CIVIL SOCIETY POSITION ON THE EAC-EU EPA

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CSOs call upon Tanzania not to Sign or Ratify the EAC-EU Economic Partnership Agreement (EPA) given the inherent dangers therein

There are increasing conflicting allegations about Tanzania discussing the signing of an Economic Partnership Agreement (EPA) with the European Union (EU), which the government of Tanzania, through the Ministry of Investment, Industry and Trade has refuted in a press release dated 15th February 2022[1].

We the members of the East African Trade Network (EATN), a consortium of CSOs working on trade, investment, fiscal and related issues in the East African Community (EAC), call upon the Government of Tanzania and the East African Community (EAC) not to waver and be stampeded into signing the EPA, given the fact that although the economic and political landscape has changed since 2016, the negative impact of the EPA on the EAC remain contentious.

What are the EPAs?

The EPAs are reciprocal Free Trade Agreements (FTAs) between European Union (EU) and Africa Caribbean Pacific (ACP) states launched in 2002. The stated objectives of the EPAs are namely; to ensure the sustainable development of ACP countries; to promote regional integration; to ensure a smooth and gradual integration of ACP countries into the global economy; and to eradicate poverty. Whereas these were the stated objectives, the actual purpose of the EPAs is to create a Free Trade Area between two economically unequal regions i.e. Africa and Europe.

In a bid to strengthen their regional integration agenda, the five EAC Partner States (Burundi, Kenya, Rwanda, Tanzania, and Uganda) in 2007 decided to reconfigure and negotiate the EPA as a bloc. There were contentious issues in the EPA which made the EAC Partner States reluctant to conclude the pact. However, on 21st May 2013, the EU unilaterally imposed a deadline for concluding the negotiations by revising her Market Access Regulation 1528/2007 to clearly indicate that any ACP country which will not have signed or ratified the EPA by 1st October 2014 will be removed from the list of beneficiaries of the Duty-Free Quota Free market access to the EU market[2]. This decision created tremendous pressure among EAC Partner States as it would imply that with exception of other Partner States who are Least Developed Countries (LDCs) and would continue accessing the EU Market under the Everything But Arms (EBA), Kenya, a non-LDC would cease to access the EU market on a Duty Free and Quota Free provision. The new Market Access Regulation would in effect lead to an imposition of a tariff of 12% (MFN) or 8.5% (GSP) on a number of key products including fresh cut flowers and fish.

As a result of this pressure, and the need to maintain its' Duty-Free Market Access, Kenya signed and ratified it on 1st September 2016 and on 20th September 2016, respectively. In a joint statement between Kenya and EU (dated 17th February 2022), the two parties renewed their intention to bilaterally implement the EPA. Rwanda also signed the EPA on 1st September 2016 but is yet to ratify. The rest of the EAC Countries by then i.e. Uganda, Burundi, and Tanzania did not sign the EPA.

The contentious issues raised by EAC Member States in 2015

Under the EAC-EU EPA, the EAC was to liberalise 82.6% of its trade with the EU over the period between 2015 and 2032. If implemented, this would have had the following negative implications to the EAC Partner States:

1 https://www.mit.go.tz/uploads/documents/en-1644995693-PRESS%20RELEASE.pdf

2 REGULATION (EU) No 527/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2013. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0527&from=EN

a) Loss of revenue:

According to UNECA (2005)[3], the EPA would have resulted into revenue shortfalls estimated at US $ 32,490,659 for Tanzania; $ 9,458,170 for Uganda; $ 5,622,946 for Rwanda; $ 107,281,328 for Kenya; and $ 7,664,911 for Burundi. This revenue shortfall would have had serious implications on the EAC Partner States' ability to mobilise resources for their development and would have led to EAC's continued reliance on aid and increased indebtedness estimated by the IMF (as a proportion of GDP) to be 55.4% for Kenya, 42.4% for Tanzania, 41.5% for Rwanda and 37.9% for Uganda as of May 2016[4].

b) EAC's Industrialization at risk:

The high level of liberalisation vis-à- vis a very competitive partner (EU) would have put EAC's existing local industries in jeopardy and would have discouraged the development of new industries.

Indeed, whereas the liberalization schedule, on the face of it, catered for the protection of infant industries and sensitive products, a careful examination of the schedules brings out clear contradictions. For example, on one hand, the EAC had protected maize (corn) flour (HS Code, 6 digits 110220) at a duty rate of 50% yet on the other hand, maize (corn) starch (HS Code, 6 digits 110812), which is a bi-product of maize flour had been liberalized. These contradictions equally applied to other products like cassava (manioc) and potatoes. With such a liberalisation schedule, promoting value addition through agro-processing will be very much constrained and will also compromise food security given the supportive linkages between agriculture and manufacturing.

c) EAC's Agricultural production and food security at risk:

The very extensive liberalisation would also have impacted negatively on agricultural production and food security in the EAC as the region would have been exposed to the EU's subsidised agricultural products. Although the EU, under the EPA Article 68(2), had undertaken not to grant export subsidies to all agricultural exports to the EAC Partner States, the real challenge to the EAC's agricultural production and industrialization were (and still are) the ever increasing domestic subsidies in the EU, which issue the EU has refused to discuss both in the EPA and in the WTO Therefore, the combination of the extensive liberalisation, the high domestic subsidies in the EU and the lack of safeguards mechanisms were evident threats to the EAC's agricultural production and food security.

d) Undermining South-South Cooperation:

Article 15 of the EAC-EU EPA obliged the EAC to extend to the EU any more favourable treatment resulting from a preferential trade agreement with a major trading economy/ country. This would have circumscribed the EAC's external trade relations; and would also have undermined the prospects of South-South trade which the EAC was and is still aspiring to promote. In addition, that Article was and is still contrary to the spirit of the World Trade Organization's (WTO's) Enabling Clause that promotes Special and Differential Treatment for developing countries and South-South cooperation.

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3 Stephen Karingi, Rémi Lang, Nassim Oulmane, Romain Perez, Mustapha Sadni Jallab & Hakim Ben Hammouda (2005): Economic and Welfare Impacts of the EU-Africa EPAs. Published by UNECA.

4 http://www.theeastafrican.co.ke/business/Debt-levels-push-East-African-economies-to-financial-crisis/-/2560/3269716/-/1joxflz/-/index.html

e) Undermining regional integration in Africa:

Although one of the ostensible objectives of the EPA was to promote regional integration, they have in fact largely balkanized the region. For example, in blocs like the EAC, Kenya and Rwanda signed with the former ratifying and currently engaged in discussions with the EU to unilaterally implement the EPA. This is likely to have far reaching implications on sub- regional and continental integration prospects as it was envisaged that the Regional Economic Communities (RECs) will be the building blocks of the AfCFTA. The EPAs will not only prescribe the kind of AfCFTA Africa will have in place but it will also deepen divisions between African countries, making African trade policy harmonization even more difficult. At EAC level, lack of a coherent position on the EPA signing and ratification will undermine the EAC Customs Union, which is a critical stage in consolidating EAC's integration agenda.

f) Rendez-vous Clause (Article 3):

Under this Clause, the EAC and EU undertook to conclude, within five years upon entry into force of the EPA, negotiations in areas of services, investment, government procurement, trade and sustainable development, Intellectual Property Rights (IPRs) and competition policy. This commitment would have further shrunk EAC partner states' policy space needed for promoting sustainable development. For example, regarding IPRs, LDCs at the WTO (Art 66.1 of TRIPS) are not required to provide intellectual property protection (they have a right to automatically renewed transition periods as long as they are LDCs. Therefore, for the EPA to include intellectual property protection in the future would severely harm the EAC LDCs (and Kenya).

The new developments in the EAC /Africa

The last 16 years since the signing and ratification of the EAC-EU EPA by some EAC Partner States have witnessed new developments in the EAC region, Africa, and globally. The new developments include:

- **African Continental Free Trade Area (AfCFTA):** Africa has prioritised the AfCFTA based on the Regional Economic Communities (RECs) as building blocks, as the vehicle to achieve structural transformation and agenda 2063. Whereas the EAC, as one of the regional blocks is experiencing challenges in consolidating her integration/trade agenda, Partner States appear to be prioritising consolidating their individual relationships with the EU and other third parties rather than with each other. Furthermore, the EPAs which are targeting regions and individual countries within the regions will undermine the realisation of an effective AfCFTA.

- **COVID-19 pandemic:** The COVID- 19 pandemic and the measures to contain its spread have had an unprecedented negative impact on EAC's economy and people's livelihoods. In order for the EAC region to achieve a greener, just, and equitable economic recovery, the region will require policy space and financial resources to put in place policies and strategies that are supportive of this recovery. Unfortunately, the EPA in its current form and with its liberalization agenda will shrink, rather than promote the much-needed policy space, while affecting revenues of Partner States.

- **Comprehensive review of the EAC's Common External Tariff (CET) rates:** Efforts are already in place in the EAC to review the CET in order promote industrialisation in the region. The meeting of the Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI) on 3rd June 2020 endorsed the decisions of the Ministers/Cabinet Secretary for Finance on the CET measures that allowed partner states to put aside the CET rates and apply either a lower or higher duty rate on specific products. The lower rate was to more easily access raw materials and inputs that are not available in the region at a lower rate; while the higher duty rate was for purposes of stimulating local production through safeguarding of that particular product against similar cheap imports; textile (garments) and textile products; leather (shoes) and leather products; edible oil; tiles, processed tea; coffee & cocoa; meat & meat products; and steel articles, iron & metal products. Most of the partner states opted for stay of application of the EAC CET and applied higher duties ranging from 35%-60%. This gives a positive indication that the EAC partner states may soon conclude the Comprehensive Review of the EAC CET. At the moment the EAC CET has three bands i.e. 0% on raw materials, 10% on intermediate goods and 25% on finished products. Negotiations to adopt a 4th band of between 30% -35% are in advanced stages. The proposal for the 4th band is also aimed at fulfilling the EAC aspirations to industrialise as set out in the EAC Industrialisation policy 2012-2032.

The current extensive liberalisation rate and tariff offers under the EPA will undermine these important developments.

These new developments call for a new trade and investment relationship between the EU and Africa/EAC. There is thus, an urgent need to rethink the EPAs in order to make them mutually beneficial while addressing the longstanding challenges and Africa's aspirations for structural transformation.

Proposals on a way forward

Proposals to the EAC/African Union (AU)

- In the context of the new developments, the EAC through the Secretariat should undertake a cost benefit analysis of the impact of the EPA on EAC Economies. This will enable EAC Partner States to rationalise the decision on whether to sign/ratify or not from an informed point of view. Moreover, this had earlier been demanded for by the Government of Tanzania in 2017[5]. This new cost-benefit analysis must be published and affected sectors and non-State actors including Civil Society, Trade Unions among others consulted before any decision is made about whether to sign/ratify the EPA.

- The EAC/AU should boldly pursue its agenda of promoting structural transformation through focusing on regional integration and the AfCFTA, beginning from the RECs as building blocks, as envisioned in the Lagos Plan of Action. Africa should not rush to integrate with other continents, but should instead look inwards and consolidate her regional integration. We propose that the EPAs be discontinued and those which have been signed and ratified be rescinded. This will allow for the much needed policy space for African countries to use the AfCFTA for industrialisation and structural transformation, and develop competitive regional value chains. Moreover, the COVID-19 pandemic has put into question the efficacy of the neoliberal paradigm that has governed global policies. It is also therefore opportune for us to reassess, review and restructure the EU-Africa trade and investment relations in order for Africa to achieve her development aspirations.

- The EAC and other RECs should not misapply the principle of Variable Geometry. The

5 https://www.tralac.org/news/article/11320-tanzania-demands-study-on-impact-of-eu-trade-deal.html

principle of Variable Geometry is provided for in Article 7.1(e) of the EAC Treaty. It states that: "the principle of variable geometry which allows for progression in cooperation among groups within the Community for wider integration schemes in various fields and at different speeds". This principle applies to Partner States within the EAC and does not apply to third parties. The AU Commission and Member States should desist from perverting the principle of variable geometry for purposes of concluding extra-regional FTAs. Kenya used this Principle to justify concluding the EPA with the EU. This action is setting a very dangerous precedent, undermining regional integration on the continent, and may eventually lead to the disintegration of Africa. Moreover, it should be recalled that during the 31st AU Summit held Mauritania (2018), Heads of State and Government urged Member States to abstain from entering into bilateral trading arrangements until after the conclusion of the AfCFTA negotiations.6 It should be noted that AfCFTA negotiations are ongoing on protocols of: Investment, Intellectual Property, Competition, E-Commerce, Women and Youth in Trade among others.

- EAC/AU should continue demanding that the EU treats the EAC region as a Least Developed Country (LDC) region which should benefit from Duty Free Quota Free Market Access. This is given the fact that the region consists of five (5) LDCs and only one developing country. This is in line with the African Union proposal for a common and Enhanced Trade Preference System for LDCs and Low-Income Countries

Proposals to the EU:

i. EU should accord mutual respect to Africa:

Experiences from the EPA negotiations indicate that the EU has been using underhand methods to put African Countries under undue pressure to choose between Africa/Regional Unity and solidarity on the one hand and access to EU Market on the other. For example, despite the prevalence of contentious issues, the EU put in place deadlines for concluding the EPAs by revising her Market Access Regulation 1528/2007 to clearly indicate that any ACP country which will not have signed or ratified the EPAs by 1st October 2014 would be removed from the list of beneficiaries of the Duty Free Quota Free Market Access to the EU market. This condition forced Non LDC countries like Kenya, Ghana, Cameroon and Ivory Coast to ratify the EPA. This was most unfortunate!

Therefore, the EU should desist from underhand techniques to put African countries in untenable situations where they have to choose between their regional integration aspirations and market access to the EU.

ii. A call for a Unified EU Trade Policy towards Africa

EU's policy towards Africa depends on a number of issues i.e. development categorization (whether a country is an LDC or non LDC), geographical position (whether North Africa or Sub-Saharan Africa). This has led to fragmentation of the African continent, thus making the AfCFTA untenable.

The EU should therefore address its fragmented trade policy towards Africa. Given the decreasing share of Africa's exports to EU especially in value added products (in 2020, over 61 % of goods imported to the EU from Africa were primary goods (food and drink, raw

6 https://au.int/en/pressreleases/20180706/summary-key-decisions-and-declarations-31st-african-union-summit

materials and energy)7, coupled with the challenges arising from the COVID-19 pandemic, the EU should grant unilateral Duty Free and Quota Free Market Access to all African countries with a unified Rule of Origin. The parties can review the earlier EU preferential offer to ACP Countries which granted preferential tariff treatment for products originating in ACP States.

Conclusion

It is critical to appreciate that the EPA is essentially a Free Trade Agreement. What is more revolutionary is that for the first time, the EAC, a relatively poor region, is being required, albeit in a phased manner, to enter into a full reciprocal Free Trade Agreement with a much more developed partner with its attendant negative consequences. As pointed out by Former Tanzania's President H.E Benjamin Mkapa; "the agreement is antithetical to Tanzania's as well as the region's trade and development prospects…..The EPA for Tanzania and the EAC never made sense….The maths just never added up…..The costs for the country and the EAC region would have been higher than the benefits8".Furthermore, as H.E Benjamin Mkapa advised, before concluding a comprehensive EPA, we should ask ourselves the following questions: i.e. Will the EPAs:

- Help our countries to increase their production capacities?
- Encourage diversification?
- Increase food security?
- Provide quality employment?
- Move us from being largely raw natural resource exporters towards being producers of more sophisticated products?

Answers to these simple but fundamental questions should serve as a litmus test to determine whether or not the EAC-EU EPA Negotiation Outcomes are acceptable for the EAC and whether Tanzania and the rest of the EAC Partner States should sign, ratify and implement the EPAs.
Moreover, the call for a rethink of the EPAs is stressed by H.E. Muhammadu Buhari, President of the Federal Republic of Nigeria, who cautions that a new economic deal between Africa and Europe, rather than the EPA should be sought by both parties. According to him, this would offer a chance for a fundamental new economic deal for Africa (one that addresses the continent's fundamental problems of commodity dependence and unemployment), while for Europe, it would provide the chance to rid herself of a trade policy that quashes job-creation in Africa and hinders efforts to stem economic migration to Europe9.
Signed:

7 https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Africa-EU_-_international_trade_in_goods_statistics

8 http://www.theeastafrican.co.ke/OpEd/comment/434750-3323648-uirx9iz/index.html

9 https://www.other-news.info/its-time-for-a-new-economic-deal-between-the-eu-and-africa/

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