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Protecting health in the proposed Economic Partnership Agreement (EPA) between East and Southern African (ESA) countries and the European Union

An Economic Partnership Agreement (EPA) is being negotiated between east and southern African countries (ESA) and the European Union (EU). The final agreement is due to be signed in December 2007. The EPA is likely to impact on health, on public revenues for health and health care, including access to medicines, and to affect other inputs to health such as food security. Without a proper health impact assessment these impacts are not easily quantified and ESA countries are urged to take a precautionary approach and safeguard health in the EPA. This policy brief outlines the ways in which the EPA may affect health and the measures that ESA can take to protect health within the EPA. While it is focused on the EU-ESA EPA, these impacts and measures have wider general relevance to trade agreements.

Negotiating the Economic Partnership Agreement

The EPA is being introduced within the twenty year Cotonou Partnership Agreement (CPA) signed in 2000 between the EU and 77 African, Caribbean and Pacific (ACP) countries. The CPA aims to bring about sustainable development and reduce poverty. Some of the preferential tariffs in the CPA were deemed by the World Trade Organisation (WTO) to be contrary to rules of non-discrimination. The current tariffs applying to trade between EU and ACP countries will be maintained until 31 December 2007, after which they will be replaced by reciprocal Economic Partnership Agreements (EPAs). Negotiation on the EPAs began in 2002.

This brief covers the EPA between the EU and ESA countries comprising Burundi, Comoros, Democratic Republic of Congo (DRC), Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe. These countries make up the ESA-EPA configuration. They are not negotiating an EPA within the existing regional configurations such as SADC, COMESA or the East African Community. COMESA is managing the negotiations on the ESA EPA, but not all COMESA countries are covered. The EPA negotiations cover trade issues in six clusters namely: development issues, market access, agriculture, fisheries, trade in services and trade related services. The agreement also covers the institutional framework for cooperation and the process for dispute settlement. A draft of the EPA is available at *www.seatini.org/publications/epas/index.html*

How will the EPA impact on health?

While issues have been raised about trade, investment and other aspects of the EPA, this brief focuses on those areas that will have consequences for health, through the impacts on essential inputs for health or on health care services. In each case we raise the area, the potential impact and the actions to protect and promote health.

The EPA can reduce revenue for public services

The EPA provides for tariffs to be removed on EU imports. ESA countries face a potential overall loss of government revenue, estimated at US $473 million *(see Table)*.

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Revenue implications of the EU-ESA EPA

Country	Revenue impacts in US$
Burundi	-7,664,911.00
DRC	-24,691,828.00
Ethiopia	-55,126,359.00
Eritrea	-7,385,208.00
Djibouti	-37,523,124.00
Kenya	-107,281,328.00
Madagascar	-7,711,790.00
Malawi	-7,090,310.00
Mauritius	-71,117,968.00
Rwanda	-5,622,946.00
Seychelles	-24,897,374.00
Zimbabwe	-18,430,590.00
Sudan	-73,197,468.00
Uganda	-9,458,170.00
Zambia	-15,844,184.00

Source: Karingi et al, 2005.

This revenue finances public services. The reduction in public revenue comes at a time when most ESA governments are not yet meeting the Abuja commitment of 15% government spending on health, and when most countries are not able to meet the minimum costs of financing health systems of $60 per capita set by the World Health Organisation (WHO), or the costs of meeting the Millennium Development Goals. Losing public sector revenue puts pressure on households to fund health or leads to cuts in service provision. The United Nations states that trade law or liberalisation measures that reduce the quality and quantity of services the poor and vulnerable groups are 'defacto discrimination'.

ESA countries should thus ensure that the EPA

- Spells out the provisions for monitoring and meeting the public revenue losses arising directly from the EPA; and
- Commits to protecting public spending on health to at least the 15% government spending on health set in Abuja and to an increase in per capita spending towards the $60 per capita estimated by WHO.

The EPA may add further pressure for liberalisation of health services

The provisions for trade in health and health related services are not yet specified and are being negotiated in mid-2007. The CPA, which forms the basis for EPAS, provides that countries extend the liberalisation of services in accordance with the provision of the WTO General agreement on Trade in Services (GATS). ESA countries have no obligation to commit their health services under GATS. A more detailed discussion of the negative consequences of commercialisation and liberalisation of public services is found elsewhere.

Under the conditions of unequal access and differentials in coverage, health care cannot be left to the market and ESA countries need to use government authorities to regulate providers, compel cross subsidies, increase risk pools, manage health worker migration and other measures needed to ensure universal health care coverage. ESA countries have thus been advised not to commit their health services under GATS as this will irreversibly narrow these authorities. Hence while the EPA may expect countries to respect existing GATS commitments, there is no basis for it to add further pressure for countries to liberalise or commercialise health services beyond their existing commitments.

As the 4th Ordinary Session of the AU Conference of Ministers of Trade stated in April 2006: *"We shall not make services commitments in the EPAs that go beyond our WTO commitments and we urge our EU partners not to push our countries to do so."*

Accordingly, the EPA should:

- Include no commitments to service liberalisation beyond existing GATS commitments, with negotiations on other areas of service liberalisation delinked from commitments in health and health related services;
- Provide for formal health impact assessments in any health-related sector where liberalisation is being proposed, whether under GATS or under the EPA; and
- Include commitments to ethical recruitment practices in relation to health workers and modalities for EU investment in public budgets to produce and retain health workers in source countries of migration.

The EPA affects access to medicines

Intellectual Property Rights (IPRs) in the EPA negotiations are covered under trade related issues. Article 64 of the draft EPA states that IPRs will aim to *"ensure availability of legal, institutional and human resource capacities and policy frameworks for the protection of intellectual property rights whilst respecting and safeguarding public policies of ESA countries".*

ESA countries have the right under the WTO TRIPS agreement to use the flexibilities provided to meet their public health obligations. This includes:

- Compulsory licensing, or the right to grant a license, without the permission from the license holder, on various grounds including public health; and
- Parallel importation-or the right to import products patented in one country from another country where the price is low.

(*Further information on TRIPS flexibilities is found in EQUINET Policy Brief No 16*). G8 development ministers in 2007, reaffirming their commitment to universal access to HIV/AIDS prevention, treatment and care by 2010 said *"more needs to be done to help lower [drugs] costs, including the use of TRIPS flexibilities to the fullest extent"* (G8 Chair's Summary, 2007).

EQUINET recommends that the EPA:

- Explicitly include a commitment to the full use of TRIPS flexibilities;
- Not include standards of IP protection that go beyond TRIPS; and
- Include provisions for EU political and technical support to ESA countries to use the TRIPS flexibilities and to develop their pharmaceutical industries.

Agriculture sector clauses impact on food security and nutrition

Agriculture is one of the major areas under negotiation in the EPA. Under-nutrition in ESA is a major public health problem, with poor household food production. EU farmers are heavily subsidised relative to ESA farmers, who face poor rains, poor or non-existent infrastructure, poor access to modern energy and inadequate credit lines. Subsidised food imports have thus undermined household food producers in ESA, to the cost of family nutrition. Recognising this, under four successive Lome conventions (1975-2000), the EU granted a preferential trade regime to ACP countries through trade preferences, commodity protocols and other instruments of trade cooperation such as financial aid and technical aid. Drafted EPA positions indicate the intention to expand market opportunities for EU agribusiness by liberalising ACP economies, drastic reductions in tariffs and other import duties in ESA, further undermining domestic production and nutrition.

In light of the above, the EPA should:

- End double standards in trade policy by maintaining subsidies on African agricultural production or completely removing them on EU agriculture (if the latter, then an explicit deadline should given for ending subsidies);
- Recognise the right of ESA countries to protect and support agriculture and provide commitment to investments to promote local food production, especially by smallholders; and
- Recognise development as a cross cutting issue, with development aid for agricultural development included in the EPA agriculture chapter.

Policy conclusions: Putting people's health first

These health implications of the EPAs need to be explicitly recognised, and health officials included in negotiations. The EPA will need to be fully compliant with all regional and international health protocols and conventions.

It is recommended that ESA governments not sign the EPAs until it includes key clauses protecting health, that is:

i. **Explicit inclusion of a commitment to interpret and implement any clauses in a manner supportive of ESA countries right to protect public health;**
ii. **Protection of TRIPS flexibilities (with no TRIPS plus clauses) and capacity support for implementation of TRIPS flexibilities;**
iii. **Exclusion of any commitments to liberalise health services;**
iv. **Inclusion of a requirement for health impact assessments in any health related sector where there may be impacts on health, prior to commitments being made;**
v. **Maintenance of African protective subsidies on agriculture until EU subsidies on agriculture are lifted; and**
vi. **Explicit provision for information, investments and capacity support to governments and social partners to manage, regulate and implement full flexibilities in relation to the health aspects of trade and to provide for losses to public revenue caused by trade measures.**

In line with the stated commitment, only an EPA that is able to deliver on development and eradicate poverty should be signed.

Follow up

The EPA and issues raised in this brief should be put for wide discussion in each of the countries covered, including in parliament and civil society, so that ESA negotiators are supported by strong public mandates to take firm positions on these health issues. The implementation of the EPA should equally be subject to public monitoring and review.

FURTHER RESOURCES

Karingi, S Lang S, Oulmane N, Perez N, Sadni Jallab M, Hammouda HB (2005) *Economic and Welfare Impacts of the EU-Africa Economic Partnership Agreements.* UN Economic Commission for Africa: ATPC Work in Progress 10, Addis Ababa.

Mabika A, Makombe P, Chizarura L, Loewenson R (2007) 'Health implications of the proposed Economic Partnership Agreement (EPA) between east and southern African countries and the European Union,' *EQUINET Discussion Paper 41*. EQUINET: Harare

EQUINET-SEATINI (2006) 'Claiming our Space: Using the flexibilities in the TRIPS agreement to protect access to medicines,' *EQUINET Policy Brief 16.* EQUINET: Harare.

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