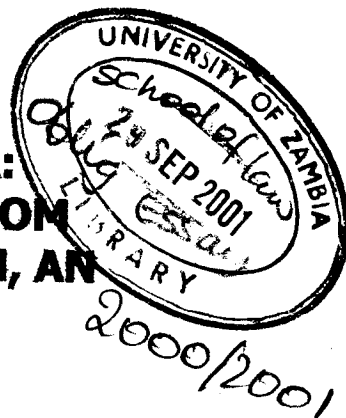


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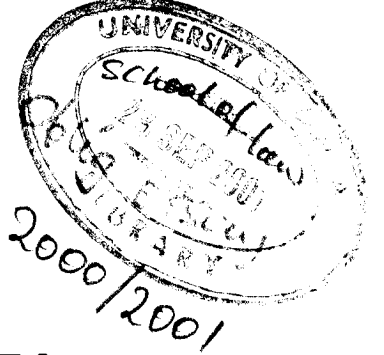


BY

DEMETRIA CHIMUKA HATOONGO

UNZA

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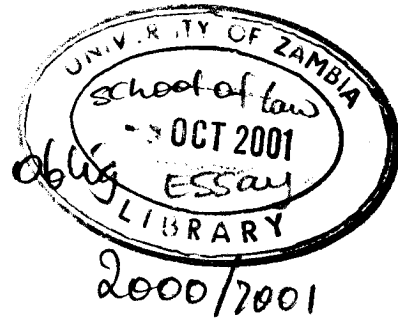
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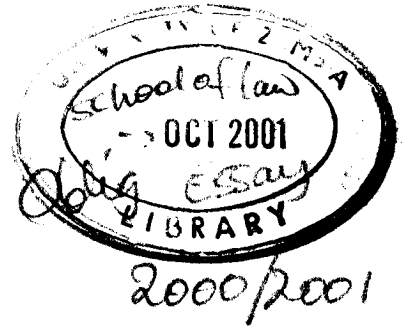
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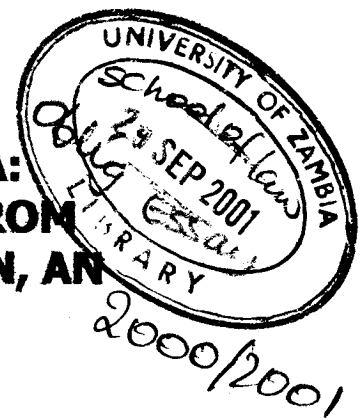
DEDICATION

This work is dedicated to my mum Rebecca Hatoongo, my late Dad Micheal Hatoongo and my siblings.

To you mum the love, encouragement, patience, endurance and support that you have shown me through my studies and entire life I can never pay. Dad I know you are proud of me wherever you are.

To my siblings Charity (deceased), Patience, Highness, Ronald, Steven, Pimpa (deceased), Lweendo, Wendy, Matimba, and Sharon, you have all been the forebearers shoulders on whom I have stood. Thank you for your love and support.

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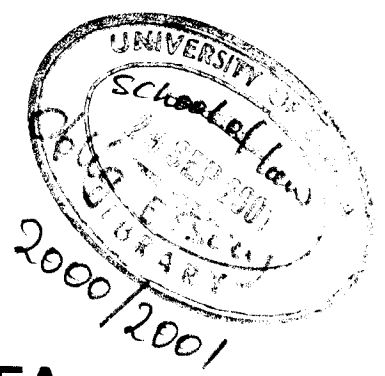


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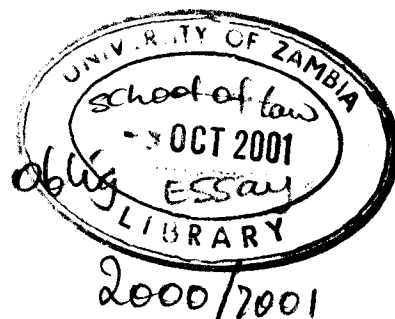
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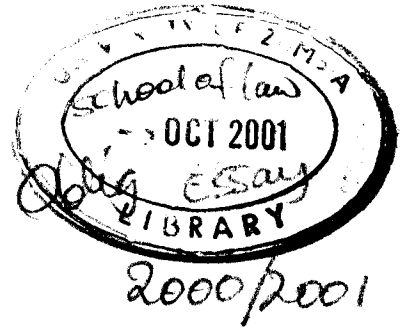
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- Mr. George M. Kanja, my supervisor for his assistance, support and patience throughout my work. Nothing went unnoticed. Thanks a lot.
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My indebtedness lies with God strength (Simbarashe) which has seen me through thick and thin.

INTRODUCTION

Today's world economy is dominated by increased International economic interdependence, which is on the most part been attributed to the success of the General Agreement on Tariffs and Trade (GATT)

The Central objective of GATT and now the World Trade Organisation (WTO) is the promotion of free or liberalized trade. Infact, GATT/WTO has in the last five decades been responsible for great reductions in tariff and other non-tariff barriers to trade in industrial goods. GATT/WTO is able to achieve this under its general obligations the most important in this paper being the principle of Most-Favoured – Nation (MFN).

The MFN obligation contained under Article 1 of GATT (1947 as amended) furthers free trade by providing that trade must be conducted on a non-discriminatory basis. For example if Country B a member of GATT/WTO offers favourable treatment to the goods of Country C coming into it's markets it must afford the same treatment to goods from Countries F and G, also members of GATT/WTO.

However an important exception exists to the MFN clause that provides for establishment of customs unions and Free Trade Area. These are arrangements, which reduce or eliminate trade barriers between two or more

political units while maintaining barriers against imports from outside the region. Also known as regional economic groups (due to the fact that they are on the most part regionally based), customs unions and free trade areas date back as far as the 19th century having existed between European, African and South American States even before the formation of GATT.

Various reasons are advanced for establishment of regional economic groups ranging from prompting peace like in Europe (economic groups having sprung up mainly just after the second worldwar) to improving poor economies and promoting self-reliance as in Africa and South America.

Whatever the reasons of establishment, the objective of regional economic groups is also that of free trade. However, it is not always clear what the effect on global trade actually is and it is sometimes said that regional economic groups may retard global integration. To illustrate this, if Countries X, Y and Z being members of GATT/WTO come together to form a regional trade arrangement; they can as among themselves enter into additional preferential trade treatment which they will however not be obliged to extend to country T also a member of GATT/WTO but not a member of the regional arrangement.

In this paper we put into perspective an analysis of the example in the preceding paragraph by taking the case of Zambia which is a member of both the WTO and

of Comesa (The common market for Eastern and Southern Africa) a regional economic group created for East and South Africa.

This interest is prompted by the fact that while Zambia is member of the GATT/WTO (having signed the Marrakech agreement establishing the WTO) it is still felt in certain sectors that GATT/WTO does not fully benefit the Zambian economy.

At a conference held in Lusaka from 29th – 30th May, 2000 under the Theme “WTO – WHICH WAY FOR ZAMBIA” organised by the Zambia Association for Research and Development (ZARD), the civil society attributed this to the fact that the WTO is not pro-poor and identified numerous problems related to trade liberalisation which hinder full benefit of the multilateral trading system to Zambia and other least developed countries (LDCS).

Against such a background, the launch of the COMESA free trade area (itself characteristic of free or liberalised trade) necessarily raises questions of whether it better prepares Zambia to access the benefits of the GATT/WTO or whether these further calls for trade liberalisation in the region will adversely affect the Zambian economy.

This paper is divided into five-parts. Chapter one looks at the WTO, it's predecessor GATT as well as the WTO's aims and objectives. This is in order to

give an understanding of the multilateral system of trade and what the functions of the WTO are.

Chapter Two basically looks at Regional Economic Groups, their existence within the GATT/WTO structure, the various forms in which they can exist and the factors that come into play as regards their establishment.

Chapter three discusses the historical background of COMESA, the transition to COMESA as well as its aims and objectives.

Our chapter four concentrates on the stage of integration that COMESA is at, that is, that of a free trade area (or FTA). The challenges that are faced by Least Developed Countries in an International economic system that puts emphasis on trade Liberalization will also be discussed.

Another area of interest under this chapter will be whether participation in the FTA increases Zambia's chances of accessing benefits under GATT/WTO.

Reference is made to the European Community.

The fifth chapter concludes this paper by way of recommendations.

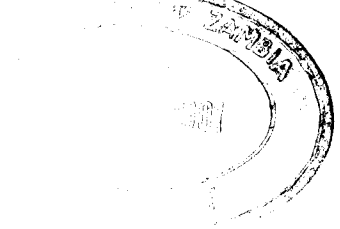
CHAPTER ONE

What exists today as the rules based Multilateral trading system was first established as GATT. GATT was conceived in 1947 as a stop-gap arrangement for multilateral efforts at liberalization pending the establishment of the International Trade Organisation (ITO).¹

The initiative to create both GATT and ITO began during the second world war and came principally from the United States of America (U.S.A). Like other international economic institutions which were to help facilitate global economic recovery after the war (the World bank and IMF being others)² ITO was to provide a comprehensive code and an institutional framework governing international trade.

However, the ITO charter negotiated in a series of United Nations Conferences (1946-1948) never materialised in to the establishment of ITO mainly due to opposition from the US congress. What this meant was that GATT initially intended to focus principally on tariff reduction was left as the only general multilateral instrument for trade co-operation.

Until 1994 therefore when the WTO was established, GATT remained the only principal international multilateral treaty for trade. Technically GATT was only in



force provisionally and in theory while it did not establish an organisation GATT in practice operated like one.³

GATT's basic policy has been that of trade liberalization by providing a forum for negotiation on the reduction of tariffs and other non-tariff barriers which include quotas, internal taxes and regulations against imports and in large constraining governments from imposing or continuing a variety of measures that restraint or distort trade.

GATT has been able to bring significant reductions of tariffs through sponsorship of major multilateral trade negotiations (known as rounds) which are conducted under GATT's three main or core principles known as the Most Favoured Nation (MFN),⁴ National Treatment obligations⁵ and Prohibition on Quantitative Restrictions.⁶

To illustrate how this is possible, the MFN principle for example provides that when tariffs and other import restrictions are negotiated between two countries Zambia and Zimbabwe for instance they are bound in what are known as concessions and become applicable or open equally to all other members of GATT / WTO.

During the last round of trade negotiations the 8th of it's kind which lasted from 1986-1994 known as the Uruguay Round, a new and better defined international

organisation and treaty structure – a World Trade Organisation (WTO) was established to carry forward GATT's work. Thus while the Uruguay Round like all the other rounds before it resulted in a number of agreements being concluded on tariff reduction and other non-tariff barriers such as the Agreement on safeguards, subsidies and counter veiling measures 8, the marrakech agreement establishing the WTO has been said to be the most significant result of the Uruguay round.

Viewed as one of the most profound changes in international economic institutions since the Bretton woods conference in 1944 (which saw the establishment of inter-alia the IMF), economic integration in Europe and North America being others, the WTO charter for the first time clearly establishes an International Organisation, endows it with legal personality and supports it with traditional treaty organisational clauses regarding "privileges and immunities", secretariat, director general, budgetary measurers and explicit authority to develop relations with other international organisations and non- governmental organisations.⁹

Of extreme importance also is that under the WTO, the world trading system for the first time incorporates international rules regarding trade and investment in the service sectors under GATS (the General Agreement on Trade in Services) and rules on trade-related aspects of intellectual property rights (TRIPS).¹⁰

So for example instead of only being concerned with trade in goods (as was the case with GATT), the WTO also governs under GATS a wide range of activities in the service sector including banking, insurance, accounting, aviation, legal services etc and requires governments to ensure minimum levels of protection for patents, copyrights, industrial designs, trademarks and other related rights under TRIPS.

The WTO therefore administers as part of its charter structure GATT 1994 (which is basically GATT 1947 as amended over the years), GATS, TRIPS, an Understanding on Dispute Settlement provisions, a trade policy review mechanism- TPRM and an annex with four optional agreements known as plurilateral agreements.

It is therefore important that it is understood henceforth that WTO essentially continues the GATT institutional ideas and many of its practices in a form that is better understood. What this means for example is that countries that adhere to the WTO charter become bound to all its annexes (but for the plurilateral agreements) reinforcing the single package idea of commitments unlike under GATT where countries could choose which agreements they would be bound by.

THE WTO OBJECTIVES

The Central objective under the WTO continues to be that of trade liberalisation and promoting expansion of international trade in goods and services.

The preamble to the WTO charter recognizes that contribution to this shall be by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.

Under part III of its charters the WTO has also been endowed with several functions meant to fulfil its objectives which include providing a forum for negotiating trade concessions and removing trade barriers, monitoring the multilateral trade system and developing a rule based trade system.¹¹

END NOTES

1. R.N. Gardner, In pursuit of World Order p.153.
2. J.H. Jackson, International Economic Relations p. 293.
3. Ibid, p. 289.
4. Article I of the GATT 1947 (as amended)
5. Ibid, Article XI
6. Ibid, Article XI
7. J.H. Jackson, p.289
8. COMESA and the World Trade Organisation (1999)
9. Article VIII of the WTO Charter (1994)
10. H.G. Broadman, Russian Trade Policy Reform for WTO Accession, p. 1
11. COMESA and the WTO, (1999), p. 3.

CHAPTER TWO

In this Chapter, the focus of our attention is regional economic groups generally and their legal validity in the GATT/WTO structure. An exposition of the various forms of regional economic groups (or RTA to mean regional trade areas and as they are to be referred to herein) is given as well as the factors which come into play as regards their establishment. This is in order to give a general understanding of what economic integration entails within a RTA such as COMESA.

It should be understood from the outset that regional economic integration is “international economic integration on a more localised normally geographic basis.”¹ At the risk of over-simplification, regional economic integration should therefore be understood as a scenario where certain countries in a given region come together and integrate their economies to achieve a desired goal.

An example would be where Zambia, Zimbabwe and Malawi come together to exploit each other's resources on large scales so as to form one whole market integrating their economies.

One such RTA considered, as having attained a high degree of integration is the European Community. First created in 1957 under the treaty of Rome as the

European Economic Community (EEC) and signed by only six countries at the time;

*"It's essential aim was to establish by three stages over a transitional 12-15 year period, a common market in which all internal tariffs, quota restriction etc were to be eliminated, a uniform external tariff created and the promotion of free movement of labour and capital attained."*²

Thus while various reasons are advanced for economic integration, the principle one here appears to be that of improvement of trade amongst members states in a given economic bloc through removal of trade barriers and enhancing of rapid economic development. In fact the European Community is referred to later on in this paper in analysis of RTAs and what economic development they foster for their members.

LEGAL VALIDITY UNDER GATT/WTO

Under the GATT/WTO structure, RTAs exist or have their legal validity couched in what is known as the Article XXIV exception to the MFN obligation of GATT/WTO.³ As was pointed out earlier, the MFN obligation imposes on member states a system of trade that is non-discriminatory.

However, under the aforementioned article, member states are permitted to enter into further necessary Preferential Trade arrangements without extending to

other members of GATT/WTO the same treatment by establishing either a customs union or free trade area.

Dubbed as a standard clause in all commercial treaties by the GATT draftmen,⁴ inclusion of article XXIV in the General Agreement was not without some opposition (which was mainly from the United States). This was largely because of the problem of how to define such an exception without opening the door to the introduction of all preferential systems under the guise of a customs union or free trade area.

Article XXIV nonetheless was incorporated on the understanding that such arrangements did not cause any disadvantage to outside countries in comparison with their trade before they were effected.⁵

Article XXIV (5) thus provides that the provisions of the General Agreement are not to prevent as between contracting parties (now referred to as members under the WTO), the formation of a customs union, a free trade area, or an interim agreement necessary for the formation of either of the two. These specific trade groups are not however an exhaustive list of RTAs that can exist.

Regional integration falling generally within successively integrated and evolving economic units in that in assessing the extent or degree of economic integration achieved between nations, there are certain characteristics of economic relations

which test the kind of integration, most writers on this subject have outlined a series of stages other than a free trade area and a customs union.

There is consensus that a free trade area is the first step of integration and the least integrated. This is followed by a customs union, a common market and an Economic Community.⁶ For purposes of the subject under discussion a further RTA will be discussed herein i.e. the Preferential Trade Area (PTA) which was the first stage of integration undertaken under COMESA.

(a) **Free Trade Area**

In a free trade area, the essential characteristic is that the member parties agree to aim at a gradual elimination of protective customs duties and quantitative restrictions on each other's products in conformity with agreed rules of origin.

Rules of origin are a set of criteria that distinguish between goods produced within a free trade area and are entitled to duty-free or preferential treatment with respect to customs duty and or other charges of equivalent duty and of those considered to have been produced outside the region and pay full national duties when traded.⁷

However, each individual member of the FTA remains autonomous though not autoch, in it's commercial policy or tariff policy in that it can fix it's

own external tariff vis-à-vis non member states. The degree of sovereignty surrendered is therefore minimised.⁸

The Baltic free trade area (BFTA) formed in 1994 between Estonia, Latvia and Lithuania is an example where trade has been fully liberalized for most sectors between the Baltic countries while all three countries have maintained their individual trade barriers with third countries.⁹

(b) **Customs Union**

A Customs Union (CU) is a step further from the FTA in that “it is reached when all restrictions are removed in the trade between the parties and a common tariff is established against third states.”¹⁰ What this entails is that two things must necessarily be done to attain this stage and these are:

- (i) Trade barriers such as tariffs, quotas and other non-tariff barriers must be done away with amongst the member states.
- (ii) There has to be an adoption of a common external tariff and correspondingly a common commercial policy or common customs regulations towards the outside world or non-member states.¹¹

A Customs Union can here be distinguished from a free trade area in that the concepts of a common external tariff and customs regulations are absent in a FTA. What this means is that if for instance in our earlier example of Zambia, Zimbabwe and Malawi a customs Union is formed, these countries would in addition to liberalizing trade among themselves maintain common trade barriers against goods of non-member states. The goods would however, enjoy free movement once they enter the customs union.

This is because the need for customs inspection at internal borders is eliminated in a customs union. Tariff revenues would then either be shared among member states or allocated according to the destination of the goods. This infact proves to be one of the most contentious issues in the development of a customs union as it involves the finding of a mechanism for the division of customs revenue among the member States.

Examples of RTAs which have been established or developed into Customs Union are abound one such RTA being the BENELUX formed initially as a Customs Union but which has since developed into an Economic Union. The Benelux is formed by Belgium, the Netherlands and Luxembourg.

(c) **Common Markets**

This is a stage which entails the total abolition of all restrictions on the movement of goods and services across individual national boundaries of

member countries. As one Author on the subject puts it, “only when complete freedom of capital and labour is also present within a customs union can a common market be said to exist.”¹²

A Common market however facilitates in addition to the free movement of the factors of production, the right of establishment and residency between members of the Common Market. What this simply means is that nationals of the members states can set-up investments or take-up jobs in a country not of their origin but which is a member of the Customs Union without necessarily having to obtain work permits and other like licences as well as reside in such country without having to obtain a resident’s permit.

Our own COMESA is an RTA that was established under the overall objective and mandate of a Common Market. It’s development strategy is designed to inter-alia “deepen integration through the free movement of capital, labour, goods and the right of establishment, elimination of the controls on the movement of goods and individuals and the adoption of a common external tariff (CEF).”¹³ Full discussion of this RTA follows in the successive Chapters.

(d) **Economic Community**

An Economic Community does not only establish a Common Market, it also introduces harmonization of basic national policies related to the economy of the Community i.e. for example;

- regional growth
- taxation and
- transport

The participating States attempt to achieve either economic co-operation or economic integration or a combination of both. The economic policies which are to be harmonized must go to an extent which tries to remove the gross factors that may distort competition among the members such as legislation in relation to monopolistic practices

It is now imperative that a synopsis of what a preferential trade area is be given for the purpose of throwing light on the origins of the subject-matter under discussion herein, the Common Market for Eastern and Southern Africa-COMESA.

Preferential Trade Area

This level of integration is similar to the FTA in that member countries would grant each other a limited preference in their tariffs albeit the rate of tariffs on each other's products may not necessarily be harmonized. Furthermore, no

obligation is placed on member states to reduce these tariffs unless agreed upon.

In the case of the preferential trade area for Eastern and Southern Africa now COMESA, the main reason for its establishment was to facilitate trade among member states through the reduction of tariffs and putting into place a number of measures to liberalize and promote regional trade. Other than opting for a formal economic integration in the form of a free trade area or customs union at the outset, the founders ideas was to work gradually towards economic integration. Today nearly two decades after having come into existence the PTA has been transformed into a common market and a free trade area established for the region. Therefore it would not be untrue to assert that thus far COMESA is one of the more successful regional economic co-operation and integration groups in Africa and the ratio decidendi behind this assertion will soon become clear.

ENDNOTES

1. R.H. Folsom, Corporate Competition Law in the European Communities: Lexington Books, 1978, pp1.
2. D.W. Bowett, The Law of International Institutions Pp 200
3. GATT 1947 (as amended).
4. J.H. Jackson, Pp 469.
5. Ibid, Pp 470.
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7. COMESA FTA Questions and Answers, February 2001. Pp 3
8. D.W. Bowett, Pp. 197.
9. Csaba Csaki and Another, Regional and International Trade Pp.18.
10. PNC Okigbo, Africa and the Common Market; Pp.20.
11. M.K. Hansungule PH.D Dissertation, 1992, 17.
12. E. Roll. The World after Keynes, Pp.111.
13. The COMESA Development Strategy Pp. 3

CHAPTER THREE

Having dealt with regional integration generally and the various forms of RTAs, we now turn our attention to the regional economic group that is the main subject of this discussion i.e. the Common Market for Eastern and southern Africa (COMESA). Emphasis in this chapter will be on the reasons behind its establishment, its objectives as well as its structural and institutional arrangements.

THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

COMESA is a regional integration grouping of 20 African states (Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe)¹ which was established on 5th November 1993 as an organization of Sovereign states which agreed to promote regional integration through trade development and to develop their natural and human resources for the natural benefit of all their peoples. COMESA is the outcome of the transformation of the preferential Trade Area (PTA) for Eastern and southern Africa which had been in existence since 1981 within the framework of the Organisation of African Unity's OAU Lagos plan of Action and the Final Act of Lagos.²

BACKGROUND TO PTA INTEGRATION

The background of the Preferential Trade Area (PTA) dates way back to the early 1962s and both the United Nations Economical Commission for Africa (UNECA) and the Organization for African Unity (OAU) between them share the credit of launching and enhancing regional co-operation for the eastern and southern regions of Africa and for Africa generally. These two organizations have over the years collaborated in the setting up of several inter-governmental institutions such as the African Development Bank (AFDB's) and other mechanisms with the main purpose of ultimately achieving African Unity and Economic integration.³

What must be stated here outrightly is that regional co-operation and integration having long been accepted as sine qua non for poverty alleviation and sustainable human development, it is not surprising that the African continent itself envisaged regionalisation as a means to attain a single economic Africa. In fact, the process of economic co-operation among African states has been said to be older than the African States itself.⁴

A good example is that as early as 1961, the preamble to the African Charter⁵ declared "the will of then independent African States assembled at Casablanca to intensify their efforts towards the creation of what they called an effective form of co-operation among African States in the economic, Social and Cultural domain."

Predominate during the 1960s however, were consistent demands by members States for decentralization into effective smaller groupings, which were more closely related with their respective nations and subregional interest and problems. The result was a proliferation of a number of subregional groups, which included inter-alia the Central African Economic and Customs Union (UDEAC), the West African Economic Community (ECOWAS) as well as the East African Community (ECA).

In November 1965 the UNECA particularly started promoting the idea of a wider economic grouping for Eastern Africa. At an initial ministerial meeting held in Lusaka, there were raised serious considerations of proposals for the establishment of a mechanism for an in-depth promotion of sub-regional co-operation and economic integration.⁶

These proposals on regional economic integration were prompted by the fact that the East African Community among others had collapsed thereby raising the need of promptly filling the gap.⁷ Thus an interim Council of ministers, assisted by an interim Economic Committee of Officials was set-up to negotiate with member states a draft treaty and also to initiate economic programmes in the intervening period.

However, these UNECA proposals were to remain only on paper for a very long time. In March 1977 a conference was held in Kinshasa (then Zaire), which

Commitment to the Establishment of a Preferential Trade Area for Eastern and Southern African States.” At this same conference an Intergovernmental Negotiating Team (INT) was established as well as the time table for negotiating.

Subsequent to this in June 1978 a meeting followed in Addis Ababa (Ethopia) which established the principles as the basis of negotiating for a PTA treaty and it's protocols.

The principles laid down for and embodied in the treaty were:

- (i) the reduction and elimination of tariff and non-tariff barriers;
- (ii) the reduction and eventual abolition of quantitative and administrative restriction;
- (iii) the gradual evolution of a common commercial policy;
- (iv) The gradual harmonization of financial monetary and Fiscal policies;
- (v) The 'fair and equitable' distribution of benefits;
- (vi) Offering compensation and development assistance to member states, incurring losses suffered as a result of the trade Liberalization arrangement.

These principles' main aim was the restructuring of devastated economies of member states and the promotion of intra-African trade. Secondly it was hoped that there would be reduction of over dependence on trade and other economic

links with the metropolis. The result expected was that of development, mutually beneficial linkages between regional poles of growth and taking advantage of complementarities of market and resource endowments.⁹

In February of 1979 in Nairobi, Kenya another meeting of Council of Ministers was held at which it was decided to proceed with the launch of the PTA by May 1980. The launch however, occurred in December 1981 and the treaty came into effect in 1982. It may be said of the objectives and provisions of the PTA Treaty that they went beyond a normal Preferential Trade Area. The treaty provided for not only the Liberalization and promotion of intra-subregion trade but also catered for inter-state cooperation and specialization in the development of basic and strategic industries, production of food crops and live stocks, science and technology, human resources and creation of inter country transport and communications network. In other words, the treaty was to address promotion of co-operation and integration in all fields of economic activity, particularly in the fields of trade, customs, industry, transport, communications, agriculture, natural resources and monetary affairs with the aim of raising the standards of living of its peoples, of fostering closer relations among its members and of contributing to the progress and development of the African¹⁰ countries. The treaty also provided for the transformation of the PTA into a Common Market.¹¹ The process of integration in the PTA was to be on a step by step basis starting firstly by the establishment of a Preferential Trade Area, transforming into a Common Market and eventually into an Economic Community.

It is imperative here to say that the most important event which impacted forcibly and positively on all the various efforts towards sub-regional and regional cooperation and integration was the second extra ordinary session of the OAU Assembly of Heads of States and Governments devoted exclusively to the economic problems of Africa.

This session which met in Nigeria from April 28th – 29th 1980 produced a comprehensive plan of Action for Economic Development of Africa (1980 – 2000) dubbed the Lagos Plan of Action and Final Act of Lagos.¹²

This Plan of Action provided for among other things:

“the adoption of measures relating to the setting of regional structures and strengthening those already existing for an eventual establishment of an African Common Market as a first step towards the creation of an African Community.”¹³

It is clear therefore that the provision for the transformation of the PTA into a Common Market ten years after it's entry into force was in consonance with the Lagos Plan of Action for an African Economic Community and that it's priorities were designed to dovetail those of the OAU. It is also true that other regional economic groups set-up such as the southern African Development Community (SADC) and ECOWAS were meant to fulfill the African dream of integration in the form of sustainable development and African Union.

Before proceeding to discuss the COMESA in detail, it is imperative that some of the successes or failings of the PTA if any, be brought to the fore so as to be certain of exactly what foundation was laid down for COMESA by the PTA.

Considerable progress was made in implementing some of the treaty provisions intended to promote sub-regional co-operation, and development. The early stages of the PTA were concerned with creating a strong institutional machinery to carry out an effective implementation of the aims and objectives spelt out in its treaty and protocols.

Several PTA institutions were therefore created which included the PTA Trade and Development Bank, the PTA clearing House, the PTA Federation of Chambers of Commerce and Industry and the PTA Leather Institute. In terms of intra-PTA relations a centre for commercial Arbitration was set-up to settle international private commercial disputes while a PTA tribunal was established to deal with disputes among members States, which arose out of the interpretation or application of the provisions of the treaty.¹⁴

These capacity building measures taken to promote trade and development were implemented on the whole through the PTA institutional machinery (or what would also be known as its organizational structure). There were under the PTA five main institutions, which had the power to take and implement certain decisions, and these in brief were:

(i) **The Authority of the PTA**

This was made up of Heads of State and Government and was the supreme policy organ of the PTA. It was responsible for general policy as well as the general direction and control of operations of the PTA.

(ii) **The Council of Ministers**

This was the second highest policy organ of the PTA composed of Ministers designated by the member states. The Council was responsible for ensuring the proper functioning of the PTA in accordance with the provisions of the Treaty. The Council took decisions on the activities of the PTA including the monitoring and reviewing of its financial and administrative management.

(iii) **Secretariat**

The Secretariat was headed by a Secretary-General who was appointed by the Authority. Its basic function was to provide technical support and advisory services to member states in the implementation of the treaty. To this end, it undertook research and studies as a basis for implementing the decisions adopted by the policy organs.

(iv) **The PTA Tribunal**

As the Judicial organ of the PTA responsible for ensuring proper interpretation and application of the provision of the treaty and

adjudicating any disputes that might arise among member states regarding the interpretation and application of the provision of the Treaty.

(v) **The Committee on Clearing and Payments or (Committee of Central Bank Governors):**

Was empowered under the Treaty to take decisions limited to certain specified areas notably to determine the maximum debit and credit limits in relation to the clearing house. These institutions would in addition to making their own decisions receive as recommendations, decisions of other organs of the PTA such as the inter-governmental commission of experts and the technical and sub-committees.¹⁵

In fact other than the progress in institution building, the PTA also had a success story in trade performance in so far as trade Liberalization was concerned. While it is not disputed that the PTA treaty was meant to generate a sturdy process of sub-regional economic integration in all sectors, the trade sector was core in its provision.

It was envisaged that during the initial stages the trade Liberalization and facilitation measures would push the PTA members states to adjust their economic and trading relations outside the sub-region and encourage them to trade more with one another thus facilitating the economic integration process in other sectors.

And indeed of the eighteen articles of the PTA Treaty dealing with sectorial economic co-operation arrangements, 10 were trade Liberalization arrangements, while out of the 13 protocols to the Treaty 5 were also on trade Liberalization

The idea in terms of trade Liberalization was to reduce tariffs and other charges by 10% every two years from 1988-1996 and thereafter by 20% and finally by 30% by the year 2000. Thereafter no tariffs nor charges were supposed to be imposed by member states. By the year 1992, there (was) considerable reduction of tariffs to as much as 70 percent. Similarly measures were also taken to remove non-tariff barriers on goods on the common list and facilitate the movement of goods and services within the PTA sub-region.

While it scored such successes, the PTA was not without its own failure or drawbacks. Some of the problems, which contributed to the failures of the PTA, were those which at the time of signing the treaty could not have been foreseen or had not emerged into intractable crises.

Social and economic dislocations arose for example from the collapse of the prices of Primary commodities of export interest to the PTA, which had resulted in persistent decreases in export earnings leading to increased external borrowing and high indebtedness¹⁶.

Secondly, the PTA did not address the sector of agriculture adequately. It being the backbone of the economics of the sub-regional, its mention in the treaty was without much importance. Mwase N. in the Journal on World Trade Law argues that the Treaty merely stated intentions but was inexplicit on the aim and extent of co-operation. It is not for example clear whether the end in view was free trade in agricultural commodities or structural changes therein.

Agriculture however, should have been a major priority in the PTA owing to wide spread food shortages and famine affecting millions of people in the Sub-Saharan region that were the result of inability to deal with recurring droughts and desertification.

Furthermore one of the PTA's strongest economy (i.e. that of Zimbabwe) was largely dependent on the south African economy in that the other PTA members did not offer Zimbabwe such markets and competitive goods that would have avoided the situation where Zimbabwe's import –export trade with South Africa was more than her trade with fellow PTA countries. It was difficult therefore to promote intra PTA trade when national markets were not fully integrated and there were no competitive goods in which to trade. The foregoing were some of the successes and failure of the PTA, which became predecessor of the now Common Market for Eastern and Southern African.

COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

Under Article 29 of the PTA Treaty, it was provided that:

“Two years before the expiry of 10 years from the definitive entry into force of this treaty, the Commission shall propose to the Council for its consideration and recommendation to the Authority for its approval measures which in addition to the provisions of the treaty would be required to be implemented as from the said period of 10 years in order to assist in the development of the PTA into a common market and eventually into an Economic Community for Eastern and Southern African States.”¹⁷

This provision from the start therefore was to be the guide to the future development of the sub-region. By the year 1992, a consensus seemed to have emerged on the need for a well articulated and clearly defined strategy to enable the PTA countries to address some of the problems outlined above so as to enhance market integration and economic transformation for sustainable growth. The PTA Authority decided that the main objective for the coming decade was to attain market integration with a view to transforming the PTA into a Common Market.

The transition from the PTA era to COMESA was supposed to be in stages and with the signing of the COMESA Treaty in Kampala, Uganda (1993) became a fulfillment of the critical initial period which was the first step towards establishment of the Common Market as agreed on by the contracting parties.¹⁸

The COMESA Treaty was ratified in Lilongwe, Malawi, in 1994 and has three protocols annexed to it and these are:

- (a) Protocol on Transit Trade and Transit facilities.

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- (a) Protocol on Transit Trade and Transit facilities.

- (b) Protocol; on Third-party motor vehicle insurance scheme; and
- (c) Protocols relating to the unique situation of Lesotho, Namibia and Swaziland.

The COMESA Treaty, which is what sets the agenda for COMESA, may be said to cover a large number of sectors and activities. However, the fulfillment of the complete COMESA mandate is regarded as a long term objective and for COMESA to become more effective as an institution, it has defined it's priorities within it's mandate over the next 3-5 years as being promotion of Regional Integration through Trade and Investment.

Perhaps it would help to go back to the definitions of a common market and preferential trade area to understand exactly what awaits COMESA in terms of economic integration. It must be noted that a common market is a much higher measure of regional integration than a PTA. A common market comes after a customs union has been achieved and when there is complete movement of capital and labour.

There are therefore embodied in the COMESA treaty certain principles that were not present in the PTA and these are:

- (a) A full 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 custom union under 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 common investment areas so as to create a more favourable investment climate for the COMESA region;
- (d) The establishment of the cross boarder payments and settlement system and a political risk guarantee system;
- (e) The eventual establishment of a common monetary union with a common currency; and
- (f) The adoption of common visa arrangements, including the right of establishment and residency.

All these elements are in consonance with COMESA's stages of regional integration, which are a Preferential Trade Area, Free Trade Area, Customs Union, Common Market and Economic Community. The launch of the free trade

area (i.e. the COMESA FTA) on 31st October 2000 was the next positive step in the stages of regional integration to be followed by COMESA.

COMESA is in a lot of ways an improvement on the PTA and most of its mandate continues to run along what existed under the PTA. The Headquarters of COMESA for example continue to remain in Lusaka, as was the case under the PTA whereas the assets and liabilities of the PTA transferred to COMESA on transition.

Furthermore, like the PTA Treaty, the treaty establishing COMESA gives to it legal status that is binding on its members and of an international legal personality. COMESA can therefore speak as an institution within the international arena. COMESA also continues to be supported by the financial specialized institutions created under the PTA namely the Trade and Development Bank for Eastern and Southern Africa (or PTA Bank), the Clearing House and the Re-insurance Company.

THE COMESA OBJECTIVES

The aims and objectives of COMESA as defined in the treaty and its protocols have been designed to facilitate the removal of structural and institutional weaknesses of member states so that they are able to attain collective and sustained development.

They include:

- To attain sustainable growth and development of member states by promoting a more balanced and harmonious development of its production and marketing structure.
- To promote joint development in all fields of economic activity and the joint adoption of macro-economic policies and programmes, to raise the standard of living of its peoples and to foster closer relations among its member States.
- To co-operate in creation of an enabling environment for foreign cross-border and domestic investment, including the joint promotion of research and adoption of science and technology for development.
- To co-operate in the promotion of peace, security and stability among the member states in order to enhance economic development in the region.
- To co-operate in strengthening the relations between the common market and the rest of the world and the adoption of common positions in international fora.
- To contribute towards establishment, progress and the realization of the objectives of the African Economic Community.

Overallly therefore COMESA's main objective is that of attaining economic integration and sustainable growth through co-operation. COMESA is to promote and strengthen regional cooperation and integration among member states by adopting more comprehensive trade Liberalization measures such as complete elimination of tariffs and non-tariff barriers to trade. How this is

to be attained will be illustrated when we discuss the COMESA free trade area in the next chapter.

THE COMESA STRUCTURAL ORGANIZATION

The COMESA structural organization or institutional machinery continues to be the same as that which existed under the PTA (the details of which have already been discussed) and exercises almost the exact authority as before with necessary modifications in certain organs.

These organs are:

- The COMESA Authority of Heads of States and Government;
- The Council of Ministers;
- The Court of Justice which has replaced the PTA Tribunal but which carries out the same functions as it's predecessor;
- The Committee of Governors of Central Banks;
- The Intergovernmental Committee;
- Technical Committees;
- The Secretariat; and
- The Consultative Committee of the Business Community and other interest Groups to provide a link and facilitate dialogue between the business community and other interest groups and organs of the Common Market.

END NOTES

1. COMESA in Brief - November 2000, p.2
2. The COMESA Development Strategy, p.1
3. S.G. Mwale, Historical Notes on the Creation of the PTA/COMESA - September 1999 p.8
4. M.K. Hansungule, p.178
5. African Charter of Casablanca - June 1961 - Text from Basic Documents of Regional Organisations at p. 42-48
6. S. Mwale, p.10.
7. PTA Development Report, A Decade of Economic Integration - 1982-1992 p.9.
8. A. Adedeji, Special Africa Trade Bulletin on the PTA - February 1982 p.5
9. N. Mwase, Journal on World Trade Law, Vol. 19 No. 6: 1985, 623
10. PTA Trade and Development Strategy - October 1991, p.4.
11. Article 29
12. S.G. Mwale
13. Annex 1
14. PTA Trade and Development - 1991, p. viii
15. Ibid, p.3
16. Ibid, P. viii
17. Comesa Journal , vol. 2 Issue No. 4 1998.
18. Article 2(I) - PTA Treaty

19. COMESA in Brief, 2000 p.2
20. The COMESA Development Strategy, p.2.

CHAPTER FOUR

As should be recalled from the definition of a FTA, it is a grouping of two or more countries which agree that goods produced by themselves can be traded without payment of customs duties or charges of equivalent effect (these include any taxes, duties or surcharges that are levied on any traded goods but are not levied on identical or similar locally produced goods), eliminate all non-tariff barriers to trade between them and agree on a set of rules of origin under which descriptions of goods are eligible for duty-free treatment.

In this chapter our focus is on the COMESA FTA and exactly what it is of interest will be the challenge faced by LDCS in a world trade system dominated by liberalisation and globalisation. Faced with such challenges does the COMESA FTA increase Zambia's chances as a LDC to access benefits under GATT/WTO. Reference is also made to the European Union.

At the time of its establishment in 1994, the COMESA countries agreed to the establishing of a free trade area on 31st October 2000¹. Since its transformation it must be stated, the COMESA region has experienced rapid trends towards liberalisation of national economies and a steady process of social economic integration through trade development.

In fact most member states have now eliminated non-tariff barriers including abolition of exchange controls, export and import licensing, foreign exchange allocation, quotas and have harmonised vital legislation.² All this is meant to lead to widespread improvements in the economic performance of the region.

In preparation for the free trade area, the Comesa secretariat adopted a number of measures such as

- (i) the compilation of a Common Tariff nomenclature (CTN) for tariff classification
- (ii) a study to determine the appropriate administrative structure for the introduction, management and sustainability of the customs union including the implementation of a Common External Tariff (CET)
- (iii) A study to review and recommend enhancement to the protocol on Comesa rules of origin.

The principle to establish the FTA was always well received from the start. In fact 14 member states adopted the Common Programme of Action (CPA) which is a fast track programme for the implementation of the necessary liberalisation measures.³

By December 1994, member states also ratified the decision to introduce a single rate of tariff reductions for intra-regional trade. This was to start with an across-the-board 60% reduction on all goods qualifying as originating from member

states according to the criteria established in the protocol with the aim of achieving 100% preference by 31st October 2000 to mark the start of the FTA.

On October 31st October 2000, 9 of the 21Comesa countries became members of the FTA (i.e. Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe) and started trading on duty-free terms for all goods originating from within their territories.⁴

The small number of countries implementing the FTA is recognition by COMESA that the member states are at different levels of growth and development and cannot move at the same speed for integration. Comesa therefore has a concept of multi-speed development by which 2 or more member states can agree to accelerate the implementation of specific Comesa treaty provisions or other common agreements while allowing others to join in later on a reciprocal basis as defined in Article 56(3) of the treaty which makes provision for MFN Treatment.

So for example, the Seychelles has pledged to join the FTA by June 2001 while Burundi, Rwanda and Eritrea not yet ready to join the FTA are expected to do so in the near future. The rest of the member states of the Comesa have not indicated a date for joining the FTA and will continue to trade with the FTA members on Comesa preferential terms. What this means for example is that since most of them have reduced tariffs on Comesa originating goods by

between 60% and 80%, they still charge between 20% and 40% of their general (MFN) tariff on Comesa originating goods.

An example would be where if the Comoros was engaged in some trade with Zambia, it would charge 20% of the general duty rate for goods leaving Zambia and entering in its borders while the same would equally be true for goods leaving the Comoros and entering Zambia.

What should become evident at this juncture is that in order to ascertain whether particular goods are entitled to duty-free or preferential terms, rules of origin become of crucial importance in any free trade area in order to prevent for example trade deflection where there is no common external tariff⁵ as is the case for Comesa as of now.

Sometime in November 2000 the Comesa rules of origin were reviewed so that origin can now be obtained on five independent criteria.⁶ The Comesa rules of origin are simply a set of criteria that distinguish between goods produced within the Comesa member states and are entitled to duty free or preferential treatment with respect to customs and other charges of equivalent effect, and those considered to have been produced outside the region and pay full national duties when traded.

Under the Comesa protocol on rules of origin, goods qualify as originating in Comesa on any of these five independent criteria

- (i) The goods should be wholly produced or obtained in a member state (that is they should contain no materials imported from outside the common market; e.g. animals bred and reared on a farm, fish caught in a country's lakes or rivers, minerals mined from the ground and timber felled in the country's plantations;
- (ii) The goods should be produced in the member states and the C.I.F value of any foreign (in so far as non-Comesa) materials should not exceed 60% of the total cost of all materials used in their product;
- (iii) The value added resulting from the process of producing the goods from imported materials should account for at least 35% of the ex-factory cost of the goods;
- (iv) The goods should be produced in member states and be classified or become classified after the process of production under a tariff heading other than the tariff heading under which they were imported;
- (v) The goods should be designated by the Council " as goods of particular importance to the economic development of the member states" and should contain not less than 25% value added, notwithstanding the provisions in paragraph (iii) above. As of June 1998, the list of goods of particular to the economic development of the member states include inter-alia.⁷

- Cement

- Medicaments (including veterinary medicaments)
- Mineral or chemical fertilisers
- Agricultural and horticultural machinery for soil preparation or cultivation e.g. ploughs, barrows etc.

However, in order for an exporter to claim Comesa duty-free or preferential tariff treatment on any of these criteria, there must be a Comesa certificate of origin accompanying Comesa originating goods as documentary proof that they qualify for either preferential tariff treatment or for duty-free entry under the FTA.⁸

What must be cautioned here is that while rules of origin are crucial in any FTA, they are merely legal devices, which may not be totally effective in the market place. This is true when one looks at the country of origin of raw materials which is much less easy to trace when compared to that of a specialised automobile part. It is not surprising thus that under Rule 5 of the Comesa protocol on rules of origin simple production or manufacturing processes are insufficient to confer origin as where there is a simple assembly of components and/or parts or the mixing or blending of ingredients as well as processes of preservation of goods in storage or transportation.

Certificates of origin are issued in the member states by competent authorities, which include the ministry of trade or customs authorities or the chamber of commerce.

Since the Comesa FTA is viewed within the Comesa trade policy as a prelude to the establishment of a customs union, it is planned that it will operate for about four years during which time all administrative, legal, institutional and logistical preparations for the operation of the customs union are to be completed.

The FTA is therefore seen as a means for bringing economic and social prosperity in that other than paving way for the customs union it is to take cognisance also of other spheres which lead to closer economic integration such as the aspect of trade in services (involving intellectual property) and immigration laws intended to facilitate the free movement of the people of the region and therefore necessitating trade in service.⁹

In fact in terms of trade creation or market size the nine Comesa FTA countries have created an economic space with a large investment and trade potential.

Three basic demographic/economic data can be tabulated as:¹⁰

Population - 180 million people

Gross Domestic Product (GDP) - US\$125 Billion

GDP per capital - US\$690

These initial positive benefits of the FTA can be explained in terms of the very objective of the Comesa FTA and what its expected benefits are to be. The very existence or objective of FTA it is intended, is to be that of fostering efficiency through enhanced competition so as to translate this into many benefits.

These benefits it is agreed will arise mainly from two sources namely:

- (i) gains from overcoming the allocative and administrative inefficiency associated with market distortions and barriers resulting from inconsistent national policies; and
- (ii) gains from policy co-ordination.

These two sources of benefits constitute the main rationale for the Comesa integration arrangement and the FTA.¹¹ Suffice to say here that it is these two sources of benefits from which it is believed will result economic development for the member states of the region and thus optimise the region's chance in taking part in International markets. This will be delved into in detail after addressing some of the constrains Least Developed Countries (LDCS) such as those in the Comesa (with the example of Zambia in particular) allege as hindering them from benefiting from the world trading system and liberalisation as a whole which we must now address.

PROBLEMS OF ACCESSING TRADE BENEFITS BY LDCS

Countries of the world economy termed as Least Developed Countries (LDCS) have for a long time tried to reorganise the world trading system as it is regulated under GATT/WTO. In fact, "historically LDCS were dissatisfied with GATT and felt that they had little influence in GATT decisions, that the dispute settlement system was not particularly useful to them and that some fundamental GATT principles were unsuited for trade involving them."¹² As a consequence, for many

years, LDCS pressed for special treatment in GATT and attempted to create new rules not related to GATT, to embody their concept of how the world economy should operate, particularly in the United Nations and its related organisations.

One area in which LDCS have attempted to do this has been to move global negotiations on trade issues through the creation of UNCTAD (United National Conference on Trade and Development). As part of this effort UNCTAD in the 1970s promoted what came to be called as the New International Economic Order (NIEO).

The NIEO was proposed to the third United Nations Conference on trade and development by President Echeverria of Mexico and was to be a charter of Economic Rights and Duties of State, drafted in order to protect the economic rights of countries especially the LDCS.

To this effect Article 28 of the charter imposed a duty on all states to adjust the prices of the exports of developing countries in relation to those of their imports. However, developed countries such as the United States, Belgium, Germany and the United Kingdom refused to accept the charter and the political reality eventually dictated that it would be impossible to have a NIEO.¹³

The charter has therefore not been implemented to any significant level. Instead what has been happening is a movement away from the goals of NIEO as

emphasis has continued to be predominantly free markets and while some observers have concluded that the NIEO no longer exists, the problems that gave rise to it and some of the ideas associated with it are still present.¹⁴

The foregoing discussion should not be understood to mean that GATT/WTO has been oblivious to all the complaints that have been raised by LDCS. In fact, the General Agreement contains several provisions that explicitly allow differential, more favourable treatment for developing countries relating to protection of infant industries,¹⁵ according high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to LDCS and recognition that raising of standards of living and progressive development of economies is particularly urgent for LDCS¹⁶ Full discussions of these provisions is outside the ambit of this paper and will therefore not be proceeded with.

(a) **Dispute Settlement**

The current provisions relating to settlement of disputes between members of the WTO are contained under the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The DSU was adopted in the Uruguay Round of Trade Negotiations and is the first fully integrated text of the GATT/WTO dispute settlement procedures.

It has been stated that the General Agreement contains a multitude of provisions to resolve disputes, obliging parties to consult in specific

instances and covering varied subjects.¹⁷ However, while dispute settlement may take many forms Article XXIII is the principle provision through which disputes arising under the General Agreement are handled.

Article XXIII provides that:

If any party should consider that any benefit accruing to it is being nullified or impaired or the attainment of any objective of the agreement is being impeded as a result of another member's action, then the said party may make written representations with a view to the satisfactory adjustment of the matter.

The procedure for settlement of dispute under Article XXIII currently is that a panel is established to hear the dispute after the parties fail to resolve their differences through consultation or the conciliation or mediation services available. The panel after hearing the parties must make a report for the Dispute Settlement Body (DSB) to consider adopting (unless there is consensus against adopting or what is known as reverse consensus). However, any party to the dispute that is dissatisfied may appeal to the Appellate Body and its report is also adopted by reverse consensus.

LDCS have always raised concern that they are not as able to use the dispute settlement system as developed countries to enforce GATT rules. LDCS have

identified 2 reasons that particularly impede any possibility of benefiting from the system and these are:

- (i) their limited resources needed to devote to litigate the trade disputes
- (ii) their limited ability to retaliate against developed countries

As regards limited resources, the argument by LDCS is that they do not have sufficient funds needed to collect extensive information to support complicated legal arguments let alone prepare representations to be submitted to a panel.

Also included under the head of limited resources is the fact that LDCS may not have International trade lawyers having the necessary expertise needed for pursuing a case under the WTO dispute settlement system. This in turn means that international lawyers have to be hired at high costs and thereby discouraging litigation of cases by LDCS. Furthermore, it is submitted that an LCD's benefit maybe impeded owing to certain Non-tariffs Barriers (NTBS) that a fellow member country might have in place an example being requirement by domestic legislation for obtaining an export permit. The quantity of the goods may be small in one isolated case but if such impediments are met by say 20 exporters of that country, then the aggregate loss is a high. However owing to lack of institutional mechanism to properly monitor such cases, governments in LDCS may not pursue only one case that most likely would come to their attention due

to the obvious costs that would be incurred and also taking into account the period before which a remedy may be implemented.¹⁸

Similarly, LDCS argue that they have a limited ability to retaliate against developed countries in relation to suspending tariff concessions negotiated with an offending party so as to prevent or remedy injury.¹⁹ So for example if a large and powerful country like the UK was to suspend or withdraw concessions in relation to goods traded with a country like Zambia, the effect would be devastating for the Zambian economy whereas if Zambia was to retaliate, such action might virtually go unnoticed in the UK economy and may even be counter productive to the interests of Zambia.

In 1983, Nicaragua initiated a complaint against the US in which Nicaragua alleged that the US decision to reduce the amount of Nicaraguan sugar allowed to be imported into the US under the US sugar quota system violated GATT rules on the administration of quotas. Although a GATT panel sided with Nicaragua, the US indicated that it did not intend to change its practice.²⁰

In this instance Nicaragua may have been entitled to some sort of compensation from the US, the usual way of obtaining such compensation being Nicaragua imposing restrictions on imports from the US. Such an action would probably have had no noticeable impact on the US economy but would even have been contrary to the interests of Nicaragua.

Thus, whereas the system may work if the US and the European Union (EU) have a dispute and threaten each other with meaningful retaliating measures, such threats are not likely to be taken seriously when made by a developing country.

In the case of United States: Tax treatment for foreign sales corporations²¹

The European community brought a complaint against the US alleging that the exemptions from income permitted a foreign sales corporation (FSC) under US income tax law violated the provisions of the General Agreement and the Agreement on Subsidies and Countervailing measures. The Appellate Body of the WTO found the FSC practices as illegal trade subsidies. Following this decisions the US offered to the European Communities, a proposal that apparently would have redressed the position as regards FSC although the EC reportedly rejected the proposal.²² Nonetheless this is a demonstration that as between two member states with powerful economies, the system of dispute settlement is more likely to yield desired results for an aggrieved member than is the case where the aggrieved member is a LDC.

(b) Negotiating Tariff Concessions

Another area of concern that has been raised by LDCS is that their participation in the GATT/WTO negotiations is very negligible to the extent that one can safely conclude that their concerns are not fully reflected in the final Act.²³

LDCS argue that their bargaining power is watered down in the negotiation of tariffs for goods of export interest to them which are largely low value, high volume primary products because the system of tariff negotiations is laden with political constructs comprising of the US, the EU, Canada and Japan (known as the quad) acting either unilaterally or jointly to promote the economic agenda of the quad at the expense of LDCS. What this means is that while tariff concessions are purported to encourage free trade, practicalities are that goods of the quad which have competitive advantages in exchange with those of the LDCS (because they are technically oriented) are being freed while developed countries entrench protectionist clauses and rules under the WTO that limit movements of competitive resources of LDCS such as labour, agricultural products and manufacturers to their markets. So primary products continue to be excluded from meaningful tariff concessions seriously impacting on the chances of the LDCS of benefiting from them.

So for example following the Kennedy Round, developing countries were generally dissatisfied with the results of those negotiations arguing that little had

been done. With respect to NTBS that they had complained about and tariff cuts were mainly on goods that held little interest for them.²⁴

Similarly even in the next Round the Tokyo Round (1973-79) entered into with hopes by LDC that their concerns would receive serious attention through significantly improved access for their exports to developed countries through liberalisation of tariffs and NTBS, the results were held as modest and wanting in many specific respects by an UNCTAD analysis of the Tokyo Round Results as regards the aims and objectives of LDCS.

It was stated that the results of the negotiations not only eroded the preference margins that LDCS enjoyed in many products of export interest to developed countries but also reduced whatever tariff advantages they had. In addition to this, products of export interest to LDCS not enjoying preferences had been excepted from tariff cuts.

Furthermore, LDCS state that while they may be commonly referred to as developing countries or LDCS there are great differences among them (some of them being newly industrialised e.g. the Asian countries, with others still being poor and dominated by dictatorships) which invariably means that each country has its own unique circumstances under which its economy runs and for which it would want tariff concessions specific to its needs. The result is that the LDCS have no common ground upon which to rally themselves when lobbying for

issues affecting them in the WTO. This is not made easy by the fact that LDCS are economically small as compared to developed countries and corresponding their leverage in global negotiations is limited. In addition exports by individual countries are often concentrated on a few product lines, so that there is typically substantially more volatility in developing country terms of trade ⁵ compared to developed countries.²⁵

C. INCOMPATIBILITY OF WTO RULES AND AGREEMENTS WITH NEEDS OF LDCS

LDCS feel that there are inconsistencies in some of the WTO rules and agreements, which do not take into account LDCS needs or are completely incompatible with them. LDCS have for example stated that the last Round of Negotiations, the Uruguay Round has resulted in developing countries being compelled to take on GATT/WTO disciplines on the same level as developed countries by further liberalising their markets. This was necessitated by the fact that developed countries had argued that while they had had to open their markets to goods of LDCS, LDCS had continued to use the GATT rules to attain one-sided benefits by requesting preferential treatment. Developed countries therefore offered little hope that negotiations between the two groups would advance until developing countries indicated their willingness to participate more fully by taking on further multilateral disciplines. The factors which have limited trade liberalisation by LDCS in the post wars years have not however, by any means been removed both multilaterally and unilaterally. Furthermore they have

not suddenly obtained sufficient leverage in multilateral negotiations to force developed countries to remedy all past grievances.²⁶

The WTO rules have therefore been said to have resulted to loss of market for the poor nations through removal of preferences in trade between LDCS and developed countries. One example that has been advanced is that which afforded preferential treatment to goods coming from African Caribbean Pacific states (ACP) to the European Union under the Lome Convention (IV). Lome IV was basically a convention between the EU and ACP states (which are mainly former colonies of the Great British Empire) which did not require any particular treatment to be given to EU exports to the ACP countries as the EU viewed the convention as a sort of preference for developing countries i.e. by granting trade preferences and development assistance from the EU and its members to the 69 current ACP states.²⁷

The Lome Convention was generally felt to be incompatible with the rules of the WTO due to its non-reciprocal preferences and it was suggested instead that it be replaced with free trade arrangements within the context of regional Free Trade Agreements.

Thus one of the fundamental problems with such WTO rules is that it assumes away the capacity problems of LDCS in terms of competing with industrialised countries. It is a fact that these economies suffer from some inherent structural

and capacity problems (e.g. labour and managerial skills, productive capital, technology, economic and physical infrastructure etc) that make them unable to respond and work against their ability to trade on equal terms with developed countries.²⁸

Thus while it has now been accepted that the Lome preferential market access will gradually be phased out (following the Continuo Convention) and be replaced by Economic Partnership Agreements between the EU and ACP countries, it is still the view of LDCS that preferential trade agreements have been among the best instruments of the Lome Convention.

The Comesa Secretariat for example has indicated that the significance of the trade preferences is demonstrated by their catalytic effect on the growth of, for example fresh produce exports (e.g. - flowers and vegetables) in Kenya, Zimbabwe and Zambia; growth of textile and sugar exports from Mauritius, Swaziland and Zambia; and exotic products like herbs and spices from Zambia, Zimbabwe and Malawi. The removal of these preferences will invariably have a negative effect on existing industries in these sectors and on raw materials and other input suppliers such as cotton farmers, small-holder sugar farmers, emergent herb and spice growers and processors.²⁹

D. INTRODUCTION OF LABOUR AND ENVIRONMENTAL STANDARDS IN THE WTO

This was one area that was never a major concern when the General Agreement was being drafted (1947) but which has increasingly received attention and calls for inclusion in the world trade rules.

Developed countries have particularly been the strongest advocates for inclusion of environment protection standards into the WTO system of trade. LDCS on the other hand view this move by Developed Countries as an attempt to close their markets, in that, countries such as the US insist on strict environmental standards. LDCS have expressed concern that these are a form of new barriers being erected against imports produced under their less strict standards.

While LDCS agree that protecting the environment in pursuit of trade is important, they have raised questions over the use of trade policies to influence environmental measures in other countries.

This is in light of International Treatise such as the RIO Principles on the Environment and Development (1992) that recognise that "states have in accordance with the charter of the United Nations and the Principles of International law the sovereign right to exploit their own resources pursuant to their own environmental and development polices"³⁰

Furthermore there is much evidence which points to a serious risk of environmental issues and concerns being exploited by protectionist measures for their own benefit. This can be done by promoting policies that discriminate against imports as part of the solution to environmental problems, pushing for inclusion of unnecessary trade provisions in multilateral agreement or by deliberately promoting production standards that place a proportionately greater cost of burden on foreign producers.³¹

The conflicting positions held by LDCS and Developed Countries was brought to the fore in the case of Tuna-Dolphin³², the result of the US embargo on Mexican Tuna imposed pursuant to the Mammal Marine Protection Act MMPA (1972). The ban was as a result of Mexican fishing practices which contravened the MMPA which seeks to reduce the number of dolphin incidentally caught while fishing for Tuna. Mexico argued that the US was discriminating against Mexican product contrary to the National Treatment Obligation under the General Agreement. The US on the other ^{hand} contended that the ban was an internal domestic measure consistent with its obligations under GATT. The panel held that the fact that Mexican fishing methods killed larger numbers of dolphins did not allow the US to discriminate against Mexican products.

The panel's decision while going to show that GATT rules block the unilateral use of trade measures to dictate changes on the environmental policies of other nations, is also illustrative of the fact that environmental standards can be

abused to introduce quantitative restrictions or NTBS on import of foreign products.

Governments are in the same vain not powerless by reason of the GATT provisions and still have the possibility of negotiating a multilateral solution. In other words, GATT rules could never block the adoption of environmental policies which have broad support in the world community. A two-thirds support is sufficient to amend the rules or grant a waiver.³³

What remains to be said here is whether the COMESA FTA presents a forum through which some of these problems can be redressed, bearing in mind that Zambia's problems in accessing benefits in the WTO have not been different from other LDCS.

COMESA FTA - ZAMBIA'S CHANCE TO BENEFIT?

While what has just been discussed above are some of the problems identified as impeding accessing of benefits by LDCS from the WTO, other general considerations have been that LDCS lack the necessary institutional, infrastructural and human resource capacities as well as financial resources to individually interpret the rules of the system, translate them into meaningful benefits as well as market access limitations.³⁴ LDCS have been urged that formation of regional trade agreements among them is one way in which some of these impediments can be addressed because of the contribution which regional

integrating may make both to improve the international competitiveness of their products and trade creation for their products within the region.

Within COMESA, it has been made the role of the COMESA Secretariat to take the lead in assisting its members states to make the adjustments necessary for them to become part of the global economy within the framework of WTO regulations and other international agreements. This is so as to facilitate the removal of the structural and institutional weaknesses of member states so that they are able to attain collective and sustained development. The FTA is only the beginning of this objective and it is envisaged under Comesa that the following benefits should result from it:

"An enlarged market for goods, exploitation of economies of scale, promotion of competition both regional and global, promotion of cross-boarder investment, regional dispute settlement process, common commercial policy and export diplomacy, and improved consumer welfare."³⁵

(i) Enlarged Markets

It has been said that questions having to do with market access are at the heart of issues facing regional integration arrangements.³⁶ Within Comesa also, the narrow and disarticulated national markets of individual member states have been said to be the greatest impediments to increased productivity and competitiveness in trade and marketing.

Under the FTA therefore the reduction and ultimate elimination of tariffs and non-tariff barriers is pursued with the aim of achieving trade and market integration so that now the entire Comesa region is considered as one 'domestic' market.³⁷ So for example while Mauritius (a member of the FTA) has a national population of just over 1 million people, the FTA now provides a Mauritian manufacturer a larger market with a population of 180 million people.

Such a large market in turn encourages longer production runs and cost effective utilisation of production capacity. This is reinforced by the predictable market that is as a result of the idea of a single market with harmonised policies.³⁸

(ii) ECONOMIES OF SCALE

Having one large market invariably will also lead to possible exploitation of economies of scale. This is because the FTA allows producers and manufacturers in the region to operate at optimum plant capacities as well as enhances efficient allocation of resources.

(iii) TRADE CREATION

The FTA is expected to also result in trade creation for the region owing to the fact that since production costs differ from country to country, there is

bound to be an expansion of trade as efficient suppliers in the region will be able to take advantage of the different factor endowments and therefore produce goods efficiently where the cost of production is less.

So for example, Zambia can concentrate on those goods which it incurs the least cost in production in bulk and export them and import those goods which it would need more production costs to produce from Zimbabwe, so that in the end both the Zambian and Zimbabwean producers maximise production of goods for which they incur less costs efficiently and benefit from the increased production of each country's industries.

(iv) Increased Competition

The FTA will also result in additional competition within the region which in turn will mean that firms and farms will have to learn to compete with their neighbours and therefore increase their efficiency. Furthermore because member states will learn to compete within the FTA, this will act as a base and training ground for fragile and unexperienced enterprises to prepare and learn the trick of international market so as to compete in the world market.³⁹ The FTA will therefore help meet the requirements of the WTO in enabling member states products to be acceptable in world markets.

(v) Common Commercial Policy and Common Export Diplomacy

It is hoped that the FTA will result in similar export patterns for the region in that given the fact that to enhance integration member states will have to harmonise most of their commercial policies, this in turn should give some scope for coordinating their positions on global issues to the benefit of the region as a whole.

(vi) Dispute Settlement Procedure

The FTA has also seen the Comesa court of justice come into operation to serve as a dispute settlement body for trade disputes arising in the region. The court of justice is to adjudicate and arbitrate on among other matters unfair trade practices, interpreting Treaty (and protocol) provisions and ensure that member states uniformly implement and comply with agreed decisions. Decisions of the court on the interpretation of the provisions of the Treaty have precedence over decisions of national courts⁴⁰ It is true to say therefore that member states have the option of benefiting from an enhanced dispute settlement process for regional disputes which they may have failed to pursue with the WTO because of the lengthy procedure and costs involved. An example would be of Zambia and Zimbabwe who are both members of the FTA and the WTO.

(vii) Attracting Foreign Capital

The FTA promotes cross-border investment franchise and agency arrangements and joint venture operations. This in turn promotes the transfer of technology and skills and contributes directly to economic development in the region. So for example, textile producers in Mauritius are relocating to more cost-effective production centres in Madagascar to improve the competitiveness of their goods while other producers such as farmers of tobacco in Zambia can also enhance strategic links with processors in Zimbabwe.

The larger Comesa market is also a stimulus for foreign investment in that the region has put in place economic reforms that increase the region's credibility as an Investment and trading partner. The overall effect is that the FTA boosts consumer welfare by offering consumers a wider choice of products at competitive prices as competition between producers is entrenched.

All these opportunities for economic growth in the FTA are the result of reduction of tariffs and NTBS in Comesa (or trade liberalisation) and have resulted in trade being enhanced and increase of competition. Parallel to this have been fears raised that the FTA will cause more harm than good for certain countries in the region which are not prepared for further liberalisation.

In Zambia, (as with other Comesa countries) the fear has been that since customs import duties will no longer be collected on goods produced in Comesa member states that qualify for zero duties under the rules of origin, there will be substantial loss of government revenue.⁴¹

In addition to this Zambian industries have raised the concern that they may be forced into closures as a result of competition from producers of similar products from other countries. The argument is that with the elimination of tariffs in the region, final goods may end up being produced more cheaply in some countries than in others due to differences in factor costs.

Local industries consider that the "playing field" is not level as their regional competitors enjoy a much more favourable environment which enables them to produce and export to Zambia at a much lower cost thereby rendering Zambian products uncompetitive due to the factor costs that they face.⁴² It has been argued that this will lead to de-industrialisation arising from some industries' failure to compete with more technologically advanced or more efficient producers resulting in reduction of the national economy, balance of payment problems and mass unemployment.

Following a study carried out in 1999 to assess the impact on Zambia's economy of a further lowering of the Comesa preferential tariff rates,

results indicate that only marginal revenue losses may be experienced whilst there may also be an improvement in domestic tax revenues through increased direct tax and VAT receipts and consumer welfare through lower prices on goods.⁴³ This is because while there has been notable increase in trade flow in the region through intra-COMESA trade, this only represents a small proportion of intra-COMESA trade in relation to total trade constituting not more than 7% of the total trade of the member countries. With such low levels of intra-COMESA trade therefore, tariff reductions among member states may not significantly affect the revenue base which coupled with the trade creation effects of liberalisation will actually lead to higher levels of disposable incomes and improved standards of living among the people.

Similarly, the study conducted to assess the impact of COMESA tariff reductions on the competitiveness of selected industries in Zambia's shows that the threat to local industry is not so much from COMESA countries as from outside COMESA. This is because COMESA countries import very little from one another. The bulk of Zambian imports for example are from South Africa, which is not a member of COMESA. Furthermore not all goods entering the country will enter duty-free but only those goods that meet the requirement of the rules of origin and since goods imported into Zambia from other COMESA states that conform to the criteria enjoy a tariff preference of 60% (i.e. the duty paid is only 40%

of the normal applicable for the class of goods imported), having duty-free goods should not seriously reduce the competitiveness of Zambian products on goods.

In fact it is hoped that with the FTA which is a market focussed approach, there will be a favourable effect on the allocation efficiency of the economies of member states as has been the case with other regional economic groups such as the European Union.

THE EUROPEAN UNION (EU)

This is the oldest and most highly developed of the world's regional trading blocs that have developed in the second half of the twentieth century. First established as the European Economic Community (EEC) in 1958 by the Treaty of Rome, it was to establish by 3 stages over a transitional 12 - 15 year period, a "Common Market" in which all internal tariffs, quota restrictions, etc were to be eliminated and a common external tariff created.⁴⁴

Incidental to this main aim was the promotion of the free movement of labour capital and the adoption of common policies of agriculture and transport as well as establishing 2 development institutions: the European social fund and European Investment Bank. Originally existing only among six countries that is France, Germany, Belgium, the Netherlands, Luxembourg and Italy, rapid growth in within-bloc trade and improvement in all development indicators attested to the

success of the EEC prompting other European countries during the 1970s and 1980s who saw the benefits of membership to apply for membership.⁴⁵ It has currently a membership of fifteen countries trading at least 50% of both import and exports within the fifteen countries.

The treaty establishing the European Union was signed in Maastricht in 1992, and marked a major step towards greater integration of the member states as well as the transition of the European Community into the European Union.

The 1992 Treaty has facilitated greater integration by establishing the concept of European citizenship, allowing a national of any member states to live in any other member states and has in place a common policy for immigration and refugee status. The treaty also introduces the establishment of a common currency (i.e. the Euro) so that viewed to day, it is true that the European Union stands as the most successful fully integrated regional economic group of the world that has realised the benefits of economic integration from which the Comesa region may learn a thing or two if it is to foster the needed development for its members.

ANALYSIS OF THE CHAPTER FOUR

What can not be ignored at this juncture is the fact that when it comes to LDCS, they do not have as much influence as Developed Countries in institutions governing the world economic relations such as the WTO/GATT framework.

While this can be put down to the fact that the present Third world states did not participate either in the inception or implementation of these structures and views due to the fact that they were at that time colonies or protectorates and later because they lacked the necessary economic power with which to determine the shape of the world economy, it is also true that these states form a large percentage of the world population and yet have very little say in the issues that directly affect them.

This is because the WTO/GATT framework for example has been structured in such a way that economic strength rather than number determine the decision-making process and so despite their numeric strength LDCS have continually failed to change the economic order (an example being the attempt to call for a NIEO) let alone significantly influence designing of some of the WTO agreements which directly impact on their interests.

So for example because LDCS may not be expected to implement an agreement under the WTO soon because they are given extra time to fulfil their obligations,

LDCS will leave the designing of a particular agreement to the discretion of developed countries.⁴⁶

And so a number of problems which LDCS have raised as impeding their ability to benefit from the WTO can be put down to the fact that they lack the economic strength needed to influence the WTO/GATT system. This is true when one looks at the arguments raised concerning the dispute settlement system under the WTO, negotiating of tariff concessions, where predominantly LDCS state that they lack the economic power to pursue the dispute settlement procedure which can be lengthy and costly and that negotiations to include their products into bound concessions is difficult because their goods and products are on the most part primary products which are low value and high volume competing with more technically processed and high value goods from the Developed Countries.

Developed countries further usually promote their economic agenda during tariff negotiations resulting in goods from LDCS not being included in the tariff concessions. In relation to the other two problems raised by LDCS: that of incompatibility of WTO rules with the needs of LDCS and the introduction of such issues as Environmental Standards in trade, the idea of reciprocity under WTO/GATT is what constrains LDCS from benefiting from the system.

The LDCS' argument that they should not be expected to have the same rules apply to them as developed countries under the WTO and should instead be

given preferential treatment that is cognisant of their economic needs and development is not completely without merit.

This is because while LDCS are accorded some preferential treatment under the provisions of the General Agreement allowing them to protect infant industries and balance of payment problems,⁴⁷ Part IV allowing them to enjoy special status as well as the Generalised System of Preference (GSP) which enables developing countries to apply special tariffs on goods emerging from developing countries,⁴⁸ there is some illusion that developing countries benefit from receiving this special treatment. This is because in practice these provisions are accompanied by various measures and conditionalities that significantly undermine the benefits they are intended to confer. These special and differential treatment remain on the most part in the form of "best endeavour" provisions so far instead of being transformed into serious binding commitments as part of industrial concessions.⁴⁹

Against such a background, LDCS can no longer rely only on their numeric strength to influence policies that affect them in international economic institutions as past experience has shown that only economic strength counts when it comes to decision making in these institutions. One way of enhancing LDCS' economic strength is by them coming together and forming regional economic groups, which have in fact proved to be a success story in other

regions such as ~~with~~ the European Union, the North American Free Trade Area (NAFTA) etc.

The Comesa FTA is therefore a certain chance for not only Zambia but other LDCS in the grouping to access benefits from the WTO. As the FTA is a prelude to the establishment of a customs union, what it means is that once implemented, the customs union having a Common external tariff (CEF) will negotiate tariff concessions on behalf of the member states with third parties as is the case with the EU member states for example.

In fact Comesa member states have committed themselves to the implementation of CET by the year 2004 of 0%, 5%, 15% and 30% on capital goods, raw materials, intermediate goods and final goods respectively.⁵⁰ The advantage of this is that collectively the member states in Comesa can mobilise resources and negotiate better concessions than they would individually. The idea is that they would come together on areas of common interest to each other and therefore support each other. This would then solve the problem of having goods of export interest to them not receiving adequate attention during tariff negotiations for concessions.

The FTA also in line with COMESA's overall objective is meant to bring economic development in the member states. The FTA therefore has a list of goods designated by the Comesa to be goods of particular importance to the economic

development of the member states containing not less than 25% of value added and it is these goods which qualify for preferential treatment. The goods show particular emphasis on industrialisation, manufacturing and agro-processing.⁵¹

The rationale is that the FTA should not only foster efficiency through enhanced competition that acts as a preparation ground for member countries to compete in international market but that it should in turn generate new income for member states within the region. The goods listed as important to the economic development member of states are contained in the table below:

SERIAL NO.	TARIFF HEADING	COMMODITY DESCRIPTION
1.	HS 25.23	Portland cement, cement fondue, slag cement, super-sulphate cement and similar hydraulic cements, whether or not coloured or in the form of clinker
2.	HS 27.10	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing not less than 70% by weight or petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparation.
3.	HS 30.03; 30.04	Medicaments (including veterinary medicaments)
4.	HS 31.02	Mineral or chemical fertilisers, phosphatic
5.	HS 3808.10, 3808.20; 3808.30 3808.90	Insecticides, fungicides; weed-killers (herbicides); preservatives for timer or leather; cattle dips.
6.	HS 85.33; 85.34; 85.35, 85.36; 85.37, 85.38	Electrical apparatus for making and breaking electrical circuits (for example, switches, relays, fuses, lighting arresters, surge suppressors, plugs, (including potentiometers), other than heating resistors; printed circuits, switchboards, (other than telephone switchboards) and control panels.

SOURCE: LIST OF GOODS OF PARTICULAR IMPORANCE TO THE ECONOMIC DEVELOPMENT OF THE MEMBER STATES

DATA COLLECTED: FTA (QUESTIONS AND ANSWERS - ANNEX II

Most important also is the fact that there is the Comesa court of justice to deal with disputes that may arise within the FTA. This particularly gives Zambia a chance to be able to pursue an unfair trade practice with a country like Zimbabwe also both a member of the WTO and Comesa, which it would not before have been able to do because of the cost of pursuing a case under the WTO dispute settlement system and which obviously is relatively high in costs as compared to pursuing the same case under the region's dispute settlement process.

Dispute settlement in the Comesa court of justice of disputes which would also have locus standi under WTO will not be something that will first be done under the Comesa FTA as other regional groups such as NAFTA (perhaps one of the American FTAS having the most elaborate dispute settlement mechanism) have adjudicated several agricultural disputes mainly between Canada and the US in this way. This mode of dispute settlement is particularly preferable as it changes the nature of dispute settlement from inter-government intermediation to interpretation of established treaty articles by a judiciary process.⁵²

Furthermore for a country like Zambia whose government's policy is eventual liberalisation perhaps even a little ahead of global liberalisation in the WTO, the FTA accords a chance of resolving real problems in the short run by imposing too much pressure on certain sectors that need time to be globally competitive before being exposed to liberalisation under the WTO. This is because within the FTA there is bound to be efficient producers of certain items of goods which in

turn means that those industries which are non-competitive and are likely to remain so even if government were to improve the macro-economic policy environment due to the fact that they are in lines of production in which they do not have a comparative or competitive advantage will be exposed.

The positive outcome in identifying such industries is that the investment and resources employed in these industries are being wasted and the country would be better off economically if they were utilised elsewhere.⁵³ The country will therefore be assisted to explore new industries and manufacturing so as to produce semi-finished and finished goods which would better able compete for the benefits of free trade under the WTO.

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53. COMESA ASIC Newsletter, p. 27

CONCLUSION

In this paper we have been looking at whether or not the COMESA Free Trade Area (FTA) improves the accessing of benefits from the World Trade Organisation (which is the rule based Governing Body on International trade system) for Zambia and for least developed countries (LDCS) in general.

In addressing this fundamental question, we examined the system of multilateral trade as it has evolved under the WTO/GATT framework and looked at the status of a free trade area within this system. We in addition to this made discussion on various forms of regional groupings and what levels of integration they entail.

It would appear that the version of the "single undertaking" which underlay the establishment of the WTO caused problems for many developing countries who naturally did not want to be left behind in the old "1947" version of GATT and that a large majority of these countries particularly the least Developed Countries (LDCS) did not possess the administrative, financial or human resources necessary to fulfil their obligations, exercise their new rights, let alone take advantage of the trade opportunities.¹

We saw in this paper some of the difficulties identified by LDCS which have real impact on their trade and that some of the proposals made by them (e.g. NIEO, special and differential treatment etc) are meant to deal with problems deriving

from the characteristics of an underdeveloped economy and need addressing immediately.

The question that remains to be answered is whether having a free trade area does offer to member states (Zambia in this instance) an opportunity to have more say and therefore benefit more from the policies of the WTO. There appears to be considerable potential for improvement for member states of a regional economic group to compete favourably in the world market than is the case when the countries try to tackle these problems individually as their economies are too small and weak and can not for example achieve economies of scale in the production and marketing of their products.

Similarly, with trade liberalisation in a FTA for example, there is indication that growth in intra-FTA trade will have positive externalities in other sectors of the economies of member states including finance, industry, agriculture, transport and communications thereby bringing overall economic development to the region needed for participation in international trade.

The foregoing notwithstanding, two pertinent issues come out in this paper as regards the participation of LDCS in the WTO and the benefits they derive therefrom. It is from these two issues that we now proceed to make recommendations for possible restructuring both in the WTO framework and in the Zambian economic policies.

Firstly it is apparent that agreeably some WTO policies perpetrate inequalities between developed and developing countries or LDCS for failing to admit that the two groups have inherent imbalances in their economies which should ultimately determine what obligations they undertake. However, LDCS also have their share of blame in that in the past, for example, they have not fully participated in the multilateral trade negotiations and have left the designing of some WTO agreements to the discretion of developed countries because they did not have to implement the agreements soon as they were given extra-time to fulfil their obligations. Similarly, where they have participated, LDCS have concentrated almost entirely on opposing the inclusion of certain issues in the WTO work programme (e.g. labour rights and investment) without formulating proposals or counter proposals for action on issues of interest to them. As a result they find themselves having to accept results in areas of interest primarily to developed countries without obtaining reciprocal commitments in their favour in areas of primary interest to them such as agriculture, textiles and clothing and movement of natural persons.²

LDCS however can participate more fully in influencing these negotiations by seeking strategic alliances depending on their individual interest and pursue and support each other in advancing areas of common interest under the so called "like minded group".³ This system emerged during the Uruguay Round where several interest driven coalitions and groups put forward and maintained consistent proposals for trade liberalisation and succeeded in blocking less

ambitious results. Examples include the Cairns group, the small and island economies, the land-locked countries, commodities dependent ACP group, G77 etc.

Secondly while the FTA may have overall opportunities for economic growth for the region, it must also be recognised that some of the fears or problem areas which have been identified in Zambia such as loss of revenue and loss of industrial competitiveness need to be addressed in order that these instances do not translate into barriers of accessing benefits from the FTA by Zambia. Furthermore while there have been studies conducted which appear favourable, the practicalities obtaining now that the FTA is in place must be looked at.

The argument for loss of revenue has been that this shall be short-termed and quickly made up for by increased revenue collected in other taxes on larger volumes of traded goods such as VAT. However, an interview with Mr. Vincent Singandu Senior VAT Inspector - ZRA⁴ revealed that while there have been increases in customs VAT, it is difficult to say whether this is because of increased trade or fluctuating exchange rates (the result of inflation) which would reflect such increases even though the value and quantity of the goods remained the same. It would appear therefore in my opinion that loss of revenue to government will not necessarily be compensated for by increased collections in VAT so that stringent policy measures must be put in place that will ensure that

drops in revenue does not result into severe problems to government expenditure and cause unwanted and unnecessary social problems.

Furthermore Deputy Commissioner - VAT operations Mr. Christopher Habeenzu⁵ in an interview stated that government had had to effect a zero-rating VAT tariff in Livingstone in a bid to increase the competitiveness of the town with neighbouring Zimbabwe which would run for the next two years beginning January this year. What this means therefore is that there is no collection of revenue by government in this strategic border town for both direct and indirect taxes (where appropriate) and the expected spill-overs of foreign exchange through increased tourism may not be easily realised as tourism is a seasonal event and this will further compound government's loss of needed revenue.

RECOMMENDATIONS

The first phase of recommendations relate to correcting the imbalances that exist in several WTO Agreements such as those on special and differential treatment; subsidies and countervailing measures which have major implications for development policies and/ or export interests of LDCS.

The statement of implementation of many provisions intended to provide for:

- (i) special and differential treatment for LDCS in the form of flexibility for LDCS to accept and implement obligations imposed by the WTO; duty-free access of LDCS exports to developed countries as well as provisions on technical assistance are a source of deep concern to many LDCS due to the vague "best endeavour" language that these provisions are phrased in.
- These should therefore be translated into more concrete benefits for LDCS so as to take into account the changing methods by which international trade is actually conducted and attempt to correct the handicaps by LDCS' firms in competing in such trade.⁶
- There should also be an extension of the transitional periods for fully complying with LDCS' obligations under the WTO to reflect the availability of their necessary financial resources and human capacities to implement these various agreements.

- It will also be prudent if the administrative and other costs of implementing any multilateral Trade Agreement at national level become an integral part of negotiations so as to ensure that LDCS are able to implement them and identify the amount of assistance that should be provided by the International Community to support them.

In Zambia in particular the process of implementing changes necessary for WTO compliance is identified as an area reflecting significant weaknesses in Zambia's governmental institutional structure.⁷ This is because the interagency process among the various entities involved with aspects of Zambia's WTO compliance is non-existent, while the Ministry of Finance and Economic Development has had to suspend the enactment of legislation on trade remedy provisions for anti-dumping and countervailing duty investigations because of the realisation that the legislation procedures did not take into account the significant institutional and resource burdens that would be placed upon the government were it to fully implement such trade measures.

- There is also need to correct the institutions in multilateral trade negotiations so as to seek substantial liberalisation of trade in a balanced manner covering all products, services sectors and modes of supply of export interest to developing countries. There should for example be umbrella-negotiating groups which would conduct overviews of the

progress in specific areas of negotiations with respect to progress towards these general goals.

- Developed countries should in turn commit themselves to meaningful trade liberalisation in areas of interest to least developed countries including tariffs on agricultural subsidies, anti-dumping measures etc. This is because as LDCS liberalise, the incidence of importing in to these countries is likely to increase which may lead to the momentum of import liberalisation in LDCS suffering.
- It is also imperative that for growing economies such as LDCS and developing countries (comprising 126 of the 135 WTO members), subsidies must be allowed under less harsh conditions as currently exist under the General Agreement so as to help these countries establish the much needed industries which are non-existent instead of having a blanket criteria of regarding the foregoing as comprising anti-competitive practices.

The second phase of recommendations relate to problems peculiar to Zambia which will help Zambia, through the FTA to access benefits from the WTO. Perhaps before these are looked at in detail we would hasten to make one recommendation as regards the FTA which so far has gone to great lengths to harmonise and simplify its customs procedure (under ASYCUD), laws and regulations and harmonisation of tariff nomenclature.

It has been said that LDCS that form regional trade blocs face a unique opportunity to participate competitively in the the global production and trading system but that this opportunity depends on the ability of these countries to meet International Markets Standards that increasingly emphasise high quality and just-in-time delivery.⁸ What this entails is that in today's world economy, there is an interrelation between transport and communication and trade.

The argument is that while trade and the spread of economic activities across national borders have been increasing for a century or more, new development in the technologies of transport and communication make possible the management and co-ordination of globally distributed economic activities that are diverse in nature.

- The Comesa FTA should therefore invest in transport and communication systems that are effective so that as they position themselves to participate in the global markets following their recent liberalisation policies, they will not be faced with serious transportation and logistics impediments that have strong implications for economic growth and poverty alleviation in the sub-region. This is because such impediments would affect the costs of doing business and impair interregional trade as well as opportunities to participate in international market. The faster the rate of integration the quicker the FTA will be transformed into a customs union enabling member states particularly to negotiate as a group for concessions in the WTO. It can not be over-emphasised therefore that

the continuity and future growth of Comesa depends on the efficiency and speed of cross-border transportation of goods and on the harmonisation and simplification of the information processing accompanying those goods.

Zambia on the other hand will have to review some of its policies on taxation so that it doesn't fall out to benefit from the benefits of liberalisation under the FTA through severe loss of government revenue and de-industrialisation. In fact, the FTA can assist in Zambia's Taxation reform agenda so that reliance is no longer on import duties and favour is placed more on domestic taxes such as VAT, which should be equally charged on imported and locally products.

What this means is that the inconsistencies currently in the VAT legislation should be removed such as:

- (i) exemptions from Import VAT for aid funded projects or purchases not enjoyed for locally manufactured goods should be done away with
- (ii) School exercise books imported in the country do not attract VAT but if they are produced locally the in-put is not reclaimable making it impossible for a local manufacturer to compete. This inconsistency should be done away with. Also tax rates on local

production costs should be reviewed so that locally produced goods should not be rendered uncompetitive by goods from neighbouring countries where factors of production are low cost.

- (iii) Refund of VAT should also be speeded-up to avoid a situation where companies are forced to suffer cash flow problems.

END NOTES

1. UNCTAD, positive agenda and future trade negotiations.
2. Ibid., at pp. 11.
3. Comesa and the WTO at pp. 13.
4. Interview of 6th July 2001.
5. Interview of 6th July 2001.
6. UNCTAD, pp. 17.
7. Paper presented by ZACCI at WTO Conference 29 - 30th March 2000
8. The World Bank report on Integration of transport and trade facilitation pp. vii.

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