THE CHALLENGES OF A CUSTOMS UNION – THE CASE OF COMESA

BY

FLORENCE CHIBWESHA

25134515

UNZA 2010

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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FLORENCE CHIBWESHA

25134515

Being a final year dissertation submitted to the University of Zambia, School of law, in partial fulfillment to the requirements for the award of degree of Bachelor of Laws (LLB)

April 2010

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that this Directed Research essay prepared under my supervision by

FLORENCE CHIBWESHA

25134515

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THE CHALLENGES OF A CUSTOMS UNION – THE CASE OF COMESA

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Date: 9-04-2010 ....

....

Mr. Sangwani Ng'ambi (Supervisor)

April 2010

DECLARATION

I, Florence Chibwesha, Comp. No. 25134515, do hereby declare that I am the author of this Directed Research paper entitled: **THE CHALLENGES OF A CUSTOMS UNION – THE CASE OF COMESA,** and confirm that it is my own original work. I further declare that due acknowledgement where other people's work has been used. I verily believe that this research has not been presented in the school or indeed in any other learning institution for academic purposes.

Date: 6th April, 2010 Student's signature: ....

DEDICATION

This work is dedicated firstly to my late mother Lydia Mpakati, who will always be my unsung Hero. To my daughter Kochiwe Mung'omba, your unconditional love, tolerance and understanding, make it possible for me to study law.

ACKNOWLEDGEMENTS.

My sincere appreciation goes to My Supervisor Mr. S. Ng'ambi, whose advise, selflessness and guidance provided me with the necessary impetus to complete this research.

I am also grateful to the many persons that provided me with the necessary support in terms of books and materials to help carry-out this research.

To the staff of Room to Read for understanding and supporting me as I undertook this task.

Lastly I am indebted to my friends and relatives, who gave me the additional support I needed, including standing in the gap for me for the times I could not be there for my daughter.

ABSTRACT

The research starts by recognizing the fact that the aim of WTO is that of promoting free trade amongst nations. However that even in this sphere, the role and the rationale for Regional Trade Agreements/Integration plays is vital to the promotion of free trade and therefore has a place in the realm of International Trade and is provided for under the GATT (1994) agreement. Regional Trade Agreements, despite their potential benefits, like most things, come with potential challenges, that if not tackled, run the risk of derailing the benefits of such agreements.

In Chapter two, the research advances the rationale of Regional Trade Agreements. It discusses the benefits that include reducing trade barriers, harmonization of systems thus enhancing trade, improved bargaining power, and economies of scale.

Chapter three, turns its attention to COMESA and gives a brief discussion on the mandate and the success, thus far of COMESA, including the challenges. Chapter four, like Chapter three discuses the challenges of a Customs Union, however in the context of Zambia.

Finally Chapter five draws the discussion to a close and attempts to provide recommendations for ease of transition for members of the COMESA Customs Union.

This belongs to introduction?

LIST OF STATUTES

1. The Common Market for Eastern and Sothern Africa Treaty.
2. The European Union Treaty
3. Treaty of Rome
4. The General Agreement Tariff and Trade Agreement (1994)
5. The Southern Africa Development Community Treaty
6. Southern Africa Customs Union Agreement
7. African Union Treaty

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ABBREVIATIONS

ASEAN	Association of South East Asian Nations
AU	African Union
CET	Common External Tariff
COMESA	Common Market for Eastern and Southern Africa
CU	Customs Union
EAC	East African Community
ECOWAS	Economic Community of Western African States
EFTA	European Free Trade Association
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Area
GATT	General Agreement on Tariff and Trade
MECUROR	Southern Common Market
NAFTA	North American Free Trade Area
OAU	Organisation of African Unity
RTA	Regional Trade Agreement
SACU	Southern Africa Customs Union
SADC	Southern Africa Development Community
WTO	World Trade Organisation

CHAPTER ONE

1.0.0 INTRODUCTION

On 7 June, 2009,[1] the COMESA Customs Union was launched. From a Free Trade Area within which trade partners grant reciprocal unfettered access to each other's markets, (such agreements inevitably require rules of origin conditions for intra partner trade) to Customs Union where partners grant reciprocal unfettered access to each other's markets while at the same time imposing a set of Common External Tariff rates and/or trade barriers on trade with other parties.

This Study therefore examines the challenges of a Customs Union the case of COMESA. It begins by providing a rationale for Regional Trade Agreements and their role in International Trade. This includes the benefits, taking into consideration the condition necessary to tap into these benefits effectively. It goes on to review experiences of some Regional Trade Agreements.

The Study then discusses the benefits in the context of the COMESA Customs Union and the potential challenges that can hinder the successful implementation of the Customs Union. Further some of these challenges are discussed in the light of Zambia as a member of COMESA. Lastly the study attempts to provide several recommendations that will contribute to the effective implementation of the COMESA Customs Union.

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[1] http://events.comesa.int

1.0.1 BACKGROUND TO THE STUDY

The fact that there is a plethora of Regional groupings all over the world is a good indication that this strategy in trade liberalization has a role to play in economic development and fostering of peace across nations. However, it does come with its own complexity. Even though blocs like the European Union have enjoyed considerable success, they have been preceded by various challenges. COMESA is the latest in line of Regional groupings moving from a Free Trade Area (FTA) to a Customs Union (CU).

The COMESA Customs Union with 19 members states aims to provide duty free and quote free trade within Customs Territory; a Common External Tariff; and harmonized trade policy.[2] It is agreed that in comparison to a Free Trade Area (FTA), the benefits of a Customs Union far outweigh maintaining a FTA and in the long run, all members should benefit.[3] Examples like European Union (EU) and Southern Africa Customs Union (SACU) provide experiences of benefits that can accrue to Member States. Specifically, the benefits include trade expansion; welfare gains; increase in real incomes; efficient allocation of resources; improved competitiveness and gain in economies of scale.

However there are several challenges that have the potential of standing in the way of the successful implementation of the COMESA Customs Union. There is also the need to manage the harmonisation processes of national policies being undertaken under COMESA.

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[2] www.comesa.com

[3] S. Njugna and others, Implications of the COMESA FTA and proposed Customs Union: An Empirical Investigation, Regional Integration Research Network Service Publications. (June 2002, 2-3)

There is therefore a requirement to study the short term challenges. These include addressing short term adjustment costs; loss of tariff revenue; prioritizing investments and reform measures and issues of overlapping membership. For instance with regard to overlapping membership, Swaziland at this point in time finds itself in-between two Customs Union namely SACU and COMESA. Belonging to both is not tenable.

This Study therefore seeks to explore the challenges that countries that sign up with the COMESA Customs Union are likely to face and what they need to do (recommendations) to maximize on the benefits of a Customs Union. In addition to this the Study will pay particular attention to the case of Zambia.

1.0.2 PURPOSE OF THE STUDY

The purpose of the study is to examine the challenges of a customs union in the case of COMESA. In looking at this it will:

1. Discuss the rationale behind Regional integration/groupings in the context of International trade, with reference to experiences of some Regional Trade Agreements.
2. Discuss challenges of a COMESA Customs Union in the context of related Trade policies. Lessons will be drawn from experiences of other countries regionally and internationally with membership to economic groupings and Customs Union. Zambia will be given particular attention.

3. Based on the above analysis, the study will propose recommendations on what should be done to overcome the challenges.

1.0.3 RESEARCH QUESTIONS

1. What is the rationale behind International trade in the world today
2. How has the GATT/WTO played a role in the promotion of International trade
3. What is the role of regional bodies and how have they performed in the context of International trade- both in Africa and in Europe
4. What is COMESA Customs Union - rationale and benefits?
5. What are the policy related challenges in the COMESA customs union?
6. What do member countries have to do to maximize on the benefits of a Customs Union

1.0.4 SIGNIFICANCE OF THE STUDY

The significance of this study is that it brings to the fore the environment in which the COMESA Customs Union (launched on 7 June, 2009) is to operate. It then goes on to identify the possible challenges with recommendations on how member countries can maximize on the benefits of a Customs Union as a way of enhancing the capacity of African countries in International trade.

The concept of International trade is rooted in Adam Smith documentation of Free Trade in his book – **Wealth of Nations** (1776). It was mainly to counter arguments against free trade.[4] Free trade or International Trade is basically trade in selling goods and services that cut across international borders/boundaries or between nationals of different countries. It involves imports from one country to another and or exports to one country from another country or trans-boundary trade.[5] The principal is premised on the economic theory of Comparative advantage – Countries focus on what they are good at and export and import what another can produce at a lower cost, highlighting inter-dependency that can lead to prosperity, and peace across nations.

Acknowledging that trade tensions were a catalyst of World War II, 1947 birthed a framework by default in the name of General Agreement on Tariffs and Trade (GATT) in Havana. This framework was used to broker international trade relationships. Several rounds of trade negotiations finally ushered in the World Trade Organization (WTO) (1995), which to date acts the body that regulates trade and settles disputes amongst its members. The aims of GATT/WTO are equality of treatment for both imported and exported goods and service and the creation of a worldwide open trading system and that the essential GATT principal is that of **Non-Discrimination**, from which three other principals are derived namely The **Most Favoured Nations** principal, The **National Treatment** principal and **Reciprocity principal**.[6]These are provided for in the GATT Articles I, II, and III

However, even though the above clauses govern International trade paragraph 4 to 10 of Article XXIV of GATT (as clarified in the understanding on the interpretation of Article

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[4] J. Jackson, Sovereignty, the WTO and the Changing Fundamentals of International Law, (Cambridge University Press, 2006)
[5] M. Igbokwe Esq. WTO and its Role in International Trade, LLB (Hons) BL, PG Dip (Maritime Law 2000)
[6] G. Moens and Gillies, International Trade and Business Law. (Cavendish Publishing Australia. Pty Limited 1998)

XXIV of the GATT 1994) provides for formation and operation of Customs Union and Free Trade in goods.[7] These fall under regionalism, with GATT/WTO having a global agenda. The rationale behind Regional blocs is to widen trade liberalization and to advance a WTO – consistent agenda.[8] There are over 170 regional agreements in existence, demonstrating the role that they play. The European Union is perhaps the best example of the role of regional integration and its benefits to member countries.

The Common Market for Eastern and Southern Africa (COMESA) was established in 1981 as a Preferential Trade Area for Eastern and Southern Africa, with its headquarters in Lusaka. In 1994 it was transformed into the Common Market for Eastern and Southern Africa, with a membership of 19 countries. On June 7, 2009, it transformed into a Customs Union. This transformation has been a gradual one, trying to incorporate all the concerns of member states in maximizing on the benefits. However throughout this transition there has been considerable debate on the readiness/ ability of member states to take advantage of a Customs Union. The challenges range from the repercussions of dual membership, inadequacies in intra-regional trading, and inadequate domestic systems to increased competition, On the eve of the launch of the Customs Union, The Secretary General of Comesa – Mr. Ngwenya speaking on the implementation of the Customs Union said, 'the new Customs Union will have challenges during its initial stages…..You always have challenges in regional integration cost of regionalism on the various economies...'.[9] In the same article, Michael Malakata of the Industry Standard is quoted

[7] GATT 1994, Article XXIV, paragraph 4 to 10
[8] M. Moore, Globalizing Regionalization: A new role for MERCOSUR in a Multilateral Trading System, (WTO News, Buenos Aires 2000, IDB/INTAL)
[9] www. Thstandard.com/news/2009/06/10

as having called the launch of the Customs Union as 'controversial' stating that one of the challenges of the Union will be dealing with the importation of cheap goods and services that will destroy local industries.[10] In the same article President Rupiah Banda is quoted as saying ' although the customs union will accelerate development and integration among member states, Zambia faces difficulty to adjusting to challenges arising from the customs union, such as loss of revenue'.[11]

Clearly it becomes important to discuss the challenges that the COMESA Customs union will face and this paper will therefore attempt to do just that.

1.0.5 METHODOLOGY

The study will rely mostly on secondary data. Extensive review of literature on Customs Unions both in Africa and Europe, with particular focus on COMESA Customs Union.

Interviews will be sought where possible from various sources from the private sector, civil society and government ministries, foreign embassies and secretariats from Economic groupings. A questionnaire will be used as the first line approach in soliciting responses, with additional questions being formulated in order to address any gaps that will arise.

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[10] Ibid, P 2
[11] Ibid, P 2

1.0.6 ORGANISATION OF STUDY

Chapter one gives a background to the study. This chapter carries with it the statement of the problem, rationale for the study, purpose of study, objectives, and research questions, significance of the study, methodology and synopsis of the research.

Chapter two reviews the literature of those who have written on the subject matter and it involves both published and unpublished material relating to rationale and experiences of Regional Trade Agreements/Integration. It will look at several RTAs and note any lessons learnt.

Chapter three discusses the challenges. These challenges will be discussed in the context of policy related issues. These will include the Common External Tariff (CET), trade, and overlapping membership. Chapter four will look at the case of Zambia and will look at what the country should be doing to effectively benefit from the COMESA Customs Union.

Chapter five makes conclusions and recommendations which should benefit the members of the COMESA Customs Union.

CHAPTER TWO

REGIONAL TRADE AGREEMENTS – BENEFITS AND EXPERIENCES.

2.0.0 INTRODUCTION

The rationale for Regional Trade Agreements (RTA) in the context of promoting free trade amongst all nations is provided for under ***Article XXVI*** of the General Agreement on Tariffs and Trade (GATT) 1994[12]. Most countries are affiliated to at least one RTA, with the European Union being the most successful. It is safe to say that the growth/development of Regional Trade Agreements has become an important feature in international relations. Baldwin states that there are two important theoretical motivations for these economic blocs.[13] These are the allocation effect that speaks to the theory that demand for a good directs production and that tariffs and non tariff barriers interferes with this demand. The other is accumulation through investment and trade. The World Bank report of 2000[14] indicated that 60% of World trade takes place in these agreements. Between 2005 and 2006, a total of 55 Agreements were notified with WTO.[15] RTAs therefore will influence the nature of International trade, as they are going nowhere soon. WTO encourages RTAs in the belief that in the long run the goal of achieving global free trade would be attained through them. It is therefore prudent to discuss the benefits of Regional Trade Agreements. However there are various factors that advance and

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[12] GATT (1994) Article XXIV
[13] R. E. Baldwin, Review of Theoretical Development on Regional Integration in Oyejide A, Elbadawi I and Collier P (eds). Regional Integration and Trade Liberalisation in Sub-Saharan Africa. Volume 1: Framework Issues and Methodological Perspectives, London (Macmillan Press Ltd: 24-88
[14] World Bank, 2000
[15] www.wto.org/english

constrain the benefits and must be taken into consideration if members are benefit. (refer to Table 2.1).

Table 2.1 Factors that Advance and/or Constrain Regional Integration

Factors that advance regional integration	Factors that constrain regional integration
• A similar production structure and a high level of intra-industrial trade among partners or dissimilar factor endowments • Large, prosperous markets with high consumer purchasing power and a high income equality • High factor mobility: equal distribution of trade benefits • Competitive environment: increased quality of goods and innovation stimuli • Open trading regime: low adjustment costs • Economically and politically stable member Countries • Geographical closeness and proper infrastructure: low transaction costs • Cooperation in trade-related areas: facilitation of intra-regional trade • Compensation mechanism: anticipation of regional disparities • Creation of common regional institutions: reduction of political and economic uncertainties • Political will to integrate • Cultural homogeneity and common political values: consensus on common policies	• A different production structure and a high level of inter-industrial trade among trading partners or a very similar factor endowment and a low level of industrialization among trading partners • Small economies with low purchasing power • High economic disparities among member countries: trade imbalances and dissimilar gains and losses • Low factor mobility and protectionist policies among member countries • Economically and politically instable member countries • Protectionist trading regime: high adjustment costs (such as fiscal losses) • Geographical disparities and a weak infrastructure: high transaction costs • Lack of intra-regional trade coordination and unclear mandate of regional integration scheme • Missing political will to integrate • Overlapping memberships in different integration schemes with rival goals

Source: NEPRU Yearbook Vol. 5-2005

2.0.1 BENEFITS OF REGIONAL TRADE AGREEMENTS

The benefits of regional integration are both theoretical and empirical in nature. Some benefits are related directly to trade issues whilst others are broader and go beyond the scope of trade. These included:

2.0.1.1 Trade creation effects

The theory of trade creation assumes that when barriers to trade are reduced or eliminated, as happens in all economic groupings, producers of goods in member countries have equal and unfettered access to markets in all member countries belonging to the economic grouping. The result should be that trade creation dominates trade diversion[16]. The main arguments surrounding the need for free trade is that countries in the long term achieve development resulting from among other things, trade creation.

Consumers will be able to get goods from the cheapest and most efficient producer in the economic bloc. If Zambia for example is the best producer of maize meal, it would follow that consumers of maize meal in an economic bloc in which Zambia is a member will buy this product from Zambia. The market for Zambian maize meal will, therefore, increase beyond Zambia. This would be applicable to all the members in the bloc, based on their comparative advantage.

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[16] Trade creation is the displacement of higher cost domestic production by lower cost production from partner countries due to lower barriers within Regional Integration arrangements. Trade diversion - displacement of lower cost production from nonmembers by higher cost production from partner countries due to lower barriers – reduce it – Economic Commission for Africa, Assessing Regional Integration in Africa, Policy Research Report, (ECA 2004)

The net effect becomes an overall increase in imports and exports in the region. Empirically therefore, regional economic groupings should result in increased levels of trade in the grouping than before the formation of the grouping, a shift in the production of all goods to countries which can produce them most competitively and efficiently, improvement in welfare such as in consumer surplus resulting from lower prices for competitively produced goods, increase in employment and above all the creation of an opportunity to identify their comparative advantages and produce goods which reflect this advantage.[17]

2.0.1.2 Access to Market Space in the Bloc.

The more players there are in the market, the competitive it becomes. The more competitive, the more likely prices respond to the market. This promotes efficiency and in the long run results in improved and increased production to meet the demand.[18] The advantage of belonging to a bloc, is that the producers have access to a wide market, and should eventually increase the purchasing power of the different groups in the bloc.[19] The European Union has shown that it equally leads to income convergence. Ireland, Portugal and Spain have made progress closing the gap with richer EU members. In the mid-1980s per capita incomes in these three countries ranged from 27% to 61% of the average income of larger EU countries. By the late 1990s they ranged from 38% to 91%.

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[17] Zambia Business Forum, Study on Zambia's Dual Membership of COMESA and SADC. (Zambia Buisness Forum, 2008) p. 13

[18] Economic Commission for Africa, Assessing Regional Integration in Africa. ECA Policy Research Repport. ECA, 2004

[19] T.Clark, Customs Union and Economic Integration: European Experience, 2009

However that said the East African Community has resulted in Regional arrangements leading to income divergence, with comparative advantages and agglomeration effects concentrating manufacturing in Kenya at the expense of Tanzania and Uganda, leading the community to dissolve in 1997.[20]

Africa housing the majority of developing countries, suffers from low incomes, high poverty levels, underdeveloped legislative and regulatory frameworks and small fragmented markets (of the countries on the continent, 39 have fewer than 15 million people – and 21 fewer than 5 million).[21] If there is a continent that requires and can accelerate develop, through RTAs it is Africa. Reasons range from them benefiting from scale economies, stronger competition, and stronger ability to negotiate on the international platform, benefiting from diversity in their differences, improved legislative and regulatory frameworks and enhance peace efforts necessary for development. [22]

2.0.1.3 Bargaining Power

One of the benefits of an RTA is that it provides a platform for members to come together as a united force and therefore put them in a better position to bargain as a front. It is recognized within the membership of the World Trade Organisation (WTO), that members have different strengths. The more powerful a member or a group of member countries (a good example is the European Union and the USA), the more forceful/better their bargaining power in negotiating for themselves. In a paper by Stephen Lendman – Alternatives to the collapsed WTO Doha Round Talks, even the EU Trade Commissioner

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[20] Supra Note 18, p. 12
[21] Supra Note 18, p. 21
[22] P. Khandelwal, COMESA and SADC: Prospects and Challenges for Regional Trade Integration. IMF Working paper WP/04/227

expressed his ire when he accused the US of trying to exact a 'disappropriate' price from developing countries. He added ***'surely the richest and strongest nation in the world with the highest standard of living can afford to give as well as it takes'.*** Nations with growing clout like Brazil and India justifiably refused to succumb to USA pressure[23]. For the case of Africa, this benefit falls short as individual countries still negotiate Economic Partnership Agreements and tax concessions in attracting Foreign Direct Investment, thus making collective bargaining difficult.

2.0.1.4 Prospects for foreign direct investment

A large market space offered by an economic grouping also provides improved prospects for foreign direct investment (FDI) into the region. Investments in individual countries acquire a new level of attractiveness after forming a Union because generally a small African country has a dual disadvantage of small population and low income levels. This deficiency is only overcome by expanding the physical space of the markets and improving aggregate income through countries coming together into one integrated market. Empirically, therefore, there should be higher investment inflows after than before the formation of the regional bloc. The increased financial and capital flows should therefore assist in improving productive capability and removing supply side constraints which may have adversely affected productive efficiency prior to the formation of an economic bloc.[24]

2.0.1.5 Cooperation in Public Sector Investment

[23] Stephen Lendman, Alternatives to the collapsed WTO Doha Round Talks, VHeadlines. Com, 2006
[24] Supra Note 17 p 34

Infrastructure inadequacies in the form of road, rail, air and telecommunication connections among countries in Africa pose a significant hindrance to efficient trade among countries. Within an economic bloc the development of certain infrastructure becomes possible because they acquire the status of regional projects and are therefore funded through cooperation by a number of countries in the economic bloc. With regional integration there should be an increase in investment for regional infrastructural development which in turn facilitates trade and welfare improvements.[25]

2.0.1.6 Technological Transfers

Transfer of technology and modern management techniques is possible in an economic grouping particularly if members are at different levels of technological and economic development. One would hope that the countries that have more advanced technology would capacity build the ones that are not as advanced through technology transfer. In the long term this should result in improved efficiencies.

2.0.1.7 Harmonised Systems

The other benefit centers around the need for members of a RTA to harmonise their systems in order to rip the fruits of the objects. There is the added requirement of updating the legislative and regulatory framework. This implies reducing bureaucratic

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[25] I. Pokorna, Africa regional groupings and International Trade, 4th Aspects and Vision of Applied Economic and Informatics, 2009

procedures, enhancing the rule of law including enforcement of property rights and efficiency of judicial systems.[26]

2.0.1.8 Peace and security

Increasingly investment flows and the resulting economic development are tied to perceived and actual stability of countries. Regional economic groupings are increasingly addressing issues of security and democracy by committing themselves to conventions and protocols, democratic reforms become locked in and policy reversals more difficult at the national level. Regional economic groupings therefore, help to build a political environment conducive to national development. During the nineteen century Customs unions paved the way for formation of Germany and Romania[27]

2.0.2 EXPERIENCES AND LESSONS

Turning to the existence of RTAs, they range from NAFTA, and MECUROR in the Americas, EU and EFTA. In the Asia Pacific, one finds ASEAN, with the Agadir agreement and the Pan Arab Free Trade Area in North Africa and Middle East. Coming closer to home, Sub-Saharan Africa includes ECOWAS, SADC, EAC, SACU and COMESA. [28]

In exploring the experiences of RTAs, it is instructive to review that of the EU as the most successful union and SACU as the oldest Union in Africa.

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[26] Supra Note, 18 P
[27] World Bank 2000b
[28] COMESA, Towards the Customs Union: COMESA FTA including update on the Customs Union (Port Louis, Mauritius, April 2009)

2.0.2.1 Southern Africa Customs Union (SACU)

The Southern Africa Customs Union, (created in 1910), is the oldest union in the world. Its membership is made up of Botswana, Lesotho, Namibia, Swaziland (BLNS) and South Africa. Its most significant feature is revenue sharing, with South Africa effectively subsidizing the other member states. The governing agreement signed in 2002 provides for[29]:

- Adoption of common policies and strategies
- Creation of democratic decision-making bodies
- Recognition of the crucial role of tariffs as an instrument for development[30]

In terms of notable success of SACU, they include the successful negotiation of trade agreements with the European Union (EU), EFTA, and Southern Africa Development Community (SADC). On all accounts SACU, has an expressive record of longevity, with harmonization of regulatory policies on issues such as competition, investment and intellectual property rights. The fact that one of the members of SACU, namely South Africa is Africa's largest and most diversified economy, accounting for about 60% of all intra-SADC trade and about 70% of its GDP. It offers a wide range of benefits to the sub-

[29] www.sacu.int
[30] Paul Kruger, The WTO Trade Policy Review Mechanism: Application and benefit to SACU, TRALAC Trade Brief No. 4/2006, Johannesburg ; June 2006

region and is prepared to underwrite the other members of SACU, only adds to the viability of the agreement.[31]

Clearly the success of SACU, include an inbuilt compensation mechanism through its revenue sharing scheme for the less advanced economies. There is collective negotiating strength with external partners. There is also provision for new democratic institutions based on 'consensus' decision-making to manage potential conflicts.[32]

However, like all RTAs, SACU has not been spared of challenges/weaknesses, despite being in existence for nearly 100 years!. The challenges include the widely divergent economic interests particularly between South Africa and the rest, which are difficult to reconcile. A good example was the 1999 Trade Development and Cooperation Agreement signed with the EU. It provides for EU goods entering SACU without duty, with loss of tariff for the other members. The other challenge relates to the fact that all the members are reluctant liberalisers as it has been more out of necessity and the long apartheid history then want. In the case of the members (excluding South Africa), they are in constant to fear of possible revenue losses, should they pull out of the union. Except for South Africa, the capacities in the rest in particular are weak, making it difficult to sometimes take advantage of the benefits. Lastly, South Africa's economic dominance fosters resentments particularly owing to the fact that economic activity agglomerates there. [33]

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[31] Supra Note 26

[32] SADC Customs Union, Inception report, 2009

[33] B. Tsheko and Gitonga, SADC Final Inception Report (September 8th 2009)

2.0.2.2 European Union (EU)

Turning to the European Union, this common market which started as a political union, soon realized that this would be an impossible mission and turned to economic union. It was established under Article XXIV of the GATT (1994) and accordingly to achieve:

- A single customs territory
- External common customs tariff
- Free movement of goods and identical rules of origin (no tariffs or non tariff barriers)

However the EU has gone beyond GATT and in addition achieved:

- Common custom territory as a cornerstone of a common commercial policy
- Free movement of goods as basis for a single market
- Border control between members have been eliminated [34]

The benefits of the union speak for themselves. As regards producers they have benefited from the trade creation that a single market has created. It has included equal protection through a Common External Tariff against third countries imports. Importers have experienced the benefits of removal of border controls and trade barriers, with goods importation being faster and cheaper. As for the members intra-regional trade has meant no tariffs or quota on goods originating within the region.[35]

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[34] Tim Clark, Customs Union and Economic Integration: European Experience, 2009
[35] Ibid, P. 5

So the question to be asked is what has helped the EU get to where it is. The one obvious place to look is what has been used to promote compliance. The object of the EU is to foster economic efficiency and economic development and achieve economies of scale. This has been achieved through political vision, institutional and administrative capacity, adaptation and harmonization of national laws, and flexibility to identify and eliminate shortcoming. The Rome Treaty of 1957 provided for

Article 23 – all trade in goods and free movement of the goods

Article 95 – a common and single market

Article 133 – common commercial policy

Article 135 – customs cooperation[36]

This is exemplary of the Union using political will through a treaty as a catalyst to achieving the goals of the EU. In addition to this an agreed set of policies has led to the definition and implementation of a legal framework for tariff policy, fiscal policy, security and safety trade facilitation. Challenges of a Customs Union included differences in technical standards; differences in local content and rules of origin; physical barriers relating to internal administration, and communication and bureaucratic burdens; fiscal frontiers related to taxes; and government preference for domestic companies when it comes to procurement. The Single European Act of 1986, dealt with the challenges by making the following provisions:[37]

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[36] Rome Treaty (1957)
[37] Supra Note 31

Technical: the principal of mutual recognition of technical standards and the attitude of it is legal in on country then it is legal in all

Physical barriers: simplification of export and import documents and customs checkpoints procedure

Fiscal barriers: harmonization of VAT and corporate

Government procurement: open to procuring from other countries[38]

To date the European Union remains the most successful Union in the world.

2.0.3 CONCLUSION

Clearly from the above discussion, it is clear that there is a strong recognized rationale for the role that Regional Trade Agreements play in International trade. In addition to this are the many benefits that accrue to members as experience has shown with some Customs Union. However it requires that countries are committed to the process and are willing to take the necessary steps. If Africa wants to be part of the world economy, it has to work out strategies that do not further marginalize them.

[38] Supra Note 31

CHAPTER THREE

CHALLENGES OF A CUSTOMS UNION – THE CASE OF COMESA

3.0.0 INTRODUCTION

Since independence African countries have embraced the need for Integration. Being a continent with the most least developed countries, it has seen this as a channel to address issues of poverty. The Lagos Plan of Action adopted in 1980 is significant in Regional Integration efforts. Most countries in Africa today belong to Multitude of Regional blocs. Out of 53 countries, 27 are members of 2, 18 members of 3 and only 7 to 1[39]. As discussed in the preceding Chapter, the performance of these groupings has been mixed. Generally speaking even though there has been considerable political rhetoric and protracted efforts by governments, institutions and civil bodies, the perception is that these Regional groupings have achieved few concrete results in comparison to the European Union (EU) or the North American Free Trade Agreement (NAFTA). This has been attributed to overlapping membership, lack of strict adherence to agreements and follow through, divergent policies, lack of capacity to implement agreements, lack of effort and strategy to incorporate agreements into national institutions, legislative and policy mechanism.[40]

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[39] UNCTAD, Strengthening Regional Economic Integration in Africa, UNCTAD, 2009
[40] ECA, Assessing Regional Integration in Africa . ECA, 2004

3.0.1 STATUS OF COMESA

The Common Market for Eastern and Southern Africa (COMESA) is a Regional Economic Grouping with a membership of 19 Members. Tracing the birth of this grouping, one must turn attention to the establishment in 1981 of the Preferential Trade Area for Eastern and Southern Africa (PTA), within the framework of the Organization of African Unity (OAU) Lagos Plan of Action and the Final Act of Lagos.[41] In 1994, the PTA evolved into COMESA, and became an FTA in October 2000 after a sixteen year period of progressive trade liberalization through reduction of intra-COMESA tariffs. The combined total population of COMESA is 406 102 471 spread over an area of 12 873 954 square kilometers. The combined Gross Domestic Product (GDP) of COMESA countries is US$ 735 599 000 with a per capital income of US$1 811. Both in terms of physical size and population, COMESA offers member states a very extensive market.[42]

The vision of COMESA is to be fully integrated economic community for prosperity, internationally competitive, ready to merge into the Africa Union, with its members comprising of Burundi, Comoros Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. [43]

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[41] African Union, Status of Integration in Africa Report, AU, 2009

[42] Zambia Business Forum, Study on Zambia's Dual Membership of COMESA and SADC, Zambia Business Forum, 2008

[43] www.comesa.com

The COMESA Treaty, which sets the agenda for COMESA, covers a large number of sectors and activities, with the long term objective being to become more effective as an institution. The priority in the medium term is "Promotion of Regional Integration through Trade and Investment.[44]

The focal areas of integration include; Trade in goods and services, Monetary integration, including payments and settlement arrangements; Investment promotion and facilitation; Infrastructure development (Air, road, rail, maritime and inland transport, ICT; Energy etc); Electronic commerce; and Peace and security.[45]

COMESA Member States have also agreed on the need to create and maintain the following:[46]

(a) A full free trade area guaranteeing the free movement of goods and services produced within COMESA and the removal of all tariffs and non-tariff barriers;

(b) A customs union in which goods and services imported from non-COMESA countries will attract an agreed single tariff in all COMESA States;

(c) Free movement of capital and investment supported by the adoption of a common investment area so as to create a more favourable investment climate for the COMESA region;

[44] COMESA Treaty 1994
[45] Ibid
[46] Ibid

(d) A gradual establishment of a payment union based on the COMESA Clearing House and the eventual establishment of a common monetary union with a common currency; and

(e) The adoption of common visa arrangements, including the right of establishment leading eventually to the free movement of bonfide persons.[47]

Thus far progress has been made in the areas of;[48]

I. Trade liberalization and customs co-operation, in this respect a Free Trade Area Covering 14 states.

II. A robust programme for the elimination of Non Tariffs Barriers (NTBS) consisting of organizational structures at the regional and national levels involving institutional systems and modalities.

III. Trade in Services

IV. Implementing a unified computerized Customs network across the region among other

V. Regional Competition Policy; COMESA has established a regional competition commission to implement competition policy.

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[47] Ibid
[48] Supra Note 38 P 35

V. The harmonization of macro-economic policies throughout the region and monetary cooperation, including payments and settlement systems. COMESA Member States are currently implementing Monetary Harmonization Porgrammes with a view to achieving limited convertibility.

VI. Investment promotion and facilitation.

VIII. Infrastructure development (Air, road, rail maritime and inland transport, ICT; energy etc); and peace and security

IX. Transport facilitation and communications to ease the movement of goods and people and provision of services between and among the countries.

X. Transit facilitation; COMESA is implementing a number of instruments in order to facilitate integration. These include, axle load limits, gross vehicle weights, harmonized road user charges, carrier licenses, regional customs transit guarantee (RCTG) among others. The RCTG once fully operational will save the COMESA region $300-500 Million annually. As a result of COMESA traffic facilitation measures, transport costs have been reduced by a factor of about 25% and efforts are underway to reduce them further.

XI. Creating an enabling environment and legal framework. This will encourage the growth of the private sector, the establishment of a secure investment environment, and the adoption of common sets of standards.

XII. Promotion of peace and security in the region.

XIII. Agriculture and food security

COMESA's progress towards a Customs Union has been gradual but concerted and has over the years involved a number of significant changes. Between 1984 and 1994, COMESA addressed the issue of both qualitative and quantitative barriers to trade which resulted in the removal of import and export restrictions, obstacles and policies on commodities and transport. Import duties were reduced on a product by product basis. Between 1992 and 2000 COMESA focused on achieving a Free Trade Area through a programme involving a gradual reduction of import duties on all products qualifying under the Rules of Origin at a rate of 10% per year from base of 60% reduction rate achieved in 1996. In addition to these changes a number of trade facilitation measures have been implemented and include:[49]

- Simplification and harmonization of trade documents and procedures
- Harmonization of customs commodity description and coding system
- Automated system for customs data (ESYCUDA)

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[49] Supra Note 38 p38

- Single goods declaration on document
- Road customs transit declaration document which is a simplified documentation procedure for dealing with goods in transit
- PTA third party motor vehicle (yellow card) and insurance scheme which serves to facilitate the movement of vehicles and persons within the region
- Uniform PTA axle load limits and dimensions for vehicles
- Harmonized road transit charges
- Issuing of PTA careers License to give automatic market access to hauliers into any member state.

The current tariff structure of intra-COMESA trade is simple at 0%, 2%, 6% and 10% for capital goods, raw materials, intermediate goods and final goods, respectively. The Rules of Origin require 35% regional value addition or at most 60% of inputs externally sourced for goods to qualify as originating from within the grouping.[50] COMESA has processed to create a number of specialized institutions to promote specific development objectives among members which include:[51]

- The Eastern and Southern Africa Trade and development (PTA) Bank which provides project and trade finance to economic operations in member states

[50] ZBF, Study on Zambia's Dual Membership of CO,MESA and SADC, 2008
[51] Supra Note 38 p. 37

- COMESA clearing House for the settlement of payment for intra-COMESA trade in goods and services amongst members
- The PTA Re-insurance company which retains foreign exchange in the region by taking up sizeable volumes of re-insurance business from insurance companies in members
- COMESA Africa Trade Insurance Agency which facilitates trade and investment by providing insurance against political risk associated with Government action
- COMTEL Communication to improve telecommunication inter-connectivity and harmonise telecommunication tariffs in the region

Other areas of integration have included:[52]

- The establishment of a COMESA Fund for revenue loss compensation
- Establishment of a Common Investment Area
- Establishment of a Court of Justice

3.0.2 SOME POTENTIAL CHALLENGES

Most if not all are challenges that apply to Africa in general and among these are high production costs, poor technological developments, poor networking within the region, supply constraints, poor infrastructural development, low foreign direct investment, lack of policy harmonization, overlapping membership, human capacity and poor mobilization

[52] http:// www.comesa.inst

of resources.[53]

According to the African union report on the Status of Integration in Africa, the following have been identified as areas that present challenges arising from programme implementation include;[54]

a) Accession of all Member States to the FTA prior to the launch of the COMESA Customs Union.
b) Finalization of the regional framework on trade in services.
c) Full implementation of the COMESA trade and transit transport facilitation instruments so as to enhance movement of transit and cross-border traffic. There is also a need to establish a seamless rail transportation system in the COMESA sub region.
d) Establishment of the Joint Competition Authority in order to implement the joint Air Transport Competition Regulations by the responsible Ministers of COMESA, Southern African Development Community (SADC) and East African Community (EAC).
e) Acceleration of establishing a COMESA Monetary Institute, which would undertake necessary preparatory work leading to the creation of a COMESA Monetary Union in the zone. In this case, COMESA Clearing House needs to accelerate the establishment of the Regional Payment and Settlement System (REPS) in order to become operational.

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[53] UNECA, Assessing Integration in Africa, EAC 2008
[54] Supra Note 38 p. 47

f) Signature and ratification of the Protocol of free movement of Persons labour, services, and the right to settlement by at least seven Member States so that it can become effective. Since the adoption of the Protocol by heads of State and Government in May 2001, only few Countries signed it.

g) Implementation of the joint COMESA, EAC, and SADC Tripartite Summit decisions in respect to harmonization of Projects and Programmes of the three RECs.

In going into details that affect the implementation because of the circumstances, the ones below give an insight.

3.0.2.1 Development Stages

One of the issues that the Official Gazette for COMESA Volume 15, No. 1 of 9 June 2009[55] acknowledges in its Preamble is the awareness that the different member countries have reached different stages of development. Clearly, the members of COMESA have found themselves with differing economies. It is a known fact therefore that the economies of the members in COMESA are heterogeneous. Comesa has 4 of the smallest in terms of land in Africa (including Seychelles, Mauritius and Comoros), and the largest (Sudan, DR Congo, Libya. In terms of population the Seychelles is amongst the least populated, with Egypt, Ethiopia and DR Congo being the most populated. 6 are landlocked and 7 are in the middle income bracket. The Regional per capita Gross Domestic product in purchasing power in 2005 ranged from US$593 in Malawi and US$14,329 in the Seychelles. It also has different sector focus.[56] In addition 6 countries

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[55] COMESA, Gazzette for COMESA, Volume 15, No. 1, June 2009
[56] World Bank, 2008

are classified as experiencing low human development – including Democratic Republic of Congo, Malawi and Zambia, with only Mauritius making it into the high human development category.[57] Further, 4 countries are classified as experiencing low human development - Democratic Republic of Congo, Malawi, and Zambia and only Mauritius makes it into the high human development category.[58]

Most COMESA economies have grown relatively slowly over the past 10 years; while SACU economies have shown convergence in GDP per capita since 1995 there is no such evidence for COMESA as a whole. The disparity in overall economic size is also evident; South Africa contributed nearly 70 percent of the region's total income in 2005 and SACU nearly 75 percent. Such vast differences in economic development and economic size pose challenges to the formed Customs Union (CU)[59]. However it is arguable that disparities in the availability of skilled manpower may be a bigger concern since the successful operation of a Customs Union as it requires considerable management skill. Economies of scale allow members to combine markets and grow incomes. However, with most of the members being on average poor, it means that they suffer from small markets and incomes, making it difficult to capitalise on this benefit.

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[57] Source: UNDP (2007). It is notable that Mauritius is ranked 65 and South Africa 121 out of 177 countries ranked by the UNDP.
[58] Source: UNDP (2007). It is notable that Mauritius is ranked 65 and South Africa 121 out of 177 countries ranked by the UNDP.
[59] World Bank (2006)

Table 3.1 Selected Macroeconomic Indicators in COMESA Countries, 2006

	Population (m)	GDP Growth (% real)	Aid (% of GNI)	GDP per Capita (US $m PPP)	GDP (US $m, year 2000 prices	Domestic Investment /GDP (%)
DRC	57.5	5.1	26.9	714	5,236	17.7
Madagascar	18.6	4.9	18.7	923	4,340	24.8
Malawi	12.9	8.5	28.4	667	1,986	16.3
Mauritius	1.2	5.0	0.5	12,715	5,475	23.8
Swaziland	1.1	2.8	1.7	4,824	1,548	17.8
Zambia	11.7	5.8	13.9	1,023	4,090	22.9
Zimbabwe	13.0	-1.8	11.4	2,038	5,547	7.3

Source: World Bank, 2006[60]

3.0.2.2 Regional Groupings in the COMESA Region

Most countries in Africa have multiple memberships. Much as this is a demonstration of Countries seeking out agreements that best meet their various needs, the downside of this is that because more often than not there will be a point of departure in terms of integration goals that each of the agreements seek, it has the potential to lead to counter-productiveness and competition between countries. [61]

[60] World Bank 2006
[61] UNECA, Assessing Regional Integration in Africa, ECA, 2008

Table 3.2[62]

COMESA	SADC	SACU	EAS
Burundi			✓
Comoros			
DR Congo	✓		
Djibouti			
Egypt			
Eriteria			
Ethiopia			
Kenya			✓
Libya			
Madagascar	✓		
Malawi	✓		
Mauritius	✓		
Rwanda			✓
Seychelles	✓		
Sudan			
Swaziland	✓	✓	
Uganda			✓
Zambia	✓		
Zimbabwe	✓		

[62] The list is adapted from COMESA, EAC and SADC websites

Thus although both SADC and COMESA have gradually converged towards a market driven agenda, the cross cutting pattern of relationships does generate issues that will need to be addressed. While the former situation was that the FTAs of SADC and COMESA could co-exist, memberships to multiple Customs Unions are not possible. [63]Therefore Swaziland cannot belong to both the COMESA Customs Union the Southern Africa Customs Union (SACU) – now that COMESA is a Customs Union, Swaziland has to decide which way to go. This multiple membership illustrates the magnitudes of the political task involved. Other technical issues arise in the scenarios given below

Zimbabwe belongs to both SADC and COMESA. Under the SADC Protocol on Trade, Zimbabwe should provide duty-free access to South African products conforming to the rules of Origin by at the least 2012. However, Zimbabwe should be implementing a COMESA CET (Starting 2009) that excludes South Africa. Seven countries (Angola, DR Congo, Malawi, Mauritius, Swaziland, Zambia and Zimbabwe) are members of both SADC and COMESA as shown in the table above. Egypt has its own trade agreement with the EU but is also a member of COMESA.[64]

3.0.2.1 COMESA Trade Policy Instruments and Practices

There are great disparities in the tariff structures of the COMESA countries; these pose a significant challenge to any harmonisation initiative. For some countries, e.g., Malawi and Zambia, tariff rates are low, as a result of reforms embarked upon as a country. In

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[63] P. Khandelwal, COMESA and SADC: Prospects and Challenges for Regional Trade Integration. IMF Working Paper WP/04/227
[64] B. Tsheko and , Study on Customs Union, 2009 p28

other countries, e.g. Mauritius and Zimbabwe, the tariff structures are highly complex, e.g., maximum tariff rates in Mauritius and Zimbabwe are, respectively, 80 and 100 percent. [65]

This indicates that the harmonisation process will be extended and that, unless members agree that all CET rates should equal the maximum in any COMESA member, some tariff lines will rise while some fall. Moreover the harmonisation process will pertains to the bindings at the WTO.

Regarding the distribution of tariff rates, while some countries have more than 50 percent of their MFN tariffs zero rated, i.e., duty free - Mauritius, - other countries have no zero-rated lines.[66] And while some countries have relatively low tariff rates, including having fifty percent or more of commodity lines zero rated, all countries have some commodities that attract high tariff rates. This heterogeneity is compounded by the fact that all members subject imports to further charges, besides tariffs, for protective and/or revenue generation purposes. For some members there is evidence that the revenue purpose is critical, and hence that government revenue concerns will be a major factor in COMESA negotiations, especially when it comes to the CETs[67].

[65] Ibid, p. 32
[66] B. Tsepho, SADC Inception Report, 2009
[67] UNCTAD, Strengthening Regional Economic Integration for Africa, 2009

3.0.2.4 Industrial Structure

A key objective of joining a Customs Union is to enhance the country's own industrial development (Cooper and Massell, 1965)[68]. The ability to realize these goals depends on the Country's comparative advantage and the potential to enhance the gains from trade. Thus, diverging production structures and trade flows may complicate this, particularly, where a CET will lead to substantial disruption of production.

A common indicator of the potential for trade diversion is the similarity in structure of production across partners. In the standard Viner Model of CU, the more similar the product mix in the partner economies, the more scope for substitution in production and the more likely there will be trade creation (Evans et al., 2006)[69]. COMESA economies seem to have placed a high degree of importance on the role of industrial policy in determining trade policy. Having said that, COMESA economies show enormous variation in the sectoral structures of their economies, particularly in the traded goods sectors. Many economies are highly dependent on mining (Zambia), and agriculture (DRC, Madagascar, and Malawi). Manufacturing accounts for over 50% of value added in traded good sectors in Mauritius and Swaziland (World Development Indicators; 2007).

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[68] Cooper C.A and Massell B.F., A New look at Customs Union Theory. Economic Journal 75, December 1965, pp.742

[69] Evans et.al, Trade Liberalisation with Trade Induced Technical Change in Morroco and Egypt – Presented at the 9th Annual Conference on Global Economic Analysis, Addis Ababa, Ethiopia

The limited overlap in production suggests that there is low potential for trade creation from the CU. There is therefore unlikely to be much dislocation of industry from one member country to another. This reduces the potential gains from trade from the formation of a customs union, but also lowers potential, short-term adjustment cost within specific industrial sectors within specific member countries.

3.0.2.5 Intra- Regional Trade Flows

Most COMESA countries import more from the rest of the World than they export to the world. Overall COMESA trade with the rest of the world and within the block is low. This calls for a greater push for increased trade especially the search for new trade niches.

The Degree of openness is small. Intra-regional trade is equally weak. The COMESA Countries' exports are mostly unprocessed. The EU and USA are important export destinations, with the EU absorbing 84% of Libya's total exports, 40% of the DR Congo, Zambia and Mauritius. In terms of world trade COMESA only accounts for less than 1% of the total exports of economies like China, Japan, USA and EU. [70] South Africa, followed by Angola is the most dominate economy.[71] What this implies is that the country is key to any integration process in the region.

Trade is, in comparative terms, more intensive between COMESA and the rest of the world than between COMESA countries. There is need for COMESA countries to work towards more integration at industry level with a view to enhancing trade among member states.

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[70] Nzuma Jimathan et.al, Qualitative Assessment of COMESA Custom, ReSAKSS, Working Paper No. 30 September, 2009

[71] World Bank (2008)

3.0.2.7 Tariffs on External trade

An evaluation of the MFN tariff structure across SADC members (based on the Development Network Africa Report; 2007)[75], provides some insight into the likely economic effects from integration. In standard economic theory, the benefits of a CU are greater the higher the initial tariffs within the region, and the lower the common external tariff.

Based on the World Tariff Profiles of 2008, the average level of protection is similar across most of the economies (DRC, Madagascar, Malawi, Zambia and Zimbabwe) and ranges from 12 to 15 percent. This puts these economies in line with the average for lower middle income economies (11.4 percent) and low income economies (12.6 percent) in the rest of the world.[76]

3.0.2.8 Industrial Convergence in COMESA

The common feature of trade policies in COMESA is the similarity of the contents of the trade policy documents. Despite these apparent similarities, there are significant differences in emphasis among trade policies of member countries in COMESA. Industrial policy for example dictates the objective of trade policy in some of the COMESA countries.

[75] Development Network Africa Report (2007)
[76] Supra Note 59, p. 42

CHAPTER FOUR

THE CASE OF ZAMBIA

4.0.0 INTRODUCTION

Generally speaking as has been noted in earlier chapters the benefits of belonging to a Customs Union are plenty, but the trick lies with the ability of the country to capitalize on this benefits and make the best out of them. In trying to achieve this goal, it then becomes necessary to ensure that the potential problems are identified and solution on how best to deal with them are applied.

4.0.1 BENEFITS

For the case of Zambia all the benefits alluded to in the preceding Chapter can potentially accrue to Zambia. In addition below are a few others.

4.0.1.1 COMESA Market

COMESA presents Zambia a much bigger market space than SADC both in terms of the number of countries covered and the value of the market. The region covers 27 countries, a total surface area of 12 0783 952 square meters, a population of 406 102 471 people and a Gross Domestic Product of US $735 599. On all these parameters, SADC is much smaller. If economic integration is about extending markets, then the COMESA Customs Union offers this market.[77]

4.0.1.2 COMESA Integration process

In most respects, COMESA has moved ahead in deepening integration. Thirteen of its members have ratified the FTA whilst the MFN duty rates are applied to the other members who have not. Rules of origin certificates have been introduced to accompany goods among countries utilizing COMESA preferences as previously presented. COMESA has an agreement on such issues as rules of origin, customs valuation, customs declaration documents etc. based on this the journey to a customs union should be faster and theoretically more feasible under COMESA.[78] This argument is supported by the progress made so far in implementing the COMESA roadmap.

4.0.1.3 Zambia has a stronger export performance in COMESA

Zambia has enjoyed a mixed record of positive trade balances in COMESA unlike in SADC and other trading partners where trading balances are consistently negative. Zambia generally has a positive trade balance overall and with a good number of countries such as Congo, Angola and Burundi, Congo which is a large trading partner, Ethiopia, Madagascar, Malawi, Swaziland and Uganda. Its negative trading balances are

[77] ZBF, Study on Dual Membership of Zambia, 2008
[78] African Union, Status on Integration in Africa, 2009

only with nine countries in COMESA and of these, the negative balances with four of them are relatively small. [79]The potential therefore for growth exists.

4.0.1.4 The composition of Zambia is diversified in COMESA

Zambia's main exports to COMESA are food stuffs, agricultural products into DRC, Sugar, Cement and Building materials into Burundi and Rwanda, fabricated metal products and aluminum into Swaziland.[80] Other exports into the region include soaps, detergents, cooking oils, livestock, poultry, maize, mealy meal and other food stuffs.[81] This diverse composition of exports suggests that COMESA gives Zambia a better chance of developing and expanding its industries.

4.0.1.5 COMESA is made up of comparable countries

The membership of COMESA comprises countries which are at more or less the same level of development. There is no one member who stands out as too strong and who would most likely benefit the most from a customs union. Even Egypt, Kenya and Zimbabwe, before its recent decline, do not yield on COMESA the same overbearing influence that South Africa does have on SADC.

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[79] Supra Note 71, p. 65

[80] The Balance of Payments Statistical Committee of the Government of the Republic of Zambia, Foreign Private Investment and Investor Perceptions in Zambia 2007/2008, Government of the Republic of Zambia, p. 11

[81] Supra Note 71, p. 67

4.0.1.6 Zambia hosts COMESA Secretariat

The COMESA Secretariat staff is an integral part of the Zambian economy through the use of services such as electricity, water, insurance, banking and transport as well as being an active consumers.

4.0.2 CHALLENGES

However it must be acknowledged that belonging to the COMESA Customs Union presents a number of problems. Apart from all reasons advanced in Chapter three, additional ones include the following. The fact that Zambia is still a country that has a long way to go in terms of growing its own economy, means that it may not be in a position to reap the full benefits of such integration as its trade is insignificant when one looks at the complete picture.

4.0.2.1 Transport

Inland transport costs within COMESA make for a serious barrier to intra-COMESA trade. Transporting goods between Zambia and Sudan for example is a complicated affair and may turn out more costly than transporting goods from Zambia to Europe by sea. The problem of transport or infrastructure is considerable. Transport, communication and power together make up an important foundation of economic activity and facilitate or impede trade flows.[82] Poor infrastructure, as is the case in COMESA increases transaction costs associated with exporting and importing of goods. The relatively low

[82] UNCTAD, Strengthening Regional Economic Integration for Africa's Development, 2009

trade between Zambia and Angola is largely due to the poor infrastructure between the despite the fact that they are neighbours. Transport is certainly a factor also in limiting Zambia's trade within countries like Uganda, Ethiopia and Eritrea.[83]

4.0.2.2 Dominance of Some Countries

Egypt, and Kenya to some extent, were considered as occupying a dominant position in COMESA similar to that occupied by South Africa in SADC. Egypt in particular, is seen as having only the single interest of expanding its market access since the EU common external tariff has limited its access of the European market. Other members of COMESA export nothing to Egypt and therefore, only stand to lose out in the COMESA Customs Union. However, an examination of the matrix of intra-COMESA trade confirms that Egypt's influence is exaggerated.[84]

4.0.2.3 Loss of Preferential Trading Relations

The choice of the COMESA Customs Union with South Africa remaining outside means that Zambia would lose its preferential trading relationships with its principal trading partner. Under existing relationships, Zambian exports into South Africa enjoy substantial preferences. The tariff on SADC imports into South Africa averages at 5.10% MFN rates.[85] The implication of this is that Zambian exports into South Africa in the event of Zambia leaving SADC may become expensive and most likely uncompetitive

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[83] ZBF, Study on Zambia's Dual membership, 2008
[84] Ibid , p. 76
[85] Ibid, p. 78

unless a substitute market for its exports within COMESA can be found which is likely in the short term.

4.0.3 CONCLUSION

As mentioned the benefits can only be maximized, if the challenges are minimized or indeed dealt with. Zambia has to ensure that it invests and also taps into the capacity building opportunities available with COMESA.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.0.0 INTRODUCTION

It must be said that based on the fact that there are so many Regional Trade Agreements world-over, and particularly so in Africa, one can safely say that RTA will be around for a while to come. As has been mentioned Africa recognizes the need for integration as a mechanism to develop and also be an active, equal participant in International trade. [86]

COMESA Customs Union is therefore a welcome development. Like all new initiatives, there are bound to be bottlenecks. This does not imply that it is not workable. Instead, being aware of the bottlenecks or challenges, allow for putting in place effective interventions that can ensure the successful implementation of the program. Below are therefore a few recommendations that can contribute to the successful implementation the COMESA Customs Union.

5.0.1 RECOMMENDATIONS

The recommendations discussed below by no means exhaust the list of recommendations. These include:

5.0.1.1 Implementation of Decisions

Member States should implement decisions, treaties and protocols. The lack of implementation by governments tends to show that there is lack of political will.

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[86] African Union, Status of Integration in Africa, 2009

Member states should commit themselves to the integration process beyond signatures since lack of transparency and scrutiny without adequate structures of communication shall result into utter failure.

5.0.1.2 Harmonisation of Different RTAs

There is need for additional effort to harmonize the activities of the different Regional groupings. Although COMESA has some cooperation going on, there is need to further harmonise and speed up integration talks so to say.

5.0.1.3 Information Sharing

There is need to have transparent information and knowledge about Member States' commitment to the integration process which will, no doubt, offer an avenue for stakeholders to get a sense of the performance of Member States, serve as an agency of restraint, and motivate Member States to deliver on their commitments.[87]

5.0.1.4 Involvement of Stakeholders

Other players like the civil society, professional groups and trade unions must be involved in the integration effort. Stakeholders also need to be empowered to participate in monitoring Africa's integration process in order to enhance the accountability of the regional institutions mandated to spearhead the process within their respective sub-regions. A platform to provide holistic information and knowledge about Africa's integration agenda and processes would provide a means by which they can probe and

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[87] African Union, Status of Integration in Africa, 2009

scrutinize what transpires within these institutions and thus facilitate the popularization and democratization of the integration process.[88]

5.0.1.5 Macroeconomic Policy Convergence

There is need for macroeconomic policy convergence, monetary cooperation, regulations and unification of systems in the various member countries. The different countries as discussed are at different stages and have different political governance and varying degree of acceptance of subordination of national policies to supra-natural oversight. There is therefore need for effective coordination to ensure that all reach a basic minimum that can effectively manage the integration process.

5.0.1.6 Institutional Authority

COMESA lacks the authority, power and resources to effectively sanction erring members. There is need therefore to strengthen this capacity and have COMESA, move beyond just being a coordination body. The Court of Justice must be well-resourced and be able to play an active role in sanctioning indifference performance and failure to fulfill commitments to protocol and treaty obligations.

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[88] Ibid, p.

5.0.2 CONCLUSION

Regional Integration is a one effective tool to further strengthen the position of Africa or Indeed the COMESA members. However it should seen as a tool embeded in the overall development strategy.

Members should take it upon themselves that they implement decisions agreed upon and ensure that the National laws and institutions domesticate the agreements.

At the end of the day, like in any relationship, there are bound to be those that benefit more and sometimes those that in fact lose out. It is therefore important for each member to carry out a comprehensive assessment that will help them increase their chances of maximizing on the benefits and minimizing the potential losses.

In the long run it should lead to improved standard of living of the citizenary. This should result in an more empowered citizenary is a more proactive one and leads to stronger emphasis on the Rule of Law.

A very good obligating essay. Well written and researched. Your referencing is immaculate and your arguments sound. Well done.

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