



THE LONDON SCHOOL
OF ECONOMICS AND
POLITICAL SCIENCE ■

Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement

SIA Report on Public Procurement and Competition Policy • May 2021



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Abbreviations

AGOA	African Growth and Opportunity Act
ACP	African-Caribbean-Pacific
CNM	Commission Nationale des Marchés
CSR	Corporate Social
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
ESA5	Five ESA Countries
EU	European Union
FTA	Free Trade Agreement
GDP	Gross Domestic Product
GPA	Agreement o Government Procurement
ICT	Information and Communication
ILO	International Labour Organisation
ITC	International Trade Centre
LDC	Least Development Country
LSE	London School of Economics and Political Science
MUR	Mauritian Rupee
NTM	Non-tariff Measures
ORs	EU's Outermost Regions
PPP	Public-Private Partnership
PRAZ	Procurement Regulatory Authority of Zimbabwe
SIA	Sustainability Impact Assessment
SME	Small and Medium Size Enterprise
SOE	State-Owned Enterprise
SPOC	Special Procurement Oversight Committee
TSD	Trade and Sustainable Development
UK	United Kingdom
US	United States
WTO	World Trade Organisation
ZEF	Free Zones and Enterprises

Executive summary

Based on the screening of potential provisions for public procurement and competition, as well as relevant legislative frameworks and stakeholder feedback, this report identified the following key potential economic, social, human rights and environmental impacts of the deepened to European Union (EU) and the five Eastern and Southern Africa (ESA5) Economic Partnership Agreement (EPA).

Overall, the economic impacts of EPA provisions on public procurement are considered to be potentially major:

- Opening public procurement to EU companies could improve access, lower costs and improve services provided by the government. However, greater participation of EU companies could lead to reductions in contracts for Eastern and Southern African (ESA) companies in ESA states.
- Greater transparency may facilitate entry to public procurement markets for new ESA businesses.
- Greater value-added (price-performance ratio) for contracting authorities in the ESA5 countries.

Potential major **economic impacts resulting from competition provisions** include the following:

- Improved rule of law could lead to an improved business environment which could increase future investment in ESA countries.
- Increased transparency and greater competition could open markets to EU companies and ESA companies.

The **impacts of EPA provisions regarding the environment and social and human rights concerns are estimated to be relatively minor**. The impacts will depend on the scope of the EPA and the extent to which certain sectors are excluded, such as, for example, health and education in public procurement.

- The provisions for public procurement could bring environmental and social benefits by improving transparency and access to government procurement markets while improving the quality of government goods and services. There could be job losses in ESA companies that are currently favoured in public procurement, though this will be at least partially offset by job creation in competitors.
- It will be important, however, to ensure that social and environmental considerations are maintained and, if possible, promoted in public procurement, as the European experience suggests: the promotion of environmental considerations in procurement plays an important role in EU environmental policy, which for example supports green and circular public procurement in the member states.
- The Trade and Sustainable Development (TSD) chapter calls for the implementation of environmental, social and human rights standards, and it is of utmost importance that public procurement provisions under the EPA are closely linked to the TSD chapter.
- Social provisions in public procurement – such as those supporting women and small local businesses and cooperatives, could also play a role in the transition from informal to formal economies, albeit these issues are relevant mostly at a local procurement level. Public procurement can also play an important role in supporting corporate social responsibility and responsible business conduct: these standards can be especially important for larger contracts.

- The importance of international public procurement markets for medical goods is well known in the ongoing Covid-19 pandemic. Opening ESA markets to EU suppliers could reduce costs for these vital goods.

The report concludes with a **set of policy recommendations** on different levels. Opening public procurement to EU companies could improve access, lower costs and improve services provided by the government. However, greater participation of EU companies could lead to reductions in contracts for ESA companies in ESA states. The negotiations should also include **capacity building/development cooperation focused on enhancing the participation of domestic suppliers as flanking measures**. This will also allow ESA governments to achieve a greater value-added (price-performance ratio) for their procurement contracts. To enhance competition, an improved rule of law could lead to an improved business environment which could increase future investment in ESA countries. In addition, increased transparency and greater competition could open markets to EU companies and ESA companies. The EU should engage in development cooperation with governments in ESA countries but should include the business community and **civil society from the start in the negotiations** and – once the deepened EPA is in force – thereafter.

Provision should be made to protect the right of Parties to use selection criteria for public procurement contracts to support environmental, social and human rights policy goals and concerns. Consequently, **parties must include assessment criteria relating to the environment, social issues and human rights**. Development cooperation should be envisaged to assist ESA countries in **developing the efficiency of enforcement practices to ensure that social, environmental and human rights standards** are upheld. The deeper EPA should **encourage Parties to open their public procurement in sensitive fields such as public health and environmental services** while allowing national governments the right to determine the most appropriate national pathways.

1. Introduction

1.1 The study

This report is part of the project to prepare a *Sustainability Impact Assessment (SIA) in support of negotiations with partner countries in the ESA in view of deepening the existing interim EPA*. Under this project, a brief evaluation of the existing interim EPA has been prepared. The study is also developing a series of SIA reports for the deepening of the EPA. In particular, **this report presents an assessment of potential provisions for the Chapters on Public Procurement and Competition**. The report builds on the analysis in the (draft) ex-post evaluation, which included an assessment of economic and environmental, social, gender and human rights impacts of the interim EPA.¹

This thematic report analyses potential economic, social, human rights and environmental impacts of the EU ESA5 EPA deepening negotiations. The assessment of this report lays a focus on the following topics:

- Public procurement
- Competition
- Development cooperation related to these topics

The Sustainability Impact Assessment for the deepening of the EPA includes this report on public procurement and competition policy as well as five other thematic reports, covering the following topics:

- TSD
- Trade in Services, Digital Trade and Investment
- Trade in Goods, Agriculture and Fisheries
- Intellectual Property Rights
- Dispute Avoidance and Settlement and Institutional Structure

Each of these reports will also include an assessment of environmental, social, gender and human rights impacts, proportionate to the expected importance of the impacts for each area of negotiation.

1.2 Context

In 2007, six countries of the ESA region – Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe – concluded an interim EPA with the EU. In 2009, four of these countries (Madagascar, Mauritius, Seychelles and Zimbabwe) signed the agreement, and it has been provisionally applied in these countries since May 2012. Comoros signed the agreement in July 2017 and ratified it in January 2019. The interim EPA includes a ‘Rendez-vous clause’ (Article 53), by which the Parties ‘agree to continue negotiations... with a view to concluding a full and deepened EPA’. The Article includes trade, environment and sustainable development among the areas for further negotiation.

The EU and ESA5 partners launched negotiations for the deepening of the currently implemented EPA in October 2019.² After that, four rounds of negotiations took place in January 2020, July 2020, November 2020 and the fourth one in April 2021.

¹ See https://trade.ec.europa.eu/doclib/docs/2021/march/tradoc_159467.pdf

² See: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_5951

For a brief overview of the five ESA countries, please see Appendix I and the Ex-Post Evaluation within this SIA of 18 January 2021.

1.3 Methodology

The analytical work for this report involves, as a first step, a screening of potential provisions set out in the EU textual proposals presented by the European Commission based on an assessment of publicly available reports on the progress of the negotiations. The results of this screening are provided in Section 2 below.

As a second step, **horizontal and sectoral measures, behind-the-border issues and relevant legislative frameworks were compiled and analysed for all five countries.** The analysis of these issues aims to identify existing barriers to trade and development in ESA5 countries and identify applicable specific sectors most affected. The findings of this analysis are presented in Section 3.

Based on this detailed assessment, a scoping and deeper analysis of the issue areas with potential economic impacts is undertaken. This analysis of the specific issue areas aims to identify areas where the economic impact is likely to be significant and areas where the economic impact can be considered minor. The assessment also includes, to the extent possible, a screening of the sector-specific economic impacts.

For each topic covered in this economic analysis, the relevant baseline is briefly presented, and also actions needed for implementation are considered. Potential impacts of each provision are then described. For each topic, a brief analysis presents the key strengths and weaknesses of the proposed provisions together with indications of external opportunities and threats that might affect implementation and the achievement of results. Finally, the analysis also provides an assessment of relevant horizontal issues (e.g. least developed countries (LDCs), outermost regions (OR), consumer impacts) where relevant. The findings of this analysis are provided in Section 4.

The analysis in Section 4 is then used as a basis for an impact assessment of environmental, social, gender and human rights impacts that are likely to emanate from the economic impacts. This social analysis follows the same methodological steps as the economic analysis described above, including an analysis of horizontal issues (e.g. gender) that were relevant and outlined in Section 5.

The findings of the economic and social impact assessments in Sections 4 and 5 are then used to develop a set of proposals for policy recommendations and flanking measures presented in Section 6.

Desk research and analysis has provided the main source of information for this report. Although interviews have been carried out in the ESA countries, many interviewees did not have a strong awareness of public procurement and competition policies regarding deepening the EPA. They did not have specific comments on the potential impacts of individual negotiating provisions regarding the different topics negotiated under the deepening process.

2. Screening of the potential provisions for public procurement, competition policy and development cooperation related to these topics

2.1 Introduction

The existing interim EPA does not contain extensive provisions on non-tariff measures or behind-the-border issues related to public procurement and competition policy. The deepened EPA is expected to contain further provisions on such measures, including provisions on development cooperation related to them. As noted in section 1, the European Commission has not yet presented draft negotiating text proposals for these topics that are relevant for this report.

2.2 Overview of ongoing negotiations

So far, four negotiations rounds took place based on negotiating texts. They have not yet included concrete negotiations on the topics of public procurement or competition. The fourth round of negotiations on deepening the agreement took place in April 2021.³ The initial EU proposal text on public procurement will become available once the ongoing internal consultation on this topic is completed. Public procurement is scheduled for discussion in the next negotiation round, which will take place in July 2021.

During the stakeholder consultations conducted for our analysis, respondents from the governments of Madagascar, Mauritius, Seychelles and Zimbabwe gave their views on what should be key issues for the negotiations for the deepened EPA. All respondents agreed that public procurement should be considered a low priority for the negotiations. Regarding competition, respondents from the governments of Mauritius, Seychelles and Zimbabwe pointed out that it should be a low priority. The table below outlines the choices of the ESA countries in preferences of selected issues in the deepened EPA negotiations.

Table 1: Selected key issues in the negotiations

	High priority				Low priority				No need to be negotiated				I don't know			
	M	ZW	S	MD	M	ZW	S	MD	M	ZW	S	MD	M	ZW	S	MD
Customs and trade facilitation	■	■	■	■												
Investment liberalisation and investment facilitation (and private sector development)	■	■	■	■												
Public procurement					■	■	■	■								
Competition					■	■	■									

Source: Own compilation; Note: M = Mauritius; ZW = Zimbabwe; S = Seychelles & MD = Madagascar.

The provisions of public procurement and competition will be analysed more closely in the detailed assessment (Sections 4 and 5, below) while considering potential ramifications that could relate to investment and trade facilitation issues.

³ See: https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159537.pdf

3. Assessment of horizontal and sectoral measures, behind-the-border issues and relevant legislative frameworks

3.1 Introduction to the legislative framework

To give an overview of behind-the-border issues and the overall legislative framework in ESA countries, we use the Economic Freedom Index published by the Fraser Institute.⁴ It is based on a range of relevant measures on legal systems and property rights, and the freedom to trade internationally. Note that the results include scores that often synthesise complex national situations and are thus open to discussion and interpretation. Appendix II provides an overview of the latest scores from 2013 to 2018 for four ESA5 countries, as the index is not calculated for Comoros. All scores shown are out of 10, with a higher score indicating a higher degree of freedom and openness. On the overall legal framework, the index includes measures of judicial independence, impartial courts, protection of property rights, the integrity of the legal system and legal enforcement of contracts, respectively, as sub-measures.

Regarding the overall legal system and property rights score, all countries increased their scores from 2013 to 2018, except for Madagascar. Overall, Mauritius scored highest, followed by Seychelles, Zimbabwe and then Madagascar. The economic freedom index also includes a measure of government size. Here, Mauritius has been increasing its score, while the score of the other countries has been decreasing since 2013. Mauritius also had the highest score in absolute terms in 2018 (8.15), followed by Madagascar (7.51), Seychelles (6.71) and Zimbabwe (4.51).

3.2 Horizontal and sectoral measures as well as behind-the-border issues

For our purpose, it is important to analyse behind-the-border measures. Concerning these, the index provides measures of regulatory trade barriers, including non-tariff trade barriers and compliance costs of importing and exporting. **Mauritius has been increasing its score regarding regulatory trade barriers slightly, leading to 7.52 in 2018. Note that the scores of all other three countries have decreased significantly since 2013.** In terms of absolute score in 2018, Mauritius was followed by Seychelles (5.60), Madagascar (4.96) and Zimbabwe with a low score of 3.26. The overall sub-index of freedom to trade internationally also includes measures of controls of the movement of capital and people. **Mauritius had the highest overall score in the overall sub-index in 2018, followed closely by Seychelles, then Madagascar and Zimbabwe.** The following section lists public procurement barriers in individual ESA countries in which detailed information could be obtained.

3.2.1 Public procurement barriers in ESA countries

Mauritius

Mauritius is not a member of the Agreement on Government Procurement (GPA) or an observer to the GPA Committee. A new government procurement act entered into force in 2008. Procurement is carried out by various government ministries, departments and public authorities. A Central Procurement Board is responsible for approving the award of all major contracts over certain thresholds and public/private partnership awards. Tenders may be limited to citizens of Mauritius or entities incorporated in Mauritius only, or a price preference may be granted to domestic or regional goods, services or contractors.

⁴ See: <https://www.fraserinstitute.org/economic-freedom/dataset?geozone=world&page=dataset&min-year=2&max-year=0&filter=0>

Table 2: Key restrictions identified in public procurement, Mauritius

Areas	Key identified restrictions
Regulatory barriers/restrictions on public procurement	<ul style="list-style-type: none"> ▪ Policy and regulatory barriers – the Public Procurement Act is the main legislation, but it lacks supporting mechanisms classified through lack of linkages with other policies and legislations. ▪ Tenders may be limited to citizens of Mauritius or entities incorporated in Mauritius only, or a price preference may be granted to domestic or regional goods, services or contractors. National firms accounted for the lion's share of procurement contracts. Mauritius does not participate in the GPA. ▪ Public entities may limit tenders offered through open advertised bidding to citizens of Mauritius or entities incorporated in Mauritius (such limitations must be specified in the bidding documents) or give a margin of preference to domestic or regional goods, services or contractors ▪ Open international bidding is to be used where: (a) the estimated value of the procurement exceeds the threshold of Mauritian rupee (MUR) 200 million;⁵ (b) the goods, works or other services are not available under competitive price and other conditions from more than one supplier in Mauritius; or (c) there is no response to open national bidding and the goods, services or works must be obtained from international bidders. ▪ Certain types of procurement are restricted depending on instances, e.g. restricted bidding and community or end-user participation. ▪ Threshold restrictions based on amounts.

Source: WTO

Madagascar

The main piece of legislation is the Government Procurement Code dating back to 2004. It was drawn up with the technical assistance of the World Bank. Government procurement volumes fell sharply in 2009, probably owing to the socio-political crisis. Foreign sources of supply accounted for a mere 0.6 per cent of total government procurement in 2013. Madagascar is neither a member nor an observer of the Agreement on GPA concluded under the auspices of the World Trade Organization (WTO). Nevertheless, the country has made significant efforts to be transparent by publishing its automated government procurement management system on the internet.

Table 3: Key restrictions identified in public procurement, Madagascar

Areas	Key identified restrictions
Regulatory barriers/restrictions on public procurement	<ul style="list-style-type: none"> ▪ Many state-owned enterprises still have their own contract award procedures.

⁵ 200 million MUR are worth roughly EUR 4 million (checked on May 30, 2021).

Areas	Key identified restrictions
	<ul style="list-style-type: none"> ▪ Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their procurement or sales the level or direction of imports or exports. ▪ Tendering is said to be restricted when bids may be submitted only by the candidates (at least three) that the person responsible for government procurement has decided to consult. ▪ Tenders may be open nationally or internationally, or a private agreement may award a contract. Recourse to private agreement requires the prior approval of the Commission Nationale des Marchés (CNM); 13 per cent of contracts were awarded in this way in 2013. ▪ Thresholds restrictions for tenders in construction or similar contracts above a certain minimum amount must be subject to consultation either by public posting or after restricted consultation on pricing; this latter procedure in principle also requires at least three suppliers or companies ▪ Restricted advertising - tender notices are published in advance in a specialised government journal and at least one daily newspaper with a wide circulation.
Governance/legal protection	<ul style="list-style-type: none"> ▪ Socio-political crisis – need to strengthen political and constitutional stability and ensure the rule of law, enhancing the legal protection of persons, strengthening real-estate ownership rights and improving governance, including within the many state-owned enterprises.

Source: WTO

Zimbabwe

Zimbabwe has recently modernised its government procurement regime: The Public Procurement and Disposal of Public Assets Act came into force in January 2018; it contains domestic preference provisions. The new Procurement Regulatory Authority of Zimbabwe (PRAZ) oversees public procurement and has started for the first time to compile procurement data. Zimbabwe is neither a party nor an observer to the WTO Plurilateral Agreement on Government Procurement. In 2018, there were 293 procuring entities at a central and sub-central level.

Table 4: Key restrictions identified in public procurement, Zimbabwe

Areas	Key identified restrictions
Regulatory barriers/restrictions on public procurement	<ul style="list-style-type: none"> ▪ A worsening fiscal and currency crisis has contributed to macroeconomic instability and structural issues. ▪ Restricted bidding - Concerning domestic preference, procuring entities may invite only Zimbabwean (domestic) suppliers to bid where the price of the procurement requirement does not exceed USD 5 million in the case of construction works; USD 300,000 in the case of goods; or USD 200,000 in the case of consultancy and non-

Areas	Key identified restrictions
	<p>consultancy services. Above these thresholds, foreign (international) bidders must be invited.</p> <ul style="list-style-type: none"> ▪ The restricted bidding method involves only bidders who are selected or invited by the procuring entity. This method may be used in cases of urgency, or when the cost of considering many bids is disproportionate to the estimated value of the procurement requirement, or for procurement contracts with an estimated value that does not exceed the prescribed threshold. The direct procurement method involves only one bidder or supplier; it may be used only in prescribed circumstances (Section 33 of the Act). ▪ Financial thresholds for procurement contracts are subject to scrutiny in certain sectors. ▪ A domestic price preference envisages a margin of 15 per cent for the procurement of goods and 7.5 per cent for the procurement of contractors' services. Within these prescribed limits, preference may be given to bidders that are domestic suppliers or manufacturers, and an extra preference, within the prescribed limits, may be given to women or entities controlled predominantly by women or to Zimbabwean universities or polytechnics. ▪ Strict controls for grain procurement
Transparency	<ul style="list-style-type: none"> ▪ Lack of transparency: increase transparency in government procurement processes, including those funded through foreign aid, reduce opportunities for corruption, and lay the foundations for genuine competition among suppliers, national or foreign.

Source: WTO

Contracts that the Government considers sensitive or valuable are reviewed by a newly established Special Procurement Oversight Committee (SPOC). SPOC reviews contracts before they are awarded above a certain threshold, and procuring entities are categorised according to three classes (A, B, and C, determined on a case by case basis according to published guidelines).

Table 5: Financial thresholds for procurement contracts liable to scrutiny

Procuring Entity	Financial threshold (USD)
Class A	
(a) for construction works	500,000
(b) for goods	250,000
(c) for non-consultancy and consultancy services	100,000
Class B	
(a) for construction works	250,000
(b) for goods	150,000

Procuring Entity	Financial threshold (USD)
(c) for non-consultancy and consultancy services	75,000
Class C	
(a) for construction works	200,000
(b) for goods	100,000
(c) for non-consultancy and consultancy services	50,000

Source: *Public Procurement and Disposal of Public Assets (General) Regulations, 2018*

Comoros

Table 6: Key restrictions identified in public procurement, Comoros

Areas	Key identified restrictions
Regulatory barriers/restrictions on public procurement	<ul style="list-style-type: none"> ▪ Lengthy procedures in getting permits.
Economic environment	<ul style="list-style-type: none"> ▪ Possible deterioration of the financial health of state-owned enterprises (SOEs) such as Comoros Telecom could aggravate the fiscal stance.

Source: *World Bank*

Seychelles

Table 7: Key restrictions identified in public procurement, Seychelles

Areas	Key identified restrictions
Regulatory barriers/restrictions on public procurement	<ul style="list-style-type: none"> ▪ Limited protection of minority investors.
Economic environment	<ul style="list-style-type: none"> ▪ Inefficiencies in public sector management, such as limited statistical capacity ▪ Scope for a more strategic and sustainable approach to social protection and the need to broaden access to quality education and skills development.

Source: *World Bank*

3.2.2 Competition barriers in ESA countries

Mauritius

In Mauritius, key legislation regarding competition policy is the Competition Act 2007, which was updated in 2012, the Small and Medium Enterprises Development Authority Act of 2009, the Fair Trading Act of 1979, which was updated in 2009 and the Public-Private Partnership (PPP) Act of 2004 – updated in 2008.

Table 8: Key restrictions identified in competition, Mauritius

Areas	Key identified restrictions
Regulatory barriers/restrictions on competition	<ul style="list-style-type: none"> ▪ According to the World Bank Doing Business Index, Mauritius was ranked 1st among the 20 best places to do business. ▪ Vertically integrated conglomerates can result in barriers to entry due to disadvantages in terms of access to finance, export markets, and value chains for non-affiliated firms. ▪ Activities of SOEs are affecting competition in key upstream industries, such as information and communication technology (ICT), energy, and transport. ▪ Regulatory rigidities may contribute to imports in capital and intermediate goods being highly concentrated.⁶

Source: WTO, World Bank

Madagascar

In Madagascar, the key legislation on competition policy is Law No. 2005-020 of 17 October 2005.

Table 9: Key restrictions identified in competition, Madagascar

Areas	Key identified restrictions
Regulatory barriers/restrictions on competition	<ul style="list-style-type: none"> ▪ Restrictions in the electricity sector – electricity selling prices are fixed by the government, which discourages the entry of new operators. ▪ Market distortions – the free zones and enterprises (ZEF) regime offers significant tax benefits that seriously distort competition conditions between local enterprises and ZEFs. ▪ Restrictions in specific sectors – The sectors most protected from the external competition include beverages, fisheries products and textiles; such a level of tariff protection does not encourage efforts to make these products competitive for export. Agricultural raw materials are more protected from outside competition than Madagascar's semi-finished exports.

⁶ See: https://www.worldbank.org/en/news/press-release/2021/05/26/new-reforms-could-help-mauritius-bounce-back-stronger-from-covid-19-crisis?cid=WBW_AL_whatnew_EN_EXT

Areas	Key identified restrictions
	<ul style="list-style-type: none"> ▪ The sectors in which abuses – chiefly price abuses – are most often reported include petroleum products, beverages, telecommunications services and construction materials. ▪ Lengthy procedures for the construction sector. ▪ Lengthy process in accessing electricity. ▪ Lengthy process in registering property.
Transparency	<ul style="list-style-type: none"> ▪ Excessive, complicated and less than transparent taxation – Large informal sector, tax loopholes, tax fraud.
Governance/legal protection	<ul style="list-style-type: none"> ▪ Lack of governance – Corruption, abuse of the legal system. ▪ Political conflicts, constitutional crises – resulted in the loss of external partners such as the United States’ (US) support through the African Growth and Opportunity Act (AGOA).
Economic environment	<ul style="list-style-type: none"> ▪ Lack of competition – Excessive prices, restrictive practices (petroleum products, telecommunications, beverages, building materials). ▪ Failure to respect quality standards – Poor product development. ▪ Expensive and unreliable energy – which result in high costs and insufficient production. ▪ Inadequate transport services – this results in high costs, delays, products lost or damaged. ▪ High cost and lack of access to credit – investment financing inaccessible to small and medium-sized enterprises (SME). ▪ Little competition in the telecommunications sector.

Source: WTO, World Bank

Zimbabwe

In Zimbabwe, the key legislation on competition policy is the Competition Act of 2001, the Joint Ventures Act, the Competition (Safeguards) (Investigations) Regulations (S.I. 217/06), the Consumer Protection Bill of 2018 and the Consumer Contracts Act as well as the National Compulsory Specifications Bill.

Table 10: Key restrictions identified in competition, Zimbabwe

Areas	Key identified restrictions
Regulatory barriers/restrictions on competition	<ul style="list-style-type: none"> ▪ Restrictions in consumer goods to protect the local market from foreign competition. ▪ While competition policy advocated for non-discriminatory treatment of business enterprises, the industrial policy tended to recognise certain ‘sacred cows’ for preferential treatment. For example, State enterprises in strategic industries receive financial and administrative support from the government that disrupt fair competition in the relevant markets in which private firms operate.

Areas	Key identified restrictions
	<ul style="list-style-type: none"> ▪ Incoherence between the Competition policy and other policies such as the law on indigenisation – the Indigenisation and Economic Empowerment Act. ▪ Foreign currency shortages and diverging black-market exchange rates have resulted in the Reserve Bank of Zimbabwe exerting a great deal of control in determining which companies receive foreign currency at the official (and beneficial) exchange rate for priority imports. Foreign currency retention requirements have challenged exporters, particularly when this gap has grown to extremes, and international firms have faced challenges repatriating profits. ▪ The regulatory environment is complex, and businesses face hurdles registering and operating. The government frequently changes policies and applies them inconsistently, often based on political or personal grounds, challenging business planning. ▪ The uncertainty of land tenure on resettled farms increases the risk to agricultural investments despite the government’s agreement to pay \$3.5 billion to commercial farmers for improvements made on expropriated farms. ▪ Lengthy procedures in starting a business. ▪ Lengthy time to get permits and expensive. ▪ Lengthy procedures, time in accessing electricity. ▪ Registering a business is costly.
Enforcement	<ul style="list-style-type: none"> ▪ Weak competition policy enforcement.
Economic environment	<ul style="list-style-type: none"> ▪ Restricted competition in air transport. ▪ SOEs are uncompetitive and suffer losses due to irregular transactions and misappropriation of funds. ▪ Limited reliability of electricity.

Source: WTO, UNCTAD, ITA, World Bank

Comoros

In Comoros, the key legislation on competition policy is the Competition Act (Law 13-014). **Regarding non-tariff measures (NTMs) in Comoros, the International Trade Centre (ITC) conducted an NTM business survey on company perspectives.**⁷ According to the survey results, 4 per cent of the cases reported were related to import price control measures.

⁷ ITC, 2018. The Comoros: Company Perspectives – An ITC Series on Non-Tariff Measures. See <https://www.intracen.org/publication/ntm-comores/>

Table 11: Key restrictions identified in competition, Comoros

Areas	Key identified restrictions
Regulatory barriers/restrictions on competition	<ul style="list-style-type: none"> ▪ Lengthy procedures in getting permits.
Economic environment	<ul style="list-style-type: none"> ▪ Accessing electricity is quite lengthy.

Source: World Bank

Seychelles

Table 12: Key restrictions identified in competition, Seychelles

Areas	Key identified restrictions
Regulatory barriers/restrictions on competition	<ul style="list-style-type: none"> ▪ Lengthy procedures in registering a business. ▪ Lengthy procedures in getting permits. ▪ Limited protection of minority investors.
Economic environment	<ul style="list-style-type: none"> ▪ Access to credit is limited.

Source: World Bank

3.3 Feedback from government respondents and stakeholders on additional barriers and opportunities related to public procurement and competition

3.3.1 Civil society organisations

Concerns were raised on the perceptions that in terms of new issues like government procurement, the EU stands to benefit more (very favourable/very positive) than the ESA5. Reasons for this stand include limited levels of competitiveness of ESA5 in these areas, a small and weak ESA5 private sector in these areas, and concentration of ESA5 exports in agricultural and marine resources.

3.3.2 Feedback from government

According to respondents from the Government of Mauritius, the deepened EPA can be a game-changer for Mauritius and practically address challenges faced by the country in its economic development policies. For instance, the deepened EPA can play a crucial role in developing new sectors. Respondents pointed out that further improving on government procurement and trade competition will strengthen opportunities in the EPA. Accordingly, Mauritius is leading negotiations on trade-related issues. Thus, whereas the negotiations are not yet in full swing and given the negotiations that have taken place, Mauritius, like other ESA5, has no concerns. In the deepened EPA, the government hopes that specific provisions should be incorporated to support SMEs to export to the EU.

The division of Customs of the government of Seychelles highlights the need for development support on strengthening key trade institutions such as the Competition and Tariff Commission. The respondents highlighted a need for targeted support to key divisions of the public sector that will facilitate the expediting of trade under EPA. They also note that ESA5 countries appropriate coordination and technical support to the five ESA countries to engage effectively in the negotiation process.

In Comoros, stakeholders from the public sector pointed out that Comoros is one of the least attractive countries for investment in Africa and raised general concerns about how Comoros can benefit from the negotiations. They stated that it is key that public procurement laws and rules are adopted as part of the agreements to follow the correct procedures.

3.3.3 *Feedback from the private sector and SMEs*

An EU private stakeholder mentioned that having better access to public procurement markets in ESA5 countries would be attractive for EU businesses. He pointed out that this would be mutually beneficial as European companies are market leaders in many areas. EU companies can provide governments with sustainable long-term solutions at fair prices, contributing to the development of African countries. Ensuring that there is better access to public procurement would be very attractive for European investors.

The EU business respondent also stated that competition is important for the investment climate as it ensured legal certainty over the long term. The stakeholder emphasised deepening the ESA agreement to cover others issues other than trade in goods. This is important for the investment climate and ensures legal certainty and protection of investments. Competition concerning investments was critical – if the competition environment is favourable, it is attractive for investors. Foreign investments in staff training, physical plants, and long-term business relationships are facilitated by fair competition. Therefore, the issue should get due attention in the negotiations on broadening the EPA. These domains are essential for ensuring that the private sector can play its central role in the development of the African continent.

Finally, the stakeholder also stated that financing instruments to support the implementation of the EPA are important. This should complement development cooperation, but the EU must ensure proper implementation of the agreement to improve the investment climate.

Another EU private sector stakeholder stressed the principle that the free trade agreements (FTAs) and EPAs should never expose EU agriculture practice to unfair competition in terms of working conditions, wages, etc., in the partner countries. This is important not only from the EU perspective but also from the ESA side, and the respondent highlighted that these conditions need to be respected.

ESA 5 stakeholders raised concerns about the complex nature of negotiations in areas such as public procurement and competition, which can form a challenge for the ESA5 countries. In addition, some of the ESA5 private sector companies, including SMEs, find it difficult to take advantage of the existing EPA. This is an important lesson for the potentially even more complex negotiations about government procurement and competition issues.

4. The economic impact analysis

The five ESA countries vary significantly in their economic development, domestic economic freedoms, and barriers to international trade. The ex-post evaluation report provided an overview of key indicators across several dimensions, which should be considered to assess the deepened agreement's potential impacts on individual countries' trade in goods (and services).

4.1 Introduction

This section provides a scoping and analysis of the issue areas with potential economic impacts. For each issue area, we assess the main economic sector affected, if applicable and the possible economic impacts. The analysis also identifies issue areas where the economic impact is likely to be significant and those areas where the economic impact can be comparatively minor.

Based on the screening of potential provisions and stakeholder feedback, this section focuses on assessing the economic impact of potential public procurement and competition provisions in more detail. Finally, the analysis also assesses relevant horizontal issues (e.g. LDCs, OR, consumer impacts) where relevant and concludes with an overall assessment of the strengths and weaknesses of the provisions, including an overview of relevant stakeholder feedback.

4.2 The economic impact of potential public procurement provisions

4.2.1 Baseline

The interim agreement does not include specific provisions covering public procurement measures.

4.2.2 Screening of public procurement provisions

Table 13: Detailed screening table of potential public procurement provisions

Provision	Main economic sectors that could be affected	Possible economic impacts	Potential importance
Possible measures concerning public procurement			
Clearer and more transparent legal framework and legislative requirements governing public procurement	All economic sectors involved in supplying procurement domestically and involved in international procurement trade.	Improvement in the rule of law may positively impact business and investment climate in ESA countries.	Major
Positive impact on rule of law and economic opportunity in ESA5 countries (e.g. less corruption)		Only a few companies in ESA5 countries can compete in EU procurement markets.	Major
Impacts on exports from ESA5 countries		Greater value-added (price-performance ratio) for contracting authorities in ESA5 countries.	Minor
Increased imports from EU			Major

Provision	Main economic sectors that could be affected	Possible economic impacts	Potential importance
Development cooperation to support training and capacity in ESA countries		<p>Increased competition for ESA suppliers resulting from increased imports from the EU, on the one hand resulting in a potential risk of these suppliers being unable to compete with EU firms. On the other hand, increased competition may also increase the productivity of these companies.</p> <p>Greater transparency may facilitate entry to public procurement markets for new ESA businesses.</p>	Major

Source: Own analysis

4.3 The economic impact of potential competition policy provisions

4.3.1 Baseline

The interim agreement does not include specific provisions covering competition policy measures.

4.3.2 Screening of competition policy provisions

Table 14: Detailed screening table of potential competition policy provisions

Provision	Main economic sectors that could be affected	Possible economic impacts	Potential importance
Possible measures concerning competition policy			
Improvement of the relevant legal framework regarding state aid regimes and preferential tax policies	All economic sectors.	Generally positive impact on investment climate and quality of supply of goods and services.	Major
Higher transparency regarding special conditions or privileges given to SOEs such as targeted subsidies or government contracts		Improved rule of law could lead to an improved business environment which could increase future investment in ESA countries.	Major
Development cooperation to support training and capacity in ESA countries		Impacts higher in large ESA5 countries, i.e. Zimbabwe and Madagascar.	Major

Source: Own analysis

4.4 Feedback from government respondents and stakeholders on development cooperation

Stakeholders from government, private sector and civil society organisations all also noted the need for ESA5 Countries to develop further and update their respective EPA implementation strategies and frameworks. They especially stressed the need to mobilise resources domestically to finance the implementation and mobilise the private sector to utilise the market opportunities to be negotiated under the deep EPA. Especially private stakeholders noted a limited preparedness of the private sector in utilising market access offers under the deepened EPA.

4.4.1 Civil society organisations

Civil society organisations in ESA countries also pointed to infrastructure challenges among ESA5: Except for Seychelles, Madagascar, Comoros and Mauritius, which have access to a sea coastline, Zimbabwe is the only country that is landlocked and faces infrastructure challenges ranging from poor roads, railway and ICT. The development dimension has been limited to mainly technical assistance, whereas the needs of ESA5 countries also need support regarding infrastructure.

4.4.2 Feedback from government

Government respondents pointed to a clear need for a development dimension in the deepened EPA. According to their views, the success and failure of deepened EPA negotiations do not have to be measured mainly against market access of interest to ESA5. It also has to be measured against a commitment to development. Accordingly, they stressed that there is a need for an explicit development cooperation chapter and that the negotiations should also focus on aid and development needs. The cost of measures and compensating people for the losses encountered due to implementing the provisions of the EPA should be analysed. It is considered important that the deepened EPA includes predictable funding of an EPA adjustment facility.

4.4.3 Feedback from the private sector and SMEs

Private sector stakeholders in Zimbabwe pointed to a lack of understanding of the technical issues involved in the negotiations, not only by the industry but also in the relevant ministries. This is because most sector players are not participating in the negotiations, making it very difficult for them to appreciate, understand and benefit from the final agreements. Zimbabwe's private sector stakeholders noted that there had been no meaningful impact from EPAs as the government delayed implementing the agreement provisions due to structural challenges. About the current negotiations, the industry believes that there is not much that will happen in terms of economic benefits as Zimbabwean industries are still struggling to take off. The industry in Zimbabwe is said not to be strategically positioned to take any opportunities in the European market.

In Comoros, the private sector stated that they had feeble knowledge about the EPA, while civil society respondents stated to have none. Non-state actors suggested that the dissemination of information was insufficient. Also, the private sector would like to be more deeply involved in negotiations. Several businesses representatives felt that the sector was largely excluded from the processes and negotiations to the detriment of Comoros negotiating power and potential to benefit from the agreements. Interviewees from all sectors expressed concerns about unequal negotiating capacity. There is a widely-held view that Comoros is unable to compete with the EU at the negotiating table. Moreover, non-state actors suggested that the Comorian authorities did not maximise their capabilities by failing to be inclusive regarding their negotiating teams.

Besides problems related to ownership and governance in ESA5 countries, there is also a perceived deficit in targeting development measures on the side of the EU. Simultaneously, private sector respondents from Zimbabwe and Madagascar indicated that most development assistance from the EU is targeted mainly towards micro and smallholder production levels, which has little capacity to transform the Zimbabwean and Madagascar industry.

4.5 Key economic impacts

According to data provided by the World Bank global public procurement database, the procurement markets of Madagascar and Mauritius both accounted for 4 per cent of gross domestic product (GDP) of these countries, respectively (see table 15).⁸ Based on disaggregated data by procurement method and type of purchase available for the first time, total procurement amounted to EUR 1.27 billion, or 10 per cent of GDP, in Zimbabwe in 2018.⁹

The total value of annual contracts in Madagascar and Mauritius amounted to 502.3 million Euros and 406.9 million Euros respectively, which was much larger than in the case of Seychelles (50.1 million Euros). In Mauritius, domestic contract awards amounted to 249.9 million Euros, compared to 157.1 million Euros of international contract awards.

Table 15: Overview of public procurement markets in ESA5 countries (million Euros)

Indicator	Comoros	Madagascar	Mauritius	Seychelles	Zimbabwe
GDP	1,019.6	12,602.3	12,018.5	1,344.1	20,603
Percentage (%) of Gross Domestic Product as Public Procurement Expenditure	n/a	4.0	4.0	n/a	10.0
Value of annual contracts	n/a	502.3	406.9	50.1	n/a
Value of contracts awards of goods	n/a	167.5	145.2	n/a	n/a
Value of contracts awards of works	n/a	269.7	211.1	n/a	n/a
Value of contracts awards of services	n/a	30.1	50.8	n/a	n/a
Value of domestic contract awards	n/a	n/a	249.9	n/a	n/a
Value of international contract awards	n/a	n/a	157.1	n/a	n/a
Value of awards to SMEs	n/a	n/a	61.9	n/a	n/a

Source: World Bank, WTO

⁸ World Bank Global Public Procurement Database. Latest data available for all countries (2018 for Comoros, Mauritius, Seychelles and Zimbabwe; 2019 for Madagascar). Exchange rate adjusted from USD to EUR based on historical annual data, see: <https://www.macrotrends.net/2548/euro-dollar-exchange-rate-historical-chart>

⁹ See: WTO Trade Policy Report for Zimbabwe. Available at: https://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm. Exchange rate adjusted from USD to EUR based on historical annual data, see: <https://www.macrotrends.net/2548/euro-dollar-exchange-rate-historical-chart>

Overall, the impacts of EPA provisions on public procurement and those on competition in terms of economic impacts are considered to be potentially major. Potential major impacts resulting from public procurement provisions include:

- Opening public procurement to EU companies could improve access, lower costs and improve services provided by the government. However, greater participation of EU companies could lead to reductions in contracts for ESA companies in ESA states.
- Greater transparency may facilitate entry to public procurement markets for new ESA businesses.
- Greater value-added (price-performance ratio) for contracting authorities in ESA5 countries.

Potential major economic impacts resulting from public competition provisions include the following:

- Improved rule of law could lead to an improved business environment which could increase future investment in ESA countries.
- Increased transparency and greater competition could open markets to EU companies and ESA companies.

Regarding benefits for consumers, the increase in exports to the EU would generate increased production and export revenues, contributing to higher income and diversification of income sources, with overall positive effects on ESA5 citizens purchasing power. Overall, the increase in imports from EU suppliers would lead to a broader product range of high-quality products that ESA5 consumers could benefit from.

The deepened EPA would increase competition for EU markets within other African-Caribbean-Pacific (ACP) countries and from non-ACP member countries. To benefit in the medium to long run, ESA5 exporters will have to diversify their production and upgrade their standards.

As concerns the deepened agreement, regulatory competition might evolve from the United Kingdom (UK) ESA EPA, which has come into force on 1 January 2021. Provisions of the UK-ESA Agreement are similar to those of the Interim EPA signed between the EU and ESA countries, and the Agreement also contains a “Rendez-Vous” clause regarding future negotiation between ESA and the UK on areas not currently covered, which include trade in services, investment, trade facilitation, competition policy, trade facilitation and others.

Regarding effects on governance and the business environment, we look at a sub-index of the economic freedom index, namely the measure for the restrictiveness of regulations, with even deeper disaggregated sub-indexes on the credit market business regulations.¹⁰ The recent development of this sub-index in ESA4 countries suggests that the deepened EPA may improve the business environment.¹¹

As concerns regional integration, the deepened EU-ESA5 EPA may facilitate the consolidation of intra-ESA5 trade and commercial integration if countries harmonise their positions during the negotiations and agree on common standards. The agreement could also serve regional integration by becoming a template for negotiations involving other ACP regions.

Overall, the economic impact regarding the EU’s outermost regions can be considered marginal.

¹⁰ The sub-index of business regulations is further broken down into measures of administrative requirements, regulatory burden, starting a business, impartial public administration, licencing restrictions and tax compliance.

¹¹ For business regulations, Mauritius shows the highest (best among ESA countries) score of 8.25 in 2018, followed by Seychelles (7.63), Madagascar (5.80) and Zimbabwe (5.15). Note that the score of all four countries has been increasing since 2013. For the overall regulation sub-index, Mauritius had the highest score in 2018 of 8.36, followed by Seychelles (7.69), Zimbabwe (6.28) and Madagascar (6.19) (see Appendix I).

5. Environmental, social, gender and human rights impacts

5.1 Screening of possible impacts

The following tables present a screening of the possible environmental, social, gender and human rights impacts arising from the possible measures related to procurement and competition. This screening is linked to the screening of economic impacts in section 4, as the changes in economic impact will play a key role in determining impacts in the other dimensions of sustainable development.

Section 5.2 then reviews the key impacts that are identified in these tables. EU development cooperation can play a key role in addressing possible negative impacts and ensuring positive impacts occur. Key areas for development cooperation are summarised in section 5.3.

Table 16: Detailed screening table of potential public procurement provisions

Provision	Possible environmental impacts	Possible social, gender and human rights impacts	Potential importance
Possible public procurement measures			
Reduction of barriers to the participation of EU entities in ESA public procurement procedures	Opening public procurement to EU companies may accelerate intensive activities (e.g., infrastructure) with adverse environmental effects.	Greater participation of EU companies could lead to reductions in contracts for ESA companies and job losses in ESA states. However, the overall social impact is expected to be minor, given that some labour would likely still be carried out through local staff.	Minor
Protection of right to include environmental and labour considerations in technical specifications	EU companies with sustainability commitments may maintain high environmental standards when contracted in ESA countries. There remains a risk that some EU companies may seek to benefit from lower environmental requirements to lower costs.	Given the relative lack of strength of civil society in some ESA countries, opening public procurement to EU companies may increase the risk of violation of customary rights to use land, minerals, water or forests among the population by foreign companies if the activity is not carefully managed.	Minor
Development cooperation to support training and capacity in ESA countries	EU companies could improve environmental management in areas such as waste treatment in ESA countries if government procurement in these fields is opened for their participation. If the Agreement were to override ESA rules providing social and environmental preferences, there could be negative	EU companies with corporate social responsibility (CSR) commitments may maintain high labour standards required in the EU when contracted in ESA countries. There remains a risk that some EU companies may seek to profit from less stringent standards in ESA countries.	Minor

Provision	Possible environmental impacts	Possible social, gender and human rights impacts	Potential importance
	<p>environmental consequences.</p>	<p>Opening public procurement to EU companies could improve access, lower costs and improve services provided by the government. There would be direct impacts related to social welfare in some areas, for example, in the health sector, potentially increasing equality in access to healthcare.</p> <p>If ESA procurement contracts are not well prepared and managed, EU companies might provide goods and services at higher prices that lead to reduced access for ESA citizens (this could be an issue for social services and environmental services).</p> <p>Greater transparency in public procurement processes could contribute to better governance where corrupt practices exist.</p> <p>Greater transparency may facilitate entry to public procurement markets for new ESA businesses.</p> <p>If the Agreement were to override ESA rules providing social and environmental preferences (e.g. for women in public procurement), there could be negative social consequences.</p>	

Source: Own analysis

Table 17: Detailed screening table of potential competition provisions

Provision	Possible environmental impacts	Possible social, gender and human rights impacts	Potential importance
Possible competition measures			
Increased transparency	Increased transparency and greater competition could open markets to EU companies and ESA companies with higher environmental standards. This could have positive environmental impacts if these higher standards are maintained for activity in ESA countries. Increased competition could induce some companies to cut corners regarding environmental standards, with negative effects on the environment (possibly for forestry in certain ESA countries), unless strong enforcement of environmental standards is in place.	Improved rule of law could lead to an improved business environment which could increase future investment in ESA countries, creating employment. Increased transparency and greater competition could open markets to EU companies and ESA companies with higher social and human rights standards. This could positively impact social issues and human rights if these higher standards are maintained for activity in ESA countries.	Minor
Reinforced competition practices			
Higher transparency regarding special conditions or privileges given to SOEs such as targeted subsidies or government contracts			
Development cooperation/technical assistance for ESA countries			

Source: Own analysis

5.2 Overview of key impacts and issues

The impacts of EPA provisions on public procurement and those on competition, in terms of the environment and social and human rights concerns, are estimated to be relatively minor. The impacts will depend on the scope of the EPA and the extent to which certain sectors are excluded, such as, for example, health and education in public procurement. This may be the case when certain areas fall under the competence of regions or local communities.

As noted in Table 16, the provisions for public procurement could bring environmental and social benefits by improving transparency and access to government procurement markets while improving the quality of government goods and services. There could be job losses in ESA companies that are currently favoured in public procurement, though this will be at least partially offset by job creation in competitors.

It will be important, however, to ensure that social and environmental considerations are maintained and, if possible, promoted in public procurement, as the European experience suggests: the promotion of environmental considerations in procurement plays an important role in EU environmental policy, which for example supports green and circular public procurement in the member states.

For example, the aforementioned 2017 Public Procurement and Disposal of Public Assets Act in Zimbabwe favours domestic bidders in certain conditions.¹² Preference is also given to entities led by women. It will be important that provisions reducing barriers do not render this and other ESA public procurement policies promoting female leadership non-compliant with the EPA.

The TSD chapter calls for the implementation of environmental, social and human rights standards, and it is of utmost importance that public procurement provisions under the EPA are closely linked to the TSD chapter. For example, the inclusion of a provision on environmental and social considerations in the public procurement chapter would give parties opportunities to ensure environmental or social goals in procurement. Moreover, linking it to the provisions in the trade and sustainable development chapter could help ensure the enforcement of these provisions. This safeguard relies on ESA states choosing to use the labour and environmental technical specifications in tendering processes; other than in Zimbabwe. Mauritius developed an action plan for sustainable public procurement in 2011.¹³ Evidence was not found of similar existing provisions in other ESA countries.

Social provisions in public procurement – such as those support women and small local businesses and cooperatives – could also play a role in the transition from informal to formal economies, albeit these issues are relevant mostly at the local procurement level.¹⁴

Public procurement can also play an important role in supporting corporate social responsibility and responsible business conduct: these standards can be especially important for larger contracts. While these are cited in the TSD Chapter, it would be valuable to include them in the chapter on public procurement.

EU development cooperation may assist in sharing good practice for the development of sustainable public procurement practices.

The importance of international public procurement markets for medical goods is well known in the ongoing Covid-19 pandemic. Opening ESA markets to EU suppliers could reduce costs for these vital goods. At the same time, due to their comparatively small economies, ESA countries may find themselves vulnerable in crises such as the current pandemic if the countries that are sources of their main goods restrict exports.

These issues are best resolved at the multilateral level. The EU's Trade and Health Initiative, prepared along with 13 other WTO partners, calls on all WTO members to increase their cooperation and work toward enhanced global rules to facilitate trade in essential medical goods.¹⁵ As global rules are still being developed, while the deeper EPA may encourage Parties to open these markets, ESA countries would benefit from flexibility.

5.3 Suggestions for development cooperation

The screening of possible measures shows that EU development cooperation could be valuable in mitigating potential adverse effects and ensuring that positive effects are seen. Key areas for cooperation include the following:

¹² Government of Zimbabwe, *Public Procurement and Disposal of Public Assets Act [Chapter 22:23]*, 29 (b), available at <https://zimlil.org/zw/legislation/num-act/2017/5/Act%205%202017-Public%20Procurement%20and%20Disposal%20of%20Public%20Assets%20Act.pdf>

¹³ Mauritius Procurement Policy Office 2011, *National Action Plan on Sustainable Public Procurement (SPP) for Mauritius (2011-2015)*, https://www.oneplanetnetwork.org/sites/default/files/national_action_plan_mauritius.pdf

¹⁴ Labour and Economic Development Research Institute of Zimbabwe and Friedrich-Ebert-Stiftung (2015), *'Strategies for Transitioning the Informal Economy to Formalisation in Zimbabwe'*.

¹⁵ European Commission, 23rd November 2020, *Ottawa Group proposes a global Trade and Health Initiative*: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2215&title=Ottawa-Group-proposes-a-global-Trade-and-Health-Initiative>

- Capacity building and technical assistance to support transparent public procurement practices in countries where transparency is an issue.
- Capacity building and technical assistance for sustainable public procurement practices, such as the inclusion of environmental and social criteria in technical specifications.
- Capacity building and technical assistance for assessing adherence to environmental, social and human rights standards, through increased inspections, amongst other activities. This can contribute to ensuring an upholding of these standards.
- Capacity building and technical assistance to help manage public procurement for medical supplies and develop competitive, export-oriented manufacturing in key fields.

6. Policy recommendations

The analysis suggests that ESA 5 countries can benefit from an open and transparent public procurement system from modernised competition policies. The two major bottlenecks seem to be administrative and infrastructure (professional services, etc.) capacities and governance failures (except for Mauritius). Whereas the former can be overcome with the help of the EU through targeted development cooperation, the latter requires reforms on the side of ESA countries.

One way would be to agree on a mutual commitment to open the public procurement markets, safeguard competition as planned in the negotiations, and combine these commitments through an appropriate dispute settlement mechanism (see Report on Dispute Settlement). Thereby, ESA governments force themselves to adhere to regulations, which benefit the countries in the medium and long run. In addition, the following is important for economic as well as environmental, social, gender and human rights impacts.

Economic impacts from public procurement provisions

- Opening public procurement to EU companies could improve access, lower costs and improve services provided by the government. However, greater participation of EU companies could lead to reductions in contracts for ESA companies in ESA states. The negotiations should also include capacity building/development cooperation focused on enhancing the participation of domestic suppliers as flanking measures. This will also allow ESA governments to achieve a greater value-added (price-performance ratio) for their procurement contracts.
- Transparency should be of utmost importance as greater transparency may facilitate entry to public procurement markets for new ESA businesses.

Economic impacts from competition provisions:

- To enhance competition, an improved rule of law could lead to an improved business environment which could increase future investment in ESA countries.
- In addition, increased transparency and greater competition could open markets to EU companies and ESA companies.

The EU should engage in development cooperation with governments in ESA countries but should include the business community and civil society from the start in the negotiations and – once the deepened EPA is in

force, thereafter. This enhances transparency and efficient procurement as it puts pressure on ESA governments to adhere to the agreement.

Environmental, social, gender and human rights impacts

- Provision should be made to protect the right of Parties to use selection criteria for public procurement contracts to support environmental, social and human rights policy goals and concerns. Consequently, Parties must include assessment criteria relating to the environment, social issues and human rights. Given that these would be voluntary, it could be helpful to include a provision in the agreement that public procurement contracts should be carried out following the conditions set out in the TSD chapter of the ESA and that the provisions should not block countries from pursuing environmental, social, gender or human rights goals in their public procurement laws.
- Development cooperation should be envisaged to assist ESA countries in developing the efficiency of enforcement practices to ensure that social, environmental and human rights standards are upheld. Cooperation can also contribute by sharing best practice on the development of sustainable public procurement practices.
- The deepened EPA should encourage Parties to open their public procurement in sensitive fields such as public health and environmental services while allowing national governments the right to determine the most appropriate national pathways.

Appendix I. Overview of the five ESA countries

The five ESA countries vary greatly in terms of their economic and human development and their environmental context. The table below provides an overview of key indicators across these dimensions.

Table 18: Key economic, environmental, social, gender and human rights indicators (2019 or latest year available)

	Comoros	Madagascar	Mauritius	Seychelles	Zimbabwe
GDP/Capita in US\$ (2019) ¹⁶	1,370	523	11,099	17,448	1,464
Surface area (km ²) ¹⁷	1,861	587,295	2,040	460	390,760
Total Population (2019) ¹⁸	850,886	26,969,307	1,265,711	97,625	14,645,468
Human Development Index (2018) ¹⁹	0.538	0.521	0.796	0.801	0.563
Poverty rate (dates vary) ²⁰	18.1%	77.6%	0.1%	..	34%
Female employment (2019) ²¹	34.9%	81.8%	40.6%	61.6%	73.8%
Yale EPI (Env. Perf. Index, 2020) ²²	32.1	26.5	45.1	58.2	37
ND-GAIN score (2017) ²³	39.2	32.9	55.6	48.4	33.1

Source: World Bank, UNDP, International Labour Organisation (ILO), Yale University, University of Notre Dame

The data for these indicators predate the Covid-19 pandemic, whose impact on the region and individual countries is not yet clear, but it is expected to have far-reaching health and economic consequences. Nonetheless, these indicators show that the five ESA countries vary greatly in terms of economic, environmental, social and human rights conditions.

Comoros is a small lower-middle-income island economy with a comparatively low level of human development. Poverty affects nearly one-fifth of the population. It faces multiple challenges in terms of adequate health, housing and food. Biodiversity is severely degraded, and its islands are prone to natural disasters and vulnerable to climate change impacts. Comoros faces challenges in providing adequate drinking water and sanitation.

¹⁶ GDP per capita (current US\$) – 2019 data for Comoros, Madagascar, Mauritius, Seychelles, Zimbabwe. World Bank Data: <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=KM-MG-MU-SC-ZW>

¹⁷ Surface area in square kilometres – 2018 data for Comoros, Madagascar, Mauritius, Seychelles, Zimbabwe. World Bank Data: <https://data.worldbank.org/indicator/AG.SRF.TOTL.K2?locations=KM-MG-MU-SC-ZW>

¹⁸ Population, total – 2019 data for Comoros, Madagascar, Mauritius, Seychelles, Zimbabwe. World Bank Data: <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=KM-MG-MU-SC-ZW>

¹⁹ A summary measure of average achievement in key dimensions of human development on a scale of 0 (low) to 1 (high). UNDP data: <http://hdr.undp.org/en/data>

²⁰ Share of population below international poverty line. 2019 data for Mauritius and Zimbabwe, 2012 for Comoros, 2013 for Madagascar. World Bank data from <https://sdg-tracker.org/no-poverty#targets>

²¹ Employment of female population, 15+. ILO Data: https://www.ilo.org/shinyapps/bulkexplorer54/?lang=en&segment=indicator&id=EMP_2WAP_SEX_AGE_RT_A

²² The Environmental Performance Index (EPI) provides a quantified summary of the environmental performance of countries around the world. It uses 32 performance indicators across 11 issue categories. The EPI uses a score of 0 to 100 (the maximum value). 2020 EPI Results: <https://epi.envirocenter.yale.edu/epi-topline>

²³ The Notre Dame Global Adaptation Initiative (ND-GAIN) score is an index assessing a country's vulnerability to climate change and its resilience and readiness vis-à-vis climate impacts. Overall, 45 indicators contribute to developing the country index, with 36 indicators assessing vulnerability and 9 assessing readiness. Scores range from 0 to 100. Notre Dame Global Adaptation Initiative: <https://gain.nd.edu/our-work/country-index/rankings/>

Madagascar is a low-income economy. It is a large island and has the highest population of the five ESA countries. Poverty levels are extremely high despite an abundance of natural resources. Poverty negatively affects its social conditions, limiting health, food, education, and housing. Biodiversity is severely degraded, and deforestation is a significant challenge. Moreover, Madagascar is highly vulnerable to climate change impacts.

Mauritius is a small upper-middle-income country whose service industry has grown considerably in the past ten years. Rights to food, housing and health care are at comparatively high levels, as is human development. The country's biodiversity is highly threatened, and despite high readiness, Mauritius remains vulnerable to climate impacts.

Seychelles is a small high-income country island with comparatively high-level human development,²⁴ including a high literacy level²⁵ and a well-developed housing market. The right to health and food has improved in recent years. Though it has a relatively high readiness level, Seychelles is highly vulnerable to climate change impacts.

Zimbabwe is a lower-middle-income, landlocked country whose economy, social conditions and environment have suffered from political crisis. Rights to food, housing and health are extremely poor. Although about one-quarter of the country has been protected, biodiversity is threatened, and deforestation continues. The country is highly vulnerable to climate change and has a low readiness score.

²⁴ Central Bank of Seychelles, *Annual Report 2018*, available at: <https://www.cbs.sc/Downloads/publications/Annual%20Report%202018.pdf>.

²⁵ World Bank, 'Literacy rate, youth total (% of people ages 15-24) - Comoros, Madagascar, Mauritius, Seychelles, Zimbabwe, World', available at <https://data.worldbank.org/indicator/SE.ADT.1524.LT.ZS?end=2019&locations=KM-MG-MU-SC-ZW-1W&start=2013&view=chart>

Appendix II. Indicators on legal system, trade barriers and regulations in ESA countries

1. Madagascar

Table 19: Overview

Year	2013	2014	2015	2016	2017	2018
Economic Freedom Summary Index	6,64	6,43	6,40	6,25	6,14	6,20
Rank	100	111	111	118	126	125
Quartile	3	3	3	3	4	4

Source: Fraser Institute

Table 20: Size of government, legal system, and property rights

Year	2013	2014	2015	2016	2017	2018
Size of Government	8,74	8,14	8,31	7,90	7,63	7,51
Judicial independence	3,35	3,47	3,68	3,59	3,52	3,48
Impartial courts	3,33	3,32	3,36	3,31	3,69	3,49
Protection of property rights	4,28	4,28	4,35	4,33	4,48	4,70
Integrity of the legal system	4,50	4,63	4,65	4,65	4,67	4,57
Legal enforcement of contracts	2,42	2,96	2,96	2,96	2,96	2,96
Legal system & property rights	2,99	3,05	3,09	3,06	3,21	2,92

Source: Fraser Institute

Table 21: Sound money and freedom to trade internationally

Year	2013	2014	2015	2016	2017	2018
Sound money	8,06	8,04	8,05	7,90	7,63	7,65
Non-tariff trade barriers	5,02	5,42	3,52	4,12	1,95	4,83
Compliance costs of importing and exporting	7,01	4,62	5,07	5,07	5,07	5,09
Regulatory trade barriers	6,02	5,02	4,29	4,59	3,51	4,96
Financial openness	4,16	4,16	4,16	1,66	1,66	1,66
Capital controls	0,00	0,77	0,77	0,77	0,77	0,77

Freedom of foreigners to visit	10,00	10,00	10,00	10,00	10,00	10,00
Controls of the movement of capital and people	4,72	4,98	4,98	4,14	4,14	4,14
Freedom to trade internationally	7,16	6,97	6,76	6,62	6,36	6,71

Source: Fraser Institute

Table 22: Regulation

Year	2013	2014	2015	2016	2017	2018
Credit market regulations	8,07	7,71	7,51	7,39	7,39	8,14
Labour market regulations	4,94	4,74	4,49	4,50	4,36	4,64
Administrative requirements	4,16	3,74	3,60	3,57	3,41	3,13
Regulatory burden	2,44	2,44	2,44	2,44	3,33	3,56
Starting a business	9,60	9,12	9,22	9,37	9,40	9,43
Impartial public administration	1,11	1,11	1,35	1,35	3,07	3,07
Licensing restrictions	8,88	7,85	7,85	7,80	7,84	7,69
Tax compliance	7,95	7,95	7,95	7,95	7,95	7,95
Business regulations	5,69	5,37	5,40	5,41	5,83	5,80
Regulation	6,23	5,94	5,80	5,77	5,86	6,19

Source: Fraser Institute

2. Mauritius

Table 23: Overview

Year	2013	2014	2015	2016	2017	2018
Economic Freedom Summary Index	7,88	7,82	7,99	7,98	7,99	8,21
Rank	16	24	14	16	13	7
Quartile	1	1	1	1	1	1

Source: Fraser Institute.

Table 24: Size of government, legal system, and property rights

Year	2013	2014	2015	2016	2017	2018
Size of government	7,81	7,68	7,98	7,88	8,15	8,15
Judicial independence	5,70	5,67	5,69	5,67	6,04	5,95

Impartial courts	5,67	5,70	5,56	5,43	5,54	5,47
Protection of property rights	6,34	6,33	6,26	6,18	6,22	6,74
Integrity of the legal system	4,69	4,69	6,95	6,96	6,79	6,77
Legal enforcement of contracts	4,64	4,64	5,03	5,03	5,25	5,25
Legal system & property rights	5,45	5,45	5,92	6,31	6,40	6,46

Source: Fraser Institute

Table 25: Sound money and freedom to trade internationally

Year	2013	2014	2015	2016	2017	2018
Sound money	9,67	9,58	9,59	9,59	9,30	9,52
Non-tariff trade barriers	6,08	6,83	6,14	6,26	6,20	6,50
Compliance costs of importing and exporting	8,76	7,91	7,86	8,23	8,54	8,54
Regulatory trade barriers	7,42	7,37	7,00	7,25	7,37	7,52
Financial openness	6,99	6,99	6,99	6,99	6,99	6,99
Capital controls	4,62	4,62	4,62	4,62	4,62	4,62
Freedom of foreigners to visit	10,00	10,00	10,00	10,00	10,00	10,00
Controls of the movement of capital and people	7,20	7,20	7,20	7,20	7,20	7,20
Freedom to trade internationally	8,50	8,50	8,42	8,47	8,52	8,53

Source: Fraser Institute

Table 26: Regulation

Year	2013	2014	2015	2016	2017	2018
Credit market regulations	8,50	8,55	8,78	8,63	8,51	8,95
Labour market regulations	7,60	7,16	7,38	6,36	6,41	7,90
Administrative requirements	4,83	4,90	4,67	4,38	4,42	5,02
Regulatory burden	9,78	9,78	9,78	8,89	8,89	8,44
Starting a business	9,79	9,79	9,77	9,81	9,83	9,85

Impartial public administration	7,00	6,94	7,10	7,10	6,89	8,36
Licensing restrictions	6,92	8,37	8,37	9,32	9,32	9,36
Tax compliance	8,30	8,30	8,30	8,30	8,30	8,43
Business regulations	7,77	8,01	8,00	7,97	7,94	8,25
Regulation	7,96	7,91	8,05	7,65	7,62	8,36

Source: Fraser Institute

3. Seychelles

Table 27: Overview

Year	2013	2014	2015	2016	2017	2018
Economic Freedom Summary Index	7,29	7,48	7,43	7,44	7,37	7,49
Rank	57	49	52	52	57	52
Quartile	2	2	2	2	2	2

Source: Fraser Institute

Table 28: Size of government, legal system, and property rights

Year	2013	2014	2015	2016	2017	2018
Size of Government	6,86	7,16	6,87	7,00	7,01	6,71
Judicial independence	5,03	5,04	4,98	4,93	5,09	5,27
Impartial courts	5,03	5,06	5,11	5,06	5,15	5,46
Protection of property rights	4,86	4,86	5,12	5,35	5,35	5,53
Integrity of the legal system	6,33	6,33	6,86	6,97	6,93	6,98
Legal enforcement of contracts	4,06	4,06	4,06	4,06	4,06	4,06
Legal system & property rights	5,16	5,16	5,42	5,54	5,59	5,54

Source: Fraser Institute

Table 29: Sound money and freedom to trade internationally

Year	2013	2014	2015	2016	2017	2018
Sound money	8,26	9,10	9,33	9,00	9,07	9,26
Non-tariff trade barriers	5,70	5,70	5,70	6,05	6,04	5,87
Compliance costs of importing and exporting	7,76	5,24	5,32	5,32	5,32	5,33

Regulatory trade barriers	6,73	5,47	5,51	5,68	5,68	5,60
Financial openness	10,00	10,00	10,00	10,00	10,00	10,00
Capital controls	8,46	8,46	8,46	8,46	8,46	8,46
Freedom of foreigners to visit	10,00	10,00	10,00	10,00	10,00	10,00
Controls of the movement of capital and people	9,49	9,49	9,49	9,49	9,49	9,49
Freedom to trade internationally	8,82	8,55	8,06	8,10	7,65	8,27

Source: Fraser Institute

Table 30: Regulation

Year	2013	2014	2015	2016	2017	2018
Credit market regulations	7,67	8,00	8,00	8,00	7,88	7,88
Labour market regulations	6,99	6,99	7,17	7,36	7,40	7,56
Administrative requirements	5,33	5,33	5,33	5,04	5,03	5,17
Regulatory burden	6,00	6,00	6,00	6,00	6,00	5,78
Starting a business	8,67	8,83	8,83	8,84	8,83	8,84
Impartial public administration	6,22	6,22	6,22	6,64	6,64	7,89
Licensing restrictions	8,98	8,46	8,46	8,46	8,67	9,08
Tax compliance	9,01	9,05	9,05	9,05	9,05	9,05
Business regulations	7,37	7,31	7,31	7,34	7,37	7,63
Regulation	7,34	7,43	7,50	7,56	7,55	7,69

Source: Fraser Institute

4. Zimbabwe

Table 31: Overview

Year	2013	2014	2015	2016	2017	2018
Economic Freedom Summary Index	5,46	5,80	6,24	5,72	5,16	5,12
Rank	144	138	118	144	152	155
Quartile	4	4	3	4	4	4

Source: Fraser Institute

Table 32: Size of government, legal system, and property rights

Year	2013	2014	2015	2016	2017	2018
Size of government	6,51	6,58	6,78	5,14	4,29	4,51
Judicial independence	3,42	3,60	3,85	3,91	3,94	3,79
Impartial courts	3,40	3,50	3,61	3,49	3,48	3,36
Protection of property rights	3,08	3,30	3,41	3,37	3,67	3,86
Integrity of the legal system	5,15	5,16	5,16	5,05	5,23	4,94
Legal enforcement of contracts	2,37	2,37	2,37	2,37	2,37	2,37
Legal system & property rights	3,54	3,60	3,78	3,74	4,11	4,07

Source: Fraser Institute

Table 33: Sound money and freedom to trade internationally

Year	2013	2014	2015	2016	2017	2018
Sound money	6,90	7,97	8,18	7,38	6,72	5,03
Non-tariff trade barriers	6,48	4,74	5,63	4,99	4,85	5,20
Compliance costs of importing and exporting	1,29	4,17	1,69	1,64	1,33	1,33
Regulatory trade barriers	3,89	4,45	3,66	3,32	3,09	3,26
Financial openness	1,66	1,66	4,16	4,16	4,16	4,16
Capital controls	0,00	0,00	0,00	0,00	0,00	0,00
Freedom of foreigners to visit	8,85	8,85	8,85	8,85	8,85	8,85
Controls of the movement of capital and people	3,50	3,50	4,34	4,34	4,34	4,34
Freedom to trade internationally	5,46	5,78	5,88	5,79	3,97	5,73

Source: Fraser Institute

Table 34: Regulation

Year	2013	2014	2015	2016	2017	2018
Credit market regulations	6,00	6,00	9,33	9,10	9,10	7,44
Labour market regulations	4,55	5,09	6,05	6,12	6,12	6,24

Administrative requirements	3,07	2,63	2,26	1,82	1,92	2,41
Regulatory burden	0,67	0,67	0,67	0,89	2,67	2,67
Starting a business	5,91	5,94	5,83	6,89	7,81	8,33
Impartial public administration	2,61	2,78	2,78	2,17	1,97	2,21
Licensing restrictions	4,99	4,95	6,99	7,00	7,49	7,99
Tax compliance	7,29	7,29	7,29	7,29	7,29	7,29
Business regulations	4,09	4,04	4,30	4,34	4,86	5,15
Regulation	4,88	5,04	6,56	6,52	6,69	6,28

Source: Fraser Institute