

10 YEARS OF THE STOP EPA MOVEMENT: THE FUTURE OF TRADE ACTIVISM

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2014 marks the tenth year of the “STOP EPA CAMPAIGN” and a milestone for the transnational movement since its launch in 2004. On the other hand, 2014 presents yet perhaps the most challenging times for the African Caribbean and Pacific – European Union economic and trade relationship as the Economic Partnership Agreements (EPAs) negotiations set to conclude. As the EPA process comes to an end, the movement has gone through episodes of optimism and disillusionment and brings into question the future of transnational activism.

The “STOP EPA CAMPAIGN” has some of its impulses in the “global justice movement¹” that gained extensive media attention after protests against the World Trade Organization (WTO) in Seattle, USA in late 1999. The “Battle of Seattle” and its predecessor campaigns against the Multilateral Investment Agreements represented some of the first major popular challenges to the neoliberal trajectory of global trade relations (Smith 2011). It was from such positive mass mobilizations that other budding social movements gained impetus in recognition that justice activism had been successful in opening up political opportunities through which such groups could exploit at even higher levels of global decision making.

As the global justice movements continued to unrelentingly question the emergent neo-liberal agenda, the EU and ACP States at the same time embarked on a process of reforming their trade relationship to make it compatible to the WTO rules. In late 2002, the EU and ACP States started the process of negotiating new trade agreements also known as the Economic Partnership Agreements which would put an end to the trade regime in place under the preceding Lomé Conventions. However, to many observers, the EPAs were a new radical shift in ACP–EU relations given the ambitious liberalisation agenda entailed in the new proposed agreements.

Key challenges arose early on in the process as ACP States grappled with the style of the negotiation process and how far they were to consider economic concessions in the appropriate degree, timing and speed of their own market opening under EPAs. ACP States had to contend on how the EPAs would lock in earlier policy reforms made under the Structural Adjustments Programmes (SAPs) which had had disastrous impacts on their economies including adverse effects on domestic industries, employment, government revenue and immensely hampered their poverty easing prospects. Furthermore, the EU reconfiguration of ACP States into new groupings subjectively for purposes of EPA negotiations undermined the intentions of self-initiated regional integration by the ACP States at the time.

As a response to the discontent on both the process and content in the EPA negotiations, civil society organisations and activists in 2004 formed the STOP EPA CAMPAIGN. Launched both in Lusaka Zambia and London, UK on the foundations of the Accra based Africa Trade Network (ATN) together with a number of European NGOs, the movement grew into an important reference point for NGO and civil society involvement in the EPA negotiation process. The campaign deeply criticised the EPA negotiations for their lack of consultation, openness and informed debate and for many ACP States, negotiations continued largely in the circles of technical negotiators based in very fragile regional and national institutions.

¹ The global justice movement is a network of globalized social movements opposing what is often known as the “corporate globalization” and promoting equal distribution of economic resources.

Through such fora like the World Social Forum and Africa Social Forum, the STOP EPA CAMPAIGN was able to find a medium to mobilise space for growing African social movements to voice their opinions and concerns and express their aspirations and alternatives. In many innovative ways, the campaign was able to open otherwise limited spaces for many grassroots movements and often marginalised groups including farmers, women groups, youth organisations, indigenous peoples among others. On the other hand, the movement was also instrumental in amplifying reformist viewpoints and practices for challenging and critiquing existing neoliberalism.

The campaign had a array of collective actions. In Europe for instance, International NGOs such as Oxfam, Actionaid, ATTAC – Germany, TRADCRAFT were active in mobilising financial and technical resources for operational activities in the North and South and also crucially helped in generating research to counter EU positions in the negotiations. Under the Trade Justice Movement, Northern NGOs were persuasive in impelling their governments on the implications of the EPAs on ACP States and one of the more notable actions of the Northern Campaign was the persuasion of the European Parliament to vote against the Commission's EPA ultimatum under EU market regulation "MAR 1528/2007" in favour of more time to negotiate fairer trade agreements. Though during later deliberations the EPA ultimatum deadline was moved to a nearer settlement date of October 2014, such an outcome showed that the STOP EPA Movement could be effective at the highest political levels.

Remarkably, the STOP EPA campaign also employed public interest litigation as a way of demanding inclusiveness in the negotiation process. In East Africa for example, the Kenya Small Scale Farmers Forum in 2007 petitioned the Kenya High Court on the State's obligation in facilitating public involvement in public policy and legislative processes and importantly in the formulation and conclusion of international agreements and treaties. The petitioners complained that subsequent studies on the impact of the EPAs on the Kenyan economy revealed that their coming into force would lead to massive losses in agricultural produce and could push a large number of farmers out of work and extirpate their means of livelihood owing to the heavy subsidization of agricultural produce by the EU.

In a landmark ruling in October 2013, the court ruled that the Kenya Government in consultation with the petitioners within thirty days had to establish a mechanism for involving stakeholders in the on-going EPA negotiations. In addition, the court also ordered the Kenyan government to publish information within thirty days regarding the negotiations in at least two dailies and other official communication on the progress of the negotiations for public awareness and in order to stimulate public debate.

On the other hand, as a way to influence their governments on policy, the Stop EPA activists were instrumental in developing counter negotiating positions and supporting ACP States technical teams which were also quite insightful in exploiting the support offered by trade and development related NGOs. During the course of the EPA negotiations, various Southern and Northern NGOs have been supportive in defending the development goals of ACP States and aiding formation of an extensive social and political network in the negotiations to enhance the purposeful capacity of some of the most resource starved delegations. From such initiatives, ACP states were able to develop means for added joint coordination and the sharing of resources to enhance their capacity to engage in not only the EPA process but also the WTO Doha Round. This structure was for the most part effective in making the best use of inadequate capacity within the ACP countries and also providing openings for understanding the negotiating process and sharing ideas about how they could better influence these dynamic processes.

Although it is difficult to gauge the extent to which the NGO initiatives swayed formal decisions, it is clear that NGO support to ACP States and the mobilisation of public discourse on EPAs was to some degree instrumental in guiding the negotiation process. It is important to note that the extent of the campaign, and the level of criticism was not expected by most European officials. Though European negotiators did not openly acknowledge to being under pressure as a result of this advocacy, it is believed that they did feel obligated to engage with such criticism and improve their efforts to communicate their positions on the developmental benefits of EPAs.

However with the initialing and signing of the EPAs by some ACP States at the end of 2007 and 2008, and the political stalemates that followed, the STOP EPA CAMPAIGN went into a limbo. Many of the organisations and

individuals in the South and North that had strongly participated in this process saw it as a disappointment since some ACP states had quickly agreed to conclude the negotiations or had in principle decided to go on with the process.

Critics of the STOP EPA CAMPAIGN argue that from a strategic perspective, campaigns were meant to influence policy, not to substantively change it, let alone question the power structure that underpinned different governmental positions. Some critics argue that for the campaign to emphasize policy, some activists presumed governmental or inter-governmental positions, only dealing with policy matters and assuming liaison duties with civil society groups. In addition, the critics of the movement note that many STOP EPA campaign initiatives were in most cases short-lived, were simplistic in message, only seeking out the broadest alliances with inadequate technical positions. Many critical observers at this point time summed up the campaign to be covered in commemorative media savvy actions driven by marketing and publicity dynamics rather than core issues.

However, on the other hand, as many activists claim, one of the most often overlooked partial triumphs of the STOP EPA MOVEMENT was the fact that the deadline for signing EPAs has frequently shifted from the initial December 2007 to date for at least some individual countries and configurations. The deferring of the deadline to sign EPAs provided activists with opportunities to further scrutinize the content in the negotiations and come up with more well-thought positions and alternatives.

As interest from governments and activists in the EPA process started to decline after 2007, quietly beneath, the EPA negotiations continued on the outstanding and contentious issues in the initialled Framework EPAs being austere controlled by technical discussions and by a select number of officials. For the activists and campaigners that were still engaging the process, emphasis remained over issues such as the understanding of “Substantially all Trade” which has not explicitly been defined by the WTO but however was sighted as increasing the level of liberalisation commitments for ACP States.

Additionally, the Commissions insistence on the Most Favoured Nation Clause² was opposed by activists who claimed that the Clause curved out Africa’s resources and markets for the Europe in line with the EU’s own Global Europe Strategy and circumscribed ACP States other external trade relations hence undermining the prospects of south to south trade.

Also problematic, was the EU’s instance on the prohibition of export taxes which many observers noted was likely to limit the ability of EAC governments to levy export duties which serve as an important development tool that can be used for revenue generation and create incentives to add value to local products. Other concerns in the negotiations lay in the standstill clause³, stringent and complex asymmetrical “rules of origin”⁴ which in effect was leaving no policy options for ACP countries in managing their fiscal and monetary procedures.

At this point, the EPA process seems to be at a cross roads especially complicated by the EU threat for the withdrawal of a market access under regulation “MAR 1528/2007” by October 2014.

Driven by these threats, the Caribbean States have already gone through the EPA ratification procedures and also ensured that the EPAs not only comprehensively cover trade in goods and services but also other trade related areas of investment, competition, public procurement and intellectual property.

For the Pacific States, Fiji and Papua New Guinea both ratified the interim EPA in 2009 and 2011 respectively and in July 2014 Fiji started applying the agreement as talks continue on a regional comprehensive EPA. Fascinatingly, however, the EU Commission is reported to be intent on exploring the prospect of broadening the membership and expand the content of the existing EU – Pacific interim EPA.

² MFN Clause is an agreement between two parties that each will extend to the other trading terms at least as good as those given to a third country. However the application of this principle has exceptions in the World Trade Organisation.

³ The standstill clause is a country Schedule of Specific Commitments, a country agrees to provide market access and national treatment for trade and services except as otherwise noted in the country’s Schedule. In this case ACP countries are being prohibited from applying higher tariffs than their bound tariffs.

⁴ Rules of origin are the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports.

In Southern African Development Community (SADC), the EPA negotiations were concluded in July 2014 ending ten years of hard negotiations with agreements only awaiting further ratification processes. In West Africa, EPA negotiations were concluded in February 2014 and ECOWAS Heads of State endorsed the agreements for signature in July 2014. However, the West Africa EPA includes rendezvous clause⁵ providing for further negotiations on services and rules chapters.

In the some of the ACP configurations, the EPA negotiations are still rather undecided with negotiations now being continually controlled by technical discussions by a select number of officials. In the Economic Community for Central African States (CEMAC) Configuration, Cameroon is the only country in the region that has signed and approved the ratification of the Agreement which is due for provisional application. However, even with increased expectation from both sides to conclude, the negotiations in the CEMAC region are presently deferred since the outbreak of violence in the Central African Republic and no dates have been set for the next Round of negotiations.

In the Eastern and Southern Africa (ESA) configuration, Mauritius, Seychelles, Zimbabwe and Madagascar signed the interim Economic Partnership Agreement (EPA) in 2009 and started provisional application of the Agreement since May 2012. Nonetheless, negotiations have been met with challenges especially for outstanding issues vis-à-vis export taxes, special agricultural safeguards, rules of origin and cumulation, export subsidies, non-execution clause, institutional provisions and dispute settlement and thus no new dates have been proposed for further negotiations.

In East Africa, the EPA was finally initialled on October 14th 2014 in Brussels. The process had been met by various technical impasses both among the five East African Community (EAC) countries themselves and between the EU and on frequent occasions. Through the process, the EAC and the EU have on many instances agreed to seek political guidance after technical stalemates and in the end, the initialling of the agreement ultimately required a more political approach to preserve the political and economic objectives of the two Parties.

Failure to conclude the negotiations by October 1st 2014 deadline by the EAC meant that, Kenya, the only developing country in the region was removed from the list of countries accessing preferential Duty Free Quota Free Market access to the EU put under the EU Generalised System of Preferences. This now means that Kenyan exports, in particular horticulture, vegetables products among others now face new tariff barriers, mostly between 8% and 12% when they enter the EU market. Nevertheless despite the initialling of the agreement, it will still likely take months for the European Commission to have a delegated act decision approved to reinstate Kenya under MAR 1528/2007.

For the next steps now, both the EAC and the EU will be examining the final text to undertake "legal scrubbing" to essentially edit grammatical errors and misprints, and cleaning up the language before the text can be translated into 23 other languages used within the 27 member states of the European Union. After this process is done, the agreement will be presented before EU and individual EAC parliaments and cabinets depending on the various ratification procedures which process is envisaged to be concluded by August 2015 at the latest.

Though on the face of it the EPA negotiating process in the EAC seems to have come to an end, it is important to note that many ACP configurations have agreed on a Rendez-vous clause in the Framework EPAs and negotiations will eventually continue on matters related especially to the Singapore issues⁶. Therefore, ACP States, activists, NGOs should be apprehensive about such broad commitments to key strategic sectors at the core ACP economic policies and development on which on the other hand many countries do not even have common policies yet.

In addition, ACP States and activists, NGOs should keenly appraise themselves with the new geopolitical reality presented by the U.S. Trans Pacific Partnership (TPP) and the U.S – EU Transatlantic Trade and Investment

⁵ The interim EPAs contain a rendez-vous clause providing for continued negotiations on trade in services, investment, agriculture, rules of origin, sanitary and phyto-sanitary provisions and technical barriers to trade, customs and trade facilitation and trade-related rules.

⁶ Four issues introduced to the WTO agenda at the December 1996 Ministerial Conference in Singapore which include trade and investment, trade and competition policy, transparency in government procurement, and trade facilitation.

Partnership (TTIP). As Peter Draper cautiously observes, these negotiations are wide in scope and deep in ambition and are laden with many implications for non-party states and for the global trading system. Therefore, as the US and EU respond to the failure of the WTO Doha Round and more crucially the geopolitical rise of the BRICS, ACP States should be wary of the big powers locking in additional policy reforms which could have disastrous implications. Equally, as the movement re-invigorates itself, the activists should draw inspiration from the recent undertakings of the U.S “Occupy Movement” that showed that there is still capacity to mobilise constituencies and have collaborative acts of solidarity.

South and North NGOS, activists, grassroot organisations should learn from the challenges of the STOP EPA CAMPAIGN in the last ten years and shape new distinct approaches to make inclusiveness of the masses have real influence in global processes.

Hence as the renewed impetus for Free Trade Agreements negotiations grows across the world, it poses a key trial for civil society networks, movements, activists and grassroot organisations to create awareness, form consciousness, re-mobilise, and re-politicise the masses, so that they are capable of engaging in this dynamic trade reform dialogue.

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