

THE UNIVERSITY OF ZAMBIA,  
SCHOOL OF LAW.

I recommend that the Obligatory Essay prepared under  
my supervision entitled;

THE IMPACT OF TARIFF LIBERALISATION ON COMESA  
AND THE SOVEREIGNTY OF THE MEMBER STATES,

by

ROSEMARY NKONDE,

be accepted for examination. I have checked it carefully and  
I am satisfied that it fulfils the requirements relating to  
the format as laid down in the regulations governing  
Obligatory Essays.

DATE.

18 - 10 - 95

SIGNATURE.



DR HANSUNGULE.

SUPERVISOR

## DEDICATION

I dedicate this essay to dad and mom. I love you so much guys, though I know I have a funny way of *showing it*. Thanks for always being there for me even when I'm being such a pain.

## ACKNOWLEDGEMENTS

The success of this work, I am indebted to a number of people, who provided me with all the help I needed. My greatest gratitude goes to my supervisor, Dr Hansungule. He is a very busy man but he still found time to guide and correct me. Without him, I could not have succeeded in this work. I also would like to thank Mrs Zulu, the Librarian at the COMESA Secretariat who worked tirelessly to provide me all the documentations I needed. I really appreciate her time and patience. My other gratitude goes to my good friend Keith Khuzwayo for the encouragement and the diskette he gave me. I hope you believe me because I really mean this. I also want to thank my best girlfriend Nchenga Muleya and my uncle "Friends" Nkumbu for reprographic services and paper.

Lastly, but most important of all I would like to praise my ~~Jehova~~ Jire, God Almighty for his unfailing love. When the going was tough He was always there, providing all the strength I needed.

# TABLE OF CONTENTS

	Page
Title	(i)
Submission	(ii)
Dedication	(iii)
Acknowledgements	(iv)
Index	(v)
<b>ABSTRACT</b>	1
<b>CHAPTER ONE</b>	2
Definitions of concepts	6
-tariffs	7
-tariff liberalisation	8
-state sovereignty	9
-economic integration	10
<b>CHAPTER TWO</b>	14
The COMESA subregion	15
-its natural resources	15
-the impediments to integration	15
-its potential	18
-The Trade and Development Strategy	19
<b>CHAPTER THREE</b>	24
The COMESA Treaty	25
-its background	25
-its institutions	26
COMESA's Trade Policy	30
<b>CHAPTER FOUR</b>	34
Implementation of tariff reductions	35
-the legal regime	35
-the timetable	39
-the actual implementation	40
-the causes of the slow implementation	41
<b>CHAPTER FIVE</b>	44
-the restrictions on tariff liberalisation	45
-the restrictions on state sovereignty	46
-the status of COMESA	47
-the impact of tariff liberalisation on COMESA	49
-the impact of tariff liberalisation on the Member States	50
<b>CONCLUSIONS and RECOMMENDATIONS.</b>	54 - 57
<b>BIBLIOGRAPHY</b>	59 -60

**CHAPTER ONE**

**ABSTRACT**

## ABSTRACT

"Taxation is the process of imposing taxes by the government for raising of revenue"<sup>1</sup>. The taxes are compulsorily imposed on all. A national tax system should be in such a way that revenues are sufficient enough to cater for all government expenditures. And the fact that national populations grow, means that, taxation as the main vehicle of government finance, should also produce correspondingly growing revenue. In economies of developed countries, taxation gives first priority to income, sales and value added tax. Consumption tax only comes in a limited extent. In developing countries however, the scenario is different and most tax is gotten from consumption rather than income. There are two reasons for it;

- (i) There is a high rate of unemployment in developing countries. Therefore very few people work and are liable to income tax. And to make matters worse, most employees get low salaries which means that whatever income tax they pay is not enough to stimulate investment. Since tax from income is low, there is need to shift the dependence on tax from income.
- (ii) Developing countries are more of major consumers than producers of goods. Most of the industries are infant ones and do not manufacture adequate nor standard products to cater for the masses. This leads to the importation of foreign goods and there is a considerable high rate of imports, these form the most important source of revenue for developing nations.

In view of these reasons, most developing countries heavily depend on tariffs for their income. However, developed nations use tariffs to protect their industries. They impose high tariff rates on foreign goods so as to discourage importation and thereby protect their industries and restrain the creation of a market. As a country imposes high customs duties on foreign goods, other countries will be reluctant in trading with it as it would be unprofitable. But the chief interest of a developing country is to create a market because a market fosters economic development since much needed income is acquired as it trades with others. "A market is an economic institution created by regular trade between a multiplicity of traders"<sup>(1)</sup>. These traders may either be private individuals, firms, sales representatives, etc. For a country to greatly benefit from trade, however, it needs to have not just a market but an open one for that. In an open market, there are large numbers of traders and therefore there is free competition. The supply and prices of commodities is regulated by demand, not worked out by a government. High tariffs and other trade barriers therefore inhibit the creation of an open market.

Creating a market therefore means a country can fully participate in international trade and thereby acquire much revenue from tariffs. All nations, whether small or large profit from international trade, this trade can either be continental or regional. The World Trade Organisation (WTO), formerly the General Agreement on Trade and Tariffs (GATT), regulates international trade. This sets guidelines on how international trade should be carried out and provides an institution for dispute settlement among the parties to this organisation. Since African countries are not major producers, they inevitably play an insignificant role in world trade. This in itself necessitates the creation of regional economic institutions. Countries in the same regional setting have a lot in common and by the principle of comparative advantage they can maximise trade amongst themselves and thereby achieve development. This principle basically entails that countries specialise in commodities that are relatively more of the factors of production that they have in abundant supply and then trade, on buying what they do not produce and the other selling what they have an advantage of producing. This reduces the incidence of countries misusing capital and labour on economic ventures that need materials that a country does not have in abundance.

"Not only has it been discovered that most African states economies are potentially complimentary, but also that the key to economic development lies in unity and economic cooperation"(2). For instance Zambia and Botswana have comparative advantages respectively in the production of sugar and beef. What should happen is the trading in these commodities instead of either trying to be self-reliant. It is better to compliment each other's economies than waste the much needed capital on being self reliant. However, despite this discovery that most African economies are potentially complimentary, it is sad to notice that there has not always been a clear appreciation of economic cooperation which is desirable in Africa. "According to statistics only 10% of trade in Africa constitutes regional trade"(3). The reasons for this are mainly two-fold, the first of which is the colonial legacy. During colonisation, colonies were encouraged to produce the one product that the imperialist did not have in its country. So even after many years of independence, African states still export that one commodity to their former colonial masters. And to make matters worse, this commodity is a primary product, and is basically a raw material for the western industries. A good example is Zambia which has been exporting copper to Britain since time in-memorial. Another reason why there is little regional trade is due to economic reforms. Immediately after attaining independence, most governments embarked on a number of development reforms which were in essence meant to make the states self reliant. So measures were set up to restrict international trade so as to encourage indigenous people to produce their own goods. In actual fact, this is futile because a state can not be absolutely self reliant. There will always be an area where it lacks something or just does not have the necessary funding to achieve that. Well, even if a country were to succeed in being self reliant, it would be discovered that it uses much more money

maintaining this status than it would if it opened up its market and thereby re-channel that money on other developmental ventures.

Despite these two drawbacks, there are a number of regional economic groupings in Africa. And one such an institution which is the focus of our attention is the Common Market for East and Southern Africa (COMESA). The success of having such an institution is to accord member countries preferential treatment but not necessarily abolishing all tariffs. Amongst themselves, members charge a common tariff on goods originating from another member state but charge much higher rates on goods from non members.

In furtherance of according preferential treatment to member states, COMESA sets certain tariff rates that members should comply with when conducting trade transactions. However, more often than not, members rarely comply with these rates. The reasons for this non compliance is tariff liberalisation and state sovereignty. The point that these principles drive home is that states have freedom to charge any amount of tariff they deem fit, without having any interference. This means that as far as tariffs are concerned, the policy of COMESA is not in line with tariff liberalisation and state sovereignty. There seems to be a conflict, that is between this freedom and compliance with COMESA policies.

In view of the foregoing discussion it is the aim of this paper to analyse the effect of tariff liberalisation on COMESA member states and state sovereignty in general. A country needs revenue from tariffs and tariff liberalisation as well as its sovereignty enable it to get it. But the problem comes with COMESA fixing tariff rates, now should a member state give up its sovereignty as regards tariffs or should it effectively apply the concept of tariff liberalisation? If a country does the former, what benefit will it achieve? These questions will adequately be answered in this paper.

From the onset, we need to state that we will keep referring to the Preferential Trade Area (PTA) in this discussion, owing to the fact that the establishment of COMESA was signed by PTA members to the effect that COMESA would come up after PTA being in existence for ten years. To this end, PTA and COMESA will be used interchangeably.

We acknowledge that a lot of work has been done on the PTA but unfortunately not specifically on tariff liberalisation.

## END NOTES

1. Henry C Black, Black's Law Dictionary 5th ed (West Publishing Company, USA) 1981 pg 1309
2. David L Sills (ed) The Social Sciences Encyclopedia (The Macmillan Company, USA) 1968 pg 118
3. R N Simbyakula, An Introduction to Taxation in Zambia (JSD Thesis) 1990 Pg 10
4. Dr Bingu Wa Mutharika, A decade of Economic Integration 1982 to 1992; "PTA Development Report" (PTA Secretariat) 1993 pg 29

## INTRODUCTION

The Definition of Concepts:-

- (a) International trade
- (b) Tariffs
- (c) State Sovereignty
- (d) Economic Groupings

### (A) International Trade

International trade is the exchange of goods and services across national boundaries. Nations specialise in the production of certain economic activities according to their endowment of climate, raw materials and skilled labour. Some nations have the sort of climate that facilitates mass production of wheat, whilst other nations have vast deposits of mineral ore and hence they exploit these avenues. Nations buy what they do not produce sufficiently or do not produce at all and sell what they have in abundance. This is where the notion of comparative advantage comes in, namely that nations specialise in commodities that use relatively more of the production factors that they have in abundance. By engaging in international trade on the basis of comparative advantage, nations earn a lot of profits and the income got is re-channelled into improving that industry to increase its productivity. This is far much better than using capital on industries that a country has no comparative advantage over. When countries apply the principle of comparative advantage they do not entertain prospects of self reliance because they realise that it is costly to cushion industries where they do not have a comparative advantage, they instead innovate their industries where it costs them less to produce. The surplus from such industries is what is sold to other nations, and this presence of a surplus makes the nation to fully exploit its factors of productions as there is a wide market. "Widening the extent of the market, inducing innovations and increasing productivity through foreign trade allows a country to overcome the diseconomies of being a small country."(1) As a nation accumulates income from trade, its economy is improved and thereby development ensures. As it intensifies its trade, it correspondingly becomes a big economic force. Trade therefore has indirect benefits on trade, and are;

- (a) it widens the extent of the market, namely that since a nation now produces not only for its consumption but also for export, it has a wide market and induces innovations and increased productivity.
- (b) it increases capital accumulation because a nation earns as it exports more and thereby has more capital to finance other economic ventures
- (c) it transfers technology, skills and better enterprenuership on its citizens. As a nation engages in trade, it is exposed to these and therefore trade has an educational effect in this respect.

In view of the foregoing, nations in the world engage in international trade. It must at this point be appreciated that international trade calls to mind the important concept of tariffs, for whenever goods and services pass across a national or custom boundary, a duty is imposed on such. So now we will look at the concept of tariffs.

## (B) Tariffs

"A duty or tax is a compulsory levy by a government to obtain revenue"(2) For governments to finance their expenditure, they need revenue and this comes taxes. Taxes are levied on a number of subjects and these are persons property and income. Broadly, the different types of taxes are; income, property and consumption tax. However for purposes of this paper, consumption tax is of relevance. Consumption tax is levied on almost everything from necessities such as salt and cooking oil non essentials like wine, cigarettes to luxuries such as jewels. Consumption tax can further be broken down into; sales exercise highway and customs duties. Amongst these, the later is our concern. Customs duties or tariffs "are taxes levied on a commodity when it comes across the boundary of a customs area"(3). This boundary, must be noted, may be that of a nation or a group of a common tax area. Namely, it can be of a national boundary of say, Zambia or that of an economical regional group like COMESA. Tariffs are chargeable on both imports and exports.

Tariffs are often classified as either protective or revenue tariffs. Protective tariffs are designed to shield domestic production from foreign competition. Where as revenue tariffs are designed to obtain revenue, than to restrict imports. These two objectives are not mutually exclusive because in some instances, even revenues tariffs give protection to domestic industries. Tariffs may affect the economy of the country imposing them in two ways. Firstly, by raising the prices of imported goods, tariffs may encourage domestic products to increase production. Namely that consumers will prefer buying locally produced goods as they are cheaper than imported ones. This will in turn induce producers to maximise production in order to cater for the consumers. Secondly "tariffs may also encourage landowners towards a monopolistic market structure to the extent it lessens foreign competition with a resulting decrease in the incentive to modernize or innovate"(4). When tariffs are too high, importation of foreign goods reduces and thereby local industries flourish. But in the absence of foreign competition, these industries won't have any need to improve their products and will therefore acquire a monopoly. Advocates of protection often argue that new industries especially in developing countries need to be shielded from foreign competition. They contend that these industries must reach a certain rate of growth before they are able to compete with well established industries and tariffs can protect some industries until then. However, this justification of tariffs is often abused. "In many developing countries,

industries have failed to attain international competitiveness even after 15 to 20 years of operation and might not even survive if protective tariffs were removed"(5). Another argument in favour of tariffs is that they stimulate domestic employment, in that tariffs raise imports prices and thereby tend to shift demand from imported goods to domestic products. It must be acknowledged that in most developing countries, protection for purpose of increasing employment may involve a misuse of scarce resources such as capital and enterpreneurship. The 1968 Reforms undertaken by the Zambian government is a good illustration of this point. It has been asserted by some quarters that the government misused funds in trying to make the country self reliant, those funds would have been put to better use. But such misuse of capital can be avoided if nations applied the principle of comparative advantage in their international trade.

Tariffs may differentiate among the countries from which the imports are obtained. They may be lower among countries that have previously entered into special arrangements and be higher as regards other countries. The bottom line about all this is that a nation has a discretion in fixing its tariff rates, that is, whether they are high or low for this or that country. This is where the concept of tariff liberalisation comes in. The word liberalisation comes from "liberal" which entails a situation where one is not bound by authoritarianism, or where one is free to do what one wills without restraints. So put together, tariff liberalisation is whereby a state has freedom to levy any amount of duties on foreign goods, without being subject to interference. This freedom generally need not be restricted by trade agreements namely that trade agreements whether bilateral or multilateral, should not stipulate tariff rates. Such trade agreements in other words ought not to have a bearing on tariffs as far as the imposition of duties is concerned. Tariffs are an important source of income for most developing countries and they are heavily relied on. As we said, the reason for this state of affairs is that there is a high ratio of unemployment (meaning few people pay income tax) and that developing countries are more of consumers than producers and therefore import a lot of commodities. So in this respect, tariff liberalisation is desirable in that a country's economic position is considered in the imposition of customs duties. Namely that if a country is a developing one with great need for added revenue, it has to impose high tariffs in order to acquire this, but in the case of a developed state, it only needs to protect its industries and therefore will not charge a very high tariff. In a tariff liberalised environment, states do not need to negotiate to form a free trade area or a customs union, owing to the fact that both economic groupings violet tariff liberalisation.

Tariff liberalisation is more of a theory that a practical reality. In practice, countries do not enjoy tariff liberalisation to the fullest extent because when a country raises its tariff too high, other nations will stop dealing with it or will also charge it highly on its exports. In the long run, such a country will lower its tariff rates as it can not do without international trade. And secondly, most countries are

bound by trade agreements whose essence broadly is the according to each other preferential treatment in so far as tariffs are concerned.

Also the most important principle of the General Agreement on Tariffs and Trade (GATT), which governs international trade, is free trade. GATT pursues free trade, that is, the elimination of tariffs and other trade barriers. In this vein, tariff reduction is more welcome than tariff increment is, and this makes tariff liberalisation out of complete reality because a country should not only take its economic position into account, but also those of other contracting parties when it is dealing with its tariff rates.

(C) State Sovereignty

Another concept closely related to tariff liberalisation is state sovereignty. The word state is defined as "a geographically delimited segment of human society united by common obedience to a single sovereign"(6). It can also be defined as a political unit that possesses a territory, population, a government and sovereignty. From these definitions, we see that the term state may either refer to society as a whole or more specifically, to the sovereign authority running the affairs of the society and is not subject to other authorities as far as running its society is concerned. This government has the right to make any decisions regarding any matter within its boundaries without interference. The most fundamental attribute in international law of the state of modern times is sovereignty.

"Sovereignty is the possession of sufficient power to maintain independence externally, obedience and order internally, and the possession of supreme and independent authority to make, apply and interpret a system of law within its territory"(7). Sovereignty relates, among things, to economic and political independence, a sovereign state is independent of interference from other states. Sovereignty may thus be distinguished into two, the first being internal and the other external sovereignty respectively. Internal sovereignty is concerned with the affairs of a state within its territory and relates to such matters as the governance of the territory, selection of its own political, economic and social systems, also the power to enter into agreements with other nations, etc. On the other hand, external sovereignty is concerned with the state's independence, freedom from all external control and enjoyment of full legal equity with other nations. External sovereignty excludes a situation where a state indirectly or otherwise controlled by another state.

It must however be understood that in practice absolute sovereignty is not possible because, "increasingly in modern states the sovereignty of many states is in fact limited by international agreements, international law and morally"(8). There are certain international arrangements that a state is bound by and has to conduct when dealing with other states. And

fear of sanctions or international disapproval often restrains states from acting in any manner they so wish. In view of this, it can be said that only internal sovereignty is exercised to a greater extent than external sovereignty. In fact, both tariff liberalisation and state sovereignty are limited as far as trade agreements are concerned.

(D) Economic Groupings

A trade agreement is a codification of principles under which trade between parties to the agreement will be conducted. "The basis of such agreement is the removal or amelioration of restrictions on trade so as to increase its volume and thereby enhance the economic well being of the parties"(9). Such agreements may either be bilateral or multilateral. In a situation where such an agreement involves countries within the same geographical proximity. It is termed as a regional economic agreement. There are various categories of regional economic groupings and these are, customs union, common market and preferential trade area. We shall proceed to discuss the features of these groupings.

A customs union is defined in Article XXIV 8(a) of the GATT as to mean "the substitution of a single customs territory for two or more customs territories that duties and other restrictive regulations of commerce are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in produce originating in such territories". As can be deduced from the definition, a customs union has free trade between member countries and a common external tariff on goods from non members. This means that goods originating from within the territory do not suffer any tariff whilst the others do.

A common market is defined as "a relationship between participating countries in which all tariffs and other trade restrictions among them are abolished, a common tariff for imports from non member countries is established and there is free mobility of factors of production and capital"(10) In such a relationship, therefore political boundaries become economically irrelevant and institutions and regulations are put in place to cater for free movement of goods.

A free trade area on the other hand, is defined by Article XXIV 8(b) of the GATT as "a group of two or more customs territories in which the duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories in products originating in such territories" This free trade area is basically a territory where there is no tariff between the member states but there is no common external tariff. Therefore members maintain their sovereignty and tariff liberalisation as non members are concerned.

A preferential trade area is composed of countries charging lower

tariffs on products imported from each other than are charged on products from the rest of the world. Thus the essential feature of this type of arrangement is that constituent members afford each other preferential treatment but however do not abolish tariffs.

Developing countries particularly African states need to integrate economically, under one of the mentioned categories. As we earlier mentioned, not only are most African states' economies are potentially complimentary but also that the key is economic development lies in unity and economic co-operation. It has however, been discovered that most African states do not appreciate this and instead trade with the West. Though they do this, it is very evident that African countries get a raw deal for many reasons. Highly developed and underdeveloped countries differ not only in the commodity composition of their trade but also in commodity concentration. What happens is that whilst developing produce raw materials or primary products, like developed ones produce a number of secondary and consumer goods, and where former only exports one product, the latter exports a diversity of them. For instance, an African country can only be exporting copper to the West but importing from there a wide range of electrical appliances and agriculture equipment. This in itself shows the imbalances that exists between trade of developed and developing countries.

Further, in the developing economy, capital and labour skills are lacking and thereby its products are naturally not in the line with the required international standards and this makes it difficult for most African products to penetrate the Western market. But the capital and skills are the disposal of the advanced economy, on the other hand, makes it possible to produce to produce goods in a specialised large variety of goods. Another drawback about trade with the West for under-developed countries is that the former fixes the prices of commodities exported by the latter. The under-developed nations have no beginning power due to the fact that they are not economically sound and are therefore in desperate need for income from exports, and a comparative advantage over pricing.

In view of the foregoing reasons, there is every need for African states to integrate. "It is frequently argued that because of similar lads and patterns of consumption in the developing countries there should be more scope for regional trade then for trade with developed countries." (11) Consumption patterns among developing countries are much more similar to each other than of developed countries. The formation of economic union accelerates the development of the member counties in the following ways;

- i) stimulating the establishment and expansion of manufacturing industries on a more rational basis.
- ii) increasing the gains from trade and
- iii) providing benefits from intensified competition.

With the formation of an integrated economic group, tariffs and other trade barriers within the group are ameliorated . The industries of individual countries are thereby encouraged in the context of competition. This includes them to attain a higher level of productivity and since the market is longer then, production is also expanded. In the quest for maximum production, such industries will be quick to emulate and specialise in order to cut down on cost. In this respect, economic integration has an advantage over state sovereignty as regards tariffs in that if a country restricts trade by high tariffs, industrialisation will be restricted because there wont be foreign competition and that monopolistic industry will not be induced to innovate. Further, members of such a group will be spending their resources on improving and specialising industries rather than protecting their industries from foreign and to be self reliant.

As we earlier noted, the removal of trade barriers will increase export market within the trade union. This expanded market for commodities then entails that the gains from trade will be increased. And since integration is within the same geographical region, there wont be too much money spent on transporting commodities to the West. The gains from trade are also increased because there is an international division of labour which is improved as resources shift to more efficient production. For example, one country would be engaged in the production of cereals, whilst another in textiles and the other in beef, depending on its advantage. So when these industries outgrow the infancy stage are more efficient, the region could then start exporting outside its boundaries and be able to compete favourably.

From this discussion on trade agreements, we that in some are completely wiped out whilst in others, they are just relaxed. Well, in both , the individual state is sovereignty and right to exercise tariff liberation is interfered with the economic union. This usurping of a stat is sovereignty through an interference is for the benefit of the constituent member states. Though state sovereignty and tariff liberalisation are desirable, some developing states however use these to the sovereignty that they great restrict importation of commodities. What should be noted is that high tariffs long term and diverse consequences on the development of a country, which we have already alluded to in the foregoing discussion.

The main objective of COMESA, which is of great concern to us, is to liberalise among the member state. The essential feature of the union is that constituent countries grant each other more favourable tariff treatment than they give to the outside world.

END NOTES

1. G M MIER, LEADING ISSUES IN ECONOMIC DEVELOPMENT 4TH ED.  
(Oxford Press, Oxford) 1984 Pg 490
2. B S Cayne et e;....The student's Encyclopedia Vol. 18  
(Crowell-Collier Education Corp. USA) Pg 22 1970
3. The Britanican Encyclopedia, Vol. Ix (Encyclopedia Britanic,  
Inc, USA) 1983 Pg 1067
4. Ibid
5. Ibid
6. David L Sill (ed), International Encyclopedia for Social  
Sciences  
Vol. 15 (The macmillan Coy, USA) 1968 Pg. 77
7. David Walker, The Oxford Companion To Law, (Clarendon Press,  
Oxford) 1980 Pg 1176
8. Ibid Pg 1164
9. R N Simbyakula, Taxation & Economic Development in Zambia,  
Ph d Thesis (USA) 1990 Pg 8
10. P Robos, Economic Integration in Africa, (G Allean & Union,  
London) 1968 Pg 29
11. Opcit 1984 Pg 562

CHAPTER TWO

**THE INTEGRATION OF COMESA  
MEMBER STATE AND COMESA'S  
TRADE POLICY**

## The COMESA: Its Problems, Potential & Trade Strategy

COMESA, as a regional grouping consists of the following countries; Burundi, Eritrea, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Swaziland, Tanzania, Uganda, Zambia & Zimbabwe. In all, this region occupies an area of about 8.3 million square kilometres. This region is endowed with abundant natural resources and these include large rivers and lakes which offer the potential exploitation of irrigation, hydro electric power, fisheries development and even inland transportation. In addition to having a large amount of arable land, the region also produces most of the world's minerals. "It is estimated that the sub-region contains over 300 billion metric tons of phosphate; over 105 billion tons of iron ore deposits; over 60 billion tons of coal; over 170 billion cubic metres of natural gas; over 200 billion metric tons of petroleum and large quantities of uranium, nickel, copper and cobalt"(1). If all these natural resources were fully exploited, this region would be rich.

### COMESA'S PROBLEMS

As we earlier noted in the proceeding chapter, a Common Market is defined as "A relationship between participating countries in which all tariff and other trade restrictions among them are abolished, a common external tariff is established and there is free mobility of the factors of production"(2). COMESA is a common market kind of regional economic grouping. It is necessary to note however that not all the characteristics of a common market are present in COMESA, nevertheless, there are programmes to fully actualize them in the near future. On the aspect of having no tariff between intra region trade, Article 4(i) of the COMESA treaty provides that "member states shall reduce and ultimately eliminate customs duties and other charges of equivalent effect imposed on the importation of goods." With respect to the issue of a common external tariff, it is provided in Article 47 that the member states have agreed to gradually establish a common external tariff within a period of ten years. COMESA also seeks to liberalise the cross border flow of investment and capital and to remove visa requirements between member states so as to encourage the movement of business person, labour and to secure significant benefits from economic integration.

Despite COMESA having been in existence for over a year now and having such sound policies, the region is not yet integrated. Studies carried out by the PTA reveal that the area still comprises of individual economies. There are quite a number of reasons why this state of affairs obtains. We now proceed to consider these problems individually.

The first is the divergent economic policies in force in COMESA member states. Not only do these states have varying economic strengths but also considerable varying economic policies. While some are purely capitalists, others are socialists and yet others still are a mixture of both. A brief look at the sort of

economies obtaining in Lesotho, Tanzania and Kenya illustrates this point. Tanzania applies socialist economic policies. "It adopted the policy of socialism in 1967 and this has continued being the guiding development policy for the country"(3). On the other hand, Lesotho has a capitalist economy and Kenya has a mixed economy.

This divergence of economic policies among COMESA member states makes the implementation of programmes very difficult. In an economic integration such as a Common Market, national boundaries became economically irrelevant. And in that respect, national legal system, institutions and policies are harmonised with the regional systems, institutions and policies. So that what obtains in the whole region is one big market. It however, must be appreciated that such harmonisation between individual national systems, policies and institutions can only be fully actualised in a situation where the member states of the particular economic groupings have similar such systems, policies and institutions. This being not the case for the COMESA, we submit that integration is far fetched because even though all have development in mind, they have different ways of planning and implementing their policies. And thereby not all are likely to benefit from the regional policies because of their adherence to their national economic policies. The best example we can use to illustrate this point is that of regional cross border private investment. Article 58 of the Treaty provides that "the member states have agreed to adopt harmonised macro-economic policies that shall attract private sector investment into the Common Market." For member states that have capitalistic and mixed economics, this policy will be easy to implement as their economies are liberalised. But as for socialist member states, this won't be the case as such countries really value nationalism. So in the final analysis, such member states will lose out on the benefits of investments. "In order to achieve the benefit - especially in the area of economics - the application of equal means among unequals can not produce the desired results to the benefit of all parties concerned."(4)

The second impediment is with regards to the historical legacy of COMESA member states. Due to the colonial legacy all the states have become glued to the economies of their former colonial masters. During the long years of colonialism, these states produced the one product that the imperialists did not have back home. So even now, after many years of independence, the production of raw materials has continued as before and these products are sold to the former colonial masters.

"For most of these states to trade and market therefore, is to look beyond their neighbours and their region, to the traditional markets"(5). For example, Zambia heavily depends on exports of raw materials (minerals) whose markets in the COMESA region are negligible; this the establishment of the COMESA really has not meant a lot of Zambia. So Zambia does most of her trade outside the region because of the nature of her products. As for other states like Lesotho and Swaziland, the traders prefer South Africa because that is a long established market. All this goes

to show why ultra Africa trade is very small in proportion to trade outside the continent.

Another problem that the COMESA region faces is that of poor infrastructure. Inter state transport and communication in particular is very poor and this tempers efficient trade. "The infra structure set up by the colonial masters and inherited at independence were planned to move exports from the farms and mines to the coast for onward transmission to countries outside the region"(6). This transport and communication network inherited by these states was not meant for inter state linkages but unfortunately little has been done to improve the state of affairs. Anyway, most of these countries have very high external debt which are accompanied by quite high debt service rates. This has in turn diverted most of their resources from developmental programmes to debt servicing. So in view of these, they lack the capacity to maintain and repair the infra structure.

The other reason why the region is not fully integrated is the protectionist regimes set up by most countries. Most countries charge very high tariffs on imports and have non tariff barriers in place, despite the region's policy against such practices. COMESA member states have infant industries which the governments protect from foreign competition. It is believed that subjection to foreign competition would cause these industries to shut down or run at losses. This is mainly because the products are of poor quality and the packaging too is relatively poor. In order to let the indigenous industries have a monopoly on the domestic market, they apply protectionist mechanics. In practice what obtains in most countries is that apart from charging high customs duties on imports, there are also restrictive import licensing policies and restrictive foreign exchange allocations. The late Burundi President, His Excellency Major Pierre Buyoya had the following to say on his aspect of protectionism; " while the annual average of Burundi's imports from her PTA partners stands at US \$34 million, her exports of her products is not due to the non availability of Burundi's products, but rather to administrative constraints set up against her products on the markets of certain PTA member states"(7). In fact some countries, especially the more economically advanced ones tend always to aspire to maximise their exports at the expense of the economically weaker ones. All they do is sell their products on the common market but do not correspondingly buy on the Common Market.

As long as member states maintain their protectionist policies, trade in the COMESA region will not grow. It is rather surprising why most African states have restrictive trade policies towards their fellow African states and deal more frequently with the Western World, yet they maintain more sovereignty dealing with the former. The Western markets set the prices at which products will be bought and anyway transportation due to the long distances makes the whole exercise more expensive. African governments need to realise that they have more bargaining power dealing amongst themselves. So with

respect to the protectionist policies,"it is clear that even if various trade promotions and facilitation measures are put in place, unless restrictive import licensing and foreign exchange allocations are liberalised, efforts to expand intra COMESA trade will be frustrated."(8)

Finally, the major problem that the region faces as far as integration is concerned, is the non availability of resources to implement its programmes, policies and strategies. All regional co-operation and integration heavily depend on the availability of financing, because for every policy or strategy taken there must be resources to implement them. The regional economic grouping, unfortunately does not possess the sufficient financial strength to implement its programmes. As we earlier noted, the member states have very heavy debt burdens and the declining export earnings make it difficult for them to finish paying back the loans. Since they do not have enough financial resources to put their own national economies into the right perspective, setting aside resources for the implementation of regional programmes seems far fetched. For example, more than US \$7,480 million will be required over a period of ten years to implement the trade and development strategy initiated by the PTA. "However, it is realised that the sub-region's own resources alone are insufficient to make this happen and reliance on external resources and concessionary assistance therefore will be needed"(9). What this means is that if external assistance wont be forthcoming, the strategy will not be fully implemented. This heavy reliance on external funding contributes to the partial integration obtaining in the region. This is due to the fact that most policies and programmes are under funded and thereby full benefit is not realised.

### COMESA'S POTENTIAL

Despite all these drawbacks, the COMESA region has potential for development. As we earlier noted, the region is enclosed with abundant natural resources which if they were jointly and properly exploited would make the region one of the richest in Africa. The large rivers and lakes offer potential exploitation of irrigation; hydro-electric power, fisheries development and water transport. "It is a pity that only 4% of available water is used for irrigation purposes and only 700 billion kwh per year is exploited"(10) The full potential of the region's h.e.p resources can only be realised through joint efforts involving the interconnecting of the various power units into a sub-regional network. This network would link demand areas with these richly endowed areas with cheap h.e.p. Some of it would actually even be exported to areas outside the regional grouping.

Minerals offer another potential area for exploitation. These minerals in question are iron, coal, uranium, nickel, copper, cobalt and phosphate. Unfortunately these are not fully exploited due to the non-availability of resources to set up mines for their extraction. What is needed before are foreign investors to engage in this business.

Another potential area of development is agriculture. Agriculture is the backbone of most of the economies of the region, for example Malawi, Tanzania, Mauritius and Kenya. Despite having vast areas of arable land and a number of rivers as well as lakes, the region usually experiences food shortages and relies on food assistance from outside the region. It is possible to eliminate food shortages and food dependence if effective agricultural development policies were articulated. And these policies, it must be noted should emphasize self sufficiency in food production and also an improvement generally of agricultural productivity. One of the reasons why agriculture output in most member states is very poor is because it is dependent on good rainfall. Since rainfall is very unpredictable, farmers should be encouraged to shift their dependence on rainfall to irrigation schemes. If the rivers and lakes were used for agricultural purposes, food production will be maximised and food dependence will be eliminated. There are areas which are endowed with fertile soils and good water supplies, complementarily among the states based on the utilization of available domestic raw materials and indigenous entrepreneurship. On this basis, projects should be identified and designed for development by particular specific member states. For example, " Uganda, can if the farmers are facilitated, produce the maize and beans for the region from one year to the next; it can produce these commodities easily and cheaply because its land is fertile and it has plenty of water"(11). Similarly, Zambia has also been identified as a major producer of fertilizer. So the fertilizer plants need to be rehabilitated so that Zambia's cooperative advantage on the production of fertilizer would benefit the entire region.

The COMESA region has also potential for increased trade and this has been significantly revealed through the general and specialised trade fairs. The level of trade conducted during these trade fairs increases each time. The general trade fairs held so far were in Kenya, 1986; Zambia, 1988; Mauritius, 1990 and Tanzania, 1992 respectively. Particularly, at the 4th Trade Fair, "intra regional trade worth over US \$160 million was conducted and this fair revealed the increased diversification of processing industries that is taking place in the member countries"(12). Also the specialised Textile Fair held in Sudan, February 1992 had a variety of cotton textiles on display. It revealed a promising potential for the textile industry as a basis for intra regional trade within the common market.

## **THE TRADE STRATEGY**

In view of the problems hampering integration and the regions potential, the PTA came up with a trade and development strategy, whose aim is to increase trade. This strategy will be implemented by COMESA. The following inter-related policies are envisaged as part of the strategy.

a) Trade Liberalisation

It has been realised that integration will be fully attained if trade was liberalised in the region. Member states in this light are expected to dismantle all trade barriers to intra regional trade. Specifically, the strategy aims at intensifying the implementation of the policy on the elimination of tariffs and other changes of equivalent effect. This elimination is gradual and is expected to be completed by the year 2000. Since non tariff barriers have serious effects on intra regional trade, it is therefore necessary to liberalise all non tariff restrictions. All intra regional trade should be free from all import restrictions, advance import deposits, special changes allocations, and restrictive licences. " A mechanism to monitor progress of the implementation of this process will be instituted"(13).

b) Trade Facilitation

This includes better transit, simplification and harmonisation of trade documentation. The complexity of documents relating to transit goods really frustrates traders. So the simplification and harmonisation of trade documents is part of the strategy. This will reduce the cumbersome, time consuming and costly procedures that are faced by the business community in the conduct of sub-regional trade. Therefore, "the member states have agreed to adopt the harmonised community description and coding system (HS)"(14).

In order to facilitate the movement of transit tariff in the region, the Road Customs Transit Declaration Document (RCTD) has been introduced. This simplified and harmonised document has replaced 13 documents previously used by the Member States. Furthermore, persons in transit do not any more have to fill in new transit declarations, load and unload at every border crossing point. This system therefore, has reduced costs, delays and breakages. In the same vein of facilitating transit of tariff, a customs guarantee system has been adopted. The scheme enables transport operators to execute bonds from countries where they are based to guarantee customs duties on transit goods in other member countries through which the goods may pass. "The system therefore saves foreign exchange and does away with the cumbersome procedure of entering separate customs bond in every transit country"(15). Since most member states are landlocked, the implementation of the regional bond guarantees scheme provides a significant improvement in the manner in which transit traffic is operated.

"Also introduced is the Automated System for Customs Data (ASYCUDA) in the sub-region. The introduction of ASYCUDA will assist in clearing goods faster from customs area, make available up to date accurate statistics on international trade.

c) Trade Promotion

This will be achieved by furthering market development activities and by having specialist trade fairs. The provision of products and services is to depend on market surveys complemented with buyer seller meetings. To this end, surveys will be carried on to ascertain the demand and have specialised ways of providing quality goods and services in the region.

Achieving market integration under the market is one of the basic objective of the Trade and Development Strategy. It is therefore important to remove all impediments so that the production sectors fit into the trade liberalisation programmes. In this light, "the member states perceive the following selected top priorities for achieving market integration under the common market"(16).

- (i) to significantly increase in all Member States the production of high standard goods and services which are competitive in price and quality. In so doing, the first step will be to rehabilitate and upgrade existing production and manufacturing structures. As we earlier said, most Member States industries are still in the infancy stage, but now there is need for them to grow and produce quality goods that will compete fairly with foreign goods. The second step is the introduction of food processing industries. The region needs to stop depending on food assistance and instead embark on food security based on a country's comparative advantage.
- (ii) to bring the member states economies together by including closely national markets into one simple domestic market. The establishment of an efficient transport and communication networks in the sub-region is the cornerstone for facilitating trade. It is therefore imperative to upgrade, maintain and rehabilitate existing roads and railways.
- iii) to enhance the role of the private sector in economic co-operation and development principally through greater dialogue with the business community. Also their participation in decision making especially in the area of trade, investment and resource mobilisation is desired. This is because it is the business community that is actively involved in trade, therefore they might have better suggestions on how to improve policies.
- (iv) to adopt new and intensive programmes for the collection, dissemination and exchange of information on trade, natural resources, research and development, science and technology, and investment opportunity. Ignorance of trade opportunities in the sub-region is also an impediment to integration. So every member state will have computer networks installed where data on this will be processed. If people are aware of opportunities in the sub-region, they

will utilise their resources and bring about development.

This foregoing discussion, has brought to light the fact that the COMESA region is richly endowed with natural resources. These resources however, are not fully exploited because individual countries do not have the capacity to do so. Nevertheless, the region could benefit highly from these if the region was fully integrated and embarked on joint ventures to exploit these natural resources. Therefore Member States should work at eliminating the barriers to full integration of the region. As long as nothing is done about these impediments, trade in the region will not grow and therefore even the sound policies formulated by COMESA will not achieve the desired results.

## REFERENCES

1. Mr Bingu Wa Mutharika, COMESA; New Trade & Development Opportunities, meeting of the economic forum of Copperbelt University School of Business Zambia, 26th March." COMESA 337.1 mut) Pg 8
2. P. Robson, Economic integration in Africa (G. Alleu & Union, London) 1968 Pg 29
3. Fleuk J Van der laan (editor)" PTA Trade Fair Catalogue," Tanzania (PTA Federation of Chambers of Commerce & Industry) Kenya 1988 Pg 83
4. R. N. Simbyakula; An introduction to taxation in Zambia (J S D Thesis 1990) Pg 10
5. His Excellency Yoweri Museveni, Creating a better environment in the PTA "11th meeting of the PTA Authority, Lusaka, 20 - 21st January 1993". (PTA 332/673) Pg 21
6. Ibid
7. Ibid Pg 32
8. Dr Bingu Wa Mutharika, "A decade of Economic integration 1982 - 1992" PTA development report (Published by the PTA) Pg 29
9. The PTA Trade & Development Strategy (Published by PTA, 1992) Pg 108
10. Opcit Dr Bingu Mutharika (COMESA 337.1 Mut) Pg 20
11. Opcit His Excellency Yoweri Museveni (PTA 332/673) pg 20
12. Dr Bingu Mutharika, " Creating Better Environment in the PTA, " The Potential of the PTA 11th meeting of the PTA Authority, Lusaka, 20th - 21st January 1993 (PTA 332.673) Pg 13
13. The PTA Trade Development Strategy (Published by PTA) Pg 18
14. Ibid
15. Dr Bingu Wa Mutharika, " A Decade of Economic integration 1982 - 1992" PTA Development Report (Published by PTA) Pg 16

## **CHAPTER THREE**

# **THE COMESA TREATY AND ITS TRADE POLICY**

In this chapter we focus on the treaty establishing the Common Market. We shall consider COMESA's aims, undertakings and its institutional framework. Lastly, we will discuss COMESA's trade policy.

### Background to COMESA

The process of economic intergration in Eeastern and Southern Africa has been on a step by step basis. Firstly, the Preferential Trade Area (PTA) was established, the second step being the transformation of PTA into a Common Market. The third step will involve the eventual establishment of an Economic Community. Currently, we are in the era of the second stage. The Treaty establishing the PTA was signed within the framework of the Lagos Plan of Action and the Final Act of Lagos. The PTA entered into force on 30th September, 1982. "It was provided for in the Treaty that ten years after the entry into force of the PTA, measures should be taken to transform PTA into a Common Market for Eastern and Southern Africa". Thus the Treaty establishing COMESA was signed in November 1993.

### The Aims and Objectives of COMESA

COMESA is determined to integrate and consolidate the economics of the Member States through the implementation of common policies and programmes of prime importance to COMESA is to have a full market integration amongst the Member States. The aim and objectives are provided for in Article 3 and these are;

- (a) to attain sustainable growth and development of the member states by promoting a more balanced and harmonious development of its production an marketing structures;
- (b) to provide 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;
- (c) to co-operate inthe creation of an enabling enviroment for foreign, cross border and domestic investment including the joint promotion of research and adoption of science and technology for development;
- (d) to co-operate in the promotion of peace, security and stability among states in order to enhance economic development in the region;
- (e) to co-operate in strengthening the relations between the common market and the rest of the world and the adaption of common positions in international fora, and;

- (f) to contribute towards the establishment, progress and the realisation of the objectives of the African Economic Community.

In relation to these aims and objectives, the Treaty in Article 4 provides for specific undertakings which are envisaged as fields for integration. These fields are, trade and customs; transport and communication; industry and energy; monetary affairs and finance; agriculture; economic and social development. For each of the fields, specific undertakings are provided which stipulate what measure the member states are to take in line with the aims of the Treaty. In all, the treaty instills co-operation between the member states and emphasises the adoption of memorised policies in all the fields mentioned for the benefit of the whole region.

### The Institutional framework

Article 7 provides for the organs of the common market which are to perform their functions and act within the limits of the powers conferred upon them by or under the Treaty. The organs are;

### The Authority

This is composed of heads of either states or government of the member states. " It is the supreme policy organ and is responsible for the general policy, direction and control of the performance of the executive functions of the common market". (2) Article 8 (3) further provides that the decisions and directions of the Authority taken or given in pursuance of the provisions of the Treaty shall be binding on the Member States and on all organs and all those to whom they may be addressed to. However, the Court of Justice is not bound by the Authority in the exercise of its jurisdiction. The decisions of the Authority are taken by consensus, namely that all the members of the Authority must unanimously agree. If one objects to a proposal, then it is defeated. As regards meetings, the Authority meets once a year. It may however, hold extra ordinary meetings upon request of a member of the Authority, such request ought to be supported by 1 of all members. It must be noted that the Authority sets its own rules of procedure.

### The Council

The Council of Ministers is composed of such ministers as are designed by each member state. Its functions are to:

- "(a) monitor and keep under constant review and ensure the proper function and development of the common market in accordance with the provisions of the Treaty;

- (b) make recommendations to the Authority on matters of policy aimed at the efficient and harmonious functioning and development of the common market;
- (c) give directions of all other subordinate organs of the common market other than the court in the exercise of its jurisdiction;
- (d) make regulations, issue directives, take decisions, make recommendation and give opinions in accordance with the provisions of of the Treaty;
- (e) request advisory opinions from the court
- (f) consider consider and approve the budgets of the secretariat and the court;
- (g) consider what measures should be taken by member states in order to promote the attainment of the aims of the common market;
- (h) Make staff rules and regulations and financial regulations of the secretariat.
- (i) make recommendations to the Authority on the designation of the less developed countries;
- (j) designate economically depressed areas of the common market and;
- (k) exercise such other powers and perform such other functions as are vested in or conferred on it by the Treaty".

The Treaty distinguishes the force that directives, decisions, opinions and recommendations of the Council shall have. A regulation, it provides shall be binding on all member states and will be published in the official gazette of the common market. Regulation shall enter force, therefore, upon official publication or on the date specified. Both directives and decisions shall be binding upon the receipt of the notification or the date specified as the case might be. It must be noted that neither of these (i.e decisions, directives and regulations) are binding on the Court. On the other hand, recommendations and opinions shall however, have no binding force. This means that a country can choose to ignore the recommendations and opinions.

As regards meetings, the Council shall meet once a year, immediately preceding a meeting of the Authority. Just like in the case of the Authority, even for the Council, extra ordinary meetings may be held upon request of a member state, provided such request is supported by at least

1 of the member states".

The decisions of the council shall be consensus or by 2 majority of the members. The Treaty further provides that 3 where an objections of raised in relation to a proposal, such proposal shall be referred to the Authority. And as we earlier noted, the Authority itself shall take its decisions by consensus. The Council has power to determine its own rules of procedure.

#### The Committee of Central Bank Governors

The committee consists of the governors of the monetary authorities of the Member State. Subject to any directions which may be given by the Council, the Committee of Governors shall meet once a year and determine its own rules of procedure. Article 13 of the Treaty provides that the functions of this committee shall be;

- (a) be responsible for the development of programmes and action plans in the field of fiannce and monetary co-operation;
- (b) monitor and keep under constant review the proper implementation of the programmes and plans adopted.
- (c) request the secretary general to undertake specific investigation in respect of sub-paragraphs (a) and (b)
- (d) consider reports and recommendations from the Technical Committee on Finance and Monetary Affairs;
- (e) submit from time to time, reports and recommendations to the council concerning he implementation of the Finance and Monetary co-operatin programme; and
- (f) have such other functions as conferred by the Treaty or under it.

#### The Intergovernmental Committee

This Committee consists of permanent or principal secretaries as are designated by each member states. It determines its own rules of procedure and subject to any directions given by the Council, the OCmmittee meets once a year. Its function are provided for in Article 14 (2). These functions include developing programmes and action plans in all aspects of co-operation. However, the sector of finance and monetary affairs is beyond its jurisdiction. The Committee also monitors and constantly reviews the development of the Common Market. It may perform any other function as may be confered upon it by or under the Treaty.

### The Technical Committees

"The Technical Committees are composed of representatives of the Member States designated for that purpose, and meets as often as necessary."(5) These committees determine their own rules of procedure. The Technical Committees are the actual backbone of the whole organisation. These are responsible for the various economical, legal and administrative sectors. All the Committees save for the Finance and Monetary Committee report to the Committees of Governors for Central Banks. All in all, these Technical Committees are;"

- a) the Committee on Administrative and Budgetary Matters;
- b) the Committee on Agriculture;
- c) the Comprehensive Information Systems;
- d) the Committee on Energy;
- e) the Committee on Finance and Monetary Affairs;
- f) the Committee on Industry;
- g) the Committee on Labour, Human Resources and Social and Cultural affairs;
- h) the Committee on Legal Affairs;
- i) the Committee on Natural Resources and Environment;
- j) the Committee on Trade and Customs;
- k) the Committee on Tourism and Wildlife; and
- l) the Committee on Transport and Communications."(5)

### The Secretariat

The Secretariat is the executive organ of the Common Market. It is headed by the Secretary General who is assisted by two Assistant Secretaries General. In a nutshell, the functions of the Secretariat are to provide technical support and advisory services to the Member States in the implementation of the Treaty and carrying out research as a basis for the implementation of the decisions adopted by the policy organs. This is provided for in Article 17 of the Treaty.

### The Consultative Committee

This Committee " shall consist of such representatives of the business community and other interest groups from the member states and these may be accompanied by such experts and advisors as the committee may seem necessary for its effective functioning." This committee shall meet as often as is possible and determine its own rules of procedure. The functions of the consultative committee include taking part in the meetings of the technical committees and making recommendations to the intergovernmental committee. It is also responsible for ensuring that the Common Market takes into account the interest of the business community in its policies.

## The Court of Justice

"The court shall be composed of seven judges who shall be appointed by the Authority and one of whom shall be appointed by the Authority as the President of the Court." The Court has jurisdiction to adjudicate upon all matters referred to it pursuant to the Treaty. The Court of Justice is not bound by decisions of any of the other organs. Article 24 provides that a Member State may refer any matter to the court in which it considers that another state or Council, has failed its obligation or on the grounds that the act is ultra vires the Treaty, respectively. An individual who is resident in the Common Market may also refer to the Court for determination any matter against either a Member State or the Council for the same reasons given in Article 24. As regards to national courts, the Treaty provides that, "disputes to which the Common Market is a party shall not on that ground alone, include the jurisdiction of national courts". This means that an individual may raise an action against the council in his national court and the national court therefore would be completed to pass a judgement. However, the Treaty goes on to provide that the decisions of national courts. Even in a situation where a national court has passed judgement in relation to a matter concerning the common market, such judgement can be overruled by the Court of Justice. It must be noted that it is only in relation to matters concerning the implementatin of the Common Market provisions that the Court of Justice can over rule decisiosn of national courts.

Having exhausted the discussion of the institutional framework of COMESA, we now proceed to consider its trade policy.

## COMESA's Trade Policy

COMESA is a regional economic grouping whose nature is that of a common market. In this respect, COMESA embodies the following principles;

(a) "A full made involving the trade generation under which there is free movement of goods and services produced within the common market and the removal of n. t. bs. It has been realised from past experience that full liberalisation of trade is the key to development in the region. Unfortunately most member states have non tariff barriers in place, these n. t. bs. consist of quantitative restrictions, export and import licensing, foreign exchange licences. The COMESA Treaty in this vein provides the ultimate elimination of n. t. bs." (10) It is important to appreciate that this is in relation only to goods originating in the sub-region. To that end, there are rules of origin that are used to ascertain whether a particular product originates in the region and is

therefore entitled to preferential tariff treatment. The Treaty however, in Article 49 (2) and (5) provide for instances where a Member State can impose discriminatory measures on foreign goods. The first instance is where a Member wishes to protect an infant industry from foreign competition. In this respect, Council has the power of determining what industry is infant and the duration of such imposition of n. t. bs. The other situation which calls for derogation from use of n. t. bs is when a member state is facing balance of payment problems. Though even here the Council decides the duration.

b) "The establishment of a customs union involving zero tariffs on all products originating in the Common Market and the adoption of a common external tariff on imports from non COMESA countries." (11) One of the characteristics of a common market is that customs duties between member states in relation to goods produced within the sub-region are eliminated. COMESA being such, envisages the creation of a customs union where customs duties and other changes of equivalent effect imposed on imports shall be eliminated.

This elimination though, is to be gradual, but completely eliminated by the year 2,000. As regards the adoption of a common external tariff, Article 47 provides that "the member states have agreed to the gradual establishment of a common external tariff in respect of all goods imported into the member state...." This establishment of a common external tariff shall be achieved by adopting uniform, comprehensive and systematic tariff classification of goods with a common and specific basis of description and interpretation in accordance with international accepted standards" (12).

(c) Free movement of capital and financ, and a common investment code so as to create a more favourable climate for foreign and cross-border investment. In relation to free movement of capital and financ, Article 81 provides that member states shall:

- (i) ensure the unimpeded flow of capital within the Common Market through the removal of controls on the transferred of capital among Member States in accordance with a timetable to be determined by the council;
- (ii) ensure that the citizens resident in the Member states are allowed to acquire stocks, shares and other securities in the territories of the other Member States; and
- (iii) encourage cross border trade and made in governement securities such as treasury bills, development loan stocks with the Common Market.

As regards investment, the Member States have agreed to adopt a harmonised investment code that attracts investors. In relation to cross-border investment, nationals of Member countries will be encouraged to buy and hold stocks in other countries in the region. "This will contribute to effective resource mobilisation on the use of foreign exchange, prevent capital outflow from the sub-region."  
(13)

(d) Free movement of persons, labour and services within the Common Market. In this respect, Member States have agreed to eliminate the visa requirements between Member states. This will encourage the movement of business persons and labour.

In addition to these principles, COMESA has also in place policies that facilitate trade. To this end, the sub-region has adopted harmonised trade documents and procedures. This is aimed at easing the cumbersome ordeal that importers undergo when importing and exporting goods. Also of relevance is the Automated System for Data which assists in the clearing of goods faster from the customs area. The documents that have been adopted uniformly by Member states are: the Harmonised Commodity description and coding System, the Road Customs Transit Declaration Document and lastly, the Customs Guarantee System.

## CONCLUSION

As we have seen from the foregoing discussion, COMESA has very good trade policy that will, with the help of the relevant institutions in place, bring about the much needed development in the region. All that remains now is for the Member States to strictly implement these policies. According to article 25, the Secretary General will refer a Member State firstly to the Council and the Court of Justice, if the state fails to meet an obligation of the Treaty or it infringes a provision of the Treaty. And the decision of the Court in this respect is binding on the Member State. With this sort of enforcement mechanism in place, it is our hope that COMESA will actualise full liberalised trade by the year 2,000.

## REFERENCES

1. Article 29 of PTA Treaty
2. Article 8 (2)
3. Article 9 (2)
4. Article 9 (2)
5. Article 15 (2)
6. Article 15 (1)
7. Article 18 (1)
8. Article 20 (1)
9. Article 29 (1)
10. Dr Bingu Wa Mutharika, COMESA; New Trade & Development Opportunities. Meeting of Economic Forum of Copperbelt University - school of Business, Zambia, 26 March 1994. (COMESA 337.1 MUT) Pg 7
11. Ibid
12. Article 64
13. PTA Trade & Development Strategy (Published by PTA) 1992 Pg 30

In this chapter we will inquire into whether the member states adhere to the tariff reduction rates decided by the authority. The basic and most critical factor in determining the success or failure of the economic co-operation and integration is political will and commitment. Without the political will and commitment, countries will not make sacrifices for regional interests above national ones because they would rather maintain sovereignty to pursue interests that benefit them individually. Lack of political will and commitment also makes countries to refuse financing the costs of economic co-operation and integration, this consequently leads to an ineffective regional grouping.

One of the objectives of the PTA was the liberalisation of trade through measures such as tariffs reduction and eventual elimination of tariffs between trade of member states. To this end, the customs and Trade Committee used to make recommendations, decisions and regulations which the authority adopted for member states to implement. Unfortunately, most member countries did not implement these at all or took so long to do it. One reason for this reluctance is that member states devoted their national circumstances before the interests of the economic grouping. Another reason that can be advanced for this slow pace of implementation was non enforceability and non sanctionality. "The PTA Treaty did not provide for obligatory implementation of the Treaty's provisions thus leaving it to the whims of each member state"(1). This state of affairs will probably be different under COMESA because the Court of Justice established under it, is not only meant to arbitrate but also to provide implementation of the Treaty. It provides for sanctions to be imposed against any member that deliberately refuses to comply with or to implement agreed decisions. As we noted earlier, the purpose of this particular discussion is to analyse the implementation of tariff rates by member states. The discussion is divided into three main categories and these are: the Legal Regime for tariff reduction and elimination, the Time table for Implementation and lastly, the actual Pace of implementation. We shall keep referring to the PTA era since Comesa just came into being and can not be effectively discussed without recourse to PTA.

## 1.0 The Legal Regime

Article 12 of the PTA Treaty provided that Member States agreed to the gradual reduction and eventual elimination of customs duties. Under the COMESA Treaty, Member States in Article 45 agree to the progressive establishment of a Customs Union where customs duties and other charges of equivalent effect imposed on imports shall be eliminated. The definitions of 'customs duties' and 'other charges of equivalent effect' are the same in both Treaties. Customs duties

are defined as "import or export duties and other charges of equivalent effect levied on goods by reason of their importation or exportation and includes suspended duties and taxes and fiscal duties or taxes where such duties or taxes affect the importation or exportation of goods but does not include internal duties and taxes such as sales, turnover or consumption taxes, imposed otherwise than in respect of the importation or exportation of goods"(2). On the other hand, 'other charges of equivalent effect' are defined as "any tax, surtax, levy or charge imposed on imports and not on like locally produced products and does not include fees similar or commensurate with the cost of services rendered"(3). The effect of both customs duties and other charges of equivalent effect is to raise the price of the imported good so that it does not compete favourably on the domestic market with the other like product. This in turn discourages people from importing and exporting products. It is important to appreciate that the reduction and elimination of tariffs only applies to products that originate in the subregion and this condition obtains under both Treaties. Under the PTA Treaty, for goods to be entitled to preferential treatment, they not only had to originate in the subregion but also had to be on the Common List. This however, has since been abolished but we shall nevertheless take time to briefly discuss it.

### 1.1 The Common List

The Common List comprised commodities that were identified as being of both import and export interest to the PTA member states. These goods therefore received preferential treatment because the programme for reducing and eliminating customs duties only applied to them. "The PTA Treaty provided that Member States should every two years, commencing from 30 September 1983 negotiable among themselves concerning the commodities to be included in the Common List....."(4). These negotiations were undertaken by the Customs and Trade Committee, though subject to the approval of council. The commodities in the Common List fell under six different schedules which had particular percentage reduction rates. At the time of entry into force of the PTA Treaty, the following were the rates:

<u>GROUP</u>	<u>DESCRIPTION OF GOODS</u>	<u>PTA RATES</u>
I	Food (excluding luxury items)	30%
II	Raw Material:	
	(a) Agricultural	50%
	(b) Non-Agricultural	60%
III	Intermediate goods	65%
IV	Manufactured consumer goods (excluding luxury items):	
	(a) durable consumer goods	40%
	(b) non durable consumer goods	35%
	(c) highly competitive consumer goods	30%
	(d) consumer goods of particular economic development	70%
V	Capital goods (including transport equipment)	70%
VI	Luxury goods	10%

Member states were expected to publish these rates along side national basic rates and apply the PTA rates when trading amongst themselves.

## 1.2 The Rules of Origin

These were formulated during the PTA era but are still applicable even in COMESA though with some modifications. It is necessary to note that the rules of origin do not change according to the type of economic grouping prevailing. These rules depend on the level of production, availability and sources of raw materials and other components used in the production of goods. The purpose of having such rules is to ensure that goods that are eligible to preferential treatment really originate in the Member States. As for the PTA, these rules were set out in the "Protocol on the Rules of Origin to be traded between Member States of PTA". Under COMESA they are contained in the "Draft Protocol on the Rules Of Origin for products to be traded between the Member States of COMESA."<sup>5</sup> These rules can be looked at in two categories, that is one relating to the consignment of the goods and the other regarding the production of goods. The other rules relating to

the control of the enterprise producing the goods was deleted by the Authority of the PTA in January 1992.

In relation to the consignment requirement, Rule 2(1) provides that the goods must be consigned directly from a Member State. "This rule helps to ensure that the goods are not substituted and that the process conferring origin took place in what is presented as the exporting Member State "6 Goods will be deemed to have originated in a Member State even if by consignment they would have to pass through a third country where operations to make them merchantable would be carried out.

When it comes to the production of goods, the Rules provide for goods that have been wholly produced locally and those with an import content. Rule 3 provides for products which are deemed to be wholly produced in the Member States. Rule 2 provides for goods with an import content, namely that such be deemed to originate from Member States provided they undergo a process of production which substantially transforms them. The Rule goes on to stipulate that;

- (a) "the c.i.f value of those materials does not exceed 60% of the total cost of the materials used in the production of the goods, or;
- (b) the value added resulting from the process of production accounts for at least 45% of the ex-factory cost of the goods."

It must be noted that under COMESA, the Rules of Origin are temporary. "There will be no Rules of Origin once internal tariffs are reduced to zero, all non tariff barriers to intra COMESA trade are eliminated, common external tariffs and all trade documents as well as procedures are harmonised."7

In addition, the Rules also provide for proof of origin. Rule 10 stipulates "that the goods concerned must be supported by a certificate of origin given by the exporter or his authorised representative in the form prescribed in Apendix 1 of the Protocol". This certificate is to be authenticated by an authority designated for that purpose by each Member State. The Rule further provides that where the producer is infact not the exporter, he should thus furnish the exporter with a written declaration in conformity with Appendix 2 to the effect the goods qualify as originating in the Member State. Rule 10(VI) further provides that all Member States should deposit with the Secretariate the names of Departments and Agencies authorised to issue the certificates required under the Protocol, specimen signatures of the officials authorised to sign the certificate and the impression of the official stamps to be used for that purpose, and these shall be circulated to the Member States by the Sectritariate.

### 1.3 Tariff Reduction and Elimination Timetable

Article 13 of the PTA Treaty provided that all duties in respect of goods originating in the region would be eliminated through a gradual process. The duration of this gradual elimination was to take ten years, that is from 1982 to 1992. In this regard, the Council drew up a programme where tariffs would be reduced every two years from 1982 by 20%. However this proved impossible to achieve and the Authority at its 6th meeting held in Uganda 1987, was forced to adopt a new timetable for the reduction of tariffs, "which is as follows;

10% further reduction Oct 1988  
10% further reduction Oct 1990  
10% further reduction Oct 1992  
10% further reduction Oct 1994  
10% further reduction Oct 1996"8

"At the same meeting, Council also decided that it would review the reductions in 1996, taking into account the need to maintain an equitable distribution of costs benefits among the Member States."9 International trade is based on the principle of reciprocity, among other things. So if one country reduces tariffs on certain goods for another country's benefit, then that country should do the same for the others. In this respect, the PTA envisaged a situation where Member States would reduce tariffs on reciprocal basis, instead of some countries benefiting more than others by maintaining higher tariffs but enjoying reduced ones from other Member States.

In view of the fact that most Member States were not implementing the reduced rates on time, at its 14th meeting in 1992 the Customs and Trade Committee formulated the third timetable. This was adopted in 1993 by the Authority and the new time table thus was;

60% reduction Oct 1993  
70% reduction Oct 1994  
80% reduction Oct 1996  
90% reduction Oct 1998  
100% reduction Oct 2000

The above timetable is what is being implemented even now under COMESA. COMESA is determined to create a customs union in the subregion, because according to it, increased trade can only be realised in a customs duties free zone. To this end Member States are directed to strictly adhere to the decisions relating to the reduction of tariffs.

### 3. The Pace of Implementation

Upon its inception PTA drew up a timetable for tariff reduction. The initial reduction was 20% and it must be noted that this was not across the board but only applied to the Common List commodities. By July 1984, most Member States had published this. It must be appreciated that the publication of these rates in the national Customs Acts was evidence that these reduced rates were being implemented. In accordance with the timetable of further tariff reductions in October 1988, then the first reduction of 10% was applied. "By December 1989, only nine countries had published both the initial and first further reduction under the second timetable."<sup>10</sup> These countries are Ethiopia, Kenya, Malawi, Mauritius, Somalia, Tanzania, Uganda, Zambia and Zimbabwe. As we earlier said PTA originally envisaged that within ten years all duties in respect goods in the Common List would be eliminated. Member States were supposed to reduce tariffs by 20% every two years. Now as we can see only nine out of 22 member countries had implemented the initial reduction. This non compliance with the timetable delayed the process of attaining a tariff free zone by 1992.

When the PTA realised that having a customs union by 1992 was far fetched, a new programme was set by which the year 1996 was set as the year for the final reductions. Unfortunately, even this new programme was not promptly implemented by the Member States. According to this new programme the second tariff reduction should have been made by October 1990. But at the 14th meeting of the Customs and Trade Committee, it was reported that "only Mauritius, Uganda and Zimbabwe had published the second further tariff reduction."<sup>11</sup> As for Sudan it still had not yet published the initial, first and second further reduction. It was reported that Burundi, Ethiopia, Kenya, Malawi, Rwanda, Somalia, Tanzania and Zambia had not published the second further reduction. This state of affairs caused the Council, at its 16th meeting held in November 1990, to issue a directive that the second further reduction should be effected by March 1991 at the latest. "However this directive was not implemented by most Member States."<sup>12</sup> During this meeting it was reported that Zambia had by then also implemented the second further reduction. This means that altogether only Mauritius, Uganda, Zambia and Zimbabwe had published the second reduction by 1990. It is a pity that only four countries out of the total membership were following the programme according to the second timetable the third further tariff reduction was to be effected by 1992. At the 11th meeting of the PTA Authority, the Chairman for the Council gave the report that "only Burundi, Kenya, Mauritius and Zimbabwe were up to date with the publications of the PTA tariffs. It is at this meeting that the Authority adopted the third timetable .

According to this later timetable, a single rate reduction of 60% was introduced and the subsequent reductions would be 10% from October 1994 to the year 2000. At the first meeting of the COMESA Council held in December 1994, "it was reported that only Burundi, Entrea, Kenya, Mauritius, Sudan, Zambia Zimbabwe and Malawi had published the COMESA tariffs by applying the 60%

reduction rate." 13 As we earlier noted, COMESA inherited the third tariff reduction programme from PTA and is now implementing it. As we have seen from the foregoing discussion, the implementation of the PTA tariff rate reductions by the Member States leaves little to be desired. There seems to have been lack of commitment on the part of the members, it's either they took too long or never just implemented the at all. And the fact that the PTA Treaty did not provide for sanctions for non compliance meant that it was upto a country's commitment to implement them. It however is necessary for economic institutions to provide for enforceability and sanctions for there to be effective implementation of policies. Political will and commitment alone is not enough.

Another fact to be attributed to this slow pace of implementation is that most Member States depend heavily the revenue from tariffs. So reducing tariff rates meant that they were not getting enough revenue to enable them supply goods and services. This is why most of them requested for derogations. Also most Member States wanted to protect their infant industries from foreign competition and therefore derogated from implementation of the reduced rates. For instance, Rwanda when requesting to be granted and derogation gave the protection of its industries as justification. "It noted that most of the production unit affected were established recently between 1988 and 1990 and due to their infancy can not withstand competition from the already established industries in other PTA countries which already acquired experience in production and management."14

The third reason is that some Member States belonged to other economic groupings and therefore it was difficult to published reduced tariff rates only in respect of the PTA Member States. This is particularly true for Lesotho and Swaziland, which are also members of the Southern African Customs Union (SACU). These two countries during PTA never published any tariff reductions. They just kept extending the derogation periods. In 1988 they asked for the first derogation for five years. And in 1993 they were granted a further period of derogation running from October 1993 to October 1997. Namibia which is now a member of COMESA is also in the same position as Swaziland and Lesotho. Infact Article 4 (1) (f) the COMESA treaty recognises this and grants all three temporary exemption from implementing of the Treaty.

#### 4. CONCLUSION

Under COMESA the situation is expected to be different in that unlike the PTA, COMESA is a supranational institution. Therefore its provisions are binding the Member States, who in turn have an obligation to implement them. The Treaty in Article 171 provides for sanctions to be imposed on those states which persistently fail to implement or violate the provisions of the Treaty. And in Article 173 the Member States agreed to make the implementation of the Treaty a priority. It is thus hoped the members will be dedicated to implement the policies of the Treaty and thereby bring about the actualisation of a customs union by the year 2000 as envisaged by COMESA.

## REFERENCE

1. Dr Mbingu Wa Mutharika, Potential for Investment in COMESA The PTA/COMESA Trade Fair 1994 Catalogue (Colourprint Ltd, Zimbabwe.) 1994 page 252.
2. Article 2 of the PTA and COMESA Treaties
3. Ibid.
4. Article 7(2) of the PTA Treaty.
5. PTA/TC/ADHOC/111/2
6. B.H. Simamba, An African Preferential Trade Area (University of Zambia Press, Lusaka) 1993 pg 165
7. Opcit pg 1
8. Volume 6 no.3 PTA Official Gazette December 1987
9. Ibid
10. Report of the 14th meeting of Council of Ministers paragraph 89.
11. PTA/TC/CT/XIV/5 Pg 2
12. PTA/TC/CT/XIV/3 Pg 2
13. 1st meeting of the Council of Ministers COMESA/CM/1/5 Pg 4

**CHAPTER FIVE**

**THE IMPACT OF TARIFF LIBERALISATION ON  
COMESA AND THE SOVEREIGNTY OF MEMBER  
STATES.**

In this final chapter, we shall consider what effect tariff liberalisation has, on one hand on COMESA, and the Sovereignty of COMESA's Member States, on the other hand. All nations engage in international trade. They sell what they have in excess and buy what they do not produce themselves. International trade calls to mind the concept of 'tariffs' because whenever goods and services cross a national or custom boundary a duty is imposed on goods and services rests on the state's sovereignty over customs matters is limited. So in this chapter, we will give an account as far as tariff liberalisation is concerned.

### **Tariff Liberalisation**

In chapter one, tariff liberalisation was defined as 'freedom granted by a state to a product to enter or leave a market'. Tariffs constitute a major source of revenue for most states and therefore tariff liberalisation is desirable in that a country's economic position is considered when levying duties. Namely that if a country wishes to protect its industries from foreign competition or its in need of higher revenue, it is at liberty to levy higher tariff rates. It is however important to note that tariff liberalisation is more of a theory than a practical reality. Tariff liberalisation today, is quite restricted. The first reason is that international trade is based on the principle of reciprocity. Namely that if one reduces its duty on another's export goods, the other should also reduce its tariffs for the same product and/or the benefit of the third country. If a country had to highly increase its customs duties, other countries whose duties are relatively lower, would certainly divert their trade elsewhere or they would also increase theirs in respect of such a country. In the long run, this country would also lower its tariffs.

The second reason why today tariff liberalisation is restricted in respect of the World Trade Organisation. This organisation regulates international trade and it operates on line fundamental principle of free trade. Free trade is envisaged in a situation where tariffs and non tariffs barriers are eliminated. In this reign, a country is not at liberty to raise its tariffs as much as it so wishes, it can only raise its duties within the frame work of WTO. In fact WTO welcomes tariff reductions than it does tariff increases. As far as WTO is concerned, a contracting party should take other contracting parties into consideration whenever it is exercising its sovereignty on customs matters.

Third reason why tariff liberalisation is restricted is in relation to trade agreement whose essence basically is to accord each other relevance to own discussion. The tariff liberalisation is closely related to the concept of sovereignty and its restriction due to a trade agreement is what we are considering. However, before we discuss the concept of sovereignty in relation to trade agreement, we first have to look at the concept of 'state'.

## **The State**

As we said in Chapter One, a state is defined as, "a geographically delimited segment of human society united by common obedience to a single sovereign" The term 'state' refers either to the sovereign authority that runs a territory or just the delimited territory which has its own government. For purposes of our discussion, state in terms of the government is our concern. A government has the right to make any decisions regarding any matter within its boundaries without interferences. In other words, a government is not subject to any authority where running its territory is concerned. Theoretically, a state has absolute sovereignty and independence over its subjects, and its affairs within its territorial limits. Practically the independence and sovereignty is largely a matter of degree, some states actually enjoy more power and independence than other states.

## **State Sovereignty**

Sovereignty is the possession of sufficient power to maintain independence externally, obedience and order internally, and the possession of supreme and independent authority to make, apply and interpret a system of law within its territory "Sovereignty may thus be distinguished into, the first being internal and the other external sovereignty respectively. Internal sovereignty is concerned with the affairs of a state within its territory and relates to such matters as the governance of the territory, selection of its own political, economic and social systems, also the power to enter into international agreements. On the other hand, external sovereignty is concerned with the states independency, freedom from all external control and enjoyment of full legal equity with other nations.

It must however be understood that in practice absolute sovereignty is not possible because, "increasingly in modern time the sovereignty state is in fact limited by international arrangements, international law and morality. "There are certain international arrangements and customs that a state has to consider when exercising its sovereignty in relation to other states. Fear of sanctions or international disapproval often restrains states from acting in any manner they so wish. In this vein, we can therefore say that at present, there is hardly a state which in the interest of the international community, has not accepted restrictions on its liberty of action. So in relation to international trade, states do not possess absolute sovereignty. Their sovereignty is restricted by either the WTO or trade agreements to which they are parties.

## International Institutions

States are free, consistently with their obligations under the United Nations Charter, to form associations or grouping for general or particular purposes. The principle functions served by them are either political, economic or related to the mutual defence and security of the nations. The majority of such bodies are regional in character but sometimes include states not located in the region concerned. Classification of such institutions is either by reference to their functions, for instance economic or security. In relation to the formation of groupings for economic reasons, the WTO provides for the various types that can be created. These are Customs Union Common Market, Preferential Trade Area and Economic Community. COMESA, is a common market type of economic integration.

The other way of classification is by reference to the supremacy of the institution, that is whether an institution is supra national or not. "A supra-national institution is generally considered to be one which has power to take discussions directly binding upon individuals, institutions and enterprises, as well as upon government of the states in which they are situated, and which they must carry out of the supra-national type can only act, or execute decisions by or through Member States. Namely that it lifts up the Member States to implement the decisions of the institution.

COMESA is an international institution which is supra-national in nature. We assert that COMESA is a supra-national institution because it constitutes sovereign states. Article 5(2) in part provides that Member States agree:

- (a) "to confer upon the Common Market legal capacity and the personality required for the performance of its functions; and;
- (b) to confer upon the regulation of the council the force of the law and the necessary legal effect within its territory"(5).

These two provisions show that the Members agree to be bound by the regulations and directives of COMESA in pursuance of the policies. The COMESA Treaty places obligations for each signatory Member State to abide by it. It must also be appreciated that membership of international institutions is not obligatory. So whenever a state asceeds to an international institution, it is actually exercising its sovereignty. Therefore it can be said that the "powers of international bodies to determine their own competence, to make decisions by majority, and to enforce decisions, depend on the consent of Member States"(6). In view of this then it can be asserted that the Member States of COMESA were fully aware of the nature of authority or the extent of supremacy that COMESA would have over their sovereignties before they asceeded to it. And the fact that they are members means that they consent to the decisions taken by it. This is further

qualified by Article 5(2)(b) which gives the regulations of the Council the force of law within the Territory. What the Member States agree to is that whatever decisions the Council takes will have to be enforced in their jurisdictions as if it were passed by their respective law making mechanisms. This conferring upon the Council such legal authority goes to show that COMESA is a supra-national institution. Under PTA Treaty however, a Member State did not cede its tariff liberalisation to PTA because it could choose not to implement its tariff reductions without sanctions befalling it.

The status of the COMESA Court of Justice further illustrates the fact that it is a supra-national institution. This Court was established not only to arbitrate matters referred to it but also to provide integration of the Treaty. As regards its jurisdiction, Article 29(ii) provides that "the decisions of the Court on the implementation of the provisions of the Treaty shall have precedence over decisions of national Courts". This goes on to show that the sovereignty of the Member States as far as disputes concerning the Treaty are concerned is limited. One thing we need to bear in mind is that Article 5(2) provides that "each Member State shall take steps to secure the enactment of and the constitution of such legislation to give effect to this Treaty...". This provision means that the Member States agree to incorporate the Treaty into their domestic legislation. Consequently, this will enable the Treaty provisions to have direct applicability because a lawyer when handling a case in which the COMESA is a party would easily cite the provisions. So the Court of Justice is not only applicable but is also supreme over the individual national courts of the Member States.

After establishing the fact that COMESA is a supra-national institution, we can therefore safely say that it is left up to the whims of the Member States to implement the decisions and provisions of COMESA. It is actually an obligation for them to undertake the decisions of COMESA. The Treaty in Article 173 provide that "the in Member State, the implementation of the provisions of the Treaty shall be prioritised .....". By this provision the Members agree to give priority to the implementation of the Treaty notwithstanding their national circumstances. To this end, the Treaty in Article 171 provides for sanctions to be imposed against any Member States that deliberately and persistently refuses to comply with or to implement agreed decisions. The sanctions include suspension and the possibility of eventual expulsion from membership.

## THE IMPACT OF TARIFF LIBERALISATION ON COMESA

In relation to the foregoing discussion, it is our submission that tariff liberalisation in its absolute sense has no impact on COMESA. We acknowledge however, that tariff liberalisation as an aspect of sovereignty is a right for each state. Nevertheless, accession to COMESA as a member means that a state cedes part of its sovereignty.

The trade policy of COMESA, as we discussed in Chapter Three is centred on the notion of free trade. Particularly, in the field of customs matter, the Treaty in Article 4 (1) (a) provides that "the Member States shall establish a customs union, abolish all non-tariff barriers to trade among themselves; establish a common external tariff..."

As we can see from this provision, COMESA as an institution has to ensure that there are no trade restrictions between the Member States and that there is a common external tariff imposed on goods from outside the subregion. In this respect a Member State can not exercise its sovereignty in terms of tariff liberalisation. Even if a situation arose where a Member State's industry was being threatened by the competition from the imports, it could not on its own impose restrictions on imports. It would have to refer it to the Council, which in turn would determine if the industry really needs protection and it does, the duration of this imposition. This is in accordance with Article 49 of the Treaty.

All economic co-operation involve some sacrifice by the individual nations of a portion of their sovereignty. The whole purpose of forming an economic grouping to accord each other preferential treatment within the block. Being a member of such a grouping means that economic autonomy in some respect must be ceded to the supra-national authority for policy making. It must also be appreciated that economic institutions are formed for the benefit of the Member States. As for COMESA, its aim is to achieve sustainable growth and development in the subregion and this is clearly the benefit of all the Member States. The Member States conferred the necessary legal capacity on COMESA to achieve its aims. As we earlier said, "the powers of international bodies to determine their own competence, to make decisions by majority and to enforce decisions, depend on the consent of the Member States"(7). Whatever authority that COMESA has to usurp the sovereignty of the Members, it can be said that they consent to it. Firstly because the founding Members, who chartered the Treaty are the ones who decided the ambit of its authority and sort of institution it would be, that is a supra-national one. Secondly, the ones which have acceded also had time to deliberate on its provisions before accession and their accession implies that they consent to its provisions.

One point to not is that as far as policy making is concerned for COMESA, the Member States still maintain their sovereignty. The

Authority, which is the principal policy making organ is composed of the Head of State or Governments. Decisions of the Authority according to Article 8(7) are made by consensus. Namely that all Members of the Authority should unanimously agree on a proposal for it to become a decision. And if just one Member objects, then the proposal is completely defeated. So whichever policy that the Authority adopts for implementation by the Member States is actually a manifestation of these policies that the Member States lose there freedom. The COMESA Treaty imposes an obligation on the Members to implement the provisions of the Treaty accordingly. And non compliance calls for sanctions on the defaulter. As we said in chapter three, a Member State, a private individual who is a citizen in the Common Market and the Council are legible to refer to the Court of Justice for determination in any matter in which another Member State has failed its obligation under the Treaty or has violated any provisions of the Treaty. The court in this regard, upon determination will pass judgement which is binding.

### **The impact of Tariff Liberalisation on COMESA Member State's Sovereignty**

Tariff liberalisation generally is not supposed to have an effect on the sovereignty of COMESA Member States. COMESA has only been in existence for over a year and hence it has not fully acquired the characteristics of a Common Market. So in some respect, the Member States still possess sovereignty in the area of customs duties. Particularly, this is in reference to customs duties in respect of goods from outside the subregion. In a Common Market sort of economic integration, the region adopts a common external tariff in respect of goods outside the region. In this vein, Article 47 provides that;

"the Member States have agreed to the gradual establishment of a common external tariff in respect of all goods imported into the Member States ....".

The period of this gradual establishment is ten years. So until that time comes when this common external tariff is adopted, Member States are still free to impose any amount of tariff they wish on goods outside the subregion. It is our hope that COMESA will really after ten years adopt a common external tariff. when that time comes, Member States then will completely lose their sovereignty in respect of customs duties on goods outside the subregion.

However, as regards the rates of customs to be imposed on goods within the region, the Member States do not possess sovereignty. COMESA envisages the creation of a Customs Union, where there is free trade in practice. Therefore it adopted a tariff reduction programme from its predecessor, PTA. During the PTA era, the Member States could choose not to implement the programme. But under the COMESA Treaty a Member State is bound to implement the tariff reduction programme or otherwise will face sanctions. So in this respect of intra COMESA trade, a Member can not exercise its right of tariff liberalisation.

## CONCLUSIONS

Sovereignty is one of the basic characteristics of a state. State Sovereignty has many attributes to it and one of them is the right of entering into international agreements. Due to the fact that international trade is restricted, most nations join international economic groupings so as to ameliorate restricted trade between them. These economic groupings are created for the benefit of the members. These institutions usually have a system of majority voting and are permitted to make decisions which in some instances are binding on the members. On joining such institutions, states are aware of the institutional aspects of these and therefore it can be said that they consent to the Treaties establishing these institutions.

There are certain conditions that need to be satisfied if economic integration is to succeed. These firstly, "that a supra-national authority should be established with real powers to make governments of the Member countries implement the decisions of the Authority"(8). If the institution created is not a supra-national one, implementation of the policies is left to the whim of the members. And practice has taught us that most countries do not want to sacrifice their economic autonomy in view of regional co-operation. So what happens in this situation is that the Member States only implement the institution's policies when they wish. This was the case during the existence of PTA, which was not a supra-national institution. As we saw in chapter four, the pace of implementation of the tariff reduction programme was very slow. This is because the Members published the reductions when they wanted and no sanction ever visited the defaulters. Therefore to ensure that Members implement the policies, it is necessary that the institution created is of a supra-national nature.

secondly all members should realise that they are gaining from the arrangement and should therefore be prepared to cede some of their sovereignty to the supra-national authority. Ceding of some of their sovereignty in relation to economic matters is necessary for the institution to come up with harmonised policies to be implemented by all members. If members maintain their absolute sovereignty then reaching a consensus in policy making would be futile because each member would like to attain the best highest benefit for its country. And the realisation of harmonised policies in such a situation would be far fetched.

Thirdly, as we said in chapter four, there can not be any effective economic integration without the political will and commitment of the Member States. Without this, Member States would rather pursue their own individual interests. But in a situation where the institution is supra-national in character, however, political will and commitment is not much crucial because of the existence of an enforcement mechanism. This enforcement mechanism operates to ensure that the Member States that default in commitment are forced to comply with the policies. Political will alone is not sufficient.

COMESA, as an institution satisfies these conditions. It has the legal capacity to make regulations which are necessary for the implementation of the Treaty. And these are binding on the Member States. Failure to comply with them, calls for sanctions on the defaulters. And in this respect, tariff liberalisation has no effect on COMESA on one hand and on the sovereignty of the Member States, on the other hand. The Members by acceding to membership to COMESA impliedly consented to the institutional framework of COMESA. This being that COMESA has the overall jurisdiction where customs matters of the region are concerned. And consequently, Members can not exercise tariff liberalisation in respect of goods imported from within the region. But however, until a common external tariff is adopted, the states in relation to goods imported outside the region enjoy their sovereignty.

## REFERENCES

1. David L Sill (ed) International Encyclopedia for School Sciences Vol 15 (The Macmillan Coy. USA) 1966 Pg 77
2. David Walker The Oxford Companion To Law (Clarendon Press, Oxford) 1980 Pg 1176
3. Ibid Pg 1164
4. J C Slarke Introduction To International Law 10th ed (Butterworths, London) 1989 Pg 608
5. Article 5(2)(a)(b)
6. Ian Brownlie Principles of Public International Law 3rd ed (ELBS Oxford University Press) 1979 Pg 290
7. Ibid
8. P Robson Economic Integration in Africa (G Allen & Union London) 1968 Pg 30

## CONCLUSIONS AND RECOMMENDATIONS

### CONCLUSION

This paper has provided us with an insight of COMESA. It has highlighted COMESA's objectives, institutions, potential and its problems where integration is concerned. COMESA is a new vision for growth and development, it is an institution for social and economic restructuring of the economies of Eastern and Southern Africa. COMESA binds free independent sovereign states to cooperate in all fields of economic endeavour for the common benefit of their peoples. It is also an arrangement that fully recognises the need to exploit the resources of the region through the adoption of common harmonised policies and mechanisms that facilitate free movement of goods, persons, labour, capital and services and joint action in production, distribution and exchange of goods and services.

COMESA, is a common market economic integration. Being so, it embodies the following principal elements.

- a) "a full trade area involving trade liberalisation under which there is free movement of goods and services produced within the common market and the removal of all non tariff barriers,"<sup>1</sup>
- b) the establishment of a customs union involving zero tariffs on all products originating in the common market and the adoption of a common external tariff on imports from non COMESA countries.
- c) free movement of capital, finance and a common investment code e as to create a more favourable investment climate for foreign, cross border and domestic investment;
- d) free movement of persons within the common market.

These principal elements are meant to alleviate the problems faced by the region. In Chapter Two, we discussed these problems and also the potential of the region, which we concluded is rich with abundant natural resources. The thrust of COMESA is to draw these small and fragmented national markets, almost wholly dependent on primary commodity exports and now present them with an option to solve major constraints experienced in the process of attaining sustainable growth and development through market integration"<sup>2</sup> The combined elements of a free trade area, customs union and a common external tariff will result in enormous investors. This is because of a wider and secure market created due to integration; a large and cheaper labour force; availability of cheap raw materials, natural resources and energy. And also the emerging new democratic governments in the COMESA region - which emphasise economic liberalisation and increased participation of the private sector in development is

an added advantage.

In relation to customs to customs matters, which is the focus of this paper, COMESA'S policy is the gradual elimination of tariffs and non tariff barriers in respect of goods originating from within the sub-region and the adoption of a common external tariff. There is a tariff reduction programme currently being implemented that is expected to run till the year 2,000. This year has been set as the time when the region should fully realise the status of a common market. As for non tariff barriers, they were completely abolished when the treaty came into force, though the treaty provides for instances where a member state is entitled to impose them. The provisions of the treaty and the decisions, regulations and directives of the organs of COMESA are binding on the members states. The Treaty provides for obligatory implementation of the provisions of the treaty and decisions of its organs. To this end, the Court of Justice established the Treaty met only arbitrates but also ensures implementation of the Treaty. The Treaty provides for sanctions that are to be exposed on these who violet or fail to implement the provisions of the Treaty.

As a way of classification, COMESA is an economic institution which is of a super national nature. Namely that it has the legal capacity to make decisions which are binding on member states. And these decisions have to be implemented regardless of what the member states. However, members are allowed to derogate from he implementation of certain provisions and policies. But the council has to approve that such conditions as would warrant a derogation actually exists. Since COMESA is a supra natural institution, the concept of tariff liberalisation has no impact on it. This is because as far as COMESA is concerned, the members can not exercise their sovereignty in the area of tariffs. COMESA envisages the gradual creation of a customs union. Similarly, tariff liberalisation has no effect on the member state is sovereignty because upon training COMESA, they added their economic autonomy to COMESA. Joining international institutions to actually an aspect of sovereignty and the fact that states join such institutions impliedly means that they consent to the governing institutional framework. In this respect it can be asserted that members of COMESA consented to having their sovereignty on customs natural Authority of COMESA.

COMESA has very good policies that will being about development in the region, if they all fully implemented. It is our hope that the member states will accord the necessary and much desired political will and commitment to the implementation of these policies. It must be noted that this is basic and most this is the basic and crucial factor which determines the success or failure of economic co-operation and integration. As we saw in Chapter Two, for integration to succeed, there must be adequate funding. Unfortunately most Member States have economic problems and therefore can not afford to sponsor the implementation of

policies. They depend on external financing from the donor community. Hence we find that donor support is also a crucial element for the success or failure of regional integration. It is our hope the donor community will be generous enough to support COMESA in its endeavour of bringing about development in t region.

## RECOMMENDATIONS

The Member States of COMESA are all developing nations. In fact most of them are currently facing balance of payment problems. As is common for most developing countries, they are more of consumers than manufacturers. They import a wide range of commodities, ranging from pharmaceutical to electrical appliances. They in turn usually export raw materials to the developed countries. Since the prices of these raw materials depend on demand the earnings of the developing countries in this respect fluctuate. Consequently, the earnings are not sufficient to cover their import expenses and to provide the necessary goods and services required by the citizens. The developing nations therefore heavily depend on foreign assistance from the developed countries. Also there is massive unemployment due to the limited number of industries in place in developing nations and thereby revenue from direct taxes collected by government from this sector is quite low. So the government inject the tax tool on tariffs very heavily. Tariffs account for an enormous part of their revenue usually in " the range of 60-90% of government revenue"(1). In view of the most important role that tariffs play in contributing to government revenue, it is our submission that tariffs between the Member States should not be completely eliminated. They should just be reduced, say to about 60%. The COMESA Member States have not yet reach a stage where they can do away with the revenue from taxes, especially now that COMESA wants to increase the rate of trade among the Member States. Namely that if the members conduct all their trade transactions within the subregion and no duty is imposed on the goods, then the members will really lose out on tariffs as a source of government revenue. In fact this is why during the PTA most members defaulted in the implementation of the reduced tariff rates. It is therefore our recommendation that though we appreciate the benefits a Common Market, the Member States should not completely eliminate customs duties between themselves. They still need the revenue from tariffs very much for national development. When these countries were colonised their colonial masters encouraged them to produce the one product that was needed way back home as a raw material int their industries. So even now after many years of independence these nations still heavily depend on exporting just that product to their former masters. Anyway, after independency most states embarked on a number of economic reforms to make themselves self reliant. They also took up protectionist mechanisms to protect their newly established industries from foreign competition. Unfortunately these industries in most countries are still infant industries even after many years of independence. Now with the trade policy

of COMESA, these industries will end up being closed. In the end, only the economically stronger partners will benefit from the expanded market. These will be able to export more products to the members at no tariff cost at all and thereby realise much income. "The welfare effects of integration could therefore include unemployment in the economically weaker partners."(4) In this vein it is our recommendation that members should not completely abolish trade barriers. Some measure of protectionism should remain, in where like products are concerned, in view of the fact that most members have the same basic industries though with different production capacities. Some are efficient than others and can therefore not compete favourably on an open market. It is our submission that only in the area of complementary industries that they should abolish non tariff barriers completely. Though the year 2000 has been set as the time when all tariffs will be finally eliminated, we do not think that by then all the Member States would have solved their economic problems. With the decline in export earnings and the ever rising service charges on their external debt, these states will be still trying to alleviate their conditions even by the year 2000. So COMESA should relax its implementation of the trade policy especially in relation to custom duties, until that time when the members are economically sound. As regards the position of Lesotho Swaziland and Namibia, these members should be given a chance to choose membership of either COMESA or SACU. This is because the other COMESA members are given a raw deal by these three countries. Namely that while other COMESA members are under an obligation to publish the reduced tariff rates these three are exempted because of their special position, they therefore do not afford the other COMESA members preferential treatment in relation the SACU members. Therefore Lesotho, Swaziland and Namibia should belong to only one of the two economic groupings.

## REFERENCES

1. Dr Bingu wa Mutharika, COMESA; New Development Opportunities, Meeting of the Economic Forum of Copperbelt University School of Business, Zambia, 26th MARCH 1994  
pg 7
2. Dr Bingu wa Mutharika, The Potential for Investment in COMESA, The PTA/COMESA Trade Fair 1994 Catalogue (Colourprint Ltd, Zimbabwe) 1994 pg 241
3. Dr Mwase and Prof G Maasdorp, The Southern African Customs Union, African Research Consortium ,Nairobi December 1994  
pg 6
4. Ibid pg 7

## BIBLIOGRAPHY

1. Brownlie, Ian; Principles of Public International Law 3rd ed (ELBS, Oxford University Press) 1979
2. Cayne B.S et al...; The Students Encyclopedia vol 18 (Crowell Collier Education Corp USA) 1970
3. Meir G M; Leading Issues in Economic Development 4th ed (Oxford Press, Oxford) 1984
4. Robson P; Economic Integration in Africa (G Allen & Union London) 1968
5. Sills D L (ed); International Encyclopedia for Social Sciences vol 15 (The Macmillan Coy,USA) 1968
6. Simbamba B H; An African Preferential Trade Area (University of Zambia Press, Lusaka) 1993
7. Simbyakula R; An Introduction to Taxation in Zambia (JSD Thesis) 1990
8. Simbyakula R; Taxation & Economic Development in Zambia (Ph D Thesis, USA) 1990
9. Starke J C; Introduction to International Law 10th ed (Butterworths, London) 1989
10. The Britannica Encyclopedia vol 9 (Encyclopedia Britannica Inc USA ) 1983
11. Van der Laan (ed); PTA Trade Fair Catalogue (Federation of Commerce & Industry Kenya) 1988
12. Walker D; The Oxford Companion to Law (Clarendon Press, Oxford) 1980

## DOCUMENTS

1. Dr Bingu wa Mutharika; Creating A Better Environment in the PTA, 11th Meeting of the PTA Authority Lusaka 20th -21st Jan 1993 (PTA 332/673)
2. Dr Bingu wa Mutharika; A Decade of Economic Integration 1982- 1992 The PTA Development Report (Published by PTA)
3. Dr Bingu wa Mutharika; COMESA; New Trade & Development Opportunities. Meeting of the Economic Forum of The Copperbelt University School of Business Studies, Zambia March 1994 (COMESA 337.2 MUT)
4. Dr Mwase & Prof Maasdorp; The Southern African Customs Union (African Economic Research Consortium) Nairobi December 1994
5. Official Gazette (Authority) Dec 1987 GN no= 12
6. PTA/TC/AD HOC/ 111/2
7. PTA/TC/CT/XIV/3
8. PTA/TC/CT/XIV/5
9. Report of the 14th Meeting of Council of Ministers
10. 1st Meeting the Council of Ministers (COMESA CM/1/5)

## TREATIES

1. The PTA Treaty
2. The COMESA Treaty