**

Although it is not clear whether the organization or the states would ratify or not the EPA, there is a general agreement that once it is signed the ratification will not be a problem. In the latter situation, WAR Parliamentarians have been sensitized to the EPA issues during a regional seminar. It should be noted that they are not part of the committees following the negotiations. This calls for scaling up of the briefing sessions for the parliamentarians.

From the discussions, the options for an alternative to the EPA are numerous going from unwillingness to sign to a conditional EPA. Generally speaking, the region appears willing to respect and defend its solidarity in the face of an EPA that does not address all their concerns. But the sub-region is also aware that these are negotiations and there are implications for the different options. Therefore, as a way forward on the alternatives, one suggestion is to completely refuse to sign the EPA and then live with the EBA for LDCs and let the developing countries compete with the rest of the world. This approach would like to explore a solidarity concept that takes into account the different

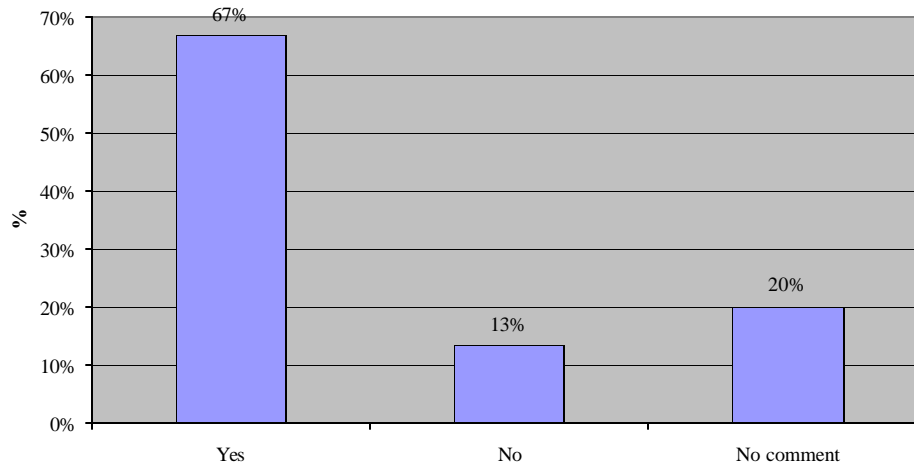
stages of development of the WA countries. **An impact study should analyse the costs and benefits to developing countries of not signing the EPA.**

On the question of the deadline for concluding the EPAs, one suggestion is to delay the signature of the EPA for 6 months and rush the negotiations schedules. Another option is to negotiate for an extension of the derogation under article XXIV and a longer implementation period of 15 to 20 years. Still another option is to negotiate a derogation to article XXIV for 5 to 10 years before signing the EPA, since the DDA negotiations are suspended. At this point, it is important to note that there were several issues raised with regard to the connection between the EPA negotiations and the WTO. Some thought that rather than constrain the EPA negotiations, some effort should be made to amend Art. XXIV. Another point raised was that given the slow pace of the WTO negotiations, it was unnecessary to rush the EPA negotiations since the outcome had to be WTO consistent. The view was also expressed that there was no need to be concerned about the extension of the current WTO waiver because the lack of an agreement would not leave ACP countries in any difficulty since they were hardly benefiting from Cotonou preferences due to market entry difficulties and rules of origin problems. There was also concern that the EPA outcome would be WTO-plus because of the insistence of the EU on including services, investment, competition policy in the EPA, while trying to protect some of its own service sectors.

There was also discussion to sign a conditional EPA, which would clearly include some commitments to address the detailed issues of interest to the WAR (i.e. production sectors, development issues among others). The tariff dismantlement should be done progressively according the progress made on the implementation of the commitments. This is a kin to the discussion on development benchmarks, which must be met in the WAR before implementation of different schedules of the EPAs. A transparent mechanism of monitoring and evaluation should be set up to follow-up the progress on the level of trade liberalisation and on the level of development issues. The signature of the EPA in such a case would be to engage both parties in a non-reversible process in order to move forward. Delaying more will just delay the development process.

67% of the participants from West Africa are in agreement with a full exploration of alternatives to EPA. However, there were differences of opinion on whether options and alternatives to EPAs should be explored. While some thought that there was no alternative to concluding the EPA negotiations while seeking maximum flexibilities, others thought that options should be explored. One view was that Everything But Arms should be extended to non-LDCs while others who opposed the conclusion of an EPA agreement confessed to not having thought about alternatives. One issue on which there was some concern and lack of clarity was on what would happen if some member States did not ratify an eventual EPA.

**Figure 42. Whether alternatives to EPA be fully Explored**



### **The case of Burkina Faso**

In Burkina Faso, a national committee that includes the government, the private sector and civil society follows the EPA negotiations. The Ministry in charge of Trade ensures the coordination for the negotiations.

As of now the country main concerns are the upgrading of the economy and the enhancement of competitiveness, which include capacity building and the development of productive sectors. The views of the administration and the private sector are in support of the EPA but with some conditions whereas the civil society is against it as it is now.

Among the issues raised, the coordination is difficult due to lack of funding for meetings and sensitisation activities. As of now, it should be noted that a few meetings were held at the national level which explains some gaps of awareness on the issues at stake in the EPA negotiations. Attendance to these few meetings is a problem. One is in preparation with the support of OIF in order to sensitise the key players in Burkina Faso.

Further, it appears that there is not much coordination between the Ministry in charge of trade and the Ministry in charge of budget and finance. The latter participates to meetings of the RPTF and it seems that there is no much consultations between the two departments for coordination purposes.

Concerning the other players (private sector and civil society), although they are part of the national committee, they feel left aside in the process. There is a kind of loss in ownership of the process expressed by the private sector. There is a feeling that the national administration should take the lead in involving them and circulating all the information related to EPA. As for the civil society, they seem to be organized and very active with the support of OXFAM and ROPPA. They even organized a demonstration

against the EPA during the last SIAO (Salon International de l'Artisanat à Ouagadougou), which took place at the end of October 2006.

Despite the efforts deployed by the administration, it should be noted that there is a major problem in communication and sensitisation at the national level. Besides, the need for detailed needs assessment expertise are requested in order to get the realistic state of play for the adjustments objectives. Expertise and funding for the conduct of a detailed needs assessment is lacking. Consequently, the national administration relies on the UEMOA Commission and the ECOWAS Secretariat for the upgrading programme. Generally, there is a perception that the two regional institutions handle the EPA exclusively. As a consequence, these institutions are responsible at all the levels of intervention related to the negotiations.

On the alternatives, generally delays for both the signature and the implementation period were suggested on the ground of the registered delays in the negotiation process and the suspension of the WTO negotiations. A suggestion was made to sign the EPA in order to get an irreversible commitment from both parties under the condition that clear development commitments from the EU are stated along a transparent monitoring and evaluation mechanism.

## Conclusions

The general perception is that the EPA negotiation process is lagging very much behind the agreed roadmap. Consequently, many delays are registered and will be translated in to delays for the signature of the agreement. More time will be needed for both the negotiations and the implementation period. The delays are basically due to various shortcomings related to the issues at stake, to the process itself and to the preparedness of the countries and regional institutions.

Concerning the issues at stake, the main problem resides on the disagreement on the way of handling the development concerns of the West African Countries. African countries are reluctant to open their barriers if nothing concrete is undertaken to upgrade their economies and enhance their competitiveness. This issue allows us to make a link with the negotiating process problems. Within the negotiating process, the structure dealing with development concerns, the Regional Preparatory Task Force (RPTF) has a mandate and operational problems. There is a misunderstanding on the mandate from both parties that translates into a weak operation of this RPTF. It was suggested that the RPTF be a permanent structure with an operational budget and a clear mandate, which could entail some commitments in the negotiations. In addition, other issues at stake that pose a problem are the said Singapore issues (Investment, competition policies) and the compensation mechanism.

In terms of the negotiating process, one of the problems relies on the number of structures and committees following the negotiations. There are various committees at the regional and national levels. Most of the time, since the two West African regional institutions have been mandated to negotiate for the region, there is a tendency for the national institutions to rely completely on the two regional ones. This tendency is

reinforced by the lack of awareness to the EPA and its issues at all the levels at national level in the general population. There should be more sensitisation on the issues at the national levels.

Besides, the various committees following the negotiations are not well organized and operational. This can be noted through the number of meetings organized and the level of participation in terms of attendance and level of representativity at important meetings. At the national levels, we can note that the private sector and the civil society although they are part of the committees are not on top of the issues.

In terms of preparedness, it was stressed that regional integration is not yet a reality in West Africa. Further, a need was expressed for more detailed impact studies and needs assessment. Therefore, efforts should be put at strengthening the regional integration process before signing the EPA, in parallel to the upgrading of the West African economies and capacity building.

## Regional Review: ESA-EU EPA Negotiations

EPA Negotiations between ESA and the EU commenced on February 7, 2004. These negotiations have made some progress since the last Council meeting in Kigali in May 2006. The legislative mandate for this review emanates from the Provision of Article 37.4 of the Cotonou Agreement which stipulates that “The Parties will regularly review the progress of the preparations and negotiations and, will in 2006 carry out a formal and comprehensive review of the arrangements planned in all countries to ensure that no further time is needed for preparations for the negotiations.”

In order to carry this comprehensive review of the level of preparedness and state of play of the negotiations at the ESA a region, a questionnaire survey was prepared encompassing areas of:

- Outstanding issues,
- Major obstacles in each of the outstanding issues, comprising of core objectives and principles, regional - - -
- Integration trade in goods and services, institutional and legal issues and other relevant issues,
- The pace of the negotiations in accordance with the road map,
- Development - facilitating measures,
- Levels of reciprocity,
- Duration of transition period that is seen as most appropriate,
- Concessions expected from EU in terms of market access,
- Necessity for additional time for conducting effective negotiations,
- Sufficiency of resources for timely completion of the negotiations,
- And finally the necessity for exploring alternatives to EPA.

The above set of questions were administered to a wide range of stake holders encompassing trade officials of governments, trade committees of national parliaments, chambers of commerce, private sectors, as well as a wide spectrum of Non State Actors. Their response were therefore tabulated and collated or grouped on basis of similarities of responses. The statistics obtained from the survey are discussed and analysed in the remained of this report.

### Overall assessment of the negotiations

The seems to be reasonable consensus that at the sub -regional level, ESA has been able to agree on most aspects of the negotiable issues in five out of the six clusters. It is only in services where some felt that more ground remains to be covered. A draft services text has also been completed but it is still to be considered by the member states. Yet, even in market access cluster where there was confidence that a lot of ground had been covered in terms of principles, objectives, scope and framework of phase in of the FTA with the EU, it was apparent some work still remained to be done. And it is this remaining work where the real issues lie. So the progress that one might see to be formidable, is actually limited when one considers the protracted negotiations and preparations that will have to be undertaken with respect to the following incomplete areas:

- The finalisation of the work on common external tariff (CET) at COMESA level that will eventually be offered to the EU. This is more complicated because the CET discussions do have implications on COMESA members such as Egypt, which is not negotiating the EPAs. In other words, the CET discussions are supposed to be driven more by the regional integration agenda rather than the EPAs agenda. Given that these two processes have different dynamics, resulting in different speeds, it is clear that this is a major issue that could have an implication on the final outcome of the market access.
- Conclusion of the sensitive regional list is also a challenging issue given its link to the broader integration agenda in COMESA. In deed, the regional list of the sensitive products is currently with the member states, which is an important achievement, but it needs to be endorsed at the regional level. Yet, even if this list is concluded, unless the principles of what constitutes substantially all trade in EPAs are not clear, it will be difficult to see how the negotiations with the EU will proceed.
- Other difficult areas in the market access cluster include rules of origin, safeguards, SPS and TBT. There is concern as will be seen later in this chapter that the work in these areas is not moving forward as fast as it should. The limited speed is attributed to the regional negotiations rather than with the EU.
- Discussions on CAP reforms impact on ESA market access in the EU. Concern was raised that the EU does not entertain the discussions on these impacts. However, from the discussions some ESA negotiators, they are concerned that there is a competition issue within the EU market and global market for ESA countries as a result of the CAP reforms.

### **Negotiations structure and strategy**

Broadly speaking, apart from concerns with the RPTF, the negotiation structure of the EPAs in the ESA region did not come out as an area that could be impeding progress. Moreover, there was satisfaction with the negotiations strategy that the sub-region has been employing, a fact reiterated in the November 2006 RNF. The sub-region has been able to take leadership on all aspects of the negotiations and have made the EC respond to its positions. However, this strategy has not been in application across the board given the lack of progress in services. Two issues emerge with respect to the issue of strategy. Firstly, given the limited national capacities and the competition for resources, it is not clear how the sub-region will be able to maintain the scope and speed of the issues that it is pro-active on. This means that if the ESA region is to reap maximum benefits from this strategy, it needs to be able to support countries to prepare their national positions and at the same time hold parallel-dedicated sessions to form the regional positions. The second issue is that this strategy has not been applied across the board on all the clusters. The lack of pro-activeness in the services sector is indicative of the internal dynamics of the grouping that countries have to be prepared to deal with. However, the fact that the ESA EPA basis is the EBA it eventually may be possible to reach agreement in a faster way when discussions on services start.

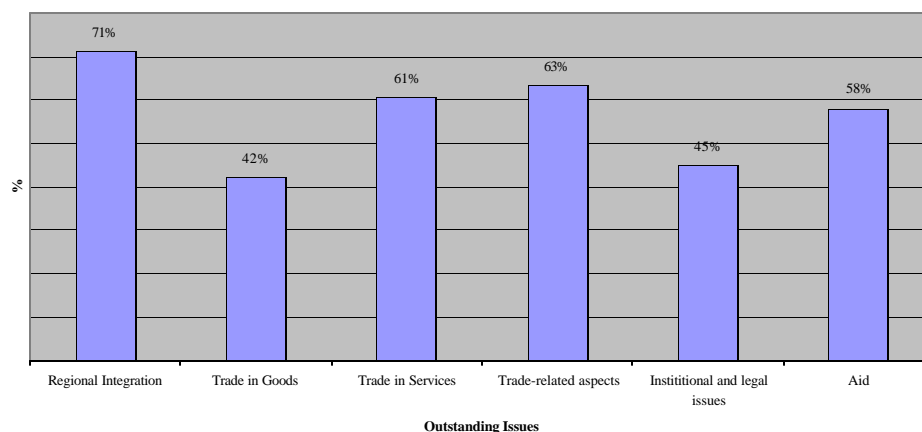
Several ways came across as avenues through which the ESA group negotiating strategy could be improved. These areas for improvement are indicative of where some of the countries see weaknesses. The areas that could be improved include more representation

in the NDTPF, technical capacity building including studies to inform negotiating positions. The sub-region has also identified as a weakness the delinking of the regional programming of the EDF by the IRCC with the ESA development cluster as a constraint. In this regard, it suggested there is need for better alignment of the EDF programming with the development cluster work. In addition to the difficulties of the parallel tracks of the IRCC and ESA development cluster, respondents were also concerned with the mandate of the RPTF as it is today. The concern revolved around the realisation that the RPTF have different mandates from those of other regions. In ESA, the RPTF is basically an informal negotiating forum where contentious issues are ironed out in a non-binding manner. But in the other sub-regions, the RPTFs have the role of programming the EDF. In this respect, the harmonisation of the terms of reference of the RPTFs with those of the other regions is seen as important to better alignment of the development matrix to the negotiations.

### **Outstanding issues**

Pertaining to the identification of outstanding issues in the current EPA negotiations, development concerns, broadly defined emerged as critical in the negotiations. 71 % of the respondents in ESA indicated regional integration to be an issue of major concern. It was evident from the discussions that regional integration concerns have not been adequately dealt with in the negotiations. Thus, the expectation that EPAs would build and deepen regional markets was not felt to be on the right track to being achieved given the direction and pace of the negotiations. Beyond the pressure that EPAs will impose in the ESA region integration agenda, the lack of market deepening activities, one year to the conclusion of the negotiations made regional integration an issue where much remained to be done. Still, there were other key issues of concerns, which emerged on a closer discussion with participants in the National Development Policy Trade Forums (NDTPF) at country level. Discussions with members of NDTPF in one of the countries identified many key outstanding issues for negotiations in the remaining period. These issues span across all the six clusters. As such a lot of work still remains to be done if the EPAs are to be concluded by end-2007. The specific issues identified: the linkage of development programmes to trade liberalisation process; the finalisation of the work on the common external tariff for COMESA customs union; the conclusion of the sensitive list for the region; preparation of an offensive position to deal with competition to be occasioned by CAP reforms; development of the EPA text on services and finalisation of important protocols on rules of origin, safeguards, SPS and TBT.

Figure 43. Outstanding issues in the EPA negotiations (frequency)



Given the outstanding issues and discussions with the stakeholders, the question of preparedness to sign an EPA there were indications that there was a link to the outcome of the Doha Round. Majority of the respondents cited the suspension of the Doha Round as an impediment to the conclusion of the EPAs negotiations. This was mainly because there was an assumption that the Doha Round would have implications on the final EPA agreements. According to some of the respondents, it was always assumed from the beginning that the DDA would be concluded before the EPAs negotiations. In this connection, given the suspension, there is fear that commitments will be done under the current rules. This is an issue of concern and hence there were suggestions that an extension of the WTO waiver be considered an option in the event that an EPA is not signed by end of 2007.

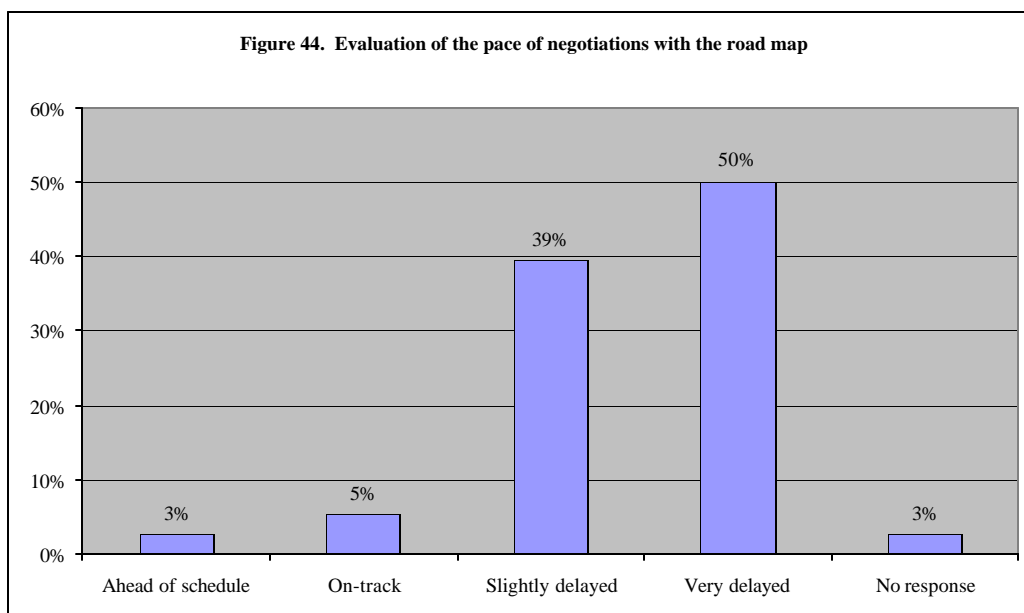
The conclusion of the EPAs in time notwithstanding, respondents did also identify some key institutional and legal issues that have to be addressed before the sub-region signs an EPA. In particular, within ESA, at the RNF and in at least one of the countries visited, the status of ESA was also considered as a key issue in that the configuration is not a legal entity. Besides, ESA lacks a regional integration programme of its own. In this regard, some of the members of the NDTPFs in ESA raised the issue of the option of converting ESA to COMESA. This is seen as one way of ensuring compatibility of ESA EPA with the COMESA Customs Union.

### Negotiations progress vis-à-vis the roadmap

On evaluation of the pace of the negotiations given the agreed work plan/road map 50% responded very delayed while only 3% expressed the negotiations as being ahead of time (see Figure 44). However, the majority of those interviewed alluded such delays to factors such as missed dedicated sessions due to lack of resources on the ESA side while the EU side exacerbated the delay by not responding on time to ESAs non papers as elaborated below. There are many areas contributing to the delay including, non finalization of CET at COMESA level, non conclusion of sensitive regional list; rules of origin, SPS and TBT as well as the CAP reform impact on market access.

On the substantive side, other major causes of the delay was attributed to EU's intransigence or non acceptance of the development dimension as the core and heart of the negotiations; additionality of resources for the implementations of EPAs except through the utilization EDF resources, which at best means, a diversion of resources from EDF projects which have been identified through the National Indicative Programs and Regional Indicative Programs.

Concretely, there are significant challenges that relate more to the missed deadlines. And as noted above, the responsibility of the failure to meet the deadlines was attributed to both the region and the EC partners. However, the EC is seen to be more responsible on this issue of deadlines rather than the ESA member states. Thus, crucial dedicated sessions have been missed due to lack of resources. The EC came for strong criticism due to its delays in responding to ESA's non-papers. The Fish Framework Agreement was cited as an example where serious progress could have been made had the EC been more responsive. There was also a strong feeling, especially among some respondents that the ESA countries were also responsible for the delays to be in tandem with the negotiations roadmap. The countries were cited as not always submitting their positions on time. The Secretariat was also mentioned for not always being able to be technically prepared.



Specific cluster level challenges were highlighted to be hampering the negotiations. In the development cluster, the delay to conclude a regional development matrix continues to be an issue. This indicates that the responsibility is more on the side of the ESA countries than the EU. And while development is seen as crucial to making the EPAs a success, the sub-region has been unable to conclude its regional development matrix. In the development cluster, the delay to conclude a regional development matrix continues

to be an issue. However, at the national level, it is comforting to see that 79% of respondents indicated that their countries have completed their Development matrix needs.

The other challenge within this cluster is that divergence remains between ESA and EC of what constitutes development. There are clear differences in the approach of negotiations between the EC and the ESA countries on the development cluster. At the ESA's Regional Negotiating Forum where part of this review was conducted, there were strong feelings that the EC keeps redefining what it considers to be development, making it difficult to make progress, as this definition is important to set the principles. ESA members are therefore concerned that the question of development unless resolved will limit the rate of progress of the negotiations. In particular, there is need for clarity on the financing of EPAs. The assurances that the EC has been giving have not been strong enough to remove doubts. ESA also seems to favour the development benchmarks as important to ensuring that EPAs are development tools, a view strongly expressed at country level and at the November 2006 RNF.

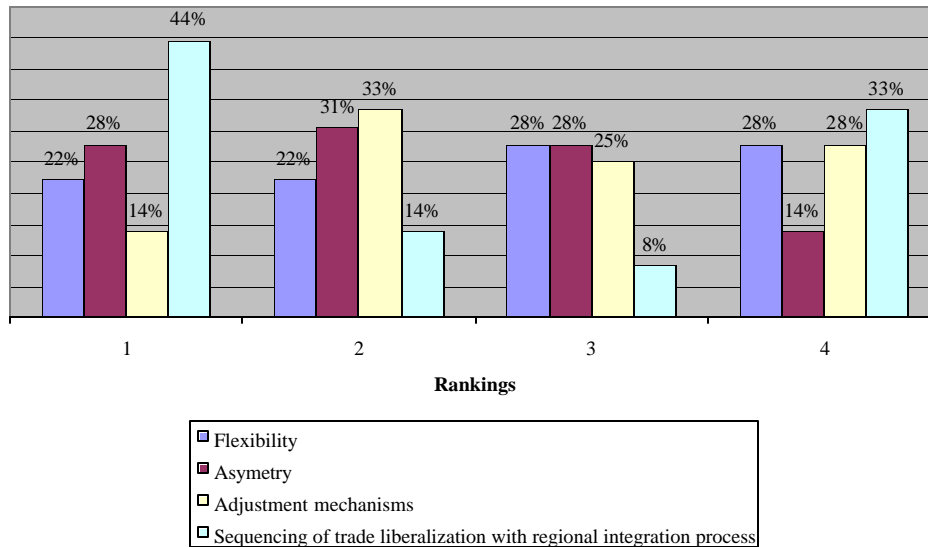
In the agriculture cluster, the main challenges that respondents advanced is the lack of a regional position on how to deal with EC's position on the CAP reforms. The EC considers the CAP reforms as a multilateral issue. Yet, the experience with the sugar protocol reforms, there will be major challenges for the ESA countries.

In the market access pillar, the challenges remain as highlighted above: delay in finalisation of the CET; sensitive regional list; and the protocols on rules of origin, safeguards, SPS and TBT. In the fisheries cluster, the compulsory landing call by ESA and opposition by the EC is a major challenge. In services, the challenge remains that there is yet to be agreement on the principles, objectives and scope for cooperation with the EC.

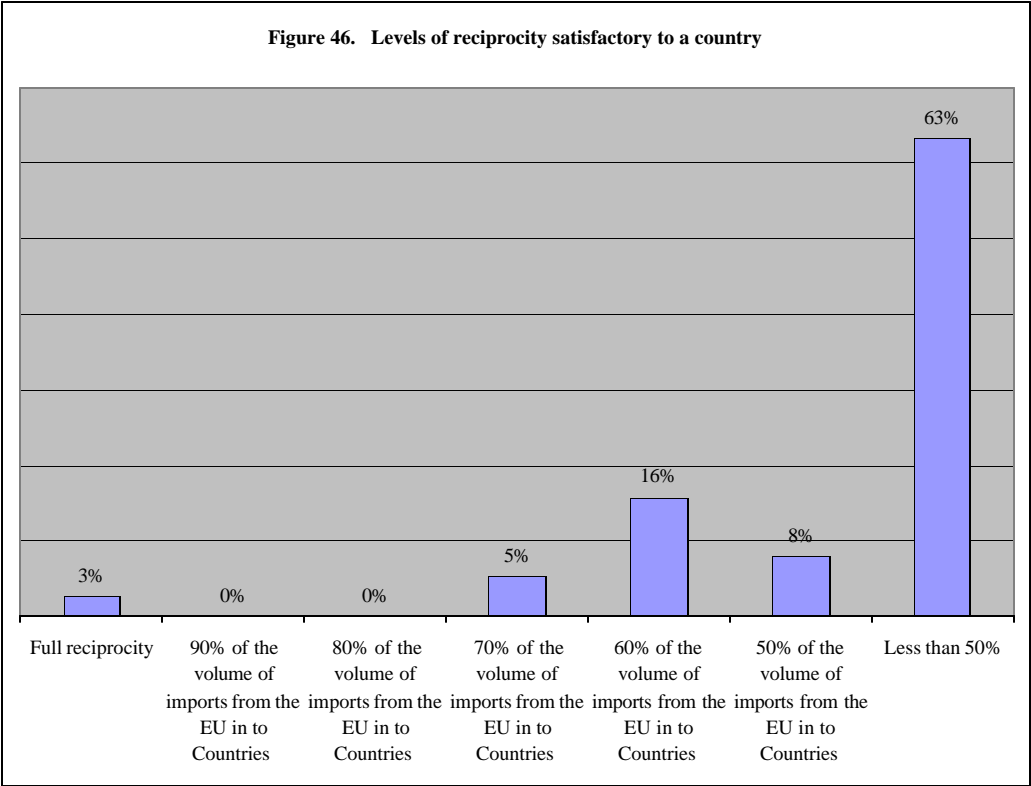
### **Development-facilitating trade related measures**

Beyond the resources in the form of aid that are expected to play a major role in enabling EPAs meet their development objectives, the respondents had been asked to rank what they consider as the most important development facilitating trade related measures. The results for the ESA sub-region are shown in Figure 45 and clearly 44% of the respondents expressed sequencing of trade liberalization with regional integration to be of paramount importance. This also happens to be a continental priority within the context of the Constitutive Act of the African Union. In this respect, respondents expressed the need for enhancing regional initiatives within ESA such as support for agriculture, services and investment at the regional level before opening them to liberalization. While asymmetry at 28 % was ranked second for the reason that any question dealing with transition period, product coverage and speed of tariff elimination should embrace the adoption of the Special and Differential Treatment of LDCs; followed by 22% for flexibility, which calls for more equitable rules that can be adjusted to take into account of specific situations; and finally adjustment mechanism at 14%.

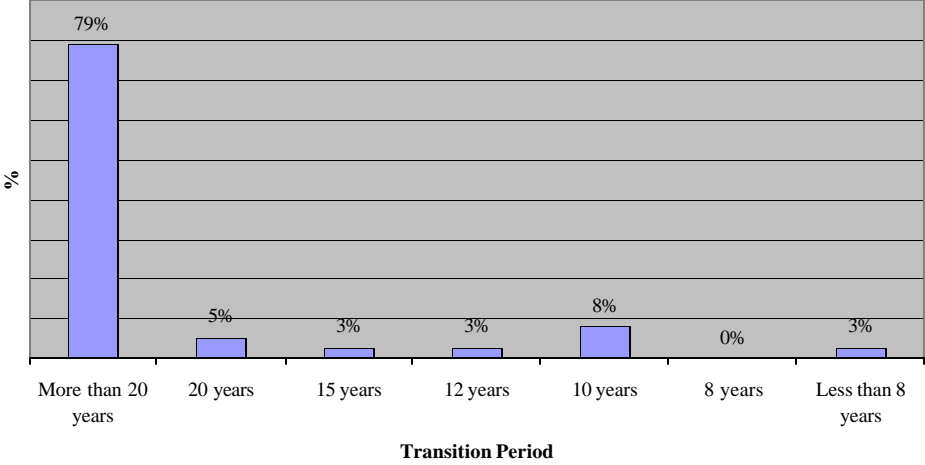
**Figure 45. Ranking the importance of the development-facilitating trade relating measures**



On the question of levels of reciprocity, 63% specified that reciprocity should be set at less than 50%. They also reiterated that reciprocity should occur only when regional integration and capacity of ESA regional markets assume sufficiently robust capacity to withstand the onslaught of EU companies and industries. This was linked to the issue of preparedness of the national and regional economies to compete with the EU economies. By having a deep asymmetry, they contend this is the right transition into the global economy and as such should be also guided by programs and development benchmarks. Along with this goes the question of transition period to which 79% of respondents in ESA expressed the requirement for 20 years plus as satisfactory to their countries; while 61 % expressed their desire for a duty free access to the EU markets for ACP products as concessions expected from EU in terms of market access (see Figures 46 and 47).



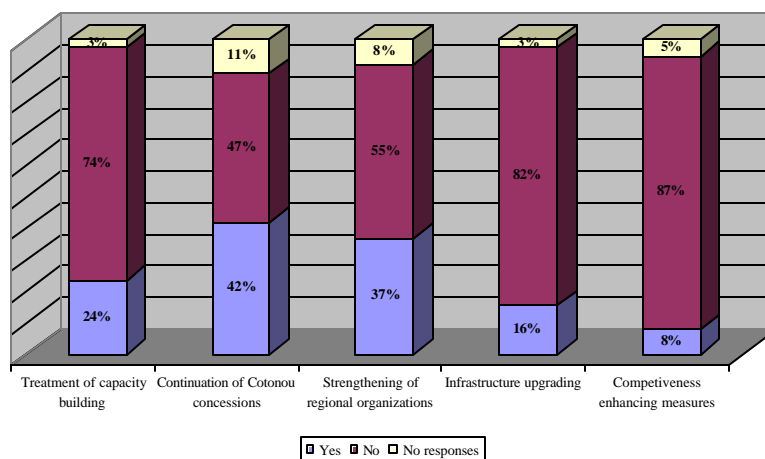
**Figure 47. Transition period satisfactory to a country (ESA region)**



## Measures required for timely completion of negotiations and implementation

ESA region considers capacity building both at the human, institutional and infrastructure level as well as competitiveness enhancing measures as *sin qua non* and effective tools for the negotiations. In these respects and querying whether the above issues have been taken into account during the process of the negotiations, 87% responded that competitiveness-enhancing measures were not taken into account, while 82% followed by 74% claimed that the vital points of infrastructure upgrading and treatment of capacity building, respectively were not taken into account.

Figure 48. Whether negotiations have taken account of these issues

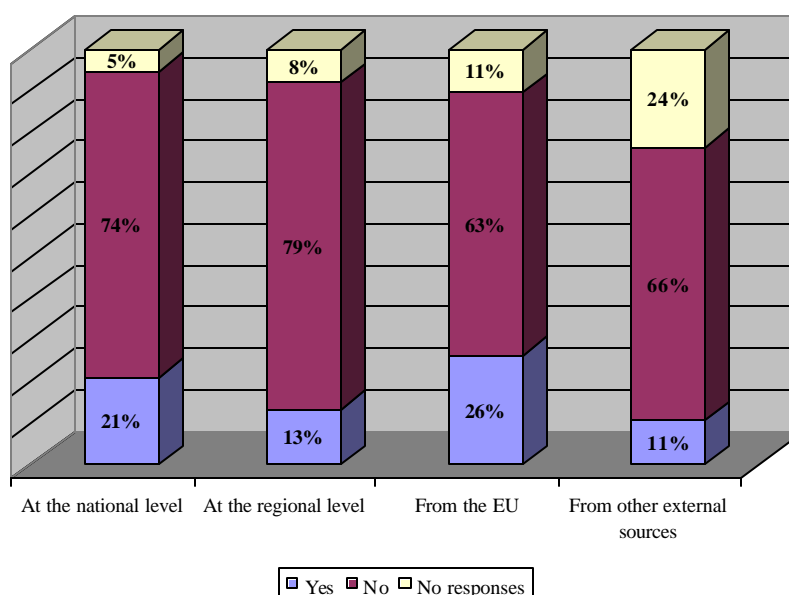


It was therefore not surprising given this record and level of capacity building that 97% of respondents expressed the necessity for more time in order to augment their capacity for negotiating effectively and prepare their economies for the implementation stage. This latter point on the preparedness to implement is strongly indicated by the response of three-quarters of the respondents indicating that their region has no capacity and is not prepared to timely conclude an EPA agreement.

Discussions on what requires to be done to conclude in a timely manner the negotiations indicated that funding is a major issue. Availability of sufficient funds for the timely conclusion of the negotiation, has always been a subject of intense debate given the limited funding for the EPA process, both at the national and regional levels which is largely responsible delays in the preparations for the negotiations and also for the missed or skipped dedicated session on key issues. Funding of EPA preparatory process at national and regional level was seen to be critical to ensuring adequate preparation for negotiation with the EC. This will avoid the skipping of dedicated sessions on key issues. In illustrating the gravity of this situation 74% of respondents lamented the lack of resources for conducting the negotiations at the national levels; 79% at the regional

levels; while 63 % and 66 % expressed respectively that no sufficient outlay of funds came from the EU or from other external sources (see statistics in Figure 49). This situation was seen as a debilitating factor, which militates against the progress of the negotiation. It is therefore obvious from responses received that 79% of them are of the conviction that ESA region, severely lacks the capacity to effectively conclude the negotiations on EPAs on a timely basis. The limited funding of the EPAs process therefore needs to be enhanced. At the same time countries will be able to be more prepared at the NDTPF level, making the regional negotiating forums work speedier.

**Figure 49. ESA region view on whether measures and resources provided to conduct the negotiations have been satisfactory**



Respondents also felt that the ESA Secretariat could be strengthened given the outstanding issues yet to be resolved in the negotiations. In addition to the improvement at the national and secretariat levels, the participation of the non-state actors came for mention. It was felt that while the EPAs process is supposed to be all-inclusive, more could be done to facilitate the participation of the non-state actors.

Concerning the implementation of agreed EPAs, several ideas were put across on the measures necessary. Again and by way of emphasizing the requisite resources for effective preparation for negotiation, respondents placed inordinate emphasis on the necessity for several important measures, which they think, are absolutely necessary for the successful implementation of agreements reached. These comprise of: trade capacity building by 82% of the respondents; regional measures (84%); national measures at 84% and funding and financial assistance expressed by 89% of respondents as Figure 50 clearly illustrates. These very high percentages clearly indicate the dire situation brought

about by the scarcity of resources to prepare the ESA economies for the implementation stage.

**Box 2**

**Negotiations process in Kenya – the inclusiveness question**

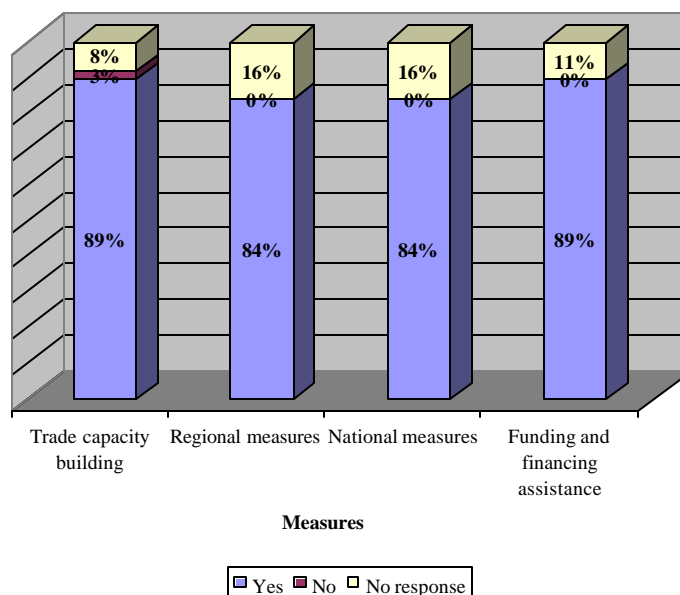
The National Development Trade Policy Forum (NDTPF) comprises both the government and the non-state actors. In particular, the private sector and the civil society organizations are formally recognized as members of the NDTPF and they have participated in the formulation of the national positions on EPAs. In terms of inclusiveness, Kenya was a good example of where the process has been inclusive and participatory. In deed, in the country's own assessment, the ESA-EC EPA negotiations are seen to have been inclusive.

However, there were two elements that could be strengthened as they have important bearing to the conclusion and subsequent implementation of the EPAs. First, the parliament, through its committee on trade and finance is supposed to be updated on a regular basis. However, it is over a year now since the last briefing. Given the limited time remaining towards the deadline of end-2007, it is paramount that the legislative arm of government be fully briefed as at the end of the day, the final authority remains with the Parliament.

The second important observation regards the level of participation in the negotiations by senior government officials. The Ministry of Trade and Industry has taken charge of its responsibility as the driver of the negotiations (forming common position) and participating in the formulation of the regional position. In deed, Kenya has been proactive in offering to take a lead in those areas where regional preparation seems to be slow. However, the most senior officials do not represent the Ministry of Finance that is crucial to the finalisation and implementation of the final agreement. Key drivers of policy at the national level from the Ministry of Finance are less engaged in the EPAs negotiations process. This is a concern because anticipation of reforms has to be taken account of the national macroeconomic frameworks that are prepared by the Ministry of Finance.

Other key measures identified included ensuring timely ratification. In this regard, it was apparent that most countries have a clear ratification procedure that will be followed before signing of the EPA agreement. Essentially, the EPA agreement will be sent to the Cabinet where if approved will be forwarded to the National Assembly as a Bill for debate and ratification. Other issues that will be critical to the implementation of the agreement include the mainstreaming of EPA issues to COMESA, political will and the development and adjustment support resources.

**Figure 50. Measures necessary to implement the agreements reached**



### **Coherence of EPAs with regional integration processes of ESA countries**

The Eastern and Southern African region is known for its multiple regional integration initiatives. But varying objectives drives all these initiatives. This means that the current integration processes cannot be overlooked or assumed in the EPAs process. It was important therefore as part of the review to assess the perceptions of the NDTPFs on the implications of EPAs to the integration processes in which their countries are part of. And so, with respect to coherence in regional integration process and EPA commitments, half of the respondents expressed their concern that there is no coherence. They argued that regional integration is an African priority. It is also seen as the prelude to the establishment of the African Economic Community and in accordance with the Constitutive Act of the African Union. They called in this respect for EU to fully recognize this and respect these measures. EPAs therefore should be supportive of this process and it is for this reason ESA countries wish to see the reinforcement of regional integration being treated as a priority. This also explains why regional integration was perceived as a key outstanding issue in the sub region. For this reason, it is imperative that the development dimension of regional integration be seen as overriding the rationalisation question, a view that was evident in discussions with ESA negotiators.

### **Alternatives to EPAs and Article 37.6 of the Cotonou Agreement**

What is the view of ESA countries with respect to Alternatives to EPAs? Opinion was sought on whether alternatives to EPAs should be fully explored. The response was that 84% of the respondents were positive that this should be done. An alternative that is based on sound research and that critically examines the benefits of a contractual EBA, a GSP+, including a WTO+.

## Conclusions

Based on the interviews during the ESA RNF in November 2006 and follow-up country missions, and analysis of the results of the survey conducted among NDTPF members in ESA countries, it's amply evident that the conclusion of EPAs will not only miss the agreed time frame as per the Road map, but pertinent and strategic issues vital for the development of the of ESA countries still remain un-addressed by EU in a manner that is satisfactory to the former.

This concern was amplified by the Declaration of the Fifth Meeting of ESA Ministers on EPA Negotiations, held on November 14, 2006 in which they unequivocally declared, "As cross-cutting and sectoral issues, development is a priority for the ESA region and must remain a key element in EPA negotiations with EU. If this condition is not acceptable to the European party, continuation of negotiations in other areas would be compromised and will have to cease." This declaration seems to serve as a clarion call for contemplating for an alternative to EPA. In other words the lack of assigning the requisite priority to the development dimension by the EU as opposed to its inordinate focus on trade liberalization with the implicit assumption that the trickle from a robust trade will eventually boost development remains the fundamental point of divergence between the negotiating parties and may even derail the entire process.

The lack of emphasis on adjustment costs emanating from the implementation of EPAs, trade liberalization and the attending fiscal challenges that will open gapping holes in government budgets and expenditures, are also other detrimental factors that ESA countries expressed in uncertain terms. This situation is further exacerbated by EU insistence that the quest for additionality of resources for the implementation of EPA be met through the utilization of EDF resources which at best means, a diversion of resources from EDF projects which have been identified through the National Indicative and Regional Indicative programmes.

It was also amply clear that regional integration remains an issue of paramount concern for the ESA region and EPA should be seen bolstering such effort and not undermine it. Thus in sequencing trade liberalization and regional integration the jury expressed that regional integration remain a continental priority; which is also a priority within the context of the Constitutive Act of the African Union.

Another area of great concern remains the human and institutional capacity constraints facing the ESA countries. This should not be underestimated. In many African countries, the trade officials who are responsible for negotiations with the EU are also responsible for WTO negotiations, regional trade negotiations and even similar reciprocal arrangements with other OECD countries. This means being very thin and too stretched on the ground. In contrast, the EU has given the EC a clear and legal competence in trade matters, has an institutional structure for the collective formulation of trade policy and full teams of experienced officials dedicated to the conduct of negotiation with the whole of the ACP States. In this context, it is of paramount importance that ESA region both at the national and regional levels appropriate national policy responses and it goes without saying that this could only be done if the requisite structures are in place for augmenting the human and institutional capacities.

## **Annex I: Terms of Reference**

### **Implementation of Article 37.4 of the Cotonou Agreement: Hiring of a consultancy to assist ACP regions in the conduct of a comprehensive review of EPA negotiations**

#### **Terms of Reference and Preliminary draft budget**

#### **Background**

1. Provisions of Article 37.4 of the Cotonou Agreement state that “*The Parties will regularly review the progress of the preparations and negotiations and, will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries to ensure that no further time is needed for preparations or negotiations.*”

#### **Objectives**

2. The purpose of the study is to assist the six ACP negotiating regions to prepare their discussions with the EC on the formal and comprehensive review of the EPA negotiations in accordance with the Article 37.4 of the Cotonou Agreement and as agreed between the parties to the negotiations.

#### **Parameters**

3. On the basis of the Decision No.2/LXXXIII/06 of the 83<sup>rd</sup> Session of the ACP Council of Ministers held in Port Moresby from 28 – 31 May 2006 and the proposal by the ACP Ministerial Trade Committee on the comprehensive review of EPA negotiation:

4. The review should be all-inclusive and consultative with all stakeholders including non-state actors and parliamentarians and should be conducted at national and regional levels. The results will be consolidated and discussed at all-ACP level before the commencement of the joint ACP-EU review. The review should include, *inter alia*, the structure, process and substance of the negotiations, the trade and development dimensions, as well as the capacity and preparedness to conclude EPAs. Development benchmarks should be developed to assist the exercise and in the negotiations as a whole.

#### **Consultant tasks**

5. The consultant assignment will cover the following:
- (i) Assessment of the state of play of the negotiations, including outstanding issues and major obstacles (core objectives and principles; regional integration; trade in goods and services; trade-related aspects; institutional and legal issues and other relevant issues);

- (ii) Assessment of the EPA negotiation work plans/road -maps up to the end of 2007;
- (iii) Evaluation of the proposed development-facilitating trade-related measures: such as flexibility, asymmetry, adjustment mechanisms, and the sequencing of trade liberalisation with regional integration processes; particularly taking into consideration of the provisions of Article 37.3 of the Cotonou Agreement which provides for priority treatment of capacity building, strengthening of regional organisations, infrastructure upgrading, and other competitiveness-enhancing measures;
- (iv) Assessment of whether more time is needed to prepare for and effectively conduct the negotiations;
- (v) Assessment of measures necessary to support the timely completion of the negotiations;
- (vi) Assessment of the capacity and preparedness of ACP regions to conclude EPA agreements;
- (vii) Assessment of measures necessary to implement the agreements reached, including: status of trade capacity building measures, status of regional and national needs assessments, funding of EPA implementation in NIPs/RIPs, and the contribution of Regional Preparatory Task Forces where they have been constituted.
- (viii) Assessment of the coherence between ACP regional integration processes and EPA commitments;
- (ix) Any other negotiation-related issue that the region may consider relevant to the successful completion of the negotiation.
- (x) Alternatives to EPAs should be fully explored in particular as they relate to Article 37.6 of the Cotonou Agreement.

### **Proposed timing**

6. The project will be implemented during the period August – Mid-October 2006 and the overall study will require a total of 15 man months for all ACP regions or two and a half (2 1/2) months for each region

### **Reporting**

7. The Consultant will submit the following reports:
- (i) Inception report (within 2 weeks of the signing of the contract); the inception report will contain a description of the overall methodology and the annotated plan of the final report;

- (ii) Draft final report after approximately 6 weeks of the presentation of the inception report. A 2-day validation seminar for all the 6 review studies will be held in mid-September to examine and approve the recommendations in the draft final report will be convened at the ACP Secretariat with the involvement of all ACP regions.
- (iii) Final report within 2 weeks of receipt of comments from the validation seminar on the draft final report

### **Validation seminar**

8. The Consultant will be expected to organize a 2-day validation seminar for all the 6 review studies to examine and approve the recommendations in the draft final report. The Seminar will be convened at the ACP Secretariat in Brussels with the involvement and participation of all the ACP negotiating regions.

**Annex II: A Comprehensive Review of EPAs Negotiations –  
Questionnaire**



UNITED NATIONS  
ECONOMIC COMMISSION FOR  
AFRICA



AFRICAN UNION

A COMPREHENSIVE REVIEW OF NEGOTIATIONS ON THE ECONOMIC  
PARTNERSHIP AGREEMENTS  
*Questionnaire*

*Disclaimer: all information collected in this questionnaire is confidential and will be used strictly for the purposes of the study.*

---

*About you:*

**First and last name:** \_\_\_\_\_

**Professional title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Activities related to the EPAs:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. Which among the following do you consider to be outstanding issue(s) in the current EPAS negotiations?

- Regional integration
- Trade in goods
- Trade in services
- Trade-related aspects:
  - Investment*
  - Competition*
  - Intellectual property rights*
  - Trade facilitation*
- Institutional and legal issues
- Aid

2. List the major obstacles (political, material, logistical, other) in each of the outstanding issue(s) in (1) above?

Regional integration \_\_\_\_\_  
Trade in goods \_\_\_\_\_  
Trade in services \_\_\_\_\_  
Trade-related aspects \_\_\_\_\_  
    Investment \_\_\_\_\_  
    Competition \_\_\_\_\_  
    Intellectual \_\_\_\_\_  
    Trade facilitation \_\_\_\_\_  
Institutional and legal issues \_\_\_\_\_  
Aid \_\_\_\_\_

3. Evaluate the pace of the negotiations given the agreed work plan/road map:

- Ahead of schedule
- On-track
- Slightly delayed
- Very delayed

4. Rank by order of importance the following development-facilitating trade relating measures (from 1 to 4):

Flexibility, rank: \_\_  
Asymmetry, rank: \_\_  
Adjustment mechanisms, rank: \_\_

Sequencing of trade liberalization with regional integration processes, rank: \_\_

5. What level of reciprocity would be satisfactory to your country?

- Full reciprocity
- 90% of the volume of imports from in the EU in ACP countries
- 80% of the volume of imports from in the EU in ACP countries
- 70% of the volume of imports from in the EU in ACP countries
- 60% of the volume of imports from in the EU in ACP countries
- 50% of the volume of imports from in the EU in ACP countries
- Less than 50%

6. What transition period will be satisfactory to your country?

- More than 20 years
- 20 years
- 15 years
- 12 years
- 10 years
- 8 years
- Less than 8 years

7. What concessions does your country expect from the EU in terms of market access?

- Duty free access to the European markets for ACP products
- Continuation of Cotonou concessions
- Improvements in the Cotonou scheme. If so, on which categories of products? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Do you think the following points have been enough taken into account during the process of the negotiations?

- |                                         |                              |                             |
|-----------------------------------------|------------------------------|-----------------------------|
| Treatment of capacity building          | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Continuation of Cotonou concessions     | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Strengthening of regional organizations | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Infrastructure upgrading                | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Competitiveness enhancing measures      | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

*Others. Please Specify* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Do you need more time to prepare for and effectively conduct the negotiations?

Yes       No

*If yes, how long?* \_\_\_\_\_

10. Do you think measures and resources provided so far to conduct the negotiations have been satisfactory?

	<input type="checkbox"/> Yes	<input type="checkbox"/> No
At the national level	<input type="checkbox"/> Yes	<input type="checkbox"/> No
At the regional level	<input type="checkbox"/> Yes	<input type="checkbox"/> No
From the EU	<input type="checkbox"/> Yes	<input type="checkbox"/> No
From other external sources	<input type="checkbox"/> Yes	<input type="checkbox"/> No

11. What would you propose as necessary support measures required for the timely completion of the negotiations?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Do you think your region has the capacity and is prepared to timely conclude an EPA agreement?

Yes       No

*If no, why?* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. What kind of measures are necessary to implement the agreement reached?

Trade capacity building	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Regional measures	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
National measures	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Funding and financial assistance	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

14. Did your country assess its development matrix needs?

Yes       No

*If yes, are you looking for financial assistance from the EU?* \_\_\_\_\_

\_\_\_\_\_

15. Do you think there is coherence in your regional integration processes and EPA commitments?

Yes       No

*If no, why?* \_\_\_\_\_

\_\_\_\_\_

16. Are there any other negotiations related issues that the region may consider relevant to the successful completion of the negotiations?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

17. Do you think alternatives to EPA should be fully explored?

Yes       No

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*If yes, which ones in order of priority?* \_\_\_\_\_

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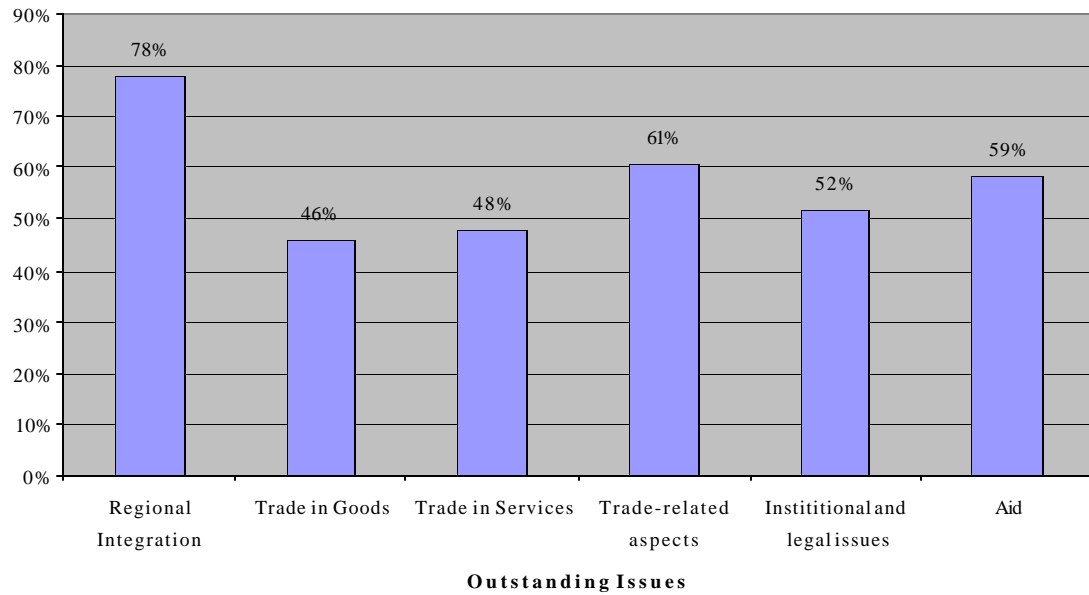
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**Thank you for your contribution**

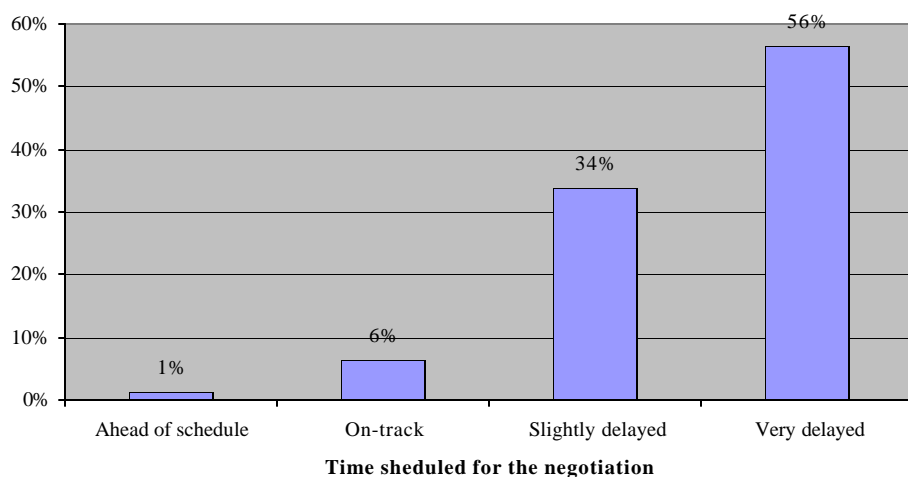
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## Annex III: Synthesised Africa ACP statistics on EPAs review questions

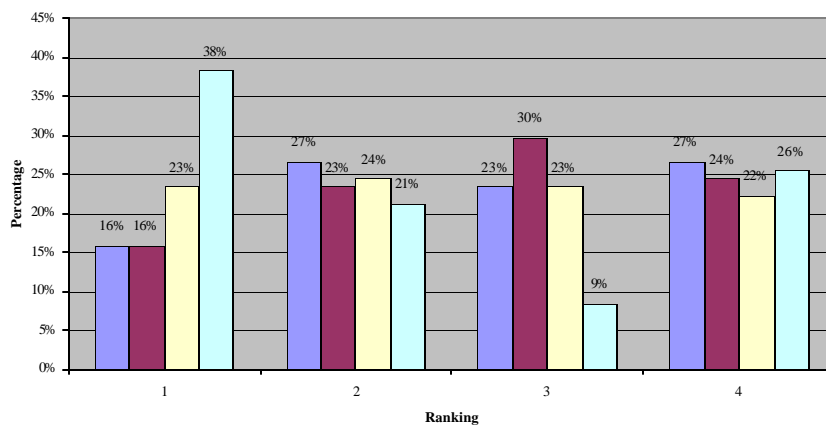
### 1. Outstanding Issues in the current EPA Negotiations



### 3.Evaluation of the pace of the negotiation

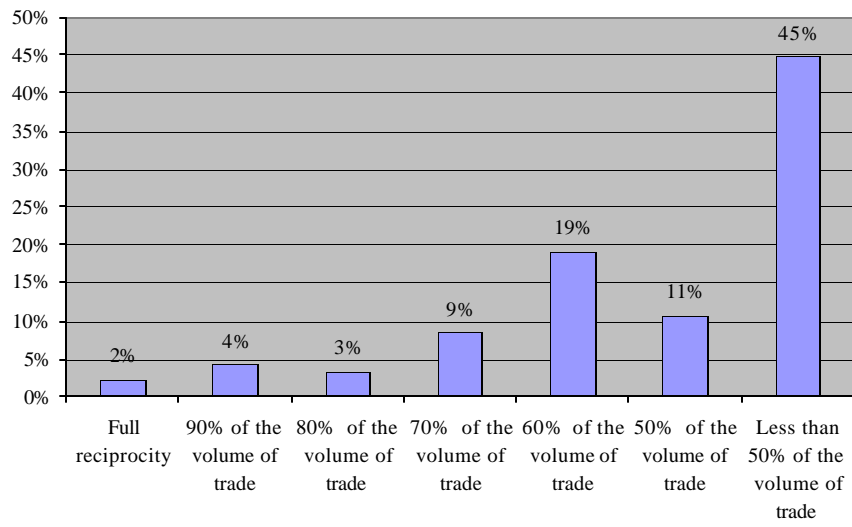


### 4.Ranking of the importance of the Development Facilitating Trade

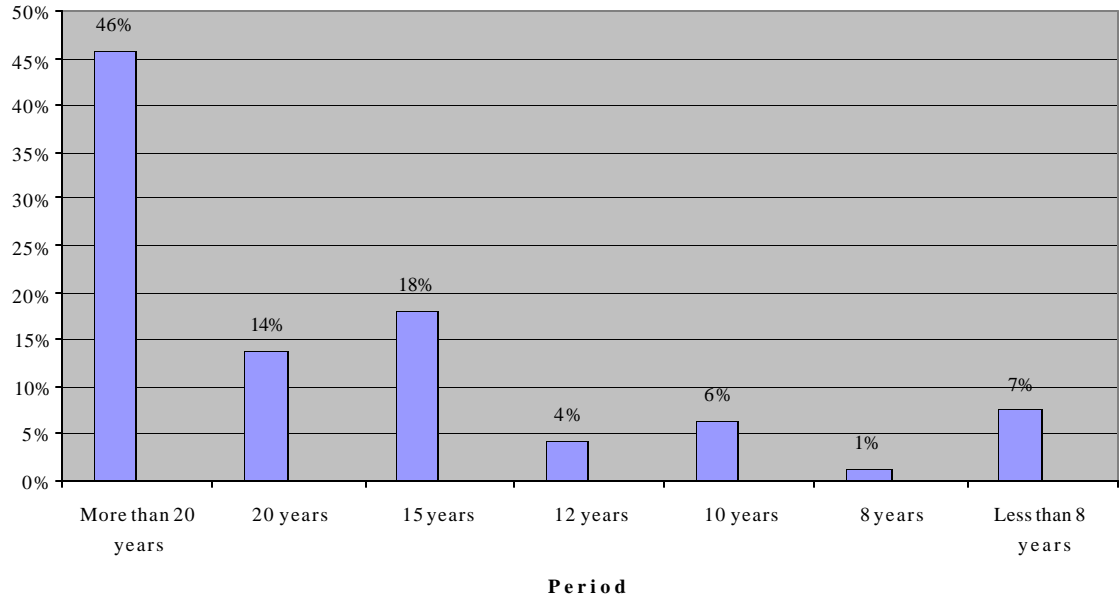


■ Flexibility 
 ■ Asymetry 
 ■ Adjustment mechanisms 
 ■ Sequencing of trade liberalization with regional integration process

### 5.Level of reciprocity in liberalisation



## 6. Preferred Transition periods



## 7. Concessions that a Country expects from the EU in terms Market Access

