

**REGIONAL ECONOMIC INTEGRATION:
THE CHALLENGE OF DUAL MEMBERSHIP TO KENYA-
WITH SPECIAL REFERENCE TO EAC AND COMESA**

E. MUTEA IRINGO

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**A Project paper submitted in partial fulfillment of the
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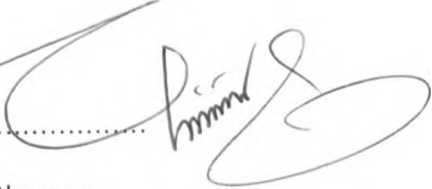
DECLARATION

This project paper is my original work has not been presented for degree in any other University.

E. Mutea Iringo

E. Mutea Iringo
Date: 7th November 2005

This project paper has been submitted for examination with my approval as university supervisor.



Dr. Ludeki Chweya

(Supervisor)

Date: 7th NOV; 05

DEDICATION

This project paper is dedicated to my parents S. M'Iringo M'Kioni and Evangeline Mukomuga for their selfless sacrifice to educate me and to my dear wife Purity Kagwiria and children Marx Mutuma and Joy Makena for the support accorded to me during my one year academic engagement.

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LIST OF ACRONYMS

ACP	-	African Caribbean and Pacific
AGOA	-	Africa Growth and Opportunity Act
ASEAN	-	Association of South East Asian Nations
AU	-	African Union
ATI	-	African Trade Insurance
AEC	-	African Economic Community
CAAP	-	Comprehensive Africa Agricultural Development Programme
CARFTA	-	Caribbean Free Trade Association
CEAO	-	Communité Economique de l'Afrique de l'Ouest (Economic Community of West Africa)
CET	-	Common External Tariff
COMESA	-	Common Market for Eastern and Southern Africa
CTI	-	Confederation of Tanzania Industries
CU	-	Customs Union
DRC	-	Democratic Republic of Congo
EABC	-	East African Business Council
EAC	-	East Africa community
EACCU	-	East African Community Customes Union
EASCO	-	East African High Commission
EBA	-	Everything But Arms
EC	-	European Community
ECA	-	Economic Commission for Africa
ECCAS	-	Economic Community of Central African States
ECOSOC	-	Economic and Social Council
ECOWAS	-	Economic Community of West African States
EDF	-	European Development Fund
EEC	-	European Economic Community
EPAs	-	Economic Partnership Agreements
EALA	-	East African Legislative Assembly
EACJ	-	East African Court of Justice
ESA	-	Eastern and Southern African
FTA	-	Free Trade Area
GDP	-	Gross Domestic Product
GSP	-	Generalized Systems of Preferences
IGAD	-	Inter-governmental Authority on Development
INT	-	Inter-governmental Negotiating Team
IOC	-	Indian Ocean Commission
IMF	-	International Monetary Fund
LAFTA	-	Latin America Free Trade Association
LPA	-	Lagos Plan of Action
MGDs	-	Millennium Development Goals
MRU	-	Magreb Arab Union
NAFTA	-	North Atlantic Free Trade Area
NIEO	-	New International Economic Order
NEPAD	-	New Partnership for African Development
OAU	-	Organisation of African Unity
OPEC	-	Organization of Petroleum Countries

PTA	-	Preferential Trade Area
RECs	-	Regional Economic Communities
RIIs	-	Regional Integration Initiatives
SACU	-	Southern African Customs Union
SADC	-	Southern African Development Community
STAP	-	Short Term Action Plan
SQMT	-	Standardization Quality Assurance Metrology and Testing
TCR	-	Taxe de Cooperation regionale
TIA	-	Trade Insurance Agency
USTR-US	-	United States Trade Representative
USITC	-	United States International Trade Commission
UN	-	United Nations
US	-	United States
WACH	-	West African Clearing House
WAMU	-	West African Monetary Union
WTO	-	World Trade Organisation
ZEP-RE	-	Comesa Re-Insurance Company

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ABSTRACT

This study assesses the challenges that countries face as a result of dual/multiple membership in regional economic organizations. The study has employed the Kenyan experience in EAC and COMESA as a case study. The objective of the study is to assess contradictions that Kenya faces as a result of being a member of EAC and COMESA. With regard to the objectives, the study established that Kenya does not face contradictions by being a member of EAC and COMESA. This is because the two regional bodies collaborate and harmonise their operations. In addition they also cooperate and coordinate their activities through inter-regional coordinating committee which also includes SADC and IOC secretariats. The study also established that Kenya is the major beneficiary of intra EAC and COMESA trade. It was also established that Kenya is an active participant in both organizations and promptly fulfils all the obligations and requirements in both organizations.

The study concludes that Kenya faces challenges as a result of being dual member of EAC and COMESA. These include administration of rules of origin, imposition of non tariff barriers, technical barriers to trade, increased competition from firms outside Kenya, and loss of revenue.

However some of the challenges can be overcome through harmonising protocols of COMESA and EAC, enhancing competitiveness of domestic industries, diversification of export base to avoid over reliance on a few commodities and improving joint investment policy within the member countries.

CHAPTER 1

1.0

DESIGN OF THE STUDY

INTRODUCTION

African leaders have since independence demonstrated a lot of interest in regional integration and have made efforts to achieve this goal. By 1994, there were about 100 intergovernmental organizations formed to address various issues.¹ The Eastern Africa region has two such blocs- East African Community (EAC) and Common Market for Eastern and Southern Africa (COMESA). Regional integration is defined as "a process by which a group of nation states voluntarily have access to each others markets and establish mechanisms and techniques that minimize conflict and maximize internal and external economic, political, social and cultural benefits of their interaction" (HAARLOV 1997).²

Jean Monnet and Walter Hallstein, define political integration as a supranational handling of increasingly important and controversial tasks: for federalist, it means the creation of federal institution while Ernest Haas defines integration as the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities to a new center whose institutions demand jurisdiction over the pre-existing national states³.

¹ The Economist 22nd June 1991 p58

² Regionalism in Africa : A part of problem or a part of solution
<http://www.polis.sciencepobordeaut.fr/vollons/artib.html>

³ The definitions by J. Monnet, Wlater Halstein, and E. Haas can be found in NYE.J.S. " Peace In Parts – Integration And Conflict In Regional Organization "(Little Brown and Company 1971)

The former UN Secretary General, B. Boutros –Ghali defines the term region as an organization of permanent nature grouping together several countries which by reason of their proximity, community interest of cultural, linguistic, historical or spiritual affinities make themselves jointly responsible for peaceful settlement of disputes which may arise between them and for maintenance of peace and security in the region, as well as safe-guarding of interest and the development of their economic and cultural relations with final aim of forming a distinct political entity ⁴.

Regional economic integration can therefore be defined as the process or processes through which two or more countries merge functions, combine markets and institutions for the purpose of enhancing the capacity to achieve economic benefits. The integration could result in the formation of a regional economic bloc. Many regional integration bodies have been formed in post independence Africa. Every country in the world today a member of at least one integration bloc. Indeed some of the countries are members of more than one regional body, leading to a phenomenon of dual or multiple membership in regional economic organizations. According to the Economic Commission for Africa (ECA), seventy-five major intergovernmental organizations had been set up by 1972 and by 1994, the number had increased to at least one hundred of such

⁴ See Norman D. Palmer & Howard C. Perkins , “ International Relations : The World Community in Transition ”(Third Edition , 2004) p 559

organizations though some estimates put the figure at about two hundred

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The euphoria of regionalism throughout the international system can be traced back to the period after Second World War when the promotion of regional integration became a global phenomenon. It is around this time that the Latin America Free Trade Association (LAFTA), North Atlantic Free Trade Area (NAFTA), Association of South East Asian Nations (ASEAN), the Caribbean Free Trade Association (CARFTA) and EEC (later EU) were founded during this period. In Africa, a majority of countries became independent during the same period. During the 1950s and early 1960s, regional trend around the world was reinvigorated worldwide by several related factors, notably the existence of the United Nations (UN), the cold war, decolonization, and rapid technological developments. On the African continent, the idea of cooperation was further promoted by the common anti-colonial struggle particularly as embodied in the Pan-Africanist creed and movement⁶.

The UN was at this time interested in ensuring peace and security in the face of the East-West conflict, with the belief that peace could be achieved through integrating regions. Indeed the UN established Economic

⁵ See Ahmad A.H.M.Aly, "Economic Cooperation in Africa – In Search of Direction" (London Lynne Rienner; 1994) P1

⁶ Domenico Mazzeo (ed) , African Regional Organisations (Newyork Cambridge University press,1984) P1

Commissions in all the regions. The UN Economic for Africa (ECA) was established vide resolutions 671(xv) in April 29th 1958. The first item on its terms of reference was initiation and participation in measures for facilitating concerted actions for the economic development of Africa ,including its social aspects with a view to raising the level of economic activity and standards of living in Africa and for maintaining and strengthening the economic relations of countries and territories in Africa⁷.

Integration in the East African region began during the pre-independence period. As a British colony prior to independence; the East African region already had a customs union, a common East African currency, a postal union and a common railway network. After independence the leaders of the three countries agreed to form East Africa Community in (EAC)⁸. However, the EAC collapsed after ten years of existence despite initial success as a model of integration.

The three East Africa countries attempts to revive the EAC commence in 1990s culminating in the launch of the new EAC in 1996. The new EAC is composed of the – Kenya ,Uganda and Tanzania and plans are underway to incorporate Rwanda. The new EAC entered into a customs union on 1st

⁷ Adebayo Adedeji, CFR History and prospects for Regional Integration in Africa a speech presented at the third meeting of the African Development Forum, Addis Ababa 5th March 2002

<http://www.africadevelopmentforum.org/afdf/afdf030302/adebayo.htm> P1 of 11

⁸ Oyugi Walter Politics and administration in East Africa English press LTD, Nairobi 1994 P.395

January 2005. The ultimate goal of EAC is to create a political federation by the year 2012⁹.

Three other regional organizations have also emerged in the Eastern and Southern Africa region. These include the Southern Africa Development Community (SADC), and the Common Market for Eastern and Southern Africa (COMESA) the Intergovernmental Authority on Development (IGAD).

Common market for Eastern and Southern Africa (COMESA) formerly Preferential Trade Area for Eastern and Southern Africa was established in 1981 and currently has 21 members. According to the treaty establishing COMESA, the aims and objectives are:- to attain sustainable growth and development of the member states by promoting a more balanced and harmonious development, to promote joint venture development in all fields of economic activity, cooperate in creation of an enabling environment for foreign cross border and domestic investment, cooperate in promotion of peace, security and stability among member states to enhance economic development and contribute to realisation of the objectives of the African economic community.

COMESA at the moment is at Free Trade area stage of market integration. It was envisaged that by February this year, the body would

⁹ The East African June 13-19th 2005 P1-2

advance into a customs union with a common external Tariff. Kenya is a member of COMESA and EAC and the study will attempt to analyse the implications of dual membership for Kenya from standpoint of the balance between benefits and obligations.

Mauritania has been in more than three arrangements namely, Magreb Arab Union (MAU), ECOWAS, West African Clearing House (WACH) and West African Monetary Union (WAMU). Kenya is in EAC and COMESA. The phenomenon of countries being in more than one regional bloc is a prominent aspect of what has been described as the new regionalism.

New regionalism is a relatively new concept which came into use in the 1980s. Other aspects of the new regionalism include integration of countries at different levels of development and countries that are located far apart.

The aspect of Kenya belonging to two blocs (Dual membership) will be the central concern of this thesis.

1.1 RESEARCH PROBLEM

Regional integration schemes in Africa have faced many challenges that include operation of mutually competitive rather than complementary national economics¹⁰. Kamukama in her thesis entitled "Regional Integration, Problems and Prospects of East African Community", has

¹⁰ Mazzeo o p.cit p 156

pointed out other challenges like lack of adequate research on the region, undeveloped private sector, insecurity, imbalanced economic development between the partner states, of high non-tariff trade barriers, dearth of information for basic data, poverty, inadequate policy and program coordination and harmonization , and poor governance¹¹.

The creation of the new EAC under the framework of new regionalism notably the aspect of multiple membership presents the EAC with new challenges.

Membership in several blocs could reduce the level of commitment on the part of members as they calculate what they stand to gain from respective regional bodies. This could also strain the members financially and occasionally make them unable to fulfil some of their obligations in the regional bloc. Dual membership as a challenge to regional economic integration will be analyzed in depth in this study with a view of ascertaining its implications to Kenya. However dual membership in regional bodies could bring forth some benefits to the countries concerned, for instance countries operating at different levels of development can form complementing economies. Unindustrialized countries can cooperate with industrialized countries such that one provides another with raw materials in return for the needed manufactured goods.

¹¹ Kamukama Ruth MA Thesis On "Regional Integration. Problems and Prospects of the East African

In SADC for instance South Africa which is fairly developed could assist Tanzania and Botswana with capital to exploit their mineral potential and use the minerals from Tanzania and Botswana in her industries and in return benefit from agricultural raw materials from the two countries. This way the market for goods and services will expand for the benefit of the three countries and each could realize benefits based on the principle of comparative advantage. However Mutahi Ngunyi argues that East African countries do not benefit from comparative advantage principle and illustrates this by using the example of Kenya and Tanzania in PTA (now COMESA).

Under the arrangement, Kenya provides a large volume of products in the intra-PTA regional trade due to her relative preponderance advantage of having a relatively developed manufacturing sector. The PTA rule of origin required that the locals of a particular country must own a substantial share in the industries providing the goods traded in PTA. In Kenya, majority of the manufacturing industries were owned by multinational corporations and therefore the locals realized little benefits. Tanzania and Uganda manufacturing sector being less developed believed that Kenya benefited more and insisted on the application of the "rule of origin" in trade relations with Kenya. Kenya on the other hand did not support the idea of "rule of origin" because it stood to benefit more from the status

quo¹². The pursuit of national interest by cooperating states poses a challenge to the survival of cooperation. There is therefore need for countries to address the problem of uneven levels of development by instituting a mechanism to ensure fair distribution of benefits. Pursuit of national interest without regard for the welfare of the regional organization poses a serious challenge to integration efforts. Article 59 on the treaty of ECOWAS states that member states may be members of other regional or sub regional associations either with other members or non member states provided that their membership to such associations does not derogate the provision of the treaty. The possibility of contradictions are between the requirements of the regional organization involved as well as in the attempt of the individual country to balance between benefits and obligations.

Indeed, the World Trade Organisation (WTO) rules prohibit countries from membership in more than one Customs Union. The EAC is an important illustration of the practice of dual or multiple membership in regional economic blocs. The EAC was revived in 1996 with its traditional members Kenya, Uganda and Tanzania. The new EAC entered into a customs union, the East Africa Community Customs Union (EACCU) on 1st January 2005. The objectives of the EACCU is to create common external tariff, establish common customs laws and regulations, eliminate

¹² Mutahi Ngunyi "Political conflict in African Regional Organizations: The case of Kenya's implementation of the protocol on the "Rules of origin" in the preferential Trade Area (PTA) for Eastern and Southern Africa" Diss. University of Nairobi, 1989. PP200-227

internal tariffs and harmonize procedures.¹³ Tanzania is also a member of SADC whereas Kenya and Uganda are members of COMESA besides the EAC. Integration within the EAC has now reached the customs Union level while COMESA has agreed to set up a Customs Union by the end of 2008. This projection suggests that if COMESA advances to a Customs union and EACCU does not break a contravention of a fundamental WTO rule will occur.

In the COMESA region, Tanzania goods will be treated as external goods by Kenya and Uganda. This is in conformity with COMESA protocol and therefore such goods will be subject to common external tariff CET as per COMESA terms. On the other hand, Tanzania could argue that its trade is with EAC members and therefore the EAC tax regime should apply. Each country is out to enhance her national interest and therefore, conflict will arise. The challenge for EAC will be how to harmonize the two tariff systems: which goods will be considered to be COMESA when Tanzania trades with either Kenya or Uganda and which goods will be EAC goods when this exchange occurs.

If Uganda trades with Tanzania without taxing Tanzanian goods, COMESA members would feel cheated. This could be a major problem that could lead either to a slow pace of integration or to disintegration. SADC intends to create a free trade area by 2005 and Customs Union by

¹³ New Vision. 26th May, 2005, p.7

duty. But other SADC members would argue they are trading within their region and could decline to pay duty. The question as to which tax regime would prevail between EAC and SADC will arise.

John Koech, Kenya's Minister for East Africa and Regional Cooperation expressed these sentiments in his observation that dual membership was slowing down the progress of the EA Customs Union long before the issue of political federation was realized¹⁴. He was referring to Tanzania involvement in SADC. Similar situations will arise when it comes to SADC and COMESA. In these two blocs Zambia, Zimbabwe and Malawi also have dual membership.

The principal motive for multiple membership in regional organizations is the anticipation of economic benefits. A paper presented in a conference held at the institute of international relations of the West Indies in Trinidad Tobago 1990, argued that the strength of nationalism is a constant pull between nationals and regional goals and reminds each country that joins a regional integration movement that seeking greater development for itself and the development of the integrated whole is never a national priority. Some countries join regional organizations in anticipation of economic benefits only to realize later that the benefits were unattainable and leading the country concerned to the regional blocs. A case in point is

¹⁴ The East African Newspaper of 13th – 19th June 2005

and leading the country concerned to the regional blocs. A case in point is Tanzania which pulled out of COMESA citing high subscription fees and thought her interests would be served better in SADC¹⁵.

Countries calculate benefits and cost as rational actors and arrive at a decision to continue or discontinue the membership in regional blocs. However, regional organizations succeed where the anticipated benefits are realized. There are several benefits of joining regional blocs. These include enlargement of market for goods and services and promotion of general development through backward and forward inter-linkages. Through regional blocs countries can access markets in other regional blocs and this can act as an advantage of Dual membership. Mitranjy univocally states that "International organizations arranged according to the requirements of the tasks could increase welfare rewards to individuals beyond the level attainable within the states' and that the rewards would be greater if the organizations worked where necessary across national frontiers"¹⁶

Overlapping membership in regional blocs often forms a web of relations and since regional economic blocs are formed at different times and progress at different paces, the process brings further complications. A country can find itself unable to fulfill all its obligations to all treaties she is

¹⁵ The East African. 13th to 19th June, 2005,p.2

¹⁶ Mitranjy David; The Functional Theory of Politics; (London Martin Robertson & Co. LTD; 1975,) P.X

a signatory in the different blocs in which is a member. For instance, Tanzania withdraw from COMESA citing high subscription fees.

Membership in several regional organizations can result in divided loyalties and the country in question could end up fulfilling only a part of the requirements and thereby drag the integration process or lead the organization to collapse.

Multiple membership seem to work against regional integration as it would be difficult to implement protocols on all sides especially when regimes are at customs union level.

1.2 OBJECTIVES OF THE STUDY

The study aims to achieve a set of three objectives:

- (i) To assess possible contradictions in benefits and costs that Kenya faces due to her dual membership in EAC and COMESA
- (ii) To explain Kenya's goals in seeking to join more than one regional economic organization
- (iii) To analyse implications of dual membership for Kenya from the standpoint of the balance between benefits and obligations.

1.3 THEORETICAL FRAME WORK

The basic question in this study is why do countries seek to integrate their economies and to what extent are such countries able to maintain

harmony between obligations and benefits. The answer to this question is best given by the statement of COMESA VISION in its Annual Report of 2004. The COMESA Treaty envisions “a fully integrated, internationally competitive regional economic community, a community within which there is economic community; a community within which there is economic prosperity as evidenced by high standards of living for its people, political and social stability and peace, and a community within which goods, services capital, and labour are free to move across national borders”.

All regional integration initiatives seek to expand membership and deepen the areas of cooperation to reap greater economic benefits. The aims and objectives of EAC on the other hand is to develop policies and programmes aimed at widening and deepening cooperation among the partner states in economic, political, social, cultural, health, education, science and technology, defence, security, legal and judicial affairs among others for their mutual benefit.

These objectives are expected to be achieved through the establishment of a customs union as the entry point, a common market, subsequently a monetary union and ultimately a political federation of the East African States under one President.

The motivation to integrate among African countries is basically a response to the realization that the nation state which the realists cherish

sophisticated international fora. The African state modelled on Westphalian principles is unsuitable for the African situation where states are fragile economically, politically, and socially. The arbitrary partition of Africa in Berlin conference (1884-1885) did not take account the realities on the ground and cut across communities placing them in different countries. There is need therefore to "redraw" the political administrative boundaries by co-operating as regions to make the states economically viable.

The need for countries to merge and form regional blocs is underscored by the fact that most African countries have a small population which cannot constitute a viable economy. The same principle is the basis upon which the Organization of African Unity and African Union OAU and AU was founded. The OAU (AU) also aimed at a achieving African independence and dignity through unity. The Economic commission for Africa (ECA) ultimate objective is to achieve African integration through regional blocs.

Through integration countries can attain a greater rate of economic growth and development. Combining efforts and resources also makes it possible on basis of reciprocity to exploit comparative advantage.

Countries too cooperate to overcome vulnerability in the international system to avoid marginalisation.

In addition Countries also cooperate so as to enlarge markets and attract foreign capital and in turn increase employment. The European Union is a good example of benefits which can accrue from successful regional integration. Some African countries enroll in regional integration schemes simply to enhance their prestige and this makes them participate in regional integration in half hearted manner.

Countries also cooperate to overcome particular problems facing them. A case in point is IGAD which was formed to respond to desertification in the horn of Africa. IGAD has now developed a conflict early warning mechanism in realization that peace is vital for development. Countries also cooperate in cultural matters to promote mutual understanding to pave way for economic development. They also co-operate to improve shared infrastructure like roads, railways and energy resources. The need for countries to cooperate is also underscored by the need for a joint effort in addressing trans-boundary issues like environment. Environmental issues do not observe political boundaries and these can be used as the building blocks for countries to co-operate. Last but not least is the fact that countries co-operate to solve border security problems. In most African countries marginalised communities which happen to be pastoral pose serious security challenges which cannot be solved by individual countries. This calls for need to cooperate to contain border security as a region.

The foregoing arguments constitute the rationale behind integration theory. In a nut shell, countries cooperate to realise their national interest. The future for Africans escape from global marginalisation lies in regional integration.

This study will adopt the framework of integration theory though with some amendments. Integration theory, was mainly elaborated in response to the major concerns of Europe after the Second World War namely Containment of nationalism and the promotion of economies of scale. There are two approaches to integration, these are federalism and functionalism.

1.4 FUNCTIONALISM

Among the scholars who have elaborated on the functionalism are David Miltrany, Earnest Haas, Joseph Nye and Robert Keohane. For federalism, 'the objectives of integration could be better attained by launching a frontal attack on national sovereignty. This implies adoption of a common constitution and the creation of joint institutions or a central government, through its legal administration, budgetary, and if necessary coercive power, the central government would give birth to an integrated economy and community attitudes. Subscribing to the tenet that politics rules economics, the federalist school sees in the political elites, notably in the

role of strong and committed personalities, the key to federalism”¹⁷. Federalists in Africa were people like Nkrumah who advocated for one Africa which is reflected in his popular adage “ seek ye first the political kingdom but without continental unity the fruits of social economic progress would not be added unto any subjects of this kingdom”¹⁸.

The functionalist school instead accepts the ideal of the predominance of economics over politics, a kind of economic determinism so dear to classical liberalism and Marxism. Economic integration should precede political integration. But economic integration can only be a slow and gradual process. Gradualism implies a movement from the easier to the more complex aspect in regional cooperation. Since different sectors of the economy and eventually different interests groups may be brought together at different times, gradualism also assumes the existence of a certain degree of social and economic pluralist. From the marriage of gradualism and determinism, in an atmosphere of pluralism, are born the major contributions of the functionalist schools of theorizing on regional cooperation; the concept of incrementalization or the spill over effect from lower to higher forms/ levels of regional cooperation’s and the concept of shifting loyalties of the concerned interest groups from national to supranational institutions¹⁹.

¹⁷ (Mazzeo 1984) op.cit, P.3

¹⁸ S.G Karanja; “The East Africa community; causes of distegration” Diss. UON P.17

¹⁹ Mazzeo, op.cit 1984 p.4

The two schools of thought differ on the approach but have same goal and aspirations on the benefits of integration. At the end they see integration with common institutions to achieve their anticipated objectives. However it is observed that such integration has flourished mainly among the highly industrialized countries of Europe. This has convinced people that regional integration is a privilege of the industrialized countries and in any case the theory of regional integration has clearly been coloured by the aspirations and experiences of industrial countries notably in Europe²⁰. This is true that for any country to join EEC it has to have a certain level of development. This is to avoid exploitation, which occurs when unindustrialised country integrates with an industrialised country. This can be seen in the world economy through the notion of dependency theory.

The theory of integration can be amended to include the recent happenings in the area of integration. Cooperation rather than integration should be analyzed. Integration has lead to underdevelopment of the weak economies and the option left is for countries to only cooperate on the areas of common interest and avoid integration which has resulted in failure of many regional blocs in Africa.

Initially the theory used to be termed as the theory of regional integration but now scholars prefer to use regional cooperation²¹ The other aspect of

²⁰ Mazzeo, 1984, p.3

²¹ Mazzeo, 1984, p.11

in the framework of SADC. The preference of the term cooperation is due to the fact that cooperation theory does not necessarily mean integration. Integration is specific and cooperation is broader. Countries can cooperate without integrating their economies. This is better because it can avoid the challenges of integrating countries that are at variance in terms of industrialization. For instance Kenya and U.S cooperate under AGOA initiative and through the arrangement, Kenya earned Kshs 21.5 billion in 2004. This is cooperation and not integration. Countries integrating economies have all the facets of economy open to membership but countries can cooperate on areas of complementarity only and avoid areas of competitions hence have all benefiting. A good example of a situation where countries benefit through bilateral cooperation (Trade) is Kenya Pakistan where Kenya exports Tea to Pakistan and in return Kenya imports rice from Pakistan.

Under this cooperation countries seek their compatible partner from any region on the globe and cooperate on areas which will bring benefits across the board. The other aspect of new regionalism is that countries are committed to two or more regional blocs, a situation referred to as dual/multiple or overlapping membership. The ultimate goal of integration theory is to form a supranational authority in which the importance of nation state is either overridden or altogether eliminated. This is almost impossible because the nationalism sentiments are too strong for this to happen and leaders are too attached to their nation states to give up their

sovereignty to the supranational authority. The option left to benefit from integration is cooperating under new regionalism which guarantees both the nation states sovereignty and also benefits of 'integration' The thesis will therefore lay more emphasize on cooperation and not integration which is problematic. It is important to note that cooperation can be in other fields and is not limited to economic.

1.5 HYPOTHESIS

Kenya's Dual membership poses contradictions which inhibits her realization of expected benefits from EAC and COMESA.

1.6 LITERATURE REVIEW

This chapter attempts to review literature on regional economic integration in Africa. It seeks to briefly outline the reasons why economic blocs are established and why countries join these movements.

The chapter also reviews literature on the challenges which these integration regimes face in pursuit of their goals. In this chapter, also what has been documented on the idea of Dual/multiple memberships will be reviewed as well as problems or factors which lead to collapse of integration bodies. The chapter will review both published and unpublished literature under the following sub-themes; reasons why countries join/ form regional blocs, challenges and reasons for failure, and the phenomenon of Dual/multiple or overlapping membership.

A lot has been written on integration and cooperation in Africa and more specifically on regional economic integration. Most studies have concentrated on individual economic blocs such as P.T.A. now COMESA, SADC, EAC and ECOWAS.

There is no study that has addressed the challenges posed by Dual or multiple membership with reference to Kenya. It is this realisation which prompted this study which seeks to explore the implications of Dual membership in EAC and COMESA with reference to Kenya. The study will shed light on the phenomenon with a view of advancing recommendations for Kenya to maximise benefits from the regional integration schemes.

1.6.1 Reasons why countries join/ form Regional Economic blocs.

Many scholars and researchers have advanced many reasons for this among them being Kinfe Abraham who observes that small population size and hence small market propel African countries to integrate. Another reason according to him is that African independence and dignity cannot be fully achieved and protected without a united Africa (KINFE 2003)²²

Through colonialism, Africa was partitioned into small units which got independence as states. These states are small in size and population to be viable as autonomous economies. Therefore in this scenario lies the rationale of integration so as to expand market.

Robson Peter also shares this sentiment. He puts it that integration is seen as a means of helping countries overcome the disadvantage of small size and making possible a greater rate of economic growth and development. He goes ahead to argue that integration makes it possible on basis of reciprocity, to exploit economies of scale and take advantage of comparative advantage. The enlarged markets attract foreign capital and hence increase employment. To Peter, if each country tries to develop separate behind its own national tariff barriers, low per capita incomes,

²² KINFE Abraham The African Quest: The Transition from the OAU to AU and NEPAD, The Ethiopian International Institute for Peace and Development and the Horn of Africa Democracy and Development International Lobby, Hadaad; 2003.p 65.

small populations and narrow resource basis will in many cases make the achievement of their objective more costly if not impossible.²³

Haas observed that in international politics an unprecedented event causes apprehension among some and the desire to emulate the event by others. The growth of the European Economic Community (EEC) in the context of the movement towards regional unification in general was such an event. African states could have therefore, emulated this integration movement.²⁴ While this phenomenon caused apprehension to some European countries, African countries envied increase of prestige and economic power as well as political power that member countries accrued out of the community. African countries see European Economic Community (EEC) as a model and inspiration as well as necessary condition for their own economic growth and political stability.

1.6.2 Challenges and reasons for failure of regional integration blocs

There are several challenges facing regional economic blocs which have been put forward by scholars which include unequal benefits, similar production of commodities, strong ties and links to countries outside Africa, political and ideological rifts, institutional weakness, external dependence, conflicts in the continent and the idea of multiple membership among others.

²³ Robson Peter Economic Integration in Africa, George Allen and Unwin Ltd, Ruskin House Museum Street, 1968, pp 11-12

²⁴ Domenico Mazzeo African Regional Organizations, op.cit pp 154-7

According to Kamukama (2004) among the challenges towards integration are that there is inadequate research on policies, lack of participation in integration process by the private sector, undeveloped private sector, insecurity/conflict in the great lakes region, disparity in economic development in partner states, institution of non tariff barriers by some member countries, poverty, lack of information and basic data, inadequate good governance, lack of capacity at the secretariat and lack of policy and programme coordination and harmonization.²⁵

Another scholar Domenico Mazzeo like Kamukama also blames maldistribution of benefits as one of reasons for failure of regional economic blocs. He also adds that ideological rifts and institutional weakness also affect the success of these regimes. (Mazzeo 1984: 154-7). Mazzeo also points out that in Africa regional economic integration tend to promote competition instead of complementarity. This ails the success of these regimes.²⁶

Robson Peter; (1968) points out that some factors both domestic and external influence the process of integration and hence determine their success or failure. He notes that in most African countries there is no

²⁵ Kamukama Ruth Regional Integration, op.cit pp 66- 80.

²⁶ Mazzeo: op.cit pp 73-77

national cohesion and therefore national consolidation is given priority over integration.

He also indicates that leaders also are unwilling to share power in these integration settings. Robson also blames the division of Africa into many currency areas and their inconvertibility, links with metropolises and associations in trade and financial deals also compromise Africans integration efforts.²⁷

Ahmad A. Aly mentions impudent administration as a factor contributing to failure of integration regimes. Poor administration leads to poor choice of integration. Imprudent administration is manifested in among other things dominance of politics particularly in the management of regional blocs and the fact that African countries rush to create multiple and overlapping groupings.²⁸

To Ahmad, political considerations have largely been obstacles rather than facilitating factors in the area of integration and cooperation right from the beginning. These considerations include African states relations with their former colonial masters; and an example here is the link between France and African Francophone states.

²⁷ Robson op.cit pp 73-77

²⁸ Ahmad A. H. M. Aly Economic Cooperation in Africa, Lynne Rienner, London 1994, p65

1.6.3 Dual/Multiple/ overlapping membership

Central to this study is the idea of dual/multiple membership. As mentioned earlier in this chapter, dual/multiple membership has been depicted as a challenge toward regional economic integration by Ahmad.

Ahmad says that African countries at independence rushed to create similar cooperation arrangements in each sub region. Most of these organizations had more or less same objectives and tended to tackle almost same problems at almost same time but in a different and independent manner without coordination or even consultation. He gave an example of West Africa where about fifty intergovernmental organizations were established over a period of twenty five years. Most of these organisations were overlapping. He notes that *Communité Economique del' Afrique del' Ouest* (CEAO)- Economic Community of West Africa, the Magreb Arab Union (MRU), Senegambia and Economic Community of West Africa (ECOWAS) were all established with same objectives. There were also two monetary arrangements. These were West African Monetary Union (WAMU) and West African Clearing House (WACH).

Ahmad observes that the problem of overlapping membership as being worsened by the economic relations of African countries with other

countries or groupings outside the continent. He gives an example of Lome convention and the Franc zone.

To Ahmad, overlapping groupings and membership bring the problem of repetition and conflicts between the provisions of the treaties of similar organizations. Illustrating how the idea of multiple membership is problematic; he gives an example from West Africa.

He says, there being no cooperation between CEAO and ECOWAS, resulted in there being three customs nomenclatures, three different rules of origin, two different and incompatible compensation structures, and two different and yet-to be reconciled systems of trade liberalization. The incompatibility of ECOWAS and CEAO treaties particularly in the area of trade liberalization is another problem. The two arrangements envisages the creation of a customs union but CEAO treaty does not provide for a general free trade area as does ECOWAS; instead it establishes a preferential trade area through use of the *taxe de cooperation regionale* (TCR), only trade in *produits du cru* (i.e. unprocessed and entirely local products) is to be duty free. If the two customs unions are completed, the same product would be traded within CEAO countries under the TCR preferential treatment and would be subject to the agreed TCR import duty rate, whereas in ECOWAS it would carry no import charges, provided other requirements are met, this would lead to a problem in ECOWAS.

According to ECOWAS treaty all CEAO members who belong to ECOWAS are obliged to extend all preferences granted to their fellow CEAO members to all ECOWAS members as well. ECOWAS treaty provides that all ECOWAS members are required to remove all provisions from prior treaties that are not compatible with the provisions of ECOWAS treaty and not to enact new ones.

CEAO members have persistently requested to be exempted from Article 20 of the ECOWAS treaty, which provides for member countries to grant most favoured nation's treatment to each other- this indicates the problem of multiple membership.

Ahmad also indicates that multiple membership brings about the problem of divided loyalty and also burden of costs to run them. It is a burden since most countries have weak economies.²⁹

Other scholars who have mentioned the idea of multiple membership in different literatures include Mutahi Ngunyi: (1989), Guy Martin (1990), and Charles Katungi in (Nyong'o 1990). Charles Katungi posits that there are related problems of extra-regional power and influence and overlapping membership, he further notes that most Eastern and Southern Africa states belong to more than one sub regional (or extra- regional economic cooperation) arrangement. He points out that this multiple membership

²⁹ Aly Economic Cooperation in Africa, Op.cit, pp 65-68

leads to conflict of allegiance and divided loyalties. States which are pulled by divergent (and often conflicting) poles of economic cooperation and integration find it difficult to establish their priorities.³⁰

Guy Martin in the same text (Nyongo 1990) also points to the idea of multiple membership as an impediment to regional economic integration. He says that the variety of political, ideological and related development strategies found in Eastern and Southern Africa partly accounts for the slow pace of regional economic integration. Indeed, sub regional political regimes range from orthodox Marxism- Leninism (Ethiopia, Mozambique and Zimbabwe) to unbridled capitalism (Kenya and Malawi), with moderate socialism (Uganda and Tanzania) some place in between. Thus the fact that most (if not all) Eastern and Southern African states belong to more than one sub regional (or extra-regional) economic situation (multiple membership) inevitably leads to conflicts of allegiance and divided loyalties.

Daniel C. Bach also agrees that multiple membership is a problem towards regional integration and indicates that it brings about tension and in part contribute to the mixed results achieved by the larger regional international organisation.³¹ However, in the same text Walter Kennes thinks that the problem can be managed by the application of variable

³⁰ Nyango op.cit p 175

³¹ Daniel C. Bach (ed) Regionalism in Africa, Integration and Disintegration. James Currey oxford, Indiana University Press; Bloomington and Indianapolis, 1999: p5

geometry and variable speed which would avoid duplication and rivalries in economic integration. By doing this some of institutional rivalries and overlap competencies would be eliminated. He says that such an idea of variable geometry and variable speed can be used to maintain Southern African Customs Union (SACU) and Rand zone in larger framework of Southern African Development Community (SADC)³².

Occasional papers of East African Community of 1999 and 2001 also mention the idea of multiple membership in regional economic cooperation.

The 1991 paper indicates that this phenomenon creates bureaucratic, legal and political problems and stifles efficient trade practices. It also gives rise to conflict in mandate; divided loyalty of governments and imposes heavy financial and administrative burdens. It also engenders acute problems of coordination. The paper goes ahead to record that the EAC can ill-afford such a development. They need to rationalize these memberships if the initiative is to become sustainable.³³

The 2001 occasional paper also reads that "the double or triple membership may bring a lot of difficulties, especially if the trade of these groupings move in different directions". However, the paper indicates that

³² Bach *ibid*: p 60

³³ Duncan Okello (ed) Towards Sustainable Regional Integration in East Africa: Voices and Visions Occasional Paper. East Africa; 1/1999 p 29 column 2.

this can be overcome if East African Community (EAC) maintains its fast track approach. The groupings referred here are SADC, COMESA and IGAD.³⁴

A sentiment expressed by Kenya's minister for East Africa and Regional Corporation John Koech portrays Dual membership as an impediment to regional economic integration. Talking to press, he said that dual membership (referring to Tanzania which is in both EAC and SADC) would create complications when SADC establishes a free trade area in 2008 as COMESA also is to set up a customs union then. He said that the situation is slowing down the progress to the East African Customs Union even before the issue of federation comes up.³⁵

From the literature review, studies have indicated that the phenomenon of Dual/multiple membership is an impediment to regional economic integration. Among the problems highlighted are; dividend loyalty, financial burden and conflicting tax regimes. Ahmad Aly has attempted to explain how different tax regimes pose problems to integration initiatives by giving examples from West Africa. Other scholars have not explained in detail how divided loyalty and financial burden pose problems to regional integration.

³⁴ Occasional paper East African Community Challenges and Opportunities: Selected Benefits and Expectations. East African Community Secretariat; Arusha 2001. p12

³⁵ The East African: June 13-19 2005 pp 1 - 2

This study will therefore seek to generate information on the above mentioned problems among others and ascertain if they hinder or facilitate regional economic integration.

The present study will seek to conduct a detailed analysis of the problem of Dual membership with particular regard to Kenya in EAC and COMESA. The study will attempt to answer two questions:

- 1) What inspired Kenya to conclude economic co-operation agreement within the EAC as well as the COMESA?

- 2) What dilemmas if any does dual membership create for Kenya?

1.7 METHODOLOGY

This sub-section deals with methodology used in research. These include data collection Techniques, area of study, research design, and population of study.

1.7.1 Area of study

The study was conducted in Kenya. The problem of study was the challenges facing Kenya as a result being a member of EAC and COMESA (Dual membership). The researcher relied on the following libraries: National Defence College Library, University of Nairobi (UON), United States International University (USIU), International French Research Center-Africa (IFRA), Internet, EAC and COMESA Websites.

The researcher also got valuable information from senior officers designated as desk officers from the Ministry of Trade and Industry, East African and Regional Cooperation, Ministry of Finance (Treasury), and Ministry of Foreign Affairs. This was done through face to face interviews and analysing information from the documents given which included seminars papers high level consultative meetings and cabinet memorandums.

1.7.2 Data collection techniques

In this study, two methods of data collection have been used. These are primary and secondary sources although we have relied mostly on secondary sources with primary data supplementing the latter.

1.7.3 Primary Sources

Primary data was collected through interviews and discussions with a cross-section of senior officers in various ministries. The officers included principal economists in the ministry of Trade Industry, Finance, East African and Regional Cooperation and Foreign Affairs who act as desk officers for EAC, COMESA and other Economic Integration Initiatives.

1.7.4 Secondary Sources

The study relied mainly on secondary data. The sources included books from various libraries, periodicals, EAC and COMESA websites, Summit papers, conferences, Journals, Annual reports, relevant magazines like The community (on EAC news) and newspaper cuttings. More secondary data was collected from thesis and dissertations of other scholars.

1.7.5 Sampling Design

The research design adopted in this study was purposeful and focussed on EAC and COMESA and the relevant Ministries.

1.7.6 Population of Study

The population identified for study was composed of key players in the selected ministries because it was considered that they were in a better position to give information required in the study.

1.8 LIMITATIONS OF THE STUDY

Conducting social science research is like pursuing a mirage and before the researcher gets to the facts, numerous problems will have been encountered.

The first problem encountered was lack of adequate time to conduct the study. The period of one year within which one is expected to engage in academic programme for National Defence College (NDC) and University of Nairobi is challenging.

The researcher also experienced a few problems with literature in books which has been overtaken by events. Regional integration is a dynamic process and literature written ten years ago may not be up to date. However, this was taken care of by the current reports from various desk officers in the ministries.

The study relied on materials in various libraries, internet and reports. Similarly interviews were confined to the relevant ministries of Trade and Industry, East Africa and Regional Co-operation, Ministry of Finance and

Foreign Affairs. It was not possible to interview the private sector participants (Businessmen) and industrialists.

The other limitation encountered is that the desk officers assigned to deal with COMESA and EAC who are Senior economists are very busy people and securing an appointment with them was an onerous task. It took time to secure an appointment.

Related to availability of interviewees, it was even more difficult to get politicians in their offices for interview. This may be attributed to the ongoing constitutional referendum campaigns.

It is also possible that some data for instance information on goods traded through smuggling cannot be found in any records.

However, despite the problems encountered, the researcher¹² made best use of the few crucial respondents interviewed and current reports, magazines and seminar papers to come up with a truly representative position with regard to the challenges posed by dual membership to Kenya.

1.9 SIGNIFICANCE OF THE STUDY

Regional cooperation presupposes that nation states on their own are inadequate frameworks for realization of states goals.

States therefore need the comfort of each other to minimize vulnerability in today's globalised world where effects in one corner of the globe impacts on other states. The realization of this inadequacy has led to proliferation of regional integration initiatives with some countries being in two or more regional integration schemes.

This study therefore will be important in highlighting the phenomena and assist policy makers dealing with regional integration to make informed decisions. The study will also assist policy makers to know the implications of dual membership so as to make appropriate decision to serve Kenya's national interest.

Many scholars have studied various aspects of regional integration but so far none has pursued the aspect of dual/multiple membership. This thesis therefore will contribute to knowledge in this area.

The study is also significant because most regional integration initiatives do not realise their goals due various challenges they force. There is therefore need to carry out research in regional integration to help in effective planning of the initiatives.

CHAPTER 2

2.0 THE EVOLUTION OF EAST AFRICA CO-OPERATION.

2.1.0 INTRODUCTION

The East Africa sub-region is occupied by three countries namely: the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania. The region is credited with one of the longest experiences in regional integration . As early as 1900, Kenya and Uganda operated a customs union which was later joined by Tanganyika in 1922.

The region covers an area of about 1.8 million square kilometers and has a population estimated at 90 million people. This chapter will attempt to analyze the evolution of EAC since pre-independence period to the time of effecting of East African Customs Union (EACU) in 2005. The analysis will divide the evolution into three phases, these phases are:

Phase 1 The period before independence to the period up to 1963.

Phase 2 The period just after independence to the collapse of the East African Cooperation in 1977.

Phase 3 From 1977 to the effecting of EACCU in 2005

PHASE 1

The campaigns to integrate the East African region began before the region attained independence. It is recorded in history that the British administrators founded the drive to the federation.

It is also at this period (before independence) that the propagators of Pan-Africanism ideology were calling for Africa to be united. In early 1920 an American African leader WEB Du Bois began to agitate for a united Africa culminated to two African statesmen attending the 1945 October Pan African congress held in, Manchester. These statesmen were Kwame Nkrumah of Ghana as secretary and Jomo Kenyatta of Kenya as assistant secretary.³⁶ During the pre-colonial period there were also calls by African leaders to unify Africa so as defeat the colonizers. However in the case of East Africa the initial efforts to cooperation were not made by Africans but by the white British administrators who ruled the region.

The British administrators had established an East African Currency Board by 1905 and a postal union by 1911. In 1924 a commission Ormsby-Gore commission was sent to East Africa to consider viability of establishing a unified policy in the region. The commission recommended among other things the establishment of a customs union of the East African Countries and harmonization of commercial laws. However the proposal to federate the area was opposed by Africans notably the Kabaka of Buganda and his *Lukiko*. (Legislature)³⁷

³⁶ Korwa Gombe Adar An Investigation and Analysis of the Causes of Disintegration of East African Community. A masters' scholarly paper submitted to the College of Arts And Sciences in candidacy for Degree of Masters of Science: Department of Political Science. Indiana State University Terre Haute, Indiana. 1981.p 5

³⁷ . Walter Oyugi (ed) Politics and Administration in East Africa .East Africa Educational Publishers, Nairobi 1994. P 396.

The 1928 Hilton-young commission concluded that time was not ripe for a federation in East Africa. Instead it gave recommendation which laid down foundation for the institutionalization framework for managing common services. It was agreed upon with the establishment of the East African High Commission (EAHC) of governors in January 1948. This commission enacted laws putting into operation the East African Railways and Harbours, the East African Posts and Telegraph, the mechanism for revenue collection, the East African income tax management and the Makerere College. In 1960 another commission the Raisman Commission was appointed to study the EAHC activities. It recommended that EAHC should have its own revenue independent of other territories. In 1961 the EAHC of governors disbanded it replacing it with the East African Common Services Organization (EACSO). This was seen as a forerunner of a federation of East Africa. Under the framework of EACSO, external trade, fiscal and monetary policy, the transport and infrastructure, and university education were operated by the time the East African countries got independence.³⁸

From the above we can clearly see that that before the East African region got independence there was integration mainly in the service sector. These efforts as seen are not by Africans, in fact Africans were opposed to this as all efforts by whites were held in suspicion due to the exploitative nature of their reign.

³⁸ Walter Oyugi(ed) Ibid PP 396-398

Phase II

Tanzania got her independence on 9th December 1961. It is alleged that president Nyerere the first president of Tanzania delayed Tanzania's independence so that the region could get independence at the same time for them to form a federation. Uganda followed by achieving her self governance status in March 1st 1963 while Kenya was the last to gain her independence on 12th December 1963.

In the year 1963, the president, Julius K. Nyerere of Tanzania, Prime Minister Jomo Kenyatta of Kenya and Dr. Milton Obote of Uganda declared that they pledge themselves to the political federation of East Africa. This was on 5th June 1963. This enthusiasm was mainly due to spirit of Pan Africanism spirit, which was rife at the time.³⁹

The EACSO operated until 1967 when the treaty of East African cooperation was inaugurated. The EACSO structures remained operational except for minor changes. Just like other institutions in the governments, the EACSO colonial structures were inherited and not many changes were made. Therefore the 1967 treaty accomplished nothing new

³⁹ Walter O. Oyugi Ibid P.399

apart from institutionalizing and strengthening the existing common services.⁴⁰

After four years of the three heads of states declaring their intention to form a federation, the same leaders signed the treaty of East African cooperation but the idea of federation was avoided. The integration was mainly economic. This was in 1967. The unity operated well until sometime in 1977. When it disintegrated Korwa and Mutahi posits that no particular date indicates the collapse of EAC can be cited, but mid 1977 when member states failed to approve the 1977-78 budget for the community comes closest to it, otherwise the community had effectively collapsed earlier in the year when common services in the scheme were decentralized.⁴¹

The EAC collapsed due to both internal and external factors. Analysis has shown that many of the collapsed integration initiatives were carried out in a manner lacking consensus about the fundamental economic systems, the domination of inward looking import substitution oriented strategies, combined with a large public sector and over protection of industries. Korwa and Ngunyi identifies ideological differences, uneven levels of development in EAC, political trends especially when Idi Amin overthrew

⁴⁰ Korwa G Ader; An Investigation and Analysis of the Causes of Disintegration of East Africa Community: opcit p.3

⁴¹ Walter O Politics and Administration in East Africa, opcit P410

Milton Obote, and lack of political commitments as factors that led to EAC collapse in 1977.⁴²

Phase III 1977 to date

The collapse of EAC in 1977 was widely regretted especially by Kenya who benefited a lot due to her relative preponderance. Thus on 14th May 1984 the Republic of Kenya, Uganda and United Republic of Tanzania signed a mediation agreement of EAC. This mediation agreement centered on the dissolution of the defunct East African Community. The main object was the division of assets and liabilities of the defunct community. This agreement however did not altogether kill the spirit of cooperation. In fact Article 14.02 of the Mediation Agreement embodies an acceptance on the part of the three partner states to explore and identify areas for future cooperation and make necessary arrangements to realize this. This can be traced as root for re-invention of the "new" East African community cooperation.

In July 15th 1986 heads of EA states began efforts to revive the EAC cooperation. In a summit held in Nairobi – Kenya president Daniel Moi, Yoweri Museveni of Uganda and Ali Hassan Mwinyi of Tanzania agreed (in principle) to establish a follow up mechanism for East African regional cooperation. A lull followed till November 22nd, 1991 when heads of states agreed to establish, *inter alia*, framework for the establishment of a

⁴² ibid p 410

Permanent Tripartite Commission for East Africa cooperation in another summit held in Nairobi – Kenya. Later in 1993 the Tripartite Commission was established on signing of the agreement for the establishment of the Permanent Tripartite Commission for Cooperation between Kenya Uganda and Tanzania. The Permanent Tripartite Commission for Cooperation between Kenya, Uganda, and Tanzania was established on November 30th 1999. The commission's responsibilities were to promote cooperation in various fields including political, economic, social-cultural and security among the East African states. On November 26th 1994 a provision was made by the protocol on the establishment of a secretariat for the permanent tripartite commission. In April 29th 1997 the heads of states directed the Permanent Tripartite Commission to embark on negotiations to upgrade the Agreement establishing the Tripartite Commission into a treaty. A draft treaty was ready for presentation to the commission on 30th April 1998 for consideration.

The draft gave as the main objective of the EAC cooperation, the deepening of cooperation among the communities through the development of policies and programmes in various fields for their mutual benefit with a view of achieving economic, social and political integration. Article 2 of the draft treaty proposed establishment of an East African community in stages. The stages start with customs union, common market and then a monetary union. In a customs union we have free

trade area and common external tariffs CET excised by all member countries. In a common market there is customs union and free movement of factors of production. The ultimate goal of EAC was the establishment of a political federation. In a political federation there is common foreign policy and one president.

To redress some of the shortcomings which led to the collapse of defunct EAC, a new policy was identified in view of the need to ensure the sustainability of regional integration. Thus the East African Cooperation development strategy (1997-2000) put an emphasis on a people centered and market driven cooperation. So when the draft treaty was presented to the commission in 1998, it was decided that the people (civil society) should be involved in contributing to its deliberations.⁴³ This proceeded until the signing of the treaty for the establishment of East African Community on 30th November 1999. This was a milestone towards the integration process in the East African Region. The treaty entered into force on 7th July 2000 and this followed formal inauguration of EAC on 15th January 2001 during the 1st summit of heads of state. The protocol for the establishment of EAC customs union was signed by heads of state on 2nd March 2004 and on 1st January 2005 when the new EAC entered into a customs union under East African Community Customs Union (EACCU) objectives being to create common external tariff, establish common

⁴³ Morara Henry Ongwenyi Regional Cooperation and Integration in East Africa: the case of the East Africa on cooperation 1993-1999, Dissertation submitted in partial fulfillment of the degree of Masters of Art in International Studies in the Institute of Diplomacy and International Studies IDIS University of Nairobi: October 2001 pp 38-50.

custom laws and regulations, eliminate internal tariffs and harmonize procedures.⁴⁴ However the community agreed the achievement of common external tariffs will be gradual and will take time.

The protocol on the establishment of EACCU contains among other elements the application of the principle of asymmetry. This is an attempt to address the imbalance of trade in the three member countries. The principle operates in a manner such that countries do not charge equal CET to other members to all or some selected goods. This takes time until they eliminate the barriers completely and adopt common external tariff i.e form a customs union "proper". The principle of asymmetry was used to protect some industries. In the case of EAC the following regime was introduced under this principle.

(i) Kenya will eliminate all tariffs on imports from Uganda and Tanzania mainly food and agricultural products.

(ii) Uganda and Tanzania will eliminate tariffs on each others imports

Currently Kenya grants Uganda and Tanzania 90% tariff discount while the 2 partner states grants Kenya 80%. Tanzania levies suspended duties of a maximum of 255 on selected imports from Kenya while in Uganda also charges excess duty Of 10%. A list of sensitive goods will be accorded preferential treatment. The sensitive

⁴⁴ New Vision 26th May 2005 page 7.

list contains goods which contribute 30%, 26% and 10% of Uganda, Tanzania and Kenyas imports respectively. There are several elements of this principal of a asymmetry as applied in EAC but this is expected to end by 2009 when EAC is expected to attain full customs union status.

The customs union protocol of EAC is based on three band structure as indicated in the table below:-

Type of goods	Percentage
1. Raw materials & capital goods	0%
2. Intermediate goods	10%
3. Final products	25%

The ambitions of the East African countries leaders to federation is evidenced by the endorsing of a fast track timetable on November 2004. The timetable was put forward by the fast track experts. The fast draft was headed by Amos Wako. The following table shows the plan:

1. January 2005	Free movement across borders
2. June 2005	Appointment of East African affairs minister
3. August 2005	Opening up of regional airspace
4. December 2005	East Africa Central Bank
5. December 2007	Setting up a common market
6. September 2009	Draft constitution and referendum
7. December 2009	Single regional currency
8. 2010-2012	Regional constituencies drawn up
9. Dec-March 2013	Elections of East Africa President

Source: Saturday Nation November 27 2004 p. 3

2.1.1 OBJECTIVES OF EAC

According to EAC treaty, the objectives of the community is to develop policies and programmes aimed at widening and deepening cooperation among the partner states in political, economic social and cultural fields, defence and security among other areas for their mutual benefits.

In doing this the community will develop a single market and investment area which will prepare foundation for rapid and sustainable economic development for higher standards of living of the people of the region. A customs union is the opening of the integration process which is expected to develop into a common market to monetary union and then eventually to a political federation

2.1.2 FUNDAMENTAL PRINCIPLES OF EAC

The fundamental principles of the community which will facilitate the realization of the above mentioned objectives are strategies which include:-Mutual trust and political will, Peaceful settlement of disputes, Good governance/rule of law and respect of human rights, Cooperation for mutual benefits, and Equitable distribution of benefits

2.1.3 EAC INSTITUTIONAL FRAMEWORK

The EAC established the following institutional framework to enable it carry out its agenda. The organs and institutions of EAC provided for in Article 9 section 1 are:-

(i) The summit of Heads of state

It consists the heads of states or government of partner states as per Article 10(1) of the treaty. It gives general direction and impetus to achieve objectives of the community.

(ii) The Council of Ministers

It consists of the ministers responsible for regional cooperation of each partner state and such other minister of the partner states as each partner state may determine as per article 13 of the treaty. It is the policy organ of the community.

(iii) The coordination committee of permanent secretaries

This consists of permanent secretaries responsible for regional cooperation in each partner state and such other permanent secretaries of partner state as each partner state may determine as per article 17 of the treaty. Its functions include implementing councils decision.

(iv) Sectoral committees of experts

The sectoral committees are established as per article 20 of the Treaty and they deal with specific areas of cooperation in the EAC

(v) The Secretariat

Its the executive branch of the community. It comprises of the secretary general, two deputy secretaries, general (projects/programmes and Finance/Administration) counsel to the community and staff. It is the executive organ of the community.

(vi) The East African Legislative assembly (EALA)

EALA was launches in November 2001. It liases with National assemblies on matters relating to the community, debates and approves the community budget and, discusses all matters pertaining to the community

(vii) The East African Court of Justice EACJ

The EACJ was launched on November 2001. Its the judicial body whose main mandate is to ensure adherence of law in the interpretation and compliance with EAC treaty.

2.1.4 ACHIEVEMENTS OF EAC

- (i) The corporate tax rate and the top personnel rates have been harmonized at 30% in all the 3 countries

- (ii) The protocol on Standardization, Quality assurance Metrology and Testing (SQ MT) was concluded and enacted on 15th January 2001.

- (iii) Popularizing of East African passport has been going on. Currently efforts are being made to internationalize it. The East African council has decided that the commencement date for the internalization of the EA passport will be 1st January 2006.

- (iv) Partner countries have adopted a single immigration card effective from 1st August 2003.

- (v) Has harmonized the procedures for issuance of entry/work permits ranging from class A-M.

2.1.5 CHALLENGES FACING EAC INTEGRATION PROCESS

- (a) There are several impediments hindering this process which include slow implementation of agreed decisions

- (b) There are elements of suspicion among members arising from the collapse of former EAC

(c) Lack of political will e.g. non tariff barriers are still being imposed

(d) There is trade imbalance between the partners. Uganda and Tanzania continue to raise issues on their relatively low development status to Kenya and demand asymmetrical implementation of the integration process when Kenya may not be that relatively more developed to compensate the two.

(e) Conflicts arising from the use commonly shared resources and hence threatening inter state security e.g. the case of Lake Victoria, cross border cattle rustling and problems of Pemba channel

(f) Financial implications of the trade liberalization process which leads to a loss of customs revenue

2.1.6 BENEFITS OF KENYA FROM EAC

(a) Trade

Currently the EA region has a population of around 90 Million people and a GDP of about 26 billion intra-trade among the partner states

Due to her relatively developed manufacturing sector Kenya benefits

most from EAC trade. This table shows Kenya exports in Ksh

Billions. From the table below it is clear Kenya has favourable balance of payments (BOP) from EAC trade.

Kenya's trade with EAC partner members

TABLE 1

Exports, in Kshs. Billion

	2000	2001	2002	2003	2004
Uganda	24,186	30,039	31,280	30,668	37,060
Tanzania	11,092	13,511	14,588	14,588	17,921
Total	35,278	43,550	45,256	45,256	54,981

The imports table shows that Kenyas volume of trade to Uganda has increased tremendously rising from 24186 in 2000 to 37060 in 2004 and 11,092 to 17,921 to Tanzania within the same period.

TABLE 2

Imports, in Kshs. billion

	2000	2001	2002	2003	2004
Uganda	0.515	0.683	0.664	1.038	1.011
Tanzania	0.928	0.585	0.803	1.368	2.010
Total	1.443	1.268	1.467	2.406	3.021

The second table shows that Kenya enjoys a favourable balance of payments in relation to the two EAC partner members.

Statistics reveal that export earnings from Uganda and Tanzania constitutes over 59 % in 2004 of the African total, and Uganda is number one single market for Kenya export in Africa, (accounting for 36.4% in 2004) while Tanzania occupies position two in Africa accounting for 17.1% in 2004.

In addition, Uganda is number one single market for Kenyan export products in the whole world (accounting for 17.3% in 2004), while Tanzania occupies position three in the whole world (accounting for 8.3% in 2004)

On the other hand Kenya was number three leading market for Uganda and number six leading market for Tanzania in 2004. Kenya has also benefited from EAC through creation of employment opportunities through trade and Free movement of people

2.2.0 THE EVOLUTION OF COMESA

Common Market for Eastern and Southern Africa (COMESA) formerly Preferential Trade Area for Eastern and Southern Africa, currently has 21 members namely: Kenya, Uganda, Angola, Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, Somalia, Sudan, Swaziland, Zimbabwe, Madagascar, Egypt, Malawi and Lesotho. The bloc can trace its roots from the Lagos Plan of Action (LPA). It should be noted that in Africa, regional integration/regional co-operation has been seen as a way of getting Africa out of its economic underdevelopment. There has been a call for uniting Africa as whole or in sub-regions. A movement like Pan-Africanism is one such effort to call for a united Africa. Pan-Africanism culminated to the formation of Organization of African Unity (OAU). The United Nations (U.N.) has also had support of this cooperation.

The UN through Economic Cultural and Social Council (ECOSOC), a commission to oversee this agenda (cooperation in Africa) was formed. The commission was named Economic Commission for Africa ECA. ECOSOC adopted this resolution 671 (XXV) on April 29th 1958 to establish EAC. At the time ECA was born the number of independent

African states had risen to ten –Egypt, Ethiopia, Liberia, Tunisia, South Africa, Libya, Morocco, Ghana and Guinea.⁴⁵

The Lagos plan for action was launched as a special initiative of heads of states and government of Africa Union promoted by ECA .The Plan of Action created a framework for the creation of a regional union as a center piece in the grand strategy for Africa development.

The LPA committed itself to set up an African Economic Community (AEC) by the year 2000 so as to ensure economic, social and cultural integration of Africa. The aim of the community was to promote accelerated self reliant and self sustaining development of member states, and their integration in economic, social and cultural fields.⁴⁶

The LPA with support of the UN-ECA divided Africa into three sub-regions and sponsored integration blocs in these areas. The sub-regions are West Africa, Central Africa, and Eastern and Southern Africa.

In West Africa there was creation of Economic Community of West African States- ECOWAS on 28th may 1975; in central Africa, Economic Community of Central Africa States was established on 18th October 1983, and in Eastern and Southern Africa Preferential Trade Area PTA for

⁴⁵ Anyang Nyong'o et. al.(eds); New Partnership For African Development NEPAD: A New Path? Henrich Boll foundation, Nairobi 2002 ⁴⁵p 299

⁴⁶ Nvongo (ed) Regional Integration in Africa Ibid 159

Eastern and Southern Africa was established on December 21st 1981. On march 1987 a declaration of intent and commitment to the establishment of PTA for Eastern and Southern Africa was signed and an Intergovernmental Negotiation Team (INT) entrusted to negotiate the treaty was created and between 1978 and 1981 the INT met eight times. Later the PTA Treaty was signed in Lusaka on 21st December 1981. The treaty came into force in September 1983 and became fully operational in July 1984.

The three Regional blocs: PTA, ECOWAS and ECCAS aimed at creation of separate but convergent and overreaching integration arrangements. According to the LPA, the organizations were to undergo three stages – free trade area, customs union, and finally economic community. To the plan the blocs would serve as building blocs for the larger Economic Community for Africa.

The PTA treaty emphasized exchange of goods and services.⁴⁷ PTA was later transformed to Common Market for Eastern and Southern African States (COMESA). In November 1993 COMESA treaty was signed and went into force in December 1994. COMESA has the following visions indicated on its treaty.

⁴⁷ Bach Regional in Africa integration and Disintegration: Ibid p 152

To create "a fully integrated, internationally competitive regional economic community, a community within which there is economic prosperity as evidenced by high standards of living for its people, political and social stability and peace and a community within which goods, services, capital and labour are free to move across national borders."⁴⁸

The main objective of COMESA is to promote cooperation. The treaty provides in Article 45 and 47 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". Article 45 and that "the member states agree 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 this treaty." Article 47. The evolution of PTA to the FTA occurred between 1984 and 2000 and with provision for a 10 year period (1994-2004).

According to LPA COMESA has fallen short of its expectations. It was expected that by 2000 it would be an economic community. Contrary to this by that year it had only reached F.T.A stage. On 31st October 2000 a treaty to establish a FTA was signed. However it should be noted not all members signed this treaty, only 10 out of 20 member states signed. The treaty provides for variable speeds to allow member states to make

⁴⁸ COMESA Annual Report 2004 P1

necessary national adjustments before joining. On October 2000 the 9 countries who effected COMESA FTA for all goods originating from COMESA region are Malawi, Zimbabwe, Madagascar, Egypt, Mauritius, Kenya, Sudan, Zambia and Djibouti. Since then COMESA FTA has expanded, on 1st January, 2004 Rwanda and Burundi joined the FTA raising membership to eleven. The status of tariff reductions of other member countries are as follows Uganda 80%, Comoros 80%, Democratic Republic of Congo 80%, Ethiopia 10%, Angola 0% active Seychelles nil, Swaziland under derogation.

The COMESA goal of having an economic union has not dwindled. In this regard, member states have agreed to a programme to accelerate the re-alignment of their external rates to the agreed CET bench marks by 2008. By the year 2008 COMESA is expected reach customs union stage. As noted above the treaty provides for a multi-pronged approach to the evolution of the COMESA integration agenda through the classical phases of FTA, customs union and common market.

The 18th COMESA council of ministers meeting in December 2004 decided that member states should work towards harmonizing their external tariff as a transition strategy towards realizing the COMESA CET. However it should be noted that a road map for implementing COMESA CU was ready by 1997. A CU was scheduled for 8th December though the launch did not take place. But the following has been accomplished:

Rules and regulations on anti-dumping and countervailing measures were completed by the end of 2004 and the secretariat has also provided assistance to member states in adopting the harmonized system of coding of traded commodities and the WTO valuation coding systems. Other requirements for customs union completed include; preparation of the common tariff nomenclature, drafting of a regional commercial policy intended to address the issue of harmonizing exemptions and other duty relief measures and export promotion, procedures for temporary admission and re-exportation of goods and transit has been completed with the policy ready for implementation by member states. A proposed legal framework for the administration of the CET has been completed and development had taken place of budgetary assistance measures to minimise the short term revenue gaps arising from the implementation of CET rates ⁴⁹

⁴⁹ Ibid PP 43-44

During The eighteenth COMESA council of ministers it was decided that the COMESA CET should be realized as follows:-

CATEGORY	RANGE FOR TARIFF HARMONIZATION	CET TARGET RATE
1. Raw material	0% to 5%	0%
2. Capital goods	0% to 5%	0%
3. Intermediate goods	10% to 15%	Not agreed
4. Final goods	20% to 40%	Not agreed

Source COMESA Annual Report 2004

An important development to the progression towards the COMESA CU is the convergence so far achieved in the CET structure for raw materials and capital goods whose target rates have been set at zero similar to the EAC rates.

The COMESA council of ministers while adopting a new time frame and programme of action towards the CU emphasized the need to consolidated the FTA before moving to a CU. The new schedule in respect to the CU is as indicated below:

ACTION	TIME
1. Completion of national studies and consultations on CET rates	28 th Feb 2005
2. National consultations on convergence timetable to CET ranges and target rates	28 th Feb 2005
3. Submission of result and proposals to secretariat for circulation to member states	14 th March 2005
4. Third Technical Workshop on CET	April 2005
5. Reification of COMESA fund	30 th June 2005
6. Study on alternative sources of revenue	To be decided upon

Source : COMESA Annual Report 2004

2.2.1 COMESA INSTITUTIONS

- (i) COMESA Authority of Heads of States and Government: it comprises of heads of States and government. The authority is the supreme policy making organ of COMESA. It is responsible for the general policy, direction and control of the performance of the executive functions of the common market

- (ii) COMESA Council of ministers: Is responsible for over seeing the functioning and development of COMESA and ensuring the implementation of agreed policies. It is also responsibilities for making recommendations to the authority and matters of policy aimed at the efficient and harmonious functioning and development of COMESA: giving direction to all other subordinate organs of the COMESA.
- (iii) Technical Committees: COMESA has a number of these whose responsibilities include preparing comprehensive implementation of COMESA integration agenda, monitoring time tables, prioritizing programmes within their respective sectors and monitoring and constantly reviewing of the implementation of co-operation programmes in those sectors.

Currently active COMESA Technical Committees include

- ◆ The committee on administrative & budgeting matters, the committee on Finance & monetary affairs, committee on Agriculture, Industry, Legal affairs, Trade and Customs, Gender, committee on Transport and Communications

- (iv) The COMESA secretariat: It is the technical arm of COMESA whose functions is to provide a wide range of services such as co-ordination of technical studies and follow up of implementation. The COMESA secretariat mission statement reads "To deliver excellent technical

services to COMESA for the advancement of sustainable growth and development through regional integration.”⁵⁰

2.2.2 OTHER COMESA INSTITUTIONS

COMESA has several other institutions to carry out its functions these include:-

(a) COMESA Court of justice

It is the supreme legal body of COMESA. It is charged with the proper interpretation and application of the provisions of the treaty. It enhances overall regional integration by ensuring the maintenance rule of law through the just resolution of disputes.

(b) The Eastern and Southern Africa Trade and Development Bank (PTA Bank)

It has 18 members, and was established 1985 as a financial institution to foster economic integration as provided for in chapter 9 of COMESA treaty.

(c) COMESA Reinsurance company (Zep.Re). This caters for re-insurance services in the organization.

(d) COMESA Clearing House: it facilitates settlement of claims arising

⁵⁰ Ibid p72

from transactions among member countries to facilitate smooth trade

(e) Leather and leather products institute (LLPI). The institute promotes programmes in capacity building, human resource and institutional development trade and investment. Assists member states and entrepreneurs with preparation of feasibility, Technical and financial studies to develop leather sector.

(f) The Africa Trade Insurance Agency (ATI) it provides insurance, co-insurance and other financial services for the promotion of trade and investment into and with in Africa.⁵¹

2.2.3 CHALLENGES FACED BY COMESA

(i) Loss of Revenue

Due to introduction of FTA Kenya is losing revenue which it would have got from customs duty. However COMESA is developing the COMESA fund which comprises of an adjustment facility which will comprise of a singular budgeting support to offset the revenue loss arising from liberalization and facilitate and enhance the process of integration within COMESA. The COMESA fund protocol was signed in Addis Ababa in 2002 and its to be ratified by a minimum of seven states before it becomes operational. Kenya has ratified this protocol

⁵¹ Ibid P40

(ii) Non Tariff Barriers (NTBs)

This remains the biggest barrier which could hinder realization of a CU. According to vice chairman of Business Council, "experience in other economic blocks has shown that whenever tariffs are abolished there is tendency of non-tariff barriers emerging to perpetuate trade protectionism." Evidence suggest that both EAC and COMESA do not have effective mechanisms for timely resolution of NTBs. These are attributed to lack of sufficiently functional structures for reporting notification, monitoring and evaluation and indeed follow up of reported NTBs.⁵²

(iii) Competition

Article 55 and 25 of COMESA & SADC treaties respectively promote regional competition regime which considers problems that transcend member states. Instances abound of prevailing inter-competitive practices persued by multinationals operating in the regional but which individual member states lack the requisite jurisprudence to effectively address; notably;

- (1) Lafarage cement company of France which is the biggest cement company in the world,
- (2) Nam Pak packaging of South Africa the largest and most diverse

⁵² NWG Trade Policy Review Issue No. 2

packaging firm in Africa,

- (3) Illovo sugar of South Africa, which is a leading sugar producer in SA but has subsidiaries in East & Central Africa
- (4) South Africa Breweries (SAB) which has now merged with Miller of America to become the 2nd largest brewer in the world with plants in East , Central and Southern Africa

(iv) Infrastructure

The region has not adequately developed infrastructure to stimulate integration.

2.2.4 CHALLENGES FACED BY KENYA IN COMESA

Most of the draw backs encountered by Kenya in inter-COMESA trade relates to the administration of the COMESA Rule of Origin, imposition of new conditions outside the protocol, technical barriers to trade and slow progress towards attaining FTA status.

Other challenges include:-

Increased competition from firms outside Kenya which cause injury to domestic agricultural industries particularly sugar and wheat industries. Kenya should therefore undertake the following measures to enhance her competitiveness of domestic industries, diversification of export base to avoid over-reliance on tea exports, lowering cost of doing business,

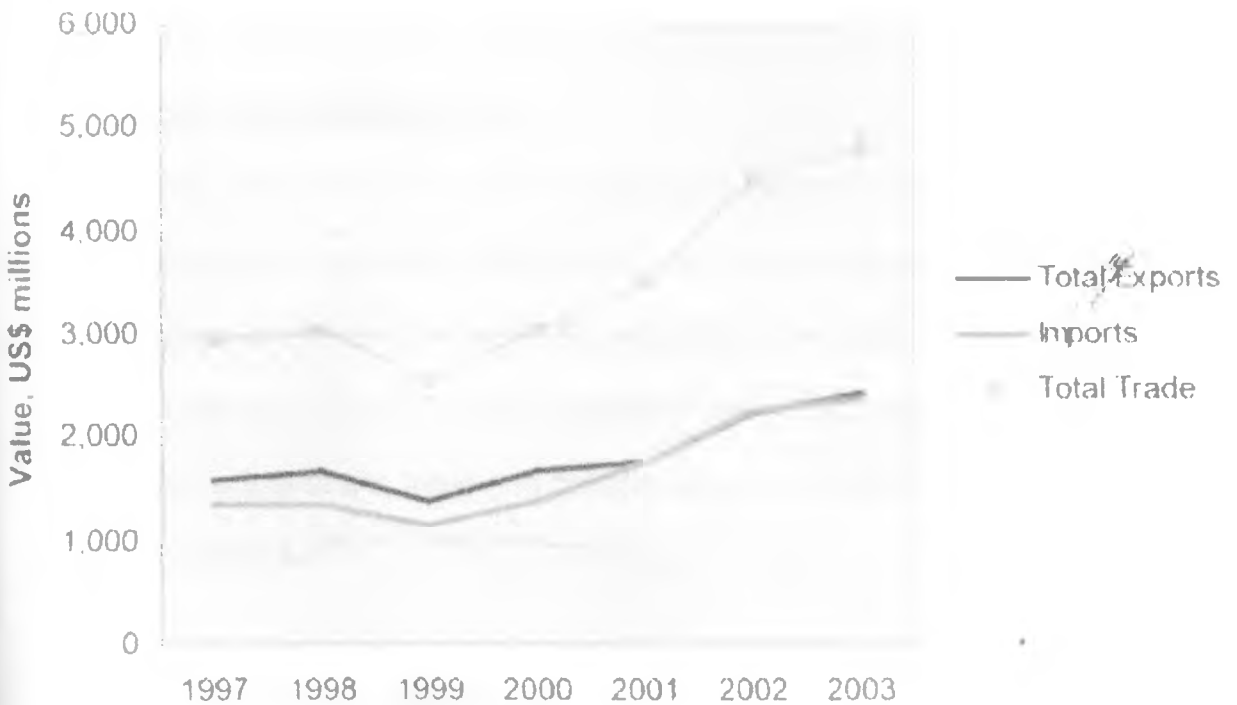
improving of infrastructure i.e roads, railways, telecommunications services and electricity supply to enhance efficiency in production and distribution and increase foreign direct investment (FDI) flows.

2.2.5 KENYAS TRADE IN COMESA

The 20 member countries offers large market from Kenya goods with the effecton of COMESA FTA. It has been reported that trade within COMESA has risen sharply since signing of FTA agreement in COMESA.

Intra-COMESA Trade - 1997-2003

Intra-COMESA Trade: 1997 - 2003



Source: COMESA Annual Report 2004

The above line graph indicates that intra-COMESA trade has been steadily increasing and the rate of increase was highest after effecting of COMESA FTA in 2000.

Assessment of member states reveals that for some countries such as Kenya and Uganda, the COMESA market has become the most important in their global trade. Kenya is the principal beneficiary of COMESA trade

2.3 OTHER ORGANISATIONS/REGIMES

A part from EAC and COMESA Kenya belongs to other organisations. These include ACP-EU, AGOA IGAD, NEPAD, AU

(i) ACP – EU COOPERATION

Was a product of two years negotiations involving seventy seven African caribbean and pacific states (ACP) and twelve European Union member states by then. The three EA countries are party to this. The main characteristics of ACP-EU cooperation are: “the partnership principle the contractual of aid, trade and political aspects to together with its long-term perspective”⁵³

The ACP-EU co-operation dates back to the European treaty of coal and steel which established EEC in 1957. This treaty expressed solidarity with the colonies and overseas countries and territories and a commitment to

⁵³ http://europa.eu.int/comm/development/body/cotonou/lome_history_en.htm

contribute to their prosperity. This cooperation arrangement started with Younde I treaty (1963-69). Younde II (1969-75). These two were signed in Cameroonian capital. These pledged the lions share of European Development Fund (EDF) financial support to French speaking Africa to built infrastructure in the wake of de-colonization. The Younde accords importantly sowed seeds for the lome accords.

Under ACP-EU co-operation after, Younde II there has been lome I – Iv accords from 1975 – 2000. The co-operation programme (ACP-EU) has the following characteristics

The non-reciprocal preferences for most exports from ACP countries to EU, The equality between partner states, respect for sovereignty, mutual interests and interdependence, the right of each state to determine its own policies, security relations based on achievements of the cooperation system, introduced STABEX (to compensate ACP countries for the shortfall in export earning due to fluctuation in the prices or supply of commodities), under lome II it introduces SYSMIN system. The system helps industry of those ACP countries strongly dependent on mining, in the cooperation there is emphasis on the promotion of human rights, democracy and good governance, strengthening on the position of women, the protection of environment, decentralized cooperation, diversification of ACP economics, the promotion of the private sector, and increasing regional cooperation.

Under the revised Lomé V there is emphasis on the respect for human rights, democratic principles and the rule of law become essential elements of the conversation. A condition was put that if an ACP country do not fulfil this, it risks the retrieval of the allocated funds.

It is under the ACP/EU Lomé IV (1990-2000) we see EU having a dialogue with IMF and World Bank on how best to support structural adjustment programmes as a means to economic growth. All these after 2000 the home again remains plus other changes, moving to the new millennium new accord.

(ii) African Growth and Opportunity Act (AGOA)

Under this arrangement (AGOA) sub-saharan African states are allowed to access United States market for some commodities. Among the eligible sub-saharan countries include the three countries of the East Africa-Kenya, Uganda and Tanzania. The AGOA pack deals specifically with textile products.

Eligibility requirements requires that the US President to designate a sub-saharan country if that country has established, or is making continued progress towards establishing.

A market based economy that protects private property rights, and minimizes government interference, the rule of law, and political pluralism, and the elimination of barriers to US trade and investment

The country should not also engage in activities that undermine united states national security or foreign policy interests. Thirdly the country should not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

A party to this Act is expected to have continued compliance to the above requirements. If the president determines that this is not observed, the president shall terminate the designation of the country. A GOA itself has many effects towards regional integration. This is due to the nature of the Act – It also has political implications to national government of the sub-saharan country i.e the designated country. The eligibility criteria for Generalised Systems of Preferences GSP and AGOA substantially overlap, and countries must be GSP eligible in order to receive AGOA's trade benefits. However GSP eligibility does not imply AGOA eligibility. Under AGOA the President can authorize to provide duty free treatment under GSP for any article after US Trade Representative (USTR) and the US International Trade Commission (USITC) have determined that the article is not import sensitive when imported from African countries.

Under the approved provisions the act provides for duty free and quota free access to the US market without units for approval made in eligible sub-saharan African countries from US fabric, yarn and thread. It also provides for substantial growth of duty free and quote free approval imports made from fabric produced in beneficiary countries in sub-saharan Africa. The AGOA programme has been extended from 2008 to 2015

(iii) INTER – GOVERNMENTAL AUTHORITY ON DEVELOPMENT

(IGAD)

In 1986 Inter-government Authority on Drought and Development (IGADD) was formed. This was to deal with the issues of drought and desertification in the horn of Africa. Later in 1990s the founders of IGADD decided to make it a fully fledged regional political, economic development, trade and security entity.

On 21st March 1996 the Heads of State and Government of the second extra ordinary summit in Nairobi approved and adopted an agreement establishing Intergovernmental Authority on Development IGAD. In April 1996 the IGAD council of ministers identified three priority areas of cooperation:-

Conflict prevention, Management and Resolution and Humanitarian Affairs, infrastructure development (Transport and communication), and food security and environment protection.

It should be noted that IGAD has been designated as one of the pillars of the African Economic Community in terms of the AEC Treaty. IGAD signed the protocol on relations between AEC and Regional Economic Communities on 25th February 1998. IGAD has collaborated with COMESA and EAC to divide projects among themselves so that there is no duplication and to avoid approaching some donors with the same projects.

The aims of IGAD are to expand the areas of the regional cooperation, increase the members dependence on one another and promote policies of peace and stability in the region in order to attain food security, sustainable environment and sustainable development. The IGAD strategy of attaining sustainable economic cooperation and integration are given special impetus and high priority to promote long term collective self sustaining and integrated socio-economic development. The leading principles of the IGAD strategy are stipulated in the agreement establishing IGAD, but are also mindful of the UN charter AU constitutive Act. Among the IGAD objectives are:-

Promote joint development strategies and gradually harmonise micro-economic policies and progress in the social, technological and scientific fields, harmonise policies with regard to trade, customs, transport,

communications, agriculture and natural resources, and promote free movement of goods, services and people within the sub-region, create an enabling environments for foreign, cross border and domestic trade and investment and, promote peace and security in the sub-region

(iv) THE OAU/AU

The organisation of African Unity was disbanded and in its place African Union was established. This was during the Durban (July 2002) 38th and last organisation of African Unity summit. This was the 1st summit of AU. AU is the continental organisation of Africa.

The major differences between the OAU and the AU is that while OAU had a single source of authority the Assembly of Heads of State and government, AU has multiple sources of authority ; these are the Assembly of head of states and government and judicial (court) and democratic institutions (parliament). The OAU had policy on respect for national sovereignty while the AU still has respect for national sovereignty but has right to intervene in grave circumstances.

In OAU there was no questioning of actions of governments but in AU there are provisions to suspend governments coming to power unconstitutionally. AU provides for peer review mechanism through NEPAD a key feature which was missing in OAU. All these indicate a radical shift on the management of the continental body.

The prime objective of AU is to enable Africa to meet challenges of 21st century and strengthening position of Africa *vis a vis* global economy and international community.⁵⁴

The changes made to AU from OAU are underpinned by eight key ideas emanating from the constitutive Act. These ideas are :-

- (1) Regional integration should be considered as strategic model for transformation and modernization of African economies.

- (2) That the integration (from 1 above) process should be geared to stimulating or reorganizing the role of states. This role is seen in experience of the countries in Asia where it was recognized that the state has contributed significantly to the economic success achieved by countries in the region.

- (3) That integration should henceforth be endowed by a union of popular base leading to an African union sustained by a union of the people. It should be underpinned by strong leadership. Where even the civil society participates.

⁵⁴ This material was gathered from African Union/European Union documents.

- (4) Which is incidental to the preceding idea is that political integration should be the *raison d'être* of the African Union, the objective being to achieve federation or confederation in the long run.
- (5) The policies and strategies to be implemented should be human centred
- (6) Gender issues should be mainstreamed into the activities of the union at all levels then gender equity enhanced.
- (7) Youths should be involved in the union activities
- (8) Eighth idea concerns the African Diaspora. This calls total mobilization of all segments of African population for the accomplishment of the set objectives.⁵⁵

(v) New Partnership for Africa's Development (NEPAD)

The foundation document, which outlines NEPAD'S vision, principles and priorities, was adopted by assembly of African heads of state as government of the OAU now the AU in July 2001.

The key NEPAD principle and messages are:

⁵⁵ Ibid

African ownership and responsibility for the continent's development, the promotion and advancement of democracy, human rights, good governance and accountable leadership, self-reliant development to reduce dependency on aid, building capacity in African institutions, promoting Intra-Africa trade and investments, accelerating regional economic integration, and advancing women, strengthening Africa's voice in international forums, and forging partnership with African civil society, the private sector, other African countries and the international community.

NEPAD has prepared a policy framework and indicates plans for the following priority areas:

The AU's peace support operations capacity; standards and guidelines for the African Peer Review Mechanism (APRM) NEPAD's instrument for promoting good governance. The NEPAD Health Strategy; the education action plan (now under review), the Comprehensive Africa Agricultural Development Programme (CAAP); the short-term Action Plan (STAP) for Infrastructure development, the Science and Technology Strategic Plan, the Environment action Plan, the tourism action plan and the Africa productive capacity action plan. All these sectoral plans were adopted by the AU assembly after consideration by African experts and ministers.

The NEPAD'S policies and priorities have become internationally approved framework for Africans development.⁴⁸ Through NEPAD Kenya will benefit a lot on all these projects. In the first place, Kenya will benefit from improved infrastructural facilities and also will have a say in the international affairs and hence avoid marginalization which is a feature of third world countries in international forums.

(vi) BILATERAL AGREEMENTS

Kenya apart from being in the above regimes has also entered into bilateral trade agreements. As of now Kenya has signed 79 trade agreements world wide and has 19 which are under negotiation.⁵⁷

Kenya has bilateral agreements with all African States except the ones who share membership in EAC and COMESA. Other bilateral agreements are with countries outside Africa. Through these agreements Kenya is able to supplement her market for her commodities. For instance there are those products which do not get good market either through COMESA or EAC or even via ACP/EU cooperation in such instances Kenya seeks market for them through signing of bilateral agreements. An example here is the Kenya – Pakistan agreement on trade on tea and rice. Through this Kenya exports tea to Pakistan while she imports rice. Kenya does get enough market for tea from either EAC

⁴⁸ W.L NKUHLU NEPAD: The new partnership for African Development The Journey so far: NEPAD Secretariat June 2005.

⁵⁷ The Source of this information is from the Ministry of Trade and Industry-Kenya

or COMESA neither does she get enough rice from these. Pakistan offers the largest market for Kenyan tea for instance Kenya got about Kshs 8 billion (\$142 million) last year 2004 from tea exports to Pakistan. Therefore the agreement comes to fill this gap. Other bilateral agreements include Kenya and China where Kenya imports electronic equipment and China imports products like coffee.

(vii) THE WTO

Kenya is also a member of World Trade Organisation WTO. This is the body which regulates international trade. It has set rules to ensure fair trade and avoid mal practices in trade. It also sets a dispute resolution body through arbitration. These should be solely trade disputes.

CHAPTER 3

3.0 DATA ANALYSIS AND PRESENTATION

INTRODUCTION

This chapter presents the findings of the study. These findings were arrived at after a thorough analysis throughout the research done so as to have correct inferences. The data was collected from different sources so as to ensure reliability and consistency before making conclusions.

This analysis entailed comparison of recorded data from books, magazines, working papers, and internet sources with the data collected from oral interviews administered. This was carefully done to ascertain the validity of the data collected

The findings from the study have been presented in text form in sub-themes as follows:-

3.1 KENYA IN EAC AND COMESA

Kenya is the member country which championed the revival of the EAC in 1990s during president Moi's regime. All through the revival process, Kenya has hosted most of the meetings culminating to EAC revival. Kenya was keen on revival of EAC because of the expected economic benefits it hoped to reap.

It should be noted that even under the earlier EAC 1967-77 Kenya was benefiting most, and when therefore the EAC collapsed Kenya's economy was adversely affected. This drive can also be explained by Kenya's quest for hegemony in the region. This drive is not only seen in EAC but in other areas which include:- Spearheading the peace process in Sudan active participation in restoring Somali government since the toppling of Siad Barre and attempt by Kenya to be included in the UN security council.

On the side of COMESA Kenya too seeks to project her hegemonic capacity. Kenya is one of the three countries which has ratified the COMESA fund protocol. This activeness in COMESA activities shows her commitment to the success of the bloc. This in return will offer more opportunities and enhance her position in the region.

3.2 BENEFITS ACCRUING TO KENYA AS A RESULT OF BEING A DUAL MEMBER OF EAC AND COMESA

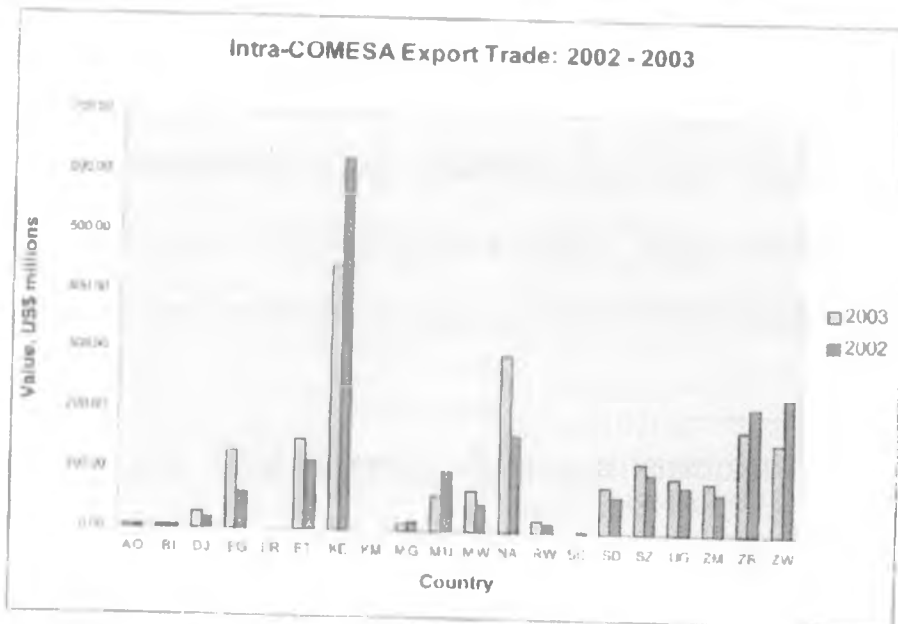
Kenya is among the Eastern and Southern African States, with a relatively developed manufacturing industry. This can be attributed to historical factors notably colonialism. Kenya was a settler economy during the pre-independence period which led to the establishment of industries. Kenya's investment policies are also conducive to foreign investors. This has attracted foreign direct investment (FDIs). The industries established therefore have taken advantage of the COMESA and EAC Regional Integration Initiatives.

EAC and COMESA offers a wider market for Kenyan products. Through COMESA FTA Kenya is able to access 10 economies duty free and another ten on preferential terms. The dual membership has therefore helped in expansion of Kenya's export market. If she was in EAC only she would not have this beneficial trade opportunity.

BAR GRAPHS INDICATING COMESA EXPORT AND IMPORTS FOR THE

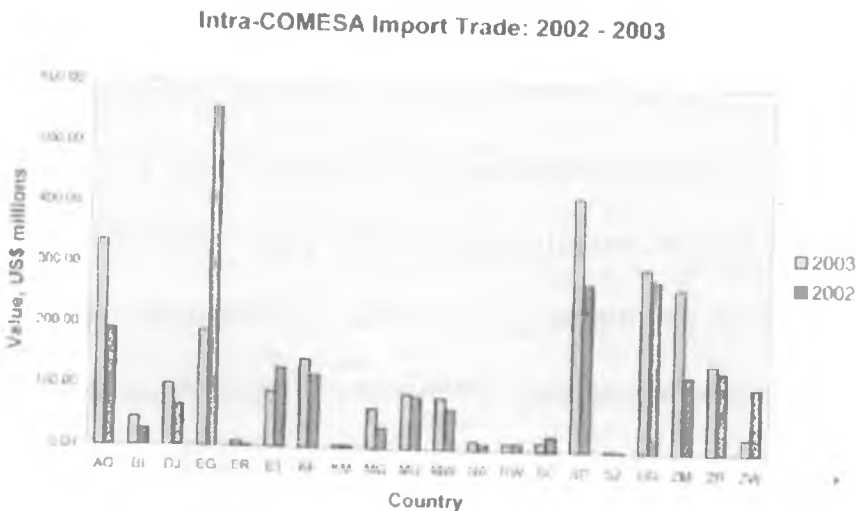
YEARS 2002 - 2003

COMESA Exports by member states



- Key**
- AO-Angola
 - BI-Burundi
 - DJ-Djibouti
 - EG-Egypt
 - ER-Eritrea
 - ET-Ethiopia
 - KE-Kenya
 - KM-Comoros
 - MG-Madagascar
 - MU-Mauritius
 - MW-Malawi
 - NA-Namibia
 - RW-Rwanda
 - SC-Seychelles
 - SD-Sudan
 - SZ-Swaziland
 - UG-Uganda
 - ZM-Zambia
 - ZR-Congo Dr
 - ZW-Zimbabwe

COMESA Imports by member states



Source: COMESA Annual Report 2004

From the above bar graphs its clear that Kenya during the period 2002/03 enjoyed a favourable balance of payment (BOP) from COMESA.

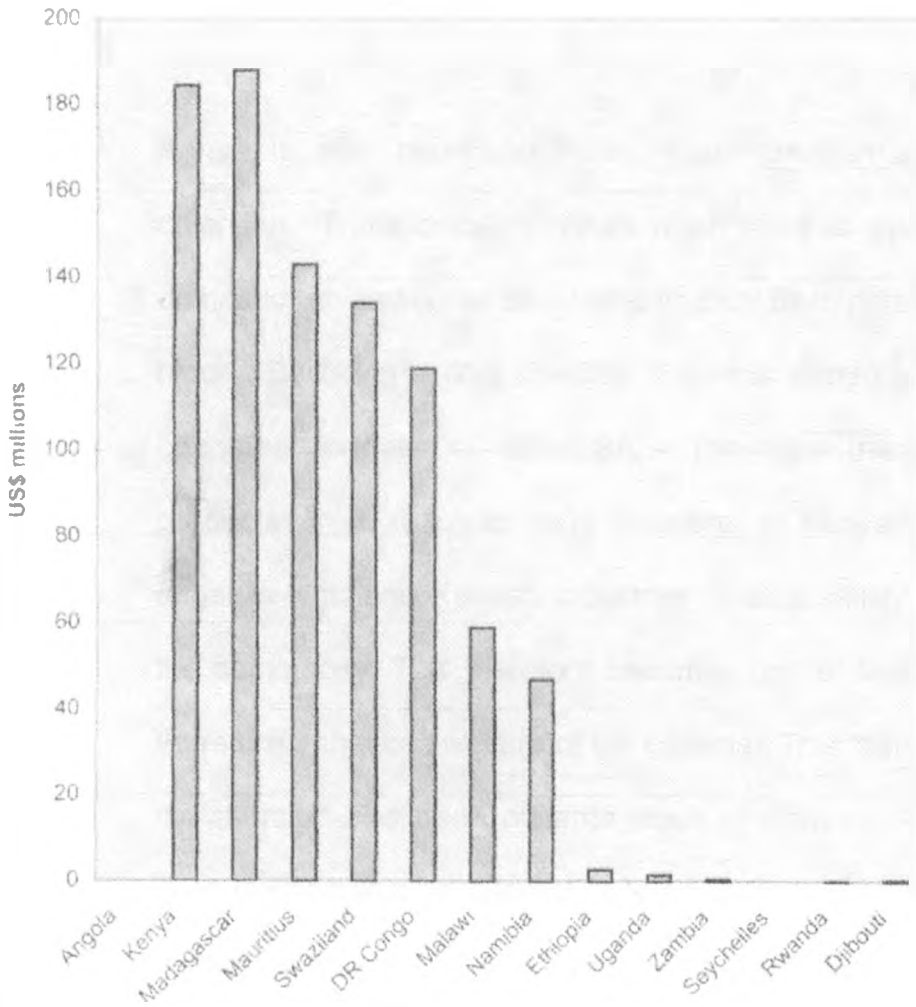
Kenya is also able to alleviate her problem of unemployment by being a member of EAC and COMESA. This occurs directly where Kenyans secure employment in EAC and COMESA institutions.

The free flow of citizens also offers opportunities because Kenyans can seek employment within COMESA and EAC. Currently all COMESA countries do not require visas except Egypt, Burundi, Rwanda and Madagascar which require visas but issue them at the port of entry.

There are other benefits which are anticipated for example the development of infrastructure like road and railway network, which will facilitate and enhance trade thus deepening cooperation. COMESA too has a joint collaboration with United States through AGOA. This way Kenya is able to access the US market under the umbrella of COMESA.

Information is important for countries in order to facilitate trade. Kenya by being in COMESA and EAC benefits from the wealth of information, which the two bodies have. For instance through AGOA linkages in COMESA (ALINC) awareness to export-ready companies within the region is done. This is done through various services which include AGOA information, US industry experts evaluations, US sales and marketing assistance, technical support and mentoring.

COMESA Exports Under AGOA (US\$ millions) 2003



Source: COMESA Annual Report 2004

The above bar graph shows that Kenya had the second highest value of exports under COMESA AGOA initiative in 2003.

Kenya also benefits from setting up regional model manufacturing and training center for apparel and footwear industries whose objective is to accelerate participation of COMESA in global market under AGOA. Kenya has been identified to host the regional manufacturing and modeling training centre.

Kenya is also benefiting from trade creation as opposed to trade diversion. Trade creation occurs when there is replacement of high cost domestic production by lower cost imports from partner countries from the blocs. By being a dual member it means Kenya is a partner with more countries courtesy of COMESA. Therefore there are more cheaper products which result to trade creation. In Kenya the cost of producing sugar is high and Kenyan industries cannot satisfy Kenya's demand for the commodity. This therefore becomes one of trade creation areas and therefore enhances welfare of the citizens. This therefore means that dual membership has been advantageous to Kenya. Another advantage of dual membership is alternative market in the sense that goods which cannot be sold in EAC can be exported to COMESA.

Kenya's dual membership in COMESA and EAC has been a blessing to the two regional blocs. This is so because Kenya enjoys relative stable political stability a factor which has assisted in attracting FDIs targeting COMESA & EAC. The favourable investment policies have also attracted investors keen to access enlarged market in EAC and COMESA.

The other advantage for Kenya's dual membership in COMESA and EAC is the stimulation of competition within the two blocs which in turn makes Kenyan industries more efficient and also challenges them to produce quality products. The consumers benefit through availability of quality goods and services which would not otherwise be available if Kenya was a member of a single regional bloc.

Kenya also gains by being in two regional blocs by being able to source raw materials for her industries within the regions. This is facilitated by availability of information on the regions and preferential treatment accorded by the member states. In addition Kenya benefits from dual membership by enhancing her power and influence to negotiate along with other members.

Kenya also benefits by enjoying a higher gross domestic growth rate estimated at 3-4% in COMESA region. Kenya also benefits from AGOA – COMESA links, which has continued to bolster US/Sub-Saharan trade and investment. Kenya also expects to benefit if COMESA succeeds in advocating for removal of agricultural subsidies provided by developed countries to their farmers which will allow African producers to take advantages that the current system prevents them from enjoying.

Kenya also stands to benefit through strengthening of democracy in the region. In the year 2003 –2004 millions of Africans elected democratic governments in Tunisia, Comoros, Ghana, Malawi, Mauritania, Rwanda, Senegal, South Africa and Mozambique.

The region is witnessing a number of peace initiatives like in Burundi, where rebel groups have signed peace agreements and once stable will provide a larger market. African countries Kenya included are learning to solve African problems using African based solutions.

Through these regional organizations, Kenya will be able to contribute to efforts aimed at changing the current hostile world order and achieve the Millennium Development Goals (MDG's). This could be done through pressuring the developed world to commit at least 0.7% of their collective GDP to enable LDCs to extricate themselves from poverty trap. In summary, dual membership gives Kenya a better chance of improving her political, social and economic status.

3.3 CHALLENGES/PROBLEMS OF DUAL MEMBERSHIP TO KENYA

As stated earlier in the literature review, dual membership has been identified as an impediment towards regional integration efforts. Scholars like Aly have argued that dual membership divide a country's loyalty between the organisations. This comes about by way of requirements for

membership like payment of membership fees and attendance of meetings and conferences. Failure to pay subscription fees by members has weakened some regional economic blocs. The causes of nonpayment are varied but chief among them is the fact that countries are overwhelmed by the amounts they have to pay to various regional initiatives. For instance countries in EAC pay an annual subscription of USD 1.741 million and those in COMESA pay USD 800,000 per year.

The problem of non-payment of annual subscriptions is real and led to the dismal performance of OAU and AU. However it is worth noting that countries honour their pledges depending on the degree to which they are able to attain their national interest from the organization. In this respect, for COMESA, according to the secretary general Mr. E.J.O Mwencha MBS, is not a victim for it continues "to receive more than normal budgetary contribution from member states".⁵⁸

In the year 2004, the contributions were well above 100 percent. The organization also receives support from cooperating partners and members continue to implement different COMESA integration programmes. This is a clear show of confidence and commitment by member states.

⁵⁸ COMESA Annual Report 2004 P5

Kenya so far has had no problems in settling the annual subscription fee in both COMESA and EAC. This is an indication that on average, Kenya benefits more by being a dual member and therefore pays annual membership fee promptly. Kenya therefore does not regret her dual membership.

The tension between WTO trade policies vis-a-vis the aspirations of developing countries were exhibited in the boycott of the Cancun talks in September 2003 led by Kenya. This means that membership in many regional blocs increases the chances of a country being trapped in political and economic confrontations in international arena.

In a realist world, this state of affairs is normal. Developing countries are now trying to overcome the handicaps posed by WTO by trying to replace it with bilateral region to region agreements.

The other challenge posed by dual membership is harmonization of rules and regulations between EAC and COMESA. Currently the EAC is at customs union stage while COMESA is at FTA level but has agreed to have a customs union by 2008. If this is realized there will be conflict in application of rules. According to the WTO rules a country cannot be simultaneously in two customs unions. On this basis therefore Kenyan is headed for contravention of the WTO multilateral organisation laws.

In technical terms a country cannot apply two different external tariffs and therefore cannot be a member of more than one customs union. This therefore rules out the two blocs becoming a customs union with the current membership. This is because a situation where Kenya would be expected to apply two conflicting tax regimes will occur.

The few conflicts which currently would be expected at this stage (that is COMESA, FTA and EACCU) cannot hamper the activities of the two institutions. This is because the two RECs have harmonized their operations. The fact that Kenya actively participates in deliberations in both regimes rules out some of these problems. Both EAC and COMESA are recognized by ECA as building blocks towards African economic Community.

Among the area where COMESA and EAC would be expected to conflict is on rules of origin. However during 2004, COMESA and EAC held meetings to review their collaboration. It was noted that EAC had adopted COMESA rules of origin. They also further agreed on the need for cooperation in the development of regional competition policy.

The two sides also agreed on the need to expand their consultations to include SADC, calling for tripartite meetings amongst COMESA, EAC and SADC of both the technical and policy levels. Harmonization of EAC and COMESA is under the auspices of inter regional coordination committee

comprising of EAC, COMESA and Indian Ocean Commission (IOC) secretariats which are in place to ensure harmony of the outcomes. These collaboration pre-empts conflicts which could arise. It is therefore clear that without such kind of co-operation conflicts would arise especially on rules of origin and liberalization schedules.

Despite this cooperation Kenya has faced some minor challenges. One of them is competition from the region emanating from the fact that the cost in Kenya of producing sugar is high. Kenyan industries face stiff competition from the region and this hampers their development. This is normal in any regional economic bloc

From the analysis, it is clear that Kenya benefits immensely by being a member of EAC and COMESA. The practice of dual membership is therefore an asset to Kenya. Kenya is not confined to the two regional blocks in search for economic benefits but also participates in other organizations like IGAD, AU, NEPAD and ACP-EU.

This is supplemented by bilateral trade agreements with seventy-nine countries worldwide and nineteen others under negotiation. This shows that Kenya is likely to continue concluding agreements with other countries and multilateral organizations to realize economic benefits so as to promote development.

CHAPTER 4

4.0 CONCLUSION

INTRODUCTION

The study set out to investigate the problems/challenges which Kenya faces as a result of being a dual member in EAC and COMESA. The study hypothesised that Kenya's dual membership in regional economic integration initiative inhibits her realization of objectives of regional cooperation. The theory of integration was adopted as theoretical framework for analysis

Broadly the study addressed the phenomenon of dual/multiple membership in regional integration initiatives and proceeded to examine the problems/challenges facing Kenya. The merits and demerits of Kenya's dual membership in EAC and COMESA have also been analysed.

The findings of the study indicate that in Africa, regional economic integration initiatives face many problems and challenges which include competition rather than complementarity which is brought about by similar production, inadequate research on the area of integration, undeveloped private sectors of some member states, insecurity which interferes with free flow of people in the region, the imposition of non-tariff barriers (NTBs), lack of policy and programme coordination and harmonization and

inadequate good governance. There is also imbalance in terms of economic development which make some countries benefit more than others and this too poses a challenge.

The study also shows that Kenya benefits from dual membership in EAC and COMESA as follows:- Offers enlarged market for goods and services, creates employment opportunities, attracts foreign direct investments, access to information on investment opportunities, increases Kenya's bargaining position in international arena, gives Kenya a better chance to access raw materials for industrial development. The EAC customs union provides a training ground on which the country's manufacturing sector can develop competitiveness for the wider world market, and improves standards of living of its citizens through trade creation.

In conclusion it is evident that Kenya benefits from the practice of dual membership in EAC and COMESA. In addition, Kenya supplements the benefits from EAC and COMESA by engaging in bilateral agreements.

The merits of dual membership outweigh the demerits. However Kenya faces a few challenges as a result of being a dual member in EAC and COMESA. These include problems of administration of rules of origin. However this problem has been overcome by EAC adopting COMESA rules of origin and therefore no contradiction.

There are also non-tariff barriers, which tend to slow down the progress of integration like poor infrastructure and roadblocks. There is also the challenge of increased competition from firms outside Kenya. Domestic agricultural industries particularly sugar and wheat have faced stiff competition from efficient industries from member countries. There is also the problem of suspicion among partner members. For instance in EAC, Tanzania and Uganda feel that Kenya is gaining more from the co-operation at their expense. There is also the challenge of slow implementation of agreed decisions. Another challenge is lack of political will in the sense that non-tariff barriers are still a problem even after the treaty of EAC has pronounced itself against them. There is also the challenge of ensuring support of EAC by the local people to ensure ownership. There have been incidents threatening inter-state security over sharing the Lake Victoria resources. EAC is also faced with complains over loss of customs revenue. The two blocs also face the problem of lack of funds to implement projects.

Despite these challenges, Kenya gains from the practice of dual membership and does not regret her membership in the two organizations.

4.1 RECOMMENDATIONS

This section seeks to give recommendations which will address challenges and facilitate expansion and deepening of integration process by eliminating areas of conflict and achieve the ultimate goal of African economic union.

(i) Streamlining membership

EAC is at the level of customs Union (CU) while COMESA is at the level of FTA. Tanzania being a member of EAC and not a member of COMESA poses a contradiction to the two blocs. Therefore it is recommended that Tanzania rejoins COMESA and drops her membership in SADC. This will enable EAC to act as a fast track in COMESA and the principle of variable geometry can be applied where countries join the customs union at their volition.

(ii) To overcome the challenge of high cost of production which makes Kenyan goods uncompetitive, Kenya should embark on policies and strategies aimed at reducing costs of production like investing in modern technology to produce cheap energy.

(iii) Kenya should also diversify the export base to avoid reliance on few commodities for export.

(iv) The government should also invest in improvement of infrastructure (roads, railways and telecommunications services) to enhance efficiency in production.

- (v) Kenya should encourage investment in industries where the country enjoys comparative advantage.
- (vi) Kenya should actively participate in the two regional blocs with the focus of realising the country's national goals.

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