The EU-EAC Economic Partnership Agreement: Defective agreement or defective system?

By:

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The EU-EAC Economic Partnership Agreement (the EPA) aimed at providing market access as between the two regions remains incomplete to this day. After 12 years of negotiation between the European Union on one side and Uganda, Kenya, Tanzania, Rwanda and Burundi on the East African side, it was intended that the EPA be in operation soon after the conclusion of negotiations on 16 October 2014.

It has, however, come under fire due to various provisions in the agreement and events such as Brexit which have necessitated, sincerely or otherwise, a few Partner States to engage in a cost-benefit analysis of whether to proceed with the EPA. Other reservations have evolved into political leverage for past (or continuing) issues and concerns, making the signing of the EPA contingent on criteria indirectly related to the negotiations. Whatever the case, these negotiations shed light on the ease with which individual member interests

have the power to overrule the interests of the entire bloc. This may be deemed an appropriate and even desirable function of intergovernmentalism, the prized means of integration selected by the Partner States.

However, the exclusion of supranational elements from crucial operations of the East African Community (the Community) has led to inexcusable failures to achieve basic economic objectives. It is important, therefore, to question the constitutional foundations of decision-making in the region in connection with external relations in order to begin to conceive an acceptable level of efficiency.

The representation problem

In 2008, the East African Legislative Assembly enacted the East African Trade Negotiations Act. Its objective is to establish a mechanism for joint negotiations of the Partner States in bilateral, regional and multinational trade, and a trade regime under which trade negotiations were to be conducted as a bloc. The Act provides for the establishment of the East African Joint Trade Negotiation Commission to carry out these negotiations on behalf of the Partner States, and even harmonise negotiating positions in instances where other partner states are not present.

The Commission is to be composed of two members nominated by each partner state qualified in trade matters, the secretary general of the Community, an ex officio member designated by the relevant ministry from each partner state, and the Director General of Trade. It is a requirement under the Act that a person can only serve as a commissioner if they are not a government minister, and if they have proven experience in trade. A clear technocratic aim can be inferred from this composition, which sets the stage for serious trade engagements among experts while ensuring that each Partner State is represented.

The Council, composed of East African Community Affairs ministers, such other ministers as may be determined and attorneys general, may be described as a political entity, or at least drawing its authority from different political backgrounds. It has played a lead role in the EPA negotiations. It is not clear

whether the trade ministers attending did so in their capacity as members of the Council or trade ministers in their individual governments. The result has been the politicising of relatively straightforward economic considerations, with individual members pitting their cooperation against unrelated trade-offs. It comes as no surprise then, that on the agenda of the September 2018 EPA negotiations in Brussels were the sanctions placed on Burundi by the EU in the aftermath of the 2015 election violence.

It is also not a coincidence that Tanzania maintains varying concerns about the agreement amid growing tensions with the EU over democracy, rule of law and human rights issues. All the while, Kenya, also riding on self-interest, is unable to move forward with the deal, having been the first to sign and ratify it. The EPA is crucial with respect to Kenya's trade relations with the EU as it is a developing country and therefore cannot benefit from tariff free access under the Everything but Arms Agreement created for Least Developed Countries. It is therefore unsettling that the economic affairs of the region are placed squarely within the whims of individual countries driven by political considerations, while there are effective mechanisms to guide the process.

One for all, all for one…or one for one?

States have always battled with the decision to give up some freedom as sovereigns in return for greater influence or security as a larger unit. This battle boils down to the decision-making aspect in the chosen fields of integration, and is all very dependent on the model chosen and the wishes of the members.

As stated above, the intergovernmental nature of the Community may condone centralisation of individual state interests fortified by the use of consensus as a decision-making tool. With the Community making arrangements for ever closer collaboration in the context of political union, this one-for-one mentality diverts from this ambitious course of integration. This is especially an issue in the context of the EPA because the negotiating role of the Commission is bypassed by the Council as well as other government ministers. Decisions in the Council are reached through consensus. The Council's presence in the negotiations increases the risk of irrelevant considerations dominating the process because the members embody the various politics of each Partner

State, as illustrated in the September EPA negotiations. Negotiations could be held hostage over these considerations because of the requirement of consensus.

The Commission, though also required to reach consensus in their decisions, may have at least added credibility to the discussion based on their expertise in deliberations on the merits of the issue. The Community's pursuit of deeper cooperation will continue to face progression challenges if it does not move away from this reliance on consensus, especially on economic issues, and suitable replacements found such as a majority voting system.

To conclude… It has become increasingly clear with the unfolding of the EPA events that the failure of the Community to achieve basic set out objectives lies deeper than the merits of the projects embarked on. As it has not proved efficient to hold each Partner State to their commitments to the Community at all times, it is necessary to address the systemic weaknesses that allow unconstructive concerns to permeate well-intended goals.

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