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RESEARCH Paper

A Case for Trade in the Resurgent EAC - Policy Challenges and Opportunities

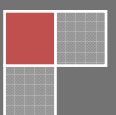
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Introduction

In Africa today, we recognise that trade and Investment and not aid, are pillars of development.

- H.E. Paul Kagame, President Republic of Rwanda, speech at the 2nd ordinary session of the conference of African Union Minister of Trade May 27, 2004.

The EAC with an estimated population of 126 million and gross domestic product (GDP) of about US\$44bn has a strong potential to effectively participate in the world economy and thereby enhance development of its people by fostering well coordinated trade and related policies in the region.

Three of the EAC member countries Kenya, Uganda and Tanzania have a long history of economic relations dating back to the early twentieth century. This included a customs union between Kenya and Uganda in 1917 that was later joined by the then Tanganyika in 1927; inter-territorial cooperation between Kenya colony, the Uganda Protectorate and the Tanganyika territory formalised in 1948 by the East Africa High Commission which, provided a Common External Tariff (CET) and currency as well as common services in transport and communication; the East African Community established in 1967 but dissolved in 1977; and ultimately the East African Cooperation of 1993 which led to the resurgence of the EAC that now includes Burundi and Rwanda.

Several factors led to the demise of the previous EAC among which was the differences in sharing of benefits from jointly owned common organisations and lack of sound policies to redress the situation. The then east and west political divide that separated the world into capitalists and socialists, exacerbated the situation with member states belonging to different camps and hence pursuing different economic policies which were incompatible at the regional level. The onset of the 1990's marked the end of the cold war and with it the world political divide, this provided an opportunity for the region to pursue integration anew and thereby expand its opportunities by utilising the economies of scale that come with larger markets.

The EAC integration process is in line with the drive towards an African Economic Community that was established by the Abuja Treaty of 1991 and envisages an African Common Market over a 34 year period. This is expected to be achieved through coordination and harmonisation of tariff and non-tariff measures, among various regional economic groupings that would lead to a continental customs union. Hence, apart from the EAC integration process the region is concurrently pursuing a Free Trade Area (FTA) that will combine the COMESA and SADC economic communities bringing together 26 countries, 14 of which currently have more than one membership in either grouping. A roadmap for the FTA is already in place with an operational Tripartite Task Force leading the implementation process.

The treaty establishing the EAC spells out the steps towards integration of the region; these are the formation of a Customs Union a protocol of which was signed in March 2004; a Common Market the protocol of which was signed in November 2009 and will come into effect in July 2010; a monetary union; and ultimately political federation, all aimed at strengthening and regulating among others the industrial, commercial, infrastructure and other relations of the partner states.

Chapter 1: Overview of the EAC

Institutionally the EAC has the Summit of Heads of State and/or Government as the highest body that gives general direction towards the realisation of the goals and objectives of the Community. The Council of Ministers is the main decision making institution and is made up of ministers from the partner states responsible for regional co-operation. This is followed by the Coordinating Committee that is constituted by permanent secretaries and is responsible for coordinating the activities of the sectoral committees. The Sectoral Committees conceptualise programs and monitor their implementation and are established by the Council on recommendation of the respective coordinating committee. The other institutions are the East African Court of Justice; the East African Legislative Assembly; and the Secretariat which is the executive organ of the Community that is entrusted to ensure that regulations and directives adopted by the Council are properly implemented, it is *inter alia* also charged with the coordination and harmonisation of the policies and strategies relating to development of the Community.

Implementation of the EAC Customs Union commenced in January 2005. It is envisaged that it will promote intra-regional trade through the ensuing liberalisation; by facilitating efficiency in production, domestic, cross-border and foreign investment opportunities, and diversification of industrial and non-industrial products leading to economic development in the region.¹

The Customs Union adopted a Common External Tariff (CET) with raw materials and capital goods rated at 0 percent, intermediate goods at 10 percent and finished products at 25 percent. However exceptional rates are applied above 25 percent on selected items considered sensitive and for which protection is accorded, these include maize, rice, cement, cotton fabrics, and sugar, milk and dairy products.

The EAC partner states also undertook to eliminate internal tariffs; in recognition of the different levels of economic development and existing imbalances among the member states, an asymmetrical tariff reduction program was adopted over a transitional period of five years, ending December 2009. The Protocol on Establishing the Customs Union provided that goods to and from Uganda and Tanzania were to be duty free; those from Uganda and Tanzania into Kenya were also to be duty free; however, goods from Kenya into Uganda and Tanzania were to be categorised into two categories i.e. those eligible for immediate duty free treatment and those for which gradual tariff reduction during the five year transition period would be applied.

Rules of origin for the region were developed along with a manual on their application including the relevant documentation such as certificates of origin, these spell out in detail the application of the criteria in determining the origin status of goods, procedures of administering the rules, treatment of small scale cross border trade and institutional framework for the implementation of the rules of origin.

¹ Article 3 Protocol on the Establishment of the EAC Customs Union.

Rule 4 of the EAC Rules of Origin gives the criteria for determining goods eligible for the Community tariff treatment, these are four and only one must be complied with for any goods to qualify for EAC tariff treatment and they are: goods wholly produced or obtained in a Partner State; goods produced in the Partner States and the c.i.f. value of any foreign materials used does not exceed 60 percent of the total cost of all materials used in their production; goods produced in Partner States whose value added resulting from the process of production accounts for at least 35 percent of the ex-factory cost of the goods; and goods produced in Partner States and are classified or become classified under a tariff heading other than the tariff heading under which they were imported, provided that the change to the character and nature of the goods is such that it demands a change in the first four digits of the classification under the HS tariff.² Implementation of the Rules of Origin instruments commenced in July 2007.

Efforts have been made towards harmonising and development of EAC standards. As of January 2009, about 1,100 standards had been harmonised some of which were pending gazetting for uniform application in the region³. The member states' national bureau of standards recognise each other's quality marks and should not subject marked goods for further analysis. The EAC secretariat established an office that deals with issues of harmonisation of standards such as inspection of goods, certification of products and systems, testing services for products, metrology and others. An SQMT Act 2006 was also enacted and deals with issues of standardisation, quality assurance, metrology and testing services.

The EAC Development Strategy (2001-2005) recognised Non-Tariff Barriers (NTBs) as an impediment to trade in the region; these include administrative and bureaucratic inefficiencies as well as poor infrastructure and communication in the region. The member States undertook to promote projects and strategies that would lead to elimination of these trade obstacles, with the main focus being the implementation of identified infrastructure programs and projects in order to improve efficiency.

The EAC further adopted a regional competition policy and law that will ensure fair competition in the region as well as prohibit practices that would adversely affect free trade. Efforts towards constituting a regional competition commission are in advanced stages. However this legislation and institution on competition are only applicable for cross-border trade while national competition laws and policies will continue to be applicable in the respective member states.

The region promulgated an EAC Customs Management Act in 2004 that came into effect in January 2005, it provides institutional, operational and enforcement framework of customs. Flanking regulations have also been adopted, these include: EAC customs management regulations; duty remission regulations; and regulations for working relationship between the Directorate of Customs and Trade at the EAC secretariat and National customs administrations. The Act and its regulations are still being implemented individually at the

² Manual on the Application of the East Africa Community Rules of Origin Chapter 2.

³ An Evaluation of the Implementation & Impact of the East African Community Customs Union. Final Report March 2009.

national level in the member states. A study on the harmonisation of the Tax system in the region was commissioned and a report produced in 2009; among its recommendations is the exchange of national administrative staff between the partner States to create the “spirit of harmonisation” in the region. Other recommendations include the urgent completion of the multilateral Double taxation agreement; development of a common EAC value added tax model; harmonisation of company and profit tax; and harmonisation of administration and procedures.

All the EAC member states are members of the World Trade Organisation (WTO) and the community has been notified as a Customs Union, representation and negotiations at the multilateral level are still conducted individually and although the specific commitments of the member states are not contradictory to the EAC CET, they are divergent in nature. At the regional level four of the five countries are members of the Common Market for Eastern and Southern Africa (COMESA) while one (Tanzania) is a member of Southern African Development Community (SADC). However for the Economic Partnership Agreement with the European Union, the region is negotiating as a block.

The Protocol on Establishment of the EAC Customs provides for export promotion schemes, special economic zones and exemption regimes in the region; however currently the export promotion schemes in the member states are still different. In Burundi investment incentives include: Duty free and Remission Schemes; and a Free Trade Area. In Kenya they have in place a Duty Remission facility; Manufacture under Bond; and an Export Processing Zone programme. In Rwanda the incentives are included in the Customs, VAT and Income Tax laws and are also in the process of establishing an Export Processing Zone. Tanzania has a Duty Draw-Back scheme; Export Credit guarantee scheme; various exemptions and export incentives introduced by the Board of External Trade; and an Export Processing zone. In Uganda the investment incentives include an Export credit guarantee scheme; foreign exchange liberalisation that entitles exporters to retain 100 percent of their foreign exchange earnings; duty and VAT exemptions on exports; duty draw back; and manufacturing under bond.

With the signing of the protocol for the EAC Common Market that will commence in July 2010 and the end of the transitional period for elimination of internal tariffs, the Customs Union will now be fully operational. However, the region is still faced with several challenges that would need to be addressed if the opportunities arising from the integration are to be optimally harnessed.

Chapter 2: Challenges in Implementing the Customs Union

Divergent Trade policies and the non-uniform application of regional instruments in the member States are a hindrance to trade led development, which requires uniform and consistently applied policies that are predictable leading to an enabling investment regime in the region that is essential for optimisation of growth and welfare of the people.

According to the March 2009 report evaluating the implementation and impact of the EAC Customs Union, the administration of the Customs Management Act (CMA) itself is faced with several challenges among which are the following:

- At the national level, the focus of the respective Member State's Revenue Authorities is to maximise revenue while at the regional level the focus is on trade facilitation as a means to increased revenue collection. In application of the CMA national officials lay emphasis on areas that have punitive dimension in the law rather than those on trade facilitation hence hindering trade rather than promoting it.
- Some Member States have not implemented some of the provisions in the CMA. For instance the appeals system has not been implemented in Kenya leading to lack of a harmonised appeals system in the region that would otherwise provide efficient and effective settlement of customs disputes.
- The EAC secretariat's Directorate of Customs is still faced with lack of sufficient human resources to effectively steer the implementation; some of the Member States are also faced with this shortage or lack of technical human resources able to accurately and in a timely manner interpret and implement regional regulations.
- Application of the relevant regulations and forms is not uniform in the region. Further other procedures such as licensing clearing and forwarding agents are yet to be harmonised for effective operations of the Customs Union.

With regard to the legislation on standards, the March 2009 report mentioned above finds that a number of challenges are still being faced in the area of harmonisation and development of standards among which are the following:

- There is limited or no awareness especially within the private sector about the importance of standards.
- There is slow and in some cases no implementation of the SQMT Act by the Member States. The Act provides for withdrawal of national standards in order to adopt the regional ones, however this has not been done and some of the Members continue to implement their national standards parallel to the regional ones.
- There is weak coordination of the harmonisation process as a result of lack of financial resources at the regional and national level. Further the technical assistance provided by donors and development partners does not always address the needs and interests of the region.

- The EAC secretariat is faced with lack of sufficient technical human resources to move the process. At the time of the report the section charged with the exercise to oversee harmonisation of standards had only one staff member making it difficult for them to be efficient in this crucial aspect directly affecting trade in the region.
- The standards program is not well informed and does not set out the priority sectors for which harmonisation of standards at the regional level should be effected without delay. The exercise is hence not focused and standards are being developed arbitrarily.

On the other hand Non Tariff Barriers (NTBs) continue to be a major impediment to trade despite commitment from Member States to eliminate them. These include customs and administrative documents procedures; immigration procedures; cumbersome inspection requirements; police road blocks; varying trade regulations among the member States; and varying, cumbersome and costly transiting procedures in the region.

Another challenge faced is that the Customs Union and the integration process have not been effectively publicised among the stakeholders in the region, especially the private sector. Sensitisation which is crucial in order to enable the private sector position itself strategically and take advantage of the opportunities coming with the Union has not been effectively done.

The region is also faced with the challenge of national sovereignty over the regional integration. Though the political will to integrate has been expressed Member States are reluctant to change from national to regional orientation and this is seen from the non-compliance with regional laws and regulations; duplication of national activities which should be otherwise handled at the regional level; and bureaucratic red-tape that often leads to delays in implementing regional obligations.⁴

Overlapping membership in regional economic groupings (RECs) of COMESA and SADC by EAC Member States is a major challenge to the implementation of EAC customs union, given that each of the regional groupings aspires to progress and effect deeper integration. However in recognition of this the three RECs initiated a process of coordination and harmonisation of their regional integration programs as a way of mitigating the challenge of multiple memberships. The three Secretariat's of the RECs constituted a Tripartite Task Force with a roadmap that envisages a program of harmonisation of trade regimes; free movement of business persons within the RECs; joint implementation of regional infrastructure projects; and formulation of legal and institutional arrangements for regional cooperation.

⁴ Ibid

Chapter 3: Opportunities Abound

The EAC Customs union and the Common Market that will commence in July 2010, present an opportunity to unlock the trade potential of the region and thereby improve the livelihood of its people.

With a population of over 120 million and combined GDP of US\$44bn, the region has abundant labor resources as well as the market for trade in goods and services. Coupled with this the region is well endowed with natural resources such as lakes; extractables such as oil, uranium, gold, copper and others; good climate favoring agriculture; a robust tourism industry boasting national parks with endangered species such as gorilla's, some of the tallest mountains in Africa; well established financial, telecommunications and insurance institutions; and vibrant and upcoming capital and securities market. These if managed with uniform and well coordinated sound policies would consolidate the regional integration leading to growth and development.

The region is negotiating an Economic Partnership Agreement with the European Union that offers duty free quota free market access. In addition all partner states are members of the WTO where as developing and least developing countries they enjoy a range of special and differential treatment measures, presents an opportunity for promotion and expansion of trade. Uniform and robust trade policies in the region that provide for *inter alia* improved infrastructure; value addition on agricultural and mineral products, investment incentives, and others redressing the challenges faced, would ensure optimal utilisation of the markets leading to economic development and improved livelihood in the region.

Chapter 4: Lessons from the European Union

Right from the start of the European Union (EU) integration process, the European Economic Community (EEC) Treaty included clear provisions on the conclusion of international agreements between the Community and third parties.⁵

Upon becoming a customs union and establishing a common customs tariff, the EU also established a common commercial policy based on uniform principles and implemented by the Community's institutions in accordance with Article 113 of the EEC Treaty.⁶

Agreements falling under the common commercial policy are negotiated by the Commission within the framework of such directives as the Council may issue, however during the negotiations, the Commission consults with the trade policy experts of member States in the framework of Committee 133. The Community's commercial policy powers are of an exclusive nature and Member states are not competent to act on their own in fields covered by the common commercial policy.⁷

The recent Treaty of Lisbon (ToL) further streamlined EU trade policy by providing that all key aspects of external trade are under the exclusive competence of the EU. The Treaty gives EU competence to deal with all services and trade related aspects of intellectual property, areas where it previously had mixed competences with Member States which sometimes led to confusion both within and among the EU trading partners.⁸

The ToL also enhances the role of the European Parliament in EU external trade policy by giving it co-decision making powers with the Council for trade legislation, a greater say in the negotiation of trade agreements and the power to grant its consent to the adoption of trade agreements with the EU. Article 207 (2) specifically provides as follows:

European Parliament and Council acting by means of regulations in accordance with the 'ordinary legislative procedure (OLP) shall adopt the measures defining the framework for implementing the common commercial policy'.

However, the enhanced role of the European Parliament relates to the legislative framework and not the detailed application or implementation of trade policy competences that remain with the Commission. Further Article 218(9) of the ToL provides the Parliament with the right to delegate powers to the Commission, this is to address the review processes in most trade agreements that often need regular detailed amendments and therefore would, avoid the Parliament having to deal with the mass of such detail.⁹

⁵ EEC Treaty, art.228

⁶ The European Union Transformed. Youri Devuyt (2006) pg 137

⁷ Ibid pg138

⁸ The treaty of Lisbon and the European Union as an actor in international trade. Stephen Woolcock

⁹ Ibid pg 11

The ToL preserves the Commission with the competence to implement EU trade policy instruments such as anti-dumping, safeguard measures and countervailing duties.¹⁰ The Council also retains the power to authorise the opening of trade negotiations, on the proposal from the Commission.

In the words of Walter Hallstein the first European Commission President “one reason for creating the European Community was to enable Europe play its full part in world affairs and it was therefore vital for the community to be able to speak with one voice and to act as one in its economic relations with the rest of the world”.¹¹ Taking a cue from the EU it is also vital for the EAC to act and speak with one voice in its economic relations with the rest of the world, while at the same time harmonising its internal trade and trade related policies, which would then enhance uniform development and make the region more attractive to investment in a predictable and well regulated environment.

¹⁰ Ibid

¹¹ Walter Hallstein, *United Europe. Challenges and Opportunities* (Cambridge : MA : Harvard University Press, 1962), 79. Quoted in Ibid pg 127

Chapter 5: The Way Forward

With a fully operational Customs Union, a common external tariff and the common market to commence in July 2010, the EAC Member States have to speak with one voice in trade negotiations both at the regional and multilateral level. Indeed the on-going EPA negotiation is a good beginning since the region is negotiating as a block; this should be replicated in other forums including at the WTO where all the member states are still maintaining individual missions.

The harmonisation of all policies especially those dealing with trade and trade related aspects should be hastened; this would make the region more attractive to investors and coupled with its potential of abundant raw materials, labor force, political stability and the emerging big market, enable faster development through trade led policies that would enhance its peoples livelihoods.

There is need for better institutional coordination between the national and regional bodies, this would enable uniform implementation of the EAC treaty while at the same time drawing on synergies among the member States, especially considering the limited technical personnel that deal with trade and trade related aspects in the region.

In order to foster trade within the region, there is need for a unified and simple regional trade policy document that would then be implemented uniformly in the region; such a document would then be mainstreamed in the National policies of the member States for implementation.

For the region to develop the ideal trade and trade related policies that would promote development there is need for dedicated research institutions as well as partnerships with international institutions for benchmarking and enforcement of best practices.

Awareness raising and bringing on board all stakeholders especially the private sector is crucial; this would ensure that their needs are addressed in the various policies, while also ensuring that they are aware of opportunities arising in the EAC, so as to utilise them.

The regional policies should ensure that trade facilitation is enhanced in order to allow for faster and cheaper costs of business transactions within the region and thereby improving peoples livelihoods through trade.

For sustainable development in the region through trade led policies, there would be need for continuous assessment and evaluation of the impact of policies applied, with a view to continuously improve them.

All in all the EAC brings with it a great potential for economic development in the region, with the right policies applied in a uniform manner, the vast resources will be better exploited, investment opportunities enhanced and the limited technical human resources especially in trade and related institutions better utilised at the national, regional and multilateral level by pooling resources from amongst the member states.

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