

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

The East Africa Community (EAC) with an estimated population of 128 million and gross domestic product (GDP) of about US\$66bn has a strong potential to effectively participate in the world economy and thereby enhance development of its people by fostering well coordinated trade and related policies in the region.

However divergent trade policies and non-uniform application of regional instruments in the member states are a hindrance to trade led development. Uniform, predictable and consistently applied policies provide an enabling investment regime essential for optimisation of growth and welfare of the people. With the EAC becoming a Customs Union (CU) with a Common External Tariff (CET) and the commencement of the Common Market, harmonisation of trade and related policies is a prerequisite for the region to realise sustainable economic development by optimally utilising the combined resources and reaping benefits from the economies of scale that come with integration.

"In Africa today, we recognize that trade and investment and not aid, are pillars of development"

H.E. Paul Kagame, President Republic of Rwanda.

Introduction

Three of the EAC member countries: Kenya, Uganda and Tanzania have a long history of economic relations dating back to the early 20th century. This included a CU between Kenya and Uganda in 1917 that was later joined by the then Tanganyika in 1927; inter-territorial cooperation between Kenya colony, the Uganda Protectorate and the Tanganyika territory formalised in 1948 by the East Africa High Commission which, provided a CET and currency as well as common services in transport and communication; the EAC established in 1967 but dissolved in 1977; and ultimately the East African Cooperation of 1993 which led to the resurgence of the EAC that now includes Burundi and Rwanda.

Several factors led to the demise of the previous EAC among which were the differences relating to the sharing of benefits from jointly owned common organisations and lack of sound policies to redress the situation. The then east and west political divide and ideological differences that separated the world into capitalists and socialists exacerbated the situation with member states belonging to different camps pursuing different economic policies which were often incompatible at the regional level. The onset of the

1990's marked the end of the cold war and with it the world political divide, thus providing an opportunity for the region to pursue integration anew.

Overview of the EAC

Implementation of the EAC CU commenced in January 2005. It adopted a CET with raw materials and capital goods tariff at 0 percent, intermediate goods at 10 percent and finished products at 25 percent. However, exceptional rates are applied above 25 percent on selected items considered sensitive and for which protection is accorded. These include maize, rice, cement, cotton fabrics, sugar, milk and dairy products.

The EAC partner states also undertook to eliminate internal tariffs. In recognition of the different levels of economic development and existing imbalances among the member states, an asymmetrical tariff reduction programme was adopted over a transitional period of five years ending December 2009.

Rules of Origin (RoO) for the region were developed along with a manual on their application including the relevant documentation such as certificates of origin. These spell out in detail the application of the criteria in determining the origin status of goods, procedures of administering the rules, treatment of small scale

cross border trade and institutional framework for the implementation of the RoO.

Efforts have been made towards harmonising and development of EAC standards. As of January 2009, about 1,100 standards had been harmonised for uniform application in the region¹. The EAC Development Strategy (2001-2005) recognised Non-Tariff Barriers (NTBs) as an impediment to trade in the region. These include administrative and bureaucratic inefficiencies as well as poor infrastructure and communication in the region. The member states undertook to promote projects and strategies that would lead to elimination of these trade obstacles, with the main focus being the implementation of identified infrastructure programmes and projects in order to improve efficiency.

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

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

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

The Protocol on Establishment of the EAC Customs provides for export promotion schemes, special economic zones and exemption regimes in the region; however currently the export promotion schemes in

the member states are still different. In Burundi, investment incentives include: Duty free and Remission Schemes; and a Free Trade Area. In Kenya, they have in place a Duty Remission facility; Manufacture under Bond; and an Export Processing Zone (EPZ) programme. In Rwanda the incentives are included in the Customs, Valued Added Tax (VAT) and Income Tax laws and are also in the process of establishing an EPZ. Tanzania has a Duty Draw-Back scheme; Export Credit Guarantee Scheme; various exemptions and export incentives introduced by the Board of External Trade; and an EPZ. In Uganda the investment incentives include an Export Credit Guarantee Scheme; foreign exchange liberalisation that entitles exporters to retain 100 percent of their foreign exchange earnings; duty and VAT exemptions on exports; duty draw back; and manufacturing under bond.

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

Challenges in Implementing Customs Union

At the national level, the focus of the respective member states' Revenue Authorities is to maximise revenue while at the regional level the focus is on trade facilitation as a means to increased revenue collection. In application of the Customs Management Act national officials lay emphasis on areas that have punitive dimension in the law rather than those on trade facilitation hence hindering trade rather than promoting it.

The EAC secretariat's Directorate of Customs is still faced with lack of sufficient human resources to effectively steer the implementation. Some of the member states are also faced with this shortage or lack of technical human resources able to accurately and in a timely manner interpret and implement regional regulations.

Application of the relevant regulations and forms is not uniform in the region. Further other procedures such as licensing, clearing and forwarding agents are yet to be harmonised for effective operations of the Customs Union.

NTBs continue to be a major impediment to trade despite commitment from member states to eliminate them.

Sensitisation which is crucial in order to enable the private sector position itself strategically and take advantage of the opportunities coming with the Union has not been effectively done.

National sovereignty over regional integration remains a challenge. Though the political will to integrate has been expressed, member states are reluctant to change from national to regional orientation. This is evident from the non-compliance with regional laws and regulations; duplication of national activities which should be otherwise handled at the regional level; and bureaucratic red-tape that often leads to delays in implementing regional obligations².

Overlapping membership in regional economic groupings (RECs) of COMESA and SADC by EAC member states is a major challenge to the implementation of EAC customs union, given that each of the regional groupings aspires to progress and effect deeper integration. However, in recognition of this the three RECs initiated a process of coordination and harmonisation of their regional integration programmes as a way of mitigating the challenge of multiple memberships.

Opportunities Abound

With a population of over 128 million and combined GDP of US\$62bn, the region has abundant labour resources as well as the market for trade in goods and services. Coupled with this the region is well endowed with natural resources such as lakes; extractables such as oil, uranium, gold, copper and others; good climate favoring agriculture; a robust tourism industry boasting national parks with rare species such as gorillas, some of the tallest mountains in Africa; well established financial, telecommunications and insurance institutions; and vibrant and upcoming capital and securities market. These, if managed with uniform and well coordinated sound policies, would consolidate the regional integration leading to growth and development.

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

Lessons from the European Union

Right from the start of the EU integration process, the European Economic Community (EEC) Treaty included clear provisions on the conclusion of international

agreements between the Community and third parties³.

Upon becoming a CU and establishing a common customs tariff, the EU also established a common commercial policy based on uniform principles and implemented by the Community's institutions in accordance with Article 113 of the EEC Treaty⁴.

Agreements falling under the common commercial policy are negotiated by the Commission within the framework of such directives as the Council may issue. However during the negotiations, the Commission consults with the trade policy experts of member states in the framework of Committee 133. The Community's commercial policy powers are of an exclusive nature and member states are not competent to act on their own in fields covered by the common commercial policy⁵.

The recent Treaty of Lisbon (ToL) further streamlined EU trade policy by providing that all key aspects of external trade are under the exclusive competence of the EU. The Treaty gives EU competence to deal with all services and trade related aspects of intellectual property, areas where it previously had mixed competences with member states which sometimes led to confusion both within and among the EU trading partners.⁶

In the words of Walter Hallstein, the first European Commission President, "one reason for creating the European Community was to enable Europe to play its full part in world affairs and it was therefore vital for the community to be able to speak with one voice and to act as one in its economic relations with the rest of the world".⁷ Taking a cue from the EU the EAC should act and speak with one voice in its economic relations with the rest of the world, while at the same time harmonising its internal trade and trade related policies, which would then enhance uniform development and make the region more attractive to investment in a predictable and well regulated environment.

Recommendations

With a fully operational CU, a CET and the common market to commence in July 2010, the EAC member states have to speak with one voice in trade negotiations both at the regional and multilateral level. Indeed the on-going EPA negotiation is a good beginning since the region is negotiating as a block. This should be replicated in other forums including at the WTO. EAC does not have its own mission in Geneva, even though one of the member states coordinates on behalf of the region.

The harmonisation of all policies especially those dealing with trade and trade related aspects should be hastened. This would make the region more

attractive to investors and coupled with its potential of abundant raw materials, labor force, political stability and the emerging big market, enable faster development through trade led policies that would enhance its peoples' livelihoods.

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

In order to foster trade within the region, there is need for a unified and simple regional trade policy document implemented uniformly in the region. Such a document could be mainstreamed in the national policies of the member states for implementation.

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

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

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

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

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

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ENDNOTES

- 1 An Evaluation of the Implementation & Impact of the East African Community Customs Union. Final Report March 2009.
- 2 *Ibid*
- 3 EEC Treaty, art.228
- 4 *The European Union Transformed*. Youri Devuyst (2006) pg 137
- 5 *Ibid* pg138
- 6 *The treaty of Lisbon and the European Union as an actor in international trade*. Stephen Woolcock
- 7 Walter Hallstein, *United Europe. Challenges and Opportunities* (Cambridge: MA: Harvard University Press, 1962), 79. Quoted in *Ibid* pg 127

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