



**Making EPAs work for trade and development: State of Play of the EAC-EU EPA Negotiations
and Way Forward**

**Presentation By Ms Betty Maina, CEO Kenya Association of Manufacturers to the European
Parliament: Committee on Development and Committee on International Trade on 11
February 2014**

Honorable Members of the Parliamentary Committee on Development

Honorable Members of the Parliamentary Committee on International Trade

Invited Guests ladies and gentlemen,

Good morning,

1. Thank you for inviting me to speak to you during this public hearing. I am sorry I could not join you in person but glad to make my contribution through this video link.
2. By way of Introduction, My name is Betty Maina. I lead the Kenya Association of Manufacturers - the largest business association representing the interest of Kenyan industry. Kenya is East Africa's largest economy with 42 million people and a GDP of \$40bn. Kenya is a member of the East African Community alongside Uganda, Tanzania, Rwanda and Burundi with a combined population of 130mln persons and a GDP of \$85billion.
3. My comments in this hearing are largely with regard to the EPA discussions between our region of EAC with the European Union. I am not well placed to speak about other regions comprehensively.
4. The European Union has been a key partner for EAC countries largely due to our historical ties. The EU market represents a significant part of their markets for agricultural and natural resource products at nearly €2 billion– with nearly 50% contribution by Kenya. The European Union remains a significant source of Capital goods and technology for EAC and is



a source of sizeable amount of our imports.

5. Kenya alongside her East African Community Partner States has been negotiating an EPA with Europe since 2004. For 10 years. In the beginning Kenya negotiated within a loose grouping - the Eastern and Southern Africa group, but from 2006, has been negotiating as EAC.
6. In 2007 a Framework Agreement on EPAs was agreed to which facilitated continued market access post the initial 2007 deadline. The parties embarked on comprehensive EPA negotiations since then and by now most issues have been agreed to except for a few issues
7. The most recent negotiating meeting took place in Bruxelles between 27th and 30th January 2014.
8. The Issues that remain outstanding are on the Following Subjects.
 - a. Export Taxes Clauses (art 15)
 - b. Most Favoured Nation Clause (art 16)
 - c. Non Execution and Relationship with Cotonou (Art 42)
 - d. In the Rules of Origin Chapter - specifically with regard to:
 - i. Cumulation with EAC and Other ACP States,
 - ii. Offer on the applicable Rules of Origin on a list of 15 Products and
 - iii. Revision of the Rules on Asymmetry (Art 42)
 - e. In Agriculture Chapter – specifically with regard to Agricultural Subsidies (art 13)
 - f. New Issues on:-
 - a. Tax Governance and
 - b. Consequences of EU Entry into Customs Unions with third parties
9. Since the beginning, EPAS have been viewed as a tool for both Trade and Development of the ACP States. And the negotiations have reflected this perspective.
10. But the negotiations remain unconcluded. Though the issues that remain are few, the parties have significant difference of opinion on how the remaining few issues should be handled and hard line positions have been taken. The recent Ministerial at the end of January demonstrated this difference clearly. A further meeting will be held in East Africa in March 2014 to make progress on the Issues.
11. Let me share some of my views with regard to the process and the State of play in this particular case.

- 12. Negotiations have gone on for A very long time.** EPA Negotiations have gone on for around 10 years and have faced various challenges which continue to manifest themselves. Players have changed over time with subsequent loss of institutional memory and appreciation of previous agreements.
- 13. The EPA are seen as tools of Trade and Market Access that meet the needs of Non-LDCs principally:** It was originally foreseen that EPAS would be the main instruments of (WTO compliant) Duty Free Quota Free market access for ACP countries. However various countries – the LDCs continue to enjoy duty free –quota free market access with no imminent loss of status which reduces incentives to conclude negotiations or find acceptable compromises. The impact of the anticipated carrot in development financing has not presented the anticipated incentives as no new EPA related development financing has been identified.
- 14. Regional Approach:** The regional approach while commendable has posed some challenges especially because of the differential circumstances of the partners. Maintenance of regional solidarity and coherence invariably means delays in acceding to positions or changes in them. This has been very evident in EAC especially in view of the different classification of countries as LDC's or non-LDCs. Positions taken have differential impact on countries and the regional approach does not offer relief.
- 15. Introduction of New Issues during the Negotiations.** The negotiations have been plagued by introduction of new issues not originally understood to be part of the coverage of the EPA discussions. Such are usually not of a commercial nature but have taken a lot of time and prevented agreements. Many of these new issues are introduced by EU upon changes in policy during the negotiation period. These issues have bogged down discussions and embolden critics of the EPAs.
- 16. Introduction of Deadlines.** While negotiations usually have no unilateral deadlines – The EPAs have suffered from an instrument or decision of equivalent effect. The European Parliament Decision on the expiry of the MAR 1528/2007 on October 1, 2014 poses a deadline for the negotiation as it represents changes in trading conditions for non LDC Countries such as Kenya. It puts pressure toward the conclusions EPA without appreciating that individual countries to be affected cannot conclude the agreements by themselves. This poses great danger to regional harmony and has differential effect on Partner Economies.

17. **Inflexibility in positions taken by the parties.** The Negotiations have been characterized by inflexibilities. The outstanding issues have dragged on for over 4 years. Both parties are not blameless in this regard. By way of example EC has insisted on positions that are not supported by multilateral and bilateral agreements that it has reached on some subjects such as Export Taxes and MFN while EAC has been inflexible on some grounds on the ROO which is inconsistent with concession on the same subject. This drags the negotiations and wears down the parties.

18. **Conclusion:** The non conclusion of the EPA Negotiations poses significant challenges for Kenya within the EAC. Without a deal with our partners in EAC, our goods will attract varying duties with effect from October, unless the expiry of the MAR 1528/2007 is lifted or alternative safeguard for Non-LDCS negotiating EPAS is considered. The Inflexible position on the outstanding issues is therefore injurious to Kenya. Alternative arrangements need to be considered. The European parliament should consider this.

19. The remaining issues are not of a significant technical nature – rather they are political and it is important that leaders on both sides provide the necessary political directions towards conclusion. Great flexibility will be expected towards this end.