

Civil society statement on the EU-EAC EPA and the Rendezvous Clause negotiations

A CALL TO THE EAC PARTNER STATES TO RETHINK THE SIGNATURE AND RATIFICATION OF THE EU- EAC ECONOMIC PARTNERSHIP AGREEMENT (EPA)

We, the undersigned civil society organizations from the East African Community gathered in Uganda on 30th June -1st July 2016 at a high-level regional conference convened by SEATINI-Uganda in Entebbe, Uganda under the theme “*Achieving Structural Transformation in the context of Regional Integration and the EU-EAC EPA: Implications and way forward for the EAC*”. We assessed the state of play of the EU-EAC EPA and discussed proposals for the way forward.

We note that the EAC concluded the EPA negotiations after 12 years of negotiations with the EU not because it was contented with the provisions of the agreement but rather in order to meet the 1st October 2014 deadline so that Kenya, a non LDC, won't be removed from the list of beneficiaries of the Duty Free Quota Free Market Access to the EU. Further to that, the European Commission has amended Annex 1 to the Council Regulation (EC) No 1528/2007 to state that the European Commission will take appropriate action to remove Kenya from Annex I if it has not ratified its agreement by 1st October 2016¹. This has put the EAC under more pressure that there is a lot of lobbying to have the legally scrubbed and translated comprehensive EPA, despite the contentious issues prevailing therein, signed on 18th July during the UNCTAD XIV session in order to provide more time for Kenya to be able to ratify the EPA before October 1st 2016.

We recall the stated overall objectives of the EPAs namely; to ensure the sustainable development of ACP countries; to support regional integration; to ensure their smooth and gradual integration into the global economy; and to eradicate poverty. However, we are deeply concerned that the concluded EU-EAC EPA does not adequately address the above stated objectives, and that some provisions therein the agreement do not only undermine the achievements of these objectives but will negatively affect the future development of the region. Therefore, we would like to reiterate that the following concerns are still valid and should serve as a litmus test to determine whether or not the EAC-EU EPA Negotiation outcomes are acceptable and whether the EPA is worth signing:

1. Loss of Revenue

According to UNECA (2005)², the EPA will result 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

¹[http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/actes_delegues/2014/08355/COM_AD\(2014\)08355_EN.pdf](http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/actes_delegues/2014/08355/COM_AD(2014)08355_EN.pdf)

² 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.

Kenya and \$ 7,664,911 for Burundi. This revenue shortfall is due to the fact that the EAC has committed to liberalize 82.6% of all its imports from the EU by 2033. This revenue shortfall has serious implications on the EAC partner states' ability to domestically mobilize resources for their development that their reliance on aid will continue which will increase their indebtedness.

2. Infant industry nurturing

The 2012-2032 EAC industrialization policy aims at achieving structural transformation of the manufacturing sector through high value addition and product diversification based on comparative and competitive advantages of the region. In order to achieve this, the role of EAC partner states in regulating trade, investment and in enacting relevant policies is critical. Moreover, the history of development shows that all today's rich countries got rich through using nationalistic policies (e.g. tariffs, subsidies, restrictions on foreign trade) to promote their infant industries, and only liberalized after they had attained a level of competitiveness³. Under the EPA, the EAC will liberalise (between 2015 and 2032) raw materials and capital goods to 65.4% on Duty Free Quota Free basis; and large intermediate products at 14.6%. The permanent removal of tariffs on these products will make it extremely difficult for the region to produce them in future thus curtailing her industrialization process and relegating the region to perpetual production of raw materials. Flexibility to raise tariffs in the future is part of an industrial development policy and should be retained by the state.

3. Concerns on Trade diversion for EAC Countries

Article 5 (b) of the comprehensive EAC-EU EPA states that the EAC Partner States will liberalize progressively and gradually their markets for goods originating from the EU in accordance with the modalities established in the EPA. According to UNECA (2005) due to the full reciprocity in this liberalization, all African regions (EAC in this case) will stand to lose. The EPA will result into trade diversion of EAC's products estimated at \$ 269,314 for Burundi; \$ 2,426,328 for Kenya; \$ 749,240 for Rwanda; \$ 1,236,647 for Uganda and \$ 607,417 for Tanzania. To date, EAC's imports continue to grow faster than its exports and, if combined with the deterioration in the terms of trade due to the EPA, its balance of trade deficit reported at 922 in 2014 will worsen.

4. Concerns on Regional Integration and intra-trade in Africa

We are conscious of the parallel ongoing regional integration processes in Africa under the different Regional Economic Communities (RECs), the EAC-SADC-COMESA Tripartite Free Trade Area (TFTA) and the Continental Free Trade Area (CFTA). Under Article 40 of the report on the 4th

³ Ha-Joon Chang (2007): *Bad Samaritans; The myth of Free Trade and the secret history of Capitalism*. Published by Bloomsbury Press .

EU-Africa Summit, the EU pledged an EPA that will foster intra-African trade, Africa's regional integration efforts and the planned CFTA, by exploiting all the possibilities to reach a satisfactory conclusion of development-oriented and WTO-compatible EPAs that promote African integration, economic transformation and industrialization, and ensure the prosperity of nations to the benefit of both continents. However, we are deeply concerned that even with the conclusion of the negotiations, there are still misgivings on the implications of the EPA on Africa's development, and as to whether the EPA will be a tool for structural transformation and sustainable development in Africa. We are more concerned that the EPA will fundamentally redefine EAC's economy and risk significantly increasing the vulnerability of her market to influxes of cheap goods from the EU. Compounded by the complexities of multilateral trade agreements through the WTO, these EPAs will further constrain the already limited intra-African trade and therefore stymie productive capacity within African economies.

5. Undermining South-South Cooperation

On 24th April 2015, African and Asian leaders renewed their commitment to the Bandung principles of promoting South-South solidarity in among many areas including economic cooperation. The role of diversification of market destinations for goods of countries is unarguably critical in fostering economic development and reducing on trade dependence. The EPA undermines the ability of the EAC to effectively and strategically diversify her market destinations because Article 15 of the EAC-EU EPA obliges the EAC to extend to the EU any more favourable treatment resulting from a preferential trade agreement with a major trading economy/country. This will not only circumscribe the EAC's external trade relations but will also undermine the prospects of South- South trade which the EAC is aspiring to promote. In addition, the clause is contrary to the spirit of the WTO's Enabling Clause that promotes Special and Differential Treatment for developing countries and South- South cooperation.

6. Concerns on Agricultural production in the EAC.

While agricultural chapters of the EAC-EU EPA are entirely excluded from liberalization e.g. 90% for coffee, tea, spices, fruits among others and sugar and sugar confectionary with a tariff of 100%⁴, other products like soft wheat have been exempted and will be put to zero upon entry into force. According to Solidarite (2016), although Kenya is importing about twice its wheat production level to satisfy its consumption need of 900,000 tonnes, it has the potential to be self-sufficient, while the rest of EAC partner states have a good production potential. Regarding the EU granting of subsidies, para 2 of Article 68 of the EAC-EU EPA indicates that the position of the EU not granting export subsidies for all agricultural products to EAC Partner States shall be reviewed by the EPA Council after 48 months. We are concerned that EAC economies will be

⁴ Solidarite (2016), The EAC-EU EPA would liberalize 75.7% of EU exports to EAC.

more exposed to EU's dumping of subsidised agricultural products under the EPA than through the WTO because of the much deeper liberalization in the EPA. Given the developments in this area in particular the Nairobi Decision on Export Competition of December 2015 where WTO Members agreed to eliminate export subsidies, there is no need to review the prohibition of export subsidies in order to nurture the Agriculture sector in the EAC.

7. The rendezvous clause

We note that Article 3 of the EU-EAC EPA consolidated text contains provisions of the rendezvous clause, where the parties undertake to conclude the negotiations in areas of services, investment, government procurement, trade and sustainable development, intellectual property rights and competition policy and conclude within five years upon entry into force of the EPA. We reiterate that this unprecedented commitment is neither required by the Cotonou Agreement nor for WTO-compatibility. We recall that developing countries, including the EAC have been reluctant to negotiate binding rules in these issues in the WTO, and thus they should not be put on table in an asymmetrical agreement. We are more concerned that the issues therein the rendezvous clause will further shrink the policy space needed for sustainable development and each of them has particular impacts on value addition, small scale farming and food security. We therefore call upon the EAC not to undertake negotiations on these issues until the EAC is prepared and has put in place policy frameworks that will help us negotiate with the EU from a more prepared point of view.

We therefore reiterate former Tanzania's President Benjamin Mkapa advised, before concluding a comprehensive EPA, we should ask ourselves the following questions:

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?

Renewing our position that trade agreements must serve sustainable development and uphold human rights and foster Regional integration and structural transformation, we call upon our EAC policy makers and negotiators:

- ❖ Not to succumb to the pressure of signing and subsequently ratifying the EPA if the terms will jeopardize the EAC's structural transformation and sustainable development.

- ❖ Not to ratify the EPA out of fear or pressure of time geared towards averting the risk of trade disruption as there are bigger issues such as the region's existing industries as well as industries that could be developed in the future at stake.
- ❖ To harmonize their ratification processes, and grant the effective involvement of parliaments for transparency and to allow for more stakeholders' engagements.
- ❖ To focus on other alternatives to EPAs and policies to boost both intra-African and South-South trade.
- ❖ To evoke section C Para 20 of the ACP guidelines for negotiating the EPA which states that *"irrespective of the outcome of the EPA negotiations, with respect to trade relations with the EU, no ACP State should be worse off in the post-2007 period than under the current ACP-EU trade arrangements"*

Endorsed by:

SEATINI-Uganda

SEATINI-Kenya

ACORD-Rwanda

ADIR-Burundi

Uganda National NGO Forum

Kenya Human Rights Commission

ECONEWS-Africa

BEACON-Kenya

Food Rights Alliance-Uganda

Consumers Trust (CONSENT)-Uganda

East African Civil Society Forum (EACSOF).

Youths Plus-Uganda

Action Développement et Intégration Régionale (ADIR)

Réseau des Organisations de Développement du Monde Rural (RODEM)-Burundi