

The EAC-EU EPA: Variable Geometry will impair Regional Integration

The 20th Summit of the EAC Heads of State will take place on Friday 1st February 2019 in Arusha-Tanzania. Among the issues on the agenda, is the EAC-EU Economic Partnership Agreement (EPA). H.E. President Yoweri K. Museveni, will in his capacity as chair of the Summit appraise his fellow EAC Heads of State on the status of the negotiations. The Summit is also expected to consider Kenya's proposal to evoke the principle of Variable Geometry to allow Partner States to implement the EPA as individual countries rather than as a bloc.

A brief overview of the EPA negotiations.

In order to get a proper perspective of the challenge at hand, a brief overview of the history of the EPA negotiations is very pertinent. The Africa Caribbean Pacific (ACP)-European Union (EU) EPA Negotiations were launched in 2002 under the Cotonou Partnership Agreement (CPA) where the Parties agreed to conclude new World Trade Organization (WTO) compatible trading arrangements, remove progressively barriers to trade between them and enhance cooperation in all areas relevant to trade (CPA Article 36.1). The stated overall 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. The negotiations were envisaged to be concluded by 2007 and new trading arrangements to be in place by 2008.

In a bid to strengthen their regional integration agenda, the five EAC partner states in 2007 decided to reconfigure and negotiate the EPA as a bloc, and subsequently, on November 27th 2007, they initialed the Interim Framework Economic Partnership Agreement (FEPA) in Kampala. Since then, negotiations continued on a number of contentious issues. 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 market¹.

This decision created tremendous pressure among various ACP regional groupings in general and the EAC in particular. For the EAC, this decision 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 accessing the EU market at Duty Free and Quota Free. 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. According to the Kenya Flower Council, this would amount to a loss of 3 million pounds per month (Sh4 billion) on the flower exports². This would have been a huge loss to Kenya's economy. As a result of this pressure, and the need to maintain Kenya's Duty-Free Market Access, the EAC-EU EPA negotiations were concluded on 16th October 2014 after 12 years of negotiations, and the pact was scheduled to be signed on 18th July, 2016.

However, the Tanzanian Government 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. This decision was supported by the Tanzanian Parliament. Burundi has also not signed because it is under EU sanctions. On the other hand, Rwanda

¹ 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>

² <https://www.trademarka.com/news/kenya-may-lose-sh4b-monthly-if-eu-trade-deal-is-not-signed/>

and Kenya signed the agreement on 1st September 2016, with the latter ratifying it on 20th September 2016. Uganda's position has, as yet, to be clarified.

Attempts to break the impasse.

As the current Chairman of the EAC Summit, H.E. President Yoweri K. Museveni undertook consultations with a number of stakeholders within the region including the EAC Heads of State. On 28th September 2017, he met with the European Union (EU) Commission President Jean-Claude Juncker and reiterated the concerns from the EAC on the EPA which included inter alia; the overall implications of the EPA on development of the region especially in the view of the rendezvous clause and the increasing domestic subsidies in the EU³. Under the Rendezvous Clause (Article 3), the EPA requires EAC and EU to undertake and 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. These are contentious issues even at Multilateral level where the EU are of the proponents with offensive interests. The intention is to make binding rules in these areas including on the digital economy which would circumscribe the ability and space of our countries to undertake development policies.

SEATINI as part of the wider civil society fraternity has consistently highlighted the negative implications of the EPA. We are convinced that the present EPA text falls far short of securing the regions' overall development interests; and maybe inimical to achieving the regions' aspirations for structural transformation.

The proposal to evoke the principle of Variable Geometry.

In a bid to break the current impasse on ratification and implementation of the EPA, Kenya is set to table a proposal of using the principle of Variable Geometry to implement the EPA. This is in line with the decision taken in the 19th Ordinary Summit of EAC Heads of State where the chair of the Summit was mandated to follow up on this matter and in the event that an acceptable way forward is not reached, the Community shall explore the use of the Variable Geometry in the implementation of EPAs⁴. The 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*"

The proposal to evoke Variable Geometry in the EPA is a misapplication of this principle. There is no doubt that this principle applies to integration within the EAC and does not apply to third parties. If wrongly evoked as proposed by Kenya, it will lead to unintended consequences of fusing the EAC in the EU Free Trade Area. If Kenya implements the EPA, it will be part of the Free Trade Area with the EU and by default the entire region will be in the EU given the fact that the EAC has a Common External Tariff. It is very difficult to envisage a situation where one EU Country would be allowed to enter into a Free Trade arrangement with the EAC while remaining in the EU. Therefore, this proposal will set a very dangerous precedent and may lead to the disintegration of the EAC.

Proposals on the way forward

It is now almost 17 years since the launch of the EPA negotiations. Since then, there have been major global developments which affected the context and dynamics within which we

³ <http://www.statehouse.go.ug/media/news/2017/09/28/president-museveni-eu-commission-boss-discuss-epas>

⁴ joint communiqué: 19th Ordinary Summit of Heads of State of the East African Community. Accessed at <https://www.eac.int/communiqué/1001-joint-communiqué%3%A9-19th-ordinary-summit-of-heads-of-state-of-the-east-african-community>

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negotiated the EPA. These developments include inter alia; a new economic geography with the rise of new emerging countries like Brazil, China, India and South Africa (BRICS); the impasse in the Multilateral Trading System and the Doha Development Round, the backlash against globalization; the growing inequality between and within nations; BREXIT among others. There is a need for any negotiations between the EU and the EAC to take these developments into consideration.

It would appear that by acquiescing with Kenya's proposal, the EAC Summit would be prioritizing trading with the EU over EAC Integration. This should be avoided in order to preserve, widen and deepen EAC Integration. This would be unfortunate!

However, there are viable alternatives for Kenya to explore.

Kenya should explore the enhanced Generalized System of Preferences (GSP+) scheme where her top 27 exports to the EU including the much-cited flower and horticulture exports will access the EU market duty free and quota free. This will necessitate Kenya's ratification of the Genocide and International Labor Organization Conventions 87 which are already reflected in her legal practice.

We recall that the Cotonou Agreement 2000 Article 37(6) provided that *"In 2004, the community will assess the situation of the non LDC which, after consultations with the community decide that they are not in a position to enter into EPAs and will examine alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules"*. The EAC Summit should call upon the EU to be true to this promise.

The EAC Summit should reconsider and follow up on the African Union's proposal to the EU entitled *"Common and Enhanced Trade Preference System for LDCs and Low-Income Countries"*. Under this proposal, the AU recommends that the EAC region should be treated by the EU as an LDC region which should benefit from Duty Free Quota Free Market Access given the fact that the region consists of four (4) LDCs and only one developing country.

The ACP and EU have launched a new set of negotiations to replace the Cotonou Partnership Agreement (CPA) which is expiring in 2020. The ACP-EU Agreement commonly known as the Cotonou Partnership Agreement prescribed the Political, Economic and Social relationship between EU and its former colonies in ACP Countries. The launch of the Post Cotonou Negotiations provides an opportunity to negotiate a holistic EAC-EU relationship. Therefore, there should be no hurry to sign, ratify or implement the EPA and the EU should be prevailed upon to await the outcomes of the Post Cotonou negotiations.

Conclusion

As pointed out by Former Tanzania's President H.E Benjamin Mkapa; *"the maths for signing and ratifying the EPA just never adds up as the costs for the EAC region will have been higher than the benefits"*⁵.

We reiterate our view that the EPA presents a litmus test for the EAC Partner States i.e. whether their priority is to promote regional integration or whether this should be subordinated to trading with the EU. Internal integration should take precedence over external integration given that the EAC market is of paramount importance for all Partner States. This is because it constitutes the largest market for the EAC Partner States and also offers better prospects for industrialization and development of regional value chains. It is critical that the EAC prioritizes her internal cooperation, as this will enable her to develop, become competitive and be able to promote and protect her interests during negotiations with third parties.

⁵ <http://www.theeastafrican.co.ke/OpEd/comment/434750-3323648-uirx9iz/index.html>