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SEATINI-Uganda's statement on the EAC-EU EPA

The inherent dangers for the EAC signing the EAC-EU EPA: Some proposals on the way forward

Introduction

There are numerous efforts in all African countries including the EAC to structurally transform their economies in order to promote industrialization, facilitate backward and forward linkages, create employment and subsequently reduce poverty. Both at Partner State level and EAC level, there are efforts to promote structural transformation through several policies and frameworks. There are also moves to deepen integration at sub-regional and continental level through the SADC-COMESA-EAC Tripartite Free Trade Area and the Continental Free Trade Area (CFTA). However, the EPA text being presented for signing will compromise these efforts, despite the fact that the ostensible reasons for negotiating the EPAs was to promote regional integration and sustainable development.

The EPA negotiations began in 2002 and were concluded on 16th October 2014 after 12 years of negotiations. The EAC-EU EPA was scheduled to be signed on 18th July, 2016. However Tanzanian Government made a decision not to sign citing its far reaching implications on Tanzania's industrialization and on 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 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. The EAC Heads of States are due to re-convene in February 2017 to provide direction on the way forward.

As SEATINI and as part of the wider civil society fraternity, we have consistently highlighted the negative implications of the proposed text. It is our considered view that a careful reading of the EPA agreement arrived at falls far short of securing the regions' overall development interests and maybe inimical to achieving our aspirations for structural transformation. 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. Against this background and in view of the decision by EALA to discuss this issue, we wish to reiterate hereunder some of our specific concerns:

The extensive liberalization

According to the agreement, 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. The rationale is that some of these products are currently zero rated because they are either industrial inputs or capital goods i.e. machinery and pharmaceuticals. Only 17.4% (1432 tariff lines) have been excluded from liberalization to presumably cater for the protection of the sensitive products and infant industries. This liberalisation seems to be taking a static approach to development which does not envisage Uganda and the East African region graduating to producing either industrial inputs or the capital goods. While we may need to zero rate pharmaceuticals at this stage because we need cheap and affordable medicines, we should be looking forward to producing these pharmaceuticals in future. The zero rating and the Standstill clause (Article 12) effectively constrain the policy space for the region to achieve this aspiration. It should also be noted that the 25 years provided for the completion of liberalization process may appear long in the life of an individual but it is actually a short period in the life of a nation.

The liberalization schedule, on the face of it, caters for the protection of infant industries and sensitive products. However, a careful examination of the schedules brings out clear contradictions. For example, on one hand, the EAC has 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 has been liberalized. These contradictions equally apply to other products like cassava (manioc) and potatoes. With such a liberalization 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.

The combination of the extensive liberalization, the contradictions within the schedules, the weak multilateral and bilateral safeguards on the one hand; and the subsidies in the EU on the other, will further negatively impact on industrialization and food security in the EAC region. Notwithstanding Article 68(2) whereby the EU undertakes not to grant export subsidies to all agricultural exports to EAC Partner States, the real challenge to the EAC's agricultural production and industrialization 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, what is offered in Article 68 (2) as a significant concession is actually miniscule. In any case the EU has already committed to eliminate export subsidies in the WTO.

The EPA provides for multilateral safeguards (Article 49) and bilateral safeguards (Article 50) for protection against import surges. However, the safeguards provided are very cumbersome to invoke as a party has to prove import surges and injury, and establish a causal relationship between the surges and injury to the whole industry. The country must also have in place an investigative mechanism which is difficult to establish. This is why developing countries have not invoked these remedies in the WTO and are also demanding for a special safeguard mechanism for agriculture which is user friendly.

Tariff revenue losses

According to the South Centre (2016), the estimated total cumulative Tariff revenue losses, would amount to €3 billion at the end of the 25 years of implementation of the EPA.[1] This takes into account tariff and VAT losses as well as trade diversion. The elimination of the export taxes, coupled with the very extensive elimination of import tariffs will also affect revenue collection in the region. Tariff revenues contribute a substantial amount to partner states' government revenue. Therefore, this drastic reduction in tariff revenue will result into severe fiscal constraints that will impinge negatively on the provision of social services.

Regional Integration

The extensive liberalization under the EPA will lock the region into a free trade area with Europe, thus adversely affecting the ongoing regional integration efforts especially under the SADC-COMESA-EAC Tripartite Free Trade Area and the Continental Free Trade Area (CFTA). Yet, the promotion of regional integration was one of the major objectives of the

[1] South Centre (2016): EAC EPA

EPA as articulated in the Cotonou Agreement and reemphasized in the EU-EAC EPA text Article 2 (b).

Export taxes, Rendezvous clause and Most Favored Nation

There are other critical Articles which will have far reaching consequences on regional integration and industrialisation in the region. These include inter alia; Export duties and Taxes (Article 14), the Rendezvous Clause (Article 3), the More Favorable Treatment (MFN) (Article 15). Article 14 for example 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 industrialisation. The logic of export taxes is to encourage producers to enter into value-added processing, hence encouraging diversification and the upgrading of production capacities. Unfortunately, the EU under their Raw Materials initiative has consistently insisted on including in their negotiations a clause that prohibits the use of export taxes since they want access to cheap raw materials. Article 14 is framed as if it is a concession by the EU in the agreement. In actual fact, it is the EAC which is conceding and giving up their right to use this very critical tool by making its use subject to the EU's permission.

Under the Rendezvous (Article 3) the 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. This is unfortunate! According to the EU's global strategy, EU's consistent position is to negotiate bilateral and multilateral binding rules in these areas. It should be noted that these are the very areas which contain instruments that governments often use to direct development, promote local industries and nurture the private sector. Binding rules in these areas will therefore constrain the policy space for governments to promote industrialization and sustainable development. It is for this reason that developing countries including the EAC Partner States have consistently opposed their introduction into the World Trade Organization (WTO) negotiations. It should be noted that investment agreements contain very onerous clauses which make it difficult for governments to successfully regulate investments with a view of promoting sustainable development. Government procurement can be used by governments to nurture local industries and strengthen the local private sector. However, a binding government procurement agreement will make it difficult, if not impossible for governments to carry out strategies such as the Buy East Africa, Build East Africa scheme as advocated by the EAC and the East African Business Council.[2]

It is important to appreciate the fact that while the EU market is important, the EAC market is of paramount importance for all partner states as it constitutes the largest market for the EAC Partner States and also offers better prospects for industrialization and development of regional value chains. While the exports originating from the region to the EU are mostly primary products (i.e. coffee, cut flowers, tea, tobacco, fish and vegetables), those traded within the region include value added manufactured products (i.e. cement, textiles, steel, plastics). It should be noted that the EU exports competitively produced industrial and value added agricultural products to the EAC such as powdered milk. This has the potential to undermine both industrial and agricultural production in the EAC. It is also a fact that the preferences and the market that the EU is offering to the EAC remain illusive as they are constantly being eroded by the Free Trade Agreements that the EU is entering into with all other regions in the world and also by the proposed tariff reductions in the ongoing negotiations under the WTO Doha Round. Therefore, preserving and consolidating the EAC market should be a priority to all the EAC Partner States.

The EPAs and Development aid

There is a false impression being created of linking the signing and ratification of the EPA with access to additional financial resources from the EU. Article 75.4 of the EAC EPA explicitly states that any development cooperation or support to the EPA Development Matrix will be delivered and implemented through EU existing mechanisms, in particular the European Development Fund (EDF) and within the framework of the successive relevant instruments financed by the General Budget of the EU. It is apparent that there is no commitment for additional resources in the EAC-EU EPA unlike the ECOWAS which has a regional EPA fund to which the EU has committed 6.5bn EUR for the period of 2015-2020.[3]

BREXIT

The EAC EPA was concluded before Britain voted to get out of the European Union. The EAC should take into account the implications of the BREXIT when considering whether to

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[2] http://www.eac.int/news-and-media/press-releases/20150902/1st-manufacturing-business-summit-held-speke-resort-munyonyo-kampala-uganda

[3] http://www.ecowas.int/west-africa-eu-prepare-for-final-signatures-towards-implimentation-of-the-epa/

sign and ratify the EPAs given the fact that the U.K accounted for 35.6% of the EAC exports to the EU in 2015. Therefore, the BREXIT reduces the value of EU's market for the EAC.

Global Developments

In making a decision regarding the EPAs, the EAC should examine their efficacy and relevancy in the context of global developments which have taken place during the fourteen years (14) of the EPA negotiations. These include, inter alia, the backlash against globalisation, the increasing inequality between and within countries largely as a result of the unfair trade arrangements, a relapse to protectionism, the recognition of the need for industrialisation/structural transformation and the redefinition of the role of the state in ensuring inclusive growth. These developments clearly indicate the urgent need to harness our resources through promoting cross sectoral synergies. This will require policy space to rethink and redesign our development strategy in light of these emerging challenges.

The Market Access Regulation.

After Kenya ratified the EPA on 20th September 2016, the European Commission on 5th December 2016 withdrew the Delegated Regulation of 8th July 2016 amending Annex I to Council Regulation (EC) No 1528/2007 with regard to Kenya. The amendment means that Kenya, was reinstated on the list of beneficiary countries for duty-free and quota-free imports into the EU. The reinstatement of Kenya provides a respite for the EAC Partner States to undertake a deeper analysis of the EPA text, and to address the legitimate concerns raised by Tanzania and the East African civil society regarding the implications of the EPAs on the EAC's development prospects.