Where is the flower power these days? The EAC-EU Economic Partnership Agreement

By:

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Uhuru Kenyatta, the President of Kenya, invested a lot in the establishment of the EAC–EU EPA. He was pressured by the Kenyan floriculture industry, according to Benjamin William Mkapa, former President of Tanzania and a fierce critic of this agreement. These concerns were echoed in a briefing commissioned by the European Parliament. Kenya is the fourth largest exporter of cut flowers in the world (after the Netherlands, Colombia and Ecuador). In 2017, the floriculture industry contributed around 1.06 per cent to Kenya's Gross Domestic Product. This industry is export-driven, with almost all produced flowers being air-transported to the European Union (EU). Two-thirds of exports are distributed via the Dutch auction. From there, they are further distributed to other EU Member States and Russia, Japan and the US. Removal of preferential market access – which the floriculture industry had under the previous IVth Lomé Convention – would decrease its competitiveness in the EU, where its main competitors benefit from a duty-free regime, either because they qualify as Least Developed Countries under the Everything But Arms special arrangement (Ethiopia) or because they are part of a free trade agreement with the EU (Colombia and Ecuador).

Trade relations with the EU

The IVth Lomé Convention, was an attempt by EU Member States to support and partner with their former colonies, the African, Caribbean and Pacific (ACP) group of states. This system was, however, against the World Trade Organization's Most Favoured Nation Principle because preferential treatment granted to the ACP states should have been granted to other General Agreement on Tariffs and Trade States Parties with a similar level of development. In 2000, a new provision was included in the Cotonou Agreement, the overarching framework for EU relations with the ACP states, making it possible to negotiate different economic partnership agreements with regional groupings.

Kenya is, however, the only EAC Partner State that has ratified the 2014 EAC-EU EPA. In 2018, the EAC heads of state from Burundi, Rwanda, Tanzania, Uganda and South Sudan postponed the endorsement of the agreement again until 'satisfactory clarification of concerns', which might entail a renegotiation of the agreement with the EU. There are two reasons why the other EAC Partner States are less eager than Kenya to ratify the EAC-EU EPA. First, the other EAC Partner States all qualify as Least Developed Countries, which have duty-free and quota-free access to the EU market under the Everything But Arms scheme, without the EAC-EU EPA in place. Second, the other EPA Partner States have relatively more reasons to be concerned about the impact of the EAC-EU EPA on their long-term objectives to promote industrialisation and to add value to their resources. The agreement provides for immediate duty-free and quota-free access to the EU market for all EAC exports, and gradual liberalisation of the EAC market to imports from the EU, providing access to 82.6 per cent of the market's value over 25 years. There are fears that East African companies will not be able to withstand heightened competition from EU corporations in Africa. Moreover, the agreement does not break trade patterns, whereby the EAC

Partner States are expected to export raw materials and agricultural products instead of manufactured goods. President Mkapa accused the EU of using the agreement to secure access to East African raw materials under its Raw Materials Initiative. Such concerns are less pressing in Kenya for two reasons. On the one hand, Kenya is relatively resource-poor. There have only recently been discoveries of oil in the conflict-affected region of Turkana County. On the other hand, Kenya is already relatively industrialised. Kenya’s exports to the EU were 2.5 times as much as the exports of Tanzania, the most developed of the least developed EAC Partner States in 2018.

For the time being, Kenyan floriculture corporations continue to export under the Generalised System of Preferences regime until the reinstatement process is over. The failure to have the EAC-EU EPA – or a renegotiated agreement - in place would result in a decrease in production and significant loss of employment in the Kenyan floriculture industry. Approximately 100,000 people are currently directly employed in the floriculture industry, supporting over half a million beneficiaries. While the number of jobs in other industries in Kenya has stagnated, the number of floriculture jobs has doubled over the last decade.

Rights in the floriculture industry

The challenge of creating *productive* jobs – an essential precondition for achieving the UN Sustainable Development Goals on decent work for all, poverty alleviation and gender equality – has, however, been largely ignored during the EAC-EU EPA negotiations. For example, no gender impact assessment has been carried out, while the EAC-EU EPA is likely to further contribute to the feminisation of precarious labour in the floriculture industry. In particular, women workers in the floriculture industry are disproportionally impacted, as their work is segmented by gender. The higher-paying jobs, such as supervision and construction, are disproportionally given to men. Women are concentrated in the more numerous lower-paying jobs, such as planting and picking. The gender factor cannot be isolated from a series of other factors. Many workers are single mothers who have migrated from non-flower growing regions to flower growing areas, such as the farms around Lake Naivasha. These migrant workers rely upon their employers for housing, transport, meals and medical assistance. This state of dependence is an effective disincentive to raise concerns about any violation of their rights taking place during or outside their working hours.

The EAC-EU EPA does also not create a legal basis for cooperation on issues relating to human rights. Negotiations in areas of trade and sustainable development were left for future discussions (article 3 EAC-EU EPA). The open-ended nature of this ‘rendez-vous’ clause mirrors the discussions on a social clause in the World Trade Organization. It would be unfair to put a social clause in ‘an asymmetrical agreement’, as EAC Partner States have been reluctant to have such a clause. Civil society organisations - such as Seatini-Uganda and Kenya Human Rights Commission - have already called upon the EAC Partner States to not undertake these negotiations until the EAC has put in place its own policy frameworks.

Human rights conditionality is controversial but the Cotonou Agreement provides, nevertheless, some clauses containing modes of cooperation and legitimation relating to human rights, as well as a framework to engage in discussions. Under article 9(2)(4) of this agreement, the EU and the ACP states acknowledge that human rights, democratic principles and the rule of law are ‘essential elements’ that underpin the domestic and international policies of their partnership. Under article 50 Cotonou Agreement, the ACP states have reaffirmed their commitment to the International Labour Organisation’s core labour standards. While core labour standards should not be used for protectionist purposes, EAC Partner States and EU Member States have agreed to cooperate on labour matters.

The Cotonou Agreement will expire on 29 February, and a new agreement is currently being negotiated. Both the EU and the ACP states have expressed that the promotion of human rights are important objectives, but only the EU refers explicitly to the protection of core labour rights in its negotiating mandate. It would be good to explicitly mention core labour rights in the Post-Cotonou agreement, as the Kenyan Central Organization of Trade Unions – currently the only union that represents floriculture workers – sustains the myth that labour rights are entirely distinct from human rights.

Aleydis Nissen is awaiting her viva examination at Cardiff University. During her PhD studies, she has been a visiting research at the University of Nairobi. She is *currently preparing a newspaper article on the Kenyan floriculture industry with the support of the Fund Pascal Decroos. View more updates on aleydisnissen.com.*

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