COMESA

Key Issues for the Integration Agenda

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Table of Contents

FOREWORD: The Critical Role of Researchers and Think Tanks in the Integration Agenda of Africa i

INTRODUCTION TO THE COMESA CUSTOMS UNION 1

POLICY SPACE AND SENSITIVE PRODUCTS IN THE COMESA CUSTOMS UNION 5

FEATURES OF the COMESA CUSTOMS UNION 15

The Political Economy of the COMESA Customs Union 21

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS AND COMESA CUSTOMS MANAGEMENT REGULATIONS 25

COORDINATION OF ECONOMIC INTEGRATION AMONG THE REGIONAL ECONOMIC COMMUNITIES OF AFRICA 33

The Process of Forming the Africa Economic Community 39

THE U.S. AFRICA GROWTH AND OPPORTUNITY ACT 47

THE IMPORTANCE OF SERVICES IN COMESA 53

THE IMPACT OF GLOBAL FINANCIAL AND ECONOMIC CRISIS ON AFRICA 58

Food Security 69

REPOSITIONING COMESA AS A PEACEFUL AND SECURE REGION FOR DEEPER INTEGRATION 78

The Challenge of Multilateral and Regional Trade Negotiations for African Countries – The Perspectives of Uganda 88

COMESA POLIYC ON INTELLECTUAL PROPERTY RIGHTS 106

COMESA, harnessing Information Communication Technologies for rural development. 115

Regional Investment- A Complement to Trade in Regional Development 125

Export Promotion and Industrial Policy in COMESA region 131

The Effect of Monetization on Tax Buoyancy in COMESA countries 138

Trade liberalization and competition policy in the Regional context:: The case of Common Market for Eastern and Southern Africa 145

The Tripartite Free Trade Area and its Implications 154

GOING PUBLIC 163

COMESA’s PARTICIPATION IN NEGOTIATIONS ON POST 2012 INTERNATIONAL CLIMATE CHANGE AGREEMENT 170

Addressing maternal mortality in Eastern and Southern Africa: What role can regional integration play? 177

Creation of a Corporate Governance Regime for COMESA 188

Sindiso Ndema Ngwenya, COMESA Secretary General

FOREWORD

The Critical Role of Researchers and Think Tanks in the Integration Agenda of Africa

Introduction of the COMESA Researchers' Series and Forum

by Sindiso Ndema Ngwenya, COMESA Secretary General

1. COMESA has a membership of nineteen Member States with a combined population of 425 million people and a combined Gross Domestic Product (GDP) of US$450 billion. The total land mass of COMESA Member States is 12.2 million square kilometres and COMESA is endowed with vast natural resources, much of which are yet to be exploited. Investors see Africa, and in particular the COMESA region, as the last frontier for development. Indeed, Africa's rich natural resources are an important contributor to the growth of the world economy. The paradox is that whereas Africans are poor their resources have made non-Africans wealthy. Consequently, regional integration programmes should place high on the development agenda, the urgent need to exploit the resources of Africa for the benefit of its citizens.

2. COMESA, which was born in December 1994, when it replaced its predecessor the Preferential Trade Area for Eastern and Southern African States, has a solid track record for programme implementation and institution building. Regarding COMESA institutions, quite a good number are now serving the entire African continent.

3. The following are the critical milestones that COMESA has achieved:

   a. On 31 October 2000, COMESA launched its Free Trade Area. The FTA allows for Duty Free and Quota Free trade that complies with COMESA Rules of Origin to take place. Intra-COMESA trade has increased from US$3.1 billion in 2000 to US$15 billion in 2009. The growth in intra-COMESA trade has been accompanied by cross border investments which has been spear headed by the COMESA Regional Investment Agency, which is located in Cairo, Egypt and hosted by Egypt's General Authority on Investment.

   b. COMESA has trade and transit facilitation programmes that have significantly contributed to reducing the cost of doing business. Among others, these include: the COMESA Carrier Licence; the Yellow Card (i.e. third party motor vehicle insurance scheme); implementation of UNCTAD's ASYCUDA (Automated System for Customs Data); the Harmonised Axle load Limits, Vehicle Dimensions and Gross Vehicle Mass; and Public Procurement.

4. The following COMESA Financial Institutions have been established, some of which have received high Credit Ratings from global rating Agencies:

   a. Eastern and Southern Africa Trade and Development Bank; popularly known as the PTA Bank provides trade and project financing;
   b. African Trade Insurance Agency which provides political and credit risk insurance;
   c. The COMESA Monetary Institute;
   d. The COMESA Re-Insurance Agency;
   e. The COMESA Clearing House;
   f. The COMESA Carbon Fund; and
   g. The COMESA Council of Bureaux on Third Party Motor Vehicle insurance.

5. In addition to these Organisations that are established by Charters, COMESA has established the following specialised Agencies as the principal interlocutors on specific issues:

   a. The Eastern and Southern Africa Power pool;
   b. The Alliance for Commodity Trade in Eastern and Southern Africa; and
   c. The COMESA Regional Investment Agency

6. To mainstream the private sector in regional integration, the following industry associations and regulators have been established:

   a. The COMESA Business Council in fulfilment of the COMESA Treaty provisions;
   b. The African Cotton and Textile Association;
   c. The Eastern and Southern Africa Dairy Association; and
   d. The Eastern and Central African Coffee Fine Association.

7. Good governance is overseen by the COMESA Court of Justice which, inter-alia, is responsible for the interpretation of the Treaty should the need arise and ensuring that COMESA is a rules-based organisation.

8. These Institutions and specialised Agencies are critical in ensuring that the formulation of programmes and policies are all inclusive and participatory.

9. COMESA is one of the eight regional economic communities that are building blocs of the African Union for the establishment of the African Economic Community. A land mark project in this connection is the COMESA, East African Community [EAC] and Southern Africa Development Community [SADC] Tripartite which aims to establish a Tripartite Free Trade Area covering half of Africa from the south to the north, and to reduce the costs of trading between countries with improvements in infrastructure and trade facilitation instruments along major trade and transport corridors.

10. There are twenty six countries that constitute the Tripartite, which comprises half of the Membership of the African Union. The combined population and Gross Domestic Product of COMESA, EAC and SADC countries is 526 million and US$825 billion respectively. By 2015, the collective GDP will be more than US$1 Trillion. The realisation of the Tripartite Grand Free Trade Area will expedite the establishment of the African Economic Community under the auspices of the African Union. As a single market, this will be an attractive market for business persons for trade and investment.

11. In reviewing the role of Think Tanks and other institutions, it is advisable that the issue is examined from two angles; namely, at the level of the nation state and at the regional level. Anecdotal comparisons will be made of the practice of developed and other developing economies with the African countries. This will enable me to draw some lessons on why perhaps Africa is devoid of innovations in public policy because it is a receptacle, not a generator, of philosophical and development paradigms that may not be relevant or appropriate to the subjective and objective conditions of the COMESA region in particular and Africa in general.

The Roll of Think Tanks at the National Level

12. A striking feature in most countries is that Think Tanks, Research Institutions and Universities do not contribute to the formulation of public policy. This is because of the lack of appreciation by policy makers of the contribution that these institutions can make to objective and holistic public policy. The other possible reason is because these institutions are seen as academic only and so are not directly linked to national development. In some cases, independent Think Tanks and universities are perceived to be antagonistic to national governments when they critique public policy. This explains why national governments may not contract these institutions to review public policies and make recommendations. As a result of these attitudes, one finds that foreign Think Tanks and institutions have a preponderant influence on public policy in Africa. This may explain why Africa has more foreign consultants working with and in public institutions in the twenty-first century than at the time of independence four or five decades ago.

13. The lack of government support to national Think Tanks and comparable institutions shows a lacunae in good governance in that the post independent nation State has a feeling of insecurity that these independent Think Tanks may undermine its attempts in nation building. The result is that the only voices to be heard are those that sing praises to government public policy even if it is unable to realise the policy objectives. This unfortunate situation is compounded by the preference of some governments to seek advice from foreign experts. The "I know all attitude" by experts from multilateral and regional financial institutions and donors with financial muscle has resulted in a situation whereby most governments are accountable to those who provide funding rather than their electorate.

14. This situation has given rise to the formulation and implementation of public policies that do not address the objective conditions that are specific and unique to each country. Hence, Africa has been in "crisis mode" for the last few decades. A typical case was the imposition of Structural Adjustment Programmes, Enhanced Structural Adjustment Programmes and the Poverty Reduction Strategy Programmes on African developing and least-developed countries by the Breton Woods institutions in the 1980s and 1990s. The very fact that the descriptions of the programmes keep on changing constitutes an admission that the programmes have not achieved the intended results. The remark made during the European Development Days by Mr Dominique Strauss-Kahn in Stockholm in 2009 that when he took over the International Monetary Fund he found conditionalities that had nothing to do with solving the identified programme is both refreshing and revealing. In his words, these cross conditionalities had the perverse effect of unintentionally compounding the problem to be solved.

15. It is instructive to note that in most, if not all developed countries and successful developing countries, Think Tanks, Research Institutions and Universities play an important role not only in contributing to public policy but as incubators for new scientific applications and innovation as well. In fact, Universities in developed and successful developing countries are not only involved in teaching but have direct links with industry and hold industrial and commercial patents from which they derive royalties. The implication of this is that the students have both academic training and practical industry skills and experience. The same Think Tanks are involved in medium and long perspective studies which inform policy makers on the basis of scenario analysis and futurism which is based on informed realities and takes multi-dimensional perspectives.

16. The activities of these Think Tanks are not confined to the countries in which they are based but include the global political economy including security issues. In the developed and emerging economies, government and private foundations support Think Tanks because they have the capacity, in a world of uncertainty, to provide perspectives which can be used for both public policy and for the adoption of strategies and policies by the private sector.

The Role of Think Tanks in Regional Integration

17. Without exception, Think Tanks, Research Institutions and Universities in Africa have not been involved in contributing to the discourse of regional integration. In fact a cursory examination of the Treaties establishing regional economic communities reveals that the role of Think Tanks was not envisaged by the founding fathers. That this should be the case is not accidental in view of the fact at the national level there is no explicit incorporation of these institutions into policy making. Even in cases where Think Tanks exist they are often not funded by their own national governments but by foreign benefactors.

18. The upshot of this is that the intellectual poverty that characterises public policy at the national level is replicated at the regional level. This explains the "slavish" adoption and practice of models of economic integration that is derived from mature market economies. It is an undeniable fact that the challenges facing COMESA economies are fundamentally different from those of developed countries socially, economically, structurally and institutionally. This partly explains why the process of economic integration in the region has not been able to serve as a catalyst for social and economic transformation of national economies. These are characterised by heterogeneity as evidenced by the triple existence of different economies; namely, enclave economic structures that have elements that are found in developed countries; and informal economies that have been imploding in the past decade and agricultural subsistence economies. It is therefore, not fortuitous that public policies that are based on socio–economic assumptions, relevant to advanced economies, are the order of the day, with the consequence that the search for sustainable development remains elusive. Until and unless governments accept and appreciate that independent critiques from our own African and COMESA independent think tanks and academia is a prerequisite for good political and economic governance, public policy will fail to serve the interests of its citizens.

19. Paradoxically, the unconventional methods of financing infrastructure development are not coming from African but from China in the form of using natural resources to fund infrastructure development. This innovative method of financing infrastructure development has attracted intense debate from Think Tanks and academia from outside Africa, who have been joined by some African academics who are funded from outside the continent. They have described the model by China as a form of "neo-colonialism". The critics who belong to countries that have climbed up the development ladder, either suffer from selective amnesia or are ignorant in that they ignore empirical evidence from economic history that their countries used, at the time, unorthodox means to develop infrastructure. The current preoccupation that infrastructure development within and between countries should be undertaken by the private sector ignores the grim realities in most African countries that the private sector is either weak or has no institutional capacity and capabilities to undertake these mega projects, even if financing was available. This brings me to the point that even the innovative methods of infrastructure provision by China is fundamentally flawed in that countries have not made it a requirement that these projects should be executed on the basis of joint ventures so that the capacity of indigenous contractors are build, and technology and skills transferred. Rather than blaming development partners, it high time that Africa accepted that this is due to public policy failure by African States. It is unimaginable that African Think Tanks and academia are silent on these issues.

20. My humble submission is that the linear approach to integration should have started with free movement of factors of production which would have an immediate impact on the lives of citizens rather than the neo–classical economic approach, which is only understood by the social, economic and political elite whose world outlook has been conditioned by the education they have received. This explains the disconnect between public policy and popular participation by citizens in regional integration. Even the African electronic and print media rarely covers regional integration; the exception of course being the coverage that is given during the Summits of Regional Economic Communities. Immediately after the Summits, it is business as usual. As for the African Think Tanks and academia, they do not even publish periodic reviews on regional integration.

21. The experience in other regions of the world in both developed and emerging economies confirms that Think Tanks and academia play an important role in influencing public policy. In the United States, Europe, Latin America and Asia, governments provide generous funding to Think Tanks and take their policy recommendations seriously. These Think Tanks and individuals are from time to time even called upon to appear before parliamentary committees.

Excerpt from a paper presented to the African Conference of Think Tanks of 8-9 November 2010 in Cairo.

Sindiso Ndema Ngwenya
Secretary General - COMESA

INTRODUCTION TO THE COMESA CUSTOMS UNION

Francis Mangeni and Tasara Muzorori

The Member States of COMESA agreed, under Article 47 of the Treaty, to *"the gradual establishment of a Common External Tariff in respect of all goods imported into the Member States from third countries within a period of ten years from the entry into force of the Treaty and in accordance with a schedule to be adopted by the Council". Article 45 of the Treaty expressly provides that, "there shall be progressively established in the course of a transitional period of ten years from the entry into force of the Treaty, a Customs Union among the Member States."*

The importance of the Customs Union for COMESA cannot be overemphasized. The political leadership and stakeholders are at one on this. The political leaders have indicated how the Customs Union will provide a framework for coordination and harmonisation of policies in a broader range of areas, and strengthen COMESA into a coherent group that has clout in international relations and in its engagement with the rest of the world. The robust performance of intra-COMESA trade, has shown that an integrated COMESA can adequately respond to global challenges and in this manner COMESA equips the Member States and the people of the region with a framework for action and with a safety mechanism.

A large workshop in April 2009 attended by over 100 parliamentarians, manufacturers, civil society, traders and other stakeholders examined the prospects, opportunities and challenges for the COMESA Customs Union and concluded that the COMESA Customs Union was necessary and timely. The private sector indicated how trade in COMESA has been profitable and how it is sustainable and allows good planning due to the rule-based regimes under the integration program. The various trade facilitation and infrastructure programs have assisted consolidate the internal market and resulted in reduction of transaction costs including for producers, exporters and importers. Information on COMESA can be obtained from the national coordinating ministry designated by every Member State.

Launching of the Customs Union

The preparatory period resulted in recommendations from technical officers of the Member States on key principles and rules for the Customs Union. The recommendations were considered carefully by the senior officers at the level of Permanent Secretary, in several meetings, who in turn made recommendations to the Ministers. Under the Treaty establishing COMESA, the Council of Ministers of COMESA has full powers to make Regulations in implementing the provisions of the Treaty, such as the provisions stating that the Member States will establish the Customs Union. Member States normally start implementing the Regulations once adopted by the Ministers and published. This streamlined process of decision-making in COMESA assists the implementation of the integration process through adopting and applying the required rules and programs in a timely manner.

The Summit of the COMESA Authority of Heads of State and Government took place on 7-8 June 2009 at Victoria Falls in Zimbabwe to launch the COMESA Customs Union. The COMESA Authority endorsed the key principles and rules that will be the basis for the operation of the Customs Union that the Ministers had adopted. These principles and rules are contained in the two key legal instruments of the Customs Union, namely, the Council Regulations Governing the COMESA Customs Union and the Common Market Customs Management Regulations. The Council Regulations Governing the COMESA Customs Union provide for establishment of the Customs Union, the internal free trade area, relations with third countries including the application of the CET, trade remedies, export promotion, and dispute settlement. The Common Market Customs Management Regulations provide for the imposition and collection of duties and taxes; the control, management and administration of Customs; the conclusion of Customs and Trade Agreements and other matters.

In addition, the leaders endorsed "the establishment of the COMESA Task Force on the Customs Union for monitoring the implementation and operation of the Customs Union" (to address any future developments). The continuous operation of the Customs Union will require adaptation to regional and international developments from time to time, as well as the finalisation of any outstanding issues such as the implementation of a road map for the transition period. The Task Force will report annually to the higher organs of COMESA. This means that there is an institutional framework in place for dealing with outstanding issues and for responding to any developments that can affect the operation and implementation of the Customs Union

It was agreed, too, that Member States should submit their lists of products with rates that are the same as those under the CET (that is, the rates of 0%, 10%, 25%), as well as their lists of sensitive products where current national rates will be aligned to the CET rates during the transition period. It was agreed that the transition period should be three years, but can be extended to a period not exceeding five years. There will be a mid term review after one year and a half (that is, after eighteen months), to take stock of the progress made by Member States in implementing the Customs Union.

The CET of COMESA is harmonised with the CET of the East African Community. This means that the Member States in both Customs Unions do not have to choose which one to remain in; for with the same CET, COMESA and EAC in effect have moved closer towards becoming a single customs union. This is in line with the decision of the Heads of State and Government of COMESA, EAC and SADC, adopted at their Summit of 22 October 2008 in Kampala, that the three organisations should form a single Free Trade Area and eventually a single Customs Union.

Several other trade instruments and programs are also harmonised or coordinated, and this will further assist the formation of the single FTA and Customs Union. For instance, the Rules of Origin of COMESA and EAC are similar. These rules will continue to apply until there is free circulation of goods within the Customs Union. At the Tripartite level, a common approach has been adopted for elimination of non-tariff barriers to trade. The Tripartite work program covers other areas for harmonisation, such as infrastructure, energy, trade in services, movement of business persons, customs procedures, health and technical standards, unfair trade practices, and institutional arrangements.

Flexibility in the Customs Union

Taking into account the need to cater for specific situations of Member States, the COMESA Customs Union will have policy space, flexibility and periodic reviews of the CET. These principles are there to allow the Member States to be in the Customs Union while at the same time taking important national issues into account.

Member States have flexibility in the following main areas:

a. **Sensitive products:** In the COMESA Customs Union, Member States will be allowed to protect Sensitive Products during the transition period, with the possibility of putting them on a common list with higher rates, or excluding some from the Common External Trade Policy for instance for religious or cultural reasons;

b. **Sequencing:** Whilst predictability is important, it is also helpful in the short run to allow Member States requiring more time to adjust to a single position on Sensitive Products leading to a Common List of Sensitive Products;

c. **Periodic reviews:** The reviews will be necessary in a Customs Union to allow evaluation of progress and necessary adjustment. There will therefore be periodic mandatory reviews. These reviews should aim at greater harmonisation, reduction of distortions, and consideration of any outstanding issues. For instance, whilst the CET rates for Raw Materials and Capital Goods have been set at zero, in future the region may develop the capacity to produce and export Capital Goods, requiring a review of the relevant rate subject to international obligations. This fine-tuning would be based on the experience of Member States in implementing the adjustment programme for the convergence of national tariff rates to the CET;

d. **Market access:** Market access acquired by Member States prior to the establishment of the Customs Union will be preserved.

These principles will govern the operation and implementation of the Customs Union and have been included in the key legal instruments.

The COMESA Tariff

Subsequent to the adoption of the COMESA CET and the categorization of products into the three bands of the tariff structure (0%, 10%, and 25%), the major task was to allocate the CET rates to tariff lines. The allocation of the CET rates to tariff lines took into account regional production and consumption as well as import and export structures so as to determine which products required protection. A series of meetings on Sensitive Products and Tariff Alignment Schedules were held to allocate the CET rates to specific tariff lines. Member States will apply this COMESA Tariff in trade relations with third countries.

Loss of Revenue in Applying the CET

Member States may lose some revenue in the short to medium term as a result of applying the CET. In order to address this, a COMESA Fund has been put in place. The COMESA Fund has two windows. The Adjustment facility caters for revenue loss arising from the implementation of the COMESA trade liberalisation programmes and the other window is the Infrastructure Fund to finance infrastructure projects in the region. It is, however, expected that in the medium to long-term, revenues may increase as import structures change as a result of the application of the CET. In addition, it is expected that Member States will undertake reforms in their domestic tax systems in order to raise more revenue.

State of play in 2011 - to be provided

Message to the world

The advent of the COMESA Customs Union is a monumental step that has sent out an important message to the region and the world as a whole. As the Chairman of COMESA said in his speech when officially launching the Customs Union, the opportunities begging to be utilised are enormous, and to the whole world COMESA says, come, see and invest in our market. This key launching speech is reproduced below.

COMESA is a market of about 400 million consumers and a phenomenally increasing volume of internal trade now estimated at USD 15.2 billion, up from USD 3 billion in 2000 when the Free Trade Area was launched, a development that the regional private sector has greatly welcomed and owned. The enormous natural resources in the region are well known, as well as the high rates of return on investment.

The COMESA region has proved itself adequately capable of responding to global and regional challenges. Due to the robust intra-COMESA trade, the current financial crisis and economic recession has not had as deleterious an effect on the region as initially feared. Also, the institutions of COMESA have greatly assisted. The African Trade Insurance Agency has continued to provide cover for turmoil and now includes terrorism. The PTA Bank has continued to provide trade and project finance to the private sector. The Clearing House has now established a Regional Payment and Settlement System, to reduce the cost of effecting payment in regional trade, for no longer will the payments have to be routed through banks overseas taking time and costing a fortune. The COMESA Fund Adjustment Facility assists Member States that can face adverse effects due to implementing the trade liberalisation programs, and so far some Member States have already submitted requests for support.

With the Customs Union, COMESA has taken another big step towards realising its vision of being a fully integrated region that is internationally competitive.

The COMESA Chairman's speech officially launching the Customs Union

"We have now come to the moment that celebrates our existence as COMESA – the launching of the COMESA Customs Union. This past year, everything in COMESA focused on the customs union – we have thought and talked the customs union, we have slept the customs union, we have dreamt the customs union; only the customs union. This then, is the hour we have all been waiting for.

We are busting with joy, with a sense of achievement, as we now launch our customs union here today, at Victoria Falls, at this place that God himself took time to curve out so beautifully and wonderfully, into a most mighty water-fall, a most fitting resort for lovers and visionaries. We, likewise, are here to celebrate mightily, in gratitude and reverence, that we have achieved our dream of all these years. On this occasion, we say to each other, that we are COMESA, bound together as a region, and that together we can achieve what we set out to achieve. To the whole world we want to say that we are COMESA, and that we are serious as a region. We want to be taken seriously. Our message to investors worldwide and to those of our region, is clear – we have a regional market for you, come to COMESA!

Trade and investment are the pillars on which COMESA stands. We have talked about it, and now by launching the COMESA customs union, we demonstrate for all to see that we are walking the talk. We want to say it loud and clear, and to be heard by our stakeholders. As a region, the opportunities that are begging to be exploited are inexhaustible, with a market of 400 million people.

We have waited long enough, since 2004, and we rejoice that finally we have been able to get there. We are launching our COMESA Customs Union! I say, what an achievement! And I congratulate you all, the Member States of COMESA, upon this achievement.

With much excitement and expectation, with all the joy, I now have the pleasure to hereby launch our COMESA Customs Union."

The Chairman of COMESA then unveiled a magnificent plaque commemorating the launching of the Customs Union. "Forever to celebrate and support COMESA Customs Union", was the inscription on the plaque, featuring the COMESA colours of blue and white.

POLICY SPACE AND SENSITIVE PRODUCTS IN THE COMESA CUSTOMS UNION

Themba Munalula, Antony Walakira, Happy Bota, and Tasara Muzorori

1. The architecture of the COMESA Customs Union is such that the Member States have policy space and can have recourse to flexibilities enshrined in the design of the Customs Union to allow countries to address national issues arising out of the implementation of the Regional Trade Policy. One of the flexibilities is that countries can designate sensitive products that would be treated differently when it comes to the application of the Common External Tariff. Since the launch of the Customs Union in June 2009, Member States have been identifying sensitive products and eleven of the Member States have submitted their lists.

2. Building on the extensive work already done, this paper analyses the status of submissions of lists of sensitive products and makes some proposals for taking the process forward, particularly in terms of utilising the tariff alignment formula adopted yb the Twenty Seventh Meeting of Council on 7 December 2009.

Principles of COMESA Regional Trade Policy

5. The following are the Seven Principles of the COMESA Trade Policy (RTP) which were adopted by Council in November, 2006 that member States may wish to adopt as the basis for a COMESA RTP. The FTA provisions such as duty free and quota free intra-COMESA trade and the legal conditions for establishing a Customs Union are already contained in the COMESA Treaty.

6. Some of the relevant Treaty Articles are as follows:

   a. Article 46 on Customs Duties provides the legal basis for duty free trade amongst member States for goods originating in those member States under the FTA and is an essential pillar governing intra-COMESA trade.

   b. Article 49 on Non-tariff Barriers (NTBs) provides for the elimination and non-imposition of NTBs so as to ensure that free trade occurs amongst COMESA member States.

   c. Articles 51, 52 and 61 recognise that Trade Remedies are an important safety valve in the conduct of intra-COMESA trade. The Treaty provisions on dumping, subsidies and safeguards and the appropriate remedial responses have been further elaborated in Regulations adopted by Council.

7. The additional elements on which Member States have agreed in order to facilitate and expedite COMESA's establishment of its Customs Union are as follows.

Principle 1: CET rates and Sensitive Products

8. In setting the CET for Raw Materials, Capital Goods and Intermediate Products, external tariff rates for given products that are produce in the region and which satisfy an agreed regional identification criteria, will be higher than the rates that would normally apply to that category of goods.

9. Member States are allowed to exclude certain products that are sensitive to their economies from the CET for agreed time-bound periods.

Principle 2: Free Circulation of Goods, Elimination of Rules of Origin

10. Free circulation of goods will apply in the COMESA Customs Union, when the conditions necessary for the application of this principle have been established; relatedly, Rules of Origin for goods traded within COMESA will be eliminated, provided that import formalities have been complied with, customs duties have been levied in a member State and goods have not benefited from a duty drawback.

Principle 3: Revenue Distribution

11. The COMESA Customs Union will provide for a system for revenue distribution to complement introduction of the principle of free circulation.

Principle 4: Export Processing Zones

12. Export processing zones are allowed under the COMESA Customs Union, but products produced in these zones must be sold outside the Customs Union or treated as third party imports and subjected to the CET when sold in Member States. In addition, Member States' export promotion mechanisms for intra-COMESA trade must gradually be eliminated.

Principle 5: Trade Remedy measures, Competition Policy

13. There will be a common approach to establishing Trade Remedy measures against third country imports. Trade issues related to intra-COMESA trade will be dealt with through the application of the Regional Competition Policy.

Principle 6: SPS and Technical Standards Programme

14. COMESA will implement a comprehensive, fast-track programme on harmonisation of Sanitary and Phyto-sanitary Measures (SPS) and Technical Standards to facilitate free circulation of goods within COMESA and to promote the export of products affected by such measures/standards to third countries.

Principle 7: Bilateral Treaties, Arrangements with Third Parties, Common Negotiating Positions

15. Member States must:

   (i) notify the Secretariat of all bilateral treaties, agreements or arrangements concerning commercial relations with third countries;

   (ii) following establishment of the Customs Union, member States will not enter into preferential trade arrangements with third parties without consulting the other the member States and approval of Council; and

   (iii) member States will establish common negotiating positions with regard to trade relations with third parties and in multilateral trade negotiations.

Assigning CET rates to tariff lines

16. The COMESA CET is based on the four categories of products, namely raw materials; intermediate products; capital goods; and final goods. The principles considered in establishing the CET were :

   a. attaining competitiveness of industry by making inputs for industry and capital goods accessible at world prices;

   b. the value-addition objectives inherent in the rates for intermediate products and finished goods; and

   c. linkages with the COMESA industrial and agricultural policies represented by the protection offered by the 25% rate for finished goods.

17. After Council had pronounced itself on the CET rates at its meeting in May 2007 in Nairobi, the next tasks were: to put products into the appropriate categories and to assign the CET rates to the tariff lines. The categorisation of products was done at the Second Regional Meeting on Sensitive Products and Tariff Alignment which was held on 15-17 October 2007 in Antananarivo, Madagascar. The assignment of CET tariff rates was a much more protracted process as the region had to take into account the balance of regional production and consumption as well as competitiveness issues. The Secretariat did a study that examined the regional production (proxied by exports) and regional consumption (proxied by imports) to guide the process of assigning rates.

18. Eight meetings were held at which the assignment of rates was discussed by the Member States based on the discussion paper prepared by the Secretariat as well as submissions given by the Member States during the meetings regarding production of products in their countries and ability to supply the region. For instance although salt is a basic commodity, it was assigned a CET rate of 25% because one country in the region argued that it had capacity to supply the whole region with salt. It is important to note the importance of these policy considerations that were taken into account in the assignment of CET rates to tariff lines because, once the categorisation was complete, assignment of rates was to be automatic with all capital goods and raw materials being assigned a rate of 0%; intermediate goods being assigned a rate of 10%; and finished goods being assigned a rate of 25%. The consideration of policy in the assignment of CET rates to tariff lines was meant to shorten the lists of sensitive products and to take account of the reality on the ground with regard to current regional production and consumption as well as future potential to produce and supply the region.

Establishing a Customs Union

19. The establishment of the Customs Union remains a process rather than an event. Being a process, it is guided by a road map containing specific actions and measures to be implemented in the long-term and those to be implemented in the short to medium term.

A. Long term measures include:

a. ensuring all Member States adopt and uniformly apply the CET;

b. fully implementing the COMESA Regional Trade Policy based on the Seven Principles adopted by Council in 2007;

c. minimising or eliminating sensitive products and deviations from the CTN and CET;

B. In the short to medium term, each COMESA Member State should implement the following measures and activities:

a. adopt and implement the COMESA Tariff Nomenclature (CTN);

b. produce tariff alignments schedules by matching national tariff structures against the COMESA CET; three schedules should be developed as follows:

i. **Schedule I:** consisting of tariff lines with rates aligned to the CET;

ii. **Schedule II:** consisting of tariff lines with rates NOT aligned to the CET but could be aligned within the three-year transitional period;

iii. **Schedule III**: consisting of tariff lines with rates NOT aligned to the CET and alignment only possible in the long term or deferred indefinitely;

c. domesticate provisions of the Regional Trade Policy including those of the Council Regulations Governing the Customs Union and the Common Market Customs Management Regulations.

20. The schedules that are to be submitted by Member States were discussed at the First Meeting of the National Task Teams on Sensitive Products and Tariff Alignment held in Lusaka, Zambia on 16-18 February 2009.

Criteria for indentifying Sensitive Products

21. The process of identification of sensitive products was undertaken with great care. The criteria of sensitivity, which were adopted at a meeting of Trade and Finance Experts held in Addis Ababa January 2002, are follows:

(a) Revenue Contribution

i. Product contribution to gross customs receipts

(b) Importance of sector to the country's economy

i. Contribution to employment

ii. Contribution to GDP

iii. Value-added

iv. Export earnings

v. Foreign currency savings

vi. Production/Capacity/Investment plan

vii. Outputs/Inputs for differentiated tariff treatment

viii. Stage of sector development/infant industry

ix. Current level of the support given to the sector (incentives)

(c) Potential of sector to regional economic development

i. Existing market size

ii. Potential market size

iii. Current production/potential production/investment plan

iv. Preference agreement

v. Outputs/inputs for differentiated tariff treatment

vi. Social, Health, Cultural and Religious reasons

22. In addition, products could be classified as sensitive for the following reasons:

a. They have been classified under the CTN in a category that has a higher rate of duty than that which is appropriate due to their economic use i.e. goods may be classified as an intermediate product at a tariff rate of 10% when they are an essential industrial input which should have a zero rate of duty (these goods were previously referred as goods of economic importance)

b. They have been classified under the CTN in a category with a duty rate that is lower than what is required for a country to raise sufficient customs revenue from that product

c. They have been classified under the CTN in a category with a lower rate than what is required for a country or the region to protect national or regional production of such goods i.e. corn is a raw product under the CTN with a duty rate of zero percent but for protective reasons its duty rate may be required to be 10% or 25%. This covers infant industries as well

d. The goods have national tariff rates way above the CET maximum ranges of 25% and countries may require additional periods to adjust tariff rates for such goods to the CET rates

e. The goods require lower rates of duty than those provided for under the CET categories because the goods have social, health, cultural or religious implications at national or regional level.

23. The grounds on which goods could be designated as sensitive, as can be seen, are quite broad and this could result in long lists of sensitive products being produced by Member States. It is important to note that the long exercise of allocating tariff rates to tariff lines significantly took into account the sensitivity criteria. In this sense then, the sensitivity criteria have been applied already.

24. However, for purposes of the tariff alignment schedules, particularly schedule II, the most frequent criterion that can be applied is the one where the national tariff rate is different from the CET.

25. In the discussions, in the eight meetings on Sensitive Products and Tariff Alignment which were held between 2007 and 2008 during which CET rates were assigned to the COMESA CTN, the issue of how long lists of sensitive products should be was not conclusively considered. However, a heavily perforated Customs Union, that is, one where there are long lists of sensitive products resulting in less commonality in trading conditions in Members of the Customs Union will not be helpful for regional integration. It is therefore important that agreement be reached as to what percentage sensitive products can be either of total tariff lines or of the total value of trade.

26. The region can consider agreeing that the liberalization should cover 80% of the trade implying that the sensitive lists should constitute not more than 20%. Whether sensitive products should constitute not more than 20% of the tariff lines or of the value of trade is another matter for which agreement in the region will have to be reached.

27. In the specification of the three schedules, reference is made to tariff lines which would imply that sensitive products have to be a percentage of tariff lines rather than value of trade.

Tariff Alignment Schedules

28. Schedule I and Schedule II are relatively straightforward. Schedule I consists tariff lines that are already aligned to the COMESA CET rates, which means countries do not have to undertake any adjustment of these rates. Schedule II, however, consists of those tariffs that are not aligned but can be aligned within the three-year transition period adopted by Council at its Twenty Sixth Meeting in Victoria Falls Town Zimbabwe.

29. In this regard, it will be recalled that the Twenty Sixth Council of Ministers Meeting decided that:

a. Schedule I (containing products aligned to the CET) should be adopted;

b. All Member States should submit their lists of sensitive products and tariff alignment schedules for attachment as Schedule II;

c. The Member States should be allowed a period of three years, to align their national tariffs with the COMESA CET, provided that after 18 months from the date of the launch, the period of three years may be reviewed by Council for a period not exceeding five years from the date of the launch; and

d. The CET should be based on the CTN and Member States should implement the COMESA CTN in the national tariff.

30. It is therefore important for Member States to indicate in their Schedule II how they move from where they are at the national level to the COMESA tariff. The alignment of national tariffs to the CET is greatly facilitated if countries migrate to the COMESA CTN. The Secretariat has written to Member States requesting them to do what is necessary to migrate to the COMESA CTN.

Formula for adjusting to the COMESA CET

31. Council at its Twenty-Seventh meeting held in Lusaka, Zambia on 7 December 2009 approved a simple formula that Member States should use to migrate from their national tariffs to the COMESA CET and submit their lists of sensitive products and action plans for tariff alignment by the end of February 2010.

The formula is as follows:

Where alignment requires a reduction in the national tariff:

- 25% in the first year;
- 25% in the second year; and
- 50% in the third year.

Where alignment require an increase in the national tariff:

- 50% in the first year;
- 25% in the second year; and
- 25% in the third year.

32. The gradual adjustment in the case where alignment requires a reduction in the national tariff was considered prudent so as not to drastically disrupt revenues for the Member State, whereas for the case where adjustment requires an increase it was considered that the alignment could be frontloaded.

33. An example is, if the national tariff is 25% and the CET is 10%, the alignment would be as follows: You need to reduce by 15 percentage points to move from 25% to 10%, so in the first year 25-(0.25x15)=21.25%; year 2: 21.25-(0.25x15)= 17.5%; and year 3: 17.5-(0.5x15)=10%

National Tariff	Year 1	Year 2	Year 3 (CET)
25%	21.25	17.5%	10%

Again as an example, in the case of alignment requiring an in increase from a 10% national tariff rate to a 25% COMESA CET rate, the situation is as follows:

National Tariff	Year 1	Year 2	Year 3 (CET
10%	17.5%	21.25%	25%

The calculation for the later case is as follows: You still need to increase by 15 percentage points from 10% to 25% CET.

In the first year 10+(0.5x15)=17.5%; year 2: 17.5 +(0.25x15)=21.25%; and year 3: 21.25+(0.25x15)=25%

34. To provide another example, this time capturing the HS Code and Description,, the entries will look as follows, and this is the format for Schedule II:

HS	Description	National Tariff	CET	Year 2010	Year 2011	Year 2012
01041010	Pure breeding animals	10%	0%	7.5%	5%	0%
020110	Carcasses and half-carcasses	0%	25%	12.5%	18.75%	25%

35. In terms of alignment to the categories of the CET, the countries with the most number of aligned tariffs to the raw material and capital goods categories are Mauritius (37% of lines), Swaziland (31% of lines), Uganda, Rwanda, Kenya and Burundi (the EAC countries) (each with 30% of their tariff lines). As for alignment to the intermediate goods category, Madagascar has 17% of lines aligned while Uganda, Rwanda, Kenya and Burundi each has 16% of their tariff lines aligned. Lastly for the finished goods category, Uganda, Rwanda, Kenya, Burundi each has 23% of their tariff lines aligned while Malawi and Zambia has 22% and 21% of their lines aligned respectively. The table below provides the detailed picture.

Composition of Alignments by CET bands and by Country

	BI	EG	ET	KE	MG	MW	MU	RW	SD	SZ	UG	ZM
Lines aligned at 0%	2,074	447	223	2,074	144	518	2,573	2,074	1,269	2,137	2,074	1,073
as a % of CTN	30%	6%	3%	30%	2%	8%	37%	30%	18%	31%	30%	16%
Lines aligned at 10%	1,125	913	527	1,125	1,154	634	32	1,125	647	204	1,125	0
as a % of CTN	16%	13%	8%	16%	17%	9%	0%	16%	9%	3%	16%	0%
Lines aligned at 25%	1,602	0	0	1,602	0	1,526	0	1,602	0	81	1,602	1,440
as a % of CTN	23%	0%	0%	23%	0%	22%	0%	23%	0%	1%	23%	21%
Total Aligned tariffs lines	4,801	1,361	751	4,801	1,298	2,678	2,605	4,795	1,916	2,422	4,801	2,513
Total CTN lines	**6,891**	**6,891**	**6,891**	**6,891**	**6,891**	**6,891**	**6,891**	**6,891**	**6,891**	**6,891**	**6,891**	**6,891**

36. The idea of a formula for tariff adjustment is not new to COMESA, as it was applied in the days of the PTA and the early days of COMESA leading to the formation of the Free Trade Area on 31 October 2000. The agreed tariff reduction formula was as follows:

COMESA Tariff Reduction Timeframe

Date	October 1993	October 1994	October 1996	October 1998	October 2000
Rate of Tariff Reduction	60%	70%	80%	90%	100%

37. It will be recalled that nine Member States managed to attain the agreed reductions by 31 October 2000, and that subsequently, more Member States complied, bringing the total to 14 at the moment. Two other Member States, Eritrea and Uganda, reached reductions of 80%; while one Member State, RD Congo, did not make much progress due to a war situation prevailing in the country, but has now stepped up internal consultations to join the Customs Union, which by definition encompasses the FTA. Swaziland still enjoys derogation on the ground of its membership in the SACU. Eritrea as well plans to join the Customs Union including the FTA.

Schedule III

38. Schedule III consists of tariff lines that are not aligned to the CET but could be aligned in the long run or may not be aligned at all due to some other consideration such as religious, cultural or social grounds. It may be important that this schedule be split into two reflecting III(a) those products that could be aligned in the long run, these would constitute the sensitive products; and III(b) those products that may not be aligned indefinitely, and these would constitute excluded products. The excluded products are those products which countries would not be in a position to align to the CET on grounds of religious or cultural considerations.

39. Council, at its meeting in Nairobi, in May 2007 decided that:

Member States be given the flexibility and policy space to enable them address national issues arising out of the implementation of the CET rates of 10% and 25% for intermediate and finished goods respectively and be allowed to protect Sensitive Products for some time with an inbuilt agenda for review aimed at reducing the list of Sensitive Products in the medium to long term.

40. On the basis of this Decision, Schedule III(a) should contain products for which the tariff rates will not be aligned to the CET rates within the three-year transition period, but within the long run period of four to five years.

41. At the same meeting Council further decided that:

Member States be allowed flexibility and policy space to exclude sensitive products from the CET in line with their national policy objectives.

42. This Council Decision allows countries to exclude sensitive products from the CET in line with national

policy objectives. These products should be in Schedule III(b), on Exclusions. However, in order to maintain harmony and a common external trade policy, agreement should be reached on the treatment of excluded products. One consolidated schedule of the excluded products, indicating the countries maintaining the specific exclusion as well as the reason, should be compiled and considered and adopted by Member States; with the possibility of periodic reviews every five years.

Submitted Lists of Sensitive Products

43. Eleven Member States, namely, Burundi, Eritrea, Kenya, Madagascar, Malawi, Mauritius, RD Congo, Rwanda, Sudan, Swaziland and Uganda have submitted their Lists of Sensitive Products. Only Madagascar provided an alignment schedule, indicating a four-year action plan for alignment to the CET. The Table below summarises what emerges from comparing national tariffs and the COMESA Tariff on the assumption that all tariff lines currently not aligned to the CET will be aligned. This is a heroic assumption given that Member States can specify products that can be excluded from the CET for a long run period, Schedules III(a), or permanently, Schedule III(b); but the assumption is still made to facilitate the exercise given that Schedule III is not produced yet by the Member States.

Overall Alignments of Tariff lines by Country

BI	EG	ET	KE	MG	MW	MU	RW	SD	SZ	UG	ZM	
Lines going up	534	2,114	1,022	534	2,254	1,141	3,379	545	575	2,566	534	889
Lines going down	1,501	3,342	5,075	1,501	3,297	3,018	639	1,495	4,269	1,637	1,501	3,227
Total Aligned tariffs lines	4,801	1,361	751	4,801	1,298	2,678	2,605	4,795	1,916	2,422	4,801	2,513
Aligned tariff lines as % of total	70%	20%	11%	70%	19%	39%	38%	70%	28%	35%	70%	36%
Missing/specific rates	55	74	43	55	42	54	268	56	131	266	55	262
Total CTN lines	6,891	6,891	6,891	6,891	6,891	6,891	6,891	6,891	6,891	6,891	6,891	6,891
Count of duplicates at 6 digit	137	343	245	137	94	174	204	44	128	677	137	429

44. The table shows that the EAC Tariff is aligned to the COMESA Tariff to the tune of 70%. This high level of alignment is followed by Malawi at 39%, Mauritius at 38%, Zambia at 37% and Swaziland at 36%. For those Member States for which the Secretariat has National Tariffs, Ethiopia has the lease percentage of aligned tariff lines at 11%.

Treatment of Specific duties

45. The COMESA Tariff does not contain specific duties yet national tariffs have some tariff lines that are specified as specific duties . There is therefore need to develop a formula for converting the national specific duties into ad valorem equivalents in order to facilitate alignment of national tariffs to the COMESA Common External Tariff for the tariff lines whose tariffs are specified as specific. Affected Member States that have applied the WTO formula for conversion of specific duties into ad valorem equivalents may be in a position to use the ad valorem rates they will use at the WTO. COMESA Secretariat has ongoing activities in collaboration with the WTO Secretariat in this area.

COMESA Fund Adjustment Facility

46. The Adjustment Facility addresses cases where adjustment to the Customs Union, including adoption of the CET, will entail revenue losses and other adjustment costs; within the overall objective of the Facility of contributing to the social and economic development of the region. The Facility therefore provides an important means of addressing certain concerns Member States may have in implementing the transition period for the Customs Union. The specific objective of the Facility is to support COMESA Member States in making the necessary fiscal, economic and social adjustments required to accompany the implementation of their regional integration commitments (Free Trade Area, Customs Union, and Common Market).

47. Funds will be granted under the Facility in accordance to the objectives of the Facility and other conditions mentioned in the COMESA Fund Operational Rules. So far, funds have been disbursed to Burundi and Rwanda, and a second call for proposals from Member States has been issued.

48. The Facility provides support to eligible Member States to:

a. Address the loss of customs and other related tax revenues in accordance with the above objectives and other conditions mentioned in the Operational Rules for the Adjustment Facility;

b. Improve the efficiency of domestic markets, the business environment, facilitating the reallocation of capital and labour resources and assisting firms in meeting the cost of compliance to new obligations (thus contributing to mitigate "frictional costs"); and

c. Improve the competitiveness of industries so that they are able to take advantage of new market opportunities through support to productive infrastructures and investment in developing new products, processes and technologies.

Issues for consideration

49. It is important that the region arrives at a common understanding on issues such as the treatment of sensitive products. In particular, it is important to take steps to ensure that the three-year transition period will be duly implemented and Member States will have adjusted to the requirements of the Customs Union by June 2012. in particular, Member States need to adopt and implement their tariff alignment schedules especially Schedule II. Progress should be made as well on producing Schedule III.

50. Regarding Schedule III(a), an important question is whether a Member State can levy any tariff that it wishes in view of the policy space that has been provided for in the Customs Union, or should there be a regional agreement as to what tariff sensitive products in this Schedule should bear? It is important, in addition, to agree on the time frame for adjustment to the CET for tariff rates in this Schedule III(a); in this regard, a time frame of 4-5 years has been indicated.

51. Regarding Schedule III(b), transparency and predictability, as well as the need to maintain a common external trade policy as a Customs Union, require that at least the Schedule III(b) should be notified to COMESA as a body and considered, and should be subject to periodic review. Intervals of five years have been indicated.

52. The issue of exemptions needs to be addressed at a regional level in terms of whether there should be a regional exemption list or countries maintain their own exemptions provided they are notified to the Secretariat for dissemination to all the other members. However, it may be necessary to revisit this matter, in light of the possibility of a Member State maintaining Schedule III(a) and Schedule III(b).

53. In this regard, it will be noted that the Nineteenth meeting of the Council of Ministers in May 2005 decided that a technical review on exemptions and other duty relief measures should be undertaken in COMESA and completed by 31 March 2006. In conforming to this decision, several countries had previously submitted national lists of exemptions and among these countries are RD Congo, Madagascar, Mauritius, Seychelles, Sudan and Uganda.

Conclusions

54. In light of the issues that have been raised in the paper:

a. Those countries that have not submitted their lists of sensitive products and tariff alignment schedules should do so in conformity with the Council Decisions;

b. The region considers sensitive products to constitute at most 20 % (of total tariff lines or total value of trade) so as not to have a Customs Union which is heavily perforated;

c. Consideration of a regional agreement on the duty(ies) to be levied on Sensitive Products for Schedule III(a);

d. Completion of the technical review on exemptions and other duty relief measures in COMESA Member States including finalization of a regional Policy on Exemptions, including the possibility of utilising Schedule III(a); and

e. The CET alignment formula should be used to expedite the generation of Schedule II, as decided by Council; and in this regard, Member States could consider utilising as a basis the model schedules the Secretariat has produced.

FEATURES OF the COMESA CUSTOMS UNION

Swithan Kalobwe

Since Adam Smith's 1776 landmark work of "An Inquiry into the Nature and Causes of the Wealth of Nations" the theory of free trade has enjoyed a long history of prominence. Many of the greatest works of economics have since defended free flow of goods and services across international borders. The rationale of the argument has been that free trade leads to expansion of world trade and that this increases efficiency in production, leading to increased wealth by all. Han Loke Fong of the United Nations Conference on Trade and Development (UNCTAD) in his presentation to a regional workshop on export diversification (Bangkok, Thailand, 3-5 April 2001) uses a very pertinent analogy of boats rising with a rising tide and compares that to how all participating entities should share in the benefits from free trade. Indeed the theory of 'free trade' has for a long time offered intellectual attraction to economists such that in 1905 economist Frank Tausig, as reported by H. Hazlitt in Graboyes, F. (1996) wrote: "--- the doctrine of free trade, however widely rejected in the world of politics, holds its own in the sphere of the intellect." Jagdish Bhagwati (1998) called it a "moral cause" for the world's economy and an engine of prosperity for developing countries.

The theory of free trade has in the present paradigm received an unprecedented boost from the explosion of the expression "regional integration" on the global trading platform. As Sindiso Ngwenya[1] observed in his opening speech at the launch of the Customs Union for COMESA in June 2009, there were three events that propelled the spread of the regional integration wind in the world. The first was increased inward looking policies by Europe which put at the centre stage consolidation of the European Union. Those activities made other countries fear that Europe was closing itself in and so they also started looking for partnerships to secure their markets. The second event was America's change of policy towards regional co-operation. In 1989 America signed the Canada US Free Trade Area (CUSFTA) which later changed to the North American Free Trade Area (NAFTA) after the joining in of Mexico. The third was the disintegration of the Soviet Union which brought about reforms in Central and Eastern Europe from planned economies to free market; and many former soviet republics applied to join the EU[2]

The Eastern and Southern Africa geographical space experienced a proliferation of regional trading blocs such as the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Inter Governmental Agreement for Development (IGAD), the Indian Ocean Commission (IOC), the Southern African Customs Union (SACU) and the Southern Africa Development Community (SADC).

COMESA started as a Regional Economic Community (REC) on 8 December 1994, replacing a Preferential Trade Area (PTA) which had existed since 1981. It continued, as the PTA had programmed, with following a uni-linear approach to deeper economic integration envisioned to culminate into a Common market under which there will be free flow of goods and services, capital including human resource, and same economic policies including fiscal and monetary policies. At its inception the REC had twenty – one (21) Member States in the names Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. Over time, some inaugural members left the Organisation. Angola left, Lesotho and Mozambique left in 1997, Tanzania left in 2000 and Namibia was the latest to leave in 2004. On the other hand, new members joined such as Egypt (1998), Seychelles (2001) and Libya (2005). From 2005, membership of the REC remained stable to the extent that as at the beginning of 2010 it was maintained at the same number of nineteen.

The first step of integration after the establishment of COMESA was the Free Trade Area (FTA) established in January 2000. The FTA started with nine Member States being Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe. Rwanda and Burundi subsequently joined in 2004, while the Comoros and Libya also joined in 2006. It was an encouraging development that the FTA which started with nine members at inception

1 *Sindiso Ngwenya is the Secretary General and CEO of the Common Market for Eastern and Southern Africa (COMESA)*
2 *Sindiso Ngwenya's Speech at the launch of the COMESA Customs Union in June 2009, Victoria Falls Town, Zimbabwe.*

grew to having fourteen of the nineteen member States with all the five remaining ones working on their impeding obstacles.

During its life through the FTA, the COMESA region developed itself to levels where it became adequately capable of responding to global and regional challenges. The global financial crisis of the 20s, for instance, did not have as terrible a deleterious effect on the region as initially feared. This strength partly precipitated from the various Institutions that COMESA developed. The institutions included the African Trade Insurance Agency which provided cover for turmoil and terrorism; the PTA Bank which provided trade and project finance to the private sector; the Clearing House which established a Regional Payment and Settlement System, to reduce the cost of effecting payment in regional trade; and the COMESA Fund Adjustment Facility which was created to assist countries that faced adverse effects due to implementing the trade liberalisation programs. COMESA FTA, consequently showed an encouraging performance on the trade front to the tune of having a phenomenal increase in internal trade volume which grew from USD 3 billion in 2000, when the Free Trade Area was launched, to USD 13 billion in 2008. As Panagariya (1999) argued, even trade diversion is beneficial to the Union due to the improvement in the terms of trade it brings. COMESA therefore has all the right to claim every benefit it accrues from its trade liberalization programme.

The Treaty establishing the Common Market for Eastern and Southern Africa (COMESA) states in Article 45 that "There shall be progressively established in the course of a transitional period of ten years from the entry into force of this Treaty, a Customs Union among the Member States. Within the Customs Union, customs duties and other charges of equivalent effect imposed on imports shall be eliminated. Non-tariff barriers including quantitative or like restrictions or prohibitions and administrative obstacles to trade among the Member States shall also be removed. Furthermore, a common external tariff in respect of all goods imported into the Member States from third countries shall be established and maintained".

In pursuit of the dictates of the Treaty, and having matured at the FTA stage, COMESA decided to take another step into deeper integration by migrate to the Customs Union. Consequently, the Customs Union was launched in June 2009 and the REC gave itself three years transition period within which the Union was to be fully implemented.

Customs Union can be described as when two or more Customs territories (which may not be single Countries) join together to form one Customs territory so that they can trade between themselves free of quotas, quantitative and value quotas, and without customs duties while imposing same duty rates on goods coming from outside them. In short, therefore, a Customs Union is a Free Trade Area with a Common External Tariff (CET). In order to have a CET there is necessary need to have a common coding system of goods known as Common Tariff Nomenclature (CTN). The other intrinsic characteristic of a Customs Union (CU) is application of same customs procedures, customs documentation and therefore same Customs law.

A. Common Tariff Nomenclature

The World Customs Organisation (WCO) has taken the lead in having all goods that are traded internationally to be described in the same way. Each description has an internationally agreed code and the combination of such codes and descriptions are collected in a system called "Harmonised Commodity Description and Coding System or simply the Harmonised System (HS)". This coding system managed at the WCO level only goes up to six-digit level, and Customs territories can expand it to eight and ten digits depending on how specifically they wish to describe their products. If for instance, the WCO describes all personal computer monitors as "monitors of a kind use in an automatic data processing system of heading 84.71" (where computers are classified) and codes these computer monitors in 8528.59, COMESA Member States might wish to have statistics on importation of monitors of particular dimensions and therefore specify these in a code at eight digit level as 8528.5910 and describes them as "monitors with a diagonal measurement of the screen not exceeding 63.5 cm".

Member States set out to agree on a Common Tariff Nomenclature. They held several meetings in which they reached consensus regarding which tariff lines to keep from various national tariff books of Member States and when they finished that exercise they engaged regional experts in the HS to polish up descriptions, coding and arrangement of the CTN. The finalisation exercise by the experts included taking a comprehensive review of the COMESA tariff structure, refining it through inclusion of Section, Chapter, subheading notes and in some cases supplementary notes to further describe products peculiar to the region, and to ensuring that all agreed tariff splits submitted by Member States were inserted. The experts made the structure such that Column "A" stands for the

HS at six-digit level (WCO level) and Column "B" stands for the HS code at eight-digit level (COMESA level). Where the WCO codes are not split COMESA adds two zeros so as to bring the tariff line to eight-digit level. In that case, all tariff lines are coded at eight-digit level.

B. Common External Tariff

The external tariff is the rate at which customs duty on imported goods is charged. Since a Customs Union is one Customs territory, it is a necessary attribute that all parties to the Customs Union should have same rates on like goods. This means that if customs duty on a bicycle is charged at 10% in Zambia, duty rate on a bicycle should be 10% in Malawi, Zimbabwe, Kenya Egypt,--- and everywhere else within COMESA. These harmonised rates are what referred to as Common External Tariff (CET).

COMESA Member States started negotiations over the ideal CET structure way before the launch of the Customs Union. After very long and detailed discussions they agreed on having a four band customs duty regime as follows:

a. 0% for capital goods;

b. 0% for raw materials;

c. 10% for intermediate products; and

d. 25% for finished goods.

After completion of the CTN therefore, the next exercise was to categorise goods according to the four bands: capital, raw, intermediate and finished products, and then assign duty rates of 0%, 10% and 25% to each tariff line according to how the product has been categorised.

C. Sensitive Products vs. Excluded Products

COMESA is aware that Member States maintain duty rates on goods for different reasons. Some goods, such as alcohol have high tariffs in some Member States for religious reasons because the product is not encouraged in those States, whereas it has high tariffs in some other Member States because it is a revenue earner since the product is consumed in high quantities even when its price is high. Some goods have lower rates because a Member State wishes to lower the cost of importing them, for instance as raw materials in a preferred industries, or they may have lower rate because they are essential commodities to human welfare.

In view of the COMESA CET, all those products whose national tariffs do not match the CET are considered sensitive. Those tariff rates have to be aligned to CET within the three years transition period which started from the date of the Customs Union launch which was 7 June 2009 to 7 June 2012.

There are, however, certain goods on which Member States will not align duty rates to the CET. Duty rate on alcohol, for instance, is argued by some Member States with the Islamic faith that there cannot be compromise on that product because it is not welcome in their national territories on religious grounds. Concerned Member States therefore insist on a prohibitively high tariff rate on alcoholic beverages within their national territories. As another example, there may be some raw materials essential to some critical industry which may, by COMESA categorization, fall under the 10% band for intermediate products, but which a Member State finds crucial to continue with its current national tariff of 0%. Products for which Member States do not intend to align tariffs to the CET are referred to as "Excluded Products". Each Member State will prepare a list of such products, and each Member State will have to justify to other members why a given product should be on the list. This list has been provided as a safety valve to allow some flexibility since COMESA may not possibly take on board all the various biases Member States have given to various products.

D. Revenue Collection and Sharing Vs. Free Circulation of Goods

When a REC becomes a Customs Union, free circulation of community goods becomes a given attribute. Once imported goods enter the Customs territory and are subjected to applicable customs procedures that make them community goods, they should enjoy the freedom of circulating to any part of the customs territory without further payment of import duties in the same way that locally produced goods do. How then do foreign goods become community goods?

The most common way of domesticating imported goods is by collecting import duties on them. In November 1999, COMESA Ministers of Trade considered several ways of collecting import revenue on foreign goods and the options considered were the following:

i. Establishment of a Customs Revenue pool. This is an option where revenue on imported goods is collected at the border of the first country into COMESA. The collected revenue is then put in a common account and the revenues are shared among Member States at an agreed time, and according to an agreed formula. The advantage of such an arrangement is that it ensures free circulation of imported goods since once imported into COMESA the goods can be taken anywhere within the region, even where they were not initially intended to go. It gives importers freedom to sell their goods where they see best returns. Furthermore, because duties are collected at entry point, chances of losing import revenue through transit frauds are not there.

This approach, however, has many intrinsic and intricate problems. COMESA has nineteen Member States who are very widely spread geographically. These Member States have varied needs and dependency levels on import revenue. If an island Member State, for instance Madagascar, imports batteries from India, those batteries go straight to Madagascar without passing through the main land Africa. Why should Madagascar postpone using the revenue collected on those batteries, and instead send the money to the common purse and then start waiting for its share when none of the Member States had anything to do with the importation of those goods, even just at facilitation level? Secondly, some COMESA Member States ran cash budgets and the agreed time and intervals for revenue distribution might not match the demand times of a Member State. Thirdly, this approach rides on trust, that every Member State will confidently receive declarations from a border Country regarding how much was imported and collected. This is a recipe for potential conflict because if a border country wants to under declare its collections it will simply not reflect the related importations on the statistical reports. Presupposing sufficient trust among Member States may not be the wisest thing to do especially in view of not uncommon disputes on origin qualifying goods. Further, the REC has not harmonized internal taxes such as Value Added Tax (VAT) and Excise duty which are collected on similar goods when imported. The effect of not collecting such taxes at the rates applicable in the Country of consumption might lead to unfair competition in the Country of consumption. If, for instance, VAT on shoes in Country A is 10% and country A collects at that rate on shoes destined to Country B where the VAT on shoes is 15%, the imported shoes will have a price competitive advantage in Country B over the shoes manufactured in that Country.

Collecting at Entry Point on behalf of Country of Consumption. This is an arrangement where border Country collects on behalf of landlocked country and banks the revenue collected into the destination Country's designated account. In doing such collection, the border country would use the CET for Customs duty, and the VAT and Excise duty rates for the Country of Consumption. In this option, funds would not be delayed for those member States running on Cash budgets, and islands would have to keep what they collect for themselves. However, this also is not without inherent problems. What happens when country of consumption discovers there was an under collection on a consignment? What happens to Customs broking industry in landlocked Countries? It should be recognized that Customs broking and guaranteeing engage a lot of people who also may be an important political constituency in some Member States.

European Union method. The European Union (EU) collects revenue at port of entry into the EU and the revenue is deposited with the European Commission, which uses the revenue on European Union matters. The trouble with this method is that most COMESA Member States have very strong reliance on import revenues such that giving it up to the COMESA Secretariat would not be a feasible option.

Collection at Country of destination. Member States continue collecting import duties at entry into the consuming State as at present. There is a school of thought which argues that the disadvantage of this option is that importers will not be free to divert their goods until they report them first to Customs authorities in the Country of destination, and that may be a minus from the "free circulation" concept. Further, the region will continue facing the risk of transit fraud which it is still grappling with at present, a risk that would greatly be avoided if revenues were collected at entry point into the Customs Union territory. The counter thought, however, is that there are already ways of dealing with transit fraud and collecting revenues at country of consumption will not make the situation any worse. Besides, the region is developing transit procedures such as the COMESA Carnet which is a facility of using one regional bond to transverse national boundaries, and those procedures are designed to counter such unscrupulous behavior as transit fraud. In addition, the option of collecting revenues at destination has advantages of avoiding quarrels between Member States over how accurate the collection may have or may have not been. Clearing agents (Customs brokers) will continue doing their work as usual and therefore the political disfavor is also avoided. Regarding free circulation, the concept of free movement of goods applies only to community goods and once foreign goods are cleared with Customs and therefore become community goods, they will enjoy free circulation regardless of where and when they became community goods. Where an importer wishes to change Country of destination from the one declared on documents, there are already procedures that permit that, and that choice will still be with importers for as long as they report to Customs and do the correct thing.

The Council of Ministers in their 8th Meeting of November 1999 found the method of collecting at destination the most suitable and decided "--- that option (d) be adopted and that Member States continue to collect Customs revenue at their port of entry until conditions permit the adoption of an alternative option". (Report of the Council of Ministers, Nov. 1999, Lusaka, Zambia)

E. COMESA Customs Management Regulations

Technical officers from Member States drafted the Customs Management Regulations which are to guide the region in managing Customs affairs. These are called "Regulations" because they are adopted and made into effect by Ministers since COMESA does not have a Parliament yet to enact Acts of law. However, the Regulations have the effect of a principal Act and the region will now develop "Enabling Guidelines" to implement the Regulations.

F. Harmonisation of Value Added Tax and other internal Taxes on Goods.

In view of the differences in Value Added Tax and Excise duty rates, and considering that Member States have varying types of taxes on goods, a study was conducted for the purpose of investigating the feasibility and benefits of harmonising such taxes. The Council of Ministers of trade noted the study on the harmonisation of tax policies and taxation among the Member States in order to facilitate the smooth operations of the Customs Union. The Council observed that other regional groups such as the EU and the Western African Economic and Monetary Union (WAEMU), which have Customs Unions and have been implementing VAT for many years did not harmonise the VAT rates and structures. The Council further observed that what was required was to develop new strategies to simplify, modernise and standardise the VAT system in order to enhance compliance and increase tax revenue. "Council therefore decided that COMESA should not attempt to harmonise VAT, at least at the current stage, but rather member Countries should share experiences in the implementation and management of VAT" (Report of the Sixteenth Meeting of Council of Ministers, 2-3 December 2003, Lusaka, Zambia.)

G. Valuation

Since the Customs Union goes with free circulation of community goods, it is imperative that imported goods should be domesticated by same standards, that is, like goods should pay same amounts of duty. The amount of customs duty is a function of import duty rate and the Customs Value, which is the value for duty purposes. Import duty rate is standardised by use of the CET. Customs Value should also be standardised by way of harmonising the formula and composite elements. In consideration of this concern, the Council of Ministers, during its eighth meeting of November 1999, noted that "--- a common Customs Valuation system was aimed at providing a fair, uniform and neutral system of customs valuation of goods to conform to commercial realities and to obviate arbitrary, diverse and fictitious customs values. It was noted that all members of the WTO had agreed to implement the GATT Valuation System (Article VII of GATT) by 2000".

After noting this the Council therefore decided that "all Member States who are not using the GATT Valuation System should adopt the GATT Valuation code of the WTO and levy Customs duties on the basis of the code, as decided by Council at its seventh meeting in May 1999 in Nairobi". (Report of the 8th Meeting of the Council of Ministers, 15-16 November 1999, Lusaka, Zambia).

OVERLAPPING MEMBERSHIP

The explosion of the phenomenon of regional economic integration onto international economics has seen many countries belonging to several regional economic groupings to the extent that it is reportedly only Mongolia does not belong to any regional economic grouping among all World Trade Organisation members.

COMESA has the following members: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. All these Countries belong to more than one Regional Economic Communities (REC). Burundi, Kenya, Rwanda and Uganda belong to the East African Community (EAC); Comoros, Madagascar, Mauritius and Seychelles belong to the Indian Ocean Commission (IOC); Democratic Republic of Congo, Malawi, Zambia and Zimbabwe belong to the Southern Africa Development Community (SADC); Djibouti, Eritrea and Ethiopia belong to the Inter-Governmental Authority on Development (IGAD); Egypt, Libya and Sudan belong to the Greater Arab Free Trade Area (GAFTA); while Swaziland belongs to the Southern Africa Customs Union (SACU).

Overlapping membership has been seen as a problem for many Member States in the Southern Region of Africa. Apart from Mozambique, all other Countries belong to more than one Regional Economic Community (REC) such as COMESA, EAC, AFTA, GAFTA, IGAD, IOC, SACU and SADC. This has brought up some argument and belief that since a country cannot belong to more than one Customs Union countries will have to make choices when it comes to joining such. The underpinning arguments leading to such a recommendation are based on revenue accountability and sharing complications, conflictual trade policy, practice and law.

The phenomenon of multiple memberships would not be a problem if Common External Tariff rates between the RECs are the same and each country is collecting revenue for itself. That is simply because Countries would have no interest in querying why this country collected only that amount from a particular consignment since each Member State will have no pecuniary interest in collections made by another member State. Further, if the Customs Unions harmonise their Customs management legislations, and trade policies, there would be absolutely no reason why a Country cannot belong to more than one Customs Unions.

In the effort of easing the complications of managing the various Customs Unions of the Eastern and Southern African geographical space, heads of State and Government of the region decided in October 2008 that COMESA, EAC and SADC should form one Free Trade Area. The region has been working on this directive and as at the time of this publication legal documents including the Agreement with its fourteen Annexes had already been drafted and were being considered by Member States for negotiations with the other RECs. It is hoped that once the three RECs start cooperating in a Free Trade Area it would be easier for each one of them to implement its own Customs Union.

In conclusion, it is important to note that COMESA is on course with its regional integration agenda. Having started with Preferential Trade Area it matured enough to migrate to Free Trade Area where it stayed from 2000 to 2009. During its life in the Free Trade Area the region developed institutions to support its operations, institutions such as the PTA Bank for private sector finance; it improved the regional payment system through the Clearing House; and the COMESA Fund Adjustment facility which is intended to help Member States cushion the effects of losses arising from liberalisation programmes. The region increased its intra trade volume and improved its internal market by having fourteen out of its nineteen members into the FTA such that it decided to migrate to the next level of integration which is the Customs Union. Since a Customs Union is an FTA with a Common External Tariff, the region has already developed and agreed on a Common Tariff Nomenclature, a Common External Tariff and has adopted common Customs Management Regulations (CMR).

What is remaining now is for member States to start using these instruments of CTN, CET and CMR. The CTN will have to be adopted in its entirety while the CET will be adopted with minor exceptions in form of “Excluded Products” meaning those with differentiated rates from the CET rates. The CMR will have to be domesticated in its entirety while amending national legislations to suit the CMR.

Once the Customs Union is fully implemented and strengthened the region will start preparing for migrating to the next stage of integration which will be the common market in 2015 and the monetary Union planned for 2018.

The Political Economy of the COMESA Customs Union

Sindiso Ngwenya and Themba Munalula

The Common Market for Eastern and Southern Africa (COMESA) is the largest regional economic grouping in Africa in terms of geographical expanse. The Treaty establishing COMESA was signed on 5 November 1993 and ratified on 8 December 1994. COMESA has 19 Member States, of which 15 are currently members of the WTO. COMESA established a Free Trade Area in 2000 requiring all Member States to eliminate all duties on imports originating from other Member States. Nine states, that is, Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe signed up at the time and this number rose to fourteen by the end of 2008. In June 2009, COMESA established a Customs Union which provides a framework to coordinate and harmonize policies and strengthen COMESA's engagement with the rest of the world. The COMESA customs territory includes the land, water and air space of 19 member States.

Article 3 of the Treaty specifies COMESA's aims and objectives as:

a. Attaining sustainable growth and development of the member States by promoting a more balanced and harmonious development of its production and marketing structures;
b. Promoting 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. Cooperating in the creation of an enabling environment for foreign, cross-border and domestic investment including the joint promotion of research and adaptation of science and technology for development;
d. Cooperating in the promotion of peace, security and stability among member States in order to enhance economic development in the region;
e. Cooperating in strengthening the relations between the Common Market and the rest of the world and the adoption of common positions in international fora; and
f. Contributing towards the establishment, progress and the realization of the objectives of the African Economic Community.

The ultimate mission of COMESA is to achieve sustainable economic and social progress in Member States through increased cooperation and integration in all fields of development, particularly in trade, customs and monetary affairs, transport, communication and information, technology, industry and energy, gender, agriculture, environment and natural resources.

COMESA's 2025 vision is to create a fully integrated and internationally competitive regional economic community; a community within which, there is economic prosperity demonstrated by high living standards of its people with political and social stability; a community within which goods, services, capital and labour move freely across the geographical borders. Having established the Customs Union in 2009, the next steps to achieve this vision are to establish a common market, and an economic community. COMESA's target is to double per capita income and halve the number of poor people through a steady expansion of its regional economy at an average growth rate of 6-8 % per year.

The creation of the Customs Union is a crucial step in furthering economic integration by increasing economic ties between COMESA Member States and improving the competitiveness of the private sector within the bloc.

A Customs Union will result in an enhanced flow of goods and services in the region as producers take advantage of larger markets to market and sell their goods. This will lead to greater intraregional trade as producers maintain a price advantage for their regionally produced goods over those from third countries. The large market that COMESA offers will encourage mass production of goods and services, which lowers costs of production due to the creation of economies of scale. The Customs Union will lead to the harmonization of taxes on production inputs in order to level the regional playing field and enhance efficiency in production and competitiveness. The Customs Union will inevitably require and lead to a common policy formulation in order to provide a positive coordination mechanism and a positive signal to the investment community. A common policy formulation will pave the way for deeper integration and more interdependence among Member States. This development will signal to the private sector that the process is irreversible; therefore, cross-border investment and all its associated benefits (i.e. employment generation) will increase. The Customs Union will have benefits for consumers within the region.

Viability of the Customs Union is contingent on political coordination and common economic objectives. Commencing with the latter point, COMESA Member States have similar trade profiles, i.e. a large and almost universal dependence on a few commodities which are raw materials. This gives impetus for breaking out of such a mould and doing so regionally has greater advantage than doing so unilaterally. In addition, the fact that the region has lagged behind in the value chain and remains a net importer of value added products has huge implications on the potential welfare of COMESA Member States. The Customs Union has the potential to unlock these opportunities in value addition as it provides a necessary environment for unlocking regional investment and concomitant trade opportunities. Common economic objectives can further be adduced from the recent thrust for infrastructure development as a key supply side component to enhanced trade efficiency. This thrust has a direct implication on the reduction of the costs of doing business regionally and internationally.

The economic objectives notwithstanding, political coordination is cardinal in ensuring that a customs union is economically viable. It should be noted that the achievement of coordination is a function of time as national constituents are brought on board to endorse regional integration and indeed deeper integration processes. COMESA is no exception as its Member States have been perfecting the tenets of the COMESA Treaty from the founding days of the precursor Preferential Free Trade Area. The formation of the Free Trade Area (FTA) in 2000 was a significant milestone in this process. Despite the fact that four out of the 19 Member States have not yet acceded to it, the process is a success when viewed from a gradual and realistic integration process perspective. Intra-COMESA trade has increased five-fold from USD3 billion in 1997 to about USD15.2 billion in 2008. Projections are that the trade will increase more rapidly under the Customs Union. Coordination is a key tenet of all COMESA programs as evidenced by the fact that successive COMESA Summits have demonstrated the requisite will to coordinate integration in the region.

The establishment, operation and consolidation of the Customs Union will require political will and unwavering commitment to the process. Political leaders will need to lead the process at the national and regional levels, through the actions of the executive and the legislative arms of their respective governments. The judiciaries will need to be conversant with the implications of the regional law and the municipal law. But equally important, stakeholders, including natural and legal persons such as companies, will need to know that they can take up action in regional courts to assist and ensure the implementation of integration programs and instruments. Political leaders need to take the initiative to inform all stakeholders within their countries of the opportunities offered by the Customs Union and COMESA as a whole.

Access to regional markets is an important factor when choosing the location of an investment, therefore, the establishment of the Customs Union is a clear political statement of the determination of Member States to proceed with deeper economic integration, and a positive signal to investors and financial markets world-wide. Investors can take advantage of the proximity of other markets and the preferential regime created by tariff-hopping (i.e. by establishing behind the Common External Tariff - CET, in this case within the COMESA region). The program for elimination of barriers to intra-COMESA trade has assisted phenomenal growth. The COMESA region's population of about 400 million and its GDP of USD 290 billion position it as a most attractive region for investment and trade. The Customs Union builds on this success: projections are that performance under the Customs Union will be even higher. For instance, trade between 2007 and 2008 increased from US$9.2 billion to US$14.3 billion, which shows that the market has been eagerly anticipating the creation of the Customs Union[3] .

The Customs Union will allow COMESA countries to not only bounce back from the current economic crisis but also to better withstand any future economic shocks. The current financial crisis has highlighted the importance of strengthening integration in the region. For example, international demand for goods produced within COMESA countries has declined due to the recession, with cancellations of orders reported. However, demand within COMESA continued to increase with no reported cancellations[4]. Additionally, the financial meltdown has further reduced the access to credit of COMESA countries. However, the launch of the Regional Payment and Settlements System

3 Interview with Sindiso Ngwenya, Secretary General of COMESA. http://ictsd.org/i/news/tni/54826/. September 2009. Retrieved 21/01/10.
4 Ibid.

(REPSS) will help COMESA Member States in reducing costs by allowing cross-border transactions to be made with local currencies, which will save valuable foreign exchange for Member States. In fact, the REPSS will allow the cost of settlements to drastically drop from USD 500 million to USD 75-80 million. Additionally, it will greatly reduce the amount of time the settlements take from up to a month, down to 24 hours.

There is a global thrust towards regionalism. Examples of widely known regional blocs include, in Asia, the Association of South East Asian Nations (ASEAN), which is rapidly moving on into deeper integration; in America, the Free Trade Area of the Americas (FTAA – still under negotiation), the North American Free Trade Area (NAFTA) and the Common Market of the South (MERCOSUR); covering both Asia and America is the Asia Pacific Economic Cooperation (APEC); in the Gulf region is the Gulf Cooperation Council; and perhaps the best known of them all, in Europe, is the European Union (EU).

While all regions and all continents are integrating ever more closely into trade blocs and investment markets, if protectionism is applied, the possibility of fortresses emerges. It will be recalled that time and again, regionalism has been considered a faster way to resolve issues particularly those of fundamental importance to the participating countries. For instance, the formation of NAFTA was expedited when the Uruguay Round negotiations were dragging. This was considered the American response to the perception that the EU was becoming a fortress. Therefore, regional integration is important for COMESA countries in order to create internal markets for goods produced in the region, so that if foreign markets become less favourable for COMESA products, local producers can still take advantage of a large regional market.

Globalisation seems unstoppable, even with the financial crisis and the recession in many major economies, provided it is beneficial for all key players. Regional arrangements are preparatory and staging grounds for fuller and more beneficial participation in the globalisation process. For example, industries can grow internally within a country (if large enough) or a region while preparing for a global expansion. The newly industrialised countries used this strategy to their benefit. Additionally, group positions carry better clout in international fora than isolated national positions pursued by individual countries. The groups include the various groups of countries at the WTO, (for instance the LDC Group and the Africa Group), and in other international organisations. The COMESA Customs Union therefore offers a political and economic facility for our enterprises and for our Member States to obtain better results in their international relations.

At the regional level, the COMESA Customs Union, through its instruments, promotes better regional coherence in the public and private sectors, enabling the Member States to have better organisational capacity in addressing critical issues. The instruments of the Customs Union are numerous. For instance, the Common External Tariff and common regulations of commerce (such as the Common Market Customs Management Regulations) provide mechanisms for a harmonised regime towards third countries, which can be managed to present a single economic space with common internal and external trade policies. Additionally, there are trade remedies, which provide mechanisms for addressing unfair trade practices, as well as a raft of other instruments that assist the harmonisation and coordination of policy in key areas for social and economic development (health and technical standards, procurement regulations, etc).

COMESA, as a rule-based organisation, must abide by the obligations the Member States have assumed in the Treaty and other instruments. The Treaty provides for a process of economic integration that starts with a free trade area and proceeds to a monetary and economic union. Not creating a customs union would amount to reneging on these treaty obligations and would do irreparable political damage to COMESA as an organisation both by throwing into doubt the credibility of the entire integration process and by questioning COMESA's seriousness towards its commitments. This should be avoided by proceeding with the integration process set out in the various COMESA instruments. The Customs Union is the next step in COMESA's integration programme.

The COMESA integration process is cast within the overall framework of creating the African Economic Community and the African Union. Africa is large, and managing it will continue to require the continental and regional institutions that share out functions on the basis of subsidiarity. There will therefore continue to be an important role for the regional institutions, even though they are expected to eventually be transformed into agencies of the continental institutions. The COMESA Customs Union constitutes an important building bloc for the continental process. It is now no longer in doubt that the African renaissance must be supported through ever stronger African institutions that assist and promote a united, stronger and free Africa that has a global voice and that beneficially participates in global processes. COMESA assists this process by bringing the realisation of this vision ever closer.

The COMESA Customs Union is an important step within the tripartite process of establishing a customs union covering the three regions of the EAC, SADC and COMESA. It would now remain for SADC to follow suit, working closely with COMESA and the EAC. The COMESA and EAC Customs Unions demonstrate that the tripartite process will be feasible by proving that coordination and harmonisation is possible through approximation of the Common External Tariff and other regulations of commerce.

The benefits of a Customs Union are well known. However, like with all changes, there are economic operators who will gain and those who may have to adjust or risk loss. Although the benefits are expected to outweigh the constraints (which are short-term), COMESA is aware of the potential risks. All Member States need to be involved in strengthening regional trade policy for the Customs Union and in building regional programmes to mitigate the adjustment costs.

The institutions of COMESA, namely the PTA Bank, the Clearing House, the Re-insurance Agency, the African Trade Insurance Agency, and the COMESA Fund will provide the required flanking measures to support the Customs Union and ensure equitable benefits for all member states. The PTA Bank has continued to lend to the private sector even amidst the current financial crisis and the ATI provided important cover for non-commercial risks that have rescued enterprises from damage and loss resulting from political turmoil and terrorism.

In particular, the COMESA Fund will deal with effects of trade liberalisation that may require adjustments, as well as with building infrastructure to consolidate the regional market. Accordingly, countries have been invited to seek the funds. In addition, provision has been made for flexibility and policy space. Countries will have transition periods within which to implement the Common External Tariff (CET), and there will be a possibility of excluding certain sensitive products. Other possibilities include resorting to trade remedies to deal with unfair trade practices or an avalanche of imports in a manner that injures domestic industry.

Painstaking efforts have been undertaken over these past years to ensure that the COMESA Customs Union is put in place, and that it will be beneficial across the board. Measures have been put in place to take care of possible risks and losses. The Customs Union is meant to specifically benefit the users. The public and private sector, civil society organisations, and representatives of the people need to be aware and convinced of the importance and necessity of the COMESA Customs Union in order to secure its benefits for the region. The Customs Union answers to key geopolitical issues which cannot be ignored.

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS AND COMESA CUSTOMS MANAGEMENT REGULATIONS

Dorica Suvye Phiri

The past few decades have seen increasing debates on the importance of intellectual property rights (IPRs) at international, regional and national levels. Discussions have been, among others, in relation to trade, investment, technology transfer, public health, food security education and human rights.

Enforcement of IPRs has emerged as one of the pressing issues on global and regional trade and Intellectual Property (IP) agenda. Developed countries have continuously pushed for higher standards of IP in various multilateral and bilateral fora. One of the justifications has been the high income loss that counterfeiting and piracy has caused to right holders in developed countries. The OECD estimated that the value of international trade in IPRs- infringing goods as 200USD billion or slightly more than 2 percent if global merchandize trade in 2005[5]. Some commentators have argued that the empirical estimates of these claims are exaggerated as 'no rigorous quantitative analysis has been carried out to measure the overall magnitude of counterfeiting and piracy'[6]. Commentators have questioned the methodologies used arrive at estimates ascribing them as 'educated guess' than true estimate[7]. However, there was no evaluation of the effectiveness of the current enforcement rules before it was concluded that the adoption of new rules is urgent and indispensable[8].

Achievement of a more effective enforcement of IPRs was one of the main driving forces behind the conclusion of the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) during the Uruguay round of multilateral trade negotiations. TRIPS Agreement sets down the minimum standards for IP protection including detailed enforcement provisions to which all WTO member states must comply with.

The Common Market for Eastern and Southern Africa (COMESA) region despite its mission in endeavouring 'to achieve sustainable economic and socio progress in all Member States through increased cooperation and integration in all fields of development particularly in trade...' , does not have any express provisions on IPRs in the Customs Management Regulations. Arguably, a member state may invoke Article 50 of the Treaty establishing COMESA to protect items of national importance which may include its IPRs. Article 50 allows member states to introduce restrictions or prohibitions affecting the protection of any item deemed to be of national importance provided that the member state concerned furnishes proof that the item is of national importance.

Moreover, Regulation 82 of the Common Market Customs Management Regulations provides that goods, the importation of which are prohibited or restricted by an international agreement to which the Common Market is a contracting party shall not be imported into the Customs territory, and those goods whose importation is prohibited or restricted under Regulation 125 (2) of the Common Market Customs Management Regulations shall only be imported into the Customs territory in conformity with provisions of that Regulation or such other prevailing provisions.

Regulation 125 (2) provides that:

Sub regulation 1 shall not preclude the imposition of prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of national treasures possessing artistic, historic or archaeological value or the protection of industrial and commercial property in accordance with Article 50 of the Treaty. Such prohibitions or restrictions shall not, however, institute a means of

5 OECD (2007), The Economic Impact of Counterfeiting and Piracy, DSTI/IND (2007)9/PART4/REV1, Paris available at http://www.oecd.org/dataoecd/11/38/38704571.pdf p 3 (accessed on 14th April 2010).
6 Carlos Correa, 'The push for Stronger Enforcement Rules: Implication for Developing Countries' in ICTSD , The Global Debate on the Enforcement of Intellectual Property Rights and Developing Countries Issue Paper No 22.
7 Carsten Fink, ' Enforcing intellectual property rights : An economic Perspective' in ICTSD , The Global Debate on the Enforcement of Intellectual Property Rights and Developing Countries Issue Paper No 22
8 As above.

arbitrary discrimination or a disguised restriction on trade between Member States.

Clearly there are no explicit rules on protection of IPRs in the Customs Management Regulations even though Regulation 125 (2) allows the imposition of prohibitions or restrictions on imports, exports or goods in transit so as to protect 'artistic or the protection of industrial and commercial property'.

Recognizing the existence of this gap in the Customs Management Regulations, Council in its Report of the Twenty Sixth Meeting of Council of Ministers[9] adopted on 4 June 2009 at Victoria Falls, Zimbabwe, 'requested the Secretariat to Carry out a study on the inclusion of the of the intellectual property rights for possible incorporation in the Customs Management Regulations as amendments'.

This paper therefore seeks to give an overview of enforcement of IPRs. It analyzes the TRIPS Agreement enforcement provisions and the recent drive for TRIPS- plus enforcement standards which risk undermining the purported balance in the TRIPS Agreement. The paper highlights some of the key considerations in formulating rules on IP enforcement for COMESA Customs Management Regulations. The paper proposes that there is need to first create a holistic framework for IPRs in the COMESA region. There is need to implement the COMESA policy on intellectual property rights and cultural industries which set the overall framework for IPRs in the COMESA region and adopted work program for IPR. Enforcement of IPRs should be analyzed within the overall framework of IPRs protection that promotes innovation and creativity for the COMESA region. The enforcement provisions to be developed will have to ensure that they are best suited to the levels of development of COMESA Member States and take into account the flexibilities in the TRIPS Agreement.

INTERNATIONAL FRAMEWORK FOR ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

WTO Trade Related Aspects of Intellectual Property Agreement (TRIPS Agreement)

The TRIPS Agreement is the first international treaty on IPRs that has included specific provisions on enforcement of IPRs[10]. The TRIPS Agreement sets down the minimum standard for IPR protection which all member states of the WTO have to comply with. If a member state decides to provide more extensive protection than specified in the TRIPS Agreement, the national treatment and most favored nation clauses prohibit discrimination between right holders that are nationals of a WTO member, subject to a few exceptions.

The TRIPS Agreement elaborates rules on the procedures and remedies that must be available under national law. These rules aim to recognize the basic differences between national legal systems while providing the effective enforcement action as well as safeguard against abuse in the use of procedures. The TRIPS Agreement does not attempt to harmonize such rules but to establish general standards to be implemented in accordance with the method determined by each member in line with Article 1.1 of the Agreement.

Article 1.1 provides members may but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement provided such protection does not contravene the provisions of the Agreement.' Members are free to determine the appropriate method of implementing the provisions of the Agreements within their own legal system and practice. The Preamble also notes the that negotiating partners recognized "the need for new rules and disciplines concerning…(c) the provision of effective and appropriate means for enforcement of trade related intellectual property rights, taking into account differences in national legal systems".

The provisions on enforcement are contained in Part III of the Agreement which is divided into five sections. The first section lays down the general obligations that all enforcement procedures must meet. These are aimed at ensuring their effectiveness and that certain basic principles of due process are met. The second section deals with civil and administrative procedures and remedies; the third section provides for provisional measures while the fourth and fifth deal with special requirements related to border measures and criminal procedures respectively. These provisions have two basic objectives: to ensure that effective means of enforcement are available to right holders and to ensure that enforcement procedures are applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

The Agreement makes a distinction between infringing activity in general, in respect of which civil judicial procedures

9 COMESA Document CS/ CM/ XXVI/ 2.

10 Some pre- TRIPS treaties made reference to enforcement. For example, Article 9 (1) of the Paris Convention established that all goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name in entitled to legal protection.

and must be available, and counterfeiting and piracy - in respect of which additional procedures and remedies must also be provided, namely border measures and criminal procedures.

General obligations

The general obligations relating to enforcement are contained in Article 41. Article 41 states the basic obligation with regard to enforcement procedures: Members are bound to establish procedures that permit "effective" action against infringement. Remedies available must be expeditious in order to prevent infringements and they must constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article 41 (2) – (5) provides for general principles whose aim is to guarantee due process. Article 41 (2) provides that procedures concerning the enforcement of IPRs must be "fair and equitable" and they may not be unnecessarily complicated or costly or entail unreasonable time limits or unwarranted delays. Article 41 (3) requires that "decisions on merits of a case shall preferably be in writing and reasoned. They shall be made available at least to all parties to the proceedings without undue delay. Decisions on the merits of the case shall be based only on evidence in respect of which parties were offered the opportunity to be heard. Moreover, provisions on enforcement are not to create any obligation to put in place a judicial system for the enforcement of IPRs distinct from that for the enforcement of law in general nor does it affect the capacity of members to enforce their law in general. The provision does not create the obligation with respect to distribution of resources as between enforcement of IPRs and the enforcement of law in general.

Civil and administrative procedures and remedies

Civil and administrative procedures and remedies are contained in Articles 42- 49 of the Agreement. Article 42 provides that civil judicial procedures concerning enforcement of any IPRs shall be made available to right holders. These procedures include: the defendant's right to timely written notice containing sufficient detail; representation by independent legal counsel; ability of parties should be able to substantiate their claims and protection of confidential information with certain national limitations. There are also non mandatory provisions relating to evidence empowering judicial authorities to order the production of evidence; order for damages; make preliminary and final determinations on the basis of the information presented to them. Judicial authorities are to have authority to order injunctions to order a party to desist from an infringement interalia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an IPR immediately after the customs clearance of such goods. Exceptions are to apply in cases of government use and other uses permitted by the government without the authorization of the right holder such as compulsory licences.

As regards the obligation the with regard to the administration of any law pertaining to the protection or enforcement of IPRs, members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith. The application of these rules on procedures and civil remedies is extended to administrative procedures.

Provisional measure

As regards provisional measures, judicial authorities shall have the powers to order prompt and effective provisional measures to prevent an infringement of any IPRs from occurring and in particular, to prevent the entry into the channels of commerce in their jurisdiction of goods including imported goods immediately after customs clearance; and to preserve relevant evidence in regard to the alleged infringement.

These measures could be adopted 'without hearing the other party' where appropriate in particular: where a delay is likely to cause irreparable harm to the right holder; or where there is a demonstrable risk of evidence being destroyed. Where these measures have been adopted without hearing the other party, the parties affected shall be given notice without delay after the execution of the measures at the latest.

Special requirements related to border measures

Much of the current debates surrounding IP enforcement refer to border measures- thus measures that may be adopted by customs authorities or courts to control the movement of infringing goods through one country's territory borders. These obligations however only apply in respect of importation of counterfeit trademark or pirated copyright goods but members may also provide for corresponding procedures for infringing goods destined for exportation. However, where a member has dismantled substantially all controls over the movement of goods across the border with another member with which it forms part if a customs union, it shall not be required to apply the provisions on the TRIPS Agreement relating to special requirements to border measures.

Under boarder measures, Members are to adopt procedures to enable a right holder who, upon meeting certain requirements, has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place to lodge an application in writing with competent authorities for the suspension by the customs authorities of the release into free circulation of such goods.

Counterfeit trademark goods are defined as “any goods, including packaging, bearing without the authorization a trademark which is identical to the trademark validly registered in respect of such goods or which cannot be distinguished in essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation”. Pirated copyright goods are defined as “any goods which are copies made without the consent of the right holder or any person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or related right under the law of the country of importation.

Competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance to protect the defendant and the competent authorities and to prevent abuse. However, shall not unreasonably deter recourse to the border procedures. Moreover the relevant authorities shall have the power to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or where procedures to obtain a decision on the merits of the case was not initiated in accordance with Article 55 of the TRIPS Agreement.

The TRIPS Agreement generally leaves some room for WTO members to determine how they control IP enforcement at the border. Given the burden that the application of broad border measures would put on customs and other competent authorities, it would be advisable for developing countries including COMESA member states to limit them to situations delineated in the TRIPS Agreement. Unfortunately, over the past few years, developed country governments and industries have strongly advocated for broad border measures as essential to prevent IP infringements. They are actively seeking to induce changes in border measures in developing countries beyond what is required under the TRIPS Agreement. The push for expansive application of border measures has now advanced to (as will be discussed in the next section) the World Customs Organization which going beyond the organization’s mandate by recommending TRIPS – plus standards.

Criminal procedures

An obligation is made to provide for criminal procedures and penalties for cases of willful trademark counterfeiting or copyright piracy on commercial scale. The remedies available shall include: imprisonment, monetary fines.
In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Moreover, members may also provide for criminal procedures and penalties to be applied in other cases of infringement of IPRs in particular where they are committed willfully and on a commercial scale. ‘

NEW STRATEGIES IN INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT

Various initiatives for the strengthening of enforcement rules both domestically and in third countries have proliferated soon after the TRIPS Agreement in many developed countries including the US and the European Union. These developed countries have promoted a number of TRIPS- plus[11] initiatives in international fora under the auspices of the OECD, Group of Eight (G8), World Intellectual Property Organization (WIPO), World Customs Organization (WCO) and negotiations of a new international treaty, the Anti- Counterfeiting Trade Agreement (ACTA).

11 TRIPS – plus refers to commitments that go beyond those already included or consolidated in the TRIPS Agreement.

Anti Counterfeiting Trade Agreement (ACTA)

Negotiations for the ACTA started in October 2007, with the United States Trade Representative's (USTR) announcement that the United States, Canada, the European Union, Japan, Korea, Mexico, New Zealand, and Switzerland had agreed to negotiate a new treaty. The aim of the ACTA would be to 'complement the Administration's work to encourage other countries to meet the enforcement standards of the TRIPS Agreement and to comply with other international IPR agreements. It was envisaged that the ACTA would not involve any changes to the TRIPS Agreement but the goal is to set a new, higher benchmark for enforcement that countries can join on a voluntary basis. Secrecy has been one of the biggest problems with the ACTA by standards of international trade negotiations as neither draft texts nor proposals by participating governments have been made public despite repeated demands by civil society groups and governments. The analysis from commentators has been based on draft text which was leaked.

The envisioned ACTA would "include commitments in three areas: (1) strengthening international cooperation; (2) improving enforcement practices; and (3) providing a string legal framework for IP enforcement." The draft ACTA agreement seeks to strengthen the legal framework for the enforcement of IPRs. It builds upon efforts and policies that developed countries particularly the US and the EU have pursued for a number of years in their domestic legislation and in free trade agreements.[12] According to a joint paper written by ACTA parties hoping to clarify the objectives of the agreement and summarize the key elements under discussion, the intended focus is on "counterfeiting and piracy activities that significantly affect commercial interest rather than on the activities of ordinary citizens."

However, several civil society organizations have expressed concern that some provisions currently under discussion could hinder access to medicines especially for the developing counties. It is feared that "injunctions, storage fees and information requirements imposed on alleged infringers of the agreement could make it difficult for generic manufacturers to compete." Further, it is feared that ACTA provisions might restrict access to knowledge and curtail users' rights in the digital environment[13]. Moreover ACTA provisions on injunctions and damages do not allow the flexibilities in the TRIPS Agreement[14].

It is generally believed that the provisions being proposed in the ACTA are highly in favour of IPR owners and greatly limit the legitimate rights of consumers and the public. Even though the draft ACTA states that its provisions would be voluntary, there is a danger that the TRIPS-plus provisions would be transferred to developing countries through bilateral and regional free trade agreements.

World Customs Organization (WCO) Standards Employed by Customs for Uniform Rights Enforcement (SECURE)

The World Customs Organization (WCO) at its June 2006 Council Sessions approved the Provisional Standards Employed by Customs for Uniform Rights Enforcement (SECURE). SECURE has been an initiative mainly of developed countries to promote TRIPS- plus standards on IP enforcement. It enshrines provisional enforcement rules and procedures for right holders on what has been one of the critical aspects of IPRs enforcement: border measures. SECURE is intended to coordinate 'efforts to suppress all kind of intellectual property rights infringement[15]". SECURE working draft contains a Section on 'IPR Legislative and Enforcement Regime Development" which proposes 12 standards of IP enforcement. The proposed standards if adopted would represent a significant departure from the TRIPS Agreement in terms of subjects, scope and measures of protection, disposal methods and member states obligations and rights.[16]

Although the proponents of SECURE had adopted a fast track approach for its speedy, effective coordination among developing countries foiled the attempt to adopt the SECURE draft at the June 2008 WCO Council. This led to the suspension of the SECURE Working Group at the WCO Policy Commission. This was seen as an interim success for developing countries as it has set a pace for the reversal of the attempt to push through new TRIPS plus standards by developed countries at the WCO. However, it is feared that there is a possibility for revival of the TRIPS plus standards by means of internal forum shopping within the WCO.

12 "ACTA Draft Stokes controversy as talks resume in New Zealand", ICTSD, Volume 14 Number 13 14 April 2010 available at http://ictds.org/i/news/bridgesweekly/74044.
13 As above.
14 James Love, "Comments on ACTA Provisions on Injunctions and Damages" Knowledge Ecology International Research
15 See http://www.wcomd.org
16 For a detailed discussion, see Xuan Li, WCO SECURE : Lessons Learnt from the Abortion of the TRIPS- Plus- Plus IP Enforcement Initiative, South Centre Research Paper 19, (December 2008) available at http://www.southcentre.org

Some of the major issues have been that the proposed standards in the SECURE may disrupt normal trade of non infringing goods by delineating the responsibilities of determination of IP infringement among various authorities, while under the TRIPS Agreement the authority to disposal of or destroy infringing goods is vested in judicial bodies rather than customs authorities. In addition, the draft grants more benefits and fewer obligations to right holders at the cost of other stakeholders. This is inconsistent with the Recommendations under the World Intellectual Property Organization (WIPO) Development Agenda which call for a balanced IP protection mechanism for all stakeholders[17].

The SECURE legal framework poses potentially, a serious economic threat to developing countries. Once adopted for implementation, it would be detrimental to the economic growth of developing countries. It is argued that such impact can be viewed from two sides: i) within their territory – there will be increased obligations for customs administration of developing countries, which will lead to higher enforcement costs within these countries; and ii) externally, developing countries would face new types of trade barriers and their enterprises are likely to face greater uncertainties due to new trade barriers[18]. Moreover, the standards pose other threats which include: 1) the lack of mandate and responsibility for WCO as its mandate is to provide technical assistance to customs administration and; 2) the possibility of undermining the delicate balance as enshrined in the TRIPS Agreement as far as the role of the customs is concerned; 3) the existence of a number of TRIPS Plus elements; 4) theis lack of transparency and participation of developing countries and observers from inter- governmental organizations and NGOs in the process.

TRIPS – plus initiatives in Free Trade Agreements

As pointed out earlier, developed countries notably the US and EU have been active in utilizing bilateral and regional free trade agreements to negotiate TRIPS- plus provisions in developing countries. This has been done by either imposing higher or new substantive protection standards or by restricting the flexibilities that the TRIPS Agreement leaves to Members to implement the Agreement. Ensnared by the promise of strengthening political ties and gaining preferential market access, more developing countries are undertaking FTAs with such provisions.

The US has insisted on the inclusion as part of extensive IP chapters in its FTAs, a set of detailed TRIPS plus requirements in the area of enforcement. Even though the FTAs establish, as does the TRIPS Agreement, that the enforcement provisions do not create any obligation to put in place a judicial system for the enforcement of IPRs distinct from the enforcement of law in general or with respect to the distribution of resources for the enforcement of IPRs and the enforcement of law in general,[19] the volume of regulations introduced under FTAs is such that they may force state partners to re allocate resources in order to enforce IPRs.[20] The FTAs themselves declare that the choices that countries make in distributing resources shall not be an excuse for failure to comply with IPRs chapters.[21] TRIPS – plus enforcement provisions in the US FTAs include: expansion of the general obligations; transparency obligations on publication of enforcement information; provisional measures, border measures and criminal procedures and damages among many others.

Just as the US, the EU has vigorously pushed for TRIPS- plus enforcement standards policy through the FTAs. It has stated that this is in line with its Strategy for Enforcement of Intellectual Property Rights in Third Countries.[22] One of the specific actions in the Strategy is to revisit the approach to the IPR chapter of bilateral agreements including the clarification and strengthening of the enforcement clauses, Although in designing the rules for each specific negotiation it is important to take into account the situation and the capacity of our partners, instruments such as the new EU Directive harmonizing the enforcement of IPR within the Community, as well as new customs' Regulation on counterfeit and pirated goods may constitute an important source of inspiration and a useful benchmark.[23]

The Economic Partnership Agreement (EPA) concluded between the EU and the CARIFOURM states signed in October 2008,[24] includes a number of TRIPS – plus enforcement obligations in respect of entitled applicants,

17 45 Recommendations were adopted under the WIPO Development Agenda. Recommendation 45 provides that : "to approach intellectual property enforcement in the context of broader societal interests and especially development oriented concerns, with a view that the 'the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to mutual advantage of producers and users of technological knowledge and in a manner conducive e to social and economic welfare and to a balance of rights and obligations' in accordance with Article 7 of the TRIPS Agreement." See http://www.wipo.int

18 As above.

19 See for example Article 15 (11) (1) and (2) of the United States- Central America and Dominican Republic Free Trade Agreement.

20 Carlos Correa, The Push for Stronger Enforcement Rules: Implications for Developing Countries (note 5 above) p 58.

21 Ermias Biadgleng & Viviana Munoz Tellez, "The Changing Structure and Governance of Intellectual Property Enforcement, Research Paper No 15 (2007) South Centre p 31.

22 Among others, the rationale of the Strategy is that 'violation of IPRs, which is reflected in the presence on the market of increasing volumes of pirated and counterfeit goods has a very negative impact in a number of different areas. The community, being a market that traditionally invests heavily in IP protected goods and services and receives considerable added- value for this effort is particularly affected by poor enforcement of IP even when it takes place in third countries and even if the pirated/ counterfeit goods or services are not destined for the Community market European Commission, Strategy for the Enforcement of Intellectual Property Rights in Third Countries, available at http://traede.ec.europa.eu/doclib/docs.2005/april/tradoc_122636.pdf

23 As above p 8.

24 The negotiations for Economic Partnerships Agreements (EPAs) between African Caribbean and Pacific (ACP) countries and the European Union (EU) were launched in 2000.These negotiations were carried out in terms of the Cotonou Agreement which seeks to replace non reciprocal trade preferences (under the Lome Agreement), which the ACP countries have been receiving from the EU. These nego-

evidence, measures for preserving evidence, right of information, provisional and precautionary measures, corrective measures, injunctions, alternative measures, damages, legal costs, publication of judicial decisions and border measures. Unfortunately, on some issues the EU is demanding from these countries higher standards than which obtains domestically with the EU internal market.[25] There is a possibility that the IP provisions in the EU-CARIFORUM EPA may influence the negotiations of other EPAs some of which involve COMESA Member states.[26]

RECOMMENDATIONS AND CONCLUSIONS

The push for high standards of IPRs enforcement under the various multilateral and bilateral fora may have significant implications for developing countries including COMESA Member states. The economic and socio impacts of IPRs violations and enforcement actions significantly differ between developed and developing countries.

In most developing countries including COMESA Member States, most IPRs are held by foreigners which may suggest that the short run welfare gains of IPR enforcement may be limited (except where domestic consumers are harmed for example in cases of counterfeit pharmaceuticals), with the adoption of the COMESA Regional Policy on IP which is intended to promote innovation and creativity, it is believed that this framework will create a push for IP ownership by COMESA region nationals which will mount domestic incentives for increased IP protection. This makes a case for developing rules on enforcement of IPRs which could be incorporated in the COMESA Customs management rules since enforcement is an integral part of an effective IP regime. Currently none exists in the COMESA region.

In the light of the analysis above, the following recommendations can be made in relation to creating an IPRs enforcement framework within the Customs Management Regulations :

a. It is first important to adopt an overall framework then engage in separate IP issues whilst maintaining a wholistic approach since enforcement of IPRs cannot be approached as a stand alone issue;

b. Ensure that the guiding premise is to ensure that IPR enforcement in the COMESA region contributes to sustainable development for the region and the attainment of the Millennium Development Goals;

c. Ensure that the rules contribute to creating an innovative and creative COMESA region where IPRs are protected

d. Ensure that the rules take into account broader societal interests and especially development oriented concerns;

e. Ensure that the rules take into account and take advantage of the flexibilities under the TRIPS Agreement which accommodates the levels of development and national legal systems for the COMESA Member States since tailored national solutions are the best means to meet the practical IPRs enforcement concerns and actual needs of each country;

f. Ensure that the rules strike a proper balance between the different interests at stake in designing appropriate IP enforcement regime;

g. Ensure that enforcement measures must be equitable and fair and balance the needs of the right holders and third parties and the limitations and exceptions in the IP system;

h. Ensure that rules adopted are not stronger IP enforcement measures and procedures beyond those provided in the TRIPS Agreement unless prior assessment has been made to determine that such TRIPS- plus standards would bring domestic benefits to the COMESA member states;

i. Ensure that the rules adopted do not constitute a threat to local competitors nor deter local innovative initiatives;

j. Ensure that the rules adopted provide for border measures that are limited to the importation of goods in cases of trademark counterfeiting and copyright piracy as required by the TRIPS Agreement;

k. Ensure that the rules adopted create checks against the abuse and misuse of IPRs and enforcement

tiations were carried out in six groups: SADC (Southern Africa); ECOWAS (West Africa); CEMAC (Central Africa); CARIFORUM (Caribbean) and the Pacific Forum (Pacific countries).

25 Enforcement of IPRs in the EU is guided by the Enforcement Directive 2004/48/EC of the European Parliament and of the Council of 29th April 2004.

26 See Dorica Phiri, "Economic Partnership Agreements and Intellectual Property Rights Protection: Challenges for the Southern Africa Development Community Region" SAIIA Occasional Paper No 48, October 2009, available on http://www.saiia.org

measures through use of competition law, ensuring that IPR enforcement are equitable and fair and providing stronger protection of limitations on and exceptions to IPRs;

l. Ensure that the rules create and enhance coordination between different areas of government to consistently deal with enforcement issues both domestically and in the COMESA region;

m. Ensure that the rules facilitate the emergence of a critical mass of well informed stakeholders in the COMESA region- including decision makers and negotiators but also actors in the private sector and civil society who are able to define their own sustainable human development objectives in IP and effectively advance them at national and international levels.

COORDINATION OF ECONOMIC INTEGRATION AMONG THE REGIONAL ECONOMIC COMMUNITIES OF AFRICA

Francis Mangeni

Coordination requires, on the part of the member states of the African Union and the regional and sub regional economic communities, the harmonious and irreversible progress towards the formation of the African Economic Community in accordance with the Treaty establishing the African Economic Community of 1991, and taking into account the subsequent agreement of the Heads of State and Government – for instance in the Sirte Declaration of 9 September 1999 – to expedite the integration process.

This chapter begins with a brief examination of how consolidation of institutions has been addressed by the African Union and its predecessor, the Organisation for African Unity; to make the point that coordination of the integration process already has a basis on which to proceed.

Consolidation of institutions and organs in economic integration in Africa

Consolidation of institutions has been undertaken to a certain extent at the continental level, and is therefore not a new phenomenon in Africa.

When the African Economic Community was formed, the constitutive Treaty explicitly provided under Article 98.1 that it was an integral part of the Organisation for African Unity, the predecessor organisation to the African Union. With the formation of the African Union to replace the Organisation for African Unity, the African Economic Community became an integral part of the African Union.

The Constitutive Act of the African Union provided for the phasing out of the Organisation of African Unity and its replacement by the African Union, in Article 33. The process included the transition from the organs of the Organisation for African Unity such as the General Secretariat to the organs of the African Union such as the Commission of the African Union.

Under both the Organisation for African Unity and the African Union, the Assembly, Council, and some Specialised Technical Committees that operated such as the Sessions of the Ministers responsible for Trade, considered matters arising under the African Economic Community which was established under a separate treaty with its own organs. A particular example is that economic integration in accordance with the Treaty establishing the African Economic Community has been considered by Council and the Assembly meeting as organs of the Organisation of African Unity or now as organs of the African Union.

As the continental political organisation, the African Union provides the overall continental framework for interacting with third countries. This continental framework takes various forms in specific international fora. At various organisations, the Africa Group of countries has been formed. For instance, the Africa Group at the World Trade Organisation has been noticeably effective and has registered appreciable success in various sets of negotiations. Other examples include the Africa groups at CBD, UNCTAD, and WIPO. The groups have coordinators, who act also as lead spokespersons, rotating periodically.

It can be pointed out also that the African Court of Justice now covers the African Charter on Human and Peoples Rights, the African Economic Community Treaty, and the African Union Act.

Further measures for consolidation of institutions and organs

This approach of consolidation of institutions and organs could be recognised as a feasible way forward in dealing with the duplication of institutions and multiplicity of membership in the area of economic integration in Africa.

Specific issues to be addressed would include: how to harmonise various institutions operating in given regional economic communities, and how the sub regional economic communities in a given regional economic community can operate consistently with that regional economic community within the overall framework of building the African Economic Community.

Overall jurisdiction of the highest organs

All the relevant regional institutions operating within countries having membership in a regional economic community could be requested to be subject to the jurisdiction of the highest organs formed under the constitutive instruments of that regional economic community, in a spirit of closer cooperation to expeditiously form the African Economic Community.

The highest organs should include the Summit of Heads of State and Government and the Council of the Ministers responsible for Foreign Affairs and Economic Integration in Africa, or their equivalents by whatever name known.

Relevant institutions include sub regional economic communities and any regional integration organisations operating in Africa and whose objectives and activities relate to or affect the process of economic integration in Africa under the African Economic Community Treaty.

Being subject to jurisdiction should mean that the various institutions should operate in accordance with policies, decisions and regulations adopted and directives issued by the highest political organs.

A decision of the African Union Assembly to this effect should be operationalised and fully put into effect within a period of one year from its adoption, including by all regional economic communities and relevant institutions operating in Africa.

Specification of sub regional economic communities

It is understood that in some cases, some member states of the relevant regional institutions, where they are sub regional economic communities, may not be member states of the regional economic community. Accordingly, it could be specified that SACU falls within SADC, CEMAC within ECCAS, and UEMOA within ECOWAS.

Sub regional economic communities as fast tracks

Sub regional economic communities dealing with free movement of goods, services, labour, and capital and the right of establishment, within the framework of forming free trade areas, customs unions and common markets, should be considered fast tracks of the regional economic communities.

The regional economic community should implement programmes to attain the depth of economic integration of the sub regional economic community within the overall framework of forming the African Customs Union and Common Market.

This could apply to a sub regional economic community and a regional economic community where a member state has membership in both organisations.

Specialised agencies, technical offices, and affiliates

Institutions operating in the other sectoral fields covered by the African Economic Community Treaty should be specialised agencies, technical offices or affiliates of the African Union. The institutions operating exclusively in the territory of a regional economic community shall additionally be agencies, offices or affiliates of that regional economic community. In the case of overlap of territories of regional economic communities, the institutions may choose to be agencies, offices or affiliates of the regional economic community with the highest number of member states.

Regional instruments for harmonisation and coordination

Regional economic communities with overlapping membership should conclude appropriate legal instruments for harmonisation and coordination. The instruments should be in uniform terms across Africa in the strategies adopted. In particular, the instruments should ensure that all the regional economic communities expeditiously progress towards the African Economic Community in a harmonised and coordinated manner.

An important step in this regard, would be the conclusion of the instruments between CENSAD, ECCAS and ECOWAS, and between EAC, COMESA, IGAD and SADC. The instruments should not be mutually exclusive and should not maintain inconsistencies in the policies, programmes and activities of the regional economic communities.

Legal instruments could be concluded also between the sub regional economic communities and the regional economic communities that they are fast tracks of.

Overlapping free trade areas

A free trade area is made up of customs territories or member states that eliminate customs duties and other restrictive regulations of commerce to substantially all their trade, but without adopting a common trade regime against third countries; each of the member states may maintain a different trade regime against third countries.

The expression “substantially all their trade” means that there is a degree of flexibility; in that not all trade need be covered by the regime for the free trade area. Some items can be excluded from the regime.

Member states belonging to a certain free trade area can therefore join another free trade area

However, if the different free trade areas have different coverage of trade items and maintain different regulations of commerce including rules of origin, these regimes would constitute significant obstacles for a member state that seeks to join the other free trade area.

Therefore, for the possibility of belonging to more than one free trade area to be available to member states, the various free trade areas should maintain the same coverage of trade items and the same regulations of commerce. There could be a possibility of negotiating accession to a second free trade area, particularly in the area of coverage of trade items, perhaps so that a further exclusion list is recognised or in order to accommodate varying regulations of commerce.

The better approach in the context of economic integration in Africa is a continental regime on parameters for free trade areas. The time table required under Article 6 of the African Economic Community Treaty and the Minimum Integration Programme provided for in the 2004-2007 Strategic Framework of the Commission of the African Union; could set out such parameters.

The parameters would cover among other things: (a) the sequencing or timing of establishment of full free trade areas by all the regional economic communities in terms of elimination of duties and other restrictive regulations of commerce; (b) rules of origin; and (c) exceptions or exclusions from the regime for free trade areas. A model agreement for a free trade area could be prepared to assist harmonise the process.

In this regard therefore, a programme should be adopted for elaborating the time table and minimum integration programme. The programme should be undertaken as a matter of urgency, and should be completed within twelve (12) months of commencement. It should be completed in time for the Assembly to take decisions relating to the time table and the minimum integration programme at its meeting in 2007.

Overlapping customs unions

A customs union is made up of customs territories or member states that substitute a single customs territory for their different customs territories, by adopting substantially the same duties and other regulations of commerce in their trade with third countries.

In international practice, for instance in the opinion of the Appellate Body of the World Trade Organisation, the expression “substantially the same” allows for a degree of flexibility and it does not mean that the constituent member states should adopt “the same” customs duties. This means that in adopting a common external tariff, various items need not be covered and may be left out of that common regime. These may be left out on the basis of various considerations. In many cases, the key consideration has been the sensitivity of the products.

This flexibility can be used in the context of rationalising economic integration in Africa. It can be used by permitting countries to belong to two customs unions if the two form a further customs union among themselves. The flexibility would be in terms of allowing under the further customs union, the exclusion from the common external tariff of items that the two customs unions do not have convergence on. The common external tariff for the further customs union would be prepared by drawing on the convergence between the regimes of the two customs unions.

So, two or more customs unions may form a further customs union on the basis of a common external tariff covering a selected number of items on which there is convergence of tariff levels. However, such a further common external tariff would be required to cover a very significant portion of the trade between the further customs union and with third countries.

Again, the better approach for economic integration in Africa is to have continental parameters governing the formation of full customs unions. In particular, the parameter should clearly set out the programme for forming the continental customs union. The continental customs union is to be formed during the fourth stage under Article 6 of the African Economic Community Treaty, but these stages are required to be abridged in accordance with the Sirte Declaration of 9 September 1999.

The parameters should include among other things: (a) the sequencing or timing of the establishment of full customs unions by all the regional economic communities; (b) the structure of the common external tariff that should apply for all the customs unions; (c) the rules of origin and other pertinent regulations of commerce; (d) exceptions or exclusion lists; and (e) the modalities for combinations and mergers of customs unions. Again, model agreements could be helpful.

The time table to be adopted during the second stage, that is, by 2007, and the Minimum Integration Programme to be in place also by 2007, should set out the parameters for formation of the continental customs union.

The regional economic communities of the AEC

African Union Ministers responsible for Economic Integration on 31 March 2006 adopted a Declaration relating to rationalisation of economic integration in Africa. In the declaration, they recommended that the Assembly halts recognition of new regional economic communities, and maintains the following eight regional economic communities: Arab Maghreb Union, East African Community, Common Market for Eastern and Southern Africa, Economic Community of Central African States, Economic Community of West African States, Inter Governmental Authority on Development, Community of Sahelo Saharan States, and the Southern African Development Community. The Declaration also called for harmonisation and coordination among the regional economic communities.

African Union Ministers responsible for Trade, meeting in their Fourth Ordinary Session on 14 April 2006, adopted a Resolution on Rationalisation and Harmonisation of the regional economic communities, in which they endorsed the Declaration of the Ministers responsible for Economic Integration.

Current status and way forward

The Heads of State and Government, meeting in their seventh ordinary session in Banjul The Gambia on 1 to 2 July 2006:

a. Adopted a moratorium on recognition of any further RECs

b. Specified eight RECs, which will now be the basis for the way forward in building the African Economic Community – namely, AMU, CENSAD, COMESA, EAC, ECCAS, ECOWAS, IGAD, and SADC

c. Urged these RECs to coordinate and harmonise their policies to accelerate the integration process

d. Requested the Commission of the African Union, in collaboration with the ECA and ADB to undertake studies on optimal scenarios for the RECs and report in July 2007, and

e. Institutionalised the meetings of the African Union ministers responsible for economic integration.

As a way forward, COMESA, EAC and SADC has provided a model through the Tripartite Process.

The Tripartite FTA – a model for inter-REC harmonisation

When the Heads of State and Government of COMESA, EAC and SADC met in Kampala on 22 October 2008, they conveyed in their communiqué a palpable sense of urgency in calling for the establishment of a single Free Trade Area covering the 26 countries of COMESA, EAC and SADC. These are 26 out of the 54 countries that make up the continent of Africa. The political leaders requested the secretariats of the three organisations to prepare all the legal documents necessary for establishing the single Free Trade Area (FTA) and to clearly identify the steps required – paragraph 14 of the Communiqué. After a period of intensive work since then, the three secretariats have delivered. At their meeting on 9 November 2009 in Dar es Salaam, the Chief Executives of the three secretariats cleared the documents for transmission to the Member States for consideration in preparing for the next meeting of the Tripartite Summit. It is expected that when the Tripartite Summit meets, in April or May 2010, the Heads of State and Government will clearly pronounce themselves on the way forward with establishing the single FTA.

The main document is the draft Agreement establishing the Tripartite Free Trade, with its 14 Annexes covering various complementary areas that are necessary for effective functioning of a regional market. There is a report explaining the approach and the modalities. The main proposal is to establish the FTA on a tariff-free, quota-free, exemption-free basis by simply combining the existing FTAs of COMESA, EAC and SADC. It is expected that by 2012, all these FTAs will not have any exemptions or sensitive lists. However, there is a possibility that a few countries might wish to consider maintaining a few sensitive products in trading with some big partners, and for this reason, provision has been made for the possibility of a country requesting for permission to maintain some sensitive products for a specified period of time.

To have an effective Tripartite FTA, various complementary areas have been included. The FTA will cover, promotion of customs cooperation and trade facilitation, harmonisation and coordination of industrial and health standards, combating of unfair trade practices and import surges, use of peaceful and agreed dispute settlement mechanisms, use of simpler and straightforward rules of origin that recognise inland transport costs as part of the value added in production, relaxation of restrictions on movement of business persons taking into account certain sensitivities, liberalisation of certain priority service sectors on the basis of existing programs of the three organisations, promotion of value addition and transformation of the region into an information- and knowledge-based economy through a balanced used of intellectual property rights and information and communications technology, development of the cultural industries on the basis of the rich cultural heritage in the region particularly in the arts, development of sector strategies to increase productive capacity and link producers to buyers and consumers. The Tripartite FTA will be underpinned by robust infrastructure programs designed to consolidate the regional market through interconnectivity (facilitated for instance by all modes of transport and telecommunications) and to promote competitiveness (for instance through adequate supplies of energy).

Regarding the steps required, or the road map, the proposal is that there should be a preparatory period for consultations at the national, regional and Tripartite level from early 2010 up to June 2011. Member States will use this period to carefully work out the legal and institutional framework for the single FTA using the draft documents as a basis. It is expected that each organisation will discuss the Tripartite documents, and that the Tripartite meetings at various levels will deliberate and reach concrete recommendations. By June 2011, there should be a finalised Agreement establishing the Tripartite FTA, ready for signature in July 2011. When signed, Member States will have about six months up to December 2011, to finalise their domestic processes for approving the Agreement (for instance, ratification) and for establishing the required institutions and adopting the relevant customs and other documentation and instruments. It is proposed that once this process ends, the Tripartite FTA should be launched in January 2012. Throughout the preparatory period, strong sensitisation programs will be mounted for the public and private sectors and all stakeholders including parliamentarians, business community, teaching institutions, civil society, and development partners.

The main benefit of the Tripartite FTA is that it will be a much larger market, with a single economic space, than any one of the three regional economic communities and as such will be more attractive to investment and large scale production. Estimates are that exports among the 26 Tripartite countries increased from USD 7 billion in 2000 to USD 27 billion in 2008, and imports grew from USD 9 billion in 2000 to USD 32 billion in 2008. This phenomenal increase was in large measure spurred by the free trade area initiatives of the three organizations. Strong trade performance, when well designed, for instance by promoting small and medium scale enterprises that produce goods or services, can assist the achievement of the core objectives of eradicating poverty and hunger, promoting social justice and public health, and supporting all round human development. Besides, the Tripartite economic space will assist to address some current challenges resulting from multiple membership by advancing the ongoing harmonisation and coordination initiatives of the three organisations to achieve convergence of programs and activities, and in this way will greatly contribute to the continental integration process. And as they say, the more we trade with each other, the less likely we are to war; for our swords will be plowshares and our spears will be pruning hooks.

The Process of Forming the Africa Economic Community

Francis Mangeni

The way the African Economic Community (AEC) is to be formed is set out in Article 6 of the Treaty establishing the community, though there are detailed provisions on the common market and sectoral cooperation further on in the Treaty. The community is to be formed in six stages[27] in which specific activities, which are to be implemented concurrently, are assigned.[28]

First stage

The first stage is to establish, and strengthen existing regional economic communities (RECs) within a period not exceeding 5 years from the date of entry into force of the Treaty, that is, up to the year 1999. "Establishing" here means starting the process of forming the RECs. Article 1 defines "region" to mean:
"An OAU region as defined by Resolution CM/Res.464 (XXVI) of the OAU Council of Ministers concerning the division of Africa into 5 regions namely North Africa, West Africa, Central Africa, East Africa and Southern Africa".

In each of these regions, a regional community is in the process of being formed, under a treaty already in force, namely, the Common Market for Eastern and Southern Africa 1993[29] (COMESA), Economic Community of Central Africa States 1983[30] (ECCAS), Southern African Development Community 1992[31] (SADC), Economic Community of West African States 1993[32] (ECOWAS), and the Arab Maghreb Union for North Africa.[33] Therefore the part of this stage on establishing RECs, was accomplished, ahead of the time limit set under the Treaty. Obviously the initial aim under various Organisation of African Unity (OAU) resolutions to establish the Community by the year 2000 were abandoned under the Treaty, and in place of that there was the establishment of RECs.

Establishment of RECs started before 1991, the year the Treaty was concluded, long before the Treaty entered into force, and perhaps this is a basis for arguing that the establishment is not really under Article 6. For instance, ECOWAS was initially established in 1975 even before the Lagos Action Plan (LPA).. These regional communities were established under the general policy pursued since the 1960s under the OAU aims, with the support of the ECA, for economic cooperation and integration in Africa. Article 6 fully recognised that there were already RECs in some regions, and provided for strengthening these. Indeed, those already established in Eastern and West Africa were re-established under new, modified treaties, that is ECOWAS and COMESA. The one for Central Africa, though, ECCAS, was not re-established when the Treaty was concluded. In the case of Southern Africa, the regional organisation instituted under a memorandum in 1980, the Southern African Development Coordination Conference (SADCC), was not and did not aim for an economic community. It was meant to be a bulwark against apartheid South Africa. Though it aimed for project-oriented economic cooperation, and fell within the recommendations under the LPA, it did not have provisions on trade liberalisation. The Treaty of 1993 establishing SADC now aims for an economic community, and in August 1996 a Trade Protocol for the creation of a FTA was adopted.

This alacrity in establishing the RECs suggests that the basic argument for economic co-operation and integration, at the regional level, has been accepted. What it might not prove is whether it is any enthusiasm for the AEC and the Lagos Plan of Action (LPA) which aim for grander economic cooperation and integration. Even at the regional level, however, the test of support for economic cooperation and integration will be seen in the extent to which the second activity of the first stage, that is strengthening these communities, is carried. The record so far is not very encouraging.

27 Article 6(1)
28 Article 6(2)
29 33 ILM 1067 [1994]
30 23 ILM 945 [1984]. ECCAS has been revived after a dormant period.
31 32 ILM 116 [1993]
32 14 ILM 1200 [1975]. A new treaty was concluded on 24 July, 1993 at Cotonou, amending the original 1975 treaty.
33 See, [1989] 1 Proceedings of the African Society of International and Comparative Law, at p. 288. However, Article 17 of the treaty provides that Arab states are eligible for membership in the Union. As membership in the AEC is restricted to members of the AU, and as the AEC envisages states of the African continent, it can be argued that the Maghreb Union is not a REC established in accordance with the AEC Treaty.

Second Stage

The second stage comprises four activities, to be completed over a period not exceeding 8 years. The first activity is stabilising tariff and non-tariff barriers, and internal taxes, existing at the time of entry into force of the Treaty. The second is preparation and adoption of "studies to determine the time table" for the gradual removal of tariff and non-tariff barriers to regional and intra-community trade, and for the gradual harmonisation of customs duties applied to products from third states. The third is strengthening sector integration especially in the areas of trade, agriculture, money and finance, transport and communications, and industry and energy. The fourth is coordination and harmonisation of activities among the RECs.

This fourth activity is general, and it is not entirely clear how the coordination and harmonisation is to be initiated and carried out. Under Article 88:

"... the Community shall be entrusted with the coordination, harmonisation and evaluation of the activities of ... RECs".

Relevant matters in this regard would, then, have to be brought to the Assembly of Heads of State, which has the role of directing the integration process and takes decisions in the name of the Community.[34] An indication of how the Assembly can go about the co-ordination and harmonisation was given at the 33rd ordinary session of the OAU held in Harare, Zimbabwe, on 2-4 June 1997. The Assembly reached a Decision "[urging] the RECs to ensure that African economic integration related issues are included on the agenda of the sessions of their respective communities" and "[requesting] the Member States concerned to identify the Economic Community which would serve as a regional pillar of the AEC"[35]. What is required is actual co-ordination and harmonisation, through active involvement by studies, recommendations, and provision of technical support in the adoption of instruments, policies and programmes. Such a role requires a quite specialised technical committee.

This stage in effect, therefore, has three substantive activities: stabilisation of barriers to trade and internal taxes, adoption of the trade liberalisation timetable, and sectoral integration. The period of 8 years should not only be sufficient for the stabilisation and liberalisation timetable, but is perhaps even longer than is required. Sectoral integration must be an ongoing process, to be continued well into the final stage, for the reason that complete sectoral integration here would in fact require a form of union government, perhaps in the form of giving the relevant mandate to a community institution, but not necessarily political unification in the sense of doing away with individual African states.

There is some vagueness about the second activity which is stated in Article 6(2)(b)(i) as follows:

" ... there shall also be prepared and adopted studies to determine the time-table for the gradual removal of Tariff Barriers and Non-Tariff Barriers to the regional and intra-Community trade and for the gradual harmonisation of Customs Duties in relation to third States".

The purpose of the studies should be to come up with the timetable, and it seems reasonable to interpret this activity as the preparation and adoption of the timetable, at the level of each REC. In fact, there seems to be support for this view, for apart from Article 33(1) which prohibits trade barriers at regional levels after the second stage, RECs are, in Article 30(2), designated as the entities to determine the programme and modalities for elimination of customs duties at the level of RECs. Further, the third stage, under Article 6(2)(c), requires the establishment of regional FTAs "through the observance of the time-table"; but the RECs on the face of it have the right to agree upon their own "programme and modalities" for the elimination of customs duties. The question is whether these programme and modalities can differ from the timetable.

One would not expect that the RECs would prepare and adopt the timetable in the second stage, and subsequently determine different programmes and modalities in the third stage. These should therefore be derived from the timetable, and it would have been clearer if, instead of "programmes and modalities", "a timetable" had been maintained, and "studies" had been omitted all together. It is vital that the timetables adopted by the RECs are harmonised. Indeed, it is better if there were one organ to draw the timetable at the continental level, for all the RECs, perhaps with annexes to cover any regional peculiarities.

34 Article 8
35 Paragraphs 5-6 of the Decision on the AEC. See [1997] 9 RADIC 477 at pp. 488-489.

Third stage

The third stage comprises establishment, within a period not exceeding 10 years, in every region, of a FTA according to the trade liberalisation timetable agreed during the second stage, and establishment of a customs union by adopting a common external tariff.

This will likely be a difficult stage, and the period of 10 years should be adequately long for member states to come to terms with consequences of the liberalisation. First, it will involve difficult political decisions to implement a liberalisation timetable which is comprehensive enough to include mainstay industries and productive activities of member states. The process of liberalisation will then most likely harm some industries, as producers with a head start begin to supply to countries with relatively weak or inefficient producers. But the harm might not be sufficient to attract escape and safeguard action under Article 35(1) and (5) for want of "serious damage to the economy of the importing state". Once the timetable is agreed, compliance will be the key to progress on establishing the Community. Political will and economic diplomacy will be necessary. But above all, enforcement of compliance, under a rule-based order, will be vital.

The other matter relates to common external tariffs for the regional communities. This is a questionable step, for several reasons. Regional common external tariffs are erected against African states party to the Treaty, and are not included in the liberalisation timetable to be agreed in the second stage. The timetable relates to the creation of regional FTAs and the continental customs union. It is possible, then, for a conflict to arise between the rates agreed under the timetable and those adopted as the common external tariff, to intra-Africa trade, which would detract from the spirit and purpose of the whole process of the economic co-operation and integration under the Treaty.

Second, regional common external tariffs are transient, for they are to give way to the continental common external tariff. Instead, the liberalisation timetables for the RECs should be coordinated so that rates on the products imported within Africa tend towards the continental FTA right from the second stage. The coordination should include rates applied to imports into Africa, so that these rates also tend towards the continental common external tariff. This, in addition, saves on the possibly duplicative process of creating a FTA and a customs union over separate periods. It is quite important that RECs are not encouraged to adopt slower paces of trade liberalisation than generally ought to apply, for varying and unending periods would clog the process of creating the Community. The Assembly ought to take this into consideration in complying with Article 30(3) which is in mandatory terms:

"During [the second and third stages], the Assembly, on the recommendation of the Council, shall take the necessary measures with a view to co-ordinating and harmonising the activities of the RECs relating to the elimination of customs duties among Member States".

So, rather than the third stage involving regional common external tariffs, it should end with the creation of a FTA all over Africa, through implementation of the trade liberalisation timetables agreed during the second stage. According to Article 31, the third stage should also see elimination of non-tariff barriers to trade.

A third reason against regional common external tariffs concerns the suitability, in general, of an effective common external tariff. Its sole function, if the tariff is excessive, is protectionist which is undesirable for precluding benefits of reasonable competition. Protectionism against other African economies seems to be at odds with a scheme for economic integration and cooperation. But if merely minimal, a common external tariff could be primarily a revenue raising facility. If this tariff is collected centrally by a community institution, this method can be administratively convenient, perhaps, for raising revenue for community functions as well, which, if the co-operation and integration process is to be the underpinning of economic development in Africa, will include extensive development planning and implementation or monitoring of the programmes. In practice, though, determining what a merely nominal rate would be is hard and subject to the vagaries of political interests as influenced by power constituencies. Rather, regional common external tariffs should not be applied against African imports which should be treated under the regime for a continental FTA.

Fourth stage

The fourth stage is "coordination and harmonisation of tariff and non-tariff systems among the various RECs", to establish a customs union at the continental level, within a period not exceeding 2 years "by means of adopting a common external tariff".

The meaning of “customs union” in this case is limited to adoption of a common external tariff. Tariffs now, however, generally are not the only, nor the most important, means of erecting barriers to imports; rather non-tariff barriers such as regulations for health and environment, and standards and packaging, and orderly market arrangements, are more regularly used. A customs union, then, apart from involving a revenue sharing formula, should include, in order to be meaningful, adoption of a common external commercial policy and common external non-tariff barriers especially regulations for health, quality and standards. Article 67 which provides for a common policy and a protocol on standardisation and measurement systems, should form part of the definition of the continental customs union.

The gist of this fourth stage should be coordination and harmonisation of tariff and non-tariff systems of the RECs, and it is these harmonised systems which should be the basis of a common external policy. Besides, the main aim should be complete liberalisation of trade within Africa by removing non-tariff barriers in addition to the trade liberalisation timetable, rather than erection of a barrier to imports.

Fifth stage

In the fifth stage, an African common market is to be established over a period not exceeding 4 years. Typical attributes of a common market are included in the activities to be completed during this stage, namely: adopting a common policy in areas like agriculture, transport and communications, industry, energy and scientific research; harmonising monetary, financial and fiscal policies; allowing free movement of persons, and providing the rights of residence and establishment; and constituting proper resources of the Community.

Article 43(1), however, is a recipe for a disorderly manner of going about free movement of persons and rights of residence and establishment, for it departs from the general framework of taking action at regional and continental levels, in allowing individual, bilateral or regional action.

This provision does not arise from generosity, but apparently reflects considerable scepticism about free movement and residence of persons. There is such a painful history of expulsions of non-nationals in Africa, that the African Charter on Human and People’s Rights in Article 12(5) now prohibits this practice:

“The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups”.

This history, the response under the Charter, and the importance of the Community to economic development in Africa, should be good reasons for emphasis in this matter. In any case, commitment to the Community process requires application of free movement, residence and establishment, as an element of the common market. The same control and regulation that applies to activities in other stages, should equally apply to this activity, especially in order to ensure that this element is put into effect.

Though there is no mention in Articles 44 and 45 which deal with monetary, financial and payment policies, and movement of capital, respectively, of the stage in which those provisions fall, Article 6(2)(e) clearly shows that it is in the fifth stage - creation of the African common market, that there is to be harmonisation of these policies. Now if these Articles fall in this stage, references to “a time-table to be determined by the Assembly” for harmonization of monetary, financial and payment policies, in Article 44(1), and to elimination “of restrictions on the transfer of capital in accordance with a time-table to be determined by the Council”, in Article 45(1), mean periods within this stage. These policies normally mean establishment of regional banks, and fortunately the RECs have invariably established these. The process of liberalisation carried on under programmes of the World Bank and IMF, has involved lifting of some restrictions on external payments and movement of capital. These seem to be reasons for expecting that this stage can indeed be accomplished within the 4 years.

This stage is the crux of the LPA and the Final Act of Lagos (FAL): sectoral co-operation, and generally economic integration, to fully apply African resources to the development process. The process of creating this common market starts in the second stage which already, in Article 6(2)(b)(ii), requires “strengthening of sectoral integration at the regional and continental levels in all areas of activity particularly in the fields of agriculture, money and finance, transport and communications, industry and energy”. Therefore, including the stages up to the end of the fifth, the period for creating the common market is a total of 24 years, a quite realistically long period provided there are the requisite and sustained political will and compliance, and enforcement mechanisms.

The Treaty deals with various sectors. Member states are to cooperate, even by harmonisation of strategies and policies, in the development of agriculture, forestry, livestock and fisheries in order to ensure food security, increase production and productivity and enhance agricultural production; and in the protection of prices of export commodities.[36] They are to harmonise their industrialisation policies in order to promote industrial development. Basic industries - food and agro-based, building and construction, metallurgical, mechanical, electrical and electronics, petrol and petro-chemical, forestry, energy, textile and leather, transport and communications, and bio-technology - and small scale industries, are to be developed to provide a solid base for industrialisation.[37] Science and technology are to be strengthened to bring about socio-economic transformation. Member states are to harmonise and coordinate their national policies and programmes, positions on all scientific and technical questions, promote exchange of researchers and specialists, and reform educational systems.[38] The other sectors in which cooperation is provided for are: energy and natural resources;[39] environment;[40] transport, communications and tourism;[41] standardisation and measurement systems;[42] education, training and culture;[43] human resources;[44] social affairs;[45] health;[46] population and development;[47] and women and development[48]. Article 77 provides for harmonisation of policies "in other fields for the efficient functioning and development of the Community and for the implementation of the provisions of [the] Treaty" - an appropriate provision given the likelihood of changed circumstances in the very long run.

These provisions on sectors are statements of general aims without specific targets, and of the scheme of, or policies to be adopted for, achieving those aims. They are therefore in the nature of development plans to address the malaise of Africa's undevelopment. A significance of embedding them in the Treaty, but obviously without as much precise and technical detail as in the background documents, is that those policies are elevated to binding obligations, enforceable under the mechanisms provided in the Treaty. To be effective, the provisions would have to be known by relevant persons and authorities, through a political process of creating the awareness. Ideally, effectiveness and enforceability should secure implementation of those policies against mercurial and vacillating leaders, by putting the policies above the discretion of individual governments in Africa. But this cannot be the case unless enforcement mechanisms, and the general institutional and legal regimes command popular support and would be defended against recalcitrant leaders; or unless the leaders themselves support the aims under the Treaty, and are motivated to implement them for that reason or out of respect for the common good and for international obligations.

The task of creating an African common market is certainly enormous, especially in respect of operation and management of common services, and formulation and implementation of sectoral policies. This is a proper area where diffusion of administration to the RECs would appropriately serve the need for keeping tasks at manageable levels. Perhaps there ought to be a target before the fifth stage is completed, of forming regional common markets which would not give up control over managing the elements of the common market, but merely harmonise and co-ordinate these among themselves; and this harmonisation and co-ordination would be the form that the African common market then takes.

Indeed treaties establishing the RECs aim for common markets and have elaborate institutional regimes for operating the common markets. A problem that can arise from provision for the fourth and fifth stages for a continental customs union and common market, is that the regional processes have to be terminated beginning from the fourth stage as their development beyond the customs union would not be within the framework for building the African common market and therefore the Community. Yet, the RECs can attain the status of common market before the Community process reaches the fourth stage which is to be completed in 25 years from the entry into force of the Treaty, that is, by the year 2020. Moreover, sub-regional organisations, which are much smaller, can progress faster.

Sixth stage

The sixth and final stage, does not state that the AEC shall then be formed, but only mentions the various activities

36 Articles 46 to 47
37 Articles 48 to 50
38 Articles 51 to 53
39 Articles 54-57
40 Articles 58-60
41 Articles 61-66
42 Article 67
43 Article 68-70
44 Article 71
45 Article 72
46 Article 73
47 Article 74
48 Article 75

to be accomplished. First, it calls for further work on the African common market stated as "consolidation and strengthening of the structure of the African Common Market". Second, it mentions the integration of all sectors, namely economic, political, social and cultural; establishment of a single domestic market and a panafrican economic and monetary union. Third, it deals with the implementation of the final stage for setting up an African monetary union, establishment of a single African central bank and creation of a single African currency. The fourth point is on the implementation of the final stage for setting up the structure of the panafrican parliament and election of its members by continental universal suffrage. The fifth point calls for the implementation of the final stage for harmonisation and co-ordination of the activities of RECs. The sixth item deals with the implementation of the final stage for setting up the structures of African multinational enterprises in all sectors. The seventh and final point calls for the implementation of the final stage for setting up structures of the executive organs of the Community.

A question to be answered here is about the nature of the Community. Article 1 defines "community" as:

"the organic structure for economic integration established under Article 2 of this treaty and constituting an integral part of the OAU",

and Article 2 provides:

"THE HIGH CONTRACTING PARTIES hereby establish among themselves an African Economic Community".

This definition indicates merely that the Community has been established as a structure which is to be filled in, but does not set out what the Community entails, nor its elements. If the final form the Community will take is to be identified, the process and the end result of it as set out in Article 6 can be referred to. The end result should be the completion of activities prescribed for the sixth and last stage. Therefore, though that sixth stage does not itself state that the Community shall be constituted by completion of those activities, Article 6(1) does so state, for it provides:

"The community shall be established in 6 stages of variable duration over a transitional period not exceeding 34 years".

The actual Community being formed is that set out in the sixth stage. And it is a panafrican economic and monetary union, with a single African currency, a panafrican parliament, and integrated sectors having parastatal-multinational enterprises. This is largely the ordinary meaning of "economic community". It seems quite extra-ordinary that the Community should be defined as an organic structure, and it does seem equally extra-ordinary that there is an economic community, at any stage, even in the very first, before the activities which constitute an economic community are anywhere near actual commencement. Article 1 of the Treaty could have defined the Community as the economic community established under Article 2, and to be formed under the Treaty.

Another question arising is whether political unification is an element of the Community. The sixth stage includes, "integration of all sectors namely economic, political..."[49] , setting up a panafrican parliament,[50] and setting up executive organs of the Community.[51] A functioning panafrican parliament and appropriate organs with executive functions, would bring about a degree of political unification. This seems to be the way round the stumbling block of a union government, which nevertheless yields some degree of political unification.

There is, however, considerable lack of clarity in the provisions. Integration of the political sector, is quite unintelligible, but it could refer to the setting up of the parliament and the executive organs. What it could mean also is agreement on systems of government, and this could entail setting criteria for membership, such as democratic governance, a good human and people's rights record endorsed by the African Human Rights Commission, and implementation of policies satisfying the requirements of collective self-reliance and self-sustaining development. It could mean also more autonomy for the Council of Ministers as a political organ of the Community comprised of relevant ministers concerned with the matters of the agenda, specialised ministerial meetings.

Regarding executive organs, it is not clear whether other organs are to be established apart from those already provided for. But given that there are no executive organs as such apart from the Assembly, it should be expected that those existing will be given executive powers especially regarding formulating, monitoring implementation of, and requiring compliance with, policies; and policing compliance with treaty provisions. Almost all these functions

49 Article 6(2)(f)(ii)
50 Article 6(2)(f)(iv)
51 Article 6(2)(f)(vii)

are, under the Treaty in its present state, performed ultimately by the Assembly.

The panafrican parliament is a good organ for political integration if appropriate functions and powers are given to it, such as to legislate and to censure other organs and political leaders. However, Article 6(2)(f)(iv) provides for, “implementation of the final stage for setting up the structure of the panafrican parliament and election of its members ...”, this without indicating what the prior stages or progress would have been. There is no doubt, however, that the panafrican parliament is to be set up and constituted in this last stage. The better approach would seem to be to involve the people in the process of integration, rather than after, and therefore to have a fully operational panafrican parliament perhaps in the first stage.

Transitions

Two final points arise from paragraphs (3) and (4) of Article 6. Starting with paragraph (4), whether there is to be a transition from one stage to the next is determined by the Assembly on the recommendation of the council. The question to be determined is, whether “the specific objectives set in this treaty or pronounced by the Assembly for a particular stage, are implemented and all commitments fulfilled”.

This test is likely to cause some difficulty unless the matter is clarified before hand. The difficulty arises in part from paragraph (3) which provides that many of these activities are to be implemented concurrently:

“All measures envisaged under this treaty for the promotion of the harmonious and balanced development among Member States, particularly those relating to the formulation of multi-national projects and programmes, shall be implemented concurrently within the time period specified for the attainment of the objectives of the various stages outlined in paragraph 2 of this Article”.

This paragraph is widely drawn, for reference to “harmonious and balanced development” catches quite a considerable range of activities set out for the various stages. The consequence is that this provision casts some doubt on the precision with which it can be determined that a stage is completed for purposes of paragraph (4).

It would appear that the better approach is not to apply the concurrency provision, nor to refer to sectoral integration which is to proceed from the second through to the fifth stage; but to give the Assembly a wide discretion in determining whether to proceed to the next stage when the period prescribed for the stage is ending. In practical terms, this would mean that a REC can proceed to the third stage of establishing a FTA though other communities have yet to complete activities under the second stage. It could mean also that a continental common external tariff could be agreed under the fourth stage, though some regions have not completely eliminated non-tariff barriers as required for the third stage. There would have to be conditions imposed on those who have not completed the activities, for being party to the higher stage in the process of economic co-operation and integration; and the discretion by the Assembly would have to be exercised carefully. This approach is to be preferred though there is a strong argument against it. The strong argument is that there ought to be compliance with the prescribed periods so that in turn there is compliance with the requirements under the WTO Agreement, which set out the international regime for trade liberalisation. This is especially in order to avoid prolonging the transitional period for establishing the continental customs union or common market.

The customs union is to be formed within 10 years unless there are exceptional circumstances; yet under Article 6(2) of the Treaty, the customs union stage is to be attained in 25 years from the entry into force of the Treaty. Nevertheless flexibility is to be preferred for the simple reason that it is not uncharacteristic in Africa for the leaders to be temporarily distracted from the process of economic integration, by policies imposed by international organisations for instance. Such extraneous policies might indeed be justified by changed circumstances, and this is a possibility to be had in mind given that the Treaty provides for a very long term project. The flexibility is of course to be confined within the overall period of 34 or 40 years.

Abridging the Stages

The OAU Heads of State and Government held a fourth extra-ordinary session of the Assembly on 8-9 September 1999 at the initiative of Colonel Ghaddafi, the Libyan leader, and adopted the quite radical Sirte Declaration with far-reaching objectives to form the African Union and establish the Panafrican Parliament almost immediately as well as to shorten the period for forming the AEC. Implementing the Declaration would be a fundamental milestone in the unity of Africa.

The passionate deliberations echoed the mood aroused by Nkrumah's vision for a united Africa, and it is a fair assessment that African leaders did emphatically adopt the position that the existing level of unity, within the framework of the OAU, was inadequate for Africa to assume its rightful and equitable place that would be appropriate for developments and challenges posed in international economic relations, especially in terms of placing Africa's concerns on the international agenda and achieving goals sought.

The concerns and goals relate to the agenda of international financial institutions in terms for instance of full debt cancellation and adequate donor funding for development programmes. They relate to the WTO in terms of market access for products of interest to developing countries, of the scope of its agenda for instance in relation to issues such as investment and competition policy, environment and labour standards, government procurement and electronic commerce, of protecting intellectual property rights in genetic modification and preserving the rights of farmers and local communities that are threatened by multinational companies seeking patents over indigenous plants and knowledge,[52] and of technical assistance and special treatment especially in implementing and complying with the extensive obligations imposed under the WTO Agreement. The international economic order including the multilateral trading system is increasingly integrated, approximating global governance through intertwining understandings and agreements between international organisations, leaving a marginalized Africa with no significant organisation solidly on its side. Africa's response must therefore include the mobilisation of a strong voice and promotion of pro-Africa positions in these fora, as well as formation of institutions for ensuring internal coherence in pursuing programmes agreed as suitable for the economic and social development of Africa.

The solution adopted under the Sirte Declaration was to strengthen African unity. The Assembly decided to "establish an African Union, in conformity with the ultimate objectives of the Charter of our continental organisation[53] and the provisions of the [AEC Treaty]", and to "accelerate the process of implementing the [AEC Treaty]"[54]. The acceleration was to be in terms of shortening the implementation, that is the stages; speedily establishing all the AEC institutions such as the African Central Bank, African Monetary Union, African Court of Justice and particularly the Panafrican Parliament; and strengthening the African regional economic communities [RECs]. The Parliament was to be established by the year 2000 and the Union by 2001 at the adoption of the constitutive instruments by the Heads of State and Government at sessions of the OAU Assembly.

Following the adoption of the Sirte Declaration, given the short deadlines set, the OAU Secretariat established an in-house Implementation Task Force chaired by the Assistant Secretary General Responsible for Political Affairs, Ambassador Said Djinnit, and constituted by heads of divisions among others, to expedite the implementation of the Declaration.[55] 7 consultants were engaged for the month of February 2000, to draft the legal instruments for establishing the African Union and the Panafrican Parliament. The drafts were subsequently discussed by the Permanent Advisory Committee that meets at ambassadorial level, and by the OAU Ministerial Council attended by ministers responsible for foreign affairs. The Assembly duly concluded the constitutive Act for the African Union at the June summit, and the member states commenced to ratify it. The required 36 ratifications were soon received and the Act entered force on 26 May 2001, within a year of concluding the Act. The Lusaka Summit of the OAU that year formally inaugurated the transition from the OAU to the African Union, launched in Durban at the June 2002 Summit. The Protocol for the Panafrican Parliament too was finalised and entered force. The Panafrican Parliament held its inaugural session in Addis Ababa at the Commission of the AU on 18-19 March 2004, after the election of representatives in the member states.

52 Please see Article 27.3(b) of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights, requiring patent protection for micro-organism, micro-biological and non-biological processes, and plant varieties; but plant varieties may be protected under sui generis systems. What constitutes WTO-compliant sui generis systems is a matter of considerable doubt and developed countries are eager to have WTO members adopt their versions, which do not contain good protection for farmers' rights and the knowledge of local communities.

53 "Our continental organisation" is the OAU, perhaps an appropriately tender way to refer to it.

54 Paragraph 8(i) and (ii) of the Sirte Declaration. Please see Appendix 3 for excerpts from the Declaration.

55 Please see the memorandum under reference CAB/LEG/23.15

THE U.S. AFRICA GROWTH AND OPPORTUNITY ACT

Tasara Muzorori

The Africa Growth and Opportunity Act (AGOA) was signed into law by the U.S. President in May 2000. AGOA was enacted to allow eligible Sub-Saharan African countries to export their products to the U.S. market duty free and quota free. AGOA expands the list of products that eligible Sub-Saharan countries may export to the United States under the Generalised System of Preferences (GSP). Whilst the GSP covers approximately 4,600 items, AGOA applies to over 6400 items. The Least Developed Countries are allowed to export to the US duty-free clothing made from fabric imported from anywhere in the world (third country fabric), whereas the other developing countries are supposed to use fabric from the US or Africa.

The US President determines eligibility for AGOA for Sub-Saharan African countries and the eligibility criteria include, among others, progress on economic reform, internationally-recognized workers rights, human rights, anti-corruption actions, intellectual property protection, and initiatives to eliminate the worst forms of child labour in Sub-Saharan Africa. The designation of AGOA beneficiary countries is based on the results of countries' progress and efforts in these and other areas. For a country to be reviewed for eligibility, it has to formally request for AGOA benefits, as required by the Act.

Forty out of the forty-eight Sub-Saharan African countries, including 14 of COMESA's 17 Sub-Saharan African (SSA) countries are AGOA eligible. Of the 40 SSA countries designated for benefits under AGOA, 27 countries are eligible for AGOA textile and apparel benefits; nine of these are COMESA Member States.

Overall Trade Performance Under AGOA

For the period January to June 2009, total U.S. imports from all AGOA eligible countries amounted to US$21.6 billion down from US$52.7 billion during the same period in 2008. This represents a decline of 59.1% decline.

For the full year 2008 U.S. imports from Sub-Saharan Africa AGOA eligible countries increased by 26.2% compared to the full year 2007. The year-end trade data for 2008 confirms that AGOA has spurred major growth in U.S. imports from Africa during its first eight years in effect. Through 2008, U.S. imports from Africa have grown 312.6% from $20.8 billion in 2001, AGOA's first full year in effect, to $85.8 billion in 2008. Duty-free imports under AGOA have grown even more dramatically by 710.1%, from USD8.2 billion in 2001 to USD66.3 billion in 2008. It is clear, therefore, that AGOA's duty-free incentive has provided a significant incentive to increased trade.

This rosy picture changes rather significantly, however, when the import growth is broken down by sector. Eighty-seven percent of the import growth falls in just one category: energy products, in particular crude oil. But it is inaccurate to attribute this trade to AGOA because the United States would have imported every single barrel of oil from Africa even if AGOA had never been enacted. Moreover, much of the apparent growth is in fact due to last year's record high oil prices.

Excluding petroleum products, the import growth is smaller, but still impressive. Total U.S. non-petroleum imports from Africa grew by 115.7% between 2001 and 2008, from USD6.5 billion to USD14.1 billion. Duty free imports, other than petroleum products, increased by 277.5% from USD1.4 billion to USD5.1 billion. Comparing 2008 to 2007, non-energy imports grew by 13.14%. Sector-by-sector (other than energy products), the most significant growth in U.S. total imports from Africa occurred in transportation equipment (up 413.0% from USD400 million in 2001 to USD2.1 billion in 2008), followed by minerals and metals (up 136.0% from USD3.1 billion to USD7.3 billion), and chemicals and related products (up 114.4% from USD660 million to USD1.4 billion). Footwear imports were also up sharply (100%), but from a very small base, growing from USD1 million in 2001 to USD2million in 2008. On the other hand, comparing 2008 trade with the previous year's data raises some potential warning flags, as some important sectors exhibited declining trade in 2008. According to the USITC's statistics, textiles and apparel trade declined in 2008 by 11.2% and footwear was down 60%. Moreover, not all products qualify for duty-free eligibility under AGOA. Focusing on growth in duty free trade (other than energy products), the largest growth was clearly in transportation equipment (up 535. 2% from USD301 million in 2001 to USD1.9 billion in 2008). Duty-free minerals and metals imports were up 296.2%, textiles and apparel products grew by 217.3%, chemicals and related products trade increased by 234.4%, and duty-free agricultural imports rose 62.3%.

Individual Sub-Saharan COMESA countries trade performance with the U.S. is indicated in Table 1.

Table 1: U.S. imports from AGOA eligible COMESA Member States (Thousands of dollars, Customs value)

Country	TOTAL 2007	TOTAL 2008	TOTAL 2008 YTD	TOTAL 2009 YTD	AGOA including GSP provisions 2007	AGOA including GSP provisions 2008	AGOA including GSP provisions 2008 YTD	AGOA including GSP provisions 2009 YTD
Kenya	326,086	343,533	185,063	171,216	255,012	255,655	128,907	127,984
Madagascar	337,895	324,262	176,670	149,853	283,807	279,293	147,349	121,191
RD Congo	206,404	266,750	239,402	84,242	44,287	65,645	65,433	75,696
Swaziland	147,963	133,877	71,358	72,140	141,410	125,566	67,512	67,406
Mauritius	187,020	176,189	103,891	94,699	119,906	101,742	54,994	57,867
Malawi	69,007	52,557	22,324	47,582	59,309	44,624	17,357	43,053
Ethiopia	88,236	152,243	89,821	64,860	8,973	18,087	11,293	7,531
Uganda	26,622	52,716	44,321	14,718	1,691	1,055	745	474
Rwanda	12,675	13,704	3,859	9,420	4,098	1,193	557	107
Zambia	48,780	51,456	34,409	7,417	230	10,944	8,691	100
Djibouti	4,484	7,037	4,696	2,138	73	126	121	71
Burundi	1,111	2,843	2,066	3,541	0	0	0	0
Seychelles	10,332	5,376	3,196	3,549	0	0	0	0
Comoros	0	925	318	275	0	0	0	0
Total	**1,466,615**	**1,583,468**	**981,394**	**725,650**	**918,796**	**903,930**	**502,959**	**501,480**

Source: U.S. International Trade Commission

Textile and Apparel issues

The U.S. Department of Commerce's official statistics of U.S. imports of textiles and apparel from Africa during June 2009 showed a 15.78% decrease compared to June 2008. Imports during May fell by 44.9% from one year earlier. U.S. textile and apparel imports from Africa in June 2009 were 21.367 million square meter equivalents (sme), down from 25.371 million sme in June 2008.

For the six month period January to June 2009 the U.S. imports of textile and apparel from Africa AGOA eligible countries recorded 136.6 million square metre equivalent (sme) – a 12.21% decline from the level recorded for the same period in 2008 of 155.6 million sme.

Since the enactment of AGOA in 2000, U.S. six beneficiary countries have been the leading sources of imports into the US, namely, Lesotho, Madagascar, Kenya, Swaziland, Mauritius, and South Africa. Since the end of the Multi-Fibre Arrangement (MFA) however, imports from South Africa have fallen so dramatically; a drop of more than 70% in three years In 2007, for instance, Namibia passed South Africa to become the sixth largest AGOA apparel exporter to the United States during 2007. But with the closure of the Ramatex plant in Namibia in 2008, the only major apparel factory in the country, U.S. apparel imports from Namibia have fallen to just a trickle. And during 2008, both Ethiopia and Malawi exported greater volumes of apparel than did South Africa, though the value of South Africa's apparel exports was disproportionately greater than those of Ethiopia and Malawi. So far during 2009, both Botswana and Malawi have passed South Africa among the AGOA apparel exporters in terms of both the volume and value of their apparel exports, but South Africa's exports remain larger than those of Ethiopia in terms of value.

U.S. apparel imports from Sub-Saharan Africa fell sharply in 2005-06, down by 26% over two years from 2004, following the expiration of the Multi-Fibre Arrangement (MFA) system of quotas effective 1 January 2005. There is great concern that AGOA's duty-free preference would not be enough to maintain U.S. apparel orders in the face of unlimited competition from China, Vietnam, Bangladesh, Cambodia and other Asian apparel giants. The extension of the AGOA third country fabric rule to 2012 in December 2006, coupled with the imposition of safeguard quotas on China in November 2005, prompted a modest recovery in the African apparel industry, as U.S. apparel imports stabilized in 2007, actually growing by 1.9% in 2007 over 2006. Because the stabilization of textile and apparel imports from Africa in 2007 was due in part to the imposition of safeguard quotas on textile and apparel imports from China in November 2005, the expiration of the safeguard quotas on China on December 31, 2008, is cause for concern.

Details of US imports of textile and apparel imports from individual African countries are indicated in Table 2.

Table 2: U.S. Textile and Apparel Imports from Africa ((in million square metre equivalent (sme)

U.S. Textile and Apparel Imports from Africa
(in million sme)

Country	Jan. - June 2007	Jan. - June 2008	Jan. - June 2009	Jan. - June 07-09 % Change	Jan. - June 08-09 % Change
Botswana	2.662	1.253	1.248	-53.12%	-0.33%
Ethiopia	1.320	2.996	2.279	72.65%	-23.95%
Ghana	3.440	0.287	0.073	-97.88%	-74.68%
Kenya	31.983	32.616	33.769	5.58%	3.53%
Lesotho	48.537	40.886	34.287	-29.36%	-16.14%
Madagascar	35.932	36.560	31.700	-11.78%	-13.30%
Malawi	3.142	1.489	1.483	-52.80%	-0.39%
Mauritius	10.181	7.495	7.461	-26.72%	-0.46%
Namibia	6.147	0.004	0.000	-100.00%	-98.80%
South Africa	5.990	13.678	5.625	-6.09%	-58.87%
Swaziland	21.153	16.388	15.294	-27.70%	-6.68%
Sub-Sahara Africa	**171.589**	**155.602**	**136.601**	**-20.39%**	**-12.21%**

Source: US – Africa Trade Report, August 2009

During January-June 2009, Africa supplied 0.63% of total U.S. textile and apparel imports, down from a high of 1.1% in January 2005, i.e., just as the MFA quotas were expiring. In both 2003 and 2004, Africa held 0.99% of U.S. textile and apparel imports, while in 2002 Africa supplied 0.79%. Africa's share of U.S. imports has now fallen back to its 2001 level, when its market share was 0.71%. Of course, it seems likely that African apparel exports to the United States would have all but disappeared completely following the end of the MFA were it not for AGOA's duty preference.

In terms of value, U.S. textile and apparel imports from Africa declined by 14.72% during January-June 2009 to USD451.732 million, from USD529.731 million during January-June 2008. U.S. textile and apparel imports from Africa fell by 11.5% in 2006 compared to 2005, measured by value. This is in sharp contrast to a growth rate in the value of textile and apparel imports from Africa of 16.1% in 2004 over 2003 and 37.2% in 2003 over 2002. As measured by value, Africa supplied 1.20% of total U.S. apparel and textile imports during January-June 2009, as compared to 1.26% in 2008, 1.21% in 2007, 1.41% in 2006, 1.66% in 2005, 2.05% in 2004, 1.98% in 2003, 1.55% in

2002, 1.39% in 2001, 1.1% in 2000 and 0.95% in 1999.

Nine AGOA countries (six of which are COMESA member countries) together accounted for 97.5% of total U.S. apparel and textile imports from Africa during January-June 2009 as measured by volume, and 99.6% as measured by value as shown in Table 3:

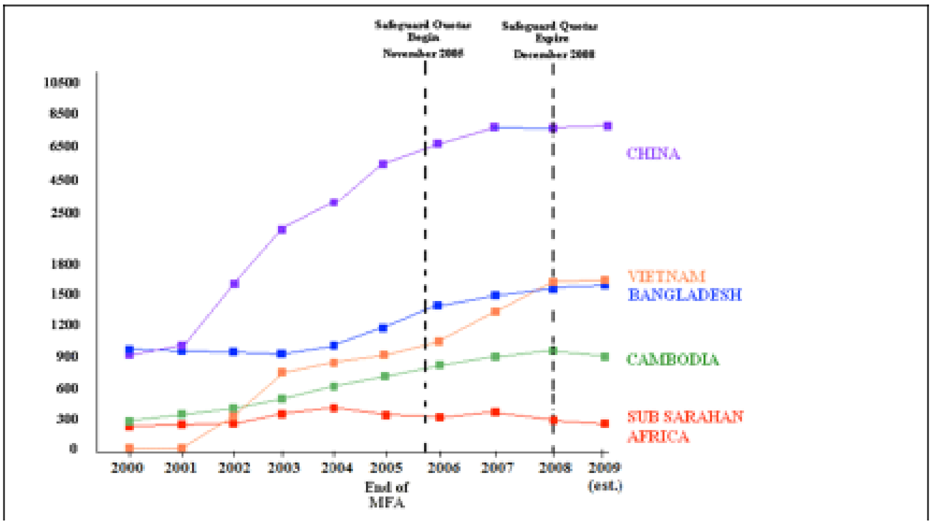
Table 3: Share of the top nine countries in US textile and apparel imports from Africa

Country	MSME	% Share	$Million	% Share
Lesotho	34.287	25.1%	$122.223	27.1%
Kenya	33.769	24.7%	$104.997	23.2%
Madagascar	31.700	23.2%	$103.411	22.9%
Swaziland	15.294	11.2%	$47.637	10.5%
Mauritius	7.461	5.5%	$46.437	10.3%
South Africa	5.625	4.1%	$9.311	2.1%
Ethiopia	2.279	1.7%	$3.706	0.8%
Malawi	1.483	1.1%	$4.266	0.9%
Botswana	1.248	0.9%	$6.944	1.5%
Totals	133.146	97.5%	$448.932	99.6%

Source: US-Africa Trade Report August 2009

U.S. apparel imports from most other major suppliers were up during January-June 2009, with imports from Vietnam up 6.5%, Bangladesh up 3.0%, and India up 4.7%, but Cambodia and Pakistan were down by -19.0% and -6.6%, respectively, compared to January-June 2008. Although total textile and apparel imports from China were down –6.05% in January-June 2009, apparel imports from China were up 6.01%. Even more important, there was strong growth in imports from China of certain key product categories of greatest importance to Africa, including Category 339 women's and girls' knit cotton blouses up 98%, Category 347 men's and boys' cotton trousers up 95%, Category 348 women's and girls' cotton slacks up 95%, and Category 639 women's and girls' MMF knit blouses up 85%. In other words, while total textile and apparel imports from China are down, China's strong growth in those product categories that matter most to Africa is contributing to the fall in imports from Africa in January-June 2009.

The chart below shows the reconfiguration of U.S. apparel imports from some countries in Asia and sub-Saharan Africa since the beginning of AGOA in 2000 up to 2009. It shows that sub-Saharan apparel exports to the US in 2009 are slightly higher than the level they were in year 2000 while there were phenomenal increases in apparel exports to the US from Bangladesh, Cambodia, China and Vietnam.



Source: US - Africa Trade Report, August 2009

Recent Policy and other Developments

The 8th AGOA Forum, Nairobi, Kenya 4-6 August 2009

The eighth session of the annual Africa Growth and Opportunity Act (AGOA) Trade and Economic Cooperation Forum was held in Nairobi, Kenya on 4-6 August 2009. In the past, the AGOA Forum has frequently been the setting for announcing new policy initiatives to bolster the trade and investment ties between the United States and Africa. This year, however, few new initiatives were launched at the AGOA Forum. This came as a disappointment to many observers, who had been looking forward to the AGOA Forum as the most logical platform for the Obama Administration to add some substance to its trade and investment policy regarding Africa.

The U.S. Government delegation to the AGOA Forum was impressive, led by Secretary of State Hillary Clinton, Secretary of Agriculture Tom Vilsack, U.S. Trade Representative Ron Kirk and dozens of other high level officials. In addition, a delegation from Congress was led by Rep. Jim McDermott, who is generally recognized as the "father of AGOA" for having introduced the first bill proposing a special economic development regime for Africa based on trade preferences to encourage private sector investment. Secretary Clinton emphasized that the best opportunity for African countries was to open up trade among themselves and link trade policies to development.

The U.S. Trade Representative Ron Kirk seemed to set the tone for the AGOA Forum by rejecting African requests for expanding, extending and improving AGOA. In comments during the AGOA Forum, Ambassador Kirk rejected African requests to extend AGOA beyond its current expiration in 2015 and to expand the list of products that are eligible under AGOA. Instead, Ambassador Kirk advised Africa that their time would be better spent trying to take advantage of the current terms of AGOA, rather than seeking additional benefits. Only a dozen AGOA beneficiary countries account for the vast majority of duty-free exports under AGOA. The majority of AGOA beneficiaries, therefore, would be well-served to explore means to capitalize on the existing terms of AGOA. Ambassador Kirk rejected out-of-hand African requests that the "preference reform" initiative being developed in Washington should not include duty-free benefits for apparel from non-African least developed countries that are already fully competitive in apparel production and exports, such as Bangladesh.

The COMESA Secretariat's delegation to the AGOA Forum was led by the Secretary General, Mr. Sindiso Ngwenya. Mr. Ngwenya in his address to the plenary noted that whereas the modest increases in trade with the US under AGOA clearly showed that preferences do work, there was need to further boost trade by increasing investment particularly in value addition of African primary products. He further cited the importance of diversification and the need to ensure that both trade and investment policies are appropriate for the many millions of people at the 'bottom of the pyramid' who need to be integrated into local, regional and international markets. Finally, Mr. Ngwenya emphasized the importance of infrastructure development in unleashing the economic development potential of key sectors such as agriculture.

GAO Presents AGOA Recommendations

The U.S. Government Accountability Office (GAO), the investigative arm of Congress, released its recommendations to Congress on 12 August 2009, for improving the competitiveness of the Africa textile and apparel industry under AGOA. Based on the advice of a panel of experts, GAO's recommendations to Congress include:

a. Extend AGOA's third-country fabric provision beyond its current authorization through 2012;

b. Extend AGOA's overall authorization beyond 2015;

c. Provide positive incentives for greater vertical integration, such as providing duty credits for importing apparel made in Africa from regional fabric, which credits could be used to import an equivalent volume of apparel duty free from non-African LDCs; and

d. Refrain from extending duty-free status to apparel from already-competitive LDCs such as Bangladesh and Cambodia.

The GAO recognized the need for improved infrastructure and for more capacity building and technical assistance to enhance the competitiveness of the African textile and apparel industries.

It will be important to improve AGOA and to reshape into the poverty eradicating instrument for good that it was initially intended to be. In this regard, the following initiatives should be considered:

a. Member States should vigorously advance the priorities of COMESA at the annual AGOA Forums and in interactions with the US Government

b. While AGOA has sought to promote market access to the US, it is absolutely important to effectively address the production and supply side constraints in the region, in order to promote the utilization of the market access

c. The US Government should put in place initiatives to promote investment flows into the COMESA region, including through tax and financial incentives

d. A special AGOA Fund should be put in place to facilitate access to trade and project finance by producers and exporters under AGOA

e. As AGOA has been characterized by unpredictability, there is need for a more predictable and stable regime that promotes long term planning and investment

f. There should be a strong regional component under AGOA in order to support COMESA regional integration programs including in the area of infrastructure;

g. Product coverage under AGOA should be extended to all products; and

h. African Governments should continue to lobby US Congressmen so that the current US Preference Reform Programme does not erode AGOA benefits for products of importance to COMESA Member States especially on textiles and apparels.

THE IMPORTANCE OF SERVICES IN COMESA

Francis Mangeni and Tasara Muzorori

Over ten years from 1997 to 2007 world imports of commercial services rose consistently from USD1.28 trillion to USD3.1 trillion – an increase of 141% while world exports of commercial services rose from USD1.3 trillion to USD3.29 trillion – an increase of 152%. During the same period merchandise imports grew from USD5.7 trillion to USD14.2 trillion – an increase of 148% while world merchandise exports also grew by 148% from USD5.59 trillion to USD14 trillion over the same period.

The United States of America was the top exporter of services, accounting for USD456.4 billion, or 14%, of global cross-border commercial services exports in 2007. Other top single-country exporter markets included the United Kingdom (8 %) and Germany (6 %). Although most of the world's top 10 services exporters in 2007 were developed countries, China and India ranked as the world's seventh- and ninth-largest services exporters, respectively. Overall, the top 10 exporting countries accounted for 53 % of such exports in 2007. The COMESA region exported USD12.8 billion worth of services in 1997 and this rose to USD26.1 billion in 2007, representing an increase of 104%. In terms of share of world exports of services, COMESA's share was 0.99% in 1997 and this share fell to 0.80% in 2007.

With regard to world services imports, the United States also topped as the world's largest services importer in 2007, with USD335.9 billion, or 11 percent of global commercial services imports. In that same year, Germany and the United Kingdom respectively accounted for 8% and 6% of such imports, while the top 10 importing countries together accounted for 51% of global commercial services imports. China, which was the fifth-largest importer of commercial services in 2007, was the only developing country to rank among the top 10 global importers. Among the world's top 10 exporters and importers of commercial services, the United States recorded the largest services trade surplus (USD120.5 billion) in 2007, followed by the United Kingdom (USD78.9 billion). Germany and Japan recorded the largest services trade deficits, with imports exceeding exports by USD44.7 billion and USD21.6 billion, respectively. The COMESA region registered an increase in services imports of 121% from USD11.4 billion to USD25.3 billion from 1997 to 2007. In terms of share of world imports of services COMESA's share was 0.89% in 1997 and fell slightly to 0.82% in 2007.

The raison d'être of the Common Market for Eastern and Southern Africa is to find better and better ways of improving the living conditions of the people. In two key areas, trade and investment, COMESA works to eliminate restrictive and discriminatory measures and policies and to adopt programs that result in a seamless regional internal market and a common investment area. The internal market is to cover all areas of economic activity. The bigger market offered by the region, if interconnected through infrastructure and trade facilitation instruments into a readily available regional market for small and big business, and if equipped with critical levels of innovativeness and business sophistication, is a significant consideration in decisions on the generation of local and regional investment and the location of foreign direct investment. The programs include the overarching requirements of peace and security, macroeconomic stability, cooperation and common positions in international relations, and consistence with the overall continental integration process. In this sense, a strong and competitive country requires a strong and competitive region.[56]

The COMESA Treaty has specific provisions on services. It provides for "removal of obstacles to free movement of services", adoption of measures to achieve free movement of services in order to establish a common market,

56 Article 3 of the Treaty establishing COMESA (the Common Market for Eastern and Southern Africa) provides that:
The aims and objectives of the Common Market shall be:
(a) To attain sustainable growth and development of the Member States by promoting a more balanced and harmonious development of its production and marketing structures;
(b) To promote joint development in all fields of economic activity and the joint adoption of macro-economic policies and programs to raise the standard of living of its peoples and to foster closer relations among its Member States;
(c) To cooperate in the creation of an enabling environment for foreign, cross border and domestic investment including the joint promotion of research and adaptation of science and technology for development;
(d) To cooperate in the promotion of peace, security and stability among the Member States in order to enhance economic development in the region;
(e) To cooperate in strengthening relations between the Common Market and the rest of the world and the adoption of common positions in international fora; and
(f) To contribute towards the establishment, progress and the realization of the objectives of the African Economic Community.

and development of the private sector.[57] Other provisions on areas of cooperation are relevant and will apply to trade in services, particularly in the areas of, monetary and financial cooperation, transport and communications, industrial development, energy, health, standardisation and quality assurance, environment, science and technology, agricultural research and marketing, tourism, information systems, and social and cultural affairs.[58] Important aspects of these areas of integration are covered by the twelve categories of services, namely, business, communication, construction, distribution, education, environmental, financial, health related and social, tourism and travel related, recreational cultural and sporting, transport, and other services.[59]

On the basis of these treaty provisions, COMESA undertook negotiations to elaborate a framework for trade in services in the region. Legal and trade experts of the member states held five meetings that produced a draft for consideration by the Permanent Secretaries meeting as the Intergovernmental Committee and then by the Trade Ministers meeting as the Council of Ministers. The Council adopted the Regulations on Trade in Services on 4 June 2009 at its twenty sixth meeting held in Victoria Falls.[60] The Regulations are a framework for liberalisation of trade in services in the COMESA region and for successive rounds of negotiation to achieve deeper and broader liberalisation as the region takes steps to become a Common Market by 2015.

The regulations provide for, the objectives of eliminating barriers to trade in services, improving efficiency and competitiveness of services markets, expanding the depth and scope of liberalisation, and increasing service exports; incorporation of the principles of the General Agreement on Trade in Services of the World Trade Organisation;[61] the most-favoured-nation treatment principle requiring that the best available treatment be given to services and service providers from the other COMESA Member States; publication of relevant measures and establishment of enquiry points; special and differential treatment on the basis of levels of development; development cooperation; rules on domestic regulation; mutual recognition of qualifications; prohibition of anticompetitive practices and of abuse of monopolistic position; balance of payments safeguard; general and security exceptions; negotiation and adoption of schedules of specific commitments for liberalisation; the non-discrimination principle of national treatment in the liberalised sectors; and dispute settlement.[62] These regulations entered force on the date of their publication, which means that Member States are now under the obligation to comply with them.[63]

The Committee on Trade in Services, established under the regulations, and in which the negotiations will be conducted, held its first meeting on 1-4 September 2009, again in Victoria Falls. The meeting adopted its rules of procedure[64] as well as the guidelines and the road map for the first round of negotiations. The guidelines provide for a positive list approach in the negotiations and for exchange of offers and requests within the committee, and for modalities of scheduling of commitments; while the road map requires at least four meetings a year, submission of offers and requests in February 2010, and a meeting to consider the offers and requests in May 2010. The committee will make reports to the bi-annual meetings of the Council of Ministers.[65]

The first meeting of the Committee on Trade in Services agreed on an indicative list of priority service sectors for liberalisation, namely: business, communications, transport, financial, tourism and travel related, energy, and construction and related engineering. Those not included in the indicative priority list are: distribution, education, health related and social, and recreational cultural and sporting. The final list of priority sectors will be agreed at a meeting to be held after three months of consultations and consensus building within the member states.

This list of priority sectors will result in a degree of liberalisation that is deeper and broader than what the member states have undertaken at the WTO within the framework of the General Agreement on Trade in Services. This means that the requirement for substantial sectoral coverage will be met.[66] This degree of liberalisation is credible and covers sectors that have an immediate and visible impact on the daily lives of ordinary people, such as business, communications, transport, energy, and financial services. They cover some of the sectors with the highest employment rates, such as tourism and construction. They include infrastructure, such as transport, communication, financial and energy services. In addition, the committee was mindful of the fact that the Southern Africa Development Community had agreed on six priority sectors in the on-going negotiations for a Protocol on

57 Articles 4.4(c), 151, 152 and 164

58 Chapters 10-21 of the Treaty
59 The UN Central Product Classification at http://unstats.un.org/unsd
60 Report of the Twenty Sixth Meeting of the Council of Ministers, COMESA document CS/CM/XXVI/2, Annex IV
61 Done at Marrakesh in April 1994, entered force on 1 January 1995; please see www.wto.org
62 Please see the various provisions of the regulations
63 Article 12.1 of the COMESA Treaty
64 The rules of procedure say how meetings will be conducted
65 The COMESA Guidelines for Services Negotiations, adopted by the Committee on Trade in Services on 3 September 2009 at Victoria Falls Town, COMESA document CS/TCM/CTIS/I/2.
66 Article V of the General Agreement on Trade in Services

Trade in Services; while the East African Community had agreed on seven sectors in the on-going negotiations for the Protocol establishing the East African Common Market.[67]

The idea behind priority sectors is that, first, the process is credible before the people of the region – the need for results that they will welcome for being useful in their real lives and living conditions by dealing with pertinent sectors; and second, the need to have deeper liberalisation at the regional level than at the WTO or in any trade arrangement with third countries. This is a WTO obligation and it is a politically correct thing to do. Agreement on the minimum number of sectors assists in this. Third, services constitute an important economic activity in the region. Liberalisation in the priority sectors will harness the power of those sectors to assist the social economic development of the people and the region. Identification of the key drivers of the economy is therefore strategically important. Fourth, COMESA, EAC and SADC have formed a Tripartite, to establish a single free trade area and customs union, and eventually to merge into one regional economic community.[68] The priority services sectors adopted in the three regional economic communities, if harmonised, would be an important step in strengthening the Tripartite.

The guidelines set out the committee's thinking behind the priority sectors in the following terms:

> It is understood that commitments in the priority service sectors will assist to attain a credible level and amount of liberalisation, support the strengthening of infrastructure, promote competitiveness, build the capacity of micro and small and medium enterprises, and contribute to the COMESA-EAC-SADC Tripartite process of merging the three regional economic communities.[69]

Services constitute anything from 40 to 70 percent of Gross Domestic Product in COMESA member states. Services are a major destination for investment. The programs for promoting COMESA as a prime investment destination and a common investment area rightly attract a significant degree of focus. Significant proportions of investment go into the tourism and travel related services particularly hotels, into banking, insurance, telecommunication, exploration, transportation, and energy services.

The broad range of services shows how they span practically all living: energy, financial, transportation, health, education, logistics, beauty, and recreational services. Services assist to promote the common good, of society, individual countries, and the region as a whole.

Financial services, covering both banking and insurance, are critical for economic growth and trade performance. Credit is required, at some stage at least, by practically all business, and by practically all investment. Up to 90% of trade requires trade finance. Insurance, both commercial and non-commercial, assists recovery and assists investor confidence in the region. Critical amounts of credit finance, readily available in an affordable and cost-effective manner across the region, will greatly assist the competitiveness and social economic development of our entire region.

Services now constitute key infrastructure for economic growth. Apart from financial services, transportation services alone can constitute up to 40 percent of the production cost of a product for landlocked countries. Utilities such as energy and communications, affect competitiveness in a fundamental manner. In these areas, a regional approach assists the pooling of resources, and assists inter-connectivity in order to consolidate the regional market and make it real and usable. In addition, distribution services and logistics, research and development, marketing services, all these are the nuts and bolts with which we actually put together a real regional market, that actually enables trade to take place, that actually assists the social economic development of our countries and our region.

Health and education services assist in keeping a healthy population and work force; and in equipping our people with skills that investment requires, and that our people need to survive and to live decent lives. In this information or knowledge society, competitiveness of a region depends on having a critical pool of skills, ideas, and innovativeness. Without education, the region won't be competitive, yet globalisation is a reality of our times and provides key parameters for our existence.

Services provide jobs. These could be high earning jobs, for instance in sports, the arts and entertainment. But they could also be the jobs that ordinary people can have as job creators, through providing their only valuable asset, namely, their services. They could be the only jobs available to young professionals, who only have their skills to

67 The East African Community plans to launch/ launched its Common Market on 1 January 2010
68 Communiqué of the COMESA, EAC and SADC Heads of State and Government adopted on 22 October 2008 in Kampala
69 Guideline 17 of the COMESA Guidelines, p.3

offer. A survey done in East Africa over a three-year period, 2001 to 2003, made the remarkable finding that 9 out of every 10 jobs advertised in the newspapers were in the services sectors.[70] The services sectors are therefore a huge employer, and on this basis, services as an economic activity have an important role in eliminating poverty and disease.

Services will assist in improving the image of COMESA region, as a prime investment destination, for local, regional and foreign investment; and in making faster progress towards modernisation of the region, and towards attainment of the millennium development goals: to reduce poverty through job creation and vibrant trade, to ensure good health for our mothers and children and for all our people through health services, to provide education to our children and to the youth and to our labour force and entrepreneurs through education services, to protect our environment through environmental services, to assist market access and market utilisation through business services and through a regional and global partnership; these are important goals we as the human family have set ourselves.

The member states of COMESA have recognised the critical importance of services through their decisions to date, and have embarked upon negotiations to deepen and broaden the liberalisation of trade in services. Services provide the bed rock for the regional market and regional competitiveness. An important step now is for each COMESA Member State finalise internal consultations in order to define key negotiating objectives that promote the good of both the country and the region through achieving the overriding objective of COMESA of improving the living conditions of the people and through making steady progress towards achievement of the millennium development goals.

International negotiations already include services; therefore it would be impolitic not to prioritise regional services liberalisation in order to avoid less preferential treatment at the regional level. Globalisation has been driven largely by services, particularly telecommunications and transport, and progress on services assists the beneficial participation of Member States in globalisation.

Initiatives reflect progress on the ground: cross-border services trade is already booming. Among the cross-border investing countries are: Egypt (USD 1,920 million) sharing 90% of total COMESA FDI outflows, followed by Sudan (USD 98 million) with 5% of share, and Mauritius (USD52 million) with 2% of share.

Forty-three of the 50 largest intra-COMESA investments between 2008 and 2010 were in the services sector, the other 7 being in manufacturing, processing and extraction. The 43 were in business, telecommunications and financial services, more than 50% being in financial services.

At present, 14 countries have submitted their lists of priority sectors to the COMESA Secretariat. These are Burundi, Comoros, Djibouti, DR Congo, Egypt, Kenya, Madagascar, Malawi, Mauritius, Seychelles, Swaziland, Uganda, Zambia and Zimbabwe.

The submissions indicate that Communications and Tourism are the two sectors which all Member States regard as priority sectors in common. Transport and Finance have been chosen as a priority sector by 13 of the countries, followed by Energy with 10 countries, Construction/Engineering with nine, Business with eight countries and Education with seven.

The countries with the highest number of chosen sectors are Djibouti, Comoros and DR Congo with 10 sectors each. Mauritius is next with eight sectors, followed by Burundi, Uganda and Kenya with each having chosen seven sectors as priority. Zimbabwe, Zambia, Malawi and Swaziland have six sectors each. Egypt and Madagascar have chosen five sectors and Seychelles four.

Out of the seven sectors identified at the First meeting of the Committee on Trade in Services, two of them – Communications and Tourism - have been selected by all the 14 of the 19 Member States, while finance and transport have been selected by 13 of the 19 Member States. Energy and Construction/Engineering were selected by ten and nine countries respectively, while Business services were chosen by eight.

Djibouti and Comoros have nine sectors in common, which is the highest number of countries with common sectors. The three EAC Member States that have submitted their priority lists, Burundi, Kenya and Uganda, all committed in

70 Ministry of Tourism Trade and Industry of Uganda, Sectoral and Analytical Studies to Guide Uganda in EPA Negotiations, 2005, pp 148-9; citing the Uganda Bureau of Statistics Statistical Abstract 2004

the same seven sectors, and have six sectors in common with the three countries listed above.

Four SADC countries - Zambia, Zimbabwe, Malawi and Swaziland - are all prioritising the same six sectors. Mauritius has also chosen those six sectors, but has additionally selected Business Services and Education. D.R. Congo has five of its chosen sectors in common with the other SADC members, with the latter not choosing Energy Services, whereas Madagascar has four of its five sectors in common with the four SADC Members listed above, and has additionally chosen Business Services. Therefore, Communications, Finance and Tourism are the three sectors chosen by all eight SADC countries in COMESA.

The COMESA services program has taken off and in a short time has registered tremendous success. This is a clear recognition of the important role of services in promoting trade in goods and in moving towards deeper level of integration in accordance with the COMESA timelines for forming a common market by 2015 and a monetary union by 2018.

THE IMPACT OF GLOBAL FINANCIAL AND ECONOMIC CRISIS ON AFRICA

Ibrahim Zeidy

The global financial and economic crisis presents significant challenges for African Countries. What we have been seeing in the global economy is unprecedented in the last 60 years. Growth in GDP has been declining in the developing economies for four reasons, namely: weak external demand from industrialised economies; lower commodity prices; tightened financing constraints; reduction in remittances.

This crisis represents a serious setback for Africa because it is taking place at a time when the region is making progress in economic performance and management. Since 2000, the Africa region has had an average growth rate of real output above 5% and inflation has declined to single digits. Sound economic policies were an important factor, as was the favourable external environment and increased external support in the form of debt relief and higher inflows. The global financial crisis greatly compounds the policy challenges confronting the region as it strives to consolidate its economic gains and meet the Millennium Development Goals. The key challenge facing African countries is how to manage the current crisis to ensure that it does not reverse progress made since the beginning of the new millennium and reduce the prospects of achieving MDGs.

Channels of Transmission of the Global Financial Crisis to Developing Countries

The global financial crisis will mean slower growth and rising inequality in developing countries. The effects will be protracted and will not show up simultaneously, and the nature and degree of impact will vary widely. Some countries, notably those with extensive foreign exchange reserves and strong fiscal positions, will be much better able to cope than others.

The impact will be felt in two stages. In the first stage, impact will be felt through two channels. First, lower growth in the industrialised countries will mean less demand for developing countries' exports of both manufactured goods and most commodities. The crisis will not have a significant impact on developing countries which are growing based on domestic or regional demand. Erosion in demand for developing countries' exports and the squeeze on financing trade and investments will depress private sector activity and adversely affect the growth momentum. This is evidenced by the declines in export prices of most primary products in recent months. For example oil and copper prices dropped by more than 50%. Tourism may also be affected first, although this could be offset by more competitive pricing following currency devaluation.

The second channel will be a reduction in capital flows to developing countries. Investors in developed countries will be more risk-averse and less willing to invest in developing countries. This is evidenced by high outflow of capital from developing countries by risk-averse foreign direct investors, hedge funds, private equity and international companies. International banks may also be tempted to cut off trade lines (both import and export) to preserve capital. Insufficient trade finance will indeed affect both exports and importers. There is already evidence that the crisis is making external credit harder to secure for African banks. Commercial banks have seen their lines of credit shrink while fundraising for new initiatives appears to be in jeopardy. Also, countries that were planning to issue sovereign bond for long-term financing for infrastructure development may have to put it off for some time;

Although some local banks in developing countries benefited from a lack of integration in the global economy, there are still concerns about possible unseen loses on local stock markets or on foreign exchange exposures caused by the sharp devaluation of developing countries' currencies. With an economic slowdown looming, non-performing assets are bound to rise and although the deposit base seems solid for now, long term funding is at a premium.

All these will lead to volatility in exchange rates as investors opt for safer havens. In such a situation, countries with strong reserve accumulation and solid fiscal position will be able to cope, e.g. China. The countries that are at risk are those that have deteriorating current account balances and fiscal problems. But even for countries with adequate reserves and strong macroeconomic performance, the global credit crunch will impose a cost. The combination of less export demand and perceived higher risk for investors means that developing country governments and businesses needing access to capital will face higher interest rates, both externally and locally. Higher interest rates and less willingness to lend make it harder for middle class and poor people to borrow. Moreover, developing countries will need to cut fiscal expenditures to deal with reduced sources of revenue and finance. Thus the result will be cuts in social programmes and infrastructure projects which results in increased poverty and inequality;

The Second stage of the impact will materialise as a result of the depth of the crisis and the cost of resolving it. The cost of resolving it such as stimulus plans and the creation of entities like "Bad Banks" for holding toxic assets and direct capital injection into banks could make the US fiscal deficit soar. This can be a problem if it undermines confidence in the dollar, and if the US government then responds by raising interest rates to defend the dollar. At this time, we don't know for sure if this will happen, but if it does, for developing countries already weakened during stage one, that is, suffering from reduced export demand and capital flows, high US interest rates could be like getting hit with a double whammy.

Uncertainty concerning the depth and intensity of the crisis, the future dynamics of financial and economic systems, and the effectiveness of the policy responses undertaken by industrial economies, are likely to affect banks' and businesses' behaviour. This will distort their lending and investment decisions to the disadvantage of long term investment. Uncertainty will also have negative effects on foreign exchange markets. This will further result in larger exchange rate volatility, with damaging effects on trade and capital flows.

Facing high interest rates, governments in the developing world would have to adjust their fiscal position again by raising taxes or cutting expenditures beyond what was needed during the first stage. The most likely expenditure cuts are those directly aimed at the poor, so the poor (they) will get hit a second time.

Impact of the Crisis in Africa

In the first few months of the financial crisis, there was a widely held view that the impact on African countries would be minimal because of their low integration into the global economy. Furthermore, African countries tend to have very small inter-bank markets and several countries have restrictions on new financial products as well as market entry, which should shield them from the direct effects of the global financial crisis. In the following section, an assessment will be made on the impact of the financial crisis on the banking sector, foreign exchange markets, commodity markets, trade flows and financial flows.

1) Impact on the banking system

Africa's low level of financial integration meant that African economies were relatively isolated from the direct impact of the financial crisis. Africa's stock marker capitalisation is still very low, representing only 2.09% of world capitalisation. Furthermore, African banking assets represent only 0.87% of global banking assets. Africa's external financing (bond issue, stocks and private borrowing) is low, representing only 4% of overall issue for emerging economies in 2007. The low financial integration indicators partly explain why Africa escaped both the sub-prime and banking crises. No African country except Nigeria announced a bank rescue plan. No difficulties have been reported on African sovereign wealth funds and the eventual impact on their returns. Generally, African banks have not been engaged in complex derivative products and are not heavily dependent on external financing.[71]

The financial meltdown suffered by the parent banks following market capitalisation losses was not passed down to their African subsidiaries. In fact, some subsidiaries of foreign banks saw considerable increases in their market capitalisation. For example, Swaziland Ned bank, Bank of Africa Benin and Standard Bank of Ghana saw their market capitalisation increase between July 2007 and January 2009. Therefore, the contagious effect of the financial meltdown is weak compared to the effect on parent banks.[72]

Borrowing from foreign banks is regulated in the context of exchange control regulations. Off-balance sheet exposure is not widespread in Africa, which is in contrast to industrialised countries that have complex financial securitisation instruments such as the ones that triggered the sub-prime crisis.

71 African development Bank Group" Impact of the Global Financial and Economic Crisis on Africa" PP 1-2, Working Paper Series No. 96 March 2009
72 Ibid, page 3

2) Impact of the crisis on markets

There are three distinguishable immediate effects of the crisis, namely the contagion effect on financial markets, foreign exchange markets and commodity markets. These are discussed as follows:

a. Effects on financial markets

The financial crisis has increased the risk premium that African countries have to pay in international capital markets. There is evidence that several countries in the region have difficulty obtaining funds from international capital markets. For example, Kenya, Nigeria, Tanzania and Uganda have cancelled plans to raise funds in these markets. The drying up of this source of external finance is a serious setback for development in the region because the money raised would have been used to finance infrastructure development and boost growth. The private sector is also facing challenges in raising funds in international capital markets.

Africa's relatively liquid financial markets not only suffered from the contagious effect but also faced amplification thereof, possibly attributable to the overvaluation of stocks and the outflow of portfolio investments. African investors, in general, and Egyptian and Nigerian investors in particular, recorded within six months an average loss of more than half the wealth invested at the end of July 2008.

b. Foreign Exchange Markets

The Foreign Exchange Markets of many African countries have been under enormous pressure since the onset of the crisis. The depreciation of some currencies is attributable to the impact of the financial crisis on commodity prices and the decline in foreign exchange reserves. Thus, the 65.8% drop in copper prices, from the highest recorded price of July 2008 at USD 8,985/metric ton to USD 2,902/metric ton at the end December 2008, led to a considerable fall in Zambia's foreign exchange reserves.[73]

Several African countries have high foreign debt, such that depreciation of their currencies against the dollar will impose serious debt service burdens. This will also increase the cost of imported intermediate inputs, with consequences for production, output and employment. Furthermore, since several countries in the region are net importers of food, which is a major component of the consumer price index, the depreciation of currencies will increase domestic prices of consumer goods and reduce access to food by vulnerable groups. Exchange rate depreciation will also increase exchange rate risks faced by domestic firms and increase the likelihood that they will default on loans owed to domestic banks, thereby increasing the vulnerability of these banks.

c. Commodity prices and Trade

On 24 February 2009, The Economist's commodity price dollar index for all items had fallen by 42% compared to a year ago. The index for food was down 30%, the non-food agricultural products index was down 45% and the index for metals was down 60%. For poorer countries, such as in Africa, the fall in commodity prices has been the main mechanism by which the global crisis is transmitted to them. In the past four to five years the rising prices of commodities had fuelled economic growth and raised hopes of a structural shift in the commodities situation, but these hopes have been dashed by the recession. The most affected commodities have been crude oil, copper, coffee, cotton and sugar. Trade in services are also being affected by the crisis. For example, global tourism arrivals fell by 1% in the second half of 2008. The financial crisis has had a negative impact on world growth prospects and seriously dampened expectations on commodity futures market, thus inducing falling prices and demand for most commodities.[74]

The reduction in expected export earnings threaten to reverse the gains from the recent economic performance of African economies. Key consequences include declining reserves, non-profitability of some oil fields that have high extraction costs, reduction in government funding capacity and cancellation or postponement of a number of investments in extractive industries that are highly dependent on foreign direct investment, and reduction in the ability of the Government to cushion the negative effects of the crisis on the economy.

73 Ibid, page 6
74 Martin Chord, Southern Bulletin " Responding to a World Crisis" page 3, March 16, 2009, Issue 34

The decrease of primary commodity prices will have a positive impact on the external account of oil importing countries, in particular countries that have sustained a large deficit on the trade account due to the large oil import bill.

3. Transmission of the Crisis through the Finance Route

(a) Worker's remittances

Many African countries also depend on the remittances sent home by their migrant workers. Remittance inflows to Sub-Saharan Africa increased from USD4.6 billion in 2000 to USD20 billion in 2008.[75] In some countries, remittances exceed official development aid as a source of external financing. A large part of remittances to sub-Saharan Africa finances household consumption and hence has a direct effect on poverty. Recent data released by the World Bank indicate that the financial crisis will reduce remittance inflows to Sub-Saharan Africa by between USD1 billion and USD 2 billion in 2009 relative to 2008. While updated data on emigrant transfers remain incomplete, they tend to show signs of a negative impact of the crisis. Monthly data for December 2008 and January 2009 indicate some stagnation or a slight decline worldwide. Surprisingly remittances in some countries such as Kenya have increased. Nonetheless, in the absence of data, it is too early to draw a definitive conclusion on the impact of the crisis on remittances in Africa.[76]

(b) Private Capital Flows

Due to the significant effect of the crisis in businesses and the financial resources constraint, it is expected that many developing countries will receive a declining flow of foreign direct investment. In recent years, there has been a significant increase in private capital flows to the region. FDI inflows to Africa are currently steady at a relatively low level of USD 61.9 billion (2008), an increase of 16.8% from 2007[77]. However, there are large discrepancies across countries: Whereas Egypt and Morocco respectively reported a decline of -5.6% and 7%, FDI in South Africa more than doubled in 2008.[78] There are indications that FDI flows to the region would decline in 2009 because of the global economic slowdown. FDI often responds to growth with a lag and so it is not surprising that the full impact of the crisis on flows to Africa will be felt more in 2009 and beyond.

Other forms of private capital flows have also been affected by the crisis.Net portfolio inflows to Africa have deteriorated in 2008 relatively to 2007. No bond issue in foreign currency has been registered in 2008 for African Countries, whereas it had reached USD6.5 billion in 2007 compared to USD1.5 billion in 2005. Many African countries are facing difficulties issuing bonds in international capital markets. The drying up of these sources of external finance has constrained growth and development in the region.[79]

Many African Countries are also facing a worsening of trade financing as banks have tightened their supply of credit even for routine import and export business. It was reported at a World Trade Organisation meeting that there is a USD25 billion shortfall in trade financing that now needs to be filled.[80]

c) Official Development Assistance

The financial crisis is expected to put heavy pressure on many of the traditional donors to Africa due to competing needs to tackle the aftermath of the crisis in all the affected countries. In fact recent estimates by and large confirm that there will be a cut in ODA flows to many developing countries to the extent of 30%. This may arise since ODA flows are procyclical. Furthermore, pressures to recapitalise the banking sector and provide support for ailing industries may force developed countries to cut down on ODA flows to Africa. Several African countries depend on official development assistance (ODA) for the financing of government programmes. In several countries ODA accounts for more than 30% of government revenue or budget.

The drying up of an important source of development finance diminishes the ability of African countries to boost growth and achieve the MDGs.

75 UNECA "The Global Financial Crisis: Impact, Responses and Way Forward" page 5, E/ECA/COE/28/6
76 African Development Bank Group " Impact of the Global Financial and Economic Crisis" Page 12, Working Paper No. 96-March 2009
77 UNECA "The Global Financial Crisis: Impact, Responses and Way Forward" page 5, E/ECA/COE/28/6
78 Ibid, page 5
79 African Development Bank Group " Impact of the Global Financial and Economic Crisis" Page 11, Working Paper No. 96-March 2009
80 Martin Khor, Southern Bulletin " Responding to a World Crisis" page 3, March 16, 2009, Issue 34

The Economic Outlook for Africa after the Financial Crisis

(1) Economic Growth

Notwithstanding aggressive easing by the Federal Reserves/central banks and a timely stimulus package by various countries, the financial crisis is going to lead to a decline in investment and consumption in the coming years as a result of deteriorating labour market conditions, sluggish growth in disposable incomes, and tighter constraints on household borrowing in big economies. For African countries, the financial crisis does not directly impact on the growth of the economy per se, however, it puts downward pressure in the economy through other means, such as declines in both public and private investments. The growing dependence of sub-Saharan Africa and other low-income countries on export receipts from tourism and transportation services, which also tend to be procyclical, heightens the region's exposure to the global recession.

The outlook for economic growth in sub-Saharan Africa in 2009 has worsened in recent months. With the expectation of a more pronounced global downturn, lower commodity prices and pressure on capital flows, in January 2009 the IMF projected that the growth in sub-Saharan Africa will slow from just over 5% in 2008 to about 3.25% in 2009, over 3 percentage point less than forecast a year ago. Growth deceleration may compromise Africa's efforts towards reaching the Millennium Development Goals and poverty reduction.

(2) Inflation

High inflation rates are presenting a real challenge to policymakers across the globe in the face of the financial crisis. The inflation estimate for Africa for 2008 (10.9%) is higher than the 2007 (7.4%), due particularly to the sharp increase in oil prices and food during the first half of 2008. However, falling commodity prices should exercise a downward pressure on inflation, resulting in lower inflation in 2009.[81]

(3) The Fall in Reserves and Government Budget

The reduced inflows or outflows in finance and the fall in exports of goods and services have led to widening current account deficits by about 4 percentage points of GDP for the region to 6.75% in 2009, though with significant divergence between groups of countries. This led to a deterioration in the stock of foreign reserves in many African countries. Some have also seen their currencies depreciated, making it more difficult to service their external debt.[82]

Spending pressures might rise more as the economic slowdown continues. Pressure for added social spending and an increase in debt servicing costs associated with currency depreciation and higher borrowing costs in both domestic and international markets could be greater than expected. Contingent liabilities associated with support for domestic financial institutions and depositors could also be higher.

Fiscal balances are expected to deteriorate significantly as tax revenues, especially those that are commodity related, come under pressure because governments face additional demands for social spending. For sub-Saharan Africa as a whole, the fiscal balance declined by about 6 percentage points of GDP, from a surplus to a deficit of about 4 percent of GDP.[83]

In 2009, some countries will face a twin deficit (current account and budget deficit). This is because exports will fall faster than imports (causing current account deficit) while governments try to keep up with expenditure levels in the context of declining revenue. Thus several countries will face the threat of structural macroeconomic imbalances in the medium term if the crisis persists.

V. Policy Response[84]

For African Countries, it would be useful to deal with the crisis at the national, regional and international level.

81 African Development Bank Group " Impact of the Global Financial and Economic Crisis" Page 13, Working Paper No. 96-March 2009
82 IMF" Impact of the Global Financial Crisis" African Department, page 5
83 Ibid, page 5
84 UNECA "The Global Financial Crisis: Impact, Responses and Way Forward" pp8-12, E/ECA/COE/28/6

1) Responses at the National level

African countries have taken several steps to mitigate the impact of the financial crisis on their economies, including interest rate reductions, recapitalisation of financial institutions, increasing liquidity to banks and firms, fiscal stimulus packages, trade policy changes, and regulatory reforms. The measures adopted differ from country to country, depending on available fiscal space as well as the degree of vulnerability to the crisis. For example, oil exporting countries in the region have more fiscal space to conduct counter-cyclical policies because they accumulated huge foreign reserves during the recent oil price hikes. In the non-oil economies, however, the ability to adopt counter-cyclical policies is severely limited and so the use of fiscal stimulus measures is not widespread in these economies. In addition to the above measures, some countries have set up task forces or committees to monitor the financial crisis and advise their government on how to respond. Rwanda, Kenya, Nigeria and Democratic Republic of Congo are example of countries that have adopted this approach.

a) Interest rate changes

Since the onset of the crisis, 18 countries in Africa for which information was available, have made interest rate changes in response to the crisis. For example, in Botswana, the central bank reduced interest rates by 50 basis points in December 2008. This was followed by a percentage point reduction on 27 February 2009. In Egypt, the central bank cut its overnight and lending rates by 50 basis points on 26 March 2009. The Central Bank of Nigeria also cut its interest rate from 10.25% to 9.25%. Other countries that reduced interest rates include Kenya, Mauritius, and countries that fall under the ambit of the Bank of Central African States, Namibia, South Africa, Swaziland and Tunisia.

b) Liquidity Injection

Some countries have taken actions to increase liquidity in the banking system and to domestic firms. For example, in Benin, Burkina Faso, Cote D'Ivoire, Guinea-Bissau, Mali, the Niger and Togo, the Common Central Bank (BCEAO) injected liquidity on a weekly basis in the regional money market. In Cameroon and Liberia, a support or guarantee fund has been created for firms. In Tunisia, the Central bank has set up new deposit and credit facilities to improve flow of credit and increase liquidity in the banking system.

c) Recapitalisation of banks and regulatory changes

Some countries have taken specific measures to recapitalise domestic banks. In Mali, the Government has decided to recapitalise the Banque de l'Habitat du Mali in order to increase and improve finance for housing. In Tunisia, the central bank doubled the capital for the financing of small and medium sized enterprises in order to boost domestic investments. The Algerian Credit and Monetary Council has also issued instructions to commercial banks to increase their capital from 2.5 billion Algerian dinars to a minimum of 10 billion Algerian dinars ($142 million) within 12 months. The Council has also put in place a series of banking reforms to strengthen the financial system. The Government of Kenya has also enacted legislation that would increase the minimum capital requirement for banks from 250 million shillings to 1 billion shillings by 2012.

d) Fiscal Policy Measures

Fiscal stimulus packages have also been unveiled in a number of countries with a view to cushioning the effects of the crisis and boosting growth. In Cape Verde, the 2009 budget projects a 17 percent rise in public spending to provide fiscal stimulus to the economy. In Egypt, a fiscal stimulus package of 15 billion Egyptian pounds was announced by the Government. Gabon, Morocco, Namibia, Nigeria, Sao Tome and Principe, South Africa and Tunisia have also adopted fiscal stimulus measures. In most of these packages, infrastructure development has been emphasised. It is interesting to note that unlike the other countries, Namibia has adopted fiscal measures that involve a 24% public sector pay rise. The South African stimulus plan, announced in February 2009, is quite broad and has four aspects: a USD69.4 million three-year public investment programme, expansion of public sector employment opportunities; increase in social spending; and assistance to the private sector. The stimulus plan adopted by Morocco includes measures to improve access to credit, tax incentives, vocational training for workers and reducing red tape and corruption.

Fiscal restraint has also been exercised by several African countries in response to the crisis. For example, the Government of Kenya plans to cut expenditure to the tune of 25 billion shillings. In Benin, the Government plans to cut subsidies on food and oil imports to free up financial resources. In Botswana, restrictions have been imposed on travel budget, vehicle purchase and the creation of new posts. In Angola, the Government plans to revise its budget downward to take account of the anticipated decline in oil revenue.

e) Trade Policy Measures

Boosting economic growth through trade has been an important component of the response plans in several countries. Cameroun has reduced or waived import taxes on equipment, tools and goods required for research and oil exploration. In Liberia, the President has announced plans to reduce trade tariffs as well as the trade levy of the Economic Community of West African States. Tunisia has increased allotments for export business travels and Mali has introduced measures to refund to gold mining companies the value added tax and import duty due on their 2006/2007 operations. In Madagascar, the Central bank has devalued the local currency to restore export competitiveness. The Government has also launched a drive to boost exports.

f) Improving Domestic Resource Mobilisation

Some African countries have used the current crisis as an opportunity to introduce reforms aimed at boosting domestic resource mobilisation. In Burkina Faso, the Government intends to undertake a comprehensive reform of its tax policy in 2009 so as to increase the tax base and boost revenue collection. Cape Verde, Senegal and South Africa have also taken measures to boost tax revenue. The Government of Kenya intends to privatise some State-owned firms. It has also launched an 18.5 billion shillings infrastructure bond in the local capital market.

g) Supporting Domestic Growth Drivers

Economic policy at the macroeconomic and sectoral level needs to target support for domestic growth drivers and be tailored to each country's circumstances. Measures should be investigated to support tourism, mining and other export oriented activities.

h) Increasing Investment in Infrastructure

It is critically important that African countries keep an adequate level of infrastructure investment to support private sector activity in general and enhance competitiveness and diversification in particular.

2. Regional Responses

African ministers of finance and planning and governors of central banks met in Tunis, Tunisia, on 12 November 2008 to discuss the implications of the financial crisis for Africa and to identify appropriate policy responses to cushion its impact in the region. The meeting was jointly organised by the Economic Commission for Africa, the African Development Bank, and the African Union Commission. The Communicate issued at the end of the meeting emphasised the need for bold and decisive actions to mitigate the effect of the crisis on African economies. The following are some key policy responses that were stressed by African Policy makers at the meeting:

- Countries need to undertake a comprehensive review of their regulatory and supervisory regimes with the view of identifying areas for further improvement. In particular, all sectors of the financial industry should be subject to proper regulation and oversight, to avoid excessive risk-taking by financial institutions;

- Macroeconomic policy and structural reforms implemented in Africa over the last two decades have served African countries well. However, there is a need to deepen economic reforms further. This would help minimise the effects of the crisis and lay the foundation for sustainable growth in the region;

- While measures aimed at restoring growth and financial stability are important, they must be accompanied by measures to minimise the potential negative social impact of the crisis in poor countries. Giving priority to social protection and pro-poor expenditure is important in this regards;

- Strengthening developing countries' voice and representation by reforming the governance of international financial institutions is also crucially important. This has become imperative especially in the light of the increasing globalisation of financial markets.

These recommendations were presented and discussed by African Heads of State and Government at their Summit in Addis Ababa in January 2009. At their Tunis meeting, African ministers and governors of central banks also set up the Committee of Ten Ministers and Governors of Central Banks to monitor development, provide regular follow-up, advice ministers and governors on proposals, and contribute to the international discourse in relation to the economic impact of the financial crisis and mitigating measures. The Committee held its first coordination meeting in Cape Town, South Africa on 16 January 2009 and its second meeting in Dar es Salaam, Tanzania, on 11 March 2009. These meetings have helped to build an African consensus on the crisis and how the international community could assist countries in the region to respond.

b) Research Support

Identifying the potential impact of the crisis and the transmission channels is critical to designing and implementing effective policy responses. In this regard, the Economic Commission for Africa (ECA) has been providing technical and research support to African countries, since the onset of the crisis. ECA has also played a key role in facilitating an African consensus on the crisis by organising high-level meetings for African countries. ECA, AfDB and AUC are also providing support to the Committee of Ten Ministers and Governors of Central Banks. These technical assistance support and advisory services have played a crucial role in ensuring that African views and concerns are adequately presented to the international community, particularly the G-20.

c) Liquidity Support

African countries are facing difficulties accessing international financial markets due to the drying up of credit and rising risk premiums. AfDB has taken several measures to improve access to long-term finance for countries in the region, particularly for essential economic infrastructure. For example, the bank has established a USD1.5 billion emergency liquidity facility to provide fast and exceptional support to eligible countries. It has also set up a USD4.1 billion trade finance facility to improve access to trade finance. Some short-term measures have also been put in place to improve access to finance, including the restructuring of portfolios and pipelines in order to have faster disbursement instruments; seeking of additional funding through co-financing; review of trust funds to direct activities and funds towards countries in need; and establishment of a catalytic trust fund for African Development Fund countries to supplement their existing resources.

The IMF Exogenous Shocks Facility was modified in September 2008 to provide assistance more quickly and in larger amounts to low-income countries dealing with exogenous shocks. Malawi was the first country to benefit from this facility, and since then Comoros, Senegal, and most recently Ethiopia have accessed the facility. The IMF has also increased access to the Poverty Reduction and Growth Facility for a number of countries.

IMF also took action to bolster its members' reserves through an allocation of SDRs or Special Drawing Rights. It was at its April Summit in London that the Group of 20 industrial and emerging market countries called for a SDR allocation of USD250 billion. The proposed general allocation was approved by the IMF's Board of Governors on August 7, 2009, and came into effect on August 28, 2009. The allocation is based on a long-term global need to supplement IMF members' existing reserve assets and it provides liquidity to the global economic system.

The Way Forward

African countries have taken important steps at the national level to mitigate the impact of the financial crisis on their economies. However, finance constraints limit the range of policy measures that countries in the region could adopt in response to the crisis. In this regard, the international community needs to provide appropriate assistance to the region to prevent the financial crisis from turning into a regional humanitarian crisis. The main areas where international action is needed to help Africa deal with the crisis are outlined below:

1. Enhancing Resource Availability

Developed countries have adopted fiscal stimulus packages to boost their economies but very little attention has been paid to the need to boost demand in Africa and how to finance it. Africa needs to be fully integrated into the coordinated effort to increase global aggregate demand. The developed countries' fiscal stimulus plans will be much more effective if accompanied by similar fiscal stimulus plans in low-income countries. Financing sources to boost demand and growth in Africa include:

- Rich countries making more efforts to meet existing commitments on aid and debt reduction;
- Accelerating disbursement and improving access to existing finance facilities;
- Urging the IMF to put in place a new facility with relaxed conditions to support African economies during the crisis;
- An early capital increase for the African Development Bank to enable it to scale up its interventions in support of African Development;
- Sale of IMF gold reserves to release additional resources to help developing countries deal with financial crisis;
- Issuance of new Special Drawing Rights.

2. Reform of the International Financial System

Africa and developing countries in general have voiced their reservations and criticisms of the existing international financial architecture and aid delivery frameworks used by donors and international financial institutions. These criticisms not withstanding, the financial architecture has fundamentally remained the same since the Second World War. There are a number of key areas that African countries would like to see changed in the context of the reform of the Bretton Woods institutions and the global financial architecture.

(a) Increasing Policy Space

The imposition and use of policy conditionalities in aid delivery has been a matter of concern to African Policy makers. African countries have had their freedom to choose their own policy mix and paths constrained over time. The Country Policy and Institutional Assessment (CPIA) of the World Bank is an example of an aid allocation tool or framework which limits the policy choices available to African Governments. The CPIA gives a disproportionately heavy weighting to policy performance relative to development outcome. Under the CPIA, countries are ranked according to the quality of their policies and institutional arrangements. This focus on policies rather than outcomes is problematic because there is no general consensus on what constitutes good policy. African countries would like a redesign of the CPIA to include a category significantly weighted towards country specific outcomes and the use of African Peer Review Mechanism (APRM) governance indicators to measure progress in governance for African countries.

For countries that increasingly face liquidity shortage, a new flow of funds is needed, and without the types of pro-cyclical conditions that previously were shown to worsen the economic situation.

b) Debt Relief

(i) African countries are also concerned about the increasing use of the DSF in aid delivery, given the methodological limitations and subjective judgments about what constitutes good policy. The DSF needs to be redesigned to take account of its shortcomings and eliminate the judgmental element of what constitutes good policy and a good institutional arrangement.

(ii) For countries that have fallen into new debt crisis, a new round of debt relief and cancellation is required. To prevent countries that are in financial difficulties from falling in debt default, an international debt arbitration system is required, with a debt standstill and an orderly workout.

c) An international framework that assists African countries in regulating capital flows to prevent or minimise speculative flows; and which enables the countries to undertake regulations of capital flows.

d) Voice and Participation

African countries are concerned that they are not represented in key forums where important decisions that affect their economies are made. The redesign of the financial architecture provides an opportunity to address this issue. Africa would like to participate in the Financial Stability Forum and to have increased representation on the boards of the International Monetary Fund and the World Bank. Africa also needs to have permanent representation in the G-20, because South Africa is a member of the G-20 by virtue of its status as an emerging economy.

(e) Promote Trade

Trade is an important source of development finance in Africa. Against the background of creeping economic nationalism underpinning the rescue and stimulus packages mobilised by advanced countries, the G-20 must refrain from trade protectionism. In this regard, Africa would like to see a speedy conclusion to the Doha Round with appropriate provisions and emphasis on the development dimensions.

There is also a need to have a mechanism to deal with the instability of demand and price of export commodities. Trade and investment rules also should be reviewed to make them consistent with the newly discovered need for financial and other regulations and to ensure that they do not constitute barriers to the policy measures needed to counter the crisis;

Governments should also respond to the urgency of reducing dependency on primary commodities; i.e. accelerate structural transformation of the economies to achieve a more diversified production and export structure. They should also have better strategies for natural resource management and prudent use of export revenues to enhance diversification and resilience to hedge against external shocks.

f) Strengthening financial sector regulation to ensure stability

In order to strengthen the financial sector regulation, governments should establish financial sector reforms that enhance competition, while enforcing mechanisms that minimise exposures to risky foreign currency borrowing. Capital requirements for banks should also be revamped, the regulation of the non-bank segment of the financial sector should be strengthened, and pension reforms to unlock medium and long term finance should also be accelerated.

Additionally, governments can consider sovereign guarantees to restore investor confidence, design a trouble bank resolution strategy including the nature of resources required (specialists, consultants, accountants, lawyers), and identify the organisation responsible for issuing bailout bonds, and consider supra-national bodies to regulate cross-border banking.

The multilateral and Regional Development Banks have to act with swift and targeted countercyclical interventions without compromising their own financial soundness.

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Food Security

Sindiso Ngwenya

In the COMESA region, over 85% of the 400 million people derive livelihood directly from agriculture. However, at the same time, while this large majority relies on agriculture, the sector contributes only about 30% to regional GDP and well over 75% of all rural dwellers in the region are poor (using the 1 USD/day income measure). This situation points to triple realities on the ground, namely that poverty is concentrated in agriculture and rural areas, even if non-agricultural growth accelerates, much of the rural population remains poor, resulting in widening rural-urban income disparities, and the current high levels of poverty in the sector are indicative of the low productivity in African agriculture. With so many poor engaged in it, it is clear that a more dynamic and inclusive agricultural sector could have a dramatic impact on rural poverty, helping the region reach the first Millennium Development Goal of halving poverty and hunger by the year 2015. Various econometric studies have shown the agricultural sector's poverty reducing potentials.

Regional integration in Africa will be key to raising agricultural productivity, reducing poverty and helping to attain national and regional food security. The experiences and achievements of the Common Market for Eastern and Southern Africa (COMESA) since its creation from the Preferential Trade Area (PTA) in 1994 are useful to elaborate how these achievements mainly in market expansion and related areas indicators are of possibly even better outcomes for agricultural producers in the COMESA region in the future. COMESA programmes will impact on the key food security components of food availability, accessibility, affordability and safety. Overall, food production is a function of market opportunities and thus through its creation and assurance of these market opportunities, regional integration is an important ingredient of national and regional food security.

Food Security, Trade and Regional Integration in COMESA

Agriculture in COMESA is the engine for economic development and is of very high priority in the integration agenda and achievement of other aspirations. In order to stimulate economic growth, overcome poverty, and enhance food security, broad based agricultural growth is necessary. Chapter 18 of the COMESA Treaty delineates the spheres of cooperation in agriculture. Specifically, article 129 outlines the objectives of regional cooperation in agricultural development. In agriculture, COMESA's objectives are to achieve regional food security and rational agricultural production. To this end, the Member States undertake to adopt a scheme for the rationalization of agricultural production with a view to promoting complementarities and sustainability of national agricultural programs in order to ensure:

a. a common agricultural policy;

b. regional food sufficiency;

c. an increase in agricultural productivity to meet domestic and export markets; and

d. Replacement of imports on a regional basis.

COMESA is working to ensure that its Member States purposefully move towards halving hunger and poverty by 2015 and attain environmental sustainability. Article 130 -137 of the Treaty define the areas of cooperation as agricultural development; supply of staple foods; export of agricultural commodities, agro-industries; agricultural research and extension; drought and desertification management; rural development; and strengthening farmers participation in agricultural development.

While during the 1990s and the first five years of the new millennium, the COMESA region was clearly one of the biggest recipients of food relief in the World with 12 of its 19 Member States requiring external food aid every

year, with annual regional figures of about USD19 billion of food imports, the COMESA region has begun to make significant impacts in its quest to attain food security. With overall trade levels having risen from about USD3 billion in 2000 (when the COMESA Free Trade Area was launched) to USD14.3 billion in 2008, the number of countries requiring external food aid has reduced to only five, with the whole region accordingly recording a surplus of some 1 million tones of cereals. Infrastructure challenges, still limit the efficient movement of food from the surplus areas to the food deficit areas hence the continuing need of food imports by some Member States.
Recent studies by various development organizations have shown that external tariffs are not particularly high in Africa. The problem is with internal tariffs which are the highest in the World. Studies do show that only about one third of the delays in importing and exporting goods in Africa are due to bad roads and poor or inadequate port facilities. A bigger proportion comes from policies that impose unnecessary, economically damaging costs on producers – excessive bureaucracy, inefficient port management, inefficient corridor transport management and inappropriate licensing restrictions.

Various constraints stand in the way of improved technologies and sometimes the costs arising from a poor business climate are so high that a country, or indeed a whole region, suffers from perpetual low productivity. Should drought or plague appear, the food security situation can become catastrophic. In that case, humanitarian aid may help for a year or two. Overall, until the policy and business climate enables farmers to trade their excess profitably in local, regional and international markets, they are unlikely to ever produce enough excess to avoid a humanitarian crisis. In this regard therefore, regional integration efforts which promote expanded trade and all around policy harmonization enables farmers to operate in an environment where a "green revolution" can expand and thrive. Regional integration allows farmers to trade and invest effectively and profitably. On the other hand, fragmentation of policy pays dismal returns and is a recipe for sustained low agricultural productivity and continuous cycles of food insecurity.

Cognizant of the great potential of regional integration in motivating producers to undertake increased investments and raise productivity, COMESA has followed an aggressive integration agenda which has resulted in notable improvements in food security over the period 2006-2009. Indeed, while the region still needs the support of the UN World Food Programme, many countries in the region are now suppliers of food to the organization. Ten countries in the COMESA region sold food to the WFP in 2008, and three countries (Uganda, Sudan and Ethiopia) are among the WFP's top 15 supplying countries. Highlighted below are some of the key COMESA initiatives and actions that are contributing to increasing agricultural output and the enhancement of regional food security.

Major causative factors for COMESA improving Food Security Outlook – Impact of Regional Integration

Several key areas are responsible for the successes being realized in the COMESA region. The establishment of the COMESA Free Trade Area in 2000 and its transformation to the COMESA Customs Union in 2009 has progressively expanded markets for producers, increased the attractiveness of COMESA as an investment destination and leveled the playing field for businesses in the region. COMESA works towards trade facilitation through infrastructure development (North-South Corridor, Northern Corridor, and others) and efficiency of operations of border crossings, through the One Stop Border (OSTB) post initiative. Additionally, COMESA has harmonized over three hundred standards of tradable agricultural goods and is putting in place a harmonized Sanitary and Phytosanitary (SPS) regime with the COMESA Green Pass at the centre of it. SPS measures can pose enormous barriers to agribusiness and agricultural trade. If SPS rules are not harmonized or are implemented on the basis of no scientific evidence, they can bring trade to a halt. Regarding SPS therefore, COMESA has, with AfDB support achieved several advances.

COMESA has trained over 120 SPS experts from COMESA Member States in SPS matters (carried out by CABI International and COMESA Secretariat). It has sensitized stakeholders on SPS matters from both the public and private sector in 12 countries of the region. It has established the SPS Electronic Discussion Forum for the SPS experts to constantly exchange views, discuss common positions on SPS maters and exchange technical information. It has also established the Regional SPS Technical Sub-committee under the Technical Committee on Agriculture, which meets at least once per year, to facilitate technical basis for decision making. The Sub-committee has so far met twice since its formation two years ago. Additionally, it has established 3 SPS Regional Reference Laboratories as SPS Centres of Excellence; one for Animal Health (in Lusaka, Zambia), one for Food Safety (in Mauritius) and one for Plant Health (in Nairobi, Kenya). Currently, the COMESA Secretariat is in the process of procuring laboratory equipment for the Regional Reference Laboratories. It has established SPS Satellite Laboratories, which will focus on specific diseases, pests or hazards and will work in close collaboration with the Regional Reference laboratories.

Finally, It has drafted the SPS legal Framework (in the form of SPS Regulations) which is expected to be adopted by December 2009. The legal framework will provide principles, guidelines, institutional framework and operational modalities for harmonizing the implementation of SPS measures by Member States. Further, the legal Framework will include the COMESA Green Pass as its main strategy for harmonizing and implementing SPS measures in the Region. The COMESA Green pass will be a commodity based retainer certification scheme, which will enable the facilitation of movement of food and agricultural products from an SPS point of view. It will be based on regionally agreed SPS requirements.

Standards are vital in ensuring confidence in traded goods. In order to facilitate trade in the region, the COMESA Secretariat has, since 2003, adopted 304 harmonised Standards while over 250 drafts have been proposed. 118 of the adopted standards are for Agricultural, Fishery and processed products, 11 are for environmental issues and 22 are for Conformity assessment, which may also apply to the agriculture and agro-industries. Of the Drafts under discussion, over 100 of them relate to Agricultural and Fishery products in raw as well as processed form.

In 2005 the Council of Ministers made a number of Decisions, three of which had a bearing on Agriculture and trade. The three decisions were that Member States should adopt the harmonised standards at the national level and implement them; the standards harmonization programme should be expanded to include: building and construction materials; primary agricultural products including dairy products; electrical accessories; textiles and leather products; timber and timber products; as well as basic standards; and, liaison should be established with other sub-regional groupings, such as EAC, SADC and IOC on standards and quality assurance.

To-date six countries have notified to COMESA the standards they have adopted as National Standards. The number of standards adopted at the national level varies from country to country depending on their national needs. Other countries may have already been using the equivalent international standards at the time the harmonized standards were proposed.

In order to avoid the development of divergent standards between COMESA and other sub-regions, some standards harmonization work started with the EAC and in this respect 9 COMESA-EAC Draft Standards (eight for Milk and Milk products and one for Maize), were agreed upon at the technical level and recommended for adoption by respective RECs. COMESA is yet to adopt these. It is hoped that this could be done by end of 2009. In terms of continuation of this work, it is advisable that any future work should be directed at harmonization between COMESA, EAC and SADC so that the same work is not repeated twice in future. One of the areas where support will be required is the Implementation of the tripartite standards harmonization work plan.

The COMESA Member States have also expanded the scope of harmonization to include Textile and Leather, Dairy products as well as primary agricultural products.

The Secretariat intends to make proposals for regulations to be established for Agricultural and Fishery products, in order to ensure that products meant for human and animal consumption meet the acceptable quality, hygiene and labeling requirements.

In addition, the Council of Ministers decided on aggressive implementation of the AU/NEPAD Comprehensive Africa Agricultural Development Programme (CAADP) with its goals of reaching at least 6% per year annual agricultural sector growth and 10% per year public sector budgetary allocation. The COMESA region remains at the forefront of this agenda with three CAADP Compacts signed in the region in Rwanda, Burundi and Ethiopia. Other countries such as Zambia, Malawi, Uganda, Kenya, Djibouti, Sudan, and Swaziland are all on the path on concluding their compacts during 2009 or early in 2010. In concluding the compacts, countries are committing to reaching higher levels of growth and making significant investments in the key pillars of land and water management, markets and rural infrastructure development, food and nutrition initiatives and agricultural research, technology development and dissemination.

In the CAADP Compacts concluded in Rwanda, Burundi and Ethiopia, investments were as committed as follows:

a. USD1 billion mainly to professionalize agricultural producers and establish viable value chains in Rwanda over the 2007 -2011 period;

b. USD3 billion to develop agricultural infrastructure and support land/water management, food security and research activities in Burundi over the 2009-2015 period;

c. USD10 billion in production support, food security and enterprise development in Ethiopia to sustain an agricultural sector growth above 10% per year.

The Council called for value addition and measures to increase productivity, noting that data available from UNIDO points to the fact in the developed world, over 98% of all primary agricultural products undergo processing, while only 30% or so of COMESA agro products are sold to processing facilities, the Secretariat has moved quickly to introduce value addition activities to motivate farmers to increase productivity. In particular, it is noteworthy that some 30% of all cereals produced and up to 50% of all fruits produced are wasted for lack of appropriate processing and post harvest handling facilities. COMESA has put in place appropriate partnerships and initiatives to encourage increased regional processing of cotton, livestock & livestock products, forest products, coffee, and other products. Additionally, through ACTESA (described further below), COMESA will work to expand agro-processing facilities throughout the COMESA region in order to capture the full value of our production and expand employment opportunities for the population.

To deal with the drawbacks of rain fed dependent agriculture and raise productivity further, COMESA operates a robust irrigation programme. The programme is mainly supported by the Government of India, and fellow COMESA Member States, Egypt and Sudan, also support other COMESA Member States to expand area under irrigation and thus encourage all year round agricultural production. To date, strategies for expanded irrigated agriculture have been developed in Zambia, Rwanda and Eritrea.

Given the abundant evidence that productivity is a function of market availability, COMESA is aggressively promoting the adoption of modern marketing instruments such as commodity exchanges and warehouse receipt programmes. A major advantage of warehouse receipt programmes, in particular, is their flexibility to use stored commodities as collateral for access to finance. COMESA, with the support of the AfDB, has been providing support to these initiatives and these activities will be expanded further under ACTESA.

COMESA, with a 150 million strong cattle herd, in the horn of Africa alone, has the highest concentration of livestock on the African continent. Livestock trade is key to increasing rural incomes and achievement of food security. Further, livestock is vital in promoting mixed farming and overall agricultural productivity. In this regard, COMESA has, with the support of partners such as USAID and others, been working to improve the policy framework for the development of the livestock sector and to expand regional and international markets for livestock and livestock products. Going forward, this work will be raided to a heightened level of focus through COMESA's specialized commodity agency, ACTESA.

Focused national agricultural inputs programmes, as part of the renewed focus on agriculture, in countries such as Malawi, Zambia and Ethiopia have made significant contributions to food security. In Malawi, serious food shortfalls experienced in the 2004/2005 production seasons were replaced by annual food surpluses since 2006 on account of well targeted "smart" fertilizer subsidies. Similar successes are being recorded in Zambia and Ethiopia.

Private sector associations are engaged in the regional agenda through the emergence of strong farmer and commodity sector associations all working very closely with COMESA. Thus, the Southern African Confederation of Agricultural Unions (SACAU) and the East African Farmers Federation (EAFF) have grown to be effective players in the regional development agenda, ensuring that COMESA, EAC and SADC all remain focused on sustaining a trade policy framework that supports agricultural development. In the same vein, agricultural commodity associations such as the Eastern African Grain Council (EAGC), Eastern African Fine Coffee Association, Association of Cotton and Textile Industries in Africa (ACTIF) and The Eastern and Southern African Dairy Association, partner COMESA in ensuring steady growth of the respective value chains. COMESA has signed MoUs with both the regional farmer organizations and the commodity associations to enable them to take advantage of the COMESA integration agenda.

Food Security Outlook for the Future

Going forward, COMESA's food security situation is expected to improve further as the region moves to implement even more coherent markets and food security programmes. In September, 2008, Ministers of Agriculture in COMESA launched the Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA). The Alliance was in June 2009 recognized by the COMESA Authority as a Specialized Agency of COMESA that will work to integrate small farmers in national, regional and international markets. ACTESA provides an institutional framework from currently ongoing COMESA agricultural markets programmes and programmes initiated by cooperating partners such as

USAID, DfiD, the WFP, EC, AGRA and AusAID. Within the Alliance, a major flagship programme being initiated aims at building a large regional network of input/output agro dealers who will be linked to financial institutions in the region. The agro dealers will help to deliver agricultural inputs, particularly to COMESA's landlocked nations of Ethiopia, Burundi, Uganda, Rwanda, Zambia, Malawi, Swaziland and Zimbabwe. ACTESA will also work to ensure harmonized seed sector regulations in the region and thus help to expand seed trade and allow use of improved seeds by the majority of producers.

ACTESA will be COMESA's main thrust going forward in seeking to attain regional food security. It will work with the COMESA Secretariat to

a. Advocate for rule based government interventions in the market

b. Promote, advocate and lobby for implementation of existing protocols, such as the simplified trade regime and removal of non-tariff barriers

c. Package marketing information for consumption by the majority of users

d. Develop a knowledge management system of activities and programs in the agricultural sector

e. Focus on the development of key value chains such as grains and pulses, oilseeds, roots and tubers, livestock, forest/natural resource products, tree crops and horticulture.

f. Ensure expanded local and regional procurement of food which would otherwise have been imported from outside sources for relief purposes

g. Continuously advocate for the development of strategic rural infrastructure to improve productivity and competitiveness

h. Build the capacity of national and regional farmer groups

i. Expand linkages of farmers to markets and sources of finance, and

j. Emphasize the emergence and growth of value addition markets to ensure increased incomes for farmers and expanded employment in the overall agribusiness sector.

ACTESA will utilize the wealth of expertise available in the region in institutions such as the Food, Agricultural Natural Resources Policy Analysis Network (FANRPAN) and Regional Strategic Analysis and Knowledge Support System (ReSAKSS) to better inform governments in the region on the best options to attain food security. These analytical networks were instrumental in providing well researched policy options for the region during the 2007-2008 global food price crisis. They concluded that high food prices had contributed to inflationary pressure in the COMESA region. Since most Member States were net food importers, they faced high import bills which were not fiscally sustainable. Overall, at the household level in the COMESA Region, rising food prices have a negative impact because food accounts for 40-70% of household expenditures. However, this impact is differentiated. The poor in urban and rural areas are hit hardest. Net rural buyers of food are hit harder than net sellers because their food budgets rise sharply. Net food sellers, who form only a small proportion of the rural population, may gain if the high prices are transmitted to the farm level. The urban poor who depend on markets for their food supplies lose heavily because food prices tend to rise faster than their incomes.

In order to respond to the food price crisis, countries in the region implemented a range of policy measures that helped to cushion consumers from high prices and increased the food supply. The most popular support for consumers was the reduction of taxes on food and seven COMESA countries were already implementing this policy by June 2008. This was followed by price controls and/or subsidies which were implemented by four countries; one country was giving fuel subsidies. The other policy action is to boost domestic supply by using reserves and this is being implemented by five countries.

Supply side measures were aimed at inducing rapid supply response to restore a better balance between food supply and demand. They included price controls and subsidies on key inputs through the distribution of seeds and fertilizers, directly or through a system of vouchers and subsidies and guaranteed minimum prices (often high) for outputs. Trade measures aimed at ensuring domestic food security are designed to increase imports or restrict exports. Measures designed to increase imports were implemented by two countries and those to restrict exports by four counties.

Social measures to protect food consumption of the most vulnerable populations (e.g. the extremely poor and children) were also implemented. Those most vulnerable to food price shocks needed to be protected from nutritional deprivation, making distress sales of their assets and reductions in their real purchasing power. Measures that were used included school feeding programmes in five COMESA countries, cash transfers, food-for-work and food ration schemes which were implemented by four COMESA countries.

Indeed, despite the good intention of these polices, some could have a negative impact on national and regional security, especially in the long run. Best bet policy options should increase household purchasing power, have no negative impact on food supply response and should not reduce incomes of poor food sellers. Actions to free import restrictions and release food grain stocks into the market often have immediate and favourable effects on consumers and on economic efficiency in general. However, they provide only one-time relief and once the tariff or tax has been reduced to zero, no further reductions in price can take place through this measure. Furthermore, they entail revenue losses for the government which, in some countries, could be substantial.
While trade restrictions may help to contain pressures on domestic prices, they may signal problems and lead to panic buying in domestic markets. In extreme cases where the restrictions are implemented effectively, farmers can reduce planting of cereals in the face of low domestic prices for their products coupled with high prices for inputs. Export restrictions may also exacerbate price instability in regional markets, especially when they are implemented in an ad hoc and uncoordinated manner by different countries. Increased volatility may in turn worsen food security in neighbouring countries.

The food price crisis showed that safety net programmes must be carefully designed since they may place large demands on institutional capacity, which may often be lacking or can become overstretched. Major challenges include leakage of benefits to non-target groups, resale of vouchers by the target group and rent seeking by officials implementing the programmes. Care is needed to ensure that safety net programmes do not impede the formation of a private marketing sector by driving out nascent, indigenous, private sector input suppliers which may jeopardize medium- and long-term food security.

The overall lessons from the recent food crisis for the region are that: although rising food prices are contributing to inflation in COMESA, the changes in global food prices are not completely transmitted to domestic markets; a regionally coordinated response offers an alternative that is potentially more effective in responding to the food price crisis than individual country responses; the crisis provides an opportunity to promote agricultural led development through increased domestic production, regional trade and integration, and finally, addressing the harmful effects of the food price surge and volatility will require actions by stakeholders along the food chain. On the one hand, the consumption and welfare of the vulnerable sections of the populations must be protected by ensuring access to affordable food supplies. On the other hand, high food prices provide positive incentives for farmers to increase domestic production and/or regional trade. Favourable commodity prices also foster innovation that enhances competitiveness along food value chains.

Going forward, mainly through ACTESA, COMESA will seek to actively work to address the effects of any potential food price surge and volatility by ensuring implementation of coordinated policy actions. Policies actions are required to protect the consumption and welfare of those vulnerable to high prices, exploit diversity in the region to promote national and regional food security and enhance food production in Member States. Some specific policy actions that will be considered are presented in Table 1.

Table 1: Policy actions for responding to rising food prices in the COMESA region

Policy Measure	Short term actions	Medium to long term actions
Protect the vulnerable	• Targeted food subsidies and cash transfers where markets are working • Tax reductions on food grains • Targeted food aid in areas where food is not available in markets • Supporting the agricultural production activities for poor rural food producers who are net buyers of food in addition providing social protection	• Build and strengthen social safety nets to help create individual, household and community assets
Promote regional trade	• Avoid ad hoc export restrictions as they exacerbate the price spiral and instability in regional markets • Instead, institute predictable restrictions by using, for example, trigger stocks • Reducing/remove import tariffs on food products • Harmonisation of trade policy to remove non-tariff barriers to trade and simplify trade procedures • Harmonise product standards and customs requirements • Improve security along trade routes	• Build a regional food reserve using, for example, a warehouse receipt system • Upgrade and maintain infrastructure and facilities on the main trade corridors in the region to facilitate movement of food from surplus to deficit areas
Enhance regional market information and intelligence systems		• Invest in improved market information and intelligence systems across the region by strengthening and using regional institutions for disaster preparedness and response • Developing appropriate frameworks for preparedness, response and learning. • Promote research as an important tool for providing the evidence base for such preparedness, response and learning
Exploit economies of scale in procurement of agricultural inputs and facilitate trade in inputs		• Undertake joint procurement of agricultural inputs • Harmonize policies and regulations to ensure duty and tax free movement of inputs • Develop capacity for quality control • Promote regional distribution of agricultural inputs

Advocacy efforts for a more equitable world trading system		• RECs should take the advantage presented by the high food prices to extract maximum benefits from the Doha round and other initiatives geared towards opening of markets for African exports
Establish regional food reserves		• Review policies on grain storage and buffer stocks to allow for building regional strategic reserves. Since most governments no longer have the facilities required to hold grain stocks, the private sector should be provided with incentives to enable them to play the complementary role as in the emerging warehouse receipt system
Avoid dampening price incentives to producers	• Remove price controls which serve as a disincentive to farmers preventing them from responding to high prices	
Make agricultural inputs affordable	• Implement 'smart' fertilizer and seed subsidies that do not undermine local private sector enterprise • Use vouchers redeemable at certified rural stockists • Provide credit guarantees • Reduce transportation costs by for example, reducing domestic taxes on fuel	• Enhance input distribution systems by developing networks of agro-dealers through training, facilitating access to credit, development of affordable input packages, and group organisation to reduce transaction costs
Make agricultural technologies available	• Leverage past investments in R&D to widely pilot and scale up best-bet technologies to boost crop and livestock yields and conserve natural resources	• Invest in R&D to develop new technologies to respond to emerging challenges
Promote innovative risk management programmes	• Test and pilot innovative risk management programmes such as warehouse receipt system and weather-based index crop and livestock insurance schemes.	• Upscale the promising risk management instruments

Beyond its own initiatives such as ACTESA, COMESA is aggressively pursuing cooperation with other RECs in key areas of expanding trade, industry, agriculture and related services. In this regard, COMESA has embarked on a harmonization of programmes with SADC and EAC in a tripartite arrangement. These initiatives will impact positively on food and nutrition security.

Conclusion:

Whereas the COMESA region still experiences pockets of food insecurity, there are ample signs indicating that on account of deepening regional integration, COMESA is poised to meet the regional food security challenges. By launching the Customs Union in 2009, a major step has been taken in providing the appropriate institutional framework in which the agricultural sector can thrive. Through focus on the implementation of key sectoral initiatives such as the CAADP and the specific activities of ACTESA, it is clear that COMESA is putting in place the appropriate frameworks, partnerships and concrete actions to ensure, in the long term, increased production and trade of safe and nutritious agricultural goods for the region and for export to international markets.

Further, COMESA wishes to promote deepened collaboration with CABI and other development agencies, building on joint and individual comparative advantages. COMESA is particularly impressed with CABI's work in Member States on issues of SPS capacity building, environmental protection, improving agricultural productivity and enhancing food security. This provides COMESA with additional opportunities to be well placed in addressing food security in the long term.

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REPOSITIONING COMESA AS A PEACEFUL AND SECURE REGION FOR DEEPER INTEGRATION

Elizabeth Mutunga

Conflicts and insecurity are among the main factors that pose the greatest threat to achieving higher levels of deepened integration that COMESA is striving towards. This is further compounded by the role that the perception of insecurity plays and it is generally accepted that the perceptions are as harmful as the real insecurity. In effect, therefore, although the peace and security situation has improved significantly in Africa over the past decades, the marks of the past have been hard to erase especially given that out of the 53 Africa Union Countries, 48 have suffered post-independence armed conflicts at some time or other and some of these conflicts have extended over long periods of time. As COMESA makes the forward stride from a Free Trade Area to becoming a Customs Union, removal of obstacles to deeper levels of integration will not only involve ridding the region of the remaining conflicts but also reversing the negative perceptions that exist and thus reposition the region as a peaceful and secure environment for deeper integration.

Over the years there have been significant shifts in the conflicts dynamics and more and more, the conflicts have been intra-state rather than inter-state conflicts. These have mostly taken the form of rebellion against the central government including civil wars and insurgences with armed factions and although most of these have been intra-state conflicts, they have frequently exhibited transnational characteristics. This is attributable to various factors including the porous borders between the states coupled with the sharing of ethnic communities across borders, a result of colonial delineation of borders. The transnational character of the conflicts have been manifested by the influx of small arms and light weapons, the flow of refugees, the illicit trade in natural resources and cross border rebel movement. All these inevitably affect the security situation in neighboring countries and thus warrant regional solutions. The Somalia conflict is an example, where the long absence of a functioning government has had very dire consequences on the economies and security beyond the neighboring countries and has now spilt over the global arena. This has been felt through the effects of piracy off the Somalia coast and the increased threats of terrorism. The conflicts therefore, despite being mostly internal conflicts continue to bear serious regional and international consequences and their resolution is to the interest of the whole region and the international community.

"…. the head cannot be independent of the neck; the neck cannot be independent of the chest; the chest cannot be independent of the abdomen; the abdomen cannot be independent of the limbs; and vice versa." – President Yoweri Museveni of Uganda on interdependence of the region following the Kenya post elections violence in 2007/8 and its impact on the Uganda economy and that of the other neighboring states.

Costs of Conflict to Integration

The devastating effects of armed conflicts on the economic growth and integration of the region cannot be overstated. At the turn of the century, for example, conflicts in Sub-Saharan Africa were estimated to continue to reduce Africa's economic growth by approximately 2% annually. Stewart and FitzGerald (2000)[85] in their study to assess the economic cost of war confirm that conflicts are a major source of poverty and underdevelopment. The exercise of accurately costing conflicts is a difficult task because of the difficulties in quantifying the numerous and often interconnected indirect costs. It is, however, estimated that Africa has been losing approximately US$18 Billion yearly due to conflicts and further estimated that an average war shrinking Africa's economy by 15%.[86] What is more, according to Luckham et al (2001)[87] among other researchers, war and poverty are dynamic and mutually reinforcing so that war increases poverty which in turn increases the likelihood of conflict and the cycle continues.

The impact of conflict on integration has been a concern for COMESA and four years after launching the COMESA FTA

85 Stewart, F., Fitzgerald V (2000) Introduction: Assessing the Economic Costs of War in F. Stewart and V. Fitzgerald (eds) The economic and social consequences of conflict, volume 1.

86 IANSA, Oxfam and Saferworld, (2007): "Africa missing billions: International Arms flow and costs of conflict", Oxfam Briefing paper 107

87 Luckham, R., White, S., Ahmed, I., Muggah, R. (2001) Conflict and Poverty in Sub Sahara Africa. An Assessment of the issues and evidence University of Sussex, IDS, New Issue No. 51

in 2004, the COMESA Ministers of Foreign Affairs reviewed the impact of conflicts in the region. They highlighted several of the factors that have had a negative impact on the economy of the region as follows:

a. The ten years of lack of central authority and the state of insecurity in Somalia, deprived neighbors such as Ethiopia of access to a number of ports and conversely of much needed revenue for Somalia for the use of its ports;

b. The border dispute between Ethiopia and Eritrea has deprived Ethiopia of a more convenient port to its northern and central regions, while Eritrea has lost opportunity to tap cheaper electricity power from Ethiopia;

c. Conflict in the Democratic Republic of Congo hindered economic development and growth within that country, and denied opportunities in investment and trade with all her neighboring countries. Instead, the country has suffered the illegal exploitation of its vast mineral wealth which could have contributed to its economic prosperity and poverty alleviation;

d. Lack of security in the Great Lakes region hindered secure access to waterway routes, such as the Lake Tanganyika and the port of Mpulungu in Zambia, which were vital for trade between Burundi, Rwanda and Zambia. Furthermore, as a result of sanctions imposed on Burundi from 1996 to 1998, in the aftermath of the unconstitutional takeover of Government, trade with countries within the Arusha Peace Process, most of whom are also Member States of COMESA, suffered extensively. For instance, Zambia suffered loss of export earnings in sugar and cement exports to Burundi; and

e. Angola's Benguela Railway, which provided an alternative and shorter route to the seaports for Zambia's goods was costly for Zambia. The Railway line will now require demining and rehabilitation at a very high cost. [88]

The impact of the January 2008 post elections violence in Kenya is a clear statement on the vulnerabilities of respective states in an economically interdependent unit. The conflict, which only lasted for about a month cost Kenya an estimated USD2 billion in revenues across sectors and had an immediate impact of the economies of neighboring Uganda, Rwanda, Eastern DRC, South Sudan and Northern Tanzania. This was felt through shortages and increased prices. It clearly highlighted the interdependence of these states and left no doubt that conflicts within a state cannot be considered to be solely the concern for the state in conflict but a concern for all countries that have a stake in the conflict and hence a responsibility to the whole region.

Another relevant cost dimension is the effect that conflicts have had in undermining the vast economic potential of the region, which includes potential in mineral resources, the fertile soil, the huge hydro-electric potential, large forest among others including human workforce and a generally good climate. Much of this potential has largely remained under exploited due to lack of investment and infrastructure which is partially attributed to conflicts and insecurity. It is for example estimated that Africa hosts 30% of the global metal reserves yet its contribution to the world's major metals is only about 7%. These include reserves at the DRC, Sudan, Zimbabwe, Zambia, Madagascar, Swaziland, Uganda and Burundi among other COMESA States. With respect to oil, Africa has over 9% of the global oil reserves and although this includes huge producers Nigeria, Algeria and Angola, COMESA Member States, Libya, Egypt and Sudan are large contributors to that figure. It is however noted that potential investors to areas that are considered a security risk tend to either avoid these areas completely or conduct their activities in a predatory manner rather than with long-term development consciousness due to risk factors.

Conflicts in the Region

In order to effectively address conflicts, it is important to review the region's conflicts history and status. The Horn of Africa and the Great Lakes Region have been the most volatile parts of the COMESA region. In the Horn of Africa, Sudan suffered a 21 year-old conflict between the Sudanese Peoples Liberation Movement (SPLM) of South Sudan and respective regimes in Sudan where almost 2 million people lost their lives since the early 1980s. The country was in conflict since 1956 with only a brief period of peace that followed the 1972-peace accord. Barely was that conflict resolved through the January 2005 Comprehensive Peace Agreement (CPA) another conflict had broken out in Sudan at the western parts of the country, in Darfur in 2004. This conflict has been described as the worst humanitarian disaster and has also spread into Chad.

Neighboring Somalia has been in conflict since 1991 with 14 failed peace processes in 17 years to earn the title of a

88 COMESA Secretariat, (2004): "Report of the Sixth Meeting of the COMESA Ministers of Foreign Affairs"

collapsed state. This left it without a central government for years. The decade-long war, which has also drawn in other countries in the Horn of Africa, particularly Eritrea and Ethiopia, has claimed hundreds of thousands of lives and resulted in over 800,000 refugees and over one million internally displaced persons (IDPs). At the finalization of this chapter, the country was undergoing its 15th Peace Process. Also in the Horn is one of Africa's few inter-state conflicts, the Ethiopia and Eritrea conflict over a disputed border. The conflict reached a crisis stage in 1998 to year 2000 and over 70,000 persons lost their lives. Although a negotiated settlement was reached in 2000, tensions are still high between the two countries and this brings out the important observation that reaching of peace agreements does not necessarily translate to peace. Real peace requires that the structural causes of the conflict be addressed.

The insurgence in North Uganda by the Lord's Resistance Army (LRA) has for more than 20 years continued to instill fear among civilians in north Uganda and neighboring areas. The rebels who have a history of raping, maiming, mutilating its victims has successfully managed to maintain its numbers by abducting and forcefully conscripting children. The rebels who have no popular support have been able to survive by their ability to operate from the bush and they have in the past done so by fleeing to South Sudan (before the success of the Sudan North-South peace process), eastern DRC and Central African Republic. Various attempts to bringing the conflict to an end have not been successful including efforts by UN mediator, former President Chissano and efforts by the Government of South Sudan. The complexities towards the resolution of this conflict were compounded by the indictment of Joseph Kony by the International Criminal Court.

The Great Lakes Region like the Horn of Africa has also been the scene of several conflicts. These conflicts are largely inter-related and can loosely be referred to as a conflict system, which has mostly taken on ethnic dimensions. The 1994 genocide in Rwanda that resulted in the killing of half a million persons from one ethnic community is still very fresh in the minds of many. This genocide became a defining moment for Africa and the world at large, forcing a review of intervention strategies in internal conflicts.

The Democratic Republic of Congo, which appears to be the epicenter of this conflict system, was the scene of a civil war since 1998. The conflict that started off as an internal conflict drew in several neighboring countries including Uganda and Rwanda on one side supporting the rebellion and Zimbabwe, Namibia and Angola supporting the Government, earning it a label of "Africa's First World War". The Burundi civil war broke out in the mid-1960s and continued intermittently until 1993 when it intensified into a full blown armed conflict. Although a political conflict, like the other conflicts in the Great Lakes, the Burundi civil war took on and exhibited ethnic dimensions. These conflicts have since been resolved through peace agreements and successful democratic elections in Burundi (2005) and DRC (2006) served as evidence that the worst of the conflict was over.

The Islands have also had some serious conflicts. The Union of Comoros has witnessed over 20 coups or attempted coups and a secession crisis, and attempts by the Island of Anjouan to secede from the Union. Peace processes granted greater autonomy to the Islands providing for Union President on a rotational basis. The Island has, however, continued to grapple with constitutional issues. Madagascar, the world's fourth largest island, underwent violent political unrest following the ousting of President Marc Ravalomanana in March 2009. By the finalization of this chapter, the peace process, led by SADC mediator, former President Chissano was still ongoing but with good prospects of reaching an agreement.

It is important to note that while most of these conflicts are rooted in governance related issues, they have been propagated by various other factors such as the proliferation of small arms and light weapons; the exploitation of natural resources such as the conflicts in the DRC, Sierra Leone and Sudan; and external interferences and the role of international players.

Opportunities and Challenges for Comesa

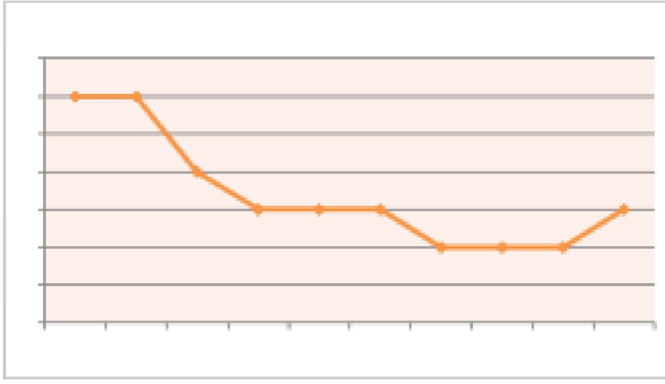
COMESA moves to a Customs Union at a time when there are various opportunities that can be exploited to hasten the creation of an enabling environment to achieve the deepened levels of integration. Along with the opportunities there are also several challenges that COMESA will also need to address.

Opportunities for COMESA

The opportunities identified include the decline in open conflicts and increase in expertise and confidence in African-led mediation; greater collaboration among the RECs; and a relatively well established structure within COMESA to support multi-track diplomacy.

Decline in open conflicts in the region

Over the last decade, the region has witnessed what appears to be an encouraging new dispensation with more conflicts being resolved than starting. The trend of conflicts in COMESA, as shown in Figure 1 has been on the decline since the inception of the Programme on Peace and Security. A similar downward trend is reflected for the whole continent. During the decade after the Cold War between 1990 to 2001 there were 19 major wars in Africa (Algeria, Angola, Burundi, Chad, Republic of Congo, DRC (2 conflicts), Ethiopia, Ethiopia-Eritrea, Guinea Bissau, Liberia, Morocco, Mozambique, Rwanda, Somalia, Sudan (North-South) and Uganda). There are now only five active armed conflicts in Africa and given that one of these is a new conflict (Darfur);[89] this reflects an impressive 78.9% rate of resolution in armed conflicts in Africa compared to a 40% global reduction figure in the same period.



Like the progress made towards resolution of conflicts in the region, the COMESA region also appears to have recorded remarkable improvements over the last decade. This is mostly observable by the holding of democratic elections in countries like the DRC and Burundi for the first time in decades. Both the reduction of conflicts and improvement of the democratic governance are an opportunity for COMESA to be able to put in place programmes that would otherwise have been constrained in volatile and unpredictable environments. COMESA can thus be able to initiate the kind of programmes that will address the root and structural factors that caused the propagation of the conflicts.

Increase in African-led Mediation

The period from 2001 reflects the fastest rate of resolution of conflicts in Africa and coincides with the period that the former continental body, the Organization of African Union (OAU) was replaced by the African Union (AU) in July 2002. The major innovation of the new body was renewed emphasis on building a continental security regime that is capable of resolving, managing and resolving African conflicts. The change was motivated by the Rwanda genocide and the failure by the international community to prevent or arrest it in time. This became a defining moment on strategies for conflict management. Specifically, the AU laid out provisions to intervene in internal conflicts of the member states thus over-riding the principle of sovereignty and non-interference, which guided the OAU and which was seen as the most significant factor that limited the past effectiveness of the OAU. The AU was given a broader legal mandate and authority to intervene in cases of "war crimes, genocide and crimes against humanity" .[90] Similarly and also in response to the Genocide, the famous "Responsibility to Protect" doctrine was conceived in 2001 redefining intervention in internal conflicts. It was adopted by all 192 nations at a UN Summit in 2005. Through this doctrine, the UN made a commitment to protect civilians from genocide, war crimes, ethnic cleansing and crimes against humanity. It also pledged to take collective action if peaceful means proved inadequate.[91]

Over the last decade and with this broader mandate, African mediation with support from the international community, has been at the center of the resolution of most of the region's conflicts. For conflicts in the COMESA Region for example, the 21-year old north-south conflict in Sudan was mediated by Kenya under the auspices of the Inter-governmental Authority on Development (IGAD) and resolved in 2005 with the signing of the Comprehensive Peace Agreement (CPA). IGAD also attempted to mediate the Somalia conflict and although the conflict relapsed, the installation of a Trans-Federal Government by the IGAD-led mediation can serve as an important milestone to the process. (Somalia is not a COMESA Member State, largely because it did not have a government in place at the time of signing of the COMESA treaty. Somalia, which was a member of COMESA's predecessor, the PTA, continues to participate in several COMESA institutions, while the conflict in Somalia has continued to affect its neighboring counties, all of which belong to COMESA).

89 The other current ongoing conflicts include Algeria (vs armed Islamic group); DRC (east vs. indigenous rebels) and Uganda (LRA insurgence)

90 Article 6h of the Constitutive Act of the African Union

91 2005 World Summit, September 14 – 16, 2005 Paragraphs 138 -139: UN Doc. A/60/c.1 (Sept 2005)

Efforts by African leaders have also played an invaluable role in resolving the most protracted conflict at the Great Lakes region and which saw the involvement of several African countries. The Lusaka Accords which were signed by the DRC and five of its neighbors were reached due to the persistence of African Leaders under the leadership of former Zambian President, Dr. Kenneth Kaunda and largely supported by the South African Development Community (SADC). The DRC was also embroidered in an internal conflict and African mediation was also at the center of its final resolution with the former President of Botswana, Sir Katumile Masire, as the chief mediator of the Inter-Congolese Dialogue. In Burundi the concerted mediation efforts by two former presidents, first the late Julius Nyerere of Tanzania and then after his death Nelson Mandela former President of South Africa, are credited for the peace that has prevailed in that country.

Constitutional and elections-related crisis in Kenya, Zimbabwe and Madagascar, have also benefited from African mediation. In Kenya, a panel of African eminent personalities led by former Secretary General of the United Nations Kofi Annan negotiated a power sharing agreement that ended the month long conflict. Similarly a power sharing agreement that ended the post elections crisis in Zimbabwe was brokered by African-led mediation in the person of former President Thabo Mbeki for SADC. SADC has also been at the fore of the resolution of the crisis in Madagascar, with former President Chissano of Mozambique as the lead mediator. Although the peace process was ongoing by the publishing of this paper, there was every indication that some acceptable power-sharing arrangement for the interim would be reached. The AU has also been at the center of resolving the constitutional crisis in Comoros.

The increasing success of African-led mediation reflects increased confidence in the ability of African and African regional and sub-regional organizations to solve the problems of the continent. The wealth of experiences contained in all these efforts will prove invaluable to COMESA to develop expertise for mediation through learning from experiences and will also present COMESA an increasingly larger number of choices in terms of expertise. It is also expected that the increased confidence in African capability will also make it easier for COMESA and the RECs to mobilize resources to address the conflicts.
Greater collaboration among RECs

In 2002, when COMESA launched its programme on peace and Security, a decision was adopted for COMESA to work within the framework of the then OAU Mechanism, and to also ensure complementarity to the other RECs. At that time, the RECs largely involved in a wide range of activities on their own and with very little communications between them. It was not until 2004 that any significant progress was made on this. Since then there has been a very big and visible shift from unilateral implementation of programmes to joint and collaborative programmes. In 2004, COMESA, EAC and IGAD started a process of developing a conflict prevention, management and resolution strategy for the region. The strategy identified three areas of intervention: the fight against the proliferation of illicit small arms and light weapons lodged at EAC, the fight against war economies lodged at COMESA and general conflict prevention lodged at IGAD. Collaboration between these RECs has increased significantly. The three RECs were able to jointly access funds from the European Union’s 9th EDF in 2007.

Similarly under the leadership of the African Union Peace and Security Department, collaboration has been extended to the other seven recognized RECs of Africa and the two independent regional mechanisms charged with the establishment of the eastern and northern Standby Brigades. To this end the AU and RECs signed a Memorandum of Understanding committing all parties to greater cooperation in the field of peace and security. This collaboration has been forged towards building upon the African Peace and Security Architecture. Among the joint programmes is the development or establishment of conflict early warning systems in the RECs. This is intended to not only respond to the mandates of the respective RECs but to build to the CEWs. The AU is in the process of putting in place a CEWS Portal, which will also be made available to all the eight RECs through VSAT technology to facilitate lateral and horizontal communication with the AU and between the RECs. The collaboration has also included the establishment of REC Liaison Offices at the AU; exchange visits and regular steering committee meetings. Such cooperation is also seen in the area of disarmament and a steering committee has been put in place with the AU as the lead.

It is expected that the 2009 Tripartite Summit between COMESA, EAC and SADC will serve as greater motivation towards higher levels of coordination and collaboration among the three ESA RECs. Although the arrangement initially addresses harmonization of trading regimes between the three RECs, it could act as a further push to collaboration in conflict prevention and peace building.

The greater coordination and collaboration is a great opportunity for joint efforts and it will continue to allow for sharing of competences and a degree of division of labor. The collaboration also allows for joint efforts at resource mobilisation and hence ability to raise more funds.

Emerging structure within COMESA and beyond

Immediately following the inception of the COMESA Programme on Peace and Security, COMESA embarked in an intensive programme to develop structures that can best respond to its mandate of conflict prevention through preventive diplomacy. Key in developing the structure was the development of strategic stakeholders that can work together to most efficiently deliver the mandate. This was done in recognition that the conflicts in the COMESA region are complex and exhibit the kind of dynamism that requires intervention by a wide range of stakeholder. These include civil society and private sector organizations, a forum for Members of Parliament and a Committee of Elders for COMESA, all of who possess different strengths and competences to address the regions conflicts.

With respect to civil society and private sector organizations, the COMESA Ministers of Foreign Affairs in 2002 made a Decision for COMESA to give a consultative role to civil society and private sector organizations in matters relating to peace and security. The Decision was informed by the specific competences of civil society organizations, who being close to the ground are able to quickly get information from the ground and who are also well versed with analysis. The Private sector organizations on the other hand, who are seen as key beneficiaries to a stable environment for business have a role in ensuring trade based practices and in resource mobilizations towards creating an enabling environment for business. Civil society organizations have other roles that they can play within the Programme, including civic education, building consensus of populations on peace agreements and on conflict prevention, the provision of certain services and in track II diplomacy.

In order to so engage the civil society and private sector organizations, COMESA has designed a process of accreditation, though which civil society organizations that meet certain criteria may be involved in the Programmes activities. To that end, COMESA has also put in place a Desk within its structure for engagement with civil society and private sector organizations.

Parliamentarians have also been found to be a very good asset in conflict prevention through their three fold role of representation, legislation and oversight. Being people's representatives, parliamentarians occupy a very unique position in society as they are close to the people that they represent, while at the same time they are the primary policy makers. COMESA therefore established the Inter-Parliamentary Forum for COMESA in 2006 as an independent advisory body within COMESA. This will be targeted for capacity building with respect to conflict prevention and peace building and are therefore expected to become a good partner for peace. The Ministers of Foreign Affairs defined the role of the Inter-Parliamentary Forum to interact with government and serve as an early warning mechanism; provide oversight on the implementation of international instruments and peace agreements; provide linkages with existing structures at the national level and to promote COMESA at the national level among other things.[92]

During its Eleventh Summit, the COMESA Authority made a Decision to establish a Committee of Elders comprising of nine elders, elected on the basis of their standing in society. The main role of the Elders is to assist the Office of the Secretary General on preventive diplomatic missions. Eminent persons were nominated by respective Member States on the basis of their extensive knowledge on developmental, peace and security challenges that face the region; their being highly distinguished and well-known in the region and beyond, and knowledge and experience in responding to conflicts.[93] The first set of five elders was elected in 2009 during the 14th Summit of the COMESA Heads of States and Government[94] to serve a maximum of five years while a second set of four Elders will be elected in 2010.

The value of any of these stakeholders will not be realized as individual actors but can only be maximized by collaborative efforts that will involve drawing from each other's strengths and competences. COMESA therefore, has the opportunity to harness these strengths for greater impact.

With respect to peacekeeping it is worth to note that the AU is in the process of establishing an African Standby Force (ASF), which is one of the four pillars of the African Peace and Security Architecture. The ASF will be made up of bridges from the "four regions" of Africa and coordinated by the RECs for the most part (except the Eastern and Northern Brigades which will be coordinated by regional mechanisms that have been created for that purpose).

92 COMESA Secretariat (2006) "Seventh Meeting of the Ministers of Foreign Affairs"
93 COMESA Secretariat (2007) "Eighth Meeting of the Ministers of Foreign Affairs"
94 COMESA Secretariat (2009) "Decisions of the 14th Summit of the COMESA Authority"

This therefore represents another collaborative effort between the AU and the other RECs and which is a good opportunity to support peace building activities especially as it will allow activities to proceed in a situation which would otherwise be impossible to operate in due to conflicts and insecurity. Thus COMESA will be able to call on these brigades when and if needed.

Challenges for COMESA

Having highlighted some of the opportunities for COMESA, there are also several challenges that face COMESA as it moves towards deepening integration. These include a greater move towards intra-state conflicts; increase in conflicts that are rooted in democracy and the emergence of new issues such as piracy and global challenges including terrorism and the effects of global warming.

Shift towards internal conflicts

As noted earlier, there has been a shift in conflicts towards intra-state conflicts. Intra-state conflicts present rather unique challenges because they occur within the borders of sovereign states making it difficult for timely external intervention. This challenge is among the factors that prevented quicker action to the Rwandan genocide of 1994. Although the UN and the AU have since reviewed their strategies, intervention into a sovereign state still remains a challenge and the emergence and propagation of the Darfur conflict in 2004 is a case in point.

Increase in elections-related violence

A second challenge recognized in this chapter is the increase in conflicts and violence that follow electoral disputes. This may be consistent with the observation that over 90% of the conflicts in the region have been intra-state conflicts, which mostly points to issues of governance as the lowest common denominator.

Among the factors that are fundamental to democratic governance is the holding of credible democratic elections. While it is recognized that holding credible elections does not in itself guarantee democracy and good governance, other factors such as popular citizen participation, human rights and the rule of law must of necessity also be upheld. The absence (or perception) of credible elections or of unilateral decision making however can be a source of grievance, tensions and instability and can become an hindrance to democracy and become a trigger factor to conflict. The crisis that followed the elections held in Kenya and Zimbabwe; and the unconstitutional change of Government in Madagascar are a case in point. This chapter, however, argues that the increase in elections related violence and conflicts may not necessarily be an indication of the decline in democracy in the region. It is more likely a combination of factors which could include opening up of democratic space for dialogue and greater awareness among civil society.

The resolutions of these conflicts have mostly ended up with forms of power-sharing agreements such as the formation of coalition governments. It will be important to evaluate the effects of this emerging method of resolving elections disputes. Specifically whether or not it will encourage crisis and violence and hence further compound the already existing challenge. This would be the case if parties find that raising stakes through violence has a reward.

Emergence of new global challenges

A third challenge for the region is the emergence of relatively new conflict related issues such as an increase in piracy off the coast of Somalia and the threat of terrorism. Piracy has mostly taken advantage of the chaos in Somalia due to the long absence of a functioning government. This is a typical war economy, where the pirates have been able to make huge sums of money, and who would therefore continue to serve as peace spoilers for Somalia. This has significantly increased the costs and risks of shipping. With respect to terrorism, COMESA region has experienced attacks in two states, Kenya and Egypt with devastating effects on the economies, including the effects of travel bans and investment. Another issue that may present a challenge in the longer run are the effects of climate change. It is expected that if the factors contributing to global change are not addressed urgently, global warming will result in an increase water stress and increased desertification, which could trigger conflicts over diminishing resources such as water.

Creation of an Environment to Maximize the Benefits of a Customs Union

From the foregoing, the challenges for COMESA to create the kind of environment that allows for the maximization of the benefits of a Customs Union will require three fold strategy:

a. Anticipate and prevent the emergence of conflicts long before they happen;
b. Resolve ongoing conflicts in the region and
c. Ensure that the resolved conflicts remain resolved.

The strategy is in turn embedded in three important Decisions of the COMESA Authority; the decisions at the inception of the programme for COMESA to involve in Preventive Diplomacy as its main intervention; a Decision for COMESA to work within the Framework of the African Union's Conflict Prevention, Management and Resolution Strategy; a Decision for COMESA to incorporate a wide range of stakeholders and the 1997 Decision for the COMESA Programme on Peace and Security to curve a niche around war economies.

Strategies for Conflict Prevention

Two broad areas of conflict prevention are identified and these include proactive engagement to by the region to adopt standards of Democracy and Good governance and the establishment of a functional conflict early warning system that is based on objective and measurable indictors.

With respect to addressing the issues of governance as a conflict prevention measure, the COMESA region will need to agree on certain minimum standards for democracy and governance and hold each other accountable for the upholding these standards. Institutions such as the judiciary, electoral commissions, human rights commissions and national parliaments will need strengthening, while it will be important to open us the space for engagement by civil society, private sector and media. Various institutions of COMESA will be important for delivering democracy and good governance in the region including the COMESA Court of Justice, the Inter-Parliamentary Forum for COMESA and civil society and Private sector organizations that are accredited to the COMESA Programme on Peace and Security.

The second important aspect in conflict prevention will be the establishment of a functioning conflict early warning system, with an ability to forewarn the emergence of conflicts long before they happen. In line with a Decision for COMESA to work within the Framework of the African Union and to avoid duplication of the activities of other RECs, the establishment of the COMESA Conflict Early Warning System (COMWARN) has been done in close consultation with the AU CEWs and other RECs in the ESA region. In line with the COMESA mandate of conflict prevention and the Decision to create a niche around economic dimensions of conflicts, the entry point for COMWARN is to monitor Structural Vulnerability Assessments.

The indictors that will be developed will therefore monitor the breakdown of the structures and will adopt the thresholds that allow reparative action to be undertaken before the conflict become manifest. Two important characteristics for the indictors will be objectivity and consensus. For greater ownership by COMESA Member States, these indicators and thresholds will be developed by member states in close collaboration with other stakeholders such as civil society organizations and for sustainability, the COMESA Authority, in their 13th Summit that was held at Victoria Falls, Zimbabwe made a Decision that COMWARN would receive funding from the regular COMESA Budget.

The early warning system will also utilize the structures that COMESA has put in place, including civil society organizations, which will be very useful in collecting data due to their proximity to the ground. The data which will be validated and analysed by the Secretariat will be used to create options for interventions whenever the set thresholds are reached and COMESA Committee of Elders may be dispatched on preventive diplomacy missions, while the Inter-Parliamentary Forum may also present a good avenue to push for redress.

Supporting Conflict Resolution

As observed earlier the period after 2001 saw the resolution of 79% of the conflicts in Africa, while in the COMESA region, there remained only three unresolved conflicts by the finalization of this chapter. For COMESA to experience the full benefits of integration, all conflicts will need to be resolved through comprehensive agreements.

COMESA mandate of conflict prevention allows COMESA to involve in activities that ensure prevention of existing conflicts from escalating or from spreading geographically. COMESA can therefore continue to support the resolution of conflicts through mediation efforts by COMESA elders, including shuttle diplomacy missions; fact finding missions by the Inter-Parliamentary Forum and analysis of conflicts including diagnosis of its causes, actors and interests. This can be done by civil society organizations, researchers and think-tanks. Where peace processes are ongoing, fact-finding missions and results from shuttle diplomacy missions will also be expected to feed into the peace processes and this will need to be done in close collaboration with the AU and any other participating REC.

COMESA will also continue to support mediation efforts undertaken by other RECs, in line with the Summit Decision to avoid duplication of efforts. This can be done by sharing of information, providing mediation support through COMESA Elders for any specific assignments as may be required. COMESA could also support the efforts by working through CSO networks or the Inter-Parliamentary Forum for COMESA to build consensus around ongoing peace processes. COMESA can borrow from the African Peace Forum (APFO) example, where APFO[95] convened consultations for specific groups at the build up towards the consultations of the CPA in 2002 and 2003 to inform them on the interpretations of the various outcomes of the Sudan Peace process such as the various protocols that made up the CPA (wealth sharing, power sharing, security arrangements etc). APFO also involved in track II diplomacy by presenting analysis and policy options, including recommendations from the populations to the mediation team. Such efforts, which COMESA accredited organizations could engage, contribute to peace processes by allowing the populations to feel part of the process.

Consolidating post conflict peace building

The importance of consolidating post conflict peace building cannot be overstated. It is noted that the build-up towards peace agreements are often accompanied by a lot of regional and international support. The level of such support following the signing of comprehensive agreements however diminishes considerably.

The biggest challenge now facing the region is post conflict reconstruction. Research estimates that once resolved, protracted conflicts have a fifty percent chance of recurrence within the first five years of resolution. Signs of this were seen in Sudan after the South temporarily withdrew from the Government of National Unity only 3 years and nine months after the signing of the CPA. The dispute is over the administration of the Abyei Region that borders the north and the south of Sudan. Although clearly addressed in the CPA, disputes over its implementation saw military build-up by both the Government of Sudan and South Sudan early in 2008. The issue is still unresolved and needs to be resolved comprehensively. This is also similar to the Eritrea-Ethiopia border dispute, which although resolved through the EEBC ruling of 2000 still has incidents of accusations, counter-accusations and military buildup over the implementation of the Ruling; while the situation in Somalia where Agreements have been broken with each of the 14 Agreements lasting an average of 29 months.

The relapse of conflicts after reaching resolution through Agreements can be attributed to various factors but one key factor is the failure to address the root or structural factors to the conflict. Another important cause can be failure by one or more of the parties to implement the Agreement accurately and speedily. In order to ensure support the consolidation of peace processes, COMESA has several options including proactively monitoring factors that lead to the conflicts. This can be done by designing indicators that monitor the factors to the conflict for example if the country has emerged from an ethnic conflict the indicators would include an ethnic tolerance index. The information could be fed into the COMESA conflict early warning system, which will have lower thresholds levels for countries emerging from conflict so that any signs can trigger intervention at the earliest stage possible (given the higher propensity to conflict by countries that have already experienced conflict). Intervention would primarily be preventive diplomacy and therefore the information could be shared with the elders and the policy organs to attempt to arrest the situation at an early stage before it breaks out.

Monitoring the implementation of Agreements will also need to be carried out concurrently with the monitoring of root and structural factors. This recognizes that Agreements can sometimes be very good and solid but failure to implement becomes the impediment. COMESA will need to engage key partners such as accredited civil society organizations to monitor the implementation of these agreements.

Apart from addressing the root factors of conflicts and ensuring smooth implementation of peace agreements,

95 African Peace Forum is a Nairobi-based NGO that has programmes in the Horn of Africa and the Great Lakes Region.

COMESA will also continue to involve in post conflict reconciliation activities to mend relations that have been strained or severed by the conflict; involve in post conflict activities to address disarmament, demobilization and reintegration of ex-combatants, including men and women and child soldiers; and address reintegration of refugees and internally displaced persons. COMESA will also continue with activities to dismantle war economies where it has become entrenched and support livelihoods that have longer-term developmental focus. On several of these issues, COMESA will continue to work with relevant partners, such as RECSA on disarmament and issues around the proliferation of small arms and light weapons. With respect to post conflict reconciliation and peace building, COMESA will continue to target small scale cross border traders and service providers at border areas where relationships across borders were strained but will also need to develop other programmes particularly for peace building for internal conflicts and also harmonize policies, develop regional standards or ensure their implementation through the Inter-Parliamentary Forum for COMESA. These could touch on refugees, IDPs, issues around war economies among others.

Finally it is noted that in view of such and other challenges that affect post conflict countries, the African Union developed and adopted Post Conflict Reconstruction Policy, the first of its kind, and which sets out the framework of post conflict activities in Africa. The Policy, which attempts to ensure coordinated and collaborative efforts among the interveners has six constitutive elements, peace and security; political governance and transition; human rights, justice and reconciliation; humanitarian and emergency relief; reconstruction and socio-development and gender. It is under-pinned by several principles including; African leadership; national and local ownership; inclusiveness; cooperation and coherence and capacity building for sustainability. It is therefore advisable for any stakeholders planning on doing any post conflict work in Africa to get a hold of the Policy.

The Challenge of Multilateral and Regional Trade Negotiations for African Countries – The Perspectives of Uganda

Francis Mangeni

I The Scope for the Negotiating Challenges

In international economic interactions, African countries seek to protect and improve their development prospects. In particular, they seek to address the constraints relating to production, market access for their exports and creating the facilitating infrastructure – physical and social. The problems they seek to address include:

a. Limited domestic resources to finance development and generate critical levels of investment and of job-creation for appropriate rates of economic development;

b. Repayment of huge foreign debts that takes away valuable and much needed resources. Resource inflow and collection, including government revenue, tends to be prioritised with a view to repaying the debts;

c. Limited market access opportunities for products of export interest, including agriculture and textiles;

d. Market access opportunities that the countries are not able to meaningfully take up. Obstacles to meaningfully utilising the market access opportunities include high and escalating tariffs, and, in cases where preferences would apply, difficult eligibility or entry rules of origin and other customs requirements; and

e. Domestic constraints that limit productivity and generally the capacity to produce and market products in domestic, regional and other markets.

The negotiations have therefore taken place in financial, trade, and specialised technical institutions. The negotiations have been multilateral, plurilateral, regional and bilateral. All these types of negotiations should be considered related or even integrated from the perspective of an African country, for it seeks through them to achieve similar objectives.

In the negotiations, the objectives of Uganda and other African countries include:

a. Appropriately positioning trade as part of the solutions to economic development;

b. Enhancing market access opportunities through trade liberalisation in partner markets, in order to support the growth of export trade;

c. Addressing institutional and supply constraints to appropriately utilising market access opportunities;

d. Establishing rules to secure and promote international trade and to protect results of negotiations in a manner that facilitates the economic development of developing countries;

e. Building a sound technological base through technology transfer and domestic generation;
f. Obtaining debt relief and development assistance;

g. Investment generation from both foreign and domestic sources; and

h. On the whole creating and promoting an international economic order that fully addresses development needs.[96]

96 The Millennium Development Goals indicate the main development agenda of the international community.

The main trade negotiations for African countries take place in the World Trade Organisation,and with key trade partners such as the European Union and the USA; in the African Union (formerly the Organisation of African Unity); and in African regional and sub-regional economic communities.

The WTO launched major negotiations at the fourth session of the ministerial conference held in Doha from 9 to 14 November 2001. The negotiations are in the areas of agriculture, non-agricultural products, services, regional trade agreements, subsidies and dumping, dispute settlement, special and differential treatment, and public health. The negotiations on agriculture, non-agricultural products, and services aim for further trade liberalisation through elimination of barriers and enhancement of market access. On the basis of the principle of special and differential treatment, market access for products of export interest to developing countries is to be the core component of these negotiations. The negotiations on regional trade agreements, subsidies, dumping, and dispute settlement, aim to streamline the rules in these areas while addressing the development needs of developing countries. The negotiations on special and differential treatment aim to strengthen and operationalise the rules in order to address the concerns of developing countries that due to their best-endeavour nature the rules have been weak. The negotiations on public health aim to produce an amendment to modify Article 31 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) in accordance with the 30 August 2003 Decision of the TRIPs Council.[97]

Uganda participates in WTO negotiations individually as well as collectively within the Africa Group at the WTO, the Consultative Group of Least Developed Countries, and the African Caribbean and Pacific Group of States. The WTO holds on average 4 meetings daily, and there usually will be additional meetings for private consultations convened by the committee chairs or for groups of countries. Since substantive decisions are taken in the daily meetings, participation is therefore important. The decisions may concern ways forward, which may be important decisions on details negotiating modalities, or may even finalise issues that have been up for negotiations.

Negotiations in the African Union, which the African Economic Community is an integral part of, aim to create an African economic and monetary union by the year 2028 and in any case not later than 2034, that is, within a maximum period of 34 years from the 12 May 1994 when the AEC Treaty entered force and in any case within not more than 40 years. The process for forming the African economic and monetary union, as elaborately set out in Article 6 of the AEC treaty, is that the African regional economic communities (RECs) will be the building blocks.[98] The RECs are to be formed first, as free trade areas and develop into customs unions. Once they reach the stage of customs unions, they are to merge and form a continental customs union, which will then develop into an economic and monetary union. However, this process can be abridged where feasible, according to the Sirte Declaration, which the African Heads of State and Government adopted in Libya on 9 September 1999 to launch the process for preparing the constitutive Act of the African Union.

Uganda is at the moment engaged in negotiations to form the East African Customs Union and the COMESA Free Trade Area and Customs Union. This is done while at the same time ensuring within the context of the African Union that the formation of the African economic and monetary union proceeds on schedule and in a co-ordinated manner, and that the RECs do not end up stumbling blocks in this process (for instance if the programme set out in Article 6 of the AEC Treaty were not adhered).

The following preference-according arrangements also constitute important trade negotiations, though they tend to be unilaterally driven by the preference-givers and therefore do not put the preference-receiving countries in a meaningful negotiating position:

- The arrangement between the European Union (EU) and the African Caribbean and Pacific Group of States (ACP), under the Cotonou Agreement (formerly the Lome Convention) – it may be felt that the elaborate institutional framework under this Agreement allows for some significant negotiations between the EU and the ACP;

- The arrangement between the United States of America (US) and eligible African countries, under the US African Growth and Opportunity Act 2000; and

- Implementation of the trade goals of the Third United Nations Conference on Least Developed

97 The Doha Ministerial Declaration.

98 The following RECs have been formed: Arab Maghreb Union, the Economic Community of West African States including the West African Economic and Monetary Union, Sahel Community, Economic Community of the Central African States, Intergovernmental Authority on Development, Common Market for Eastern and Southern Africa, and the Southern African Development Community. The East African Community and the Southern African Customs Union (SACU) are prominent sub-RECs that have already passed the stage of customs union.

Countries, including the Everything But Arms initiative of the European Union, and GSP schemes operated by various developed and advanced developing countries.

The WTO is often equated to the multilateral trade system. This is not entirely accurate. The multilateral trade system is broader. It is made up of the WTO and other international instruments of comparable or near-universal membership that have implications for or contain provisions relating to trade; quite naturally one would add as almost everything is trade-related. Goods with health, environmental, security and other public policy implications will normally be subject to additional and specialised rules on their trade. Such other instruments could include the Convention on Biological Diversity and the Biosafety Protocol, the International Treaty on Plant Genetic Resources of the Food and Agriculture Organisation, and several multilateral environmental agreements.

The rules of the multilateral trade system are contained in the WTO Agreement [99] and other trade-related international instruments. These rules invariably include provisions on plurilateral and regional or sub-regional arrangements. Such rules provide for arrangements among groups of countries regionally dispersed or contiguous.

Properly speaking, arrangements among regionally dispersed countries would normally not be called regional arrangements, but those among regionally contiguous countries would. In practice however even arrangements among regionally dispersed countries have been counted among regional arrangements. Two examples of these include the Asia Pacific Economic Cooperation arrangement; and arrangement among the European Union and Africa Caribbean and Pacific Group of States. Bilateral arrangements would not be counted among regional arrangements, unless the region happens to have only two countries. However, bilateral arrangements have been notified to the WTO as regional trade agreements.

This practice of liberally construing what constitute regions is consistent with the market access objectives of countries that participate in the multilateral trade system. Market access is sought within the framework of the WTO as well as separate arrangements with individual countries or groups of them. The practice is also consistent with domestic objectives of protecting public health, the environment, security and other public policy objectives, in the sense that trade with the country should meet the same public policy objectives regardless of the country of origin of the products.

The country should identify all sustainable opportunities for promoting its trade objectives. It should in this regard be quite remarkable that regional markets provided under the programmes for African economic integration do not on the whole enjoy as much priority as access to markets outside Africa. The process of African economic integration entails a huge work programme that should equally deserve serious attention on the part of African countries, particularly as South-South trade is poised to rapidly increase and assist the sustainability of their development programmes, and as African economic integration aims to create customs unions and economic communities that would result in single markets.

The resilience of Economic Integration

Economic integration, in involving fewer parties than the entire multilateral system, makes for faster progress on specific matters that especially concern particular members. Though tremendous progress has been made in tariff reduction, and in reaching agreement on instruments for control of non-tariff barriers, we are still far from a world without any barriers to trade, and yet several new issues have been put on the WTO agenda, such as investment, competition, environment and government procurement. Provided there remain barriers and inconsistent trade regimes, there will be reason to undertake deeper liberalisation. A more liberalised regime will continually provide a competitive advantage if competitors have to break into relatively protected economies, whether in respect of trade or investment. And the very arguments for economic integration now will be applicable in the sense of relatively higher costs for third country entities and the need for larger markets. Economic integration seems to be the escape route that states avail themselves when the multilateral system gets clogged by convoy, foot-dragging, or even free-rider effects.

The provisions on differential and more favorable treatment for least developed and developing countries are perhaps evidence of a systematic manifestation of the stratified nature of the world economic system. The approach adopted is for developed economies to offer the treatment, on a bilateral or plurilateral basis. Again, economic

99 The WTO Agreement is made up of the Marrakesh Agreement Establishing the WTO together with the multilateral agreements annexed to it, namely, the 13 agreements on trade in goods, the Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Dispute Settlement Understanding, and the Trade Policy Review Mechanism. Some Members are additionally signatories to the plurilateral Agreement on Government Procurement.

integration will most likely be resorted to, given the resilience of poverty and lack of economic development despite prescriptions of all sorts at the multilateral level, and the very difficult and rather insubstantial remedies - in the sense for instance that effective debt relief is not given - advanced by the community of creditor states and institutions so far. In addition, though by far the overwhelming majority of trading nations are members in the WTO, there are some whose applications are still pending, and others who will remain non-members anyway. Non-members, apart from those applying the rules on a voluntary and de facto basis, will be outside the purview of the WTO rules, and therefore of the multilateral system. Contiguous states will continue to face acute and peculiar problems, perhaps without ready solutions from the WTO. For instance, developed economies in the proximity of developing or least developed economies, complain about illegal immigration, and seek solutions outside the WTO. Other similar problems are, those associated with asymmetrical economic polices leading perhaps to smuggling and resource diversion, environmental destruction, and even security concerns such as terrorism and subversion. Such non-economic problems nevertheless offer opportunities for forms of economic integration resulting from the general co-operation. For instance, economic integration has been mooted as a way that peace will come to the Middle East, following the example of Europe where foes have been turned into friends. The unfortunate prevalence of strife, caused by ethnic, religious and other differences, is reason for supposing that economic integration will yet prove a prominent tool for peace efforts.

So, simply stated, economic integration will likely continue to be a step ahead of multilateralism in many areas, and for this reason to be an option, and to feature, when member states can make faster progress at the regional or plurilateral level. When all barriers to trade and investment will be eliminated, there will yet be scope for further economic integration in terms of harmonising policies and regulatory frameworks, perhaps leading to a phase for RTAs primarily concerned with creating economic unions so policies can be harmonised. It might be a question ultimately of whether the multilateral system can attain a barrier free regime and common economic policies overall in trade and investment.

The Scope for Challenges in Trade Negotiations

The scope for challenges in trade negotiations for African countries will therefore include multilateral, regional, and bilateral negotiations. In particular, African economic integration as the overarching development strategy for Africa will require that African countries give a degree of prominence or priority to the trade negotiations relating to the African Union and the African regional economic communities. It should be rather despicable that African economic integration is not a core component of the African trade negotiating agenda. But then this immense scope of multilateral, regional and bilateral trade negotiations can only imply huge negotiating challenges.

II A Framework on Challenges in Trade Negotiations

A country enters trade negotiations with another or others with a view to promoting its trade objectives usually in the context of broad public policy goals relating to the social economic welfare of its people. To effectively negotiate out its trade objectives, a country needs to have relevantly skilled negotiators and the supportive resources. Sorting out their trade objectives, finding and keeping skilled negotiators, and harnessing supportive resources, constitute major challenges for African countries.

The broad trade objectives will normally be in terms of increasing a country's exports and securing imports on as favourable terms as possible taking into account factors such as the nurturing of domestic industry while maintaining a suitable degree of competition from imports, ensuring adequate sources of government revenue from customs duties (for African countries), and securing for consumers a good variety and good quality products. In rule setting trade negotiations, a fundamental objective will be to ensure that the rules provide for sufficient flexibility for adopting and implementing development policy.

The specific trade objectives will depend on the structure of the economy of the country. African countries on the whole, like other developing countries, have traditional exports they are out to diversify away from. In such circumstances trade negotiations will aim to secure markets for the new products in addition to markets for the traditional exports. The negotiations will aim also to obtain the co-operation of trading partners for technical and financial assistance required to meet market preferences, and satisfy health and technical standards and other customs or entry procedures. And in the broader context of development co-operation, negotiations will aim to assist developing countries particularly the least developed address their production and supply constraints so that these countries can fully develop their potential, increase their productivity and the production of particular products for the domestic and export markets.

A country must position itself to effectively negotiate its objectives into the specific results of the negotiations so that the instruments adopted contain rules that secure and promote those objectives. In order to do so, a country should streamline or strengthen its major forums of action and implement a concrete programme on capacity building for trade negotiations.

The Forums of Action

The major forums of action will be at the organisations where trade negotiations take place, and at the domestic institutions that prepare and negotiate the national positions. The idea is that a country should establish a functioning link between its representatives in the negotiations, its officials in the line ministries, and the support institutions for the negotiations. The support institutions will include researchers and other think-tanks that timely provide back-up information in order to sustain the negotiating positions adopted, by continually providing evidence and other material to representatives stationed abroad at the organisations to argue the country's positions. The institutions will include also a structure within which the think-tanks directly link to the line ministries and within which both the line ministries and the think-tanks link into the actual negotiations in terms of keeping briefed about twists and turns and expeditiously providing feed back and input on the way forward.

In WTO negotiations, the forums of action from the perspective of Uganda, for instance, will be Geneva where the WTO is headquartered, Kampala the capital city where the Trade and Foreign Affairs and other relevant ministries are stationed as well as the various domestic institutions particularly the Inter Institutional Trade Committee (IITC). The IITC is the broad-based national body that is supposed to formulate trade policy and negotiating positions for Uganda. It is made up of representatives from six government ministries and ten government departments, and from the private sector including three academic institutions, five non-governmental organisations, and eight trade associations.

In negotiations within the African Union or the African regional economic communities, the forums of action will additionally include the cities where the meetings of the African Union or the regional economic community are taking place as well as the secretariats of those organisations. It seems to be the case though that most African countries do not have permanent representatives to the regional economic communities headquartered in countries hosting the secretariats, though many would have ambassadors as permanent representatives to the African Union based in Addis Ababa in Ethiopia. Instead, the regional economic communities are serviced from the capitals by designated officials that would additionally cover other areas.

While it is necessary for the member states of the regional economic communities to designate coordinating ministries and to designate desk officers, it is equally necessary to have permanent representatives to the regional economic communities that closely follow developments in negotiations on specific matters but especially that prepare the contacts and the context for advancing the country's trade objectives. And as the more immediate activities are taking place within the regional economic communities as the building blocks for the African Economic Community, one would expect permanent representatives to the regional economic communities.

In bilateral arrangements, the forums of action will include the capitals of the partners and these will be necessary to nurture the bilateral relationship generally and to specifically implement the arrangements. Under the Cotonou Agreement (formerly the Lome Convention) with the European Communities and under the African Growth and Opportunity Act 2000 with the United States of America, the additional forums of action will be the capitals of the bilateral partners, namely, Brussels and Washington/New York.

Linkages between the forums of negotiations

Trade negotiations with other countries tend to raise more or less similar issues, particularly issues of obtaining market access and the stability of that market access. In cases of African countries seeking foreign markets outside the continent, the trade partners will be the same regardless of the forum of the negotiations. In the WTO, and in the bilateral arrangements, the major trade partners will be the European Communities, the United States and the other developed countries, and to a significant extent the newly industrialised countries that promise new markets especially for non-traditional exports.

The concerns and trade objectives of trading or negotiating partners will usually be the same in the various forums. A good instance is how the issues of investment and competition policy, government procurement, labour standards, trade facilitation, and environment protection, feature in multilateral organisations as well as in the bilateral arrangements with the European Communities and the United States and other developed countries.

Given this similarity of issues and negotiating partners, the forums of action must co-ordinate their activities not only in relation to negotiations in one forum but also in relation to trade negotiations in all other forums. The aim of the coordination is to ensure first that the country's officers and representatives all speak with one voice and understand the same positions, and second that the country's positions on issues are similarly advanced and defended in all the forums; for if the country loses its positions and its interests are thereby prejudiced in one forum where a major trading partner participates, successes in other forums will be severely compromised and perhaps even rendered ineffective.

Functions and Effectiveness of the Forums of Action

Each forum of action has an important role in the overall design and pursuit of negotiating positions and strategies. Shortcomings at any one forum of action will constitute serious fault lines and will normally be the focus of attacks from negotiating partners where they seek to defeat what they consider adverse negotiating positions.

Functions of the line and lead ministries

The functions of the line and lead ministries through the capital-based officials should be designed to provide the overall direction for the negotiations. The representatives in the negotiations should then have positions to articulate, the positions communicated from their capitals. Without such positions, the representatives in the negotiations will be in the embarrassing position either of themselves formulating their country's positions on their feet in the course of the negotiations or of simply keeping quiet in the negotiations on the basis that their country does not have a position on the issues under consideration.

The line ministries for certain trade negotiations will be several. It will be important in such circumstances to be clear which the lead ministry will be, in order to try to avoid a conflict of leadership between the ministries and to ensure harmony and unanimity in pursuing the country's trade objectives as contained in its negotiating positions. In trade negotiations with other countries, the Trade and Foreign Affairs ministries will be concerned, unless there is a specific ministry on External Trade. In WTO negotiations in particular, the agreements on various subjects mean that various ministries will be involved; for instance, the ministries responsible for justice, agriculture, health, finance, telecommunications, labour, immigration, intellectual property, etc. While there could be ministries responsible for specific regional economic communities in the case of trade negotiations in the African Union and the regional economic communities, the broad coverage of the constitutive instruments on African economic integration, similarly mean that various ministries will be involved. The lead ministry will therefore have to effectively coordinate all the relevant ministries in consultation and conjunction with the line ministry.

It has not been uncommon to see tensions between various ministries played out at negotiating forums or in capitals. The tensions have in some instances gone to the core processes for adopting and advancing the country's negotiating positions, with officials from different ministries seeming prepared to advance differing positions, or seeking to be the spokesperson or dealmaker for the country.

The specific functions of the line ministries (the relevant specialised ministries) in the build up to and during negotiations will include:

a. Preparation and communication of the country's position in accordance with the institutional arrangements if any on how negotiating positions are prepared and adopted; and

b. Coordination of programmes to support and supplement the country's positions once adopted and pronounced in the negotiations.

The specific function of the lead ministry (normally the ministry responsible for foreign affairs) will be to coordinate and facilitate where possible the government representatives that go into the negotiations. The lead ministry will however have to do this in accordance with the mechanisms, including protocol, that the government would have put in place relating to international negotiations and dealings.

Effectiveness of the line and lead ministries

The line and lead ministries need to be effective in their functions in order to ensure the country has good positions that fully reflect its trade objectives, and to ensure that these positions are consistently and timely availed to the country's representatives in participating in the negotiations. In Africa the ministries face formidable constraints arising mainly from limitations on government spending and shortage of expertise and information in specific areas.

The effectiveness of the ministries will require:

a. Adequate staffing levels so that officials can be conversant with all relevant issues and have time to undertake the work necessary for the processes of formulating trade policy and positions, bearing in mind that ministry officials will most likely be the ultimate experts on what is best for the country notwithstanding what think-tanks and possibly consultants would recommend;

b. Reasonable terms of service and conditions of work in order for the officials to endeavour being single-minded, settled, motivated and patriotic in undertaking their functions;

c. A broad-based and well-resourced institution providing a legitimate and authoritative forum (by including all relevant interested parties in the country) for the formulation and implementation of trade policy and positions;

d. Ready access to a pool of expertise from academic, research and other sources, and to relevant information in print and online, in order to provide timely research and information, and to service the institutions formulating trade policy and positions;

e. An adequate budget to pay staff, fund programmes and facilitate the actual negotiations, and in all other respects to support the timely functioning of the ministries; and

f. Clear government rules and guidelines on the mandates and hierarchy of the line and lead ministries that the respective officials and representatives will follow.

Functions of representatives in the negotiations

A country's representative in trade negotiations has the primary function of faithfully and effectively presenting, advancing and defending the positions the country has adopted. Where the country has not adopted positions in time, the representative might well and does from time to time remind the governments to formulate and communicate them; but this should come as some embarrassment to the government as a whole and should be undesirable.

Nevertheless, it should be prudent for the representative to inform the capital in advance of the timeframes for relevant negotiations and to provide states of play in negotiations so that programmes are in place for the timely formulation and communication of positions. Besides, properly functioning governments should have in place arrangements for the representatives to personally participate in the processes for trade policy and position formulation. Where this happens, the representative should be in good stead to reconstruct the country's positions in advancing and defending them once presented.

A country's representative engages in trade diplomacy, understood to be processes for getting other countries to be sympathetic with the country's trade objectives and to see issues in a manner that supports those trade objectives. In international trade negotiations, the formation of blocs has been useful in assisting the participating countries to jointly present, advance and defend their positions. The blocs however are not substitutes for and only facilitate negotiators that win their opponents over, though this is rare, and that are pro-active in creating international public opinion that is favourable to the positions of their governments.

Public opinion is shaped mainly through the media, presentations and meetings, academic and empirical literature, manifestos and work programmes of political parties or organisations, and interactions between political and civic leaders. And it is useful when brought to bear upon governments and negotiators that would prejudice the attainment of the trade objectives being pursued in negotiations.

Effectiveness of representatives in trade negotiations

Representatives in trade negotiations will be either based in the capitals or stationed at the forum of the negotiations. For both cases of negotiators, their effectiveness will be absolutely crucial and will be assisted by:

a. Expertise possessed in the specific subject of the negotiations, either acquired out of training, or internalised from regular briefs provided by those with expertise;

b. Personality and ability to clearly and consistently, even repeatedly, articulate positions with precise arguments, and to subsequently advance and defend them impromptu and at presentations in the context of the negotiations and of pro-activism to inform and hopefully develop supportive public opinion;

c. Consistent and reliable back up from the capital and the trade policy and position formulation institution including its resource persons and think tanks;

d. A core group of like-minded countries and negotiators around which positions can be nurtured and through which they can be advanced and defended in negotiations; and

e. Adequate provisions and resources to meaningfully engage in trade diplomacy.

Functions of support institutions

The support institutions are necessary to supplement the expertise and resources available to officials in the line and lead ministries and to the representatives, where government does not have adequate capacity or would do with extra-ministry assistance.

The support institutions, if structured to be broad-based and to include all stakeholders, could serve as consultative forums where national trade policy and positions are formulated. In this sense, the institutions would provide an important democratic forum and legitimise the negotiating positions, if compared to processes where the positions are normally adopted within the bureaucracies of line ministries and keep secret until presented in the negotiations that in turn might also be secretive.

The specific functions of support institutions could include:

a. Discussion and adoption of recommendations and positions on all issues arising from subjects to be negotiated;

b. On the basis of be briefs from the negotiators, discussion of and formulation of responses to issues raised by the positions and interests of negotiating partners;

c. Providing resource persons and expert support to negotiators individually and collectively;

d. Networking with all known and willing researchers and their institutes, including domestic and foreign academic institutions and research organisations; and

e. Initiation and sharing of research on pertinent trade topics.

Effectiveness of support institutions

The effectiveness of the support institution will require that it is structured rather than improvised, and that it is formally recognised in the country as the forum for the formulation and adoption of trade policy and positions.

The institution will need to be adequately funded in order to undertake the programmes particularly those relating to research and hosting experts on various issues under negotiation.

The membership and functioning of the institution should ensure broad inclusiveness so that as many of the country's experts as possible are taken on board, and all stakeholders fully participate in its proceedings. Stakeholders' participation will be important in identifying interests and concerns on which the institution could formulate policy and positions.

A National Programme on Capacity Building for Trade Negotiations

A national programme on capacity building for trade negotiations is a key foundation for sustainability in effective trade negotiations, because without the human and skills capacity to negotiate a country does not have those means to pursue its objectives in trade negotiations.

The programme on capacity building for trade negotiations should address several elements. An institutional memory should be maintained, including retention of employees, so that experience is not lost and is instead augmented through consistently keeping current on relevant issues and participating in the programmes for trade policy and position formulation, and in the negotiations, as the case may be. Training should be undertaken, particularly through introducing relevant trade subjects in the curricula of institutions of higher learning, for instance, African Economic Integration, WTO Law and Policy. Manpower planning should be done in order to adequately cater to the personnel needs of the country in the short, medium and long term. Inter-ministerial and inter-organisational coherence is needed in order to eliminate inconsistent government policies and positions on key issues. National and regional networking is necessary for government officials, researchers, education institutions, and civil society; and finally, adequate provision should be made in the national budget.

Institutional Memory

Institutional memory is the collective memory that resides in the people that get trained or consistently work on and keep apace with developments in a particular subject or, as in this case, a particular field or aspect of trade negotiations. The main sources of institutional memory are the pursuit of specialised training courses, hands-on learning or on-the-job training, and keenly following specific subjects either as part of one's job specifications or out of interest. The capacity building programmes on trade negotiations undertaken under the auspices of international organisations like the WTO, UNCTAD, and WIPO have produced a cadre of trainees in the civil service of many African governments. In addition, officials are normally assigned to cover specific trade areas or negotiations. The trained officials would therefore constitute some institutional memory.

Officials that follow particular or specific aspects of negotiations get familiar with the issues and their history, and develop insights into the processes and unspoken considerations. They develop contacts and working relations with colleagues, they join networks of negotiators, researchers, and civil society activists, and they become practitioners and experts in their fields. Together, the officials become a complementing team in which resides a stock of knowledge that can be utilised in preparation of negotiating positions, and in advancing and defending them. They become an invaluable resource for the country that can also be utilised in training for further capacity building.

Keeping or maintaining an institutional memory helps to avoid losing what the country has got and is therefore a basic way of efficiently conserving and utilising human and training resources. A common occurrence in Africa is the trimming of the civil service, a process that invariably results in loss of expertise and human resources. Together with this, the unsatisfactory terms and conditions of service are a perennial cause of civil servants leaving government service for the private sector. While that is a correct economic decision for such civil servants, the public policy considerations that the government should bear in mind, would require that means be found to retain the civil servants particularly when they have a useful role to play. And they should have such a role because on the whole African governments do not have enough manpower to undertake intensive trade negotiations; all trade negotiations involving international trade particularly of a multilateral nature are intensive.

It is appropriate to continue with training programmes and preferably to scale them up, and to encourage officials to become as familiar as possible with subjects they cover. And when officials are trained and when they become good at their work, it would be important to retain them in government service.

Training

The training component of the programme should aim to produce for the country people endowed with the requisite skills that can become effective government officials and trade negotiators. The programme should therefore be designed with the trade negotiations in mind as well as the level of skills possessed by the average trade negotiator the government employs, with a view to scaling up those skills and adequately equipping the trainees with skills that match the sophistication of the negotiations.

While theoretical components will be fundamental pillars of the programme, like most subjects undertaken in academic institutions, the programme must contain adequate elements of practical training. Seasoned trade negotiators and other practitioners should be included among the teachers, at least as visiting teachers. Where possible, trips and internships with secretariats of the WTO and other trade international organisations particularly UNCTAD, as well as the secretariats of the African regional economic communities, should be arranged for the students.

African trade negotiators will need to be competent to undertake all the multilateral, regional and bilateral trade negotiations. The training or further training they will need should therefore be formulated with these various negotiations in mind, to put together a comprehensive course that produces graduates skilled in all the facets of the negotiations. Specialisation should be possible, but it will be important for the trade negotiators to appreciate the linkages between the various multilateral, regional and bilateral negotiations.

A course on trade negotiations would therefore appropriately include the following subjects, stated in broad terms. One part of the course, on African trade negotiations, could cover the following topics:

a. History of African economic integration;

b. Structure of African economies and development strategies;

c. Impetus to African economic and political integration, with specific reference to the Organisation for African Unity and the Africa Union;

d. African Economic Community;

e. African regional economic communities;

f. Cotonou Agreement and other bilateral arrangements with developed countries;

g. WTO rules on regional trade agreements.

A second part, on WTO negotiations could cover the individual agreements that make up the WTO Agreement and the additional issues included under the Doha work programme, namely, trade debt and finance, trade and technology transfer, investment policy, competition policy, government procurement, and trade facilitation. The part of the course on WTO negotiations would aim to address the negotiating history of the agreements including the negotiating positions of the parties to the negotiations; the substantive obligations and rights eventually agreed and written into the agreements; the implementation of obligations and defence of rights – experience and best practices; jurisprudence on the agreements; development implications of the agreements; current and built-in negotiations; and priorities and concerns of African countries, and the way forward on the issues.

Manpower planning

The planning ministries normally have the task in the context of national development plans of forecasting and providing for the manpower needs of the country in the short, medium and long terms. There is reason to believe that trade negotiations have not been a priority or has received only inadequate attention in such planning, because of the obvious personnel and skills shortfalls that African countries experience in attempting to participate in negotiations in various international organisations including the WTO and African regional economic communities.

The Uruguay Round was negotiated from 1986 to 1994, and by the time the WTO was established on 1 January 1995, developed and some advanced developing countries already had government officials that could hold themselves out as experts in WTO Law and WTO subjects, either because they had studied International Economic Law, a course that by that time had become a separate discipline of learning, or because they had closely followed the negotiations all along. When the WTO put together a training programme for developing countries and embarked upon it, it was merely introductory and clearly not designed to produce experts as such. The fate of African and other developing countries was therefore to only be half-familiar with the WTO and therefore inadequately participate in the WTO processes. And eight years after the establishment of the WTO, African countries are yet to squarely respond to the challenge of putting in place training facilities for producing cadres of experts on trade negotiations.

This is even truer of African integration. Economic integration has been adopted as the overarching development strategy for Africa, especially since 1980 with the adoption of the Lagos Plan of Action. In 1991 the Heads of State and Government concluded the Treaty Establishing the African Economic Community and in 2000 they adopted the Act Establishing the African Union. Both the African Economic Community and the African Union are in force as continental organisations providing direction for the future and development of Africa. Yet African institutions of learning hardly have specialised courses designed to produce students of African economic integration and African trade negotiations. Experience in other jurisdictions, particularly the European Union where economic integration has been very successfully in re-building Europe after the second world war ended in 1945 and reconciling arch enemies like Germany, France and Britain on the basis of the common interest of economic integration, shows that teaching relevant courses, subjects on the European Union in this case, has been instrumental in building momentum and a vigilante society necessary for European integration.

Manpower planning for trade negotiations should include programmes in addition to introducing courses on multilateral, regional and bilateral negotiations, African governments should develop student and scholar exchange programmes with recognised universities offering appropriate courses.

African governments should set aside funds for scholarships for core teams of trade negotiators and teachers to undertake graduate studies in recognised universities, for durations of one or two years. The core teams would return to the country to in turn give training courses to government officials and students in institutions of high learning. And again, the scope of the scholarship programmes should reflect the manpower needs of the country. For instance, African governments would need not less than five experts in their missions in Geneva for WTO negotiations. In the Trade and Foreign Affairs ministries, again, not less than five officials should cover the WTO[100] ; and each bilateral arrangement and African regional economic community would need a separate official or preferably several officials to cover it.

It will be necessary to take into account the possibility of promotions and the need to have officials at the level of experts, as well as the possibility of postings and resignations to take up other functions; so that the manpower of the government is maintained and sustainable at all levels of government service and trade negotiations.

Manpower planning should in addition envisage needs in the private sector. Trade negotiations must target the private sector as major stakeholders. The exporting community is a good watch dog against infringements of obligations by other member states where they adopt measures against the country's exports in breach of the trade agreements negotiated.

Coherence

Officials in various ministries may have different perspectives to various trade policies supposed to be pursued or implemented in the country. The perspectives arise from the relation of the ministry to international financial institutions, to the funding available to the ministry from budgetary and extra-budgetary sources, and the overall priority accorded to the ministry within the architecture of government.

The Finance ministries tend to be powerful and to lean kindly towards policies espoused by the World Bank and International Monetary Fund; and they may even have the desks servicing bilateral trade relations with major trading partners particularly the European Union and the United States of America. To the extent that the Finance ministries would be responsible for budgetary allocations, many trade programmes would be undertaken within their auspices.

The Foreign Affairs ministries tend to be significantly excluded from trade policy formulation and implementation, except to the extent that the representatives in trade negotiations may be diplomats from the Foreign Affairs ministries. This should be a serious strategic flaw, because the trade negotiators are in that manner removed from the domestic processes for trade policy and position formulation and implementation and de-link from the national processes. This might even be made worse by a mild antagonism between the Foreign Affairs and Trade ministries,

100 The Trade ministry of Uganda has three officials covering the WTO, in addition to other areas that they equally have to attend to.

which is not unheard of.

The Trade ministries tend on the whole to be poorly funded and weak, and to have a low stature in the architecture of government.[101] This should be startling given the prominence that trade is avowedly supposed to play in economic development and poverty reduction. It simply reflects the mismatch between words and action, and the apparent lack of seriousness on the part of many African governments as governments.

The WTO has several sectors – manufactures, agriculture, services, intellectual property, dispute settlement; which means that various ministries will be involved in WTO matters, and which further implies more scope for trade policy fragmentation with the consequent loss of direction and cohesion in trade policy formulation and implementation, and in the preparation of negotiating positions.

There is absolute need for coherence among all relevant ministries among themselves and in their relations with international financial institutions and other organisations. The coherence will be the means for ensuring that there is a national position on specific trade issues and the position will be the same wherever and whenever the issues arise. This assists in terms of harnessing all the capacity in the various ministries to the same cause and behind the same policies and positions, rather than infighting and the spending of resources duplicating functions or correcting mistakes.

Networking

National and regional networking for government departments and public and private sector trade institutions, and for researchers and academic institutions, helps to pool and share the total available human resources, information and research.

When government departments network at the regional level, they develop a shared or common understanding of trade issues, which can assist in arriving at common positions to present and negotiate. The common positions in turn mean that the countries can mutually reinforce each other in the negotiations to present a strong negotiating team, perhaps even applying the specialisations of the various negotiators for the collective good of the countries sharing the common positions.

Trade institutions such as exporters' associations and the private sectors of the countries, can network in order to organise and share market information, and in order to hold out the region, for instance the East African Community, as a single destination for investment and as a single market. The trade institutions can be powerful lobby groups that promote particular positions, and normally these would be positions that reflect the collective concerns of the trade institutions and the private sector at large. These functions facilitate the identification of priorities and concerns and the formulation of trade policy and positions.

The result of networked researchers and academic institutions is a lot of research and information and a readily utilisable pool of experts that can be resource persons and that can assist the formulation of policy and positions. This means access to a harnessed capacity that would otherwise be scattered and out of reach.

Budgets

Up to 50 % of the budgets of African countries are donor-funded, including recurrent expenditures. This dependence is unsustainable since donors are have specific objectives. While the objectives might not be harmful at all, the common feature is that donor programmes are of a short-term nature and are usually not brought to fit into long-term plans where they exist. This may happen because donor funds come in trickles and do not amount to critical funding levels that can kick-start and wholly sustain long-term programmes.

Funding needs of African countries are monumental though not insurmountable. It has been clear for decades now that donor funds will not be the panacea to the development finance needs of African countries; for ODA levels have continued to fall since the 1970s and recent conferences on development financing have not changed that trend. The obvious response for Africa would seem to be to more seriously look inside itself and draw upon its internal resources, but this needs more serious planning that has hitherto been undertaken.

101 Trade policy fragmentation in Uganda is such that Foreign Affairs covers the East African Community, Finance has until recently been covering the Cotonou Agreement, and AGOA is covered by a semi-autonomous department in the Office of the President established specifically for the purpose. The Trade ministry covers COMESA and the WTO while Foreign Affairs covers the African Union.

The capacity needs of Africa are not problems without solutions, if African countries mobilised and shared their human resources and skills, and more closely co-operated in the context of African economic integration in all their dealings with third countries and organisations.

The budgetary allocations of African countries, even as meagre as they are, clearly show some lopsided priorities. The bigger proportions, where they are accounted for, go to defence and the offices of the presidents. Social infrastructure, including education and health, receive less priority. Trade is among the least considered sectors. It is important to change this paradigm in African budgets, to give much higher priority to trade and to capacity building for trade negotiations.

Conclusions

Governments should co-ordinate and strengthen their forums of action – that is, the capitals and the stations where the negotiations take place. This should be done in conjunction with a systematic programme of capacity building for trade negotiations.

For African countries, their forums of action in trade negotiations will be their capitals and the capitals of their major trade partners for bilateral arrangements, and will primarily aim to effectively implement the arrangements. For the regional market, the stations hosting the secretariats of the African Union and the African regional economic communities will be important forums of action. In WTO negotiations, Geneva will be a major forum of action. African missions in Geneva, and the trade ministries will be major players, and will need to position themselves to successfully negotiate the trade objectives of their countries into the specific results of the negotiations, mainly through enhanced expertise and manpower.

A programme of capacity building must aim to nurture an institutional memory within government, to train a pool of experts within the public and private sectors, to plan for the manpower needs of the country, to ensure coherence across the ministries and across relevant international organisations, to establish public and private sector networks at the national and regional levels in order to access and share as much as possible all relevant expertise, and to provide an adequate budget to support the programmes.

III Negotiating Challenges Confronting Uganda

This part considers key negotiating challenges facing Uganda in its participation in trade negotiations. The aims are to identify those challenges and indicate possible ways of addressing them.

The broad objectives of Uganda in multilateral, regional and bilateral trade negotiations include the following:

a. Building development infrastructure including infrastructure to link up regional markets;

b. Sustainably developing its natural resources including the energy sectors;

c. Enhanced market access for its traditional exports (coffee, cotton, tea, tobacco) and non-traditional exports (fish, maize, flowers, hides and skins, electricity) with a view to further diversification of exports and reduction of dependence on few export products (for instance, commercial deposits of oil might exist in the Albertine region in the West of the country; farming of commercial insects, exports of cultural products, and the energy sector, promise major gains);

d. Nurturing its important domestic industries through preferences, useable trade remedies, and resort to public policy in order to add value to primary products and to industrialise;

e. Technical and financial support for the competitiveness of its key products (goods and services) in export markets, specifically through improvement of quality and health and technical standards;

f. Liberalisation of labour markets abroad to facilitate employment in those markets of the people of Uganda;

g. Availability of competitive credit and other financial services;

h. Domestic access by all to medicine for HIV/AIDS, malaria, tuberculosis, and other diseases;

i. Promotion and international protection of traditional knowledge;

j. Dissemination of information and communication technologies; and

k. Development of user friendly dispute settlement systems that Uganda can readily utilise; and

l. Adequate flexibility for adopting and implementing development policy.

These diverse objectives constitute a formidable work programme for Uganda in terms of studies to raise concrete negotiating positions and proposals, and of resources to pursue the necessary negotiations in all appropriate organisations and countries.

There will usually be additional specific objectives for individual trade agreements and negotiations. The WTO for instance has rules in multifarious trade areas – health and technical standards, unfair trade and trade remedies, customs and entry regulations, regulation of services, protection of intellectual property, and settlement of disputes. Each of these areas raises fundamental public policy issues for Uganda and other developing and least developed countries, on which therefore negotiating positions will be necessary. The communications and proposals of the Africa Group of countries for WTO negotiations, where they have been made, have invariably indicated fundamental problems raised by the agreements and made suggestions for improvements and changes. Trade negotiations in the WTO will be technical and wide-ranging.

Trade negotiations in the framework of African economic integration will additionally include the political objectives of African unity and supportive neighbourliness in matters of peace and security, care for the environment, and of cooperation in various sectors and fields of infrastructure. Uganda as a member of the WTO will seek also to ensure that the regional and bilateral trade negotiations do not result in breaches of relevant WTO rules.

The forums of action for Uganda are Trade and Foreign Affairs and other relevant ministries located in Kampala; the Inter Institutional Trade Committee which sits in Kampala, Uganda; the WTO in Geneva, Switzerland; the African Economic Community and the African Union in Addis Ababa in Ethiopia; COMESA in Lusaka, Zambia; the East African Community in Arusha, Tanzania; the Cotonou Agreement administered in Brussels the location of the European Commission; and the African Growth and Opportunity Act administered from Washington D.C., USA.

The Trade and Foreign Affairs ministries operate under formidable difficulties and while they have endeavoured to bravely perform their functions, their effectiveness has been compromised. Two major constraints are identified. First, staffing levels are very low seen in light of the negotiating requirements in multilateral and regional organisations and in the bilateral arrangements they are involved in. Second, the few officers are employed under terms of service that are not decent and that can only demoralise and distract them. In particular their remuneration hardly reflects the cost of living and their other family needs. Officers must be able or at least have the conditions that would enable them to devotedly and thoroughly carry out their tasks, in order for the capitals need to be in order and to function efficiently; and the capitals are crucial links in the entire negotiating processes because they produce the negotiating positions for the country.

Staffing and skills

The Trade ministry has three officers based at the ministry in Kampala covering the entire WTO in addition to other organisations. The Foreign Affairs ministry maintains two officers in Geneva to cover the WTO and all the other international organisations based in Geneva, but does not have specific officers in the capital to cover the WTO. This has meant that both ministries have had to work very closely in order to complement each other, subject to certain slight discomfort about mandates or the functions of either ministry, which however should be easy to address through establishing a joint committee or other body that assists in administering trade negotiations.

The expertise in the Foreign Affairs ministry has tended to prioritise political affairs and that in the Trade ministry trade affairs. This can in part be accounted for on the basis of the training received at Makerere University and other institutions of higher learning in the country. There is yet no course on offer that would cover both the diplomacy and the technicalities of trade negotiations. Institutions of learning that were designed to initiate new government officers into their jobs, where such cross-cutting training could be given, are largely dysfunctional or lacking teachers or instructors with expertise in trade negotiations. In particular, the Management Training and Advisory Centre, and the Uganda Management Institute, do not offer courses on trade negotiations for government officers. Foreign Affairs officers on the whole therefore still need intensive training in trade negotiations, while Trade ministry officers require intensive training in basic negotiating skills and diplomacy.

Conditions of service

The Trade and Foreign Affairs ministries, unlike other prominent ministries in the country, are housed in quite desolate facilities awash with evidence of lack of, or inadequate, maintenance. Basic facilities that improve working conditions, including sanitary, catering, and rest, are severely inadequate. The bad image from lack of maintenance reflects badly on the government and does not instil confidence on the part of those that would do business with the ministries. And it does not encourage a sense of professionalism and duty on the part of officers and support staff.

Perhaps more important is that resources, particularly primary sources of information on trade negotiations, are still inadequate, which complicates and undermines the work of the officers. The Foreign Affairs ministry does not have a library with reference material for ongoing trade negotiations. The reference centre on the WTO located at the Trade ministry, containing print and on-line documentation, is not sustainable for it has been established and is run under the Joint Integrated Technical Assistance Programme for Least Developed and Other Selected African Countries which will end by 2005, and does not have a specific budgetary allocation within the ministry or the national budget.

Inter Institutional Trade Committee

The committee was set up in 1998 when the Permanent Secretary of the Ministry of Tourism Trade and Industry by letter convened a meeting of various selected stakeholders with an agenda that included consideration of the WTO and its implications for the country. That meeting initiated the setting up of the committee. An inaugural meeting was subsequently held from 15 to 18 November 1999 to consider the terms of reference of the committee and set up its sub-committees. Five subcommittees were set up then, on agriculture, Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT); TRIPs and legal issues; services; Singapore issues; and trade remedies and trade facilitation.

The problem with that administrative procedure for setting up the committee, other than through a statute, was that there were no streamlined legal modalities for its functioning. There was no provision in the laws of Uganda for its status, funding, structure and functions. The Uganda Law Reform Commission, with donor assistance and consultants, has drafted a Bill for a statute implementing the WTO Agreement. The initial draft Bill proposed to formally establish the committee under the statute implementing the WTO Agreement. But as it was feared that the process for enacting the law would be long and difficult, a new suggestion was made for the committee to be formally established under a separate statute. The Bill for the separate statute has not been drafted, but a policy paper to formally recognise the committee has been brought before cabinet and, if adopted, would be a basis for drawing a separate budget line for the committee within the national budget. This cabinet shortcut, though, must still be unsatisfactory compared to a proper statute that would set up the committee given the modality problems.

The committee has held regular meetings with the commencement in 1999 of efforts in earnest to draft and enact laws implementing the WTO Agreement and sensitising the public about the implications for the country, and also because financial and technical assistance from the Joint Integrated Technical Assistance Programme for Least Developed and Other Selected African Countries (JITAP) has been facilitative. Under JITAP, the committee was designated the national institution to oversee the implementation of the WTO Agreement in the country and generally to discuss and recommend positions for WTO negotiations and all other trade negotiations. It has therefore been a major forum of action within the country for all trade negotiations.

Membership of the committee is neatly balanced: sixteen institutions are from the public sector and the other sixteen from the private sector. The public sector is represented by six ministries and ten departments, and the private sector by three academic institutions (though Makerere University Faculty of Law has not been represented for a while now since the lecturer covering the committee went on study leave to undertake a doctoral programme), five non-governmental organisations, and eight trade associations. The total number of individuals on the committee is forty-four, broadly drawn from a cross-section of society, which is large enough for the committee to be serious and legitimate as a national institution on trade policy and negotiating positions, but small enough to efficiently conduct national business.

The plenary sessions of the committee are held quarterly and there is an annual retreat. The committee originally had five subcommittees but two more were added when the mandate of the committee was extended to all trade agreements (regional and bilateral) in addition to the WTO. The subcommittees now are on agriculture, TRIPs and legal aspects, services, trade remedies and trade facilitation, new issues, regional integration, and bilateral opportunities and domestic initiatives. The subcommittees are supposed to meet monthly but this has been irregular. They ideally have ten members, but they have leave to incorporate other individuals not exceeding ten as may be necessary. Attendance of the plenary and the subcommittee sessions has been well above average (37 to 40 for the plenary sessions).

Challenges for the IITC

The Inter Institutional Trade Committee faces several negotiating challenges. The legal standing of the committee and its modalities particularly funding sources, remain unclear and it is by no means certain whether and when a statute will be in place to address these constitutive problems. This lack of legal standing casts doubts on the authority of policy and positions the committee adopts, and indeed on whether the committee work programmes can be considered national programmes.

Funding for the committee under JITAP is due to end when the programme expires in 2005, which means the committee will face acute funding problems – it might even have difficulties convening any meetings at all. The exit strategy designed for this last phase of JITAP has not been able to come up with conclusive funding solutions; but has rather expected increased government funding for the Trade ministry and synergies with other donor programmes particularly the EU-funded Uganda Programme on Trade Opportunities and Policy, which has the mandate of addressing constraints relating to negotiating expertise and resources and supply of export markets.

The committee continues to face serious difficulties in harnessing a sufficient pool of experts that can service its activities. Under JITAP, one consultant was recruited as a resource person for the committee, and from time to time the UNCTAD and the WTO would provide resource persons on specific topics. The scope of the WTO together with regional organisations and bilateral arrangements that now fall under the committee's mandate, means that not less than ten such consultants or standing resource persons would be needed – five on the WTO (to cover the five broad areas of the WTO), three on regional arrangements (to cover the African Union, COMESA, and the EAC), one for the Cotonou Agreement and the other for the African Growth and Opportunity Act.

It is planned that the committee will be the negotiating body for Uganda in all trade negotiations. The committee will constitute a core team that goes into the actual negotiations, while the large group provides the backup. This plan should be taken seriously as it would solve the fundamental problem of lack of coherence across government ministries and departments, and across the trade organisations and arrangements. The major two problems that this plan will face will be negotiating skills including technical expertise, and funding for the negotiating trips.

Regional organisations and bilateral arrangements

Uganda has maintained a mission in Addis Ababa to cover (formerly the Organisation of African Unity and now) the African Economic Community and the African Union; and has missions in Brussels to cover (formerly the Lome Convention and now) the Cotonou Agreement, and in Washington for the US African Growth and Opportunity Act (AGOA). An Officer in the Trade ministry responsible for the WTO Agreement on Agriculture also covers the Cotonou Agreement and resources permitting regularly travels to Brussels for the meetings.

However, Uganda mainly covers the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC) using officials based in Kampala the capital city. An officer in the Trade Ministry covers COMESA. An officer in Foreign Affairs and another from the Uganda Law Reform Commission cover the EAC. But in addition to these officers, other government departments also send officers to these two regional organisations from time to time, particularly the Uganda Revenue Authority.

The rationale for these differing methods of covering regional organisations and bilateral arrangements is questionable. All these organisations and bilateral arrangements are equally important and should be treated similarly in determining how they are to be covered. Perhaps more importance could even be attached to the African regional economic communities on considerations of long-term sustainability of ties given that the work programmes envisage the creation of customs unions and eventually economic communities, and of political good neighbourliness. The work programmes under the African regional economic communities are quite involved and it would appear that only little research has been done to bring out their complexity and scope. The concrete national development programmes of Uganda and many other African countries, such as the poverty reduction strategy papers, bear little evidence of treating the African regional economic communities as seriously as, for instance, the WTO or even the bilateral arrangements with the European Union and the United States of America.

What is more is that all these regional and bilateral arrangements require intensive research and a readily available pool of expertise to assist in internalising the benefits and problems. This exercise needs to be done bearing in mind that Uganda, its bilateral partners and 40 of the 54 African countries are WTO members, and therefore would wish to avoid breaching their obligations and giving up their rights under the WTO Agreement.

Budget

The budgetary implications have been difficult to address, because both the Trade and Foreign Affairs ministries would appear to be very low in ranking and funding on the list of government priorities.

This is clearly a mismatch between words and action, for government of Uganda has put priority on poverty eradication through an export-led development strategy. The Poverty Eradication Action Plan, which the poverty reduction strategy paper of Uganda clearly recognises, has given due priority to export trade as a major means of reducing rural and urban poverty through growth in the export of goods and services produced by the rural and urban poor. The Plan additionally stresses activities that improve the sustainability of poverty eradication programmes, for instance, provision of health and education facilities, transport and communications, investment in rural areas, and extension services on productivity, standards and marketing.

There should be no half measures about sufficiently funding the Trade and Foreign Affairs ministries as the key ministries that oversee trade negotiations, and that provide the immediate framework for negotiating the much touted market access opportunities in multilateral and regional organisations and bilateral arrangements. Though donor support constitutes up to 50 % of the recurrent budget and over 90 % of the development budget, with obvious sustainability implications, government must still place as much priority in budgetary allocations for the Trade and Foreign Affairs ministries as it does on the export-led development strategy.

Uganda faces negotiating challenges in multilateral, regional and bilateral trade negotiations relating to a shortage of officers and negotiators to cover and undertake relevant negotiations, bad terms and conditions of service that undermine performance, inadequate skill levels that produce ineffectiveness, a still shaky domestic base for identification and articulation of negotiating objectives and positions for the advancement and defence of the positions, and severe financial and other resource shortfalls that cause the concomitant mundane difficulties.

IV Summary and recommendations

The scope for challenges in trade negotiations for African countries will include multilateral, regional, and bilateral negotiations. In particular, African economic integration as the overarching development strategy for Africa will require that African countries give a degree of prominence or priority to the trade negotiations relating to the African Union and the African regional economic communities. It should be despicable that African economic integration is not a core component of the African trade negotiating agenda. But then this immense scope of multilateral, regional and bilateral trade negotiations can only imply huge negotiating challenges.

Governments should coordinate and strengthen their forums of action – that is, the capitals and the stations where the negotiations take place. This should be done in conjunction with a systematic programme of capacity building for trade negotiations.

For African countries, their forums of action in trade negotiations will be their capitals and the capitals of their major trade partners for bilateral arrangements, and will primarily aim to effectively implement the arrangements. For the regional market, the stations hosting the secretariats of the African Union and the African regional economic communities will be important forums of action. In WTO negotiations, Geneva will be a major forum of action. African missions in Geneva and the trade ministries will be major players, and will need to position themselves to successfully negotiate the trade objectives of their countries into the specific results of the negotiations, mainly through enhanced expertise and manpower.

A programme of capacity building must aim to nurture an institutional memory within government, to train a pool of experts within the public and private sectors, to plan for the manpower needs of the country, to ensure coherence across the ministries and across relevant international organisations, to establish public and private sector networks at the national and regional levels in order to access and share as much as possible all relevant expertise, and to provide an adequate budget to support the programmes.

Membership of the Inter Institutional Trade Committee of Uganda

Type of institution	Names of institution	Number of representatives
Government ministries (6)	Tourism Trade and Industry	6
	Finance Planning and Economic Development	2
	Foreign Affairs	1
	Health	1
	Agriculture Animal Industry and Fisheries	2
	Justice	1
Government departments (10)	Exports Promotion Board	2
	National Bureau of Standards	2
	Revenue Authority	2
	Law Reform Commission	1
	Bank of Uganda	1
	Investment Authority	1
	National Agricultural Research Organisation	1
	National Environmental Management Authority	1
	Civil Aviation Authority	1
	Presidents Office	1
Academic institutions (3)	Law Development Centre	1
	Makerere University Business School	1
	Makerere University Faculty of Law	1
NGOs (5)	Actionaid Uganda	1
	Advocates Coalition for Development and Environment	1
	Deniva	1
	Food Rights Alliance	1
	Uganda Consumer Protection Association	1
Trade associations (8)	Uganda National Farmers Federation	1
	Private Sector Foundation	2
	Uganda Manufacturers Association	1
	Uganda National Chamber of Commerce and Industry	1
	Uganda Fish Processors and Exporters Association	2
	Uganda Services Exporters Association	1
	Uganda Clearers and Forwarders Association	1
	Uganda Law Society	1
Public sector institutions : 16 **Private sector institutions : 16**	**Total of institutions : 32**	**Total of individuals : 44**

Compiled by Francis Mangeni from various official documents.

COMESA POLIYC ON INTELLECTUAL PROPERTY RIGHTS

GEORGE MPUNDU KANJA

Before the 1990s Intellectual Property (IP) was a subject which, due to being little–known, was unappreciated as one of the major factors of economic growth and development. It was instead a subject which was the exclusive domain of legal specialists or experts and the owners and producers and creators of Intellectual Property. However, the coming into force of the World Trade Organization's (WTO) Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement in 1995 has changed the dynamism and revolutionized the world perception of this subject.

Today Intellectual Property has become one of the most economically and politically important and, at times, controversial issues in national, regional and international arenas. IP is relevant in discussions on trade, competition policy, industrial policy, education, public health, traditional knowledge and expression of folklore, biodiversity, biotechnology, food security, biopiracy, cultural and creative industries, sport, counterfeiting and piracy, the internet, the entertainment and media industries, information technology, economic partnership agreements or bilateral trade agreements.

The TRIPs Agreement requires all WTO Members to provide minimum standards for the protection of a wide range of intellectual property rights (IPRs) which include copyright and related rights, including computer programs and databases, trademarks, geographical indications, industrial designs, patents, integrated circuits or semiconductor topographies, and undisclosed information (trade secrets). In doing so, the TRIPs Agreement incorporates provisions from many existing IP international agreements such as the Paris and Berne Conventions administered by the World Intellectual Property Organization (WIPO). The TRIPs Agreement also introduces a number of new obligations, particularly in relation to geographical indications, patents, trade secrets, and measures governing how IP rights should be enforced.

In order to comply with the TRIPs Agreement minimum standards, WTO Members have formulated, amended or are in the process of amending their IPRs legal frameworks. Additionally, countries have formulated and adopted intellectual property policies to mainstream intellectual property in their economic activities and development agendas so as to take advantage of the opportunities and potential benefits created by the IP era, known as a 'knowledge-based and innovation-driven economy' - an economy that creates, disseminates and uses knowledge to enhance growth and development.

In today's global economy which is increasingly propelled by the knowledge-based industries, the protection of ideas, creativity and innovations through IP has therefore become one of the major priorities in the competitive strategy of not only the powerful economic industries and countries but also for a few developing countries such as China, India, South Africa and Brazil. These emerging economies, have recently witnessed tremendous economic as well as technological growth due to their increased investment in IP as well as value-adding to their goods, products and services through the use of IP.

In addition, ownership and distribution of IPRs assets has become a high-stakes issue in international negotiations and international trade. Besides, the continuous shift towards a knowledge-based and innovation-driven economy has brought to the fore the issue of how knowledge is created, disseminated, retained and used to obtain economic returns by both firms and countries. Knowledge embodied in IPRs rights assets such as patents, software, and copyright, is becoming a key determinant of companies', firms' and countries' economic and financial performance and growth. It is also becoming an important source of income or revenue for those entities. Countries or firms that are unable to create IP remain net importers and consumers of the IPRs assets produced in countries that do create those assets and have incorporated IP in their competition and growth strategy. Unfortunately, COMESA is a net importer of IPRs developed and created by developed economies, as its IP base is still in infancy.

In addition to countries, regional trading blocs such as the European Union (EU) have equally attached serious importance to IPRs in their overall economic growth and development strategy. Thus, in 2000, European Heads of State established the strategic goal for the EU of becoming the most competitive and dynamic knowledge-based economy in the world by 2010. Innovation was recognized as the key to the success of this strategy. It is for this reason we see the inclusion of strong and elaborate IPRs provisions currently in the Economic Partnerships Agreements (EPAs) being negotiated by the EU and some Member States of COMESA.

Equally, in the United States of America (USA), which is one of the largest producers and innovator of IPRs, the IPRs issues are of paramount importance to the USA economy and competitive strategy as demonstrated by the USA's push for the formulation and inclusion of the IP treaty, the TRIPS Agreement, within the WTO framework in the Uruguay round of negotiations. This changed, not only the scope and standards of protection of IPRs, but also the way countries implemented their respective obligations under intellectual property treaties.

Furthermore, the USA in 1988 introduced the "Special 301" of the Trade and Competitiveness Act to globally monitor the adequacy and effectiveness of the IPRs protection by the USA's trading partners. The 'Special 301' requires an annual review by the USA Trade Representative (USTR) of the IP practices of the country's trading partners. The USTR is required to identify 'priority foreign countries' which deny 'adequate and effective protection of IPRs' or which 'deny fair and equitable market access' to USA traders. The USTR is then obliged to place those countries on either a 'Priority Watch List' or 'Watch List', with a view to a fast-track investigation, followed by trade retaliation in the form of increased duties or import restrictions. The 'Special 301' therefore provides a critical policy tool to enhance the USA's innovation, creativity and protection and enforcement of IPRs.

The USA's strong IP policy as indicated by the above measures is driven by the enormous contribution the IP contributes to the country's economy.. For example in 2007, the copyright industries alone contributed USD1.52 trillion or 11.05% of the USA Gross Domestic Product (GDP) of USD13.8 trillion, and employed 5,577,900 representing 4.05% of the total USA workforce. Additionally, the foreign sales and exports of core copyright industries in 2007 earned the USA USD125.64 billion, which is by far the largest earned by any industry in the country.

The contribution of copyright industries to the US economy in 2007 was more than three times the total combined GDP of COMESA which stood at USD345 billion with a population of 416 million. In the same year, the total volume of COMESA exports and imports was USD203 billion but the USA's earnings from the export of copyright works alone stood at USD125.64 billion. In the period 2006-2007, the US copyright industry alone contributed 43.06% to the country's real annual growth. COMESA has to therefore seriously and critically examine the role of Intellectual Property, if any, in its aims and objectives as well as development agenda if it has to be regionally and internationally competitive. IP would secure COMESA Member States a meaningful stake and influence in the international or global trade as IP has become a determining factor for development.

OVERVIEW OF INTELLECTUAL PROPERTY

IP is a term increasingly in use today, but still little understood or appreciated especially in developing countries, including in COMESA Member States. It remains a mystery to most people, some obscure legal subject or concept of little relevance to everyday life. But yet every activity we do in our daily lives, be it commercial, social or cultural, is in one way or another affected by IP.

Our daily lives are affected by the works, processes and products of Intellectual Property. For example, the food we eat and beverages we drink (Malawi Coffee, Kenyan Tea, Coffee, Ethiopian Coffee, Mosi, Tusker, Nile, Mazoe), , the news and films transmitted via satellite on our television, the car and music on the radio as we commute to work, books, magazines, newspapers, correspondences, research materials we come into contact with or refer to in the course of our study, the computers, phones, internet and the very office building or homes in which we spend most of our time, are all products of IP. When we are sick, the equipment used in diagnosing our illness and medicine, both convention and non-conventional, to treat our illness are part of IP. Additionally, goods and services that are traded within COMESA are also subject to IP.

IP protects intellectual creations in the industrial, scientific, literary and artistic fields. IP is a term that broadly refers to creations that result from the mind, called the human intellect. Intellectual Property Rights protect the interests of creators by giving them property rights over their creations. IP consists of ideas, inventions, technologies, artworks, music and literature, that are intangible when first created, but become valuable in tangible form as products.

The Convention Establishing the World Intellectual Property Organization (1967) does not seek to define intellectual property, but gives the following list of the subject matter protected by intellectual property rights:

a. Literary, artistic and scientific works,

b. Performances of performing artists, phonograms and broadcasts,

c. Inventions in all fields of human endeavour,

d. Scientific discoveries,

e. Industrial designs,

f. Trademarks, service marks and commercial names and designations,

g. Protection against unfair competition, and

h. All other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Over the years, the rather elastic concept of IPRs has been stretched to include not only patents, copyright, industrial designs and trademarks, but also trade secrets, plant breeders' rights, geographical indications, and rights to layout-designs of integrated circuits. Of these IPRs, patents, copyright and trademarks are arguably the most significant in terms of their economic importance, their historical role in the industrialization of Europe and the USA, and their current standing as major pillars of the international law on IPRs.

Intellectual property relates to items of information or knowledge, which can be incorporated in tangible objects at the same time in an unlimited number of copies, at different locations anywhere in the world. The property is not in those copies but in the information or knowledge reflected in them. Intellectual property rights are also characterized by certain limitations, such as limited duration in the case of copyright and patents.

The importance of protecting intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property in 1883 and the Berne Convention for the Protection of Literary and Artistic Works in 1886. Both treaties are administered by the World Intellectual Property Organization (WIPO). Countries generally have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and to the rights of the public in accessing those creations. The second is to promote creativity and the dissemination and application of its results, and to encourage fair trade, which would contribute to economic and social development.

Intellectual property is usually divided into two branches, namely copyright and industrial property

Copyright

Copyright relates to artistic creations, such as poems, novels, music, paintings and cinematographic works. Copyright protects the form of expressions of ideas, not the ideas themselves. In the civil law system, copyright is known as author's rights. The expression copyright refers to the main act which, in respect of literary and artistic creations, may be made only by the author or with his authorization. That act is the making of copies of the literary or artistic work, such as a book, a painting, a sculpture, a photograph, or a motion picture. The second expression, author's rights refers to the person who is the creator of the artistic work, its author, thus underlining the fact, recognized in most laws, that the author has certain specific rights in his creation, such as the right to prevent a distorted reproduction, which only he can exercise, whereas other rights, such as the right to make copies, can be exercised by other persons, for example, a publisher who has obtained a license to this effect from the author. Performances of performing artists, phonograms and broadcasts are called "related rights," that is, rights related to or neighbouring copyright.

Industrial Property

Industrial property takes a range of forms which include patents to protect inventions; and industrial designs, which are aesthetic creations determining the appearance of industrial products. Industrial property also covers trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, as well as geographical indications, and protection against unfair competition. In some of these, the aspect of intellectual creation, although existent, is less clearly defined. What counts here is that the object of industrial property typically consists of signs transmitting information, in particular to consumers, as regards products and services offered on the market. Protection is directed against unauthorized use of such signs likely to mislead consumers, and against misleading practices in general.

OPPORTUNITIES CREATED BY INTELLECTUAL PROPERTY

Today's 21st Century is labeled as a "knowledge-based and innovation-driven economy" where IP has become not only a major tool or catalyst in economic growth and national development but also in wealth creation for individuals, companies, countries as well as regional groupings. It has enabled and facilitated companies to be competitive and grow their brands and goods, products or services both locally and globally. With the IP in information and communications technology such as internet and e-commerce, numerous companies and their goods or services have become known and have marketed and traded globally which would not have been possible without the development and help of IP.

IP can therefore present enormous opportunities and potential benefits to a nation and a regional grouping if it is properly exploited and harnessed, and can transform the economic landscape of COMESA in the same way IP has transformed the North American, EU and some Asian countries' economies such as China, India and Singapore.

IP AND ECONOMIC DEVELOPMENT

A knowledge-driven economy, has changed the notion that countries acquire wealth through factors of production (namely raw materials and labor) by showing that countries that have taken steps to invest in IP as well as the necessary human capital required to create IPRs are the wealthiest. Thus in a 'knowledge-based and innovation-driven economy' the generation, creation, innovation and management of knowledge through IP play a crucial role in wealth creation and national development as opposed to the past centuries where the wealth of a nation and national development was determined by the factors of production namely raw materials such as copper, minerals, oil, timber, sea food, water, plantations coffee, tea, cotton, and sisal, and vast land.

Equally in a 'knowledge based economy' IP has become the major determinant between those countries developed, rich countries, industrialized and culturally advanced, on one hand, and those countries which are least developed, poor, and culturally backward, on the other hand. Though the latter countries are endowed with rich resources they rely on the IP (machinery, equipment, including manpower) developed by the former countries. The development countries including COMESA Members are net importers and consumers of IPRs and culture created from (music, book, films) from the developed world, which often more expensive than what was paid for the raw materials by the developed world in making these machinery.

Also leadership and influence in the global trade and economy is being measured or determined by its ability to create, innovate and harnessing knowledge, and convert knowledge into wealth through IP, as is demonstrated by some developing countries such as China and India, and recognition of some developing countries such as South Africa, Brazil and India in the G20. In order to take advantage of the opportunities presented by the 'knowledge based economy' most countries are now investing heavily in the generation, creation, innovation, exploitation and development of intangible assets (IPRs) and the necessary infrastructure (Innovation Centres, Technology Parks, and IP Centres of Excellence), including policy and legal frameworks and human capital or resource required to produce such intangible assets. For example, in 2008 for the first time, a Chinese company, Huawei Technology topped the list of applicants with the highest number of patents (1,737) filed at the Patent Cooperation Treaty (PCT) at world Intellectual Property Organization (WIPO) in the business sector.

African countries including COMESA Members' development model is still largely premised or dependent on endless export of raw materials with little or no IP value added. These make COMESA products or goods fetch low prices in the global economy as compared to goods or products with a high input of IP. COMESA should take an aggressive policy to transform the Member States economies from ‘raw material or resource-based economy’ to ‘knowledge-based economy’. As earlier stated the USA’s earnings from copyright industries, in 2007 was more than three times the GDP of COMESA.

IP AND TRADE

The year 1995 marked significant changes in international trade regime as regards intellectual property. Not only was the World Trade Organization (WTO) formed, but also as part of this new trade regime was the inclusion of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) within the WTO multilateral system that has permanently linked trade or created an inseparable bond between trade and intellectual property.

In today’s ‘knowledge-based and innovation-driven economy’ the most important thing which preoccupies the manufacturers or producers of goods, products and services as well as their respective nations or regional trading blocs is not the movement of goods or services in themselves either in the domestic, regional or international market but the IPRs behind or incorporated in those goods or products. This concern or worry has been necessitated first by the fact that economic activities especially in most developed countries are increasingly becoming research and technology-intensive. Consequently, their export products, both traditional (such as chemicals, fertilizers and pharmaceuticals) and comparatively new (telecommunications equipment, computers, software), now contain more technological and creative inputs that are subject to IPRs. Manufacturers are therefore interested to ensure that wherever they market their products these rights are adequately protected, thus enabling them to recoup their Research and Development expenditure.

Second, with the removal of restrictions on foreign investment by a large number of developing countries, new opportunities are emerging for the manufacture in these countries of patented products under license or with joint ventures. However, the willingness of industries in industrialized countries to enter into such arrangements and to make their technology available depends on how far the IPR system of the host country provides them the assurance that their property rights to technology will be adequately protected and not taken by the local partners making use of the reverse engineering.

Thirdly, technological improvements in products entering international trade have been matched by the technological advances that have made reproduction and imitation simple and cheap. In countries where IPRs are not strictly enforced, this has resulted in increased production of counterfeit and pirated goods, not only for sale in domestic markets but also for export in the international market with the possibility of competing with the legitimately produced or manufactured goods or products.

Estimates of revenue foregone by industries as a result of counterfeiting, pirating and other infringement of intellectual property rights run in billions of dollars. For example, the Organisation for Economic Co-operation and Development (OECD, 2007) estimates that international trade in counterfeit and pirated goods in 2005 may have amounted to as much as USD 200 billion, or slightly more than 2 % of global merchandise trade.

Goods are treated as counterfeit when they are offered for sale particularly under well-known trademarks which the seller has authority to use. These are generally labour-intensive products which, because of the reputation of the brand name, can be sold at high prices. They include clothing, shoes, watches, cosmetics, leather goods, and households and sporting goods. In terms of trademarks, “counterfeit trademark goods” means any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.

Pirated goods, on the other hand, are those goods that infringe copyright and related rights. Book publishers, producers of records, discs, films, tapes and cassettes are often the victims of violation of copyright and related rights. Technological progress has greatly facilitated the art of copying. The computer software industry is the leading victim of the speed with which intellectual property can be illegally copied and distributed on an international scale. In terms of copyright, “pirated copyright goods” means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.”

The concern of trade regime is that piracy and counterfeit are a disincentive to the development and creation of IP products and works. It may also present a serious danger to the public, especially if the counterfeit goods are food, medicines, pharmaceutical or cosmetic products or spare parts. Where IP is weak or not effectively enforced, foreign owners of intellectual property rights stay out of the country and development of local industries is impeded. Furthermore, local intellectual property owners or authorized dealers of intellectual property rights cannot make a living from their rights nor recoup their investment. Additionally, local markets are flooded with inferior illegitimate products and technology is not incorporated in the country's base and infrastructure. Besides, government loses not only revenue, as no taxes are paid where there is rampant piracy and counterfeit, but also employment creation.

IP AND CULTURAL INDUSTRIES

Cultural Industries are defined as those industries which produce tangible or intangible artistic and creative outputs, and which have a potential for wealth creation and income generation through the exploitation of cultural assets and production of knowledge-based goods and services, both traditional and contemporary. The cultural industries include books, music, writing, printing, writing, advertising; multimedia, architecture; crafts; designer furniture; fashion clothing; film, video and other audiovisual production; graphic design; educational and leisure, software; live and recorded music; performing arts and entertainment; television, radio and internet broadcasting; visual arts and antiques.

The term "cultural industries" is almost interchangeable with the concept of "creative industries." Whereas the notion of "cultural industries" emphasizes those industries whose inspiration derives from heritage, traditional knowledge, and the artistic elements of creativity, the notion of "creative industries" places emphasis on the individual and his or her creativity, innovation, skill and talent in the exploitation of intellectual property.

Cultural industries are a major contributor to the growth and GDP of countries, more especially in developed and some selected developing countries where they are being fully exploited and developed. In case of China, the book publishing industry produces 60,000 new titles each year with printed copies of 3 billion, with an estimated value of USD5 billion annually; the film industry produces 126 films annually, unit sales of recorded music over 60 million with sales of USD80 million. Copyright industries in India contributes 5% to GDP; Film industry produces over 1000 films per year, with annual turnover of USD1 billion; the publishing industry produces over 60,000 new titles, with annual turnover of USD455 million; the computer software industry employs about 500,000 people, and exports annually are over USD5 billion in 2002 - 2003, and were expected to rise to USD50 billion in 2009.

COMESA Member States are endowed with rich cultural resources that could be better exploited and tapped to better the lives of the majority of the people in the region. However, cultural industries in COMESA Member States, like any developing countries, face a number of challenges which include:

a. Lack of, or Limited limited, commercialization of cultural and artistic creations on both domestic and international market;

b. Lack of, or limited, market access of copyright and cultural goods in the rich or industrialized countries;

c. Limited national market demand which limits economies of scale required for the local commercialization of artistic and cultural creations, and by extension, their export on terms favourable to the country;

d. Limited design, packaging and promotion capacity to adapt artistic creations and 'cultural' goods to the characteristics of demand in industrialized countries and to evolving demand in domestic markets;

e. Limited production, commercial and distribution infrastructure, including access to international advertising;

f. Lack of policy and legal framework at the national and regional level to transform the abundance of talent and cultural assets into thriving and competitive creative industries;

g. Lack of effective protection of the IPRs of the copyright based industries and cultural industry as well as local artists;

h. Lack of effective copyright and cultural industries societies to manage the creative work of artists in revenue collection;

The globalization of cultural and entertainment industry coupled with the emergence of sophisticated copying technologies such as photocopying machines, video cassette recorders, have made the copying or reproduction of copyright products or work relatively easy and fast and often at a very low cost. The advent of the Internet or Digital Technology and the worldwide computer linking of electronic databases permits access to and copying of protected material on a massive and unprecedented scale. The cultural industries if properly harnessed, promoted, marketed and branded can significantly contribute to social and economic development as well as provide employment opportunities for millions of people in COMESA, and reduce poverty.

IP AND TRADITIONAL CULTURAL EXPRESSIONS AND FOLKLORE

Traditional Cultural Expressions (TCE) and Folklore have existed since time immemorial. This knowledge resource has played a vital role in moulding a community into a well organized and governable society.. Traditional Cultural Expressions and Folklore provided education, health system entertainment and regulated the day to day life in a given community. TCE and Folklore are inherited from past generations and are handed down orally in rural communities. They have been vital to the development of communities because, apart from the entertainment aspect, they impart traditional values and norms to young generations as well as the promotion of indigenous cultural innovations.

The Traditional Cultural Expressions and Folklore are not protected and are therefore vulnerable to being indiscriminately exploited and utilized. There is therefore a need for a systematic way of identifying the community right holders, collating data and distributing benefits. Often, the users of the TCEs neglect or deliberately fail to ask for permission to use the cultural expressions of indigenous communities and to acknowledge the source of the creativity, and sometimes even passing off productions and works as authentic expressions or products when in fact they are not. Besides, knowledge and/or cultural expressions of special sacred or religious significance are commercialized in ways that indigenous communities do not approve or find offensive or morally wrong.

There are discussions going on in WIPO as well as ARIPO to try to secure the protection of TCEs and folklore through IP in order to protect TCEs and Folklore against misappropriation, misuse, and exploitation beyond their traditional context as well as to recognize and reward holders of TCEs and folklore and the relevant communities. Rights of holders are rights inherent in all persons of a community who hold knowledge of TCEs and folklore.

IP AND TRADITIONAL KNOWLEDGE AND GENETIC RESOURCES

The recent development in biotechnological sciences (ability to find greater use for genetic resources), and rise in the patents in the field of biotechnology have put tremendous pressure on the traditional knowledge (TK), and genetic resources often located in tropics – and thus. developing countries. Annual Income generated from genetic resources is estimated to be between USD500 million to USD800 billion. Estimated annual sales of traditional medicines is, about USD43 billion.

Indigenous innovation is any generation of a new or improved method of using traditional knowledge. Traditional knowledge and indigenous innovations systems have contributed significantly to the present body of knowledge possessed by scientists, such as ethnobotanists, ethnopharmacologists, and by agriculturists, foresters, and food technologists. In short, traditional peoples and communities in developing countries are responsible for the discovery, development and preservation of a wide range of medicinal plants, health-giving herbal formulations, and agricultural and forest products. Traditional knowledge (TK) is also used as an input into modern industries such as pharmaceuticals, botanical medicines, cosmetics and toiletries, agriculture and biological pesticides. Besides, many communities depend on TK for food, employment, medicine and livelihoods

Genetic Resources that are of value and relate to traditional knowledge systems in terms of use include human, animal, plant and micro-organisms that are utilized by humans to support their livelihood. These include genetic resources relevant for food and agriculture. Through many generations, local farmers and communities have developed valuable genetic diversity found in traditional crop varieties and animal breeds, which provide raw materials for the creation of new improved crop varieties and animal breeds. A great deal of knowledge and practices related to production utilization and conservation of these resources has been compiled over generations. There is however limited documentation regarding the traditional use and value of these resources.

There a number of cases of multinationals and researchers in developed countries who use TK without the permission, consent or knowledge of local traditional communities. The illegal exploitation or 'biopiracy' of traditional knowledge from local communities in developing countries has raised serious concern and call for the protection of TK through IP mostly by the developing countries who are endowed with huge reserves of TK.

Examples of biopiracy

Turmeric

Turmeric (Curcuma longa) is a plant of the ginger family yielding saffron-coloured rhizomes used as a spice for flavouring Indian cooking. It also has properties that make it an effective ingredient in medicines, cosmetics and as a colour dye. As a medicine, it is traditionally used to heal wounds and rashes. In 1995, two Indian nationals at the University of Mississippi Medical Centre were granted US patent no. 5,401,504 on "use of turmeric in wound healing". The Indian Council of Scientific and Industrial Research (CSIR) requested the US Patent and Trademark Office (USPTO) to re-examine the patent.

CSIR argued that turmeric has been used for thousands of years for healing wounds and rashes and therefore its medicinal use was not novel. Their claim was supported by documentary evidence of traditional knowledge, including an ancient Sanskrit text and a paper published in 1953 in the Journal of the Indian Medical Association. Despite arguments by the patentees, the USPTO upheld the CSIR objections and revoked the patent. The turmeric case was a landmark case as it was the first time that a patent based on the traditional knowledge of a developing country had been successfully challenged.

Neem Tree

Neem (Azadirachta indica) is a tree from India and other parts of South and Southeast Asia. It is now planted across the tropics because of its properties as a natural medicine, pesticide and fertilizer. Neem extracts can be used against hundreds of pests and fungal diseases that attack food crops; the oil extracted from its seeds is used to treat colds and flu; and mixed in soap, it is believed to offer low cost relief from malaria, skin diseases and even meningitis believed to offer low cost relief from malaria, skin diseases and even meningitis. In 1994 the EPO granted European Patent No. 0436257 to the US Corporation W.R. Grace and USDA for a "method for controlling fungi on plants by the aid of a hydrophobic extracted neem oil". In 1995 a group of international NGOs and representatives of Indian farmers filed a legal opposition against the patent. The patent was revoked by the EPO in 2000.

Hoodia Cactus

The San, who live around the Kalahari Desert in southern Africa, have traditionally eaten the Hoodia cactus to stave off hunger and thirst on long hunting trips. In 1937, a Dutch anthropologist studying the San noted this use of Hoodia. Scientists at the South African Council for Scientific and Industrial Research (CSIR) only recently found his report and began studying the plant. In 1995 CSIR patented Hoodia's appetite-suppressing element (P57). In 1997 they licensed P57 to the UK biotech company, Phytopharm. In 1998, the pharmaceutical company Pfizer acquired the rights to develop and market P57 as a potential slimming drug and cure for obesity (a market worth more than £6 billion), from Phytopharm for up to USD32 million in royalty and milestone payments.

On hearing of possible exploitation of their traditional knowledge, the San People threatened legal action against the CSIR on grounds of "biopiracy." They claimed that their traditional knowledge had been stolen, and CSIR had failed to comply with the rules of the Convention on Biodiversity, which requires the prior informed consent of all stakeholders, including the original discoverers and users. Phytopharm had conducted extensive enquiries but were unable to find any of the "knowledge holders". The remaining San were apparently at the time living in a tented camp 1500 miles from their tribal lands. The CSIR claimed they had planned to inform the San of the research and share the benefits, but first wanted to make sure the drug proved successful. In March 2002, an understanding was reached between the CSIR and the San whereby the San recognised as the custodians of traditional knowledge associated with the Hoodia plant, will receive a share of any future royalties. Although the San are likely to receive only a very small percentage of eventual sales, the potential size of the market means that the sum involved could still be substantial.

COMESA Member States should support the on-going discussion of the protection of TK and where possible adopt policy and legislative measures to protect TK as TCEs and folklore against misappropriation and biopiracy, as well as recognizing the rights and reward holders of TK and TCEs and Folklore.

IP AUDIT AND VALUATION

While in today's 'knowledge based economy' most companies have more intangibles as compared to tangible assets. companies located in developing countries including COMESA Member States have more tangibles than intangible assets which makes them less competitive to their counterparts in the industrialized countries. With intangible assets being so important to their income, IP management stands at the core of business strategies for producers and businesses in the developed world. Whether they produce computer software, home appliances, candy, or music, producers in rich countries use various forms of IP tools to own and control the intangible aspect of their products.

For them, IP is not merely a "legal issue," it is the base of their business strategy, the means by which they achieve their business objectives. IP is unfortunately not a major priority in the regional trading blocs of Africa as demonstrated by the lack of inclusion of IP issues in their founding treaties or instruments. IP is also absent from national development agendas as well as in business strategies of most companies in Africa.

COMESA, harnessing Information Communication Technologies for rural development.

Clive Tinashe Gwara

The Common Market for Eastern and Southern Africa (COMESA) envisions itself as a body that has many benefits for its members on the economic front achievable through factor mobility and removal of barriers to trade. COMESA should effectively harness all aspects of Information Communication Technologies (ICTs) for rural development; this will result in digital and financial inclusion for the rural populace. People living in rural areas become eligible to the use of modern ways of doing business and social interaction among a host of other electronic applications that add value to already existing processes and procedures, ultimately enhancing livelihoods. COMESA Member States should gear themselves up for ICT Universal Service provision for all their rural communities in order to achieve the Millennium Development Goals, because ICTs have the potential to leapfrog Africa's development to greater heights.

1.0 Introduction and Background

According to the International Telecommunications Union (ITU), over 40% of the world's population lives in rural and remote areas of developing countries and have difficulties accessing basic telecommunication services. Information Communication Technologies (ICTs) enable human or machine interaction from a distance. These technologies have the greatest potential to connect rural dwellers so that they become part of the global information society.

1.1 Definitions of Telecommunications and ICTs

Telecommunication services can be categorized in several ways. Firstly they can be sub-divided into basic and value-added telecommunications. Basic telecommunications, include all telecommunication services, both public and private, that involve end-to-end transmission of customer-supplied information. These include voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services, such as analogue/digital cellular/mobile telephone services, mobile data services and paging (Keck et al 2006). Value-added telecommunication services are telecommunications services for which suppliers "add value" to the customer's information by enhancing its form or content or by providing for its storage and retrieval, for example, online data processing, online database storage and retrieval, electronic data interchange, email and voice mail.

Information Communication Technologies (ICTs) on the other hand are a collection of technologies and applications which enable electronic processing, storing and transfer of information to a wide variety of users or clients. These technologies and applications are further broadly classified into three categories on the basis of their use, these include computing, communication and internet–enabled communication and computing. The communication processes can either be one-way or two-way. In one-way communication the information is disseminated to the receiver who does not have the opportunity to respond immediately like the radio and television. Two-way communication allows for feedback between the sender and the receiver of information. The devices for this include telephones, telegraphs, facsimiles and pagers. Relatively recent communication technology, like the Internet, consists of a number of sub-networks that are connected to each other through which electronic communications are transmitted (Foros et al, 2005).

Internet represents the convergence of computing and telecommunications, and forms the backbone of a knowledge-based economy and information society. Mobile convergence is embedded in technologies like 3G and NGN1[102] (next generation networks) which offer internet on mobile phones. The substantial improvements in computing power, speed, storage and overall capacity have boosted the development of the knowledge-based economies

102 2NGN (Next generation networks e.g. 4G (Fourth Generation Communication Networks)

and the information society. The development of new technologies like WiFi[103], WiMax[104],iBurst[105], ATM6[106] and 3G[107] are evolving telecommunication given their ability to introduce computing and internet to most people. This has resulted in technological convergence which has manifested in the evolution of new applications, including hardware, software and services in diverse areas. Convergence has resulted in what is commonly termed 'ICTs' which have enabled the integration of different operating platforms to one usable platform at a point in time.

1.2 Common Market characteristics and expected impact of ICTs in rural areas.

A common market is a type of trade bloc which is composed of a customs union with common policies on product regulation and freedom of movement of the factors of production (Capital, Labour and Enterprise). A single market is a more advanced form of common market which envisions more efforts geared towards removal of physical (borders), technical (standards) and fiscal (taxes) barriers among member states. These barriers obstruct freedom of movement of the factors of production, to remove these barriers member states need political will.

The Common Market for Eastern and Southern Africa (COMESA) envisions itself as a body that has many benefits for its members on the economic front achievable through factor mobility and removal of barriers to trade among Member States to achieve allocative and productive efficiency. In this light, COMESA should effectively harness all aspects of Information Communication Technologies (ICTs) for rural development which will result in digital and financial inclusion for the rural populace. People living in these rural areas become eligible to the use of modern ways of doing business and social interaction among a host of other electronic applications that add value to already existing processes and procedures. COMESA Member States should gear themselves up for 'ICT Universal Service' provision for all their rural communities in order to attain the Millennium Development Goals (MDGs), because ICTs have the potential to leapfrog Africa's development to greater heights.

Rural Africa lacks development due to problems fuelled by the vicious cycle of poverty. This is a characteristic observable within COMESA Member States' rural hinterlands. The lack of development of ICTs Infrastructure worsens the situation preventing them from achieving anticipated growth targets. Operators consider rural areas to be economically unviable relative to offering ICT products and services thus affecting the adoption and ultimate use of the ICTs in rural areas.

2.0 Rural Development Theories: Duality.

The market structure in most COMESA Member States suffers from some degree of imperfections: the product market is characterised by the barter system in many rural areas. Villagers, in many cases, live in predominantly agrarian societies characterised by the exchange of crops for industrial goods and as such a monetised economy is reduced. At the macro level the money and capital markets are far from being homogenous due to the existence of organised and unorganised credit agencies.

The development of dual economic models is anchored on the major assumption that the economy is divided into two main sectors, which are the advanced sector, largely associated with the industrialized sector, and the backward sector, mainly composed of the unorganised agricultural or rural sector. There is a system of interlinkages between the two sectors through production relationships with the growth of the economy demonstrated through the growth of the advanced and backward sectors. Several theories have been propounded that explain this duality concept in which the economy is divided into the backward and advanced sectors. For the purposes of the argument at hand the Lewis Model (1954), The Fei-Ranis (FR) (1964) and the Jorgenson Model shall be highlighted.

In the Lewis Model (1954), the economy is divided into two sectors comprising the advanced and backward sectors as highlighted above. The advanced sector utilises capital stock which is reproducible with capitalists receiving payments for utilisation. The backward sector utilises non-reproducible capital e.g land. The elasticity of labour supply is infinite in the backward sector because unskilled labour is abundant. The real wage rate is assumed constant and the marginal productivity of labour in excess supply is approximately equal to zero (disguised unemployment). Lewis postulated that output per capita is higher in the advanced sector than the backward sector and that wages are not related to marginal product in the backward sector.

103 WiFi, (Wireless Fidelity),
104 WiMax (worldwide Interoperability for Microwave Access)
105 iBurst, a mobile broadband with speeds of up to 1 Mb per second.
106 ATM, (Asynchronous transfer mode)
107 3G (Third Generation Communication Networks

Fei and Ranis (1964) demonstrated that with the transference of surplus labour from the agricultural sector to the industrial sector, an economy can be fully commercialised and developed. At the beginning, Fei-Ranis assume a Lewis type of economy which is characterised by the presence of 'surplus labour'. Wages in the agricultural sector are assumed fixed by institutional factors. The supply curve of labour in the industrial sector is infinitely elastic at the beginning since the opportunity cost of displacing labour is zero or very small. In the Fei-Ranis Model it is shown that Lewis did not pay attention to the role of agriculture in promoting industrial and economic growth. Further, Fei-Ranis argue that a labour transfer from agriculture to industry should be preceded by a rise in productivity. This model consists of three stages of economic growth.

The Jorgenson* model has elements of both the classical and neo-classical theory. Jorgenson assumes along with Lewis* and Fei-Ranis* that 'surplus labour' exists in developing countries but not to the extent of zero-marginal product (labour) in agriculture. The framework of analysis is still dualistic with the economy consisting of the industrial and agricultural sectors. It is assumed that technical progress in agriculture is neither labour nor capital-using, meaning that it is neutral (technological neutrality). Analysis within the Jorgenson model is anchored on the following production function.

Where…..
Qa=eαt Lβ N1-β
Qa= Total Output
L= Land
N= labour
eαt =measures the change in output due to technical change.

A model is a subdued replica of reality; however it sometimes fails to explain its objectives in explaining reality to totality. Several limitations have been cited which go against the models discussed. For example, the Lewis model crashes because real wages are not always constant due to collective bargaining and the marginal product of labour is greater than zero. Fei-Ranis neglect the role of prices and money and did not specify investment functions within their model. Fei-Ranis assume a closed economy which denies the possibility of importation of food and raw materials. They again did not analyse the role of capital in agricultural production. Jorgenson in his description of the agricultural production function, did not include the role of capital.

2.1 ICTs and Duality in developing countries'

The predictive and explanatory powers of the dual models are now questionable given technological developments currently obtained. This gives room for us to question the issue of technology neutrality especially explained within Jorgenson's model. ICTs in particular are leveling the economic playing field, defying the existing borders and geographic regions. Duality, the existence of the advanced and backward sectors, is on the verge of collapse as we are moving towards a more 'homogeneous' economic system, with rural areas only being defined in terms of geographic locations. The agricultural and industrial sectors will merely become geographic designations because ICTs would have advanced the 'rural sector' to be at par with the 'urban sector' in all aspects of life in as much as they are connecting countries to become a truly global village. There is however a catch if this is to happen, there should be universal access defined in terms of the universal service policy that aims to eliminate geography. ICTs are proving to be the catalyst behind the 'invisible hand' postulated by Adam Smith's invisible hand theorem thereby pushing the agenda of the free market mechanism.

For rural areas to be deemed developed from an ICTs perspective we should visualise an interconnected village or rural community that has a fully grown business enterprise which has the capacity to employ a significant number of people through the direct or indirect use of wireline or wireless communication means.

Bridging the digital divide.

Rural development using ICTs can be achieved through, the following combination of factors among others:

a. Development and exploitation of new revenue streams.

b. Limitation of the amount of money flowing out of the village/community.

c. Increasing the amount of money flowing in through ICT projects.

d. Building community-owned networks and village tele-centers run by locals.

e. Training and development at village level for the appropriate and effective use of technologies.

f. Investment in education to transform the informal sector into a formal one so that firms' managers are able to keep records (Auriol, 2005)). This is meant to create business and move individuals and rural-based business organizations up the value chain. This is because ICT is a facilitator or catalyst to the value creation process.

g. Reduced costs within the rural economy or village.

h. Availability of electricity energy to power rural communities e.g the use of solar technology, fuel powered generators and access to the national electricity grid.

i. Put in place an efficient telecommunications infrastructure for the creation of an information society in the rural realm.

3.0 Tools that can be adopted to improve rural connectivity.

ICTs are now relevant tools that have the potential to promote sustainable economic growth and poverty reduction in Africa and indeed among COMESA Member States. However not all of the inhabitants of COMESA Member States have access to the Information Communication Technologies (ICTs), mainly due to lack of access to digital communication tools. This is known as the 'digital divide' or the 'digital gap' and the areas where the digital gap is prevalent are known as under-served areas. Under-served areas of the world mostly comprise of developing countries, least developed countries, Small Island developing states, landlocked developing countries, highly indebted countries, territories under occupation, countries recovering from conflict and areas prone to natural disasters. (Declaration of principles WSIS Geneva 2003). According to the G8 Digital Opportunity Task Force, the digital divide is a reflection of existing broader socioeconomic inequalities and can be characterised by insufficient infrastructure, high cost of access, inappropriate or weak policy regimes, inefficiencies in the provision of telecommunication networks and services (Gauguier and Douine, 2005).

In COMESA, under-served areas include rural areas where there are no base stations, fibre optic links and/or electricity, mountainous regions that block communication signals and mostly poor communities with no financial means to access ICTs among other barriers to access. Member States should try to close this gap to realise the set objective of minimising the divide by 2015 as set out by the ITU. Mobile penetration can be used as a proxy for ICT penetration in line with Breitenbach et al 2005, because of the leapfrogging ability of mobile telecommunications technology. Some of the tools that COMESA Member States can adopt to harness ICTs for rural development are discussed below.

Push for Mobile technology is a solution for achieving connectivity for people in the rural areas. The Economist (2005) argued that encouraging the spread of mobile phones was the most sensible and effective response to the digital divide. Strong mobile penetration helps to achieve the universal access goals much faster than fixed line penetration. A smart mobile phone can now provide internet, radio, television, voice and data telecommunications in tandem due to technological convergence of broadcasting, internet and telecoms. Using mobiles, people can buy shares, groceries, transfer of airtime/money, mobile-banking, tele-betting, voting, advertising, emailing, receive news and weather bulletins etc. If access of mobile phones is provided to rural dwellers, their livelihoods will definitely improve in quality as they will be in constant touch with local, regional and global developments. Cell phones have since evolved from being luxuries to more basic commodities due to derived demand, in that they are not demanded for themselves but for the stream of services they offer. The digital gap in Member States suggests that there is plenty of potential for subscriber growth. Income is the major constraint, especially for rural areas, and is believed to contribute a significant proportion of this digital gap statistic. Annex 1 shows ICT statistics for some of COMESA Member States and how they fare among other world economics as at year 2007 in terms of adoption and use of ICTs. The table below indicates a policy matrix for negotiating the digital divide at any level.

Table 1: Negotiating the Digital Divide (A Policy Matrix)

Access	Policy Action
Physical Access	Provide Infrastructure Expand Applications
Financial Access	Suppliers(enhance competition, promote investment) Customers (Grameen ,targeted subsidiaries)
Cognitive Access	Teach Teachers Teach students Science and technology policies Continuous learning and training
Design Access	Improve hardware and software for popular applications
Production Access	Capacity Building Pairing Innovation, Reform Incentives for local production
Institutional Access	Expand ICT sites (home, municipal, kiosks, post office etc)

Source: Adapted from Wilson 2004.

Agriculture can provide a backward country a platform to take off into an industrialised economy. Using the same argument, agriculture can provide a platform to launch into a digitalised economy especially in under-served areas given that most COMESA Member States' rural communities are agro-based. Excess proceeds from sale of agricultural commodities produced can be used to buy digital communication tools that can put rural dwellers on the global map. The argument here is that subsistence agriculture can sustain adoption and use of ICTs at a microeconomic level.

Some of the rural communities among Member States are not connected to the power grid hence electrification becomes important for digital access. Therefore, solar technologies and generator power should be deployed at low cost to these areas to increase uptake and connect rural schools, clinics, hospitals and other rural institutions to the information society.

The high cost of computers and software e.g. open source software poses a serious challenge to Member States' rural communities to access information communication technologies. Governments can use fiscal tools such as tax breaks or even full tax exemptions for equipment and new enterprises that service rural communities since they impact on the retail price of ICTs. Pricing is a major issue if mass adoption of ICTs among Member States is to be achieved. Zero rating (setting tax free thresholds) or lowering import duty on ICT equipment increases uptake by a significant margin which might be observable on the overall ICT penetration rates. Individuals benefit via more disposable income in the face of low taxes and corporate bodies benefit through increased profit margins and retained earnings.

To attract investment into the ICT sector at macroeconomic level, Governments can relax capital requirement thresholds and enable 100% retention of total project capital without authorization and allow the investor to repatriate benefits and revenues from investment capital including the value-added generated by the investment (Burtin et al, 2005). Governments can come up with fiscal and quasi fiscal exemptions and tax holidays for Investors in the ICTs sector if the investment projects are to be implemented in the rural areas. There is evidence that shows there has been serious underinvestment in telecommunication facilities in developing countries, (Goldsmith 1984). Goldsmith (1984) analysed the reasons for such neglect and demonstrated that the major restrictive factor was the absence of adequate foreign exchange financing. Accordingly he cited supplier credits, multilateral lending and bilateral lending as major stimulants in the expansion of rural telecommunications.

Information communication technologies offer low-cost learning possibilities which enable distance learning within Member States. Children are quick learners and can adapt quickly to computer-based learning. Governments should make it a policy that there be a computer center at each primary school with a threshold to absorb at least an average class at a point in time. Rural schools can be allowed access to world libraries at the click of a button enhancing availability and quality of education.

ICTs have the potential to link Member States' educational institutions to international universities and development institutions, facilitating research and exchange of information. Research empowers, hence in the realm of ICTs, rural areas stand to benefit from individual and institutional initiated research efforts on any subject matter under study. ICTs offer a platform to researchers for seamless communication between researchers and supervisors, feedback, documentation, storage, analysis/ synthesis and dissemination. For example, the African Development Bank (AfDB) Group funded research studies that were pivotal in helping African Countries launch the Regional African Satellites Communication System (RASCOM). RASCOM has 42 Member Countries and aims to improve telephone access to rural areas by installing 456 000 fixed solar-powered stations to raise tele-density in rural areas to average one phone to one hundred inhabitants (1 phone:100 inhabitants). The project is expected to reduce the distance to the nearest phone in Africa tenfold from 50km to 5 km. Low earth-orbiting satellites are tipped to counter the effects of inadequate and expensive telephone services in rural areas. Their deployment provides for widespread connectivity to both telephone services and internet in rural areas. Telecom operators within the COMESA bloc can also consider sharing infrastructure such as base stations to reduce duplication.

Within the context of research, the COMESA Treaty provides for the development of a statistical strategy for the COMESA Secretariat for the development of a comprehensive information system. The development of this program includes a program on the compilation of infrastructure and ICT indicators in COMESA Member States. This programme should be implemented with much zeal so that econometricians, statisticians, and analysts alike can perform accurate regressions and diagnoses that explain the true COMESA story about ICTs from a COMESA perspective. This is very useful for policy formulation since it compliments COMESA's mid-term goal to enhance e-readiness throughout the region by creating a framework for e-readiness and strategies for collecting and managing e-readiness data.

It has been suggested that bare-bone computers and stripped-down software which are perfectly serviceable for internet connections, word processing and graphics, can be built at prices lower than prevailing prices affording rural communities a chance to purchase them. In line with this argument, "second hand" obsolete but reusable ICT equipment can be sold to COMESA Member States from the developed countries at low prices. This equipment can then be upgraded, affording the chance for rural communities to own and operate computers and telephones: this is called the second-hand strategy. Under this argument, governments of Member States should guard against dumping, given that digital gadgets' scrap is non-biodegradable and cannot be easily recycled. Professionals from Member States working abroad can help reduce the digital divide back home by sending functional ICT tools thereby increasing access to ICTs within the COMESA grouping.

Broadband access should be the appropriate response from COMESA Member States' regulators with a view to enhance the development of broadband technologies. This will result in the movement of voluminous traffic (voice and data) at high speeds with a high probability of increasing business returns and value. There will be positive spill-over effects to all rural dwellers as businessmen servicing rural areas adopt broadband technologies and develop new business models. The diffusion of Voice over Internet Protocol (VoiP), Wireless Fidelity (WiFi) and WiMax, that bring both services and high speed internet access to urban and rural areas, is challenging to regulators and policymakers. This is mainly in the area of design and implementation of a new set of models and tools to reform and regulate broadband (Rogy 2005). The successful launch of broadband technology in the form of DSL shows potential to supply internet access, voice and broadcast services like TV and radio. This technology is suitable for cyber cafés, hence, if deployed to rural areas, will be suitable for village telecenters and village internet cafés. Telecentres are public access points for ICT resources which incorporate services like fax, computers and e-mail and internet. The only disadvantage of DSL and other fixed wire line technologies is that they are very expensive for rural areas. Joint infrastructural development projects between Governments in the area of fibre optic cable deployment are instructive if broadband is to be deployed at a national scale within a Member State. This is in the face of the submarine fibre optic cable that is planned to run around Africa.

Marginalised women, the poor and the disabled need to be empowered to improve their access to ICTs through awareness in policies, planning, implementation and evaluation of ICT projects. There is evidence from a number of telecentre evaluations that women's use of ICTs increases when women are managing or teaching in telecentres (Robinson 1999).

4.0 Why ICTs for rural development?

Failure to harness ICTs among COMESA Member States rural communities may deny them the golden opportunity to participate in the nascent knowledge-based digital economy. These technologies, however, need to be adopted and used appropriately otherwise, the reverse of what is intended might occur because of the socio-ethical implications that are associated with these technologies.

Developing an ICT policy framework that is continuously updated is important for Member States as it will regulate the sector and at least tame some of the destructive negative effects associated with ICTs adoption. This is because ICTs are continuously evolving by the day. Cyber security is a major concern in cyberspace since the image or identity of the user can sometimes be obscured. This gives an opportunity for users to abuse the system sending destructive/ unconstructive content over networks that are difficult to control especially in the face of terrorism, pornography, hate language, cultural erosion and the leakages of data to unintended users over networks among a host of other challenges. ICTs adoption increases the prevalence of violation of a person's or organisation's intellectual property rights, this ultimately results in loss of revenue for original thinking. It is therefore important that these challenges be managed to protect the moral fabric of rural communities within Member States.

ICTs will, without doubt, place rural dwellers on the digital world map as it affords them access to markets for their produce at a local and international scale. Farmers and rural entrepreneurs will also gain access to latest production methods and pricing trends. For example in Lusaka once considered a status symbol and the preserve of the urban elite, mobile phones are now changing the lives of rural Zambians. Guy Robinson a farmer in Mazabuka, which is 200km south of Lusaka, said that "finding a market is critical for the farmer". Robison used to travel to Lusaka for business which he can now do over the phone. The benefits of mobile technology have also allowed Alex Dobiso, a farmer in Lunchu village in Kapiri Mposhi, a farming district 200km north of Lusaka, to start supplying cotton to buyers in the mining town of Kabwe. "With the phone I am able to call my clients to find out if payments are ready before traveling. I am able to call back to the village to supervise work there. In that way, productivity does not suffer". LUSAKA, 29 June 2004 (IRIN).

Member States should take the opportunity of the emergence of digital agricultural extension applications whereby agricultural extension workers make use of ICTs to connect with farmers for agricultural advisory purposes; this falls under the umbrella term e-agriculture. Zimbabwe has developed its own 'e-hurudza' software application for the purposes of agricultural planning at farm level. Adoption of ICTs will ultimately increase productivity at the micro-economic level (farm/village level) which will ultimately feed into the economic growth of the Member States' economies through production linkages with the other sectors of the economy.

According Stanford Research Institute, access is a catalytic process that enables interactions, contacts, and exchanges among people, business and nations (SRI 2006). Interactions within this access framework can happen in the following ways.

a. Business to Business interactions

b. Business to Consumer interactions

c. Consumer to Consumer interactions

d. Consumer to Business interactions

e. Government to Business

f. Business to Government

g. Government to Government

h. Consumer/Citizen to Government

i. Government to Consumer/Citizen

According rural populations access to ICTs will open up many unexpected new opportunities. Rural communities can benefit through electronic applications like e-business/e-commerce, e-medicine, e-tourism, e-government among a lot of other applications which make extensive use of ICTs for operational purposes. Digital inclusion in rural areas is correlated to financial inclusion, a state when an individual has access to banking facilities. ICTs offer an opportunity for the rural communities within Member States to access banking facilities via electronic banking (e-banking) solutions through applications like sms/text banking and internet banking. These applications can see the emergence of rural-based Money Transfer Agencies (MTAs) or agents, thereby creating employment.

Additionally, rural areas can use ICTs for various content development initiatives that can earn the communities money through the creation of content which is marketable locally and internationally as entertainment products such as documentaries, films, dramas, music etc. Member States should create a framework that fosters the production of local content and promotes the spirit of 'ubuntu'. Intellectual property rights (IPR) for such projects should be guaranteed protected by the state so that producers will financially benefit from the content development initiatives. The governments, quasi–governmental organizations and/or non-governmental organizations (NGOs) can even go to the extent of offering incentives to prop up production of content from rural communities.

5.0 Conclusion

Bridging the digital divide among COMESA Member States' rural communities is a function of market reforms, development of effective infrastructural systems, investment in social and educational facilities as well as government effort and innovation through multisectoral initiatives with private public partnerships. If these conditions are met, then underserved areas will become networked thereby enabling sustainable economic development for the rural communities.

Annex1: Access Indicators (Worldwide)

Access indicators

		Fixed telephone lines per 100 inhab.		Mobile cellular subscriptions per 100 inhab.		International Internet bandwidth per Internet user(bit/s)		Proportion of households with computer		Proportion of households with Internet	
		2002	2007	2002	2007	2002	2007	2002	2007	2002	2007
1	Albania	7.2	9.0	27.7	72.1	1'000	1'164	2.0	9.5	1.0	7.8
2	Algeria	6.2	9.1	1.4	81.4	313	857	2.1	8.3	0.3	6.8
3	Argentina	20.5	24.0	17.5	102.2	1'336	8'943	27.0	36.4	14.0	27.5
4	Armenia	17.8	20.9	2.3	62.5	133	2'712	1.2	41.2	1.0	6.1
5	Australia	53.3	47.1	64.9	102.5	928	8'035	61.0	73.0	46.0	64.0
6	Austria	47.8	40.8	82.9	18.6	11'996	30'116	49.2	71.0	33.0	60.0
7	Azerbaijan	11.2	14.8	9.6	53.4	7	6'475	2.7	10.1	0.2	9.3
8	Bahrain	25.2	25.9	55.9	148.3	1'588	7'680	35.0	50.7	19.0	34.1
9	Bangladesh	0.5	0.8	0.8	21.7	211	1'284	0.8	1.9	0.1	1.3
10	Belarus	29.9	37.9	4.7	71.8	89	427	3.0	24.9	1.0	12.1
11	Belgium	47.6	44.6	78.2	102.7	17'862	37'831	40.9	67.0	43.0	60.0
12	Benin	0.8	1.2	2.9	21.0	42	1'033	1.2	8.0	0.6	3.6
13	Bhutan	1.0	3.4	-	17.2	200	1'125	5.0	13.7	-	6.1
14	Bolivia	6.8	7.1	11.8	34.2	169	398	7.1	18.0	1.8	5.9
15	Bosnia	23.0	27.1	19.1	62.3	340	1'896	5.2	35.6	2.7	25.0
16	Botswana	8.4	7.3	18.8	61.2	233	810	0.8	4.5	0.1	0.1
17	Brazil	21.7	20.5	19.5	63.1	570	2'955	14.2	20.8	10.3	15.4
18	Brunei Darussalam	23.3	19.6	44.0	89.5	1'948	2'954	45.9	66.6	38.9	61.7
19	Bulgaria	36.4	30.1	32.9	129.6	110	15'878	5.1	23.3	3.4	19.0
20	Burkina Faso	0.5	0.7	0.9	10.9	320	2'170	2.0	3.0	0.3	1.8
21	Cambodia	0.3	0.3	2.9	17.9	400	3'571	0.5	4.1	0.1	2.4
22	Cameroon	0.7	1.0	4.5	24.5	150	371	0.5	10.1	-	5.2
23	Canada	65.9	55.5	37.9	61.7	4'628	22'250	64.0	79.1	54.5	72.1
24	Cape Verde	14.9	13.5	9.1	27.9	188	649	4.6	11.6	2.3	11.4
25	Chad	0.1	0.1	0.4	8.5	34	61	0.3	2.0	0.1	0.1
26	Chile	22.0	20.7	39.6	83.7	659	13'135	20.5	36.4	11.0	22.1
27	China	16.6	27.5	16.0	41.2	159	1'735	10.2	39.1	5.0	16.4
28	Colombia	17.8	17.2	10.6	73.5	349	3'528	10.0	27.4	5.6	3.7
29	Comoros	1.4	2.6	-	4.8	80	217	0.8	4.3	-	1.0
30	Congo	0.6	0.6	6.1	34.2	26	10	1.5	5.0	-	1.4
31	Costa Rica	25.3	32.2	12.3	33.8	623	2'440	20.0	31.6	7.3	11.8
32	Côte d'Ivoire	1.9	1.4	5.9	36.6	220	689	2.9	6.2	0.6	3.6
33	Croatia	40.5	40.5	51.9	110.5	228	7'553	18.8	34.7	16.7	29.5
34	Cuba	6.0	9.3	0.2	1.8	481	162	0.5	2.3	-	1.8
35	Cyprus	53.0	44.9	51.8	115.6	739	4'218	36.0	53.0	24.0	39.0
36	Czech Republic	35.9	23.6	84.0	124.9	9'108	14'649	27.8	43.0	13.5	35.0
37	D.R. Congo	-	-	1.1	10.5	100	43	0.2	0.3	-	0.2
38	Denmark	68.8	51.9	83.2	114.5	31'721	42'752	72.2	83.0	56.0	78.0
39	Dominican Rep.	10.7	9.3	20.0	56.5	83	894	5.5	12.5	2.8	5.7
40	Ecuador	11.1	13.5	12.3	75.6	377	2'458	17.5	18.0	2.0	6.8
41	Egypt	11.1	14.9	6.4	39.8	339	1'023	3.0	16.1	1.4	9.1
42	El Salvador	10.2	15.8	13.6	89.5	199	157	5.2	8.6	2.3	3.6
43	Eritrea	0.9	0.8	-	1.7	222	100	0.2	0.3	-	0.2
44	Estonia	35.2	37.1	65.3	148.4	985	18'722	21.8	57.0	13.9	53.0
45	Ethiopia	0.5	1.1	0.1	1.5	200	842	0.1	0.2	0.1	0.1
46	Fiji	11.8	14.5	10.9	63.2	160	1'379	8.9	18.2	1.3	11.5
47	Finland	52.4	33.0	86.8	115.2	5'140	21'847	54.5	74.0	44.0	69.0
48	France	57.1	56.5	64.6	89.8	11'076	46'086	36.6	62.0	23.0	49.0
49	Gabon	2.4	2.0	21.2	87.9	320	2'439	0.8	4.3	0.6	3.6
50	Gambia	2.7	4.5	7.2	46.8	82	618	0.3	4.0	-	2.0
51	Georgia	13.9	12.7	10.9	59.2	245	9'103	-	12.6	-	2.4
52	Germany	65.1	65.1	71.7	117.6	6'448	35'487	61.0	79.0	46.0	71.0
53	Ghana	1.3	1.6	1.9	32.4	71	565	0.3	5.1	0.2	1.8
54	Greece	57.0	53.9	84.3	110.3	1'476	13'805	25.3	40.0	12.0	25.0
55	Guatemala	7.2	11.0	13.5	76.0	1'625	1'429	5.9	13.6	0.6	1.8
56	Guinea-Bissau	0.8	0.3	-	17.5	5	45	0.3	3.6	-	1.0
57	Haiti	1.6	1.1	1.7	26.1	746	155	0.3	4.0	-	1.8
58	Honduras	4.8	11.6	4.9	58.9	101	4'081	4.2	10.1	-	3.3
59	Hong Kong, China	56.3	57.2	94.0	149.2	3'863	23'571	62.1	74.2	52.5	70.1
60	Hungary	36.1	32.4	67.7	110.0	1'477	9'293	26.0	54.0	8.0	38.0
61	Iceland	65.6	62.0	90.9	108.9	301	8'121	83.0	89.0	77.0	84.0
62	India	3.9	3.4	1.2	20.0	113	441	0.3	3.7	0.2	3.0
63	Indonesia	3.6	7.7	5.5	35.3	127	923	2.5	8.1	1.0	6.9
64	Iran (I.R.)	19.1	33.5	3.4	41.8	174	473	5.5	13.0	2.8	8.6
65	Ireland	50.2	49.1	76.3	115.9	13'254	27'122	41.1	65.0	32.8	57.0
66	Israel	47.4	44.4	99.3	128.5	1'260	7'190	53.8	61.8	24.4	44.7
67	Italy	46.9	49.0	93.6	153.1	4'173	27'339	39.9	53.0	34.0	43.0
68	Jamaica	16.6	13.5	47.6	98.6	3'333	34'000	13.0	17.3	7.7	12.7
69	Japan	47.7	40.0	63.6	83.9	511	5'415	71.7	85.0	48.8	62.1
70	Jordan	12.8	9.9	23.2	80.5	293	831	16.4	25.1	5.0	10.5
71	Kazakhstan	14.0	21.0	6.9	79.8	192	1'052	3.4	15.6	0.5	13.9
72	Kenya	1.0	0.7	3.7	30.2	65	112	1.0	5.5	0.7	2.2
73	Korea (Rep.)	54.5	46.4	68.4	90.2	613	1'353	78.6	80.0	70.2	94.0
74	Kuwait	19.8	18.6	50.3	97.3	308	2'577	29.0	34.1	24.0	29.1
75	Kyrgyzstan	7.8	9.1	1.0	40.8	59	796	2.8	8.6	0.6	3.6
76	Lao P.D.R.	1.1	1.6	1.0	25.2	100	1'880	-	6.7	-	1.9
77	Latvia	29.9	28.3	39.2	97.4	825	6'428	15.0	49.0	8.5	51.0

Source: ITU , Measuring the Information Society The ICT Development Index 2009

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Regional Investment- A Complement to Trade in Regional Development

Walter Pedyo

Regional integration initiatives between COMESA Member States have brought multifaceted benefits to their residents. Despite the huge growth in intra-COMESA trade that has occurred since its inception, other areas of cooperation such as investment still lag behind. Intra-COMESA investment is minimal but there is immense potential that. if realized, could result in phenomenal growth.

Areas that offer vast investment opportunities encompass both Foreign Direct Investment (FDI) and Portfolio Investment. Regional investment can be a catalyst for growth when respective governments pursue joint infrastructural projects that have a bearing on trade using avenues such as Built-Operate and Transfer (BOT) or Built-Own-Operate and Transfer (BOOT).

Similarly, private companies can also complement regional economic ties by expanding operations in COMESA Member States. This is an ideal business strategy for spreading risk and diversifying revenue sources.
Developing nations are hampered in their operations by capital constraints, which presents a strong case for the promotion of Portfolio Investment, this, however has to be accompanied by strong financial markets as well as a relaxation of capital controls.

1. Introduction

The Common Market for Eastern and Southern Africa (COMESA) is one of the largest trading blocs in Africa with 19 Member States and a population of about 400 hundred million people. It has attained several milestones since its formation, such as setting up a COMESA Clearing House, formation of a Customs Union and trade facilitation programmes that include the Harmonized Road Transit charges, COMESA carriers license and the Yellow Card Scheme.

Since its inception, intra-COMESA trade has grown substantially and besides trade, economic cooperation is discernible in other areas, for instance, the Leather and Leather Products Institute in Ethiopia, the COMESA Clearing House in Harare, that enables clearing without going through Europe, and the reinsurance facility ZEP-RE, based in Kenya that has had a fair share of regional insurance business.

After the realization of the importance of sustaining economic growth and development in all Member States, COMESA countries signed a Framework Agreement on Enhancing Economic Cooperation through joint efforts in liberalizing trade and promoting intra-COMESA trade and investment flows. Cooperation between COMESA Member States has moved a notch up as seen by the increase, albeit at a slow pace in investment flows. However, the increase in intra-COMESA investment has not been rising at the same pace as the increase in intra-COMESA trade. Since investment flows between COMESA Member States is at its infancy, this presents an opportunity to foster economic cooperation, and subsequently improve the livelihoods of the people. This initiative can be pursued vigorously by both private players and governments or government agencies.

Recognising the need to promote direct investment and to enhance COMESA's attractiveness and competitiveness, Member States subsequently established the COMESA Common Investment Area (CCIA) which they envisaged to contribute towards the realization of a Common Market. Member States are committed to the 1990 Agreement on Multinational Industrial Enterprises to enhance cross-border investments. Regardless of the existence of blueprints and roadmaps, not much has been done as the growth of intra-COMESA investment has tended to lag behind the growth of trade flows. Where there are cases of implementation, they take long to complete because of procrastination, lack of capital and structural rigidities among a host of other problems. The main purpose of this chapter is to highlight the obstacles to the realization of phenomenal intra-COMESA investment and the strategies that can be adopted to enhance the level of economic cooperation among Member States.

2. Policies that Promote Investment

In as much as regional integration presents corporations with a larger market thus promoting trade among Member States, corporations can boost their operations by setting up plants in other countries. Expanding into other countries is beneficial in the sense that it diversifies revenue sources and spreads risk, such that if operations in some countries are going through turbulent times, profits may be buoyed by good fortunes being experienced in other countries. Furthermore, the profits and dividends from the subsidiaries are remitted to a fellow Member State; hence the money keeps on circulating in the region, thus boosting the levels of income. As incomes grow, this gives an impetus for an increase in trade, investment and development.

For instance, SeedCo, a Zimbabwean seed company that has subsidiaries in Malawi and Zambia was facing problems in the home market, such that it was failing to supply adequate seed on the market. However, this was partly offset by an 'Indian Summer' experienced in Zambia and Malawi and the Zimbabwean company had to import from the subsidiaries in order to satisfy the home market. This had multi-faceted benefits since the investment by SeedCo in Member States led to trade from the importation of seed from the regional operations. Similarly, the host countries benefited through employment creation, tax revenues and a wide variety of seeds on the market. In addition, SeedCo Zimbabwe gained from dividends and management fees that were remitted from the cross-border investments. It was a short in the arm for farmers in Zimbabwe who would have failed to plant because of the shortage of locally produced seed. This type of investment is in line with the Cross-Border Initiative which was established by COMESA in 2002, which is a strategy for boosting regional integration at the level of countries rather than the whole region at once. The main tenets of the Cross-Border Initiative are to pursue regional integration through agriculture-led development, tourism-led development, mining-led development and industrial/manufacturing-led development.

In many cases, developing nations lack the financial resources to implement infrastructural projects that impact positively on the livelihoods of the masses. A way around this predicament would be to partner with the private sector in Built-Operate and Transfer (BOT) and Built-Operate-Own and Transfer (BOOT) kind of partnerships. Although these business models are currently in place, what needs to be done is to increase the scale. There are many projects in some countries which have been in the pipeline for too long in the hope that multilateral institutions like the World Bank will finance them. Instead of waiting for well-wishers, COMESA Member States can partner with cash-rich companies who can finance the projects and operate and own the project for an agreed number of years until they have recouped the costs, usually after 25 years. This can be practical in situations where a company constructs a road and the recovery of costs will be achieved through revenues generated from operating toll gates along that road. At the same time, the construction of the road enhances trade facilitation through faster movement of goods as poor road networks in the region have been identified as one major obstacle to the smooth movement of goods.

An alternative way to implement costly infrastructural projects is accessing syndicate loans. These are loans whose repayment is based on the revenue generated from the project. This strategy has been used in the past by multilateral development institutions such as the World Bank, for example, in the construction of the Kariba Dam. This can also be adopted by COMESA Member States as it has the potential to drive growth. A notable example would be an arrangement that finances the exploitation of coal bed methane gas in Zimbabwe, whose deposits are believed to be the largest in Sub-Saharan Africa but have not been exploited because of the unavailability of money. The repayment funds would come from the proceeds from gas sales. Another option of repayment can be the delivery of gas to a financier at an agreed price for a number of years. There are numerous idle projects in Member States which could be made operational by this business model.

Foreign Direct Investment amongst COMESA Member States cannot solely dwell on new investment, but it should include a rehabilitation of obsolete infrastructure in other countries. In this regard, Member States can take a leaf from the Zimbabwe Electricity Supply Authority (ZESA) and Namibian Power (Nampower) deal.[108] The nature of the transaction was such that Nampower, a Namibian state-controlled electricity utility, availed USD40 million to ZESA, a Zimbabwean electricity utility. ZESA used the facility for the refurbishment of its Hwange Power Station which resulted in an increase in electricity power generation. In return, ZESA would supply 40MW per month to Nampower for an agreed number of years. The deal was symbiotic because Zimbabwe's agriculture and industry benefited from more power and at the same time, Nampower got a shot in the arm as it had more power for its

108 Namibia is not a member of COMESA and the information was sourced from an article by Oscar Nkala on www.engineeringnews.co.za

customers. In 2009, Zimbabwe and Botswana entered into a similar agreement in which Botswana availed a loan for the refurbishment of a thermal power station in Bulawayo. In return, Zimbabwe will supply about 15MW per month to Botswana. The COMESA region is abounding with many projects that can espouse similar cooperation. Cooperation between Member States where investment comes in the form of infrastructural rehabilitation can be replicated in other areas such as sanitation, roads, and ports among others.

Cooperation between COMESA Member States has been growing over the years as seen in the case of Zambia and Zimbabwe in the management of the Kariba Dam.[109] Recently, the two countries signed a Memorandum of Understanding (MOU) for the joint construction of a Hydro-Electric power plant at the Batoka Gorge. Nevertheless, much still needs to be done to bolster the level of cooperation. One project that has the chance of changing the lives of many Africans is the Inga Dam project in the Democratic Republic of Congo (DRC). Currently, electricity that is generated at this plant is exported to many countries as far as South Africa. However, current output is only a fraction of its capacity as the Inga Dam is capable of producing enough power for the entire African continent. This presents an opportunity for countries in the COMESA region to pool their resources and bring to fruition, what will probably be one of the largest engineering feats in the world. It will help many COMESA countries whose industry is affected by load shedding due to electricity shortages. At the same time, the majority of COMESA citizens do not have electricity, notably in the rural areas, and this would be a chance to bring basic amenities to the poor. Apart from its social and economic benefits, Hydro-Electric Plants are environmentally-friendly as they do not produce smog which harms the environment.

The cooperation in the energy sector highlighted above can be replicated in all sectors of the economy, especially agriculture, with a view to enhance food security in the region. Given the recurrent droughts that affect the region, food production can be increased through the construction of dams which are then used for irrigation purposes. In spite of the benefits encumbered in dam constructions, most Member States cannot afford to pursue such infrastructural projects without donor support. Cooperation between governments can help such projects to come to reality as cash-rich Member States like Egypt and Libya can acquire shares in a dam project in Swaziland by meeting some of the costs of construction. The dam can be used to irrigate sugarcane and Swaziland might repay the two countries through the proceeds from sugarcane sales. Another viable strategy will be for Swaziland to supply given quantities of sugar to Egypt and Libya for an agreed number of years. This form of financing will be sustainable for Swaziland unlike aid which comes with all sorts of conditions which may be detrimental to her development. Furthermore, intra-COMESA trade would have been created from the deal as Swaziland would export sugar to the financing countries as well as exporting the surplus to other countries, since her production would have increased. Similarly, Egypt and Libya will get their sugar imports from a fellow Member State, as opposed to buying from Europe and other non-Member countries. In the same vein, Kenya's main cash crops are tea and coffee and it has been estimated that only 20% of the irrigation potential of the country has been harnessed. (RIRN, 2001).

As a way of boosting development and investment in the region, COMESA countries came up with the Spatial Development Initiatives (SDI), one of which is the Lobito Development Corridor.[110] These are areas earmarked for the promotion of development corridors (based on the rehabilitated regional transport routes) and to open up certain resource-rich areas that the participating governments believe have high inherent mining and related processing activities, tourism and agriculture potential but are as yet un/underutilized RIRN, 2001).[111] Despite the existence of these noble objectives, not much has been done to bring these goals to fulfillment. Although there are success stories under this framework, there exists a lot of unutilized potential, which gives room to pursue these initiatives vigorously, as these have prospects to bring development to the region. The onus is on the COMESA Member States to vigorously pursue the SDI that are already in place as these assist trade facilitation and the integration process.

Under the SDI initiative, cooperation in the tourism sector was identified as one of the important instruments for promoting greater levels of socio-economic development in the region. It was envisaged that this would be realized through the creation of trans-frontier parks. The results in this respect are not encouraging as, to date, only the Greater Limpopo Trans-frontier National Park[112] is operational, in spite of the fact that numerous have been in the pipeline. Trans-frontier parks have developmental potential as they involve infrastructure upgrading as well as mobilization of private sector investors. Countries in the COMESA region should take them seriously as they offer economies of scale; tourists prefer destinations with variety and this entails a collaborative marketing effort. Setting up of these parks cannot be a problem as most Member Countries share borders and offer a variety of scenic features.

109 The construction of the Batoka Hydroelectric Power Station is expected to produce about 800MW after completion.
110 The Lobito Development Corridor involves the rehabilitation of the transport network that links DRC and Zambia
111 Regional Integration Research Network Series Publications, 2001
112 The Greater Limpopo Transnational Park involves Mozambique, South Africa and Zimbabwe. NB: Mozambique and South Africa are not members of COMESA

In a bid to cushion themselves from capital flow reversals and the vagaries of international capital flows, most developing nations have tight capital controls, which in some instances have inhibited their development. Some countries like Kenya and Zambia have developed well functioning bond markets, although they are still at infancy, that have been an alternative way of raising capital. Kenyan companies such as KenGen have issued bonds in the past which have been oversubscribed. The success of the KenGen Initial Public Offering (IPO) has led to a bandwagon that has seen some quasi-government companies selling their creditworthiness. Capital raised from these issues could be used for the implementation of projects which could otherwise have failed to take off because of limited financing. It is unfortunate that the capital controls that are in place in most Member States deterred institutional investors, mutual funds and pension funds from other countries who would have wanted to participate in their corporate bond markets. For example, institutional investors from Zimbabwe cannot invest offshore unless there is prior approval from the Central Bank's Exchange Control Division. Capital controls need to be relaxed as portfolio investment can assist in raising capital thus subsequently spurring development. Institutional investors, individual investors and mutual funds have to realize that government bonds are secure investments since the chances of a government defaulting are very rare.

The Global Financial Crisis that hit the world in 2008 exposed the vulnerability of the United States Dollar as some countries like China that had their reserves in US securities saw their holdings diminish greatly in value. This scenario presents a strong case for cash-rich nations or sovereign funds to diversify risk from USD-denominated assets and invest in corporate or government bonds or any other interest or dividend paying assets issued by other Member States. A case in point is the ownership of about a 16% stake in the Commercial Bank of Zimbabwe (CBZ) by the Libyan Government. When the stake was acquired, CBZ was a relatively small commercial bank, but now it is the largest bank in Zimbabwe by deposits. The increase in deposits enhances the lending capacity to the productive sectors of the economy thus boosting economic growth. Recipient countries get mileage from offshore capital as they will be better placed to pursue infrastructural projects which would be difficult to launch using internal resources. This kind of partnership should act as an eye-opener as there are many companies that can benefit from such initiatives.

It is important to note that the success of corporate/government bond markets is best enhanced by conducive regulatory markets and adoption of sound economic policies that improve the prospects of repayment. This implies that the onus is on individual Member States to ensure that they maintain good sovereign ratings which attracts foreign investors. Regulations should not act as a deterrent to international capital flows which are a way of raising finance. At the same time, it is paramount to avoid the destabilizing impact of speculative capital, hence it is necessary to insulate against speculative attacks like in Malawi where, foreign investors need the central bank's authority to buy Kwacha-denominated debt or repatriate profits from such investments and in Zimbabwe, foreign investors' participation in primary issues of stocks and bonds is limited to 35% and foreign investors may not participate in the secondary market. Protection measures are prudent as some capital flow reversals may not be driven by fundamentals in the host country. After the 2008 global financial crisis, there was some substantial movement of capital from emerging and developing nations' capital markets to the West regardless of the fact that the financial crisis had originated there.

COMESA Member States can take a cue from the World Bank and the Commonwealth countries which run the International Finance Corporation (IFC) and the Commonwealth Development Fund (CDF) respectively. These provide seed capital for start up companies or support companies in their infancy and then pull out when they can stand on their own feet. Likewise, the PTA Bank can form a similar fund which identifies either private or public companies that need financing. This is in view of the fact that some companies in COMESA countries fail to reach their potential because they are capital-constrained and have excess capacity. In the developed world, there are companies that operate hedge funds dedicated to investing in the developing nations. Financial institutions or private companies from the region can follow related business models and invest in start-ups or even established corporations in Member States. The financing is beneficial in the sense that as companies increase output, employment is created. Moreover, trade is generated as more output means that there will be enough to export to other countries.

Due to the lack of financing, there are few homegrown COMESA companies with substantial cross-border operations. The ideal situation is to have corporations from COMESA that have cross-border activities in the region or even beyond. Companies with vigorous cross-border activities are Multi-National Corporations (MNCs) giants like BAT, Total, and Unilever among others, whose origins are in the developed world. These MNCs bring many benefits to the host countries through employment creation, payment of taxes and infrastructural development, but at the end of the day, they eventually remit profits back to their countries of origin. Other companies should learn from Telecel, a Cairo Stock Exchange listed Egypt telecoms giant that has operations in many countries. Such home-grown big companies ensure that profits are not repatriated to the west as is the case with MNCs. Furthermore, as long as COMESA companies remain small, it may hamper their ability to participate in tenders for big projects. Whenever there are massive construction projects, only western companies can compete in such tenders because they have the resources. Only a few countries in Africa such as South Africa can award big tenders to local companies, and it is heartening to note that all the stadium constructions and refurbishment for the 2010 World Cup were done by South African companies. To facilitate development in the region, it is wise to have big companies that can also win big tenders floated in the region, and as such, profits and dividends will circulate in the region rather than be remitted to the West. The current scenario is disadvantageous to COMESA countries in the face of Economic Partnership Agreements (EPAs), which seek to liberalize the service sector in developing nations. It implies that western companies with the financial muscle will dwarf COMESA companies in tenders. To guard against this, companies from the region have to be capitalized or should raise finance on capital markets. However, this needs a relaxation of capital controls as well as the deregulation of the financial markets.

In the same token, most financial institutions in the region are small compared to other banks worldwide. As a result, their ability to finance large-scale projects or to act as underwriters in financial deals is limited. This results in global banks out-muscling small banks found in COMESA countries. It is risky to rely on global banks as the global financial crisis resulted in a liquidity crunch, as there were capital flow reversals back to Europe and some reduced flow of funds to Africa, which affected the financing of some projects in developing nations. In order to increase intra-COMESA investment, it is necessary to build strong financial institutions that are capable of supporting expansion activities of regional companies without offshore financing from Western banks. Robust financial institutions can emerge through mergers and acquisitions. An African success story is South Africa, whose banks have set up shop in many countries and in most countries, they compete evenly with Western multinational banks.

A publication by RIRN (1994), found that a major inhibiting factor to the growth of COMESA companies was the cost of credit, which results in companies failing to access finance, thus their operations are constrained. The same study by the RIRN (1994), highlighted that exorbitant utility costs were growth-constraining as they caused loss of competitiveness. High electricity bills make COMESA products uncompetitive compared to products originating from established Western companies. It becomes difficult to make cross-border investments, since a company should have the possibility of gaining some market share in another country before setting up operations in that country.

In view of the Cross-Border Initiative of boosting regional integration at the national level, Member States should pursue Bilateral Agreements that encompass investment promotion and protection. This strategy has the potential to increase FDI within the region as foreign investors need assurance that crossborder investments are not at the risk of regressive practices like nationalization. On the other hand, recipients of FDI know that when Bilateral Agreements are in place, they should be held sacrosanct. Regional countries should guard against policy inconsistencies which might have a bearing on asset holdings by foreign investors as this result in investment flight to other countries deemed to have better investment climates.

To avoid skewed growth and development between countries, Member States ought to harmonize investment laws. Different laws are problematic in the sense that they result in investment flows from countries deemed to be unfavourable to those with favourable regulations. Likewise, countries that have tight regulations on Greenfield investments lose out to those with favourable rules. According to the World Bank African Development Indicators Report (2007), foreign investors had to go through 27 procedures before getting an investment licence, while in Sudan, there were 67 procedures. Besides, the World Bank 2009 Doing Business Report Ranking had Mauritius on position while Rwanda and DRC were on position 67 and 182 respectively.[113] In the COMESA region, Mauritius with lax controls is emerging to be the major recipient of most international capital and a base for hedge funds. In the long run, this scenario is not sustainable as it results in two distinct areas of core countries and the periphery countries. Recently, in Europe, there was some fear that London might lose its luster to other countries as a prime investment destination for international capital, after the promulgation of a law to levy a tax on banks that paid their traders excessively.

Intra-COMESA investment flows are currently hampered by lack of information as to the opportunities that exist in other countries. The best way to overcome this problem is to create an efficient information exchange network through setting up of a database which is managed by the COMESA Secretariat. A more effective way for fostering information is through participation at Trade Fairs, Exhibitions and Investment Conferences as well as the Business Forums and Exhibitions that are held alongside COMESA Summits. Unfortunately, most regional countries rarely take these symposiums seriously, as it is investors from the developed and emerging market countries who attend.

113 The ease of Doing Business Report for 2009, covered the period from June 2008 through May 2009 and made comparisons 183 countries

COMESA Member States should realize that these conferences proffer matchmaking prospects. Companies from the region should come out of this cocoon, as often is the case; the success of a Trade Fair or Investment is measured by the number of participants from the developed world.

3. Conclusion

It is important for COMESA Member States to adopt some of the investment strategies that have been highlighted above. In some instances, the systems are already in place, what is wanted is just the implementation. To realize the benefits of intra-COMESA FDI, countries need to pursue joint initiatives since it is costly to implement individually. In the same way, countries should try to strike a balance between capital controls which insulate against speculative capital and ensure that regulations are not a deterrent to the inflow of offshore capital. The removal of structural rigidities should be given due attention since they are a causal factor of capital flight.

Export Promotion and Industrial Policy in COMESA region

Bonga Wellington Garikai

Many countries, especially developing nations, concentrate on protecting domestic producers by encouraging production of import substitutes and import competing goods. Such a development strategy, coupled with high import duty, target to avoid competition from cheap foreign products and the protection of domestic producers. This chapter aims at examining the factors hindering export growth and ways to promote export growth and the industrial policy to be adopted. It has been observed that development of substitutes and import competing goods enables local producers to supply domestic demand at an efficient price. However efficient development also means supplying abroad and enhancing value-addition to the exported products (developing nations mainly export primary products which are agro-based). The study identified export growth to be affected by regional integration, time efficiency, foreign currency levels, infrastructure, exchange rate, labour earnings, inflation, natural disasters and women participation.

Introduction

Foreign currency and reserves in general are of great importance to any nation whether developed or developing, as they bring in stability and economic growth. Exports are key for economic growth and development because they are a source of foreign currency in an economy. Trade consists of a substantial share of Gross Domestic Product (GDP). Historically, most economies which attained higher economic growth embarked on export promotion strategies. Hong Kong and Taiwan, among other Asian Tigers, through export promotion, industrialization managed to transform their economies from agriculture based into modern dynamic economies. Given the extensive background and forward linkages of the agriculture sector, this sector has been of particular importance in contributing towards exports. However, agriculture exports have declined dramatically in recent years. This makes it critical for the manufacturing sector to be an important driver of growth. With lessons from the four Asian Tigers, trade policies have shifted significantly from the inward-oriented import substitution towards outward-oriented export promotion strategy. Moreover, it has been discovered that developing countries that pursued the export-oriented trade policies enjoyed a higher output growth than those embracing import-oriented policies (Balassa, 1978). Export promotion strategy involves giving incentives to exporting firms relative to their importing counterparts.

Developing nations are well-known for their importation of finished products from developed nations despite the fact that they are the most endowed with raw materials and natural resources. However, the nations do export to other nations, either within themselves or to developed nations. Exportation of raw materials or primary resources does not raise adequate revenue for the nations rather processed goods should be exported (manufactured exports are of higher economic value than agricultural exports). Value-addition has for years been emphasized, but its significance has not yet been felt and implemented on mass grounds. Reasons for failure to implement the policy are lack of funds to expand and further process the raw materials, lack of adequate skills in the job market and cost effectiveness in production.

The Common Market for Eastern and Southern Africa (COMESA) comprises of developing nations that are almost on the same level of development, with just a minor differences in development and levels of resource endowments, external aid being a significant component that drives the path of development in these nations. The ratio of exports to imports over the years shows that exportation is relatively lower than importation and hence the countries remain net importers.

The study seeks to find ways of improving the export performance of the developing nations in the COMESA region, taking into account the level of resource endowments the countries have. Specifically, it examines the possibility of satisfying foreign demand instead of local demand to improve economic development. To accomplish this, examination of export levels and the trend of exports from the past decade should be analysed and, where necessary, the reasons for the trend be given. What is the necessary policy adjustments required to achieve increased export promotion?

This chapter argues that export promotion in the COMESA region will bring about economic development in the respective nation. The reason behind this argument is that if value addition to primary products is facilitated, more revenue will be collected from exports. An additional reason is that if local companies are empowered to produce cost effective products which are internationally competitive, they can export to other nations. Local producers should not only target local demand but rather expand to cater for foreign demand. This ensures economic growth with no limit.

However, such an action needs government intervention at some point in time and to some level, promotional laws should be in place and aid where necessary should be given to exporting countries. The environment should be conducive for exportation and flow of funds, political stability is important in this case, bilateral relationships between countries should be facilitated and where necessary Memoranda of Understanding (MOUs) should be signed to ensure binding of contracts. This ensures and promotes effective planning and forecasting for the exporting companies. The benefits of comparative advantage of nations over others will be realized and hence gains maximized.

Background

Exports are of great importance as they facilitate the flow of funds into the nation. They have been a significant contributor to national income of many developing nations. However the share has been fluctuating with an average upward trend. It shows that the sector is receiving attention and stands to be the hope of development in many nations. Growth in the export sector is directly linked to the growth of the nation and hence stability of the economy. This explains why trade openness has been suggested by many researchers and policymakers. Trade openness involves regional groupings and formation of customs unions, strengthening of relationships between countries and formation of joint ventures that will help in export expansion. Value-addition is however emphasized for developing nations, as the bulk of exports are primary products and not manufactured products.

In May 2005 a meeting was held in Kigali-Rwanda to discuss on issues pertaining to COMESA and the formation of a customs union. The Plenary session reviewed the regional export performance and examined present constraints to export growth as well as potential mechanisms to overcome these constraints. Encouragement has been made by the participants for countries to move in haste in order to be globally competitive. The region needs to have a paradigm shift from the comparative advantage model to the competitive advantage model, Press Release (2005). It was noted that there was need to have policy coherence between countries, donors and regional international organizations. There should be shared vision among COMESA countries in regional integration. The private and public sector community was acknowledged to start to devise a strategy that should assist governments to transform the hidden economy into a formal sector. Domestic debt reduction effort was also called upon during the summit.

In an effort to increase exports, the COMESA Secretariat has been assigned under TIFA to negotiate with the USA Government to allow COMESA countries to export to the USA. The Secretariat should assist Member States develop national export-led strategies, and should devise strategies that strengthens intra-regional trade in raw materials and intermediate products.

During the same summit, and in a session, the Ministers presented an outline of COMESA's vision for the attainment of the Customs Union and how this integration arrangement will contribute to the promotion of regional investment and export competitiveness. It was noted that regional integration gives Member States an opportunity to know where they are not competitive and hence integration was to be promoted so that Member States were not left behind. There was a need for States to ensure that all stakeholders are sensitized on both the advantages and disadvantages. Progress in Canada was cited for lessons; it has created a Private Sector Development Fund of USD200 million jointly financed by government and private capital.

To build an industry strong enough to produce exports, there is need for a single economic space that applies a uniform trade and industry policy thus creating scope for regional investments. Convergence of interests creates a common position when engaging the international community on trade and investment issues. Countries can build regional infrastructure through pooled resources and engage in joint promotion of regional infrastructure for donor financing. This can be done through: a common investment area with harmonized investment codes and policies, national treatment provisions and regional guarantees on the security of investments, public-private sector partnerships in the development of regional policies and resolution of outstanding technical work. A supply response for the region is to take advantage of the market opening in developed economies by creating companies that are globally competitive, building on experience acquired through competition on a regional market.

Women's participation in regional export growth should be encouraged. The summit identified constraints hindering women entrepreneurs and possible actions needed to strengthen their contribution to regional export growth. Issues like property rights have to be addressed to ensure that women are protected, and training and dissemination of information to ensure that more women have access to resources should be enhanced.

The key constraints to intra-regional flow of goods and services include infrastructure which is not well established and transport bottlenecks. Poor infrastructure leads to high cost of business and high transaction costs and hence exporting becomes unprofitable. This is specially seem in ports, roads and railways mainly used to transport goods from one country to another.

Time factor is also to be managed and improved, this refers to the time goods are cleared on borders and re-inspection should be stopped. There are COMESA transport and trade facilitation instruments on axle load limits; weigh-bridge management; customs documentation and procedure, RCTD, COMESA carriers license and these have to be enforced to operate efficiently.9

The ability of the region to finance the investment and export activity is worth an analysis. There are a number of facilities available which include the World Bank, African Development Bank, the PTA bank, the EU, specialised financial institutions (mining) and Development Finance Institutions such as IDC. In fact, there is actually a large excess of liquidity in the region with plenty of funds available, and the various institutions are all in the same market together, competing with each other. These funds were not being put to use mainly due to lack of knowledge of what was available and from where, the minimum requirements were not being met and often submissions were not 'bankable', did not sufficiently articulate the business ideas and the project proposals were deficient and lack a track record.

The main significant constraints to accessing investment or project funds were identified as being the need for collateral or owners' contribution, high level of interest rates and bank bureaucracy, high minimum lending levels which creating a problem for SME's, lack of a track record and absence of a good loan repayment culture.

To manage the above problems, building credibility with lending firms is a critical issue. Starting small and building up a reputation can be used to further expand. Consulting financial experts and negotiating services on a project "success fee" basis and consider equity partnering and venture capital. For SMEs the establishment of a small scale enterprise guarantee scheme (like in India) to enable banks to share and therefore reduce their risk exposure is an important strategy. Structural financing whereby the collateral is inherent in the transaction itself should also be considered.

Currently, the COMESA Customs Union has been launched and there is now greater hope for exports to rise as foreign markets negotiation is easy and financial problems can be addressed collectively. However, some other reasons for poor export performance are worth mentioning. The lack of imported inputs and domestic recession has characterized the explanations for the downfall in the manufacturing sector among all other sectors. Like most African countries, COMESA Member States' manufacturing sector has suffered from economic inefficiency at firm level. The sense of efficiency includes familiarity with the working environment, realizing technical economies of scale, ability to develop new skills, and acquiring information and technical knowledge about suppliers needs. Also the static nature of African efficiency has contributed to this poor performance at international markets, whilst economic efficiency requires an element of dynamism and capabilities to adapt, improve and innovate the existing technologies. This has contributed highly to the poor performance of the manufacturing sector in some nations.

Furthermore, factors like land reform also directly and indirectly attributed to decline in manufacturing sector exports. Political instability in other nations led to firms downsizing their operations and even relocating to other countries' more welcoming environments. In an alternative perspective, firms that depend highly on primary inputs ended up downsizing due to poor raw material supplies as a result of this shock in the agricultural sector. Some of the reasons which contributed to this kind of operations include the inability of most manufacturing firms to source foreign exchange for the importation of essential raw materials.

Shortages of foreign exchange access in banks have forced most manufacturing firms to rely heavily on the parallel market where the rate is usually very high. This feeds into higher costs of production. Since these higher costs of production are normally passed to consumers through higher prices, consequently they lead to loss of competitiveness of manufactured products at international markets.

The poor export performance of the manufacturing sector is attributable to the lack of adequate export incentives and the unstable macroeconomic environment in which our industry is operating. This includes hyperinflation and lower real interest rates. This has translated into sharp rises in the cost of inputs for the industry which is largely raw material import dependant. There have also been massive hikes of major utilities which include electricity, fuel, water and telecommunications. It is with this background that manufacturing sector export performance should be improved in order to boost business confidence and motivate an export culture in our economy.

In conclusion, having this background, we have managed to identify the importance of exports to the region and the factors that hinders their growth. The following section comprises of theoretical and empirical literature that explains reasons behind export behaviour and growth in developing nations.

Literature Review

Theoretical Literature Review

Heckscher-Ohlin (HO) introduced an important model that predicts a relationship between factor endowments to trade patterns. HO theory assumes trade between two countries, a home country and a foreign country that can trade two goods free of transport costs. The factors of production, labour and capital are immobile internationally but they move without cost among sectors within a country. This model hypothesized that a country should specialize in the production of a good that uses intensively the abundant factor, and export the same commodity. For this reason, a labour-rich nation should produce and export commodities that use labour intensively and vice-versa for capital-rich nations. The HO model provides alternative explanations of trade by concluding that a country tends to produce and export the commodity that uses intensively the factor in which it is relatively well-endowed. While the HO model emphasizes on differences between goods in intensities with which they use these factors, the Ricardian model focuses on differences in technology as basis of trade.

Ricardo (1987) came up with the Ricardian model which explains comparative advantage as the basis of trade between two or more countries. A country has a comparative advantage in the production of a good if it has lower labour costs than the foreign country. These cost differentials arise from factor productivity differentials. The model emphasizes on labour productivities which allow us to analyze a host issues of trade, such as the effects of technological progress on patterns of specialization and the distribution of gains of trade. According to the comparative advantage theory, a country should specialize in the production of a good in which it has comparative advantage and export that good and import a commodity of comparative disadvantage. If this comparative advantage model is correct, then exports should be determined by factors of production like labour and capital and their costs.

In contradiction to the comparative advantage theory is the view of Krugman (1979) that firm-level factors are important determinants of the ability to export. He introduced factors like size and world prices as other critical determinants as they enable firms to enjoy economies and compete at world markets by the ability to adjust prices to suit demand.

The Lancaster model (1966) explains that trade and exporting behavior is a function of resource endowments, agriculture output, number of manufactured goods, manufacturing sector output and cost function of the manufacturing sector. Hence, the model also contributes the element of technology and the ability of the employed labour to quickly adopt the new unique products and production processes as determinants of trade. Thus, manufacturing firms are encouraged to engage and employ more innovative and skilled labour in order to try to capture more consumer preferences.

The earlier view is further supported by the Technological Gap theory that again introduced technology and Research and Development in international trade. According to the technological gap model (Posner 1961), a great deal of the trade among industrialized countries is based on the introduction of new products and new production processes. These give the innovative firm and nation a temporary monopoly in the world markets, which is normally based on patents and copyrights which are granted to encourage the flow of innovations. In reinforcing this idea, Vernon et al

(1967) found a strong correlation between expenditure on R&D and export performance.

Empirical Literature Review

Most empirical studies carried out tend to show that the exporting manufacturing sector plays an important role in economic growth and development. In literature, export performance behaviour is a function of both internal and external determinants. Internal determinants are supply related factors whilst external components include market access conditions and the country's location. For instance, Edwards and Alves (2005) concentrated on supply determinants only. In contrast, another series of study papers by Fugazza (2004) investigated both supply and demand constraints of export performance. Major determinants include technology, relative size, inflation, exchange rate, research and development, capital intensity and labour productivity.

Edwards (2005) carried out a study on South Africa's export performance. He noted that foreign affiliation is positively related to marginal propensity to export mainly because of beneficial effects of multinational companies who prefer to sell some of the products to their home countries. The conclusion from this study can be criticised on the basis that it did not include factors of production such as labour and skill in the econometric model.

The relationship between export performance and inflation has been introduced in a study by Fugazza (2004). It found that the effect of inflation on exports depends on the rate of increase in other operating expenses as compared to that of inflation. Inflation was found to be inversely related to export performance. The adverse effect occurs when the rate of increase in operating expenses is faster than that of inflation. Also another issue of significance noted in similar studies is the ability of firms to forecast accurately future inflation levels. This enables firms to accordingly manage their operating expenses. The extent to which inflation levels affect firms' productivity and export volumes depends on the firms' management policies to adjust profits at a rate faster than that of increase in costs and thus acquire higher economic profits (Vanzeti, 1992).

Musila (2004), used the gravity model to examine the impact of COMESA on the flow of Kenya's exports. The study found that COMESA has the effect of trade creation; it has helped to improve Kenya's export performance and in turn assisted in the effort to achieve the Millennium Development Goals. There was no evidence of trade diversion detected by the study. The study results managed to show that nominal GDP of importing countries, distance, adjacency, and common official language have a statistically significant impact on the flow of Kenya's exports.

Concluding the section, many factors have been proposed to affect export performance of developing nations. If these are well addressed, improved export performance will be achieved. The factors include both the supply and demand factors and also technical management issues.

Methodology and Data Analysis

The methodology and data analysis section explores the determinants of export performance of the COMESA region. It is based on the previous chapters and offers the guidelines for policy recommendations. Explanation and justification of the variables will be of great importance as guided from theoretical and empirical literature. Impact of the variables on the dependent variable, export performance, will be explained.

Primary exports do not bring as much revenue as manufacturing sector exports, hence a shift from agricultural exports to manufacturing is highly recommended. However, a combined analysis of total exports is used in the study. Exports are given as aggregate from the whole economy as specified by the African Development Indicators data records. Such records are important as they show figures relevant for international comparisons. In summary, the determinants of export performance can be expressed as a function of both productivity and non-productivity factors.

The common determinants of export performance include foreign currency levels, inflation level, natural disasters, labour earnings, relative size of manufacturing sector, labour availability and skills, political instability, exchange rate and previous export levels. However, these are not the only determinants as some additional ones include financial constraints, information asymmetry, technological factors, scale of production, resource endowments, institutional factors, time factors and gender and equity issues.

Foreign currency levels are very low in the region; in actual fact there is always a shortage. Because many countries in the region are net importers of production equipment and spare parts, the shortage of foreign currency is a challenge. Importing firms usually get foreign currency from the informal sector where it is more expensive; due to this, low profits will be realized by the firms. Usually they become internationally incompetent as their costs of production are high. This explains why larger volumes of exports are primary products with no value-addition.

Regional grouping enables countries to help each other and form joint ventures in production and marketing. It helps in the negotiation for foreign markets. Since the formation of regional groups, such as SADC and COMESA among others, many countries have witnessed export growth. Abiding to rules and regulations of the groups will help a lot since good business ethics are needed. Delays in transportation have been a characteristic in the region and hence should be minimized. The time needed to transport goods from one country to another is a determinant of export performance: the longer the time the less attractive are the country's exports as it is a sign of inefficiency and failure to deliver.

Inflation, as a general increase in price levels by definition, is a determinant of export performance. It takes into account the general increase in costs of production. The effect of inflation on manufacturing sector profitability will depend on whether the manufacturing sector's wages and other operating expenses increase at a faster rate than inflation. The ability of management to forecast accurately future rates of inflation can help them to accordingly manage their operating expenses. In other words, in order for the management of the sector to fully manage their operating expenses they should be able to fully predict inflation trends for future periods to enable them to earn higher economic profits. In stable economies, planning and forecasting is not complex. Under such an environment capital flight and brain drain will dominate the economy and this will negatively impacts on productivity. Inflation is therefore important in determination of export performance.

Labour earnings in other studies are used as a proxy for skill levels for example Kaluwa et al (1991) used average earnings. In developing countries, skill is negatively correlated with export performance since most of their manufactured goods tend to require less skill. This means that higher labour earnings should be associated with less competitiveness. The variable captures several aspects of production factors and the issue of incentives on the part of employees. Labour earnings variable can be justified by the East Asia Tigers, for nations to achieve growth in export promotion it is important to give both employees and employers enough incentives in terms of wages and other supportive measures.

Under the Marshal Lerner environment, there is an inverse relationship between export volumes and exchange rate. Several studies have not given a firm argument about the explanation of the effect of exchange rate on export performance and the kind of relationship is not resolved as yet. Some have postulated the view that exchange rate uncertainty may induce producers to shift from traded goods to non-traded goods, thereby dampening trade volumes (Arze et al 2000). Exchange rate pegging has been a problem for most producers in the region due to its unrealistic and wide margin from the parallel market rate. This has resulted from speculative behaviors at exchange rate markets and economic instabilities. Nonetheless, in some cases, the exchange rate acts as an incentive for exporters to export their products. This is because if firms legally export their products, they will get some of their cash in local currency from the central bank using central bank's exchange rate.

Natural disasters do play a role in undermining export performance, particularly of primary products. In years of poor rains or floods, production is lower in agriculture and hence export levels decrease. These natural disasters are very common in the region, especially poor rains in Zimbabwe and floods in Mozambique. Political instability is a factor to consider since the lack of stability makes exporting difficult due to lack of security and policy inconsistency. Good international relationships enhance export growth and reduce sanctions to trade or transportation of exports.

Conclusion and Policy Recommendation

The chapter's aim was to examine the factors hindering export growth and ways to promote export growth and the industrial policy to be adopted in the COMESA region. The chapter observes that developing nations are finding it hard to export their products to developing nations. Whenever they did so, they are either exporting primary products or they export at a loss or low profit basis. Among the factors that have been hindering export performance are poor infrastructure in the region and unnecessary laws which promote double inspection of goods and services leading to time inefficiency. Regional integration has played a greater role in export promotion, however, reforms within regional groupings are still necessary.

To improve export performance in the region, the COMESA Member States should have a strong relationship with one another and support the Customs Union goals and objectives. This improves their negotiating power for markets abroad. Investment in infrastructure, particularly roads, railways and ports should be done, this helps in reducing transaction costs. Avoiding double inspection will also enhance good business ethics and save time, especially for goods in transit. Encouraging women's participation in regional development, and empowering them to overcome constraints pinning them will also have a long-term advantage. Awareness programs will help by having information available to traders. Industrialisation should be promoted to bring in cost effectiveness and quality products for international competitiveness.

In conclusion, commitment by the respective governments is crucial in the success of export promotion and export growth. Ensuring unity and avoiding political instability will be a supportive measure that will take COMESA to a higher level. Private-public partnerships will ensure industrial relations and smooth operations of international trade.

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The Effect of Monetization on Tax Buoyancy in COMESA countries

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Countries in the Common Market for Eastern and Southern Africa (COMESA), like many other developing nations, face difficulty in raising tax revenue for public purposes. This chapter uses panel data analysis for nineteen countries during 2000-2009 to analyze empirically the determinants of tax buoyancy. Among the variables identified as affecting annual tax buoyancy is monetization, with empirical results confirming its importance. The results have shown that the way monetization is handled in developing nations affects annual tax buoyancy negatively. Other variables that have been found to be affecting tax buoyancy include the growth in the agricultural and industrial sectors' contributions to national income, external aid growth, growth of fiscal deficit and growth of total expenditure. The determinants of tax buoyancy have been suggested following tax handle theory advice. The study yielded such results because quality dimension of tax performance have been considered, which has been neglected by many previous authors.

Introduction

The traditional function of the tax system is to bring in sufficient revenue to meet the growing public sector requirements. Common measures of the ability of the tax system to mobilize revenues are buoyancy and elasticity (Asher 1989). A desirable property of a tax system is that income elasticity and buoyancy should be equal or greater than unity. Such property ensures that revenue growth keeps pace with that of Gross Domestic Product (GDP), without frequent discretionary changes. More importantly, it imparts built-in stability to the tax system, hence ensuring mitigation of cyclical variations in GDP over the course of the business cycle.

The concentration of this chapter will be on tax buoyancy, which indicates whether taxes keep up with growth in the economy. Tax buoyancy measures the total response of tax revenue to changes in national income (Begum, 2007). Year to year buoyancy measures the volatility of the tax and the ability of government to meet the demands of their constituents. As an economy grows, the income of taxpayers grows and the demand for public services tends to increase. If tax revenues grow slower than the economy, then the public sector will not be able to meet increased demand for better social amenities.

The Common Market for Eastern and Southern Africa (COMESA), in line with the above indicator (buoyancy), comprises of low tax performance countries with average regional buoyancy that is less than unity (Matshediso, 2004) implying that the tax system is not responsive to the income changes in the region. An effort to improve tax performance has been done over the years, mainly noted by various reforms in the taxing system, but no significant permanent solutions have been reaped so far. On the other hand, policies relating the monetization to tax performance have not yet received attention in the region.

The chapter attempts to examine the determinants of tax buoyancy, paying particular attention on the effect of monetization on tax buoyancy. The tax performance analysis aims at finding out whether there is a possibility of increasing tax revenue in developing nations through the monetary policy. Taxation is an important instrument for attaining a proper pattern of resource allocation, income distribution, and economic stability, so that the benefits of economic development are evenly distributed.

Tax systems should be adequately stable and buoyant in order to enable a country to meet its increasing financial commitments as its Gross Domestic Product (GDP) grows. If the tax revenue of a country is stable and buoyant, there is a high probability that its public expenditure needs will be adequately met over time. If GDP is growing more than tax revenues then it could be one policy indicator that the tax structure needs reform. The study of tax buoyancy is of much importance because it is both a quality and quantity measure of tax performance. Tax buoyancy can also be used to summarize revenue growth over time, (Zolt, 2003:8). Finally, it shows the strength of the tax system in the country when it is subjected to certain environments for example when a certain sector is declining.

The manner in which different countries raise taxes differs as widely as do the amounts they raise. The pattern of taxes found in any country depends upon many factors, such as its economic structure, its history, and the tax structures found in neighbouring countries (Bird and Zolt, 2003: 7). According to Zolt (2003:1), developing countries are no different: ideas, interests, and institutions play a central role in shaping tax policy. Based on this argument the chapter will be focusing on COMESA Member States since they are close to each other and belong to a community. Countries no longer have the luxury to design their tax systems in isolation.

The research problem is derived from the fact that public services in the past years in developing nations have been deteriorating. The level of revenue being raised from taxation is very low in these nations as compared to the tax base which shows their tax potential. Rapid expansions in expenditure and declining or low revenue levels have been the main cause of fiscal imbalances in COMESA Countries over the years (Ghura, 1998).

Tax revenues appear to be highly volatile relative to GDP and the tax base (Ghura, 2004; Greenaway, 2005). According to Ghura (2004), the changes include the effects of changes in tax rates, deductions and compliance. Developing countries are characterized by high tax rates (exorbitant tax rates, Matshediso 2004) as compared to developed nations, the obvious effect being decreasing tax revenue collection due to the increased informal sector activities. Hence the governments are not able to meet public demand of public goods. The existing persistent budget deficits in developing nations suggest that the tax system is not revenue productive, and in such situations, increasing revenue should be the main objective of tax policy.

On the other hand, money supply in the COMESA economies has been growing at high levels but has been named inflationary. There are high levels of tax erosion, due to the high growth of money supply (RED, 2006).The monetary sector has not received attention as far as taxing policies are done in these nations and hence its emphasis should be brought about, since some studies have proposed its importance.

The objective of the chapter is to establish the main determinants of tax buoyancy in developing countries with special attention paid to the effect of monetization. The General and Specific research questions of the chapter can be stated consecutively as follows: What are the main determinants of tax buoyancy in developing nations? How does monetization affect tax buoyancy? The main hypotheses to be tested in this chapter are that: Monetization has a positive relationship with tax buoyancy. Growth of the industrial sector and agricultural sector, fiscal deficit, external debt, level of economic development, total expenditure and trade openness increase tax buoyancy. Growth in external aid and the concentration of population reduce tax buoyancy. These hypotheses are tested by determining the significance of the regression coefficients of the relevant regression equation that will be estimated.

Countries no longer have the luxury to design their tax systems in isolation due to current wave of globalization and regionalization (Bird and Zolt, 2003). With dramatic reduction in trade barriers over the last two decades, taxes have become a more important factor in location decisions. There is increased tax competition for portfolio investment, qualified labour, financial services, business headquarters and foreign direct investment. This means that taxes do matter, and any country with a tax system that differs substantially from other countries, particularly its neighbouring countries, may suffer. From this idea, analysis of determinants of tax buoyancy in the SADC region can be undertaken, since the countries trade with each other, share labour services and share national borders.

The previous studies (Harley, 1965, Lotz and Morss, 1967, Raja, 1971, Raja et al., 1975 and Roy, 1979) of tax performance have been dwelling much on quantitative measures of tax performance such as the tax ratio. There is a need to incorporate both a quality and a quantity measure of tax performance, in this case tax buoyancy. There are few studies (for example Teera, 2002 and, Bird and Zolt, 2003) carried out in this area especially for African countries. It is a new area which needs further investigation around the regions of the world. Also the study involves the determination of yearly buoyancy, of which several studies (Quazi (1994), Begum (2007) and Teera (2002)) have been involved in the use of single averages over a period. The main base of this study's approach is that tax buoyancy changes over time even annually because of many factors (discretionary changes) which may include the political environment among others.

The effect of monetization on tax buoyancy is a crucial issue to consider when making tax performance decisions. This is because policymakers have to critically administer the optimal level of money supply in the economy (an amount that will not have adverse effects on economic agents). If money supply grows faster than the growth of the economy, inflation arises and the problem of tax erosion occurs since there is a gap between the time taxes are to be paid and when they are actually paid. Increased documentation of the economy can also arise as monetization increases and hence this facilitates the collection of both direct and indirect taxes. From this idea, the impact of monetization on tax buoyancy has to be analysed. The results will be used to give necessary policy advice on the link between monetization and tax performance. The incorporation of money supply in taxing decisions of governments is also a contribution, the variable of which have been left by many authors without any justification.

The study will contribute to existing literature on tax buoyancy for developing nations; this helps in the continuous debate of the effects of various determinants. Analyzing the determinants offers a guide to policy makers on which areas to put more emphasis. According to Teera (2002), a poor tax performance in terms of raising revenues can mean either deficiencies in tax structure policy or an inadequate effort to collect on the part of government, both of which are influenced by various factors. Hence the study concentrates on finding factors that affect tax performance.

Therefore there is need for more empirical input and guidance to carry out rational economic decisions. To formulate strategies for achieving sustained increase in tax buoyancy, relevant information is necessary. Therefore examining determinants of tax buoyancy is an appropriate way of finding where policies can rightly respond to those issues as we would gain better understanding about the determinants. Knowledge of the determinants of tax buoyancy in SADC will help preclude policymakers from (over) emphasizing only a few variables to neglect other important ones in promoting tax performance.

Theoretical and Empirical Literature Review

Theoretically and empirically tax buoyancy can be calculated using the Constant Structure rate, Dummy variable method, Divisia Index and the proportional method. However this study due to its nature will use annual tax buoyancy, as the above methods refers to periodical buoyancy.

The normative bent of the literature on tax policy deals with the questions of why a country develops a particular tax structure and why this tax structure differs among countries and changes during the process of economic growth. This strand of tax literature not only recognizes the importance of administrative constraints on tax policy, but in contrast to the normative literature places administrative factors at the forefront.

The tax handle theory offers a sweeping historical explanation of tax structure change. It argues that low-income economies are forced to collect revenue from easy-to-administer taxes (or tax handles), but that this administrative constraint lessens as countries develop and become able to choose “better” taxes as defined by the normative objectives discussed above. Measures of tax handles typically include per capita income, trade taxes and the proportion of people living in urban areas (Liebaman, 2003).

The optimal tax theory, the reigning normative approach to taxation combines information on a country’s economic structure, the set of available taxes to the government and the objectives of tax policy to make recommendations on tax mix, structure and incidence (see Slemrod, 1990; Burgess and Stern, 1993). Optimal taxes are those that raise a desired amount of revenue with the lowest marginal efficient cost, with few distortions, and that promote the desired amount of wealth. While the optimal tax theory tackles the trade-off of different taxes, it does not explain the structure of government revenues.

The Ricardian equivalence theory is based on the opinion that when the government borrows instead of levying taxes to finance budget deficits, the current generation is under-taxed; they are rational and will realize that the loan will have to be repaid from income tax at some time in the future. Debt finance is therefore a postponement of the tax burden which will fall on the future generation. The importance of this theory to tax performance is now questionable given the continuous borrowing done in developing nations and continuous budget deficit in the economies. The theory suggests discipline in the monetary sector and also effective borrowing which does not affect generations to come.

Quazi (1994) carried out a study of the determinants of tax buoyancy in developing nations using 35 countries for a period of ten years. The countries were chosen at random all over the world but based on the level of national income. Zambia and Zimbabwe are the two COMESA countries selected for the study. He used the ordinary least squares method in the regression of tax buoyancy and its suggested explanatory variables. The model includes average growth of money supply (monetization- M2), import sector output, industrial sector output, service sector output, agricultural sector output, deficit, grant and Gross Domestic Product (GDP). He found monetization to be positively related to tax buoyancy, he commented that an increase in monetisation increases the documentation of the economy which increases tax collection. His conclusion was that increase in the level of monetization through increase in documentation also facilitates the growth of taxes. Other variables found to affect buoyancy include growth of industrial sector, growth of imports and growth of grants.

A study by Begum (2007) of the determinants of tax share and revenue performance (buoyancy) is worth noting. The study on Bangladesh, along with ten other developing countries, through a panel data analysis spanned fifteen years. The results obtained suggest international trade, broad money, external debt and population growth to be significant determinants, with expected signs of the estimated coefficients. The study identifies Bangladesh as the lowest tax effort country in the sample, with an average tax effort index of 0.493. This has important policy implications, with the conclusion that Bangladesh and other countries having low tax effort (less than unity) are not utilizing their full capacity of tax revenue, and therefore, have the potential for financing budgetary imbalance through raising tax revenue.

A study carried out by Teera (2000) found that the results of the dynamic measure of tax performance (tax buoyancy) indicate that the high-income OECD group has the least percentage number of countries with a buoyancy ratio below unity, followed by the lower middle-income group. This implies that the lower income groups have made less effort to increase tax revenues over the period as compared to the higher income groups. He mainly hammered on the tax evasion variable. In his regression he included variables like total expenditure and also time trend.

Methodology and Data Analysis

In the hope to improve tax performance COMESA countries have been undertaking several reforms either individually or collectively. The shift from sales tax to value-added tax (VAT) has seen many countries improving their tax collections and reducing tax burdens of the taxpayers. During the period under study, VAT has dominated sales tax and is in use. Furthermore, nations have launched Autonomous and Semi-Autonomous Revenue authorities (SARAs) to have the duty to collect revenue on behalf of the government. This was done to separate political influence and revenue collection. However the efficiency of these SARAs is debatable since revenues rose in the early years of introduction of SARAs then they declined.

Panel data methodology is used in the analysis since cross-sectional and time series are combined. The methodology is more common for the comparison of different countries. Nineteen countries in the COMESA region are considered over a sufficient period. Data for analysis is obtained from the African Development Indicators' various publications and World Bank/IMF publications. The advantage of these sources is that they allow international comparisons to be made.

Using various theoretical literature and empirical literature, many variables have been identified as affecting tax buoyancy. The main variables to be used in the chapter include monetization, level of economic development, structure of the economy (contribution of agriculture and industrial sectors to GDP), external aid growth, debt, population size, expenditure growth and trade openness.

The following results have been found after regressing tax buoyancy against its determinants using STATA econometric software. Multicollinearity and homoskedasticity have been checked. Panel tests have been done and the best model was the pooled Ordinary Least Squares (OLS) and time effects have been taken into account.

Specific Pooled OLS Model [Dependent Variable BUOY]

BUOY	Coef.	Std. Err.	P>|t|
ECON	.0055117	.0040867	0.179
AGR	.0188142	.0071365	0.009***
IND	.0219473	.0067639	0.001***
MS	-.0043354	.001639	0.009***
AID	-.7558855	.1211132	0.000***
DF	-.0165895	.0064552	0.011**
XM	.0056362	.0044746	0.210
EXP	.8653563	.3776645	0.023**
Trend	-.074938	.035562	0.037**
_cons	150.7422	71.12115	0.036**

R-squared = 0.4063 Adj R-squared = 0.3725
F = 12.01 Prob > F = 0.0000*
* denotes statistical significance at 10%, ** at 5% and ***at the 1% level

Discussion of Results

The F statistic 12.01 (0.0000***) shows that the model is correctly specified and that the null hypothesis of variable inclusion is rejected at the 1% level of significance and we therefore conclude that at least one of the variables in the model explain the magnitude of annual tax buoyancy in COMESA economies.

The coefficient of monetization (MS) has a negative value and significant at the 1% level indicating that growth of money supply (M2) seems to negatively affect the tax buoyancy of COMESA states. The results are not in line with the tax handle theory which poses for a positive sign. This means that the growth of money supply does not facilitate the documentation of the economy so as to improve tax administration. The reasons why monetization has a negative influence on tax buoyancy in the COMESA region might be due to the lack of capacity within the tax administrators to take advantage of the growing supply of money to facilitate the tax collection of each tax, over-relying on printing money to finance government activities rather than generating revenue elsewhere, the presence of distortions such as trade barriers, and weak legal and financial systems. Some COMESA financial markets are not well-developed. The region has a narrow range of intermediaries and offers a limited number of financial instruments. This finding is not in line with the result obtained by Quazi (1994) who found a positive and significant effect of monetization and tax buoyancy for a sample of 35 developing countries in a period of 10 years. Begum (2007) obtained a positive significant coefficient for Bangladesh which is a developing nation, the reason being that there is utilization of growing money supply to facilitate the documentation of the economy.

The coefficient of growth of the agricultural sector (AGR) is .0188142, with a p-value of 0.009 showing that the coefficient of domestic investment was positive and significant at 1% level. Thus countries that are able to maintain and improve their agricultural sector will experience an increase in their tax performance.

Growth of the industrial sector (IND) has a positive and significant impact on tax buoyancy at all levels of significance. This shows that it is one of the major variables that explain how the tax system is performing in developing nations. This is in line with the tax handle theory which predicts a positive impact. The possible reason for such results is that the sector is easy to tax, companies keep records of transactions and many are located in urban areas, which reduces costs of tax collection. Industry includes mining companies which are very large and also few and hence easy to monitor and audit for tax payment.

External aid (AID) has a negative and significant impact on tax buoyancy at all levels, indicating a major variable. Economic theory (tax handle) predicts a negative impact, which is in line with the results. The findings in this study suggest that high levels of external aid growth in COMESA have influenced the tax performance of developing nations negatively. The reason may come because an increase in foreign resources makes governments in the developing nations relaxed and due to fear of any political unpopularity the governments rely less on domestic resource mobilization. The results are in line with those of Quazi (1994), who found also that it was a major variable significant at all levels with the appropriate sign.

Fiscal deficit (DF) variable is significant at 5% with a negative coefficient of -.0165895 and a p-value of 0.011. The sign is not the expected, and this shows that as the deficit grows big it demotivates the respective authorities from improving their taxing strategies to raise revenue from taxes. The time trend coefficient (Trend) is significant at 5% with a negative sign. Implication is that tax performance is changing over time due to the presence of shocks. The variable explains the presence of time effects and hence economic shocks during the period under study. The possible reasons for such results can be explained by the presence of droughts, civil wars and political instability during the period.

Total expenditure (EXP) is significant at 5% significant level and reports a correct positive sign. This is in line with economic theory. The results for this variable are in line with what Teera (2000) obtained. The results indicate that as the total spending increases, this causes the tax system to be more buoyant, this is due to an extra effort to collect more revenue through taxation to finance the increasing spending.

Trade openness (XM) variable is not significant but has the correct sign; it has a probability value of 0.210. A positive sign was also obtained by Teera (2000) but significant at 5 % and 10% for the low-income group and SSA countries respectively. The possible reasons for such results include the undervaluation of imported goods which applies to most own-funds imports (Fjelstad, 1995). This is due to the fact that the importer has access to foreign exchange without going through central bank records. Administrative constraints and corruption at entry points increase the problem of undervaluation of imported goods (Basu and Morrissey, 1993: 22)

The overall model reported Adjusted R-squared of 0.3725. This tells us that approximately 37.25% variation in the annual tax buoyancy is explained by the explanatory variables included in the model. The obtained Adjusted R-squared by Begum (2007) reports a value 0.51 for total tax buoyancy regression and 0.46 for indirect tax buoyancy regression using pooled OLS, no justification was given for such results. It automatically reports to us that there are some variables that explain buoyancy that have been omitted. Some variables have been omitted such as the shadow variable (tax evasion) due to the problem of measuring it.

Conclusion and Policy Recommendation

Conclusion

The study has attempted to examine empirically the determinants of tax buoyancy in the developing nations using COMESA Member States' information for the period 2000-2009. The motivation of the study was to address the neglected quality dimension of tax performance leading to biased policies, low tax revenue collection against potential revenue that can be raised from national income, deterioration and shortage of public goods, continuous changes in tax rates that are also high as compared to developed nations leading to the rapid expansion of the hidden economy, persistent fiscal deficits and high growth rates of money supply.

Using a panel data, pooled OLS methodology we found out that monetization negatively affects tax buoyancy. This result suggests that monetization seems not to increase tax performance, instead it retards buoyancy levels. Possible reasons of this result may be due to the inability to utilize the growth of money supply to increase the documentation of the economies to increase the collection of each tax. The abuse of the printing of discretionary paper money to finance government activities in developing nations is a possible reason for such results. This reduces effort to raise adequate revenue from collecting taxes. Poor tax administration and also underdeveloped infrastructure may be possible reasons.

Apart from monetization, the study found that growth of agricultural sector, growth of industrial sector, external aid growth, fiscal deficit growth and total expenditure growth to be the determinants. The agricultural sector is still contributing positively to revenue generation processes despite the industrialization going on in developing nations. The industrial sector should be noted as it contributes significantly to tax performance. Respective countries can increase their tax buoyancy by actively encouraging growth in the agricultural and industrial sectors; they should not undermine one sector since both have positive impacts. Fiscal deficit growth and external aid growth have indicated a negative impact on tax performance.

Economic shocks to tax performance have been found to have negative impacts. Economic shocks were identified by the presence of time effects and their significance in the regressions undertaken. The main causes have been severe droughts due to inadequate rainfall, civil wars and political instability.

Policy Recommendation

Since our findings suggest a negative relationship between monetization and tax buoyancy, to reap benefits from monetization, COMESA Member States need to have strong links between fiscal and monetary sectors, improve tax administration through appropriate reforms, invest in the improvement of infrastructure to facilitate the collection of taxes and provide a stable macroeconomic environment. A strong link between fiscal and monetary sectors facilitates the utilization of the growth in money supply to improve tax performance through increased documentation of the economy. Improvement in tax administration will produce efficient taxing systems which discourages tax evasion and the growth of the hidden economy. Most of all there should be central bank independence from political authorities, the government activities should be financed not from discretionary paper money printing rather they should use other non-inflationary ways such as tax collection until the potential level of the economy has been reached.

Policies aimed at developing the domestic taxing systems are beneficial. The policies should be aiming at taking special considerations of the findings in the study. Factors aimed at taking appropriate decisions on variables like fiscal deficits and external deficits since they have been found to have a negative impact on tax buoyancy. In some COMESA countries there are few numbers of financial intermediaries, and stock markets are not well-developed; an effort to improve their significance will be an appropriate measure to be undertaken.

Development policies should not be biased towards the growth of one sector rather it has to be across all sectors. Both the agricultural sector and the industrial sectors have proved to be of significance in defining the level of tax performance, and hence they have to be treated without disparity.

Developing nations should however consider maintaining their taxing systems or improve them positively over time. The time trend variables have shown us that over time there is negative effect on tax buoyancy; there is actually a decline and this is to be prevented. Policies aimed at avoiding declining tax performance over time should be developed. Economic shocks like drought should be avoided through forecasting and mitigation strategies developed.

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Trade liberalization and competition policy in the Regional context:: The case of Common Market for Eastern and Southern Africa

Jackie Nankunda

Trade liberalization and competition policy have turned into a global necessity to which regional integration is exposed. There is little doubt that free trade triggers competitive pressures, which can act as a substitute to competition policies. Likewise, anti-competitive practices may reduce the benefits of trade liberalization, hence calling for strengthening of basic competition principles and rules. The purpose of this paper is to discuss the linkages between trade and competition policies with a view to finding out whether trade liberalisation and effective competition policies are substitutes or complementary. The paper exclusively looks at trade liberalization and competition policy in Common Market for Eastern and Southern Africa (COMESA) and the challenges the region faces in ensuring fair competition in its liberalized markets.

1. Introduction

Over the last decade, regional integration efforts intensified in both developed and developing countries. Many regions witnessed the expansion and deepening of the degree of regional integration. In Europe, the European Union (EU) established the single market and its four freedoms: the free movement of goods, services, people and money in 1993.[114] In North America, the North American Free Trade Agreement (NAFTA) was launched in 1992.[115] In Africa, several regional initiatives have been pursued, particularly; the Common Market for Eastern and Southern Africa (COMESA) was established in 1994.

Similarly, concerns about competition and trade have emerged as major issues on the global trade agenda due to an increasingly liberalized world economy. Globalization has lowered trade barriers and paved the way to the efficiency benefits from markets. The World Trade Organization (WTO) was established in response to the spreading globalization.[116] The topic 'trade and competition policy' was put on the WTO agenda at the Singapore Ministerial meeting in 1996.[117] Trade liberalisation has a significant impact on firm-market dynamics in a regional context. The purpose of intra-regional trade liberalisation is to facilitate trade within a regional economic space and through enhanced trade opportunities to elicit firm-level decisions to expand productive capacity.

As trade liberalization advances, the question arises as to whether a global and coherent approach to competition policies is needed. Notably, competition policy has an important role to play in regional development, both in promoting a competitive environment and in building and sustaining public support for a pro-competitive policy. In this connection, Fox has argued that trade liberalization and competition law should work hand in hand to anchor these benefits.[118] On one hand, trade liberalization triggers competitive pressures, which can act as a substitute to competition policies while on the other hand, anti-competitive practices may reduce the benefits from trade liberalization, hence calling for reinforcement or the introduction of basic competition principles and rules.

COMESA has made great advances to trade liberalization as most of its member states have already liberalised their import and export licensing and other non-tariff barriers. The goal of COMESA is to establish an effective market integration of its members where movement of trade, services, capital and investment are free. COMESA believes that the globalisation of production, distribution and exchange requires this process. However, cross border anti-competitive practices may negate the benefits of trade liberalization and regional integration efforts. Market distortions, regional cartelization schemes as well as other anti-competitive practices at the regional level can distort domestic markets and might be efficiently dealt with through regional cooperation on competition policy. The role of competition policy in promoting competitiveness and increasing efficiency is thus recognized.

114 EUROPA, Internal Market. Available at http://europa.eu/pol/singl/index_en.htm (visited 26 January 2010).
115 NAFTA Secretariat, North American Free Trade Agreement. Available at http://www.nafta-sec-alena.org/en/view.aspx?x=343&mtpiID=ALL (visited 26 January 2010).
116 The World Trade Organization is an international organization that was established in 1995 whose primary purpose is to open trade for the benefit of all. Available at http://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm. (visited 26 September 2009).
117 Singapore WTO ministerial 1996: Ministerial declaration wt/min (96)/ Dec adopted on 13 December 1996.
118 Eleanor Fox, 'Economic development, poverty and anti-trust: The other path' (2007) 13 South western Journal of Law and Trade in the Americas 211 at 216.

Competition law and policy is commonly a salient element of trade agreements as it aims at guaranteeing a level playing field for doing business for new entrants and national actors alike. Competition policy is an instrument through which governments ensure that their markets are functioning efficiently, competitively and in the interests of consumers.[119] It is accepted that competition policy is a broad term that encompasses competition law.[120]

Openness to trade has been seen as an important element of a sound economic policy and trade liberalization as a necessary element of achieving it.[121] Trade liberalization does not have a specific definition; nonetheless, some authors have attempted to define it. Shafaeddin defines trade liberalization 'as any act that would make the trade regime more neutral -nearer to a trade system free of government intervention.'[122] Edwards defines trade liberalization 'as any policy that reduces the degree of anti-export bias.'[123] Trade liberalization is of essence because it is one of the most prominent characteristics of globalization and it reduces the barrier to international trade in goods and services, one of the main drivers of globalization.[124]

2. Interface between trade liberalization and competition policy

The existence of multiple linkages between trade and competition policies is well known. Trade and competition policies might work at cross-purposes, hence the need to explore their interface.

There appears to be a convergence on at least two points. The first is that trade liberalization and competition policy share broadly similar goals, are interrelated, and are partly overlapping. Competition policy preserves and promotes competition as a means of ensuring the efficient allocation of resources in an economy and this should eventually result in fair prices and adequate supplies for consumers.[125] Correspondingly, with trade liberalization many players enter the market and this lowers or eliminates barriers to trade in goods by opening foreign markets to goods from abroad, and bringing competition to bear on domestic producers.[126] Therefore, trade liberalization can have a significant impact on competition and markets.

The second is that both affect access to markets by seeking greater efficiency in the production and allocation of goods and services through the removal of barriers to the competitive process.[127] This common goal of market access also coincides with the central function of the WTO, which is to ensure equality of competitive opportunities for Members in the world trading system.[128] The interface between competition policy and trade liberalization is evident if one considers that they converge at a common goal of encouraging cross-border competition. These two policies can be mutually supportive since their shared goals and objectives suggest teaming rules against private anti-competitive behaviour with rules on the elimination of government barriers to international trade.

Tojo has raised a clear difference between trade policy and competition policy.[129] He notes that trade policy is 'international' in nature and addresses government-imposed barriers to trade in contrast with competition policy that addresses privately erected barriers to competition. Because of the nature of trade policy, it is only natural that trade liberalization has progressed through diplomatic negotiations among nations.[130] Therefore, trade policy at least in a practical meaning, concerns export interest of supplier groups as a distinct objective, as well as enhancing national economic welfare.[131] This is in contrast with competition policy, which is originally 'domestic' in nature and concerns national economic welfare within the jurisdiction primarily.[132] Accordingly, competition policy has been enforced under national law in accordance with each nation's ability and incentive without any effective international adjustment.

From the above, it can be concluded that competition and trade policies share a complementary underlying rationale.

119 Jonathan Faull and Ali Nikpay, The EC Law of Competition (1999) 4.
120 Bernard Hoekman and Peter Holmes, Competition policy, developing countries, and the World Trade Organization Policy. Research Working Paper . Available at http://go.worldbank.org/ZVFDAEFDQ0 [visited 21 February 2010].
121 S M Shafaeddin, Trade liberalization and economic reform in developing countries: structural
122 S M Shafaeddin, Trade liberalization and economic reform in developing countries: structural change or de-industrialization? Available at http://www.unctad.org/en/docs/osgdp20053_en.pdf. [Visited 21 February 2010].
123 Sebastian Edwards 'Openness, trade liberalization, and growth in developing countries (1993) 31 Journal of Economic Literature 1358 at1364.
124 McCulloch et al (note 9) at 5.
125 Pradeep S. Mehta and Smita John, Trade liberalization and competition policy. Available at http://www.cuts-international.org/pdf/Viewpoint-TradeLiberComp.pdf [visited 21 February 2010].
126 Kevin C. Kennedy, 'Global trade issues in the new millennium: Foreign direct investment and competition policy at the World Trade Organization' (2001)33 George Washington International Law Review 585 at 589.
127 Friedl Weiss, 'From world trade law to world competition law (2000) 23 Fordham International Law Journal 250 at 256.
128 Ibid.
129 Yoshizumi Tojo, Trade and competition policy in a global economy: convergence or divergence. Available at http://www.jftc.go.jp/eacpf/06/6_01_09.pdf [visited12 March 2010].
130 Ibid
131 Ibid.
132 Ibid.

When pursued effectively, trade liberalization and the application of competition policy are complementary and mutually reinforcing. Similarly, the establishment and enforcement of effective competition laws and competition policies can generally go a long way toward assuring the conditions that are conducive to expanding and sustaining liberal trade. In the absence of an effective competition policy, the benefits of trade liberalization may be compromised as a result of restraints on trade by private or public firms. Conversely, in the absence of a sustained process of trade liberalization, the impact of competition policy in promoting the contestability of markets is limited.

3. The World Trade Organization debate on trade and competition policies: the developing country perspective

The greater integration of markets across countries which has come about as a result of multilateral and unilateral reductions in border barriers to trade has led to increased attention to the interface of trade and competition policies.[133] In order for developing countries to minimize the potential negative consequences of implementing some WTO Agreements, an active broad-based competition law should be developed and implemented.[134] This can and should be done independently of the WTO, that is, no international disciplines are needed.[135]

The proposals for multilateral competition rules have been quite controversial and have been opposed by many developing countries.[136] They believe that the demands for multilateral competition law standards are motivated by a concern to help multinationals, headquartered in the North, to break into their economies, without any concern for the effect that this might have on workers and small industries in their markets.[137]

Particularly, some developing countries have expressed concern in the WTO working group that limited cooperation mechanisms that are voluntary in nature and are premised on the existence of effective antitrust enforcers in their jurisdictions will not help them to deal with international and export cartels practices given their limited capacity.[138] For low-income economies with limited antitrust enforcement capacity, an approach centered on national enforcement may not have a positive payoff since it would impose implementation costs for countries without competition laws.[139]

The WTO competition-policy arrangement has very limited prospects for dealing with problems of competition law enforcement and improving market access especially in the developing countries.[140] The success of the WTO approach has generally rested on the negotiation of reasonably specific rules to prohibit certain governmental actions that restrict market access for foreign suppliers[141]. Two features of competition policy raise serious doubts as to whether a useful code could be negotiated. First, there is little hope of agreement on specific rules. Second, because the rules of the code would apply to governments, they would be one step removed from the private conduct that might deny market access.[142]

The WTO approach seeks to ensure non-discriminatory market access to foreign markets through the progressive liberalization of governmental barriers to market access and by means of its inter governmental system for the settlement of disputes.[143] However, in its debate on the interaction between trade and competition policies, the working group has given priority to governmental market access barriers and trade-related aspects thereof, rather than to country- specific internal non-discriminatory competition policies that differ from country to country without impairing the market access commitments under WTO law.[144]

4. Advances of the interface between trade and competition in the COMESA region

The process of regional integration emphasizes the linkages between trade and competition. Countries in COMESA have engaged in a variety of trade liberalization initiatives such as Regional Trade Agreements (RTAs). This high

133 Peter Lloyd and Gary Sampson, 'Competition policy and trade policy: Identifying the issues after the Uruguay round' (1995) 18 World Economy 681 at 685.
134 Hoekman and Holmes (note 8).
135 Ibid.
136 Philip Marsden, Competition policy at the WTO. Competition Law Insight (2002) issue 1 at 6.
137 Ibid.
138 Bernard Hoekman and Petros C Mavroidis, 'Economic development, competition policy and the WTO policy.' Research working paper 2917 (2002) at 22.
139 Ibid.
140 Daniel K. Tarullo, 'Norms and Institutions in global Competition Policy' (2000) 94 American Journal of International Law 478 at 490.
141 Ibid.
142 Ibid.
143 Weiss (note 15) at 261.
144 Ibid.

trade dependency means that trade liberalization can induce large structural changes in the COMESA countries. The trade and competition relationships are increasingly influenced by RTAs. The Declaration of the WTO Ministerial Conference noted that RTAs can promote further liberalization and may assist developing economies in integrating into the international trading system.[145] Competition provisions in trade agreements have a positive impact. Since trade agreements are market agreements and competition laws regulate markets, competition law provisions in the COMESA trade agreements are deemed a necessary complement to regional trade liberalization measures.

The COMESA economic integration agenda through a process of gradual reduction of tariffs and non-tariff barriers among COMESA member states has facilitated market integration across national borders of COMESA countries and given rise to a considerable increase in intra-COMESA Trade. In fact, some COMESA Member States are now trading at a zero tariff following the launch of the COMESA Free Trade Area (FTA) in October 2000. However, the elimination of tariffs and the lowering of non-tariff barriers in the FTA has stiffened competition in intra-regional trade and there is a danger that benefits created by integration may not filter down to the people of the region. In order to ensure fair competition and transparency among economic operators in the region and to protect the weak from the powerful, COMESA's trade and competition policies should be mutually supportive to address issues of unsustainable influx of imports, protection for infant industries, subsidies and dumping.

Nevertheless, COMESA has adopted regional competition regulations. Their primary aim is to promote fair competition aimed at boosting regional trade and investment and the maximization of consumer welfare in the COMESA region through an effective regional competition framework.[146] Despite a general widespread trend towards the adoption, reformulation and better implementation of competition laws and policies in COMESA countries, many of these countries still do not have up-to-date competition legislation or adequate institutions for their effective enforcement. This may lead to anti-competitive practices that hinder or negate the realization of benefits that should arise from liberalization of tariff and non-tariff barriers affecting the trade and development of COMESA countries.

Developing countries, a class in which COMESA countries fall, have not been at the centre of the debate on trade and competition in the WTO.[147] They are concerned about the possible adverse consequences of an international competition rule on domestic industrial policies. Since many do not have competition laws and associated enforcement institutions or have limited implementation ability, it is impossible to assess the full implications of a competition agreement. In the first instance, developing countries foresee major costs in overhauling existing domestic legislation or introducing new legislation and overcoming their lack of expertise to comply with a possible agreement.[148] Some members also feel that each country has to implement its own competition policies to fit its specific needs, and a single common international rule could not replace a domestic competition regime.[149]

Since the trade and competition topic debate was placed on the WTO agenda, an important question for developing country policymakers is what this will imply for their ability to adopt anti-trust and competition policies that are in the national interest. This has led many specialists to recommend that developing countries pursue a broad-based competition policy that encompasses all actions governments may take to promote competition, including trade liberalization, measures to facilitate domestic entry into industry and services, de-monopolization of sectors, and imposition of hard budget constraints on public enterprises.[150] Therefore, implementing a trade-bloc competition law for COMESA is highly recommended.

From an economic integration point of view, the interface between trade and competition policy is important as it allows competition authorities to be able to challenge extra-territorial cases. This is even more important for industries such as the cement, energy, and telecommunications, however due to their institutional, legal or market characteristics; they are likely to face antitrust practices.[151] These industries have undergone changes from being local oligopolies to conform to global oligopolies. This makes them more likely to perform an antitrust practice at a regional level, depending on their particular characteristics.

The interplay of trade and competition policy measures at a national as well as a regional level often provides confusing signals to firms engaging in production and cross-border trade.[152] In a liberalized setting such as COMESA

145 At Para 7 of the DOHA WTO Ministerial Declaration 2001. Available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#interaction [visited 15 March 2010].
146 Art 2 of COMESA Competition Regulations, December 2004
147 Hoekman and Holmes (note 8) at 11.
148 Mikyung Yun, Trade and competition policy in WTO. Available at http://www.unescap.org/tid/publication/chap7_2161.pdf [visited 23 March 2010].
149 Ibid.
150 Hoekman and Holmes (note 8) at 11.
151 Marcos Avalos 'The interface between trade, competition policy and development.' Regional Seminar on Trade and Competition: Prospects and Future Challenges for Latin America and the Caribbean Caracas, Venezuela 20 - 21 April 2009 SP/SRCC-PFDALC/DT N° 2-09 at 8.
152 Martine Visser and Trudi Hartzenberg, Trade liberalization and regional integration in SADC: Policy synergies assessed in an industrial organisation framework, Forum

FTA, the lowering of tariffs associated with liberalization often makes it more difficult for smaller firms in the region to enter these liberalized markets. The lack of trade and competition policy co-ordination, and the often conflicting policy aims and directions of the participating Member States can negate any attempts at stimulating fair competition within the region.

More importantly, the kind of conflict that may arise between trade and competition policies in COMESA concerns small and medium-firms. While trade policy measures strive to create entities of a critical size in which economies of scale can be achieved, they are likely to be detrimental to the viability of smaller enterprises.[153] As a result, they are likely to oppose the objective of the competition policy. However, trade and competition measures will certainly be compatible if both the regional competition regime and trade liberalization initiatives in COMESA target the achievement of higher level of competition. For example, the lowering of tariff and non-tariff barriers stimulates the free circulation of goods and increase competition. This augmented competition is likely to be in turn an effective means to reduce the efficiency of anti-competitive practices, such as cartel behaviours.[154]

It has been argued that regional trade liberalization by lowering prices stimulates competition. Although this leads to higher regional demand and supply, it also contributes to lower profits which forces less efficient firms to exit the market.[155] Firms that survive this competition process increase their market share which allows them to further exploit economies of scale.[156] Therefore, trade liberalization in oligopolistic markets can generate a welfare improving concentration effect with lower prices and lower average costs.[157] Thus, the potential for abuses of dominant positions are more likely in the case of regionalism, suggesting the need for an effective competition policy.[158]

Given that most of the flow of direct foreign investment occurs through international mergers,[159] the increase of these international mergers may pose a significant threat to competition in COMESA countries. These mergers may result in a high level of market power for the subsidiaries of the international corporations that operate in the COMESA. This may create barriers to entry and reduce significantly markets contestability or could damage the wellbeing of a country.[160] The extent of trade liberalization and globalization of business activities that have taken place in the present COMESA countries resulting into anti-competitive practices of enterprises necessitates the implementation of a vigorous regional competition policy to respond appropriately to these concerns.

Increased globalization has meant that a higher percentage of competition cases now have significant regional and international components. As trade and investment liberalization reduces entry barriers, firms may have greater incentives to engage in anti-competitive practices and mergers, which would limit market access by firms. Mere liberalisation of trade is not sufficient to create an integrated and competitive COMESA market. This underscores the continuing need for effective implementation of the regional competition policy through increased cooperation.

By comparison, there has been successful implementation of competition policy in the EU. Although Member States have their own competition laws, an overarching competition policy is in place that aims at ensuring that competition in the union is not distorted and eliminate existing anti-competitive distortions and to prevent potential anti-competitive situations from emerging.

It should also be noted that, for trade liberalization and competition policies to be addressed, state measures should go beyond mere competition advocacy. For example, the EU encompasses both legislative and executive functions relating to the reform of government measures affecting competition under which anti-competitive restraints are declared unlawful.[161] In addition, the EC Commission or the Court of Justice can declare a law or a regulation of a single Member State to be contrary to the Treaty because it allows companies to violate the competition rules.[162]

It should be noted that the level of addressing anti-competitive practices tends to depend on the type and degree of regional integration. The ultimate form of integration is the EU with deeper forms of integration, such as, the

paper 13-15 October 2004.

153 Dominique Foray, Pauline Rutsaert and Luc Soete, The coherence of EU trade, competition, and industry policies in the high tech sector: The case of the telecommunications services sector. A paper prepared for the International Conference on EC Policies on competition, industry and trade: Complementarities and conflicts (27-28 October 1994) Louvain-la-Neuve at 5.

154 Ibid.

155 Sanoussi Bilal and Marcelo Olarreaga, 'Regionalism, competition policy and abuse of dominant position' (1998) 32 Journal of World Trade 3 at 14.

156 Ibid.

157 Ibid.

158 Ibid.

159 Avalos (note 39) at 9.

160 Ibid.

161 Anderson and Heimler, 'What has Competition Done for Europe? An Inter-Disciplinary Answer' (2007) 62 No 4 Aussenwirtschaft at 419.

162 Ibid.

European Economic Area, the Europe Agreements, and the European Free Trade Area (EFTA) where the community competition rules have precedence over national rules in a complementary manner thus respecting the principle of subsidiarity in the enforcement of competition rules.[163]

The EU's major contribution, from which COMESA could learn has been its attempts to overcome the distortions and restraints in the internal market that arise as a result of different regulatory approaches among its Member States, approaches, such as, consumer protection, health and State monopolies especially those found in electric power and telecommunications.[164]

Another important lesson for COMESA with regard to trade and competition policies in the EU is the idea of a single market imperative. The EU competition policy has greatly contributed to the single market where internal barriers to trade with the community are dismantled and goods, services, workers and capital have complete freedom of movement and this encourages trade between Member States by facilitating cross-boarder transactions and integration.[165] The unification of the single market has sometimes enabled the community authorities to take decisions prohibiting behaviour that a competition authority elsewhere would not have reached. [166] The same principles of competition policy that operate in the single market of the EU would be a necessary feature in the COMESA as abuses that are harmful to the community would be condemned.

Although competition policy as it is practised in the EU is very much a European creation with deep roots of trade liberalization and advanced level of development, it is needless to say that taking account of the experience within the Community carries important insights and lessons for COMESA. With some of the advances of interaction between trade and competition, it is important to look at some of the future challenges of competition and trade policy interface, which will be addressed in the next section.

5. Trade and competition: potential future challenges and tensions in the COMESA

The challenge in maintaining fair competition and consumer welfare in the face of trade liberalization should not be underestimated.

The impact of mergers involving multinational enterprises and the capacity to deal with the impact of such mergers on competition in their domestic markets is a major concern in developing countries.[167] A case in point is where a merger of two or more parent firms does not produce structures that restrict competition in their countries of origin. For example, owing to their relatively small share in those bigger markets, and yet would create such structures in the context of their subsidiary companies in developing or small countries where they operate, owing to the new market dominance they may have acquired in those countries as a result of the merger in the countries of origin.[168] Moreover, even if the competition agency of a developing country refuses to authorize a merger of subsidiary companies in its national market, it will not prevent the merger in the country of origin.

Even in the absence of barriers to external trade, the potential benefits of trade liberalisation in COMESA may not be realised. Member States should simultaneously take steps to address anti-competitive practices and structural barriers to development such as private and public monopolies in infrastructure sectors, domestic and international cartels that raise business input costs and reduce the welfare of consumers, and restrictions on entry, exit and pricing in manufacturing and other industries.

For COMESA to be able to deal with monopolistic practices that assume a cross-border position and guarantee the potential benefits of trade liberalization there is a need for cooperation on competition policy at a regional level. This may be done by concluding a regional free trade agreement that would include provisions on competition policy. Such agreement would deepen the knowledge of competition policy and its relation to trade policy, the implementation of competition law and policy in the region. Additionally, promoting cooperation and coordination would contribute to the construction of regional norms on competition policy

The main concern arises on how the advancement in terms of coordination amongst countries in the region, will allow the development of a more ambitious regional cooperation and even more with respect to competition policy

163 Rebecca Schoenfeldt, 'Competition Laws of the European Union in the face of the new single currency market' (2000) 33 The John Marshall Law Review 715 at 718.
164 Kalypso Nicolaidis and Raymond Vernon Competition Policy and trade policy in the European Union (1994) 306.
165 Richard Whish, Competition Law, 6ed (2009) 22.
166 Ibid.
167 WTO, 'Report of the Working group on the interaction of trade and competition' WT/WGTCP/W/80 18 September 1998.
168 Ibid.

in the context of globalization and COMESA countries being at different levels of development and implementation of competition policies. If the competition policy is not properly implemented, competitive behaviour of private monopolies, oligopolies or mergers will hamper markets as they pool their efforts together to take advantage of the wider market. With regard to the institutionalism and the enforcement of the competition policy in the COMESA, it is clear that an increase in reaching significant advances that will give a greater juridical certainty to trade and competition issues is needed.

A notable challenge to the interaction of trade and competition is when COMESA countries with firms that have market power in other COMESA economies may have incentives to permit them to get organized in cartels outside the country in order to extract their monopoly benefits abroad. Although the competition policy exists in the domestic market, it may be difficult for the domestic competition policy to regulate the export cartels in foreign countries and at the same time eliminate their monopolistic power in the domestic market. In this connection, Auquier and Caves argue that the cartel activities tend to spill over to the domestic industries and sustain those countries that export the major share of their tradable goods, have been more tolerant with anti-competitive actions in their economy.[169] For instance, the European Economic Community (EEC) placed great importance on the collective control of agricultural prices as part of the process of removing barriers to trade.[170] The COMESA should be aware that the current economic crisis encourages cartels as firms are much more prompted to collude in an environment of low demand.

As a result of lack of a harmonized competition and trade liberalization policy at the national and regional level, the business environment in COMESA Member States may not ensure equity and fairness through a predictable and level playing field. As a consequence of this unfair business environment, transnational corporations engage in restrictive business practices in which local and small companies are prevented from gaining the full benefits of globalisation.

Given the widespread interest in preventing anti-competitive activities, COMESA countries should be encouraged to ensure that they have in place an adequate set of competition rules and that these are effectively enforced. Competition law enforcement agencies should be established and avail themselves of the opportunity to increase mutual dialogue, understanding and cooperation. In this regard, the challenge for competition law enforcement agencies in COMESA will be to promote and safeguard open and competitive global markets for the benefit of the region's consumers and producers. However, for this to be done effectively there is a need of some form of cooperation between the agencies.

The need for the governments of the COMESA to analyze the various aspects related to the issue of trade and competition policies is very important. It is thus necessary for the COMESA Secretariat to conduct systematic activities involving debates, updates and trainings as regards the issues of trade and competition in connection with the economic and social development needs of COMESA countries. In sum, trade policy and competition policy in the COMESA should be regarded as complementary although there are may be conflicts between the two policies.

In order to survive and prosper in a fast globalizing world with developments in the commercial world which are impacting on competition particularly mergers, acquisitions or take-overs taking place among airlines, banks, cement manufacturers, sugar producers, oil companies and other enterprises as they seek to re-position themselves in the globalising world economy, competition and trade liberalization policies should be mutually supportive.

6. General conclusion

The process of regional integration emphasizes the interface of trade and competition. However, this interface is a multifaceted one. This paper dedicated itself to a study of whether trade liberalisation and the implementation of an effective competition policy are substitutes or complements. It has been argued that trade liberalization reduces the need for competition policy, as anti-competitive practices are less feasible in an open economy even when markets are relatively concentrated. Similarly, while trade liberalisation, by fostering competition, can sometimes act as a substitute to a pro competitive regime, in most cases a high degree of complementarity between trade and competition policy is necessary.

This interface provides significant challenges as COMESA region becomes more integrated in terms of not only trade and but also other cross-border economic activities. Therefore, the importance of a competition policy at a national,

169 A A Auquier and R. E. Caves, 'Monopolistic Export Industries, Trade Taxes, and Optimal Competition Policy.' (1979) 89 Economic Journal 559 at 569.
170 Ibid.

regional and multilateral level increases. Similarly, in the case of regional integration agreements among developing countries such as COMESA countries where market failures are due to imperfect competition, there is a need for a regional co-ordination of competition and trade policies. Therefore, COMESA should take all necessary measures to establish equal opportunities for all enterprises operating within the region in order to ensure fair competition and promote efficiency, economic growth and development.

While trade liberalization policies are of vital importance in fostering competition in developing countries, competition policy has an important role to play both in promoting a competitive environment and in building and sustaining public support for a pro-competitive policy stance by the government; priority should be given to eliminating barriers to trade. Competition legislation is also required to allow countries to combat the possible anti-competitive implications of certain WTO agreements. Therefore, it is recommended that developing countries ensure that they implement a pro-active, broad-based competition policy that fosters a liberal trade.

Many challenges lie ahead for COMESA as countries continue to engage in trade liberalization initiatives without a competition law regime. Therefore, COMESA countries must establish effective competition law regimes in order to deal with anti-competitive behaviour and arrangements through appropriate regulatory and institutional mechanisms and to ensure that the benefits of liberalization and market reform are not undermined by anti-competitive restraints.

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The Tripartite Free Trade Area and its Implications

Derk Bienen

The establishment of a Tripartite Free Trade Area (TFTA) which would combine the members of three existing regional economic communities, i.e. the Common Market of Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC), was decided at the 2008 Tripartite Summit. The purpose of the TFTA will be to harmonise trade arrangements among SADC, COMESA and EAC, improve the movement of persons within the region, facilitate the joint implementation of infrastructure projects and enhance co-operation of members.

One of the TFTA's objectives is to help avoid the problems of overlapping membership in regional economic communities. However, this benefit will only materialise if the TFTA will replace the existing communities, at least in the long term. Otherwise, it would create another layer of regional integration and might even further complicate trade and hence increase transaction costs for both importers and exporters.

The TFTA, COMESA, EAC and SADC therefore need a strategy for harmonisation. This will have to address legal, policy, economic and institutional issues. The future roles of the communities and their institutions under the new TFTA framework need to be defined in such a way as to avoid duplication of responsibilities and inefficient use of resources.

The paper provides ideas for the definition of such a strategy. Based on a review of regional integration processes in the Caribbean as well as lessons drawn from the political economy of regional integration a proposal is developed on how the TFTA could be implemented and what the roles of the regional economic communities would be within the TFTA framework. Based on the proposal, both COMESA and SADC would lose some of their responsibilities while the EAC and the Southern African Customs Union (SACU) would continue to operate as poles of regional integration within the framework of the TFTA.

A. Introduction

The establishment of a Tripartite Free Trade Area (TFTA) which would combine the members of three existing regional economic communities, i.e. the Common Market of Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC), was decided at the 2008 Tripartite Summit. The purpose of the TFTA will be to harmonise trade arrangements among SADC, COMESA and EAC, improve the movement of persons within the region, facilitate the joint implementation of infrastructure projects and enhance co-operation of members. Finally, at the Summit the ultimate goal of the TFTA was to establish a Customs Union that involves the Tripartite Member States.

One of the TFTA's objectives is to help avoid the problems of overlapping membership in regional economic communities. However, this benefit will only materialise if the TFTA will replace the existing communities, at least in the long term. Otherwise, it would create another layer of regional integration and might even further complicate trade and hence increase transaction costs for both importers and exporters.

The TFTA, COMESA, EAC and SADC therefore need a strategy for harmonisation. This will have to address legal, policy, economic and institutional issues. The future roles of the communities and their institutions under the new TFTA framework need to be defined in such a way as to avoid duplication of responsibilities and inefficient use of resources.
The aim of the paper is to provide inputs for the definition of such a strategy. Based on a review of regional integration processes in the Caribbean as well as lessons drawn from the political economy of regional integration, it provides recommendations for the future relationship between the TFTA and the three regional economic communities (RECs).

B. A Glimpse on the Status Quo

The establishment of the TFTA will be a unique step in history as it will combine three already existing RECs. The process of merging will be confronted with a number of challenges – mainly regarding the harmonisation of structures and procedures of the RECs – which no other regional integration arrangement has experienced. In order to study these challenges, three issues need to be considered: First, the appropriateness of the current plans for the establishment and operation of the TFTA as laid down in the Draft Report on Establishing the Tripartite FTA needs to be analysed. Second, the ongoing process of deepening the existing RECs toward customs unions and common markets will have implications for overlapping membership issues and the justification of establishing the TFTA. Finally, the ongoing processes in the RECs and the plans for the TFTA need to be aligned.

B.1 The Draft Report on Establishing the Tripartite Free Trade Area and Overlapping Membership Issues

In early November 2009, the Tripartite Coordination Mechanism prepared a road map for the TFTA, the "Draft Report on Establishing the Tripartite Free Trade Area" (hereafter Draft Report).[171] The Draft Report includes the "Draft Agreement Establishing the Tripartite Free Trade Area" (hereafter Draft Agreement) and a road map for the establishment of the TFTA, along with an explanation of the proposed rules for the TFTA.

The Draft Report argues that the TFTA will bring about a number of benefits to its members. One of them, arguably the key benefit of the TFTA as mentioned in the Draft Report is that it will help avoid the problems of overlapping membership in RECs (§§36f).

Overlapping membership create problems both for member governments, business and regional integration at the macro level. For governments, membership costs are higher. What is more important, there is a high likelihood that the programmes and activities of the different RECs are contradictory, thereby causing inconsistencies in members' regional integration policies as well as creating contradictory obligations and loyalties to the different RECs. Most importantly, once RECs develop into customs unions, overlapping membership will only be possible if all customs unions always apply the same common external tariff (CET).

For businesses, overlapping membership increases costs due to more complicated and less transparent rules for cross border trade – depending on whether the trading partner is a member of one or the other REC, conditions of trade will vary. For example, different rules of origin and customs procedures will be applied.

Finally, at the macro level duplication of efforts and conflicting regional integration policies slow down "integration, reducing the regional economic communities' effectiveness, and stretching thin limited financial resources"[172] .

The Draft Report, drawing on UNECA's assessment of regional integration in Africa, explicitly refers to a number of potential gains from the removal of overlapping membership:

Efficient allocation of resources; increased trade between member countries and countries outside the region; gain in economies of scale; strong negotiating position; welfare gains, improved productivity; higher wages; policy credibility; more efficient provision of public goods; and fewer regional conflicts. As the challenges of globalisation become more pronounced, regional integration holds potential towards economic diversification and increased competitiveness of the region's constituent economies. (§37)

However, the Draft Report fails to answer how the TFTA will help to achieve these benefits. For instance, some benefits would already result if the existing RECs harmonise their policies and procedures. Indeed, as we will see below, such harmonisation is already under implementation in a range of issues, so that the importance of actual costs of overlapping membership is probably less high than the theoretical arguments suggest.

Nevertheless, the benefits of removing of overlapping membership will only materialise fully if the TFTA will replace the existing RECs. Otherwise, it would create an additional layer of regional integration and might even further complicate trade and hence increase transaction costs for both importers and exporters. Even if the three RECs harmonise their procedures (the Draft Report mentions this as another benefit of the TFTA), some issues, such as rules of origin, cannot be harmonised as long as different RECs continue to exist.

171 Tripartite Coordination Mechanism 2009: Draft Report on Establishing the Tripartite Free Trade Area, Version of 11 November 2009, COMESA-EAC-SADC.
172 UNECA/AU 2006: Assessing Regional Integration in Africa II: Rationalizing Regional Economic Communities, Addis Ababa, p. xvf.

In the long run therefore, the TFTA should replace the existing three RECs. Such a long-term perspective is presented in the Draft Report, but only vaguely. The Draft Report stipulates that the “assumption has been made that the FTA trading arrangements of each of the three RECs will be replaced by the Tripartite Free Trade Area arrangements upon full implementation” (§179). Note that this refers only to “FTA trading arrangements” of the existing RECs, not to the RECs as such; furthermore, there is no definition or target date for the “full implementation” of TFTA arrangements.

The Draft Agreement, for its part, does not entail the long term vision of the TFTA replacing the existing RECs. However, it does address potential conflicts by giving priority to the TFTA: “In the event of inconsistency or a conflict between this Agreement and the treaties and instruments of COMESA, EAC and SADC, this Agreement shall prevail to the extent of the inconsistency or conflict” (Art. 41(2)).

B.2 The Ongoing Deepening of Existing RECs and Overlapping Membership Issues

Independently of the TFTA, COMESA, EAC and SADC have been advancing their internal integration processes at an accelerated speed in the recent past. The COMESA FTA, which was launched in 2000, today comprises 16 of the 19 Member States (all but DR Congo, Eritrea and Ethiopia). The COMESA Customs Union was launched officially in June 2009 and is currently in the process of being implemented.

The EAC is both the most recent and most advanced of the three RECs. Following its establishment in 2000 the Customs Union was launched in 2005. The EAC Members are now working towards the establishment of a Common Market in 2010, subsequently a Monetary Union by 2012 and ultimately a Political Federation of the East African States.

Finally, the SADC FTA was launched in August 2008. According to the SADC Regional Indicative Strategic Development Plan, further integration will include the establishment of a Customs Union by 2010, a Common Market by 2015, a Monetary Union by 2016 and a single currency by 2018. Furthermore, five SADC Members are also Members of the Southern African Customs Union (SACU), which is also open for accession by new members. In fact, several SADC countries – notably Mozambique, Zambia, Malawi and Zimbabwe – have been named as potential contenders for extended SACU membership (Soko 2007). The relationship between expanding SACU Membership and creating a SADC Customs Union remains somewhat unclear.

In sum, all of the three RECs have reached the status of customs unions (or, as in the case of SADC/SACU have a separate organisation comprising a subset of Member States). Thus, assuming that all COMESA FTA Members are also going to be Members of the COMESA Customs Union, of the 26 potential TFTA Members 21 – all but Angola, DR Congo, Eritrea, Ethiopia and Mozambique – are already Members of existing customs unions. Three of these have an overlapping membership in two customs unions: Kenya and Uganda in COMESA and EAC, and Swaziland in COMESA and SACU. However, if SADC is launching its Customs Union in 2010 as planned, the problem of overlapping membership will become quite acute.

As mentioned, overlapping membership of a country in two customs unions is only possible if both customs unions have the same CETs. This is actually planned for the COMESA customs union, whose CET is harmonised with the EAC CET. Conversely, the COMESA customs union and SACU CETs are not aligned. Therefore, unless SACU and COMESA can agree on harmonised external tariffs, Swaziland cannot be a member of both the COMESA customs union and SACU and has to decide to which of the two customs unions it wants to belong. Other countries which are both members of SADC and COMESA – DR Congo, Madagascar, Malawi, Mauritius, Seychelles, Zambia and Zimbabwe – will face the same decision when the SADC customs union is launched.

In addition to the deepening of integration taking place within the RECs various initiatives of harmonisation among RECs are also under way. The harmonised CET in COMESA and the EAC is one important example. Other areas of harmonisation include the regimes on rules of origin in COMESA and EAC. At the Tripartite level, a common approach has been adopted for elimination of non-tariff barriers to trade, and the work programme also covers harmonisation in a wide range of areas including infrastructure, energy, trade in services, movement of business persons, customs procedures, health and technical standards, unfair trade practices and institutional arrangements.[173] However, it should be noted that harmonisation in many of these areas presently still is at an early stage.

173 COMESA 2010: Brief on COMESA Customs Union.

B.3 Summary: the Added Value of the TFTA in Addressing Overlapping Membership Issues

Summarising the two strands of developments both within the existing RECs and with regard to the TFTA the picture is that significant efforts are being made with regard to harmonisation among RECs while the provisions in the TFTA for the eventual replacement of RECs by the TFTA are "weak". What does this mean for the establishment of the TFTA?

One could be tempted to say that the stronger harmonisation is among RECs, the weaker is the argument for a TFTA. If substantial harmonisation takes place, and problems of overlapping membership can be removed, without the need to create the TFTA – what then is the added value of the TFTA after all?

Such an argument would be flawed because, first, harmonisation among the RECs is at least in part owed to the harmonisation drive coming from the plans to establish the TFTA. Also, important areas are not yet harmonised in practice, and the impetus for the implementation of harmonisation efforts will need to be maintained – which is easier done in an institutionalised structure such as the TFTA. And finally, only the TFTA will guarantee that current harmonisation efforts are not reversed.

Therefore, the current wave of harmonisation among RECs should be seen as a useful preparatory move for the establishment of the TFTA. What it needs to be complemented with, however, is a stronger vision for the TFTA to eventually replace the existing RECs in order to permanently eliminate problems arising from overlapping membership.

What is also important for the TFTA is that – assuming that all 26 countries participate – it will be an FTA comprising of two customs unions (possibly one of them having deepened into a common market) and a number of Member States which are not members of customs unions. This means that the TFTA will have Members with different degrees of regional integration. This heterogeneity among Members will have to be reflected in the institutional structure of the TFTA. It is therefore interesting to see how other regional integration arrangements have dealt with the issue of concomitance of different integration stages.

C. Regional Integration in the Caribbean: Lessons to be Learnt for the TFTA

Establishing a regional FTA consisting of economically diverse members is by no means an easy task, as the failed attempt at creating the Free Trade Areas of the Americas has shown.[174] It will be even more difficult to combine existing RECs with different structures, institutions and procedures. In fact, there is no historical example of a successful merger of existing RECs at different stages of development and with overlapping membership. Nevertheless, useful lessons for the TFTA may be drawn from regional integration arrangements which are characterised by having members at different stages of integration. Two such arrangements can be found in the Caribbean.

C.1 Regional Integration in the Caribbean: an Overview

The Caribbean provides a good example of how regional integration can take place at varying speed and overlapping membership. In the region, two RECs exist, the Caribbean Community (CARICOM) and the Organisation of Eastern Caribbean States (OECS). The latter was founded later and its Members are also CARICOM Members, but they have reached a deeper degree of integration.

The Caribbean Community (CARICOM) was established in 1973, replacing its predecessor, the Caribbean Free Trade Area (CARIFTA), which had been in existence since 1965. In fact, CARICOM originally consisted of two institutions with separate legal bases: the Treaty establishing the Caribbean Community and the Agreement establishing the Common Market (later on annexed to the Treaty). In addition to economic issues, the Community instrument addressed issues of foreign policy coordination and functional cooperation. Issues of economic integration, particularly those related to trade arrangements, were addressed in the Common Market Annex. This institutional arrangement allowed countries to join CARICOM without being parties to the Common Market regime – for example, the Bahamas are a Member of CARICOM but not of the common market.

Discussions for further economic integration among CARICOM Members started in the late 1980s and culminated in the adoption, in 2002, of the Revised Treaty of Chaguaramas, which establishes the legal basis for the establishment

174 For an analysis and lessons to be learnt for the TFTA, see Disenyana, Tsidiso 2009: Towards an EAC, COMESA and SADC Free Trade Area, South African Institute of International Affairs, October 2009.

of the Caribbean Single Market and Economy (CSME). According to the Treaty, the single market includes the free movement of goods, services, skilled workers and capital among member countries, the right of establishment of CARICOM nationals anywhere in the Community, a common external tariff and a coordinated foreign trade policy. The single economy includes macroeconomic policy coordination, harmonization of laws and regulations, and Community-wide sector-specific policies on agriculture, industry, services and transport.

Twelve of the 15 CARICOM Member States are currently in the process of establishing the CSME.[175] The single economy was formally established on 01 January 2006 with the signing of the document for its implementation by six original Member States, with the other six joining on 03 July 2006. Nevertheless, full implementation of the CSME is expected to be completed by 2015 only. The implementation process entails, among other things, the integration of national goods, services and factor markets through intra-regional liberalization and regulatory harmonization and, as a result, the creation of a single, seamless market space within the Community.

The Organisation of Eastern Caribbean States (OECS) was established in 1981 by seven countries, all of which are also members of CARICOM,[176] in an effort to deepen the sub-regional integration arrangements and to consolidate an inner concentric circle of the region's integration movement but with points of relevance and contact to the wider CARICOM. The OECS Members share a single currency (and central bank) as well as a common Supreme Court. They are currently in the process of establishing a treaty to establish the OECS Economic Union and create a Single Financial and Economic Space. There is no long-term strategy for a merger between the OECS and CARICOM.

To summarise, regional integration in the Caribbean presently sees countries (excluding those which are not participating in the two RECs at all) at three different levels of integration stages: integration is deepest among the Members of the OECS, which constitutes an institution separate of CARICOM, followed by those countries which are currently participating in the implementation of the CSME. The third group of countries is composed by Members of CARICOM which are not participating in the CSME.

C.2 Analysing the Caribbean Experience

Caribbean integration can be analysed by applying regional integration concepts which have been developed in the European context. These key concepts appear under different names – famous ones are the concepts of concentric circles, variable geometry, enhanced co-operation and multi speed Europe – but basically address the same issue: that within a regional arrangement different degrees of integration co-exist at the same time.

The concept of concentric circles describes a regional integration arrangement made up of subsets of states which have achieved different levels of integration. Thus, the OECS could be interpreted as the most inner circle, which is surrounded by the CSME circle, and finally the outer circle would comprise all CARICOM Members.

In a similar way, "multi-speed integration" is the term used to describe the idea of differentiated integration whereby common objectives are pursued by one group of Member States both able and willing to advance, it being implied that the others will follow later. Note that strictly speaking this idea refers to different levels of integration within one contractual arrangement – it would therefore aptly describe the different status of CSME- and non-CSME Members within CARICOM but not the role of the OECS. The same applies to the concept of "variable geometry", which used to describe a method of differentiated integration when there are irreconcilable differences within the integration structure, and which therefore allows for a permanent separation between a group of Member States and a number of less developed integration units.

C.3 Comparing the Caribbean Experience with Eastern and Southern Africa

Finally, there is a certain analogy between the situation in the Caribbean and in Eastern and Southern Africa. Thus, integration is deepest among the OECS countries, which constitute a sub-set of CARICOM. In Eastern and Southern Africa, the EAC and SACU are in an analogous situation at present: they are areas of enhanced co-operation among a sub-set of COMESA and SADC Members, respectively.[177] At the intermediate level, Members of the COMESA and

175 Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago. The Bahamas, Haiti and Montserrat are not participating.

176 The Full Members of OECS are Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Lucia, St. Kitts and Nevis, and St. Vincent and the Grenadines. Anguilla and the British Virgin Islands are Associate Members of the OECS and also of CARICOM.

177 There is one exception which will be addressed in more detail below: Tanzania is a Member of EAC but not COMESA. Similarly, Montserrat is a Member of the OECS

SADC FTAs are in an analogous situation to the CSME Members. Finally, countries which do not participate in the FTAs are at the lowest stage of integration.

This analogy is shown in the following table, which also depicts the potential situation in Eastern and Southern Africa after the establishment of the TFTA, which will be discussed in more detail in section E below.

Integration level	Caribbean	Eastern and Southern Africa (current)	Eastern and Southern Africa (after TFTA establishment)
Deepest integration (enhanced co-operation)	OECS	EAC and SACU	EAC and SACU
Medium level integration (FTA or Customs Union)	CSME	COMESA FTA/CU and SADC FTA	TFTA
Lowest degree of integration	Non-CSME Members of CARICOM	Non-FTA Members of COMESA and SADC	Eligible countries not participating in TFTA

However, the analogy between the two regions is not perfect. Contrary to the Caribbean, where the model of concentric circles works quite well, in Eastern and Southern Africa there are two groups of countries with “enhanced co-operation”, i.e. SACU and EAC. Under the TFTA, this may cause internal inconsistencies and conflict, whereby the costs of overlapping membership in different organisations could be replaced by costs of intra-organisational frictions and rivalry within the TFTA. In order to analyse these risks in more detail, and devise strategies to avoid them, it is helpful to resort to regional integration theories based on political economy.

D. The Political Economy of Regional Integration: Theoretical Insights?

Put very simply, the question to be answered is: Can a regional integration arrangement such as the TFTA work if it has two poles of enhanced co-operation, or will competition and rivalry between these poles tear apart the larger institution?

Indeed, research has shown that the higher the number of members in a regional agreement, the higher is the likelihood of failure. The reasons for this are varied. Olson (1965) has shown that the size of a group is inversely correlated with its ability to act collectively. More importantly, Haggard (1997) argues that large groups increase the likelihood of preference divergence among members. This situation may be particularly important in the case of the TFTA which would combine different RECs with different histories, cultures and preferences. By allowing the continuation of different poles of enhanced cooperation, different preferences might be perpetuated and accentuated, thus blocking the deepening of integration of the wider institution.

Another theoretical approach explaining regional integration highlights the role of hegemonic powers driving the integration process (Gilpin 1975, 1987; Krasner 1976). This approach may explain regional integration in Southern Africa, i.e. SADC and SACU (Soko 2007). If this approach is right, the stability of the TFTA could then depend on whether or not South Africa is strong enough to exert its hegemonial power in the wider TFTA context. If this is not the case, the likelihood of conflict between the Southern and Eastern poles of integration will be high.

In summary, the two poles of integration within the TFTA are likely to have a negative effect on the TFTA operation which will gain in importance as integration deepens. Thus, there might be little concern as long as the TFTA is only a free trade area. However, deepening it into a Tripartite Customs Union will require careful negotiations and balancing of interests among the Member States.

E. The Way Forward: Future Roles for the Tripartite FTA and the Existing Communities

Obviously, from an economic point of view the optimum solution for the TFTA would be to have one coherent institution comprising the 26 countries which are currently Members in at least one of the existing three RECs. In such a situation, problems and inefficiencies arising from overlapping membership would be eliminated. A TFTA in which one sub-group of countries (such as EAC or SACU) is integrated more deeply would also pose little problem. The TFTA could then be understood as a regional integration arrangement based on the concept of concentric

but not of the CSME.

circles.

However, given the existing situation in which different RECs already exist, and political economy approaches show that the dissolution of existing institutions is rarely if ever achievable, the first best solution for the TFTA does not appear to be a feasible option in the foreseeable future. Nevertheless, the ultimate objective of the TFTA integrating and replacing the existing RECs should be made explicit in the TFTA Agreement.

In practice, the actual design of the TFTA will be the implementation of a second best option. It has to be based on the fact that the three RECs (four, if SACU is also taken into account[178]) will continue to exist in the medium term at least.

Under this key assumption two options for the sequencing of the TFTA establishment exist: Under the first option, a harmonised deepening of the existing RECs would be completed first and the TFTA be established thereafter. Conversely, the TFTA could be established first with further harmonisation to take place thereafter within the TFTA.

The first option assumes that the RECs – notably COMESA and SADC – would continue with their ongoing and planned integration programmes, i.e. the establishment of customs unions. This would also require that membership in the RECs is rationalised: overlapping membership in the different RECs should be avoided. Thus, it would make sense for Tanzania to re-join COMESA (as all other EAC Members are also COMESA Members)[179]. Furthermore, all countries which could potentially be Members of the COMESA and SADC customs unions – DR Congo, Madagascar, Malawi, Mauritius, Seychelles, Swaziland, Zambia and Zimbabwe – would have to make a choice between the two. Finally, pursuing this option would mean that the establishment of the TFTA would have to wait until the ongoing deepening of integration within the RECs has been implemented.

The second option would give priority to the establishment of the TFTA. Initially, the TFTA would start – as planned in the Draft Agreement – with a modest degree of integration, i.e. as a free trade area. The ongoing efforts of COMESA and SADC to establish customs unions should be halted. This approach would have the advantage that conflicts arising from overlapping memberships in the COMESA and SADC customs unions would be avoided – countries would not have to choose which customs union to join, and also the difficult negotiations of harmonising COMESA and SADC CETs would be avoided.

If option two is pursued, the relations between the RECs would be structured along the lines depicted in the third column of the table above. There would be two regions of enhanced co-operation within the TFTA, the EAC as an "Eastern African pole of integration" and SACU as the "Southern African pole of integration". Countries which are not in either of the poles of integration would be members of the "mere" Tripartite FTA, i.e. remain at a relatively low degree of regional integration.

The structure of the TFTA could thus conceptually be described with the concepts of "multi-speed TFTA" or "variable geometry TFTA" whereby the arrangement would start with three levels of integration: at the lowest level of integration would be countries which are not in a position to implement the TFTA immediately. This group would probably include those of the 26 countries which are currently not Members in any of the FTAs. The second group of countries would be the Members of the TFTA but not of SACU or the EAC. Finally, Members of the EAC and SACU would constitute the third, most deeply integrated group of countries. The Tripartite Summit of October 2008 accepted the principle of variable geometry, and the Draft Agreement also incorporates the principle referring to it as the "flexibility which allows for progression in co-operation amongst members in a larger integration scheme in a variety of areas and at different speeds". The proposed structuring of different layers of integration is therefore in line with the TFTA concepts already discussed; nevertheless, in the long run a conversion of the EAC and SACU into TFTA sub-arrangements should be envisaged.

Why would this structure constitute a second best option? First, the existence of two poles of integration may result in tensions between the poles and prevent further integration of the TFTA Members. In the worst case, centrifugal forces may cause the failure of the institution. Second, by putting on hold the current efforts of COMESA and SADC to establish customs unions, the current drive for a deepening of regional integration efforts may be lost. After all establishing the TFTA as a free trade area falls behind the COMESA Customs Union already launched. Nevertheless,

178 The importance of SACU for the TFTA arrangement should be recognised in the further negotiations of the TFTA Agreement, which could possibly be extended into a "Quadripartite FTA Agreement".

179 The issue of whether or not Tanzania should re-join COMESA is one of heated debate in economic and political circles of the country. The Government of Tanzania has recently made clear, however, that such a move is not contemplated at present.

going this one step back is required in order to address the inconsistencies which would arise from multiple membership in different customs unions. Furthermore, negotiations for the launch of the Tripartite Customs Union could then start relatively quickly, using the agreements already reached for the COMESA and SADC customs unions, as well as the mechanisms in force in the EAC and SACU, as a starting point.

Finally, under the proposed option, much of the raison d'être for COMESA and SADC would disappear, as both RECs would merge into the TFTA, in the context of which further integration would take place. Nevertheless, the dissolution of COMESA and SADC seems unfeasible in the foreseeable future, precisely because both COMESA and SADC are more than mere free trade areas. It is therefore suggested that a TFTA Secretariat would take over responsibilities for all issues related to the establishment of the free trade area, as well as negotiations for further integration. The COMESA and SADC institutions would continue to be in charge of their other current activities, which could be gradually handed over to the TFTA institution as integration progresses.

This shift of responsibilities from COMESA and SADC institutions to the TFTA Secretariat would imply only limited additional costs as both staff and offices could be handed-over from the former to the latter. It would also mean that the TFTA would start with two headquarters, in Gaborone and Lusaka.

F. Conclusion

At the 2008 Tripartite Summit in Uganda, Members of COMESA, the EAC and SADC have agreed to establish a Tripartite Free Trade Area which would combine the members of three existing regional economic communities. One of the TFTA's objectives is to help avoid the problems of overlapping membership in the existing RECs. However, this benefit will only materialise if the TFTA will replace the existing communities, at least in the long term, and if the existing RECs gradually integrate their policies and operations into the TFTA framework.

In this paper, a proposal has been developed on how the TFTA could be implemented and what the roles of the RECs would be within the TFTA framework. Based on the proposal, both COMESA and SADC would lose some of their responsibilities while the EAC and SACU would continue to operate as poles of regional integration.

Such changes might be painful for COMESA and SADC as institutions. However, if the TFTA is taken seriously, it must inevitably have an impact on the existing institutional regional integration arrangements. Thus, the willingness of Member States to integrate existing institutions into the TFTA framework will provide a first test of the importance which the 26 countries assign to the new initiative.

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GOING PUBLIC

How Africa's integration can work for the poor.

Jeggan C. Senghor

Introduction

The vision of African unity dates from the dreams of the first pan-Africanists. Then, as now, the continent's political leaders believed fervently in the equality of nations. Most saw the promise of a unified continent – following concurrent paths of economic and political integration – as the means to dignity, prosperity and security. Today, closer integration between African states is once again a priority for the African Union and the regional institutions of southern, East and West Africa.

In the intervening period, the emphasis of most arguments for closer cooperation has changed. The case for regional integration today rests squarely on the promise of increased trade, within continents and between them. The world's dominant economies have sought to reduce tariffs and harmonise the rules of international trade within regional blocs, notably the North American Free Trade Agreement, the Caribbean Community and Common Market, the Association of South-Eastern Asian Nations, and Mercosur, the Latin American economic group.

Policymakers in Africa have sought to lead their states in the same direction as their peers in the Americas, Asia and the Caribbean. Yet while the value and volume of Africa's external trade has grown in absolute terms, its proportion of the vastly expanded global market for goods and services has fallen from 6% in 1960 to about 2%. Improved market access, economies of scale and a concerted voice at the World Trade Organisation are useful priorities for African governments – and long overdue.

No doubt such ambitions are necessary. The benefits of enhanced trade are vital to fuel economic growth and to nurture more diversified economies. But they do not address the real dimensions of poverty in Africa today. Regional blocs are committed to a process of integration weighted towards an agenda for trade and economic liberalisation. Yet without a clear purpose, integration will fail to win popular credibility. The larger goal of cooperation between states can be distilled within a single priority. Regional integration must work for the poor.

The over-riding priority

Unity remains an imperative for Africa's development. The regional project has been given renewed impetus by the efforts of a number of African governments. African policymakers have seen the example of the European Union and the gains which follow free movement of labour, capital and goods. Within east and southern Africa, COMESA, the Southern African Development Community and the East African Community are committed to precisely those goals.

Among the hydra-headed processes of liberalisation, in all its forms, moving towards free trade was a priority of the structural adjustment policies launched in Africa in the 1980s. Their legacy remains clearly evident. The 'shock therapy' prescribed by foreign creditors ultimately helped to stabilise fragile economies, but at a terrible price. Falling per capita incomes throughout that 'lost decade' compounded the poverty in sub-Saharan Africa today.

Africans are one third of the world's poor. According to World Bank estimates, the number of people worldwide living in conditions of extreme poverty fell by about a quarter between 1981 and 2005. In Africa in the same period, their number almost doubled. The vast majority live in rural areas, where 85% depend on agriculture. Their poverty is a consequence of low productivity, poor access to markets and inadequate provision of basic services.

Africa will not meet the United Nations' Millennium Development Goal of halving poverty by 2015. Falling rural incomes will continue to drive migration to the cities, a worldwide trend which is among the most significant demographic pressures of this century. Half of Africans will live in cities by 2030. About 72% of urban dwellers in sub-Saharan Africa inhabit makeshift accommodation on city peripheries, where slum-dwellers are more vulnerable to infection and disease than rural peoples.

A continent of regions

Poverty has been only an implicit concern for the regional project, at least until the creation of the African Union in 2001. Poverty is entrenched by a lack of public goods. Infrastructure and utilities create economic opportunities. Regional cooperation can do much to provide essential services: for example, in the equitable management of water resources or the administration of cross-border disease prevention programmes.

Among the greatest obstacles to effective integration is the plethora of regional institutions – the 'spaghetti bowl'. Africa spans eight Regional Economic Communities (RECs) and a further six regional sub-groups. Most countries are members of two or three such groups. Kenya is a member of four – the EAC, COMESA, IGAD and CEN-SAD. There are more regional inter-governmental organisations in Africa than any other continent.

The prevalence of overlapping memberships exacerbated what has been described as an "ossified, static, protected-fortress approach to integration" in Africa. In the absence of a more coherent structure, RECs have been tasked with diverse responsibilities. Member states are often under-represented in regional institutions, where attendance by national representatives at regional meetings has been poor. The legacy of Africa's liberation struggles has been a preoccupation among political leaders with the pursuit of national sovereignty – a prize which, even today, is far from secured.

The first Tripartite Summit between representatives of COMESA, EAC and SADC in October 2008 was one initiative aimed at untangling the spaghetti bowl. Few African governments can claim either the resources or the institutional capacity to safeguard their national interests by purely national means. In Africa, none is able to meet the legitimate expectations of its citizens. Yet most recognise that more effective cooperation – sub-regional, regional and pan-African – has become imperative. Greater scale – and economies of scale – are the only effective response to under-capacity in national systems.

The orthodoxy of regional integration needs revision in the light of experience. The key to effective integration is to develop a popular programme and prioritise policies most likely to help the poor. Economic growth alone is not sufficient to bring about a reduction in poverty. The case for a renewed emphasis on regional public goods grows stronger each year.

Defining public goods

Investing national resources in regional public goods is a test of political will. Regional plans depend on commitment from national authorities. They make sense only after a hard-headed assessment of the prospects for smaller scale programmes. A combination of vision and humility is required – an amalgam which can at first seem counter-intuitive for those yoked to domestic agenda. It follows that the projects surveyed in this paper are a measure of statesmanship in Africa.

Where the political will is convincing, other actors often follow. Regional public goods are by no means the preserve of governments or the public sector. Where they work well, they have proved to be a catalyst for substantial private investment. The N4 toll road, a highway linking South Africa to Mozambique, is among the best-known examples. Others include the digital mobile phone networks built by multinational companies listed on the stock exchanges of Europe, and Chinese investment in Africa's railways under the terms of oil-for-infrastructure swaps.

In Mozambique, cross-border infrastructure connected to the rehabilitated harbour capital of Maputo sustains an economic 'cluster' known as the Maputo Development Corridor. In Lesotho, the ongoing construction of the Highlands Water Project is on course to become the single largest trans-national project in Africa, at an estimated cost of US$8bn. Although aspects of its social and environmental impact have been controversial, the principle of trading Lesotho's water for South African investment capital is a win-win formula.

The examples which follow have not been selected with any rhetorical intent. They include instances of regional projects which have under-performed, and others which have failed to help the poor. The lesson is not that African institutions are unequal to the task, but that every intervention of this kind depends ultimately on sound management and informed policy choices. Regional public goods are an unalloyed benefit for the poor, but much scope remains to make them vastly more effective in reducing poverty.

The price of travel

The cost of transporting goods in Africa is the highest in the world. Imported capital equipment, for example, can be 70% more expensive in sub-Saharan African than for OECD or East Asian countries. The average cost in 2009 of shipping a container from Africa to the US was US$7,600, compared with US$3,900 from South Asia and US$2,100 from the Middle East and North Africa. According to some estimates, a 50% reduction in transportation costs would bring a five-fold increase in Africa's total volumes of trade.

High transport costs have a direct impact on the poor. Africans are, on average, 50% more distant from economic markets than Europeans. Fewer than one in five of main roads are paved, and only half of Africa's rural population lives within two kilometres of an all-weather road. Two thirds of Africa's population depend on agriculture for their livelihood, but without adequate roads small farmers cannot transport their harvest to market. In Malawi, where agriculture accounts for 90% of total export earnings, transport costs absorbed 53% of the value of all exports from Malawi in 2007.

Only Latin America, where most people live in coastal areas, has a lower road density than Africa. Railway lines, ports and roads have not been adapted to meet new imperatives. From 1973 to 2003, the proportion of international development assistance allocated to infrastructure fell from 30% to 10%. According to one UK aid official, it had become "more sexy to lend for a school than a thermal power plant".
Massive investment is required to redress Africa's infrastructure deficit. The World Bank estimates that Africa will require US$93 billion annually for new infrastructure and maintenance in the coming decade – more than double recent levels of expenditure. That figure is equivalent to 15% of Africa's annual GDP, and comparable to China's total investment in African infrastructure over the course of the past decade.

Tarmac, track…

If all connecting roads between the countries of West Africa were paved, intra-regional trade would increase by a factor of three, while simultaneously improving the competiveness of all other exports. In the 1970s and 1980s, the value of Africa's road stock deteriorated by an estimated US$45 billion – a loss which could have been averted at a cost of about US$12 billion for maintenance. The World Bank estimates the initial investment required to upgrade African roads at about US$20 billion, with annual maintenance costs of US$ 1billion.

Improved road networks in sub-Saharan Africa could increase the value of overland trade by US$250 billion over a decade, according to the World Bank. In Ethiopia, about 70,000km of new roads were built during a 15 year programme, effectively doubling the reach of tarmac roads among rural populations. In November 2009, the African Development Bank announced a US$452 million in new investment in roads in Kenya, Ethiopia, Djibouti and Uganda.

In West Africa, ECOWAS and UEMOA are investigating plans for an interconnected rail network. In East Africa, the percentage of freight carried by rail has fallen to less than 6% but plans have been announced by Kenya Railways for a new US$4 billion high-capacity rail line from Mombasa to Malaba, on the Ugandan border. If completed, this would be Kenya's biggest infrastructure project since the 1970s. Further extensions to the line are under discussion, as neighbouring states seek to benefit from the proposed expansion. The government of South Sudan intends to build a rail link from Juba to the new line, and to lobby for membership of the East Africa Community.

The example of China

China has emerged as the largest investor in Africa's new infrastructure. Its investments have changed the way that roads, dams, railways and power stations are commissioned and funded.[180] Annual investment from China in African infrastructure reached US$7bn in 2006, a seven-fold increase within five years. Its terms of engagement are varied, and often less risk-averse than other lenders. They range from oil-for-infrastructure swaps to cost-recovery contracts, priced on terms which can be more expensive than the discounted financing available by western multilateral lenders.

180 World Bank, Building Bridges. July 2008.

China's appetite for energy and resources is a new kind of opportunity for Africa. In exchange for new infrastructure, Africa's oil-producing states have traded long-term concessions to Chinese state companies led by PetroChina, China National Petroleum Corporation and China National Offshore Oil Company. On price alone Chinese companies can often outbid other multinationals in Africa. "While the West is talking, China is acting," said a spokesman for Congolese president Joseph Kabila.

Africa supplies about one third of China's energy. Domestic energy security is the top foreign policy priority for the Beijing government, which commands more than $2 trillion in foreign reserves. In political terms, electrification is the single most visible benefit which the Chinese state can deliver to its billion-strong rural population. "Only a party which came to power by rural unrest knows what it means to live in fear of rural unrest," said Ambassador Richard Richardson, a former US special envoy in Africa.[181]

The political and security implications of Beijing's state-sponsored capitalism are disputed. In 2005, for example, Angolan state oil company Sonangol – China's largest supplier of crude oil – agreed a $2.5bn syndicated loan from China's EXIM bank. The arrangement ousted a consortium of western banks, which had sought to attach 'transparency' conditions to the loan in response to pressure from anti-corruption campaigners. Historically, external financing from all sources has generally reinforced incumbent elites. China's strategy will have the same outcome, although it differs radically from the western development agenda of 'good governance' and conditionalities.

Development corridors

Development corridors are large-scale infrastructural projects, often along historic trade routes, to foster regional trade and economic growth. A flagship initiative of NEPAD, they may include regional power pools, water resources and information technology. In 2005, NEPAD commissioned a study of 12 possible development corridors in Africa. Of these, seven were short-listed for evaluation by NEPAD's Spatial Development Programme:

a. Bas-Congo – DRC, Republic of Congo, Angola. A triangular corridor to link the coastal town of Bas Kouilou in the Republic of Congo-Brazzaville to Kinshasa, Brazaville and Quindonacaxa on the Angolan coast.

b. Maghreb Coastal – Morocco, Algeria, Tunisia, Libya, Egypt. From Agadir in Morocco, the corridor follows the Mediterranean coast through Algiers, Tunis, Tripoli to Cairo.

c. Niger – Senegal, Gambia, Mali, Niger, Nigeria. From the Senegalese capital, Dakar, through Banjul in the Gambia, east via Timbuktu and Bamako in Mali, through Niger, to Port Harcourt.

d. Conakry-Buchanan – Guinea, Liberia, Cote d'Ivoire. A U-shaped infrastructure from Conakry, through Cote d'Iviore to the Liberian port of Buchanan.

e. Gulf of Guinea – Nigeria, Benin, Togo, Ghana, Cote d'Ivoire, Liberia. From Port Harcourt, west along coastal Benin, Togo, Ghana and Cote d'Ivoire to Monrovia.

f. Mombasa – Kenya, Uganda, DRC, Sudan. From Mombasa port, west via Nairobi and into Uganda. From Uganda, two corridors diverge: west to Fort Portal, and northwest to north-eastern DRC and the city of Juba in South Sudan.

g. Madagascar. From Ambovombe on south-east corner of the island, north along the coast to Manakara, inland via the capital of Antananarivo, to the coastal town of Fenoarivo Atsinanana.

The Maputo Development Corridor (MDC) was the first project of this kind in Africa, and has attracted over US$5 billion in private investment. A partnership between post-apartheid South Africa and post-conflict Mozambique, its key components are:

a. The 630km N4 toll road, privately funded at a cost of US$400 million

b. Rehabilitation of the port of Maputo

c. Improvements to the Lebombo border post

181 Ambassador Richard Williamson, Stanford University, February 2008.

d. Construction of two high voltage electricity lines from South Africa to Maputo

e. Development of the Pande-Temane gas field in Mozambique and construction of a US$ 1.4 billion pipeline to South Africa

f. The US$2.1 billion Mozal aluminium smelter, the second largest in Africa

Power-broking

The founding charter of the Organisation of African Unity, ratified in 1963, stated that member states would "coordinate and harmonise their general policies" in all sectors dominated by government. While external institutions have limited influence on political leaders in countries with no democratic precedent, regional organisations have begun to exert some leverage to defend democracy in fragile states, or to reinforce a constitutional process where national leadership is in flux. Such settlements may fall short of a democratic outcome, but they reinforce a process on which prospects for democracy depend. In several instances, the decisions of the African Union, ratified by member states in 2001, and its councils have prevailed over the preferences of individual presidents, including the AU chairman.

In Zimbabwe, a government of national unity government, formed in February 2009 in the wake of discredited presidential elections, was vigorously promoted by mediators from the SADC. Former South African president Thabo Mbeki was often criticised for his adherence to 'quiet diplomacy', and for his reluctance publicly to criticise President Robert Mugabe's Zimbabwe African National Union – Popular Front (ZANU-PF). However, the SADC was able to broker a transitional power-sharing arrangement when elements within the top military and political leadership refused to cede power. In practice, the arrangement has proved disruptive for all three main political parties, while detention of opposition activists and human rights abuses are an ongoing concern.

Regional organisations have been tested by coups d'état in Mauritania, Guinea and Madagascar. In 2008, Guinea and Mauritania were suspended from the AU after military coups toppled their respective governments. In Mauritania, a prompt commitment to hold elections ensured that AU sanctions imposed on military leaders were short-lived. In Guinea, the military regime failed to convince regional institutions of its intent to hold free and fair elections. Guinea was suspended from ECOWAS, whose criteria for the country's re-admission included security sector reform and voter registration for elections. In both instances, institutional processes within ECOWAS and the AU defied the publicly expressed opinions of, respectively, President Abdoulaye Wade of Senegal and Libyan president and AU chairman Muammar Qaddafi.

In March 2009, Malagasy president Marc Ravalomanana was ousted by the mayor of Antananarivo, Andry Rajoelina, in a military-backed coup. African leaders refused to recognise the change of government, and Madagascar was suspended from both the AU and SADC. After three months, Rajoelina agreed to participate in SADC-mediated negotiations. In November 2009, both Ravalomanana and Rajoelina joined an interim power-sharing government pending a general election in 2010.

Obstacles to the new momentum

Efforts to advance regional integration in Africa have been designed to further too many objectives simultaneously, from increased trade to political union. A shared sense of purpose among disparate institutions is long overdue, but the breadth of the AU's mandate risks becoming counter-productive. Poverty reduction is an explicit objective of the New Partnership for African Development (NEPAD), a programme adopted by the AU, but it vies for attention against other priorities.

The most effective way to reduce poverty is to provide regional public goods. Cross-border infrastructure, regional utilities, and improved access to power, water and health care deliver significant economies of scale. Regional public goods are, by definition, the result of regional cooperation – whether formally, or in the informal sectors. They may be provided by governments, or business, or other non-state actors. They may involve public, private and external capital. Narrow definitions of 'public goods' which refer only to the state sector or governments are too restrictive. Regional public goods are the most direct, effective and evenly distributed means to improve the livelihoods of the poor. Sceptics will argue that private capital and the free market are preferable. Some will cite the example of China's burgeoning interests and investment in Africa. Others will doubt that an African Union subsidised by President Muammar Qaddafi of Libya, and heavily dependent on foreign funds for peacekeeping and other security operations, can give practical meaning to the pan-Africanist vision of the continent's founding fathers. In recent decades, the process of regional integration has been dominated by an economic agenda to expand regional trading blocs.

The relationship between trade and patterns of investment, especially foreign investment, is often emphasised. Yet without more diversification of economies, the benefits of larger regional communities have been concentrated narrowly. For the poor, increased trade is most useful where it creates jobs or fosters downstream industries. To date, the benefits from closer integration have been concentrated disproportionately in larger economies. South Africa, Kenya and Nigeria have gained most within their respective regions. In each of those countries, almost every measure of social inequality has increased sharply.

Summary of recommendations

The methodology of regional integration must be revised to ensure that poverty reduction becomes a guiding principle. While the peace and security councils of regional institutions have made some progress in enforcing common standards for member states, a renewed sharper focus on poverty reduction is essential to build the public support and legitimacy on which their authority will depend in the longer term.

a. The 'spaghetti bowl' must be untangled. Rationalisation of inter-governmental organisations will allow them to pursue clear goals more effectively. Multiple, overlapping memberships of regional communities dilute energy and funds.

b. Regional public goods are the most effective means of reducing poverty in Africa. They enable regional organisations to exploit economies of scale, and distribute benefits more widely than improved trade or investment.

c. Regional institutions, foreign investors and development agencies should recognise the potential of development corridors to reduce poverty. Development corridors are an excellent mechanism for delivering regional public goods.

d. Investment in power is Africa's single most pressing infrastructural need. Unreliable power is a drag on productivity and economic growth. Africa is a net exporter of energy, and more can be done to harness the potential of its resources.

e. Supra-national authority to act in cases of national unrest or coups d'état must be consolidated and defended. In recent years, Africa has made great progress in negotiating peaceful outcomes to national political disputes.

f. Increased trade and investment bring economic growth, but in Africa they have not brought significant reductions in poverty. Concerted regional approaches can foster cross-border trade and labour-intensive industries.

g. Regional investment codes can enable development of regional public goods by creating simpler, standardised terms for investment. Adherence to regional codes mitigates the risk of a 'race to the bottom' among national rivals.

h. Monetary union is the ultimate test of economic integration, although not wholly within the ambit of regional institutions. A firm commitment from national leaders is necessary for local economies to satisfy the economic criteria for convergence.

Conclusion

The vision of a united Africa is rooted in the pan-Africanist movements which emerged during the nationalist era, before and after independence. Yet the mechanisms of regional integration under the African Union owe much to a parallel process in post-war Europe, directed from Brussels. Both projects are complex. The work of the AU, for example, ranges from new infrastructure to social programmes and a new African Standby Force tasked with regional security.

Whether African institutions, freighted with such responsibilities, will become truly accountable to Africa's peoples is moot. Direct elections to the Pan-African Parliament are intended to foster democratic participation by civil society and non-state actors. Yet in many African states, the capacity and the political will of incumbent politicians for building a rights-based democracy is disputed. The discrepancy is thrown into relief by the domestic record of some AU leaders.

The methodology adopted by the African Union is, in essence, a constitutional mechanism. As a development model, it stands in stark contrast to China, whose involvement in Africa has expanded exponentially in the 21st century. Such is China's need for energy security that, in exchange for long-term concessions, Beijing has become the leading sponsor of new infrastructure in Africa. The delivery of public goods which cross national boundaries warrants closer scrutiny and coordination by regional institutions.

The liberal-left tradition of Africa's liberation movements has faded dramatically in the first decade of the 21st century, but the overall direction of AU policy is firmly within the traditions of the nationalist campaigns of the independence era. The architects of closer cooperation between African states include many pan-Africanists who remain staunchly committed to constitutional rule. If they are to avoid becoming another generation of over-reachers, advocates of Africa's integration must strike a tough and hard bargain for more regional public goods.

NOTE: *An earlier version of this paper, 'Going Public: How Africa's Integration Can Work For The Poor' by Jeggan C. Senghor with Mark Ashurst, Jonathan Bhalla, Aoiffe O'Brien, Edward Paice and Anthony Rawlinson appeared in African Prospects, January 2010. A longer edition was published by Africa Research Institute, London in December 2009. To download a free copy, please visit www.africaresearchinstitute.org.*

COMESA's PARTICIPATION IN NEGOTIATIONS ON POST 2012 INTERNATIONAL CLIMATE CHANGE AGREEMENT

George Wamukoya

1.0 INTRODUCTION

The goal of the United Nations Convention on Climate Change (UNFCCC, Article 2) is "to achieve…stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." The UNFCCC, which was ratified in 1994, sets out an overall framework for international efforts to tackle the challenge of climate change. The Kyoto Protocol, which entered into force in 2005, is an instrument under the Convention that sets legally binding targets for reducing greenhouse emissions for 37 developed nations and the European Community (EC). The targets amount to an average of five percent reductions in emissions from 1990 levels over the five year period 2008-2012. The major distinction between the Convention and the Protocol is that the Convention encourages industrialized nations to stabilize greenhouse gas (GHG) emissions, while the Protocol commits them to do so.

The first commitment period of the Kyoto Protocol ends in 2012 and countries have entered into international negotiations with a view to reach agreement on a package for addressing climate change beyond 2012. The Bali Action Plan (BAP) agreed to in December 2007 at the thirteenth Conference of the Parties (COP13), set out a two-year process for reaching a climate agreement. The fourteenth Conference of the Parties (COP14) to the UNFCCC, held in Poznan, Poland in December 2008, marked the halfway point between the adoption of the BAP and the fifteenth Conference of the Parties (COP15) to held in Copenhagen, Denmark in December 2009 where a comprehensive post 2012 climate agreement was expected to be adopted, it never happened. Instead, a political agreement, the so-called Copenhagen Accord was arrived at and which was not adopted the Parties, but the "took note" of the Accord.

It is expected that negotiations will take on increased urgency in the coming months as the world strides to build on the Copenhagen Accord to hammer out commitments and structure of a post-2012 regime at the sixteenth Conference of the Parties (COP16) to be held in Cancun Mexico in November/December 2010. Of importance to developing countries is defining what scale of greenhouse gas (GHG) emissions reductions that would prevent dangerous human interference with the climate system and how this translates into targets, commitments and/or actions for developed and developing countries. In addition, the development of a package of measures to assist developing countries in mitigating and adapting to climate change enabled and supported by enhanced capacity building, technology development, deployment, diffusion and transfer and finance.

A successful conclusion of a post 2012 international climate change regime is a key priority for Africa and in particular COMESA. This is premised on the fact that throughout Africa the need to adapt to the effects of climate change has become increasingly evident. Without appropriate global responses, climate change is likely to constrain trade, economic development and poverty eradication efforts and exacerbate the difficulties of realizing the Millennium Development Goals (MDGs).

2.0 POST 2012 NEGOTIATION PROCESS

Countries that are members of the UNFCCC are attempting to come to agreement on an international strategy for addressing climate change after 2012 – the end of the first commitment period under the Kyoto Protocol. This process was started at COP11 in Montreal, Canada in December 2005 where countries agreed to a two-track process for moving forward. The first track was a "Dialogue on long Term Cooperative Action to address climate change by enhancing implementation of the Convention under the UNFCCC." Work under this track led the adoption of the BAP at COP13 in Bali, Indonesia in December 2007 and the formation of the Ad Hoc Working Group on Long Term Cooperative action under the Convention (AWG-LCA) as a follow up process to the dialogue. All 192 countries that have ratified the UNFCCC are members of this working group.

The second track is the Ad Hoc Working Group on Further Commitments for Annex 1 Parties under the Kyoto Protocol (AWG-KP) that is considering future developed country targets under the Kyoto Protocol. This working group includes 183 countries and one economic region (the European Community – EC) that have ratified or accepted the Kyoto Protocol. Most notably, the United States of America (USA) is not a member of this working group. However, the COP serving as the Meeting of the Parties (COP/MOP) brings together those countries that have ratified or accepted the Kyoto Protocol.

Other UNFCCC bodies also contribute to the post-2012 negotiations through related discussion. Under the COP, the Subsidiary Body for Implementation (SBI) deals with such issues as financial mechanisms, technology transfer and capacity building. Also under the COP, the Subsidiary Body for Scientific and Technological Advice (SBSTA) includes technology transfer, adaptation, reduced emissions from deforestation and forest degradation (REDD), mitigation in agriculture sector and bunker fuels.

3.0 COMESA'S STRATEGY IN SUPPORTING AFRICAN GROUP OF NEGOTIATORS

3.1 COMESA's Position

The land use sector has great potential in mitigating climate change. According to IPCC the technical mitigation potential of agriculture in the African region alone is estimated at 17 percent of the global total mitigation potential. Similarly, Africa's forestry potential per year is 14 percent of the global total, and the avoided deforestation potential accounts for 29 percent of the global total. While carbon dioxide emissions from agriculture may appear small, the sector accounts for about 60 and 50 percent of all nitrous oxide (N2O) and methane (CH4) emitted, mainly from soils and enteric fermentation, respectively.

The magnitude of the challenge to stabilize GHG concentrations in the atmosphere and limit average temperature increases makes it imperative that the contributions of all sectors with significant mitigation potential be tapped to the fullest extent possible. Agriculture, forestry and other land use can contribute to climate change mitigation through reducing GHG emissions and carbon sequestration. Declining agricultural yields, drought, ecosystem degradation (including deforestation) and conflicts are major drivers of poverty among these populations – all which undermine local communities' ability to adapt to climate change.

Clearly the challenge of climate change is one that is beyond the capacity of any one country to tackle. Ultimately, it's shared developmental and security implications call for regional cooperation. Vulnerability to climate change is considered to be highest in the ESA region due to social, economic and environmental conditions that amplify susceptibility to negative impacts and contribute to low capacity to cope with and adapt to climate hazards. The conditions also limit the region's capacities to cost-effectively participate in global opportunities presented in emerging carbon markets and other related opportunities.

In 2009, following adoption by COMESA's highest policy organ, COMESA with support from the Government of Norway and the Rockefeller Foundation initiated the Bio-Carbon Initiative. The Initiative aimed at ensuring that the successor to the Kyoto Protocol values the contribution that agriculture, forestry and other land use (AFOLU) can make to climate change adaptation and mitigation in the ESA region. In this regard, COMESA's position on the scope of the post 2012 climate change agreement may be summarized as follows:

(a) Inclusion of agriculture, forestry and other land use (AFOLU) in the post 2012 climate change agreement.

(b) Establishment of REDD plus mechanism.

(c) Simplification of CDM rules so as to enable Africa to benefit from the carbon market.

(d) Broadening the scope of CDM to include agriculture, forestry, agroforestry and other land use.

(e) Enhanced, adequate and reliable financial resources.

(f) International support of early action AFOLU programmes in Africa that enhance climate change resilience, sustainable development and poverty reduction.

3.2 COMESA's Support to Climate Change Negotiations

3.2.1 Mobilizing African Climate Change Scientists

A number of regional and national scientific and interdisciplinary organizations and networks are engaged in climate change-related research. Many of them hardly foster collaborative studies, capacity development, and knowledge sharing across the region on climate change issues. There exist barriers that relate to availability of scientific information, lack of communication between the science and policy communities as well as absence of knowledge base on successful measures. Yet, policy, decision makers and practitioners at various levels need information in order to plan as appropriate. In this regard, COMESA has facilitated the establishment of the African Climate Change Knowledge Network whose objective is to enhance understanding of the linkages between climate change and its impacts, sustainable development and livelihoods in Africa through:

- Advancing research, analysis, modelling and synthesis of climate change issues, impacts, scenarios, vulnerability and adaptation assessments and opportunities for Africa at different scales;

- Enhancing communication and dissemination of information on impacts of climate change and the resultant implications on social, economic, environmental and political security in Africa;

- Building capacity of African institutions and professionals to generate, synthesize and disseminate climate change-related knowledge at various levels to support the preparation and implementation of climate change actions while taking into account gender considerations; and

- Supporting African countries to engage effectively in international, regional and national policy processes aimed at reducing vulnerability, minimizing loss and damage and building the resilience of ecological and social systems and economic sectors to present and future adverse effects of climate change.

3.2.2 Galvanizing Stakeholder Involvement and Support

3.2.2.1 Civil Society Organizations (CSOs)

Civil society has a very important to play in raising the community voice into the climate change agenda. It is against this background that in addition to the Pre-AMCEN CSOs meeting held in Nairobi 23-25 May, COMESA supported another pre-COP meeting in Addis Ababa and the participation of CSO at the Copenhagen Climate Change Talks held in December 2009.

3.2.2.2 Business Community

Business is the primary source of innovation and, provided with the right environment, is a critical actor in climate change mitigation and adaptation strategies. Development investments may be adversely affected by climate change, either by being directly threatened or under performing. Equally investments play a role in decreasing 9or increasing) vulnerability indirectly. It is therefore fundamentally important to get a broad range of stakeholders particularly the business community involved in climate change if Africa's adaptive capacity is to be enhanced. In this regard, COMESA has endeavored to mobilize business community and enhance their involvement and contribution into the ongoing negotiations on post 2012 international climate change.

3.2.2.3 Parliament

COMESA recognizes the important role Parliamentarians play, in particularly, on issues of development, reviewing, debating and enacting laws and policies that enhance climate change mitigation and adaptation. Accordingly, COMESA has endeavoured to build the technical capacities of Parliamentarians to address climate change issues through policy and legislative reforms. Against this background COMESA supported several members of Parliament from her membership to attend the Copenhagen Climate Change Talks held in Copenhagen, Denmark in December 2009.

4.0 SCENARIO ANALYSIS OF THE POSSIBLE CLIMATE CHANGE NEGOTIATIONS OUTCOME

A new international climate change treaty was not possible at the Copenhagen Climate Change Talks. A failure at the Copenhagen Climate Change Conference is not easy to accept given that the Copenhagen Accord was not adopted by Parties. Building on the Accord which is not a legally binding political agreement and the work of AWGs, Parties may agree to (a) adopt a new protocol under the Convention that either replaces or complements the Kyoto Protocol and/or (b) amend the annexes of Kyoto Protocol in accordance with Article 3.9, or (c) fuse the work of AWG LCA and AWG KP. These there options are discussed herein below in detail.

4.1 ACTION UNDER THE CONVENTION : AD HOC WORKING GROUP ON LONG TERM COOPERATIVE ACTION (AWG – LCA)

As the "supreme body of the Convention," the COP has the primary responsibility for deciding on next steps in the development of the climate change regime under the Convention. In contrast to the 1995 Berlin Mandate, which called for the "adoption of a protocol or another instrument," the BAP does not specify the form or legal character of the outcome. Options include:

- A COP decision addressing further actions under the Convention.
- Adoption by the COP of an amendment to the Convention or to an annex, setting forth additional actions and/or commitments by the UNFCCC Parties.
- Adoption by the COP of a new legal instrument that either supplements or replaces the Kyoto Protocol.

In addition to instruments resulting from the AWG – LCA negotiations, amendments of the Convention, amendments of annexes, and new protocols could be proposed by a Party or group of Parties directly. The Convention requires that amendments and protocols be communicated to the Parties by the Secretariat at least six (6) months in advance of the session at which they will be considered.

However, it is instructive to note that The principle of common but differentiated responsibilities and respective capabilities implies that all countries have a responsibility to address climate change, but that their responsibilities differ, and what they should do to protect the climate system will vary, depending on their different responsibilities and capabilities. The division between Annex I and Non-Annex I Parties is often associated with the principle of common but differentiated responsibilities and respective capabilities, but the Convention does not explicitly tie the two, or preclude alternative forms of differentiation in future agreements. For instance, in addressing future mitigation efforts, the BAP refers to "developed country" and "developing country" Parties, not to Annex I and Non-Annex I Parties.

4.1.1 Options

4.1.1.1 COP Decision

Article 7.2 of the Convention gives the COP general authority to periodically examine the obligations of the Parties in light of the objective of the Convention and to "make, within its mandate, the decisions necessary to promote the effective implementation of the Convention." This general provision provides the COP with broad decision-making authority (for example, to recommend additional actions, to memorialize national actions in a new schedule, or to adopt new rules for the implementation of existing commitments), but does not give the COP authority to establish new legal commitments. Instead, additional commitments would require a new legal instrument such as an amendment of the Convention or a new protocol. In the absence of any agreed rules of procedure specifying a voting rule, COP decisions require consensus – a somewhat elastic term that in practice has required only the lack of formal objection by one or more Parties, rather than unanimous agreement.

4.1.1.2 Amendment of the Convention

Under Article 15 of the Convention, the COP may adopt an amendment to the Convention (other than an Annex) by a three-quarters majority vote. The Convention does not impose any substantive limitations on what the COP might agree as an amendment. Thus, an amendment could specify new commitments, change existing commitments, or establish new institutions or procedures.

In order to enter into force, an amendment must be accepted (i.e., by ratification or accession) by three-quarters of the Parties. Once in force, an amendment binds only those Parties that have accepted it, and applies only as between those Parties. The preexisting terms of the Convention continue to apply with respect to Parties that do not accept an amendment. In effect, each successive amendment to the Convention would create a new treaty as between those Parties that ratified the amendment. In a Party's treaty relations with another Party, it would be bound by the most recent amendment that both it and the other Party have agreed. To prevent Parties from picking and choosing which amendments to accept, the COP can, when adopting amendments, bundle several amendments into a single amendment that Parties must ratify as a whole – an approach that has been used under the Montreal Protocol.

4.1.1.3 Amendment of the Annexes

At present, the Convention contains only two Annexes, listing the Annex I and II Parties. Pursuant to Article 4.2(f), the lists of countries in these annexes may be amended only with the approval of the Party concerned. Apart from this particular requirement for Annexes I and II, the more general procedure for adopting new annexes or amending existing annexes is set forth in Article 16 of the Convention. Article 16 restricts the content of annexes to "lists, forms and any other administrative character." The COP may adopt new annexes or amend existing annexes by a three-quarters majority vote. In contrast to amendments to the Convention, adoption or amendment of annexes does not require explicit acceptance by a Party (with the exception noted above for Annexes I and II). Instead, new annexes and amendments to existing annexes enter into force after six months for all parties, except those that submit written notification of non-acceptance.

If a developing country wished to assume new commitments (for example, relating to reporting), one possible avenue would be for it to assume the commitments of Annex I Parties. The Convention sets forth two procedures for the assumption of Annex I commitments. First, a Party may make a unilateral declaration pursuant to Article 4.2(g) that it wishes to be bound by the specific commitments of Annex I Parties. This takes effect automatically and does not require approval by the COP. Kazakhstan has assumed the commitments of Annex I Parties by this means. Second, the COP may amend Annex I pursuant to Article 4.2(f) and 16, with the approval of the Party concerned. Monaco, Slovenia, Croatia, Liechtenstein, the Czech Republic and Slovakia have become Parties to Annex I by this means.

4.1.1.4 Adoption of a new Protocol under the Convention

Article 17 authorizes the COP to adopt protocols to the Convention, but does not specify any particular procedure for doing so. In the absence of COP rules of procedure regarding voting, adoption of a Protocol would require consensus. A new protocol under the Convention could complement or, with the approval of the CMP, supersede the Kyoto Protocol.

In either case, the new agreement could incorporate parts or all of the Kyoto Protocol by reference, rather than starting over again from scratch. For example, the 1994 WTO agreements were based on the previous GATT regime and incorporated GATT 1947 by reference, but included many new agreements that went well beyond the earlier GATT. Since the Convention does not specify the requirements for entry into force of a protocol, any new protocol would need to specify the requirements for its own entry into force. For example, the Kyoto Protocol provided for entry into force 90 days after the 55th ratification, including Annex I Parties representing 55% of 1990 carbon dioxide emissions by Annex I Parties. Only Parties to the Convention may join a protocol.

4.2 ACTION UNDER KYOTO PROTOCOL: AD HOC WORKING GROUP ON KYOTO PROTOCOL (AWG – KP)

The AWG – KP process contemplates the adoption of an amendment to Annex B, setting forth a new round of emission reduction for Annex I Parties. But the AWG – KP process does not preclude the CMP from adopting a decision or an amendment to the main body of the Kyoto Protocol.

4.2.1 Options

4.2.1.1 CMP Decision

The Kyoto Protocol contains several hooks for a CMP decision, apart from Article 3.9. First, Article 9 requires the CMP to periodically review the Protocol in light of the best available scientific information and to take appropriate action. The second such review was initiated at CMP 2. Second, Article 13.4 requires the CMP to keep under regular review the implementation of the Protocol and to assess the progress towards achieving the objective of the Convention. A subparagraph (b) of this article specifically requires the CMP to examine periodically the obligations of Parties to the Protocol in light of the objective of the Convention, and does not limit this examination to Annex I or Annex B Parties. Both of these provisions provide a potential basis for CMP action, although the Bali Conference agreed that the Article 9 review "shall not lead to new commitments for any Party."

4.2.1.2 Amendment of the Protocol

The Kyoto Protocol does not specify any substantive limits on what might be agreed by means of an amendment. Thus, an amendment might modify any aspect of the Protocol, including which Parties are subject to commitments, the nature of commitments, or the rules for emissions trading and the clean development mechanism (CDM). The procedural requirements for amending the Kyoto Protocol are set forth in Article 20 of the Protocol and are the same as for amendments of the Convention, including in particular the requirement of a three-quarters affirmative vote.

4.2.1.3 Amendment of Protocol annexes

Annexes to the Kyoto Protocol may be amended pursuant to Article 21. with the exception of amendments to Annex B of the Protocol (which may be adopted only with the written consent of the Party concerned), the provisions for amending annexes to the Protocol are the same as for amending annexes to the Convention.

Article 3.9 specifies the procedure for adopting commitments for Annex I Parties for subsequent commitment periods. Under Article 3.9, future targets must be adopted by amendment to Annex B, not by CMP decision. Under Article 21.7, amendments to Annex B may be adopted only with the written consent of the Party concerned. An amendment to Annex b could take virtually any form, including a new target number or a new type of target (for example, an intensity target).

4.3 OPTIONS TO LINK AWG – LCA AND AWG - KP

A comprehensive outcome establishing a single integrated climate regime would have several benefits. It would promote greater reciprocity between Parties by facilitating political tradeoffs. It would promote economic efficiency through emissions trading, and it would promote greater consistency, coordination and administrative efficiency.

Such an outcome could be effectuated most directly by adoption of a single new instrument under the Convention (either a Convention amendment or a new protocol), which addressed actions and/or commitments by both Parties to the Kyoto Protocol and the Convention. A single instrument would allow the regime to have a single set of institutions and procedures (for example, relating to reporting), while still allowing commitments and actions to be differentiated among countries in terms of type, stringency and/or timing – for example, through annexes that specify different sets of commitments or actions for different groups of countries, or through a country-by-country schedule of commitments. Such a new agreement could incorporate by reference some or all of the elements of the Kyoto Protocol.

If the Parties to the Convention and Kyoto Protocol prefer to adopt two decisions, one is relating to the Convention and the other relating to the Protocol, this would make the establishment of a single integrated regime more complex, but would not preclude various kinds of linkages between the Convention and Protocol decisions. Options include the following:

o Political linkage – Although at present, the AWGs are not formally linked, and the outcomes under the Convention and the Protocol would need to be formally adopted in two separate decisions, they could be negotiated and agreed as a package.

- o Legal linkage – If the COP and CMP were to adopt new legal instruments (such as protocols or amendments) to the Convention and the Kyoto Protocol, respectively, these legal instruments could be linked through entry into force requirements that made entry into force contingent on the other.

- o Operational linkage – New legal instruments under the Convention and Kyoto Protocol could be operationally linked through cross-references. For example, if each instrument allowed emissions trading, the trading systems could be operationally linked through mutual recognition of allowances and use of a common transaction log. Similarly, to provide for a common system of reporting and review, one agreement could piggyback its reporting and review procedure on the other.

5.0 CONCLUSION

COMESA appreciates the complexity of the negotiations and hopes that the world will soon realize that there is no more time for talking – it is time for acting. It is encouraging to note that most of the issues that COMESA has advocated have been grounded in the three main documents, namely, (a) the Copenhagen Accord, (b) AWG – LCA Negotiating Text, and (c) the AWG-KP LULUCF text. Arising from the Copenhagen Climate Change Talks in December 2009, it is clear that the position of the United States of America, Brazil, China, India and South Africa is a large factor in the negotiations. Any positive actions taken by these would give a new lease of life to the negotiations with a possibility of sealing the deal in Mexico in 2010 or South Africa in 2011. COMESA will continue to play its positive role in strengthening the common Africa position in the climate change talks.

Addressing maternal mortality in Eastern and Southern Africa: **What role can regional integration play?**

Gladys Mutangadura

The recent reviews of the progress made towards achieving the Millennium Development Goals (MDGs) on maternal health indicate that although some countries in the Eastern and Southern Africa region have been able to reduce maternal mortality, the overall progress on this MDG has been very slow. Maternal mortality in Africa remains the highest in the world. According to WHO's 2005 maternal mortality estimates, sub-Saharan Africa has a maternal mortality ratio of 900 deaths per 100,000 live births. This high rate of maternal mortality constitutes a public health crisis, a social injustice, and a violation of women's human rights and dignity. The fifteen-year reviews of the implementation of the International Conference on Population and Development Programme of Action (ICPD PoA) and Beijing Platform for Action in Africa held in 2009, noted that despite the commitments made to maternal health, this has not yet translated into substantial gains in fighting maternal mortality and called for intensified efforts including use of innovative ways to address maternal mortality. Using information drawn from desktop research, this paper highlights the status of maternal mortality in the sub-region; identifies the major causes; and suggests sub-regional actions that could be adopted to successfully address the problem of maternal mortality.

Key words: *regional integration, maternal mortality, East and Southern Africa.*

1. Introduction

The recent reviews of the progress made towards achieving the Millennium Development Goals (MDGs) on maternal health indicate that although some countries in the region have been able to considerably reduce maternal mortality, overall the progress on this MDG has been very slow (UNECA, 2009a, African Union Commission, 2008, UN, 2009). Maternal mortality is defined by WHO (1992) to be the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.

Maternal mortality in Africa remains the highest in the world. The target set for MDG-5 is a 75% reduction in the maternal mortality ratio (MMR)[182] between 1990 and 2015. However, in sub-Saharan Africa between 1990 and 2005 there has only been a reduction of 2%. The 2005 estimate of maternal mortality is 900 deaths per 100,000 live births for sub-Saharan Africa; and 160 deaths per 100,000 live births for North Africa (WHO et al, 2007). Consequently, the target reduction of 75% between 1990 and 2015, which requires a 5.5 % annual decline rate is not being met (ECA, 2009).

African countries have committed themselves to reducing maternal mortality and uphold the human right to health in different treaties, declarations and programmes of action. At the international level, African governments are part to the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ECOSOC), the International Covenant on Civil and Political Rights, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW); instruments that uphold the human right to adequate health. The international community also launched the Safe Motherhood Initiative in 1987 where governments and development partners were urged to maternal health an urgent health priority. The Programme of Action of the International Conference on Population and Development (ICPD) (1994) and the Beijing Platform for Action (1995) highlighted the importance of recognizing women's health and strategies to address maternal mortality as basic human rights. The Millennium Declaration of 2000 specifically made addressing maternal mortality a specific goal in its own right.

At the regional level, African governments have repeatedly highlighted the importance of reducing maternal mortality and upholding the human right to adequate health. The African Charter on Human and Peoples' Rights

182 Maternal mortality ratio is the number of maternal deaths during given time period per 100 000 live births during same time period.

(1981) that provides for the elimination of discrimination against women and for the protection of their rights; the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa adopted in 2003 in Maputo, addresses the concerns of African Women in a more specific manner; and the Solemn Declaration on Gender Equality in Africa (SDGEA) adopted in July 2004, requires States to respect existing normative standards on women's human rights. The African region also reaffirmed its commitment to sexual and reproductive health and rights and promotion of maternal health by adopting the Maputo Plan of Action on Sexual and Reproductive Health and Rights in Maputo in 2006. The African Union in collaboration with AU member states, the Regional Economic Communities (RECs), UN agencies and other organizations launched in May 2009 the Campaign on Accelerated Reduction of Maternal Mortality in Africa (the CARMMA), under the theme Africa Cares: No Woman should Die While Giving Life. CARMMA is an outgrowth of key priority areas embedded in the 2005 AU Policy Framework for the promotion of sexual and reproductive health and rights in the Maputo Plan of Action that African Ministers of Health approved in Maputo, Mozambique in September, 2006. The aim of CARMMA is to ensure effective coordination and implementation of the existing plans and strategies in the area of maternal and child health.

The fifteen-year reviews of the implementation of the International Conference on Population and Development Programme of Action (ICPD PoA) and Beijing Platform for Action in Africa held in 2009, noted that despite the commitments made to promote maternal health, this has not yet translated into substantial gains in fighting maternal mortality. The two reviews called for intensified efforts including use of innovative ways to address maternal mortality. Many African governments are still grappling with the challenge of developing health policies and health-care systems that can address high maternal death rates. Yet the illness or death of a woman has serious and far-reaching consequences for the health of her children, family and community and eventually affects the progress in achieving the MDGs.

Translating into reality the commitments of African leaders on achieving better maternal health outcomes requires information that can support the development of effective policies and strategies. This paper aims to fill this information and policy gap. This paper highlights the status of maternal mortality in the sub-region; identifies the major causes; and suggests national and sub-regional policies and actions that could be adopted to successfully address the problem of maternal mortality.

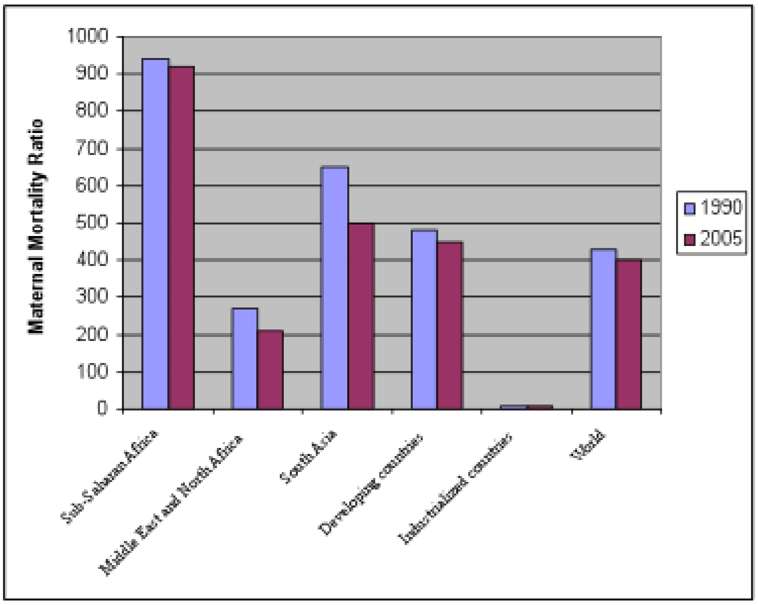
The rest of the paper is organized as follows: Section 2 reviews the status of maternal mortality in sub-Saharan Africa in general and East and Southern Africa in particular; Section 3 highlights the major causes of maternal mortality in the region; Section 4 presents the major challenges that countries have faced in addressing maternal mortality; Section 5 presents the priority actions required to address maternal mortality at national and regional levels; and Section 6 provides the conclusions.

2. Status of maternal mortality in East and Southern Africa

Measuring, monitoring and tracking progress on maternal mortality is challenging partly due to underreporting, misreporting and lack of reporting. In many instances in Africa, the routine recording of death and its cause is not common in civil registration systems. The currently most up to date available data is for 2005. However there is some recently updated data for 2008 published that was published online by the Lancet on April 9, 2010 that has been included in table 1.

Figure 1 compares maternal mortality ratio between 1990 and 2005 by region. As shown in the figure, the largest ratio of worldwide maternal deaths occurs in sub-Saharan Africa where most of the COMESA countries are. At this rate, the sub-Saharan African region account for half of all the maternal deaths experienced worldwide annually. The figure also shows that sub-Saharan Africa made the least progress globally in reducing maternal mortality. In addition, the lifetime risk of maternal death is unacceptably high in sub-Saharan Africa, at 1 in 23. In comparison, it is only 1 in 140 in North Africa, 1 in 92 in the World and 1 in 8000 in industrialized countries (WHO, UNICEF, UNFPA and World Bank, 2007).

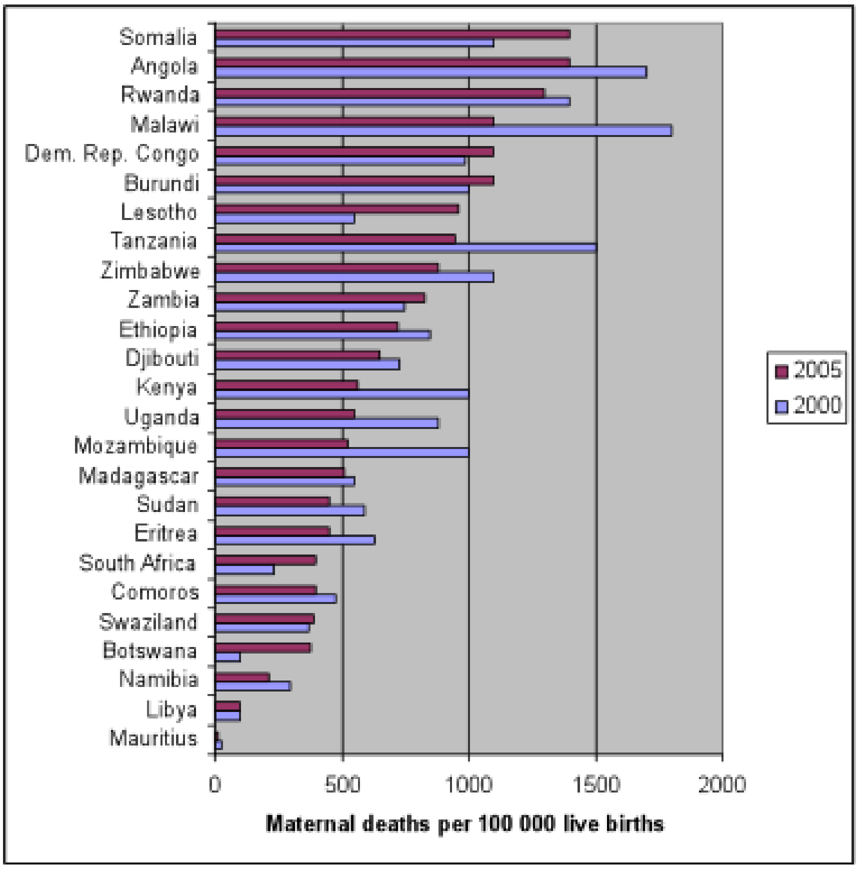
Figure 1. Maternal mortality ratio per 100,000 live births by global region, 1990 and 2005



Source: WHO, World Health Statistics, 2008.

Figure 2 and table 1 presents MMR per 100,000 live births in East and Southern African countries for the years 2000, 2005 and estimates for 2008. The data shows that 60% of the countries have managed to reduce maternal mortality, whereas in 8 countries, maternal mortality increased. However even with the reduction, maternal mortality was still quite high in 2005 in most countries. Some countries had very high maternal mortality ratios in excess of 1000 per 100 000 live births including Angola, Burundi, Malawi, Somalia, Democratic Republic of Congo, and Rwanda (see figure 2 and table 1). This is in contrast to Mauritius and Seychelles who, given their strong health infrastructure and management capacity have reported very low levels of maternal mortality ratios (UNECA, UNFPA and AU, 2009).

Figure 2. Maternal mortality ratio per 100,000 live births in East and Southern Africa, 2000 and 2005



The MMR estimates that have just been released by the Lancet show that some of the countries that had very high maternal mortality rates in excess of 1000 per 100 000 live births such as Angola, Burundi, DRC, Rwanda and Somalia, have been able to reduce by about 50% (see table 1).

Table 1. Maternal mortality estimates, delivery care coverage, contraceptive prevalence, and antenatal care coverage in Eastern and Southern Africa

Country	Maternal deaths per 100 000 live births			Delivery care coverage 2000-2007		Contraceptive prevalence (%)	Antenatal care coverage 2000-2007 (%)	
	2000	2005	2008[1]	Skilled attendant at birth	Institutional delivery*	2000-2007	At least once	At least four times
Angola	1700	1400	593	47	46	6	80	na
Botswana	100	380	519	94	80	48	97	na
Burundi	1000	1100	570	34	29	9	92	na
Comoros	480	400	225	62	43	26	75	52
Dem. Rep. Congo	990	1100	534	74	70	31	85	na
Djibouti	730	650	462	61	74	18	92	7
Eritrea	630	450	751	28	26	8	70	41
Ethiopia	850	720	590	6	5	15	28	12
Kenya	1000	560	413	42	40	39	88	52
Lesotho	550	960	964	55	52	37	90	70
Libya	97	97	40	94	na	45	81	na
Madagascar	550	510	373	51	32	27	80	40
Malawi	1800	1100	1140	54	54	42	92	57
Mauritius	24	15	na	98	98	76	na	na
Mozambique	1000	520	599	48	48	17	85	53
Namibia	300	210	586	81	81	55	95	70
Rwanda	1400	1300	383	39	28	17	94	13
Somalia	1100	1400	675	33	9	15	26	6
South Africa	230	400	237	92	na	60	92	73
Sudan	590	450	306	87	na	7	6	na
Swaziland	370	390	736	69	74	51	85	79
Tanzania	1500	950	449	43	47	26	78	62
Uganda	880	550	352	42	41	24	94	57
Zambia	750	830	603	43	44	34	93	72
Zimbabwe	1100	880	624	69	68	60	94	71
Sub-Saharan Africa	**940**	**920**	**na**	**45**	**40**	**23**	**72**	**42**
Middle East and North Africa	**220**	**210**	**na**	**81**	**71**	**56**	**72**	**na**
South Asia	**560**	**500**	**na**	**41**	**35**	**53**	**68**	**34**
Developing countries	**440**	**450**	**na**	**61**	**54**	**60**	**77**	**46**
Industrialized countries	**13**	**8**	**na**	**na**	**na**	**72**	**na**	**Na**
World	**400**	**400**	**na**	**62**	**54**	**62**	**77**	**47**

Source: WHO, UNICEF, and UNFPA, 2003; WHO, UNICEF, UNFPA and World Bank, 2007; UNICEF, 2009.
1 2008 MMR estimates from the just released data by Hogan et. al. 2010.
** Institutional delivery is the proportion of women aged 15-49 years old who gave birth during the two years preceding the survey and delivered in a health facility (UNICEF, 2009).*

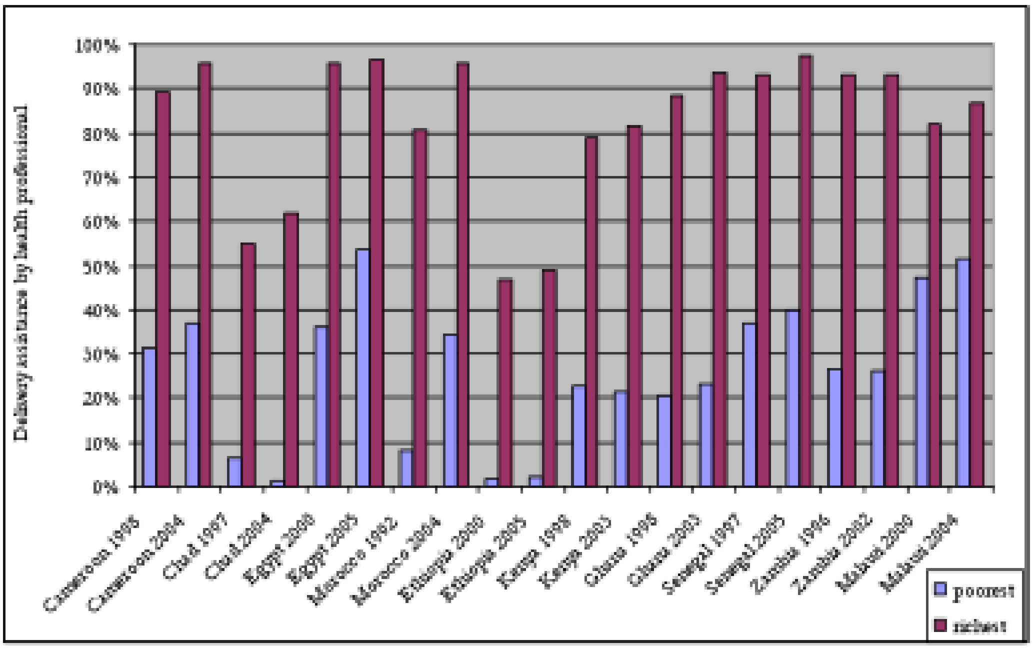
At the regional level, the WHO has supported countries to implement the Safe Motherhood initiative. Today all the countries have a safe motherhood programme, although not all have universal coverage. The trend in the second indicator for monitoring MDG 5, the proportion of births attended by skilled health personnel (doctor, midwife, or nurse) show that sub-Saharan Africa has less than 50% births being attended to by a skilled health worker (see table 1). The trend in the status of the institutional delivery care coverage also show low level of 40% indicating that most women are not able to deliver in a health facility.

Modern contraceptive methods some of which include voluntary sterilization, oral contraceptives, intrauterine devices, condoms and injectables have been proven to be effective family planning methods and important in promoting maternal health by reducing the incidence of unwanted pregnancies. In 2007, the overall modern contraceptive prevalence rate was about 23 percent for sub Saharan Africa as shown in table 1. In Southern Africa the coverage rate exceed 50 percent, and East Africa is 17 percent (UNECA, AUC and UNFPA, 2009). Without a widespread adoption of modern methods of family planning and reduction in the magnitude of unmet family planning needs, it will be difficult, to achieve a significant reduction in maternal mortality.

Access to and utilization of prenatal care services is important for addressing some of the causes of health care complications and mortalities associated with pregnancy. Antenatal care coverage has improved in many countries as shown in table 1. However, the coverage rate of at least 4 times which is the recommended level is low.

It is important to note that significant disparities in maternal mortality exist resulting from income differences, rural-urban location and other factors. A study conducted by UNECA in 2008 in 10 African countries revealed huge inequities in accessing delivery assistance by a health professional, antenatal care, and modern contraceptive methods due to income and rural – urban location. Women in the richest wealth quintile have greater access to delivery assistance by a health professional when compared to the poorer groups in all the study countries as shown in figure 3.

Figure 3. Women with access to delivery assistance by richest and poorest wealth quintiles



Source: UNECA, 2008

The UNECA study also revealed huge disparities in accessing delivery assistance, antenatal care and modern contraceptives between urban and rural areas. Women resident in urban areas had a much higher chance of getting these services than those in rural areas. The vulnerable and marginalized groups experience higher cases of maternal mortality. The vulnerable groups are also the ones being most severely impacted by the economic crisis. This implies that vulnerable and marginalized groups such as the poor, rural women, and other marginalized groups need specific targeting in order to ensure that they do make progress towards the targets of MDG 5.

About 80 per cent of maternal deaths are preventable if women have access to essential maternity and basic health care services (Khan et al 2006). There is need for continued efforts to expand the coverage of essential services.

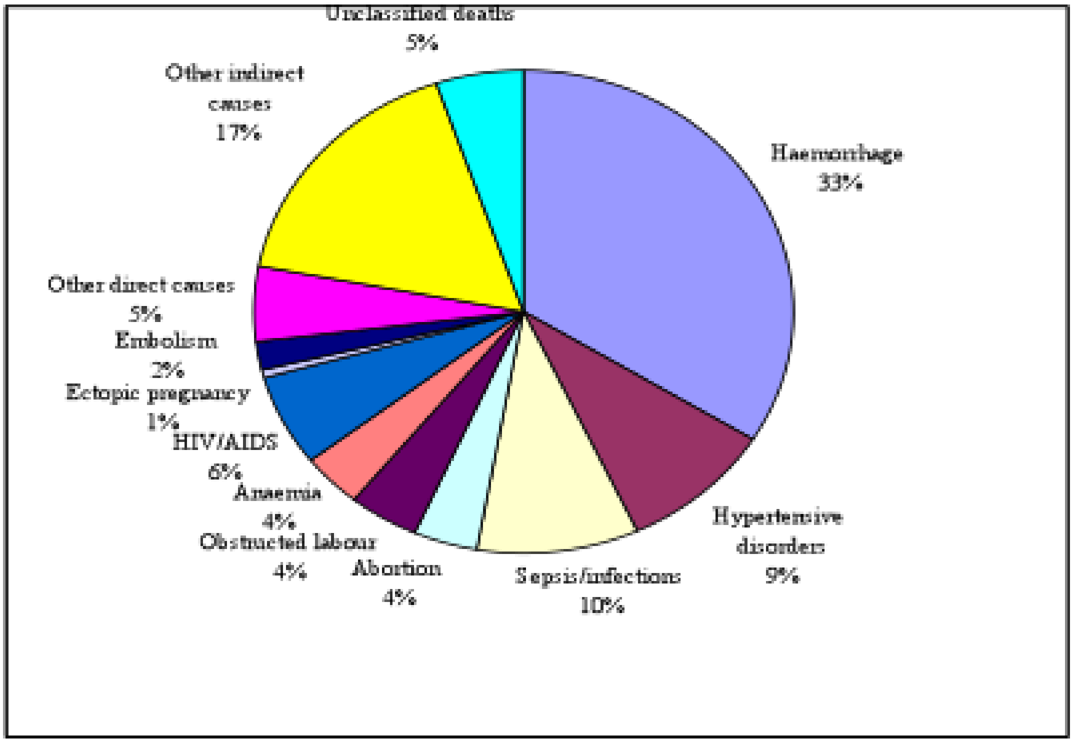
3. The major causes of maternal mortality

There is a distinction between a direct cause of maternal death that occurs as a result of a complication of the pregnancy, delivery, or their management such as unsafe abortion, or pregnancy induced hypertension, and an indirect cause that is a result of worsening of an existing medical condition such as HIV/AIDS, anaemia or malaria. Some of the indirect causes such as tuberculosis, malaria and anaemia are highly preventable or treatable. Separation of indirect obstetric deaths from direct causes is important for determining the intervention strategies that are of priority in specific locations. For example, if deaths due to malaria or HIV/AIDS are not distinguished from direct causes in settings with a high prevalence of malaria or HIV/AIDS, resources might be misdirected away from HIv and malaria prevention strategies, which could have a large effect on maternal mortality (Ronsmans and Graham, 2006).

Other fatalities such as accidents, murders, or suicides experienced while a woman is pregnant or within 42 days of delivery but unrelated to a pregnancy are termed accidental or incidental. However, increasingly, there is mounting evidence suggesting that such deaths might be closely linked to the pregnancy. For example in India, deaths due to domestic violence were the second largest cause of death in pregnancy (16%) (Ronsmans and Graham, 2006).

Available literature[183] indicates that the leading direct causes of maternal deaths worldwide and in sub Saharan Africa are: haemorrhage, hypertensive disorders, sepsis/infections, obstructed labour and unsafe abortion. Direct causes account for most of the maternal deaths in sub-Saharan Africa as shown in figure 4. The leading indirect causes are malaria, anaemia, hepatitis, and increasingly, HIV/AIDS.

Figure 4. Causes of maternal deaths in sub-Saharan Africa



Source: Khan et al 2006.

The direct and indirect causes of maternal mortality are driven by the major factors that affect maternal health outcomes that are depicted in a conceptual framework presented in figure 5. The framework, presents household and community level factors that affect the status of maternal health and the ability of pregnant women to demand and utilize health services. The major household social, and economic determinants of maternal health include: poverty, hunger; limited education, poor health literacy, gender inequality that leads to vulnerability to HIV/AIDs infection, poor adherence to antenatal visits, untimely arrival for delivery, unsafe water, poor sanitation, housing and other environmental problems. These household factors determine the woman's ability to prevent themselves from most of the indirect causes and also contribute to how they can minimize the direct causes.

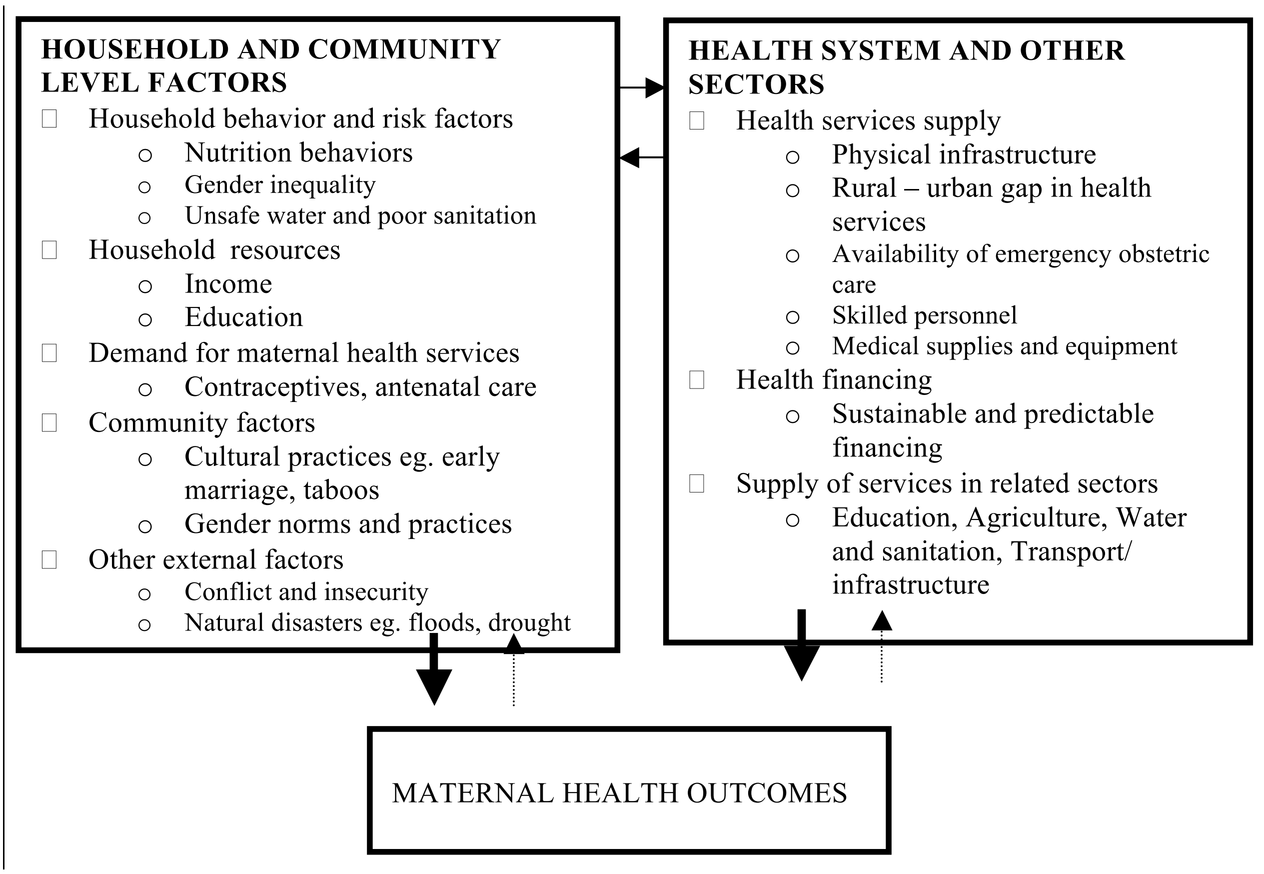
183 Ronsmans and Graham, (2006), WHO (2007), Khan et al (2006), Ujah et al (2005).

Community factors include cultural practices such as female genital mutilation, early marriage, multiple pregnancies, and detrimental taboos; informal and formal community support; and gender norms and practices that do not allow women to make decisions about their own health and might encourage violence against women. For example, one of the factors behind maternal mortality in Africa is the high rate of adolescent pregnancies due to early marriage and teenage pregnancies (UNECA, 2009b). The risk of maternal mortality for very young mothers (15-19) is twice as high as maternal mortality risk for mothers aged above 20 (UNFPA 2006). Their young age and the low status of women in society often leave them with little power to determine if, when and with whom to become pregnant. They are also more vulnerable to getting infected by HIV/AIDS, which stems from economic, social and cultural inequalities. In addition, women who have undergone infibulation, a form of genital mutilation where the external genitalia are stitched, are more likely to suffer from obstructed labour (Nanda et. al. 2005).

Other external factors that affect maternal health at household and community levels include conflict and situations of insecurity that can destroy health services or discourage access of health services; and recurrent natural disasters such as floods, and drought.

The health sector has factors that affect the supply of health services, and health financing. Factors affecting supply of health services include poor physical infrastructure; inequality in the coverage of services between urban and rural areas; lack of prompt emergency obstetric care; inadequate skilled personnel at the time of birth; quality family planning; limited access to health technologies; inadequate and unpredictable health financing; and lack of essential medicines and vaccines, supplies, and equipment. Sustainable and predictable financing is crucial for strengthening health systems and for promoting geographical and financial access.

Figure 5. Conceptual framework on the factors affecting maternal health outcomes



Source: Adapted from Claeso, et al, 2001.

Other sectors such as education, water and sanitation, agriculture, transport and others are crucial in helping address maternal mortality. For example, in rural Tanzania, 84 percent of women who gave birth at home intended to deliver at a health facility but did not due to distance and lack of transportation (Nanda et al 2005). Improving girl's access to education has been proven to have very long lasting impacts on maternal health outcomes.

Overall, the causes of maternal mortality and associated factors discussed in this section, highlight the need to ensure that strategies should address problems inside and outside the health sector and household and community level factors.

4. Challenges to promoting maternal health

Although successful interventions to prevent the vast majority of maternal deaths are available, many African countries have not been able to make much progress towards achieving MDG 5 because of several challenges. This section highlights some of the leading challenges that are hampering progress. Some of the major challenges that have been identified in different literature (Oluwole, 2004; Nanda et al 2005; Ronsmans and Graham, 2006) include:

- Lack of national commitment to prioritise maternal health.
- Financial constraints: poor budget allocations to health in particular maternal health issues, resulting in funding that is not sustainable and is not adequate for scaling up. This has severely constrained countries to move from policy to action in the health sector.
- Poor coordination among partners.
- Growing poverty among women which is a major obstacle in accessing health services.
- Harmful socio-cultural beliefs and practices and persistent gender inequalities.
- Shortage of human resources for health and limited availability of skilled health personnel in rural areas.
- Lack of access to health services during pregnancy, childbirth and the immediate postnatal period.
- Poorly functioning health systems with weak referral systems especially during obstetric emergencies.
- Negative impact of the HIV pandemic on human and financial resources for maternal health care.
- Lack of reliable data on which better policies could be based.

5. Priority actions for addressing maternal mortality

The realization of MDG 5 require increased attention to address the important direct causes that have been identified to include haemorrhage, sepsis, eclampsia, obstructed labour and unsafe abortion. Indirect causes that exacerbate the impact of maternal deaths such as HIV/AIDS, malaria and tuberculosis require heightened attention. This implies that the health systems need to be strengthened in order to achieve the required results. Based on the discussions highlighted in this paper, priority actions at national and regional levels are provided below.

5.1 Priority actions at national level

Priority actions at national level include: scaling up interventions that have proven to be effective; strengthening of health systems; enhancing systematic generation and management of better country-level data; addressing the special needs of vulnerable populations; strengthening the role of families and communities in addressing maternal mortality; improving sustainable funding for maternal health; promotion of multi-sectoral approach; and strengthening of advocacy and communication to galvanize political commitment.

Scaling up of evidence-based, cost-effective interventions that can improve health outcomes in mothers is essential for the realization of the MDG on maternal health. These interventions have been highlighted in detail in UNICEF, 2009; Campbell and Graham, 2006; Nanda et. al.2005. The interventions include those aimed at reducing the direct causes such as hemorrhage, obstructed labour, and hypertensive disorders and the indirect causes such as anaemia, malaria, unsafe abortions and HIV infection. Some of the leading interventions include magnesium sulphate and calcium supplementation for the prevention of hypertensive disorders of pregnancy; effective dissemination strategies for guidelines on the prevention and treatment of post-partum haemorrhage, skilled health attendant at birth; the recommended provision of at least four antenatal visits to pregnant women and one post-partum visit to new mothers; iron folate supplementation; effective programmes for the prevention and treatment of malaria and HIV; and others (UNICEF, 2009).

Strengthening health systems to improve maternal health involve: improving the availability of quality skilled health personnel at the time of birth; improving access to quality sexual and reproductive health services including family planning, pre and post natal services and emergency obstetric care; addressing unsafe abortions; investing in health infrastructure, and supportive information and communication technology; improved availability of essential drugs and medicines; and strengthening of referral systems especially during obstetric emergencies. A key innovation in strengthening availability of skilled health personnel is training of non-physician clinicians who are “mid-level health workers” to give emergency help to pregnant women and infants. This innovation has proved particularly effective in enhancing access to human resources to address maternal mortality (Bergstrom, 2005).

Enhancing systematic generation and management of better country-level data on cause of death and trends in maternal mortality is vital for development of relevant policies and monitoring and evaluation. Countries should strive to report every single maternal death and widely disseminate the data.

Addressing the special needs of vulnerable populations such as refugees, poor women and internally displaced persons is essential since they are the ones most affected. Strategies to improve their geographic and financial access to maternal health services should be promoted.

Strengthening the role of families and communities in addressing maternal mortality is key to addressing some of the household and community determinants of maternal mortality. Community-based information and education efforts should aim to raise the level of community preparedness for obstetric emergencies. Community and family members need to know about the potential risk of obstetric complications for all pregnant women and the need to recognize danger signs and to obtain appropriate care quickly. The role of men need to be particularly strengthened by fully involving their participation in family planning, sexual and maternal health. Families and communities need to be sensitized against traditional practices and taboos that hamper increased use of family planning, and maternal services. Emphasis should be placed on communication and education on behavior change.

Improved and sustainable funding is required to ensure the scaling up of interventions. In particular funding should also be allocated to neglected and under-funded issues such as family planning, adolescent sexual and reproductive health and rights and harmful traditional practices.

Promotion of multi-sectoral approach is vital for positive maternal health outcomes. There is need to promote the role of other sectors in addressing maternal mortality including education, social welfare, transport, infrastructure, communication, economic development, including those aimed at promoting culture and tradition that is supportive of maternal health. These are important in addressing underlying factors such as poverty, gender inequality, illiteracy and Strategies that empower women and girls, such as policies that promote the right of girls and women to education, improved access of women to employment opportunities and productive resources, interventions that empower women to make vital decisions about their bodies and lives.

Strengthening of advocacy and communication to galvanize political commitment at the highest level is necessary to stimulate action at country level.

5.2 Priority actions at sub-regional and regional level

At the regional level, the African Union has developed different initiatives to promote maternal health including the following:

- Road map for accelerating the attainment of the MDGs related to Maternal and Newborn Health in Africa
- African Union framework for Child Survival
- African Union Maputo Plan of Action on Sexual Reproductive Health
- African Union Health Strategy
- African Union Implementation Framework for Achieving Universal Access to HIV/AIDS, TB and

Malaria services

- The Campaign on Accelerated Reduction of Maternal Mortality in Africa (the CARMMA)

These initiatives are crucial for guiding the development of national health policies and strategic plans on maternal health or revision of existing ones. They have also been crucial for bringing in much needed injection of resources into the health sector in sub-Saharan Africa.

At the sub-regional level, Regional Economic Communities (RECs) can contribute through resource mobilization, advocacy, capacity building, inter-country sharing of experiences and dissemination of vital information.

Under resource mobilization, RECs can help foster the promotion of maternal health by helping countries mobilize resources that are essential for scaling up interventions that work. They can also encourage investment of mobilized resources into infrastructure (eg transport, and communication) that can support maternal health at the su-regional level.

With respect to advocacy, RECs can promote key messages on maternal mortality by supporting the AU CARMMA to mobilize political will and commitment for action towards effective implementation of strategies for reducing maternal mortality. The RECs can also advocate for the adoption of other initiatives that promote positive maternal health outcomes such as the United Nations Secretary-General's "UNite to End Violence against Women and Girls" campaign.

Under capacity building, RECs can provide technical strategic policy guidance to improve maternal health within the context of African Union's and other relevant initiatives; build the capacity to capture accurate data for monitoring maternal health; and also develop regional strategies to manage training and retention of health human resources.

RECs are well placed to lead and facilitate the development of effective inter-country mechanisms of sharing widely best practices, on experiences on policy, strategies data and other resources for promoting maternal health.

6. Conclusions and recommendations

MDG 5 aims to achieve an expected 5.5% annual decline in MMR from 1990 to 2015. However as reviewed in this paper, MMR has not improved significantly in Eastern and Southern Africa. The annual decline for the whole of sub-Saharan Africa has been about 0.1% which is very low compared to expectations set by the MDGs. The high number of maternal deaths could be saved with health interventions, which have proved to be cost-effective in many situations. The paper has highlighted the major challenges that countries are experiencing in trying to improve maternal health.

The critical challenge for countries in sub-Saharan Africa and East and Southern Africa in particular is to move from policy to action with regard to maternal health. Efforts to expand coverage of essential services and strengthening of the health systems combined with actions to educate and empower women have potential to accelerate progress towards addressing maternal mortality. Governments and development partners should ensure that maternal health programs receive adequate human and financial resources, in order to scale up implementation of effective interventions, paying particular attention to neglected areas.

Regional Economic Communities (RECs) can support Member States in various ways including: helping countries mobilize resources that are essential for scaling up interventions that work; provide guidelines on policy development; building capacity to capture accurate data for monitoring maternal health; and development of effective inter-country mechanisms of sharing widely best practices, on experiences on policy strategies, data and other resources for promoting maternal health.

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Creation of a Corporate Governance Regime for COMESA

Jacqueline Musiitwa

Because the company is so integral to society, it is considered as much of a citizen of a country as is a natural person who has citizenship. It is expected that the company will be directed to be and be seen to be a decent citizen. This involves social, environmental and economic issues - the 'triple bottom line'. Boards should no longer make decisions based only on the needs of the present because this may compromise the ability of future generations to meet their own needs... The success of companies in the 21st Century is bound up with three interdependent sub-systems - the natural environment, the social and political system and the global economy. Global companies play a role in all three and they need all three to flourish... In short, planet, people and profit are inextricably intertwined.[184]

Introduction

Corporate governance is roughly defined as the framework of laws, regulations and policies (internal and external) that aim to improve economic performance and the way in which a company is administered.[185] The Organization for Economic Cooperation and Development suggests that a, "corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets."[186] This is in line with COMESA's intentions to not only create a corporate governance regime, but also to create a better integrated region that is a thriving investment destination.

Good corporate governance is essential for COMESA for many reasons, including but not limited to evidence that corporate governance promotes greater investor confidence and market competitiveness, it promotes good business practices generally and it creates the necessary environment for growth of the private sector. In order to achieve good corporate governance, the leadership (the board of directors and management) must show commitment to the effective and efficient running of the company, there is transparency and accountability, there are rules and regulations outlining a company's requirements and the rights of the stakeholders are valued by leadership.
COMESA's development of a corporate governance regime could not have commenced at a better time. As the global economy starts to recover from the financial crisis, business law reforms are in order. Crises in business highlight the need for changes in the policy and legal regime. This is no exception. COMESA will have the benefit of hindsight for not only the 2008 financial crisis, but crises before that one as well. COMESA will be able to create a system that is more insulated from global shocks to the financial system as well as able to withstand internal shocks. However, the creation of such a regime will take time and adequate diligence. Only then can COMESA create a corporate governance regime that will best benefit the area, but that will also act as a model for the 21st century way of doing business.

The Corporate Governance Bandwagon: COMESA jumps onboard
Background of the contemporary corporate governance movement

As COMESA seeks to create a corporate governance regime, it is necessary to adopt an approach that takes the known best practices as well as lessons learned from other countries and regions around the globe. What are the immediate lessons COMESA can learn as far as structuring its own regime? The East Asian crisis in the late 1990s is said to have been caused by poor management practices, lack of transparency and other poor corporate governance practices.[187] However, it is arguable that other than thwarting forward the discourse on corporate governance, the

184 King Code p 11.
185 Organization for Economic Co-operation and Development, Principles of Corporate Governance 2004, http://www.oecd.org/dataoecd/32/18/31557724.pdf ,17.
186 Organization for Economic Co-operation and Development, Principles of Corporate Governance 2004, http://www.oecd.org/dataoecd/32/18/31557724.pdf ,17.
187 Jesus Estanislao, President and CEO of the Institute of Corporate Directors in the Philippines and former Finance Minister, East Asia's Financial Meltdown: Why Corporate Governance Matters, http://www.cipe.org/pdf/publications/fs/estanislao.pdf 2001 as seen on March 31, 2010.

East Asian crisis seems to have had little effect towards creating a corporate governance regime in COMESA. It is the demise of Enron, World Com, Tyco and others in the United States that forced the world, including COMESA to pay renewed attention to corporate governance. The corporate governance crisis in the United States is said to have been as a result of poor accounting practices and lack of transparency, poor business ethics and a weak regulator system.[188] Seeing as the United States is a trendsetter in legal and regulatory matters in commerce and industry generally, it is no wonder the rest of the world too decided to find country and region specific corporate governance best practices.

COMESA faces a distinct advantage because it is able to learn from other countries and regions that have corporate governance regimes for a longer period. However, it is necessary for COMESA to consider that a "one size fits all" approach will not work. It is necessary to take into consideration the unique elements of COMESA. What makes COMESA unique in this situation? COMESA is a tripartite framework of the East African Community, the Southern African Development Community and COMESA. This area is home not only to a diverse number of languages and cultures, but also policy, legal and regulatory regimes. It is arguable that these differences do not serve as a detriment to COMESA's goal of a unified corporate governance regime. Rather, the diversity will provide many different examples of what can work in order to create a corporate governance regime that will be in line with COMESA's goal of better regional integration. Therefore, it is especially important for COMESA to create a local solution for corporate governance issues that factor in the local business environments, development goals, cultural customs and the unified desired outcome of global competitiveness.

This writing is especially concerned with the creation of a COMESA corporate governance regime that integrates a 'triple bottom line'[189] approach. In what can be described as an African solution to an African problem, this approach will factor in universal African values to be used to engage corporations to participate in a social, ethical, environmentally friendly business environment that generates more than profit, but also tackles COMESA specific problems such as poverty on the one hand and promotion of both local and foreign direct investment on the other.

Even though there are many praises for the triple bottom line approach, there are some criticisms as well. One of the main criticisms is how to aggregate or measure the effectiveness and the social and environmental impact. Additionally, since reporting is a critical element of any good corporate governance regime, the question arises how does a company report what can not be quantified. However, this is a problem that exists in the field of development and should not be used to deter companies from an inclusive approach. Another criticism is that because companies are not specialized in providing and promoting social services or environmental protection, they might end up doing more harm than good. The strength of this argument can be diminished if companies consult with local communities as they outline their strategies. Further, it is not uncommon for corporations to mask the truth or to fabricate information in their favor when they need to. The added concern is that as companies continue to receive positive marketing and media attention from their good corporate governance and corporate social responsibility engagements when companies may not actually do what they are saying.

The Integration of COMESA and the significance of corporate governance

A regional corporate governance structure is essential for not only increasing foreign investment, but also propelling COMESA businesses as sustainable business that viable competitors in the global market. Additionally, good corporate governance is a critical element for creative competitive markets and consequently improving living conditions. COMESA, like other African regional trade blocks seeks to better integrate the region, brand themselves as the best African region in which to do business, remain internationally competitive while consequently improving living conditions of the people in the region. For COMESA to succeed in this mission it is essential for the appropriate business infrastructure to exist, one that that promotes economic growth, investment, trade and entrepreneurship in a social, ethical and environmentally conscious manner. Promoting good corporate governance should be part of the holistic solution to solving private sector challenges in the region. According to Article 3 of the Investment Framework Agreement for the COMESA Investment Area ("COMESA Agreement"), it was established in order to substantially increase the free flow of investments into COMESA from both COMESA and non-COMESA members, jointly promote COMESA as the most attractive investment area, strengthen and increase competitiveness of COMESA's economic activities, progressively reduce or eliminate investment regulations and conditions which may impede investment flows and the operation of investment projects in COMESA. In order to achieve these goals

188 Dick Thornburgh, "A Crisis in Corporate Governance? The WorldCom Experience" Monday, March 22, 2004 http://www.klgates.com/files/Publication/5ca1eda3-acd7-47e1-9431-6f0511d1e7e4/Presentation/PublicationAttachment/ee2da30a-9843-4264-b182-f06d9d381051/Corp_Gov.pdf

189 The theory coined by John Elkington that argued that in order for today's modern corporation to thrive it must not only aim for high profits, but it must also factor in the community in which it operates and the environment.

COMESA must have committed leadership committed to implementing and enforcing the corporate governance regime.

Corporate governance is essential for the protection of investors and their investments, ensuring transparency and accountability of corporate leadership, streamlining the investment process through a legal regime of check and balances and lastly residual stakeholder benefits[190]. However, nowhere in the COMESA Agreement is corporate governance mentioned. This is a grave error considering the significance of good corporate governance as it relates to the promotion and attraction of investment. However, this omission does not need to be rectified by amendment of the Agreement, rather, an addendum and auxiliary laws need to be created outlining a suitable corporate governance model. If COMESA took the necessary measures to create a corporate governance regime, COMESA would to be the first regional African organization to have clear laws on the matter. As the leading region in corporate governance matters, it will get the much needed investor attention. However, creation of a corporate governance regime is only effective if there is enforceability and a culture of compliance. Bad or no corporate governance will result adverse consequences, like in reduced investor confidence, failure of companies and the reduction of foreign and local direct investment. The question therefore is not whether a corporate governance regime is necessary, but rather what type of regime COMESA should implement.

The changing nature of business in COMESA

The private sector in the COMESA region has been undergoing many changes over the past twenty years. After 1991, many countries underwent substantial changes in political governance, which invariably affected their systems of business. The effects were many, but at minimum, they ensured that many countries were starting on very similar footing as far as free market liberal economies. With South Africa's independence in 1994, another dynamic changed. After sanctions were lifted on the apartheid government South African businesses began a strategic entry into other markets in the region. The effect for corporate governance has been such that South African companies, mostly have parent companies in South Africa and therefore expectedly continue to abide corporate governance regulations as stipulated by South African law. However, that is not always the case. For instance, Shoprite, a South African chain grocery store has been criticized for not abiding by its own corporate governance and corporate social responsibility strategies outside South Africa. Bench Marks Foundation found that in Zambia, Malawi and Swaziland, "Shoprite jeopardised local businesses, did not include local farmers in its supply chain, was doing well on HIV/AIDS projects, underpaid staff and did not report on social investment projects in Southern African Development Community countries other than SA [South Africa]."[191] The Shoprite example forces us to ask whether there are other multinational companies that are doing the same. Whether the answer is in the affirmative or not, one example is more than enough to indicate such behavior is possible. As such, it highlights the need to streamline and create an "inclusive" or "enlightened shareholder value" or "stakeholder" corporate governance regime in COMESA. The inclusive approach is synonymous with the triple bottom line. It is critical to create an inclusive regime so that as intraregional and international trade increases in COMESA, companies will develop a good corporate governance strategy and will conduct themselves as good corporate citizens in every country they operate in and not just where a company is domicile.

Anglo-American ("shareholder") vs. European ("stakeholder") approach

Companies are pillars of economic growth but if local communities do not enjoy some residual effects of the corporation such as employment, a clean environment, infrastructure development and the like, there is the chance local communities will retaliate against the companies. This is commonly seen in Nigeria's Niger Delta where the local communities feel disempowered, have few economic opportunities and suffer from environmental damage. As a result, among other things, local citizens often kidnap employees of oil companies for ransom and also vandalize the property of oil companies.[192]

According to Slater,

> Companies don't operate in a vacuum... Every company, large and small, has contractual and non-contractual relationships with individuals and entities. These might include the community in which the company operates, its customers, employees, shareowners and suppliers. In order for the inclusive approach to be implemented these stakeholder groups need to be defined and recognized

190 Principles for Responsible Investment http://www.unpri.org/principles/

191 Nicola Mawson "NGO criticises Shoprite"last modified 2009-04-15 10:14 Business Day. Accessed 3/31/2010 http://www.fastmoving.co.za/news-archive/retailer-news/ngo-criticises-shoprite

192 Nigeria – Niger Delta, Global Security, http://www.globalsecurity.org/military/world/war/nigeria-2.htm

> by the company, and then the values by which the company will carry out its daily transactions with these stakeholders must be identified and communicated. This is not a one-way street, by contrast, the only way the company can achieve its goals is to ensure that it has mutually beneficial relationships with its stakeholders. Communication on performance, targets and commitments is the key to building trust. In my own experience, this inclusive approach is the way to create sustained business success and steady, long-term growth in shareowner value.[193]

Part of building trust is making sure that stakeholders also create the strategy that will affect them. Formulation of a corporate social responsibility plan without assessing the needs of the community is bound to be ineffective. Lastly, if stakeholders are not part of creating that strategy and recipients of the benefits of corporate profit, stakeholders will continue to jeopardize companies' operations.

Out of the two common models of corporate governance, stakeholder and shareholder, this paper will argue in favor of COMESA adopting the stakeholder approach. The shareholder model focuses on the primacy of the shareholder's rights and interests in a company whereas the stakeholder model views the corporation not only as an economic entity, but also as a social one that owes fiduciary duties and duties of transparency and accountability to stakeholders, that is "those who influence or are influenced by the corporation. This usually encompassing owners, suppliers, customers, employees, management, government and local communities."[194] The stakeholder model is more ideal for COMESA for several reasons. The primary reason is that good corporate governance is necessary for promotion of investment and private sector development and private sector development is key to economic development.

According to Reed, the shareholder approach is characterized by the following:

1. A single-tiered board structure which gives almost exclusive primacy to shareholder interests;
2. A dominant role for financial markets;
3. A correspondingly weak role for banks; and
4. Little or no industrial policy involving firms cooperating with government agencies (and labour bodies).[195]

Contrary to Reed's view that developing countries tend to adopt corporate governance reforms in line with the Anglo-American approach, many developing countries in fact do not. The first problem with this argument is that "developing countries" like "emerging markets" is too broad a categorization. It is not clear if the author is referring to one specific geographic area or what level of development. Surely corporate governance varies from Latin America to Eastern Europe to Africa to Asia. With respect to COMESA, the Anglo-America approach can not be fully implemented because many COMESA countries do not yet have the necessary business infrastructure in place to follow the shareholder approach. For instance, considering the role of the corporation as earlier mentioned, it is impossible for the interests of shareholders to take priority without taking into consideration stakeholder's interests. Therefore, the shareholder model is impractical for COMESA considering the position of business and the socioeconomic challenges in COMESA.

COMESA can not adopt the shareholder approach because the financial markets in many COMESA countries are still unsophisticated. There are only ten (10) active stock exchanges in COMESA that are members of the Africa Securities Exchange Association ("ASEA"). Contrary to Reed, corporate governance reforms do not play a dominant role in the financial markets of COMESA because not only are they developing their financial markets, some also lack corporate governance regimes. Lastly, the stakeholder approach takes into consideration employees interests. This is especially important in COMESA because countries do not usually enforce their industrial relations laws. As such, a COMESA law would streamline the manner in which corporations treat their employees, for instance De Beers in South Africa would have to abide by the same labor standards with its employees in the Democratic Republic of Congo and Botswana. This would avoid a situation similar to the one above with Shoprite.

193 A Slater, 'What you had was good gems from a governance guru' (2005) 2 Corporate Responsibility Management 1.
194 West 434.
195 Reed, D.: 2002, "Corporate Governance Reforms in Developing Countries", Journal of Business Ethics 37, 223–247 (230).

Recommendations

As Africa undergoes a renaissance and redefinition as a self determined continent, it is essential to ensure that African values are inserted into the spheres of influence. In order to set Africa apart from the rest of the world, it is necessary to reverse years of mirror imaging foreign business system and omission of African values. What are African values is arguable considering Africa's rich cultural diversity. Therefore it is essential to use overarching principles that can be found through COMESA member states.

For the purposes of this paper, the concept *"ubuntu"* will be used. There are various aspects of it, including but not limited to co-existence, collectiveness, obligation to others, cooperation, consensus. Former president Nelson Mandela[196] and Bishop Desmond Tutu[197] have often given anecdotes of community and people sharing food with others without having to ask, during the apartheid struggle as an aspect of *ubuntu. Ubuntu* is clearly in line with the stakeholder approach because of its focus on community rather than an individual or single institution. By incorporating principles of ubuntu as well as taking into consideration other peculiarities of the COMESA business climate and the triple bottom line approach, COMESA can create a fitting solution to its problem. Incorporation of ubuntu is done wish the hope that it will be a trendsetter for other laws, regulations and policies to use African values as well as deliver a holistic solution to problems. As such, all recommendations below incorporate ubuntu.
The following are some recommendations that the COMESA region can adopt in order to create a corporate governance regime:

Option 1:

In recognition of all of the complexities of formulating a corporate governance regime, Option 1 will only focus on corporate governance for publically listed companies.

Regulatory regime for publically listed companies

COMESA in consultation with ASEA should create a law that would only apply to companies listed on stock exchanges in COMESA ("black letter law approach"). ASEA is an appropriate organization because in accordance with Section 3(a)(i) of The Companies Act, ASEA was created "to establish an association for systematic mutual cooperation, exchange of information, materials and persons, mutual assistance and joint programmes between the members."[198] Additionally, based on "the new body of law, Common Market law, which is independent, uniform in all the Member States of the Common Market, separate from and yet superior to national law, and many of whose provisions are directly applicable in all the Member States"[199] COMESA can create a harmonized corporate governance regime. COMESA should focus on more than corporate governance and should reassess the current business law regime. COMESA should do an assessment of harmonizing all business law follow suit of Francophone countries which have harmonized business laws in Organization for the Harmonisation of Business Law in Africa ("OHADA"). Harmonization of business laws would be a vital step towards integration of the COMESA region. It has many advantages, for instance, ease of conducting business in different countries, reduction in cross border legal issues and uniformity of precedent. Additionally, exchanges that are members of ASEA, but not part of COMESA will have the option to adopt the laws focused on corporate governance. Regardless of the laws of the countries of a company's domicile, companies from countries outside COMESA will be required to comply with COMESA's corporate governance regime. In the alternative, such a company can abide by the laws of the country with more stringent corporate governance standards provided the minimum requirements set by COMESA are complied with. COMESA should then create a regulatory arm to ensure that all corporate governance related laws for listed companies are enforced. Failure to abide by the principles would result in legal course of action to be brought in COMESA Court of Justice.

There are advantages and disadvantages of involving ASEA. An advantage is that it is an established organization that is familiar with practices of all member exchanges, but the problem is that it is a non governmental organization and participation is voluntary. Based on ASEA's size, there is no indication it has the capacity to engage in such a large scale project. Based on the fact that Option 1 focuses on publically listed companies, other types of companies in COMESA would be neglected. That being the case, if investors can be certain that the companies they are investing in are properly governed there is potential to attract more investors to the region.

196 Interview with Nelson Mandela, former South African president. http://www.youtube.com/watch?v=ODQ4WiDsEBQ as seen on March 15, 2010.
197 Speech by Bishop Desmond Tutu http://www.youtube.com/watch?v=ftjdDOfTzbk as seen on March 15, 2010.
198 The Companies Act, Chapter 486, Laws of Kenya. Memorandum and Articles of Association of African Securities Exchanges Association.
199 Contribution of the Court to the integration process http://about.comesa.int/lang-en/institutions/court-of-justice

Option 2

Legislation should be mandatory for publically listed companies and voluntary for other types of companies

Option 1 leaves the question of how non listed companies should govern themselves. This paper argues that the approach taken by King III (Inclusive approach and Triple Bottom line Reporting) in South Africa should be adopted. The King III code mandates companies listed on the Johannesburg Stock Exchange, but all other "companies are encouraged to adapt the principles under the Code as appropriate to the size, nature and complexity of their businesses"[200] ("Principles approach"). King III provides a good framework for corporate governance regime for many reasons. It is especially important because King III "focuses extensively on the following tenets – 'sustainability' 'corporate citizenship' 'social responsibility' and 'stakeholder relationships'…"[201] This reflects a progressive way of crafting business leadership.

What exactly does King III say with respect to corporate governance? Principle 2.2. of King states that a good corporate citizen is one which has comprehensive policies, strategies and practices in place which enable it through its directors to make decisions and conduct its operations in an sustainable manner that generates profit, that also takes into account ethics, the local community and the environment.[202] King III also mandates a high level of business ethics.[203] Chapter 6 mandates companies to abide by the necessary laws, rules and codes applicable to the company. This part of the tenet of sustainability encourages transparency and accountability. Chapter 8 which deals with stakeholder relationships encourages a collaborative approach between the local community and the company in dealing with balancing both their interests. Lastly, COMESA should follow is the " 'apply or explain' approach to governance - that is to say, where companies have applied the Code and best practice recommendations, they must state this positively to their stakeholders. Where a specific principle or recommendation has not been applied, the board must explain the reasons for this."[204]

Non listed companies will be encouraged to voluntarily abide by these principles. These principles should put a strong emphasis on shareholder protection, promote shareholder activism and clearly outline the duties of directors. Different sectors should then encourage businesses to adopt such principles. The goal of the principles is to especially target state owned companies, small and medium sized enterprises and other types of business entities. As development studies have shown with the case of the Asian tigers, small and medium size enterprises ("SMEs") are the backbone of developing economies and the greatest contributors for development. Since the code will be voluntary, companies could reveal the necessary information as requested by investors. Seeing as SMEs are termed as being part of the missing middle because of their difficulty in getting funds, perhaps if SMEs follow the recommended corporate governance regime, it might entice investors to invest more in SMEs.

Black letter law versus Principles

There are several advantages and disadvantages of the black law approach versus the principles based approach. The problem with the black letter law approach as used in the United States with the Sarbanes Oxley Act for instance is the cost involved to make sure companies change their systems so as to be in compliance. Whereas, a principles-based approach provides flexibility. Companies are able to assess their size and budget and comply accordingly. Companies seem to have more time within which to change their bad governance practices and corporate culture, whereas legislation is more stringent and can have unreasonable deadlines. Unlike black-letter law, it is easier to amend principles. Arguments for maintaining the principles-based approach are echoed as follows: first, 'no regulatory system, however stringent, can provide total protection against the consequences of human greed, folly or corruption…..as the best safeguard against fraud, abuse and incompetence is the integrity and conscientiousness of the men and women in positions of responsibility.'[205]

Despite corporate governance standards arguably producing overall positive effects, small companies could face a

200 LILIAN MILES, MARIETTE JONES THE PROSPECTS FOR CORPORATE GOVERNANCE OPERATING AS A VEHICLE FOR SOCIAL CHANGE IN SOUTH AFRICA, DEAKIN LAW REVIEW, VOLUME 14 No 1, 56 2009. P 59

201 LILIAN MILES, MARIETTE JONES THE PROSPECTS FOR CORPORATE GOVERNANCE OPERATING AS A VEHICLE FOR SOCIAL CHANGE IN SOUTH AFRICA, DEAKIN LAW REVIEW, VOLUME 14 No 1, 56 2009. P 60

202 Institute of Directors, King Code of Governance for South Africa 2009, Principle 2.2 < http://www.iodsa.co.za/> as seen on March 31, 2010.

203 Principle 2.3.

204 LILIAN MILES, MARIETTE JONES THE PROSPECTS FOR CORPORATE GOVERNANCE OPERATING AS A VEHICLE FOR SOCIAL CHANGE IN SOUTH AFRICA, DEAKIN LAW REVIEW, VOLUME 14 No 1, 56 2009. P 59

205 Tim Yeo (South Suffolk), from UK Hansard Thursday 30th January 2003, 4-5.

harder time complying. For instance in Australia, the change in corporate governance rules were seen to "damage their [small companies'] ability to be entrepreneurial, to grow and be profitable'[206] and makes boards risk averse, consequently affecting shareholder profits. Issues of costs affect smaller companies more adversely. In the US according to Holstrom and Kaplan, the effect of the Sarbanes Oxley Act ("SOX") is such that 'because of additional costs of complying with SOX are fixed rather than variable, the effects will be more negative for smaller companies than for larger ones.'[207] There seems to be few suggestions for what small companies should do. COMESA should learn from the following examples and find what works best for small and medium sized enterprises in the region.

Option 3

Self regulation by sector specific groups

After choosing either Option 1 or 2, COMESA in conjunction with various professional and sector specific bodies can based on COMESA drafted principles promote a self regulation system. This would give different types of businesses the liberty to abide by minimum standards set by COMESA while creating a corporate governance regime that makes the best sense for them. Additionally, "self-regulation should always be the preferred option for professions….The statutory route should be taken only when it is clear beyond doubt that self-regulation is inadequate."[208] However, confusion and contradiction can arise when too many bodies release principles and companies crossing over industries are unsure which ones to follow.

Option 4

Create a certification system based on compliance with the corporate governance regime

After applying Option 3, both COMESA and industry bodies should also create additional incentives for compliance with the corporate governance regime. The options range from creating a rating system such as a financial ratings rankings which would rate companies by their governance practices to creating a brand label system such as the "certified organic" food labels. This can act as an incentive for businesses to improve the value of their brand. Failure to comply with corporate governance standards will not only result in the punitive measure of either the law or the principles, but they will result in damage to brand name. These proposals will be difficult to streamline and will take time to implement, but they are essential for the prosperity of COMESA's private sector in the 21st century.

Conclusion

In the area of corporate governance, it is important to understand that there is a strong need for flexibility because a "one-size fits all" approach can be damaging.[209] COMESA should be flexible in its approach especially initially. As has been demonstrated in this paper, there are several options that COMESA can use as an initial rubric for a corporate governance regime. However, whatever option is preferred, the triple bottom line and ubuntu need not be forgotten. COMESA has the benefit of lessons from different parts of the world and to have seen how different systems withstood pressures from events such as the financial crisis. It is with such insight that COMESA needs to create a system that works best for it, but that also insulates it from the whims of international crises.

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206 Kath Walters, 'Stifled by the rules', Business Review Weekly (Melbourne), March 17-23, 2005, 78.

207 Bengt Holmstrom and Steven N. Kaplan, 'The State of US Corporate Governance: What's Right and What's Wrong?' (Working Paper N°. 23/2003, European Corporate Governance Institute, 2003), 22.

208 Tim Yeo (South Suffolk), from UK Hansard Thursday 30th January 2003, 4-5.

209 Tim Yeo (South Suffolk), from UK Hansard Thursday 30th January 2003, 4-5.