

## **A Trade Policy to Serve the People: Exploring alternative Free Trade Agreements (FTAs)**

The professed role of Trade in promoting development cannot be disputed. Trade can foster growth, promote industrialization, promote investment, innovations, create jobs, build better synergies between countries' production needs and agriculture capacity, and can help developing and least developed countries integrate further into the regional and global economy. Trade can also work for the most vulnerable e.g. women from poor and marginalized communities, leading to improvements in their lives and livelihoods, thus reducing inequalities. For Uganda, trade can be a critical tool in reducing the ever-increasing trade deficit which is currently at USD 2,434 million<sup>1</sup>. However, experiences have revealed that trade can also be a tool for further marginalization of poor economies and can lead to increased trade deficits, inequalities between and within countries, vulnerabilities, Market shocks in poor countries and can result into a greater concentration of wealth produced by the global economy.

In the contemporary global economy, Trade is shaped policies and agreements. Trade is the most regulated sector in the world, with 60% of international treaties, protocols and agreements are trade related<sup>2</sup>. At the East African Community (EAC) level, FTAs have manifested themselves through the Tripartite FTA<sup>3</sup>, African Continental Free Trade Area (AfCFTA), and Economic Partnership Agreement (EPA) being negotiated with the EU. Other countries like the U.S.A, China, Brazil, India, Turkey, U.A.E, EFTA States have also expressed desire to negotiate FTAs with the EAC respectively. However, it is important to note that trade agreements, especially Free Trade Agreements (FTAs) are a double-edged knife that if not properly negotiated, they can have far reaching implications on our economy and people's livelihoods.

The standard practice is that FTAs are premised on promoting regional integration, creating employment, fostering structural transformation, and raising living standards of the negotiating parties--rather than to maximize trade per se. In practice, however, promoting development and maximizing trade--have come to be increasingly viewed as synonymous, to the point where the latter easily substitutes for the former. The net result has been a confounding of ends and means. Trade, under FTAs has become the lens through which development is perceived, rather than the other way around. This can be deduced from the African Caribbean Pacific (ACP)-European Union (EU) Economic Partnership Agreement (EPA).

### ***Understanding the genesis of FTAs***

Right after the failed World Trade Organization (WTO) Ministerial in Cancun in 2003, Robert Zoellick, the US Trade Representative, announced that the USA would push ahead with free trade and investment agreements with willing countries: 'By pursuing multiple free trade initiatives, the US is creating a 'competition for liberalization' that provides leverage for openness in all negotiations, establishes models of success that can be used on many fronts, and develops a fresh

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<sup>1</sup> The Uganda National Budget Framework Paper FY2019/2020. Accessed at <http://budget.go.ug/budget/sites/default/files/National%20Budget%20docs/National%20Budget%20Framework%20Paper%20FY%202019-20.pdf>

<sup>2</sup> [https://www.newvision.co.ug/new\\_vision/news/1426598/uganda-access-regional-global-markets](https://www.newvision.co.ug/new_vision/news/1426598/uganda-access-regional-global-markets)

<sup>3</sup> The Tripartite FTA brings together the three regional blocs i.e. the EAC; Common Market for Eastern and Southern Africa (COMESA) and the Southern Africa Development Community (SADC).

political dynamic that puts free trade on the offensive<sup>4</sup>.<sup>4</sup> In October 2006, Peter Mandelson, the EU Trade Commissioner, made a similar pronouncement: “Europe’s bilateral agreements will of course be driven by competitiveness considerations that reflect our trade priorities [...] they will be [...] stepping stones to future multilateral agreements [...] and] road-test liberalization that can ultimately be extended to the global system”<sup>5</sup>.

It is therefore key to underscore the fact that rich economies like the EU are using FTAs to win concessions that they are unable to obtain at the WTO, where developing countries continue to band together and hold out for more favorable rules. For the EU, this can be seen from the Economic Partnership Agreement (EPAs) that it has negotiated with the African Caribbean and Pacific (ACP) Countries. While these FTAs have often been initiated in view of making them WTO compatible, they have, in reality, tended to be WTO plus. Indeed, by going beyond the provisions negotiated at a multilateral level, they impose far-reaching, hard-to-reverse rules that systematically dismantle national policies designed to promote development. Indeed, although developing-country governments have proved themselves increasingly assertive at the WTO and in some regional and bilateral agreements, the balance of power in current negotiations remains tipped heavily in favor of rich countries and large, politically influential corporations. Furthermore, within developing countries, small businesses, trade unions, non-government organizations, women’s groups, and indigenous peoples have very few mechanisms for participation, and their rights and needs are largely ignored.

### ***Whither development agenda in FTAs? A case study of the East African Community (EAC)-EU Economic Partnership Agreement (EPA)***

Since the beginning of the Doha Ministerial Conference of the World Trade Organization (WTO), it has always been tasking to infuse the development component in trade agreements. Indeed, during the Doha Ministerial Conference, it took a lot of resistance from LDCs for the WTO developed members to agree on naming the round the “Doha Development Round”. It is no wonder that since 2001 to date, the development component of the Doha Round is yet to be realized, and due to the stalemate of the round, there is a big push by development countries to abandon the round and focus on new issues. Indeed, there have been efforts to bury the Doha Development Round so as to update the WTO with new issues i.e. 21<sup>st</sup> Century Issues like e-commerce and Investment Facilitation among others.

The same can be said of FTAs. While the expression “development” features in the texts, in practice, it has been the opposite. Taking the example of the East African Community (EAC)-EU EPA, at the beginning of negotiations, the stated overall objectives of the EPAs were namely; to ensure the sustainable development of ACP countries; to ensure their smooth and gradual integration into the global economy; and to eradicate poverty. While the negotiations did not adequately address these objectives, the EAC is being stampeded into signing the text. As a result of the pressure, Rwanda and Kenya have individually signed, with Kenya ratifying and depositing her ratification instruments with the European Union on 20<sup>th</sup> September 2016. This is irrespective of the fact that there are contentious issues that have overtime been raised by Civil Society

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<sup>4</sup> See the Statement of Robert B. Zoellick, US Trade Representative, before the Committee on Finance of the US Senate, 5 March 2003; Office of the United States Trade Representative (2003) ‘Annual Report’; and the Trade Policy Agenda of the President of The United States, Washington DC, 2004.

<sup>5</sup> Peter Mandelson, EU Trade Commissioner, ‘Bilateral Agreements In EU Trade Policy’, speech delivered at London School Of Economics, 9 October 2006.

Organizations and recently by Tanzania, which, if not resolved, will not only undermine the achievements of these objectives but will negatively affect the future development of the region.

Key to note on why the EPA is not a “development Agreement” for the EAC is the fact that it has an extensive liberalization offer (the EAC has offered to liberalize 82.6% of her imports from the EU over a 25 year transition period by initially liberalizing 65.4% on entry into force of the agreement); threatens industrialization in the EAC; threatens regional integration in the EAC; and the rendezvous clause (Article 3 of the EPA text) which commits parties undertake to conclude within five years upon entry into force of the agreement, negotiations in areas of services, investment, government procurement, trade and sustainable development, intellectual property rights and competition policy i.e. issues which EAC countries have refused to negotiate at the WTO<sup>6</sup>! By stampeding the EAC into signing and ratifying the EPA or face sanctions, the EU has signaled that promoting regional integration in the EAC should be subordinated to integration with the EU. This is irrespective of the fact that internal (regional) integration should take precedence over external integration.

The benefits of FTAs for development have been pushed, that African countries have largely embraced them. The challenge therefore presents itself on how to achieve development through the free market ethos which permeates FTAs. The history of development and industrialization has confirmed that no country has developed simply by opening itself up to foreign trade and investment. According to Rodrik (2001), the trick in the successful cases has been to combine the opportunities offered by the market economy with a domestic investment and institution-building strategy to stimulate the animal spirits of domestic entrepreneurs<sup>7</sup>. Indeed, almost all of the outstanding cases—East Asia, China, India since the early 1980s--involve partial and gradual opening up to imports and foreign investment. This is not for the case of the EPAs where the EAC has offered to liberalize 82.6% of her imports from the EU over a 25-year transition period. While protectionism is not inherently preferable in international trade, the benefits of trade openness are now greatly oversold. Deep trade liberalization cannot be relied on to deliver high rates of economic growth and therefore does not deserve the high priority it typically receives in the development strategies pushed by leading multilateral organizations. It is no wonder that in his Four Steps to Damnation, Joseph Stiglitz ranks Free Trade as the fourth and final step which countries, especially LDCs are convinced into adopting which leads to their “economic capture”<sup>8</sup>.

Whereas FTAs are crafted with promises of promoting regional integration and a gradual integration of LDCs into the global economy, a clear examination of the provisions in FTAs casts a highly contested belief. As pointed out by Tandon (2011), “*the fundamental reality of Africa is that it is integrated into a global system of kleptocratic capitalism characterized by rent seeking by the rich nations and within each nation by the rich power elite.....this creates at the opposite polar end the dispossession and disempowerment of the majority in her economies*”<sup>9</sup>. It is not uncommon practice for African countries to massively displace communities from their land and give it to foreign investors, nor is it strange that investment guiding legal frameworks have prioritized the rights of investors over those of

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<sup>6</sup> <https://www.seatiniuganda.org/publications/research/66-seatini-statement-on-inherent-dangers-of-signing-the-eac-eu-epa/file.html>

<sup>7</sup> Rodrik D (2001). The Global Governance of Trade as if Development Really Mattered. Accessed at <http://www.giszpenc.com/globalciv/rodrik1.pdf>

<sup>8</sup> <https://www.theguardian.com/business/2001/apr/29/business.mbas>

<sup>9</sup> Tandon, Y. (2011). “Kleptocratic Capitalism: Challenges of the Green Economy for Sustainable Africa”. Accessed at <https://static1.squarespace.com/static/5c0a99cfcf7fdedeb167d25/t/5c0aedb5b8a045ca68a5b4ba/1544220085734/Kleptocratic-capitalism.pdf>

host communities. Clearly, this kind of development model, which is further enshrined in FTAs won't translate into people's welfare.

### ***An FTA that serves the people: what are the alternatives?***

Like already pointed out, the experience of newly industrialized countries all over the world as well as modern growth theories underscore the fact that market mechanisms may not be sufficient, and that the government has a potential role to play. FTAs are designed and driven by an absolutist ideology which undermines the expected "mutual benefit" from economic cooperation. Just like trickle-down economics which holds that if Gross Domestic Product goes up, the incomes of all (or most) will, too, while an FTA might provide market access to regional groupings, not all will benefit from such an arrangement. In order to avert this, there is need to rethink the contemporary FTAs for alternative FTAs i.e. those that put interests of the people at their core mandate. Most importantly, alternative FTAs should:

**Focus on maximizing Development rather than Trade:** FTAs should be designed to put promote a trading regime in which trade rules are determined so as to maximize development potential, particularly of the poorest nations in the world. Instead of focusing on how to maximize trade and market access, negotiators should focus on how to use trade as a tool to enable countries to grow out of poverty. This will require adopting alternative FTA texts which promote a development-friendly trading regime i.e. a regime that does much more than enhance poor countries' access to markets in the advanced industrial countries. According to Rodrik (2001), a development-friendly trading regime is "*one that enables poor countries to experiment with institutional arrangements while leaving room for them to devise their own, possibly divergent, solutions to the developmental bottlenecks that they face....It is one that evaluates the demands of institutional reform not from the perspective of integration ("what do countries need to do to integrate?") but from the perspective of development ("what do countries need to do achieve broad-based, equitable economic growth?")*"<sup>10</sup>.

**Pursue strategies for poverty alleviation rather than growth per se:** While engaging in FTAs discussions, there is a need for African countries to distinguish between strategies and provisions that focus on growth and those that focus on poverty alleviation. More importantly, African countries have to articulate their needs not in terms of market access, but in terms of the policy autonomy that will allow them to exercise institutional innovations that depart from prevailing orthodoxies. Investment chapters of FTAs like the EPA should uphold the right of governments to regulate the entry of foreign investors to promote development and the creation of decent employment, and include commitments to enforce core labor standards for all workers. This is perhaps the most feasible way to counter corporate led globalization which is driven by FTAs, and is informed by the fact that countries have the right to protect their own institutions and development priorities. More importantly FTAs should not contain broader provisions/chapters on issues like investment, e-commerce, competition among others which have been greatly contested at the WTO level. This will not only make them WTO compliant but will also lead to preserving the necessary policy space for development.

**Promote regional integration and intra-regional trade:** Developing countries often negotiate FTAs in the hope of increasing their market access or under the threat of preference withdrawal, which looms large for many. FTAs like the EPA have been used in a manner that disrupts the

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<sup>10</sup> Rodrik D (2001). The Global Governance of Trade as if Development Really Mattered. Accessed at <http://www.giszpenc.com/globalciv/rodrik1.pdf>

regional integration Agenda in Africa. For example, in spite of the outstanding issues which remain unresolved, the EU has continuously used unilaterally imposed deadlines for concluding EPA negotiations by revising her Market Access Regulation 1528/2007. In the East African Community, this has created tremendous pressure that has seen unharmonized positions amongst Partner States and is likely to disrupt regional integration by affecting the Common External Tariff, in an event all the EAC Partner States don't sign the EPA<sup>11</sup>. For Africa, a focus on FTAs that seek to promote intra-regional trade like the African Continental Free Trade Area (AfCFTA) should be prioritized. This is because such regional FTAs do not only deepen integration but they also help create a stronger negotiating bloc in big forums like the World Trade Organization, as members seek to ensure that such forums don't erode the benefits of deeper intra-regional trade and integration. While this does not necessarily guarantee enhanced welfare for all, this is a general step to promoting Pan Africanism, and seeking African solutions to African development challenges.

**Allow for use of Tariffs for infant industry growth and competitiveness:** The EU under her Raw Materials initiative has consistently insisted on including in her negotiations a clause that prohibits the use of export taxes since they want access to cheap raw material. Indeed, Article 14 (Export duties and Taxes) of the EAC-EU EPA subjects the usage of export taxes to stringent conditionalities i.e. notification to the EU, limited product coverage, limited period of time, and subject to review by the EPA council. This is despite the fact that export taxes are permissible under the WTO. As is well known, export taxes are very critical for industrialization. The logic of export taxes is to encourage producers to enter into value-added processing, hence encouraging diversification and the upgrading of production capacities. *Therefore, alternative FTAs should be designed to enable developing countries to use tariffs, subsidies, and other measures in support of industrial policy and to modify them as their economies develop.*

**Promote the role of State in regulating Foreign Direct Investments:** Investment provisions in FTAs prevent developing-country governments from requiring foreign companies to transfer technology, train local workers, or source inputs locally. Under such conditions, foreign investment fails to build national linkages, create decent employment, or increase wages, and instead exacerbates inequality. The investment chapters of FTAs and bilateral investment agreements make governments vulnerable to being sued by foreign investors if a new regulation is perceived as damaging the investor's profits, even when such reforms are in the public interest. *Therefore, alternative FTAs should be sought to recognize the right of governments to impose capital controls on foreign investment and performance requirements that encourage joint ventures, technology transfer, and local sourcing, as well as incentives to improve labor practices.*

In conclusion, like argued by Stiglitz, negotiations of FTAs between largely developed economies like the EU and underdeveloped, poor economies like the EAC have *often tended to be an imposition from the former to the latter, rather than a negotiation*<sup>12</sup>. This has subsequently ushered in asymmetrical engagements which have worked against mutually beneficial FTAs. Therefore, in order to ensure that FTAs work for the people, especially the poor and vulnerable one, they should be used in a manner that promotes role of the State in Africa's economic transformation and development.

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<sup>11</sup> Rwanda and Kenya signed the agreement on 1<sup>st</sup> September 2016, with the latter ratifying it on 20<sup>th</sup> September 2016. Uganda's position has, as yet, to be clarified, while Tanzania made a decision not to sign the EPA pact citing its far-reaching implications on Tanzania's industrialization, revenue collections and on the development of the region at large. Burundi has also not signed because it is under EU sanctions.

<sup>12</sup> Joseph Stiglitz cited in *La Jornada*, 19 May 2006, <http://www.jornada.unam.mx/2006/05/19/045n1mun.php>

The central role of the State in the economic success of the Asian tigers and some Latin American countries reinforces the call for a more effective role for the State in governing Africa's development. As argued by UNECA (2011), the failure of earlier approaches, both State-led and market-driven, points in the direction of a developmental State that uses the market as an instrument rather than a "mechanism" for fostering long-term investment, rapid and sustained economic growth, equity and social development, and does this in the context of a democratic, inclusive and comprehensive national development framework<sup>13</sup>.

A closer look at what modern trade agreements do and don't do makes clear that they have in recent years taken on a variety of issues that reach beyond the traditional theories of free trade—and in many cases, domains of national governance. Instead of eliminating trade barriers such as import duties and quotas, contemporary trade agreements have become a lot more expansive in the list of issues they tackle. Like emphasized by Rodrik, FTAs commonly cover issues such as labor standards, patent rules, investor-state dispute settlements, and the harmonization of standards that boost corporate profits at the expense of broader wellbeing. Not only do these elements of "free trade" agreements go beyond what most trade models were set up to analyze; they also occupy domains of public welfare about which most economists have chosen to remain mute<sup>14</sup>. It is therefore important that alternative FTAs, with a major intent of enhancing welfare, rather than trade per-se are prioritized, if Trade is to be a tool for the development and structural transformation of LDCs.

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<sup>13</sup> UNECA (2011). "Governing development in Africa: The role of the State in economic transformation". Accessed at [https://www.uneca.org/sites/default/files/uploaded-documents/CoM/cfm2011/com2011\\_issuespaper-governingdevelopmentinafrica\\_en.pdf](https://www.uneca.org/sites/default/files/uploaded-documents/CoM/cfm2011/com2011_issuespaper-governingdevelopmentinafrica_en.pdf)

<sup>14</sup> <https://www.ineteconomics.org/perspectives/blog/why-free-trade-agreements-serve-corporations-first>