

EAST AFRICAN COMMUNITY



“ATTAINMENT OF A SINGLE CUSTOMS TERRITORY IN A FULLY FLEDGED CUSTOMS UNION FOR THE EAC”

DRAFT FINAL REPORT



Submitted by:



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EXECUTIVE SUMMARY

Introduction and Background

The East African Community (EAC) by the treaty establishing it is a regional body cooperate with international legal personality established by the Partner States to spearhead the East African economic, social and political integration agenda. The Treaty for the establishment of the EAC was signed in November 1999 and entered into force in July 2000. The Treaty set out a bold vision for the eventual unification of the Partner States. The Customs Union (CU) was slated to be the entry point of the EAC of integration.

In 2010 the Community attained the Common Market; a landmark achievement in the integration process. In order for the Common Market to nurture and flourish, an effective, flawless and seamless customs union must be in place. The realization of the noble objectives of the Common Market will require an effective and full fledged customs union.

The Protocol establishing the EAC CU was signed in December 2004 and its implementation of commenced on 1st January 2005. The establishment of the CU was to be progressive in nature over a transitional period of five years. The fully fledged CU was expected to be achieved by January 2010.

The realization of the fully fledged Customs Union has not been achieved; the seamless and free movement of goods remains a challenge to the Partner States to date. A variety of reasons account for this state of affairs. It is for this reason among others that the Secretariat commissioned a study on "Attainment of a Single Customs Territory in a Fully Fledged Customs Union for the EAC". Through a process of competitive international bidding, the secretariat commissioned MA Consulting Group to conduct the study.

Terms of Reference

The terms of reference for the study were:

- a) Review and identify the gaps in the implementation of the Customs Union taking into account the roadmap towards attaining a fully-fledged Customs Union.
- b) Analyse the implication of multiple membership of Partner States in Regional Economic Communities in a Single Customs Territory
- c) Propose best options and modalities for addressing the outstanding issues whilst identifying the required interventions for a fully-fledged Customs Union. The proposal was to be guided by analysis of the models of a Single Customs Territories with specific focus but not limited to:
 - i. Free circulation of goods within the Customs Union
 - ii. Revenue collection and management systems
 - iii. Reduction of internal customs border controls
 - iv. Treatment of domestic taxes on goods traded across Partner States
 - v. Application of the Rules of Origin in a Single Customs territory (SCT)
 - vi. Legal, institutional and administrative arrangements
 - vii. Any other related and relevant area for a single SCT
- d) Develop modalities for implementation of the model proposed
- e) Recommend a detailed legal and institutional framework suitable for administering the proposed option under 3 above
- f) Recommend an implementation roadmap

Methodology

In order to attain the objectives of the study, the consultants combined both literature and data review and detailed focused consultations with both the Partner States and the

Secretariat at very high policy levels. It also became necessary to visit selected entry points including sea, air, ports and internal border points to obtain first hand information on customs administration at this points.

Study findings and Recommendations

The study findings include;

1. Our review and analysis indicate serious gaps and challenges in the implementation and achievements of a fully fledged customs union: These gaps include:
 - Lack of a common legal framework
 - Lack of common systems and procedures
 - Lack of an institutional framework which is either unified at the territorial level or where the sub-territorial customs administrations are interlinked through a central framework;
 - Slow circulation of goods with no or minimal border controls;
 - Lack of an agreed mechanism for collection and/or sharing of customs revenue;
 - Lack of harmonized or approximated domestic tax regimes applicable on cross-border trade;
 - Non-application of Rules of Origin.
2. The consultants observed that EAC Partner States are also members of more than one Regional Economic Communities (RECs). These overlaps have a bearing on the costs and benefits of integration since they tend to absorb much-needed human resources, institutional capacity and limited financial resources, and more fundamentally, have implications for the processes of deeper integration. Further multiple memberships dilute the effectiveness of CET.

In order to resolve this problem, we recommend that the Partner States in each of the three RECS negotiate applicable rules of origin to govern trade between them and the negotiated rules be applicable on first point of entry of goods into the Customs Union. This will serve to harmonize differences in CET and rules of origin which are the key challenges posed by multiple membership.

3. The Treaty and the Customs Union protocol envisaged that, the move towards a fully-fledged Customs Union with free circulation of goods was to be gradual and be attained within a transitional period of 5 years from 2005. Although internal tariffs have been eliminated the states are applying a Common External Tariff, free circulation of goods within the region is yet to be achieved. Internal customs border controls as earlier indicated still exist, Rules of Origins are still applicable and non-tariff barriers persist. Goods that originate from other Partner States even if qualifying under the Rules of Origin attract indirect taxes such as VAT and excise (where applicable) across the borders hence are subjected to the same customs clearance processes like any other goods from outside the region.

The Consultants recommend that the Partner States adopt the third model of clearance of goods for free circulation in the single market with Variations to accommodate goods exported from one Partner States to another. In this model, all goods are declared under the respective regime to which they are to be entered. Custom administrations at destination states retain control over assessment of taxes. Importers at the country of destination make declarations at the country of final destination. Goods that have already been taxed should not be subject to any other customs formality except post clearance audit. Details of this model and other options are elaborated in the report

4. Revenue management is one of the critical areas under a single customs territory. This entails collection of taxes at the first points of entry and/or pooling of revenues collected by the national revenue agencies as is the case with EU. In EAC, Partner States continue to retain control on their revenue collection function. The issue of revenue collection at the regional level has not been considered by the Partner States since the commencement of the Customs Union. Any mechanism for centralized revenue collection system has advantages and disadvantages, including considerations of efficiency and political equilibrium. However a regional revenue collection system is imperative and desirable under the Common market and Monetary Union steps the Community is moving into.

The Consultants recommend for the sake exigencies in the short run, Partner States continue assessing their own revenue but goods, once released at the first point of entry into the customs union.

5. The Private Sector is a critical player in the EAC integration process. Their primary interest is the eliminations of Non Tariff Barriers (NTBs) and the costs of doing business. Among the institutions established to deal with NTBs is the NTB monitoring mechanisms established in the Partner States. This mechanism has not been successful in managing NTBs because it does not have powers to sanction any state agency for introducing an NTB.

The Consultants recommend a review of NTB Monitoring Mechanism and establishment of an institution capable of dealing with NTBs and customs officers be empowered with mandate and training to enforce the role of some of the non customs agencies at entry points.

6. In EAC Customs Union, VAT, excise duty and other levies are imposed on goods crossing internal borders in accordance with the national legislations. These duties and levies are collected by customs on behalf of the domestic tax departments. The computation of these taxes is based on customs value of the goods and the processes follow similar path like those goods which are subject to import duty. This means that local goods crossing the borders are subjected to the same processes as goods from outside the region at the internal borders because of the domestic taxes. Key in the treatment of domestic taxes on cross border movement of goods is tax harmonization. Indeed this was envisioned in Article 83 of the treaty and Article 32 of the Common Market Protocol.

The Consultants recommend that considering the current level of integration in EAC, harmonization of domestic taxes should be achieved through; Adopting common domestic laws, Common procedures, codes structures and definitions, Common incentive regimes and Minimum and maximum tax rates in the short run with a view to adopting common rates in the long run.

7. While harmonization of taxes in general is important, the point of collection of domestic taxes is crucial for free movement of goods. If all taxes and levies were to be imposed at the port of entry, it would be difficult to import and sell goods at affordable prices.

The Consultants recommend that domestic taxes in the case of imported good be collected at the first point of entry of the goods into the customs territory and that in the case of goods transferred from a Partner State to another, such a tax be remitted prior to the goods being released to the country of destination and finally collection of withholding tax at the port of importation be discontinued.

8. In a single customs territory, goods move either from one partner states to the other or they enter the customs territory from a third country. Where the goods enter from a third country, they are subjected to the CET and therefore do not require any rules of origin as they are not expected to undergo any special tax treatment. When these goods are exported to another Partner State, they do not require any rules of origin as they will have undergone the CET. However, because Partner States on their own and indeed customs Unions tend to enter into trading arrangements with other RECs and other Nations, it is correct to argue that rules of origin are relevant in a single customs territory to the extent that they refer to trading arrangements between the customs territory and third parties.

The Consultants recommend that the current rules of origin be reviewed in view of the ongoing negotiations for the EAC/ COMESA/ SADC FTA. They further recommend that any future trading arrangements with third countries be negotiated by all Partner States of the Community.

9. Currently, the Partner States are using different ICT systems on customs operations which are not interlinked. The biggest challenge with the information and communications technology utilisation is the lack of regional interconnectivity of Partner States customs systems.

The consultants recommend establishment of a central reference database at the Directorate to serve as a depository of customs and trade information, a Commission to oversee the development of a customs system for use in documenting customs transactions in the region and the implementation of the recommendations of the study on EAC interconnectivity.

10. The Treaty in Article 7 and 75, envisaged the establishment of an institution with power and authority to administer the Customs Union. The Customs Union Protocol in Article 34 and 39 can be interpreted to have similar expectations. The East African Customs management act of 2004 was meant to actualise both the treaty and the protocol expectations of an institution with power and authority to administer the common market. The consultants find that sections 3 and 4 of the CMA fall short of establishing the institution envisaged in both the treaty and protocol. The future success of EAC integration in general and its single customs territory in particular, can only be guaranteed if EAC has institutions that protect and project the EAC integration vision, and which are able to drive the single customs territory even when political will-power fails nationally. The establishment and gradual growth of an EAC Customs Administration, able to take regional decisions, and holding a clear mandate and financial resources, is required for the attainment of the EAC single customs territory.

The Consultants recommend the establishment of an EAC Customs Administration with power and authority to administer the Customs Union. This can be achieved either by the enactment of a new legislation at the Community level establishing such administration and clothing it with requisite functions and powers or by effecting substantial amendments to the current East African Community Customs Management Act for this purpose.

11. The proposed institutional structure for the customs administration has the Sectoral Council on Trade, Finance and Investment at the highest political level and a body cooperate to be known as the Customs Authority established with a Director General as its CEO who will be supported by Directors of Specialized Directorates necessary to administer the EAC Customs Union.

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ACRONYMS AND ABBREVIATIONS

ASEAN	Association of South East Asian Nations
CED	Customs and Excise Department
CET	Common External Tariff
CHOGM	Commonwealth Heads of Government Meeting
CMA	Customs Management Act
COMESA	Common Market of Eastern and Southern Africa
CTH	Change in Tariff Heading
CU	Customs Union
EAC	East African Community
EU	European Union
EWGCC	Experts Working Group Committee on Customs
FDI	Foreign Direct Investment
FTA	Free Trade Area
GDP	Gross Domestic Product
KRA	Kenya Revenue Authority
MEAC	Ministry of East African Community
MFPED	Ministry of Finance, Planning and Economic Development
MTTI	Ministry of Tourism, Trade and Industry
NAFTA	North American Free Trade Area
NGO	Non Government Organisation
NTB	Non-Tariff Barriers
ROO	Rules of Origin
SADC	South African Development Community
SSA	Sub-Saharan Africa
VAT	Value Added Tax
WTO	World Trade Organisation

1.0 INTRODUCTION

The East African Community (EAC) is currently an intergovernmental organization comprising the five East African countries: Burundi, Kenya, Rwanda, Tanzania, and Uganda. The treaty establishing the Community in its present form was signed on 30th November 1999 and ratified on 7th July 2002. EAC has now a combined population of 126.6 Million People, a GDP of 73 Billion USD and a per capita income of 506 USD. Individually, the Partner States are members of various economic groupings such as COMESA, SADC, Northern Corridor Transit Agreement, Southern Corridor Transit Agreement, IGAD, WTO and World Customs Organization. EAC is also negotiating an Economic Partnership Agreement (EPA) with the EU. The region has also signed a framework for negotiating a partnership agreement with the USA. Both agreements are aimed at liberalizing trade between EAC and those other regions. The EU is the main trading partner of EAC countries and the largest market for EAC's exports, absorbing around 40 percent. EAC imports are quite diversified; around a quarter come from the EU, and about 20 percent from each of Asia and the Middle East.

In 2005, the EAC partner's states established a Customs Union; which was transformed into a Common Market in 2010. The next phase of the integration will see the bloc enter into a Monetary Union and ultimately become a Political Federation of the East African States. Negotiations for the establishment of the Monetary Union are ongoing.

The EAC Customs Union is guided by the Protocol establishing the Customs Union. The Protocol provides that the initial five years of the Customs Union implementation would be transitional after which a fully fledged Customs Union would commence in 2010. In addition to the Treaty, Protocol and its annexes, there are other instruments stipulating the legal, functional and institutional mechanisms for implementing various programmes under the Customs Union. The legal instruments include:

- The EAC Customs Management Act and Regulations;
- The Act on Standards, Quality Assurance Metrology and Testing;
- The EAC Competition Act and Regulations;
- The Trade Negotiations Act;

Other instruments such as One Stop Border Post (OSBP), the Counterfeit and Piracy, the Sanitary and Phytosanitary Measures (SPS) Protocol.

Although implementation of the Treaty has been steady, the realization of a single market in a fully fledged customs Union has been elusive. In order to inform decisions on how to usher in a fully fledged customs Union, EAC secretariat commissioned MA consulting Group to conduct a study on the attainment of a single customs territory.

1.1 The Significance of the Study

The EAC is the fastest growing REC in the world today. Stakeholders in both the public and private sector are keen to see implementation of the fully fledged Customs Union so as to reap the benefits of integration. The last six years of implementation of the Customs Union have left a few gaps and stakeholders would like to see these gaps addressed to pave way for implementation of the Common market and subsequent stages of integration. The significance of this study is that it attempts to answer some of the concerns regarding the customs union and its implementation and makes recommendations on the way forward.

The study attempts, to the extent possible to bring out issues to inform decisions related to implementation of free movement of goods and proper administration of customs in the East African Community.

1.2 The Objectives and Scope of the Study

The study set out to identify what institutional and legal frameworks are required for the attainment of a single customs territory in a fully fledged EAC customs union. The specific objectives of the study as per the Terms of Reference were to:

- g) Review and identify the gaps in the implementation of the Customs Union taking into account the roadmap towards attaining a fully-fledged Customs Union.
- h) Analyse the implication of multiple membership of Partner States in Regional Economic Communities in a Single Customs Territory
- i) Propose best options and modalities for addressing the outstanding issues whilst identifying the required interventions for a fully-fledged Customs Union. The proposal was to be guided by analysis of the models of a Single Customs Territories with specific focus but not limited to:
 - viii. Free circulation of goods within the Customs Union
 - ix. Revenue collection and management systems
 - x. Reduction of internal customs border controls
 - xi. Treatment of domestic taxes on goods traded across Partner States
 - xii. Application of the Rules of Origin in a Single Customs territory (SCT)
 - xiii. Legal, institutional and administrative arrangements
 - xiv. Any other related and relevant area for a single SCT
- j) Develop modalities for implementation of the model proposed
- k) Recommend a detailed legal and institutional framework suitable for administering the proposed option under 3 above
- l) Recommend an implementation roadmap

1.3 The Methodology Used in the Study

The study covers all the Partner States, namely Burundi, Kenya, Tanzania, Rwanda and Uganda. The team used the following methodology to achieve the objectives of the TORS

1.3.1 Documentary Review

The study team examined the relevant documentation, which included reports, and various policy documents, and many others as indicated in the references. The purpose of the documentary review was to collect published data and information on the subject as a basis for further verification. In order to complement the documentation identified, the study team also collected relevant information from Internet websites.

1.3.2 Interviews with Stakeholders

The team held interviews with various stakeholders, including officials from the various ministries in the five countries as well as selected individuals from the private sector the team also held substantial consultations with the Secretariat. The list of respondents and institutions are contained in **Annex 1**

Purposive sampling was done in ensuring that we covered most of the Partner states while randomly any of the border/entry points had an equal chance of being selected.

1.4 Limitations of the Study

While the study team did its best to fulfil the TOR as provided by the client, there were a number of limitations to contend with.

Firstly, the scope of the study is too big because there are many players involved in the customs. It was difficult to interview all of them in the time and resources at the team's disposal.

Secondly it was difficult in securing timely appointments in all the Partner States which slowly the pace of the study hence affecting the strict timelines for the study.

Thirdly, the study was affected by language constraints. This is especially true in the case of Burundi, where the official language is French. Translating some of the information into English takes time, but most importantly, it has the potential risk of distorting the content.

Fourthly, the team was constrained by the limited time given the scope of work in the terms of reference. Some of the comments made during the initial consultations bordered on going out of the scope of the terms of reference, which tended to encroach on the time allocated. Moreover, the different interpretation of issues and terms of reference by the various stakeholders, made it difficult to satisfy the divergent interests.

1.5 The Structure of the Report

This report is organized in ten parts. It starts with an acknowledgement and Executive Summary. The first part gives the background information and the context in which the study was carried out. Part 2 reviews the implementation of the EAC Customs Union. Part 3 assesses implication of multiple memberships in a single customs territory. Part 4 looks at the options and modalities for addressing the outstanding issues. Part 5 examines revenue collection and management including the framework for its collection and accounting. Part 6 assesses the reduction of internal customs border controls, treatment of domestic taxes on cross border movement of goods and collection of domestic taxes. Part 7 analyses the application of the rules of origin in a single customs territory. Part 8 examines the information and communication technology. Part 9 analyses the various modalities for implementing the proposed models. Part 10 presents legal and institutional framework suitable for administering the proposed options and Part 11 presents recommendations on the way forward.

2.0 REVIEW OF THE IMPLEMENTATION OF THE EACCU

Under this term of reference, the consultant was required to review and identify the gaps in the implementation of the Customs Union taking into account the roadmap attaining a fully-fledged Customs Union. In this regard, the review looked at current status of the EAC Customs Union in relation to the attainment of a Single Customs Territory.

2.1 Implementation of the EACCU

A Customs Union is an amalgamation of two or more countries that agree to promote free circulation of goods within their territory. Robson (2000) identified three essential features of a Customs Union:

- a) The elimination of internal tariff on imports from member countries;
- b) Adoption of a common external tariff on imports from the rest of the world; and
- c) The division of customs revenue according to an agreed formula

The principal elements of a Customs Union include:

1. Common trade policy approach
2. a single customs territory,
3. free circulation of goods

A common trade policy approach calls for;

- a) trade remedy laws that would imply a single regime for third countries
- b) reconciling the differences in the countries' current free trade and preferential trade arrangements with other countries respecting product coverage,
- c) rules of origin,
- d) future free trade partners;
- e) a common external trade policy with respect to multilateral and regional negotiations
- f) dispute settlement within the Customs Union based on the treaty provisions

The theory of single Customs territory extends to the application of import duties on goods entering the Customs Union. Thus whichever State the goods are imported, they would be subjected to the tariff rate and granted community status.

Free Circulation of goods means that goods entering the Union from outside the region should, once admitted at the first port of entry, be free to circulate in any partner state without being subjected to further customs procedure when they cross from one member state to another. The theory behind free circulation of goods is that the Customs Union is one territory and that goods moving from one place in a Union to another are neither exports nor imports.

It should be recalled that under the protocol, Partner States agreed to liberate trade between them and remove all tariffs in trade between them. It should be noted that trade involves goods originating from within and outside the Customs territory.

Customs revenue still contributes a substantial proportion of State revenue in East Africa and therefore, where goods originate from outside the Customs territory; there are genuine fears that a State may lose revenue. Implementation of a single customs territory therefore requires a legal and institutional framework to guide collection and accounting for customs revenue.

A Single Customs Territory is an integral part of a fully-fledged Customs Union. It is an arrangement where two or more customs territories merge to form one customs territory.

The essential features of a single customs territory include:

- a) common legal framework;
- b) common systems and procedures;

- c) an institutional framework which is either unified at the territorial level or where the sub-territorial customs administrations are interlinked through a central framework;
- d) circulation of goods with no or minimal border controls;
- e) Agreed mechanism for collection and sharing of customs revenue;
- f) harmonized or approximated domestic tax regimes applicable on cross-border trade;
- g) Non-application of Rules of Origin

2.2 Implementation of the protocol and its annexes:

Implementation of the customs Union has been an ongoing process that culminated in the signing and ratification of the Common Market Protocol by all partner states. A harmonised customs legal regime comprised of a common tariff structure, uniform EAC Customs Management Act, Rules of Origin (RoO) and Customs Regulations were adopted for uniform application in all Partner States. Over a transitional period, the internal tariff reduction programme was implemented up to January 2010 when all the internal tariffs came to zero. Harmonization of laws, imposing of uniform competitive policy, customs and procedures is ongoing to ensure a level playing field for all members of the community.

As regards common systems and procedures; the region is working towards adopting common IT systems standards and indeed common customs procedures. However, each Partner state has got its own set of legislation governing trade and investment.

Under the gradualism model that was adopted then, national institutions including those that are responsible for the Customs Union implementation were retained. At the central level, a Directorate of Customs and Trade was established at the Secretariat to initiate policy, coordinate and monitor its implementation. Under the transitional arrangements, each Partner State was to continue clearing its goods at the time of arrival into its customs territory.

The fact that partner states opted to continue clearing their own goods has been on its own the biggest obstacle to free movement of goods in the Customs Union. Thus whereas all tariffs have been removed, from intraregional trade, goods moving from one partner state to another have to undergo customs procedure to enforce standards, and collect domestic taxes on goods. Table 1 below presents the current status

Table 1: Customs administration status

ARTICLE	STATUS
<p>CUSTOMS ADMINISTRATION</p> <p>Article 5 :Communication of Customs and Trade Information</p> <p>Article 6 Trade Facilitation</p> <p>Article 7 Simplification, Standardisation and Harmonisation of Trade Information and Documentation</p> <p>Article 8 Commodity Description and Coding System</p> <p>Article 9 Prevention, Investigation and Suppression of Customs Offences</p>	<ul style="list-style-type: none"> • Information exchange ongoing but not seamless • EAC Customs Procedures, Enforcement regulations ongoing. • EAC HS CODE implemented
<p>TRADE LIBERALISATION</p> <p>Article 10 Internal Tariff</p> <p>Article 11 Transitional Provisions on the Elimination of Internal Tariffs</p> <p>Article 12 Common External Tariff</p> <p>Article 13 Non-tariff Barriers</p>	<ul style="list-style-type: none"> • Implemented • NTB mechanisms established in Partner States but not effective in removing barriers

ARTICLE	STATUS
TRADE RELATED ASPECTS Article 14 Rules of Origin Article 15 National Treatment Article 16 Anti-dumping Measures Article 17 Subsidies Article 18 Countervailing Measures Article 19 Safeguard Measures Article 20 Co-operation in the Investigation of Dumping, Subsidies and Application of Safeguard Measures Article 21 Competition Article 22 Restrictions and Prohibitions to Trade Article 23 Re-exportation of Goods Article 24 East African Community Committee on Trade Remedies	<ul style="list-style-type: none"> • Rules of Origin implemented. • Committees not constituted for 16- 20& 24 perhaps because no need arose. • Competition law and regulations drafted. Institution pending • 22- 23 implemented
EXPORT PROMOTION SCHEMES Article 25 Principles of Export Promotion Schemes Article 26 Duty Drawback Schemes Article 27 Duty and Value Added Tax Remission Schemes Article 28 Manufacturing under Bond Schemes Article 29 Export Processing Zones Article 30 Other Export Promotion Schemes	Implemented
SPECIAL ECONOMIC ZONES Article 31 Freeports Article 32 Other Arrangements	Pending
EXEMPTION REGIMES Article 33 Exemption Regimes	Implemented
GENERAL PROVISIONS Article 34 Administration of the Customs Union Article 35 Measures to address Imbalances arising from the Establishment of the Customs Union Article 36 Safeguard Clause Article 37 Trade Arrangements with Countries and Organisations outside the Customs Union Article 38 Inter-linkages with Other Areas of Co-operation	Implemented

Table 2: Implementation of Annexes

Annex	Article in Protocol	Description	Status
I:		Harmonized Commodity Description and Coding System and EAC Common External Tariff	EAC commodity Coding system implemented in all the Partner States. CET implemented with exceptions: <ul style="list-style-type: none"> • Sensitive list • Uganda List

Annex	Article in Protocol	Description	Status
II		Programme and Modalities for Elimination of Internal Tariffs	Implemented
III:		The East African Community Customs Union (Rules of Origin) Rules	Implemented
IV:		The East Africa Community Customs Union (Anti-dumping Measures) Regulations	Pending
V:		The East African Community Customs Union (Subsidies and Countervailing Measures)	Pending
VI:		The East African Community Customs Union (Safeguard Measures)	Pending
VII		The East African Community Customs Union (Export Processing Zones) Regulations	Implemented
VIII		: The EAC Customs Union (Free Port Operations) Regulations	Pending
IX		: The East African Community Customs Union (Dispute Settlement Mechanism)	Pending (however,

The consolidation of the EAC Customs Union shall provide a springboard for the implementation of the Common Market whose Protocol came into force on 1st July 2010. Free movement of factors of production under the Common Market builds on the free movement of goods under the Customs Union.

2.3 Status of implementation of the Roadmap

It was envisioned that the EAC Customs Union would evolve into a fully-fledged entity after the transitional period of five years and this would provide a foundation for the Common Market. In order to move to a fully-fledged Customs Union, the Council of Ministers in November 2009 adopted a roadmap spelling out specific milestones to be achieved. The milestones and status of implementation were as indicated below:

Table 3: Status of the Fully Fledged Customs Attainment Status

No	Milestone	Status of Implementation
1.	Full elimination of internal tariff	Done
2.	Comprehensive review of the Common External Tariff	<ul style="list-style-type: none"> • Done • Review of the sensitive list to be undertaken
3.	Establishment of the Customs Authority	Pending – Partner States consulting
4.	Harmonization of domestic tax laws	Pending – Process on-going
5.	Development of a EAC Trade Policy	Pending
6.	Attainment of free circulation of goods	Pending – Partner States consulting

No	Milestone	Status of Implementation
7.	Ceasing the application of the EAC Rules of Origin	Pending
8.	Harmonization of EAC Customs Procedures	Pending
9.	Practical intervention for elimination of Non-Tariff Barriers	In progress
10.	Development of Customs Strategy	In progress
11.	Review of the CMA for: <ul style="list-style-type: none"> • the establishment of the Customs Authority • enforcement scope by the Customs Authority • interconnectivity of customs 	Pending – Partner States consulting

Some of the milestones yet to be implemented have been subject of Partner States' consultations since 2009. The Summit, during its Meeting of December 2010 directed the Council to expedite the implementation of the Road Map. In the same vein, the Summit agreed to consider the recommendations on the attainment of the single customs territory.

Past Lessons

Here we explore three RECs which have implemented a single market in a customs Union; the defunct EAC, SACU, The Customs Union of Russia, Belarus And Kazakhstan, **MERCOSUR**

Defunct EAC

A Customs Union between Kenya and Uganda was established in 1917 and from this date there was a single customs administration for the two territories. The two territories had a common external tariff and internal free trade. Tanganyika became part of the Customs Union in 1919. Free trade in local produce and imported goods were provided for in the agreement establishing the Common Customs Administration. Free trade between Kenya, Uganda and Tanganyika in local produce began in 1923.

The major features of the Customs Union then were:

- a) an external tariff common to the three territories;
- b) a single collection of import duty at the point of entry into East Africa and subsequent movement of goods in East Africa;
- c) allocation of customs revenue among territories on the basis of 'derivation' that is, according to the territory of ultimate destination;
- d) free trade between the territories in products of East African origin;
- e) from 1949, a common customs administration;
- f) free movement of capital and substantially free movement of labour;
- g) common currency;
- h) common administration of transport and communication and other infrastructure.

SACU

The Southern African Customs Union (SACU) dates back to 1910, when South Africa, Basutoland, Swaziland and Bechuanaland signed up. Only Britain and South Africa were involved in the 1910 negotiations. This Agreement lasted until the British Protectorates received Independence in the mid 1960s. It was then renegotiated with the apartheid government, culminating in the 1969 Agreement.

In 1994 renegotiations began between Botswana, Lesotho, Namibia, Swaziland (BLNS) and South Africa to take account of the new socio-political environment in the region following the demise of apartheid. After eight years of negotiations a new Agreement was signed in October

2002. The 2002 SACU Agreement is more comprehensive than the earlier agreements; it encompasses three main areas, that is, governance and administration; economic policy and regulatory issues as well as revenue sharing. Its stated objectives include:

- To promote the integration of the Members into the global economy
- The facilitation of cross-border movement of goods between the Members
- The establishment of effective, transparent and democratic institutions which will ensure equitable trade benefits to the Members
- To facilitate the equitable sharing of revenue from customs, excise and additional duties
- To promote fair competition, substantially increase investment and facilitate economic development
- To facilitate the development of common policies and strategies

THE CUSTOMS UNION OF RUSSIA, BELARUS AND KAZAKHSTAN, CARICOM

This Customs Union became operational in 2010. It consists of a common customs territory with an external customs border. The Customs union Legal basis was created by adoption of Unified Customs Tariff and Unified Non Customs tariff Regulations and the execution of the Agreement on the Customs Code of the Customs Union. The legal framework of the customs Union is based on international agreements and protocols adopted by member states. The initial formal step to the formation of the Customs Union was the agreement on creation of the single Customs Territory and formation of Customs Union.

CARICOM

The erstwhile Caribbean Free Trade Association transformed itself into a Caribbean Community in which the common market would be an integral part. The objectives of the Community, the key elements of the CARICOM single market are:

- Free movement of goods and services
- Right of Establishment
- A Common External Tariff
- Free circulation - free movement of goods imported from extra regional sources which would require collection of taxes at first point of entry into the Region and the provision for sharing of collected customs revenue;
- Free movement of Capital –
- A Common trade policy –
- Free movement of labour
- Other measures:
- Harmonization of Laws

MERCOSUR

This Comprises of Argentina, Paraguay, Uruguay and Brazil, the Southern Common Market - its objectives are:

Free transit of goods, services and factors of production between the member states with inter alia, the elimination of customs rights and lifting of nontariff restrictions on the transit of goods or any other measures with similar effects;

Fixing of a common external tariff (TEC) and adopting of a common trade policy with regard to nonmember states or groups of states, and the coordination of positions in regional and international commercial and economic meetings;

Coordination of macroeconomic and sectorial policies of member states relating to foreign trade, agriculture, industry, taxes, monetary system, exchange and capital, services, customs, transport and communications, and any others they may agree on, in order to ensure free competition between member states; and

2.4 Findings from field interviews.

There was wide consensus among all the stakeholders interviewed that although implementation of various stages of integration has been steady;

The institutional capacity at the secretariat was inadequate to implement all the legal instruments. The number of staff at the secretariat is too thin to address the current workload. The working arrangement between the secretariat and Partner States makes it impossible for the secretariat to implement the protocol, decisions of the council and legal instruments. All the stakeholders interviewed argued for:

- A review of institutional framework to have a strengthened Customs Authority
- A review of legal framework to expand the mandate of the Customs Authority at the centre
- Contrary to common view, all stakeholders in the Partner states are willing to cede part of customs sovereignty to a central Authority

2.5 Thinking regional

Thinking as a region and not country is crucial to the attainment of a single customs territory, and is going to be crucial to the success or failure of the EAC Customs Union. Partner States need to think of the wider picture and their wider involvement in the regional project. The need to think regional is paramount to the attainment of the single customs territory.

The single customs territory, as a regional project, should be built on consensus. As EAC integration matures the need to engage in consensual politics will also grow. Consultations, particularly with the private sector and the EAC citizens, will be required to achieve the single customs territory.

Regional integration is a deeply political process and the implementation of a single customs territory has important political aspects. As the region matures into a common market there will be need for open markets, common trade and other policies at which stage there is need to transfer some national competencies into the regional project. This is particularly required if EAC has to achieve a single customs territory. A selective transfer of competencies is obligatory to a functional single customs territory. The benefits of a single customs territory will only be realized if the requisite political will is invested.

Regional integration in general and the realization of a single customs territory in particular, will be achieved when the states and the elected leaders show leadership often against fierce domestic resistance. A strong and sustained political commitment with two critical variables, namely a political vision and a shared political courage between the Partner States to advance towards the common objective of a single customs territory, now and for a long period in the future, will be a critical strategic driver for the EAC single customs territory.

2.6 Recommendation:

The Team recommends that the EAC implements the remaining aspects of the protocol so as to realise the gains of a fully fledged Customs Union

2.7 Chapter Summary

In this chapter, attainment of single customs territory is identified as a necessary ingredient for the EAC common market and subsequent stages of integration. A Single Customs Territory is an integral part of a fully-fledged Customs Union. It is an arrangement where two or more customs territories merge to form one customs territory.

3.0 THE IMPLICATION OF MULTIPLE MEMBERSHIPS IN A SINGLE CUSTOMS TERRITORY

3.1 Background

Under this TOR, the Study team was required to analyse the implication of multiple membership of Partner States in Regional Economic Communities in a Single Customs Territory.

As is the case with other countries in Africa, each partner State belongs to more than one regional Economic Community (REC) even though its needs can be served by one. Partner states of the East African Community, enjoy multiple memberships in several Regional Economic Communities including the East African Community (EAC) of which Burundi, Kenya, Rwanda, Tanzania and Uganda are members; the Common Market for Eastern and Southern Africa (COMESA) of which Burundi, Kenya, Rwanda and Uganda are members; South African Development Community (SADC) of which Tanzania is a member, and the Economic Community of the Great Lakes Countries (CEPGL) of which Burundi and Rwanda are Members.

3.2 Multiple memberships and the EAC Treaty

EAC, COMESA, and SADC have embarked on similar integration paths and deeper integration. The treaties and respective protocols of SADC, EAC and COMESA do not preclude members from maintaining prior trade arrangements or from entering into new ones. They do state, however, that any preferences granted by a member state to a third party or by two or more member states have to be extended to all other member states according to the common customs territory principle. This suggests that countries with multiple memberships should not seek individual preferences but rather cooperate in efforts to negotiate new arrangements between the RECs concerned.

The East African Customs Union protocol does not directly address the issue of multiple membership to the various Regional Economic Communities, but it stipulates that *“the Partner States shall honour their commitments in respect of other multilateral organisations and organisations to which they belong”* (Article 37 (1)). Article 37 (2), a *“common policy in the field of external trade”* is envisaged. For that purpose, *“the partner states shall formulate a mechanism to guide the relationships between the Customs Union and other integration blocs, multilateral and international organisations upon the signing of this Protocol”* In this regard, Partner states agreed that goods from COMESA and SADC would continue enjoying preferential tariff discounts that they enjoyed prior to coming into force of the Protocol for the Establishment of the EAC Customs Union¹.

Article 47 (4a) further stipulates that *“Partner States may separately conclude or amend a trade agreement with a foreign country provided that the terms of such an agreement or amendment are not in conflict with the provisions of this Protocol.”* Although all the other parties have to agree to such agreements or amendments as stipulated under Article 47 (4e, member states can still introduce other RECS into the already crowded relationship.

¹ Article 37 (3a)).

Table 4: membership in different RECs

COUNTRY	COMESA	COMESA FTA	SADC	SACU	EAC	ECCAS	IGAD	IOC
Angola			X			X		
Botswana			X	X				
Burundi	X	X			X	X		
DR Congo	X		X			X		
Comoros	X							X
Djibouti	X	X					X	X
Egypt	X	X						
Eritrea	X						X	
Ethiopia	X						X	
Kenya	X	X			X		X	
Libya	X	X						
Lesotho			X	X				
Madagascar	X	X						X
Malawi	X	X	X					
Mauritius	X	X	X					X
Mozambique			X					
Namibia			X					
Rwanda	X	X			X	X		
Seychelles	X							x
South Africa			X	X				
Sudan	X	X					X	
Swaziland	X		X	X				
Tanzania			X		X			
Uganda	X				X		X	
Zambia	X	X	X					
Zimbabwe	X	X	X					

3.3 Implications of multiple memberships

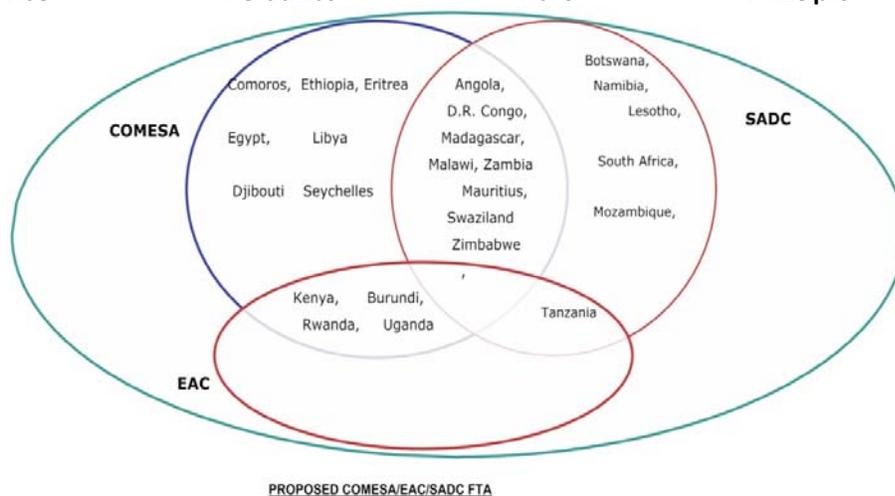
These overlaps have a bearing on the costs and benefits of integration since they tend to absorb much-needed human resources, institutional capacity and limited financial resources, and more fundamentally, have implications for the processes of deeper integration. Conflicts in jurisdiction arise where two different integration organizations have similar mandates, or where a country belongs to two or more integration organizations with conflicting policies.

Further it increases the burden placed on these organizations and their member states already lacking the necessary capacity and resources. It also leads to legal uncertainty in cases where more than one trade arrangement applies to trade between two countries. Uncertainties of this kind not only undermine the implementation of the agreements that aim to establish rules-based dispensations, but it also adds considerably to transaction costs and duplication in both regional trade and trade with outside partners. The general uncertainty and unpredictability caused by this also impacts negatively on the investment climate in these countries and their organizations.

Further, multiple memberships in various RECS dilutes the effectiveness of the CET in that goods imported from third countries enjoy reduced tariffs on entering the Customs Union because of preferential arrangements with third parties. To prevent these goods from entering a country where there are no preferential arrangements, Partner States are forced to enforce rules of origin at territorial borders. In this regard, multiple memberships are a hindrance to free circulation of goods.

3.4 EAC COMESA SADC FTA

Negotiations are ongoing in establish an FTA between COMESA, SADC and EAC. It is envisaged that once the negotiations are concluded, goods will move freely within the three regional groupings. The challenge to this FTA will however be to ensure that the new configuration does not introduce more multiple memberships



Both COMESA and SADC in the process of establishing Customs Unions and formation of the FTA will not solve the issues of multiple memberships because;

- a) It is technically and legally impossible for a country to apply two different CETs and therefore be a member of two customs Unions
- b) Whenever one member of the Customs Union negotiates a trading arrangement with another country, the whole group must bear the costs of administering several trades within the same Customs Union.
- c) Members of the various groupings must maintain border posts to enforce rules of origin meant to prevent preferential trade from entering the countries that are not party to the agreement. It should be noted that although the protocol for the establishment of the COMESA customs Union was signed more than a year ago, not all the states belong to the Union and indeed not all the Partner States are members of the FTA.

3.5 Findings from field interviews

All stakeholders interviewed were aware that all the EAC Member states were members of other RECs. While membership in some institutional such as IGAD and AU did not pose conflict in movement of goods, Membership in COMESA and SADC caused a challenge because SADC, EAC and COMESA apply somewhat different rules of origin. The team also found that Partner States have strong bonds with the RECS for which they have membership in and it would be difficult to persuade them to leave these organizations to retain membership to the EAC. The stakeholders were also of the view that unless the issues emanating from multiple memberships are addressed, it would be difficult to achieve free movement of goods

Private sector stakeholders are not interested in membership to Customs Unions, Single market etc. They are interested in removal of NTBS and simplification of procedures

3.6 Recommendations

The team recommends that

- a) the three RECS negotiate applicable rules of origin to govern trade between them
- b) The negotiated rules be applicable on first point of entry of goods into the Customs Union.

3.7 Chapter Summary

In this chapter, it has been found that EAC member states like other countries in Africa are members of more than one REC but it is not technically possible to have more than one CET. It has been observed that dual membership can slow free movement of goods because partner states are forced to establish border stations to monitor movement of goods enjoying preferential treatment,

It has also been noted that multiple membership wastes and stretches human and financial resources of both the member state and the organization. Further, when one member state negotiates a trading agreement with a third country, the burden of administration of the arrangement falls on all the members.

It has also been observed that the establishment of the EAC COMESA SADC FTA is not a solution to the dual membership problem and Partner States must decide which Customs Union to belong to when both COMESA and SADC become fully fledged Customs Unions

4.0 OPTIONS AND MODALITIES FOR ADDRESSING THE OUTSTANDING ISSUES

Under this TOR, the team was required to propose best options and modalities for addressing the outstanding issues whilst identifying the required interventions for a fully-fledged Customs Union. The proposal was to be guided by analysis of the models of a Single Customs Territories and was expected to address the following outstanding issues:

- Free circulation of goods within the Customs Union
- Revenue collection and management systems
- Reduction of internal customs border controls
- Treatment of domestic taxes on goods traded across Partner States
- Application of the Rules of Origin in a Single Customs territory (SCT)
- Legal, institutional and administrative arrangements
- Harmonization of domestic tax laws
- Development of a EAC Trade Policy

4.1 Free circulation of goods

In EAC, the move towards a fully-fledged Customs Union with free circulation of goods was set out to be gradual and attained in a period of 5 years. Although internal tariffs have been eliminated the states are applying a Common External Tariff, free circulation of goods within the region is yet to be achieved. Internal customs border controls as earlier indicated still exist, Rules of Origins are still applicable and non-tariff barriers persist. Goods that originate from other Partner States even if qualifying under the Rules of Origin attract indirect taxes such as VAT and excise (where applicable) across the borders hence are subjected to the same customs clearance processes like any other goods from outside the region.

The free circulation of goods in a single customs territory presupposes the following:

- a) a revenue collection system that ensures reconciliation and accountability to enable goods to move from one place to the other;
- b) cessation of Rules of Origin;
- c) minimal or removal of internal border controls;
- d) improved IT interconnectivity and exchange of information between agencies involved in clearance of goods and collection of taxes;
- e) shifting the domestic taxation on imports at the time of entry of goods to the point of sale in the importing Partner State;

The advantages for a free circulation of goods are:

- a) lessen internal border controls and use of RoOs, since it would not be necessary to test locally produced goods for compliance with origin conferring criteria;
- b) Strict bond controls would not be required and there would be no need to track consignments to ports of destination. This would also lessen the need for risk management control and post clearance audits
- c) promote intra-region trade and market share of the locally produced products;
- d) reduce the cost of doing business;
- e) promote SMEs and informal sector to trade across borders;
- f) encourage cross border investment;
- g) stimulate production and trade of agricultural products;
- h) enhance quality of statistical data on cross border trade; and,
- i) Enhances movement of exports from inland to the ports of exit.

The likely disadvantages are:

- a) difficulty in collection of domestic taxes on cross border trade since it will require better exchange of information between the exporting and importing Partner States in order to follow up on the traders tax obligations;
- b) Encourage dumping and other unfair trade practices. For example, it would be difficult to guard against smuggled goods that could hurt domestic industries of Partner States as some goods may be declared to be consumed at the destination but end up being introduced to the domestic markets of other countries;
- c) free circulation could also overload capacities of Partner States with sea ports as they would be required to clear the bulk of goods entering the Customs Union; and,
- d) Lead to the loss of import revenues for a number of Partner States that are highly dependent on the direct contributions of import taxes.

4.2 Options and Modalities for free circulation of goods.

There are various options for clearing goods for free circulation into the customs Union. In the first option, partner states invite each other's customs officers to work at entry points to ensure that customs clearance is done in a way that protects their national interests. To implement this, entry points would designate areas where goods destined to a partner state would be stored prior to clearance by customs agencies of that state. This model is however too costly and may delay clearance of goods if the same have to be handled by more than one set of clearing agency. Moreover, delays in clearance can be caused by conflict between two agencies.

Under the second option, all the partner States would surrender their customs administration to a central agency. The agency would be responsible for customs clearance of goods at entry points and monitoring the movement of goods from one partner state to another.

This option calls for an arrangement for pooling of customs revenue and a modality for sharing. While this is the most desirable model in the long run, partner states may not have reliable data to negotiate a revenue sharing model in the short run and this may delay implementation of free circulation of goods.

Under the third option, all goods are declared under the respective regime for which they are to be entered. Details of declaration shall be entered in a central database assessable by all customs administrations on a need to know basis. The declarations should be made at the convenience of the importer to the Destination State. In the case of goods entered for warehousing, transit or other duty suspension regime, a bond guarantee shall be executed to cover movement of those goods to their destination. Bond guarantees shall be enforceable in all Partner States. Bonds shall be cancelled on receipt of the goods at the designated warehouse, exit from a partner state or in the case of goods under duty suspension scheme, entry into a Partner State. Officers at border stations shall enter in the central data bank exit of goods from one partner state and entry in another State. This record shall signify movement of duty liability from one State to another and the goods will undergo no other formalities at the border except data capture. When goods on whose duty has been paid and enter a destination state, customs at the entry point shall capture this information into the central database. This information shall be used by the designated bank to release duties already paid in their respect. Goods that have already been taxed should not be subject to any other customs formality except post clearance audit. For this reason therefore, Measures should be taken to ensure that correct duties are assessed at the point of entry.

Under the Third option, importers at the country of destination make declarations at the country of final destination. The customs administrations at the destination country shall, based on documents presented assess the taxes payable. Once payment of taxes is effected, the customs administrations at the destination advise the customs administration at the point of entry that duties have been paid. This notification is done through the central database. Based

on documents presented at the entry point and the notification of payment at the country of destination, customs administration at the point of entry authorises release of the goods for free circulation in the customs Union.

4.3 Prerequisites for free circulation of goods

To effect free circulation of goods and collection of duties and other taxes on goods at entry points there must be:

1. Interconnectivity of customs systems in the region to facilitate seamless flow of information between customs stations
2. Standardization of data structures
3. Interconnectivity of customs systems with designated banks.
4. A payment system to manage transfers of revenues between states
5. An independent audit system for early detection of deviations to the protocol
6. Provisions in Partner States laws to authorise acceptance of electronic information as evidence for transactions
7. Legal provisions to enjoin Partner States to enforce customs debts on behalf of each other.
8. A centralised bond guarantee system
9. Operational single window borders.
10. A centralised customs administration with stronger mandate to enforce compliance with the Customs law.

To fund the administration of free circulation of goods, Partner States should agree on a percentage of customs revenue to be remitted to the secretariat. This should go to a specific fund and used to pay bank charges, audit, interconnectivity charges and other charges related to cross regional control and movement of goods

4.4 Stakeholder observations

All stakeholders interviewed agreed that free circulation of goods was a prerequisite to achievement of single customs territory. They opined that goods entering the customs Union should be subjected to customs only once the time of entry into the customs Union. Some of the stakeholders in inland states expressed concerns that one customs administration may not trust the work of another customs administration. In this regard, they observed that customs officials in partner states should be subjected to the same training standards and apply the same procedure in the clearance of goods.

4.5 Recommendations

The team recommends to the Partner States to adopt the third model of clearance of goods for free circulation in the single market with Variations to accommodate goods exported from one Partner States to another. Under this model, customs administrations at destination states retain control over assessment of taxes.

4.6 Section Summary

Under this section it has been observed that the model of revenue collection is critical for free circulation of goods and attainment of a single customs territory. Various prerequisites for free circulation of goods have been discussed looking into their pros and cons in respect to EAC. A model where , importers at the country of destination make declarations at the country of final destination and the customs administrations at the destination country based on documents presented asses the taxes payable has been proposed. Based on documents presented at the entry point and the notification of payment at the country of destination, customs administration at the point of entry authorises release of the goods for free circulation in the customs Union.

5.0 REVENUE COLLECTION AND MANAGEMENT

5.1 Back ground

Revenue management is one of the key areas under a single customs territory whereby Partner States institute an integrated system of collection and pooling of revenue hitherto undertaken by each of the national revenue agencies of the Partner States that form the Customs Union. This entails collecting of taxes at the first points of entry and/or pooling of revenues collected by the national revenue agencies as is the case with EU. In EAC, Partner States continue to retain control on their revenue collection function. The revenue agencies collect revenue on behalf of their governments and such monies are directly remitted to the consolidated accounts. These processes are governed by the respective national legislations. The issue of revenue collection at the regional level has not been considered at the policy level since the commencement of the Customs Union. It was presumed this matter would be considered after the transitional period of five years.

There has been little literature on Customs Unions' (CU) sharing common tariff revenue mechanisms (Syropoulos, 2003). Comparative analyses show that in past and current CU two main mechanisms are being used. First are sharing rules depending on countries size measures (imports, consumption, and population) which also, in some cases, could be combined with members' per capita income levels deviations as it is the case of the South African Custom Union (SACU). The second mechanism is to build a common fund to finance common policies as it is the case in the European Union (EU).

Each mechanism has advantages and disadvantages, considered both efficiency objectives and the particular political economy equilibrium of each experience. In the early stages of establishing the European Union, the creation of a common fund was considered an essential tool to reinforce the cohesion of the group of countries of Europe (Pelkman, 1997) through the development of a set of common policies. Moreover, the selected mechanism was one of the essential elements to empower the supranational technique represented by the institutional functions and attributes of the European Commission, in particular the common management of the Common Trade Policy (including the Common External Tariff). At the other extreme, in SACU the common funds of the Common Trade Policy are pooled and distributed according to a general rule that combines the size of each country (measured in intraregional trade) and a development component corresponding to deviations from the average income level of the bloc (Kirk and Stern, 2003). In this case, from an institutional point of view there is a delegation from each of the members of the CU to the biggest and richest, South Africa, i.e. the country who defined the Common Trade Policy of the bloc.

In a recent paper the SACU formula was applied to the MERCOSUR case (Vaillant, 2005). The results obtained show that the main problem in adopting that formula is that in the South American trade bloc the big country is not the richest, unlike the case of the African trade bloc

A regional revenue collection system is practical and relevant under the EAC Common Market and subsequently Monetary Union due to:

- a) use of technology in tax payments and collections;
- b) it reduces the cost of doing business in the region through reduction in clearance costs such as bonds, demurrage and storage charges, transit fees and other related charges;
- c) it increases the turnaround of trucks because of removal of internal borders;
- d) it facilitates trade hence increasing turnover;
- e) it reduces cost of collection of taxes and compliance costs;

- f) results in equitable and balanced mutual benefit to the Partner States from the pooled revenues;
- g) it improves compliance due to elimination of diversion of goods since they will be duty paid at the first point of entry;
- h) it would lead to harmonization of varying tax incentives accorded by each Partner State;
- i) It would lead to removal of requirements for Rules of Origin and simplification of customs procedures.

Although there are practical advantages some of which are mentioned above, a regional revenue collection system may have some inherent complexities relating to:

- a) sovereign rights over revenues in relation to imports;
- b) collection of domestic taxes on cross border trade;
- c) revenue accountability;
- d) Divergence preferential treatment of goods based on membership to different regional blocs.

5.2 The Principle of Subsidiarity

Among the operational principles of the Community as set out in Article 7 of the Treaty, is the principle of subsidiarity with emphasis on multi-level participation and involvement of a wide range of stakeholders in the process of integration. Subsidiarity is a principle which directs attention to the level or levels at which certain policy objectives can best be formulated and realized. It explains the reasons for any shift of 'locus' of decision-making from member states to the Community level and the advantages which that level solutions provides. Under this principle, institutions must prove that they are better placed to realize particular objectives. Embedded in the principle of subsidiarity is the sub-principle of responsibility gradualism. The Community has so far delivered on the mandate under the difficult circumstance it has been in. it has become of age and needs to be entrusted with more responsibilities to spearhead the integration process. Time is now ripe for the principle of subsidiarity to be implanted and in particular the responsibility gradualism in so far as customs administration on free circulation of goods is concerned. Partner States should show their commitment to this Treaty principle by agreeing on region wide Mechanism for Revenue Management within the single customs territory.

5.3 Revenue collection and administration in other Regional Intergration groupings.

a) THE EUROPEAN UNION (EU)

The EU Parliament is the ultimate organ of the Union Customs Authorities in the EU member States authorised as "competent authorities" to operate and administer all customs controls and revenue collection on behalf of the Commission utilising systems set down in the Customs Code. The Customs revenue is collected by each Member States' customs service as "own resources" (that is revenue belonging to the EU Commission) and remitted by the respective Finance Ministries or Treasuries at regular intervals after deducting the 10% allowed to cover the administrative costs of the customs department.

The funding comes from three major sources;

1. All of the customs revenues collected by the member states' customs services as competent authorities are remitted to the EU Commission less a 10% which the state retains to cover the cost of collection.
2. Each member state remits 1.5% of its total VAT receipts to the Commission.
3. Each member state makes an agreed lump sum payment annually which at one time is related to various economic factors, population, GNP etc. but now appears to be purely a negotiated sum.

These revenue sources are supplemented by miscellaneous small payments and receipts such as agricultural levies.

B) SACU

In SACU, customs and excise revenue is collected at the first port of entry and forwarded to a central pool. All customs and excise collected in the common customs area are paid into South Africa' national Revenue Fund. South Africa is the custodian of this pool. Only the BLNS Member States' shares are calculated with South Africa receiving the residual. SACU revenue constitutes a substantial share of the state revenue of the BLNS countries. From here it is shared among the member states according to an agreed formula. The revenue is shared according to member states' shares in the combined SACU GDP. Customs revenue is shared on the basis of intra SACU trade measured net of re- exports of goods imported from non SACU countries.

Thus the revenue share accruing to each Member State is calculated from three basic components: A share of the customs pool; a share of the excise pool; and a share of a development component.

These three different components are distributed as follows:

1. The customs component allocated according to each country's share of total intra-SACU trade, including re-exports.
2. The excise component, net of the development component, allocated on the basis of GDP.
3. The development component is fixed at 15% of the total excise pool and distributed to all SACU members according to the inverse of each country's GDP/capita.

C) THE GULF COOPERATION COUNCIL

The Council of GCC Heads of State reached an agreement allowing customs in each member country to collect revenues at their ports of entry and then to transfer these funds on a monthly basis to a common account (within the first three days of each month). Once the funds are received in the common account, they will be prorated using an agreed allocation formula and then disbursed to GCC member countries via a bank transfer.

The allocation formula is based on a mix of criteria, such as the member countries' share of total GCC imports, share of total GCC GDP and share of total GCC population computed as an average of the last five years. The agreement shows the revenue shares ranging between 45 and 47 percent for Saudi Arabia, and 20 to 23 per cent for the UAE. The remaining will be shared proportionately by Kuwait (12 percent), Bahrain (9 percent), Oman (7 percent) and Qatar (6 percent).

D) CHINA

According to the rules of the State Council on revenue sharing system, the tax revenue in China may be divided into Central tax revenue, local tax revenue and the tax revenue shared between the Central and local governments.

- Central tax revenue: domestic Consumption Tax; Customs Duties; VAT and Consumption Tax collected by the Customs on behalf of the domestic consumption tax department.
- Local tax revenue: Individual Income Tax; City and Township Land Use Tax; Farmland Occupation Tax; Fixed Assets Investment Orientation Regulation Tax; Land Appreciation Tax; House Property Tax; Urban Real Estate Tax; Inheritance Tax (not yet legislated); Vehicle and Vessel Usage Tax; Vehicle and Vessel Usage License Plate Tax; Deed Tax; Slaughter Tax; Banquet Tax; Agriculture Tax and Animal Husbandry Tax and their local surtaxes.

Unlike China, EAC consists of states bound together by a protocol and as such it is unlikely that its revenue collection and sharing model would, at this time be appropriate for EAC

5.4 Revenue management Models

Decisions on how tax revenue is to be collected and administered will determine the direction of the Customs Union. Broadly, three models of collection and accounting for tax revenue in a Customs Union have been tried hitherto. Presently any model for collection and accounting for tax revenue in EAC should have three levels of comfort;

1. Preserve, to the greatest extent possible the taxing power of member states
2. Give assurance that member states will not lose revenue
3. Be enforceable and transparent.

5.5 Pooling and sharing

Under this model, all the customs revenue is transferred to a central pool from where it is shared among the Partner States. Perhaps the biggest problem with this model is how to agree on the parameters of determining the quantum of share revenue going to each member. Furthermore, negotiating on the sharing formula can take a very long time.

Sharing pooled revenue can be done on the basis of population, GDP, GDP per capita, or a combination of two or more variables. It should be noted that any revenue sharing model should be a win-win situation which does not leave any partner state worse off than it was before the revenue sharing and pooling was agreed upon. If partner states agree to use this model, they should be guided by the principles laid down in the treaty,

5.6 Destination model

Under the destination model, duty is paid to the country where imported goods are consumed. The taxable moment for goods under this principle is the point of entry into the customs union. The destination model has two variants:

- a) Duty is collected by the country of entry and then remitted to the country of consumption once the goods are exported; under this variation, measures are necessary to ensure that Customs administrations in the country of consumption have confidence in the ability of the officers at entry point to correctly assess the duties. Moreover modalities for transfer of revenue from the country of entry to the country of destination are necessary.
- b) Duty is paid directly to the country of consumption and goods are allowed free entry into the Union at the country of first entry. Under this variation modalities are required to ensure that the country of entry does not lose revenue when goods on which duty has been paid in another country is consumed in the country of entry or a transit country.

Considering the level of integration and applicable technology in the partner states, the latter option is more desirable. Here the prospective importer shall make a declaration at the country of destination. The customs officers shall process the declaration and assess the duties payable. Once the duties are paid, customs at the country of destination shall notify the customs at port of entry of entry to release the goods for free circulation.

This model gives partner states control over revenue collection and assessment while at the same time facilitating clearance at the first port of entry into the customs Union. Moreover, it will in the short run enable partner states to collect data for revenue sharing in the long run.

Prerequisites:

1. A robust EACwide IT system to enable exchange of information between customs administrations and other stakeholders involved in clearance of goods.
2. Strong monitoring by Partner states Customs administrations to ensure that goods for which duty is paid in one Partner State are not consumed in another partner State.

Duty collection and revenue- sharing pilot scheme in the EAC

The East African Community (EAC) recently launched a pilot program for the implementation of the new duty collection and revenue- sharing scheme, a key element in the creation of a single customs territory. The new scheme has the potential to change the way trade is conducted with the EAC and should reduce the cost of doing business in the region for traders.

The revenue authorities expect that the scheme will contribute to reducing tax evasion through smuggling goods in transit between the ports of entry and the final destination. However, the successful implementation requires a look at the scheme's inherent challenges and business implications.

To address some of the above issues, the partner states have agreed to a scheme whereby duties and taxes collected at the port of entry will serve as the bond/guarantee to the transit countries during transit while also serving as the duties payable to the country of destination. An electronic tracking system, developed by Trademark East Africa, an organization established to support EAC regional trade and economic integration, will account for the duty collection and revenue-sharing associated with the movements of the goods. Instead of customs procedures at the border control points, a message is simply relayed from one scheme manager to another indicating that the goods are still intact with the duties and taxes collected at the port of entry serving as guarantee to countries of destination. This scheme thus provides the required security for the revenue authorities, but removes the burden of bond costs from the trader.

In January 2011, the EAC entered into a partnership with various commercial banks to participate in a pilot program to implement the electronic system of duty collection and revenue-sharing. Initially, this system will be applied by the Tanzania revenue authority at the port of Dar Es Salaam, handling imports to landlocked cities of Kigali and Bujumbura, before being replicated at the Mombasa Port.

Available information regarding the operation of the system does not indicate in what proportions and how the revenue-sharing will be conducted among the partner states. For instance, it is unclear whether the taxes paid will be remitted to the country of consumption instantly by the bank. The amounts of revenue shared and the period within which the importing country will receive taxes paid will be critical for the successful implementation of the system across the EAC region.

Findings from field study

During field consultations, there was a cautious approach on how customs revenue was to be collected and accounted for. In some of the Partner States, it was made clear that Partner States would not want to cede sovereignty over revenue collection. This was because customs revenue contributes a large portion of government revenue and it was imperative that this revenue be collected and remitted as early as possible.

Other stakeholders did not have objection to ceding revenue collection provided that the principle of asymmetry was to be applied in the revenue sharing formula. They argued that revenue collection be done on the basis of population or GDP. Some of the stakeholders argued that they could not trust other revenue authorities to assess and collect revenue.

Despite the sensitivity attached to revenue collection, the team did not find any evidence that any of the revenue authorities was collecting customs revenue. Indeed, all revenues were collected through banks and that partner states revenue authorities were not dealing directly with revenue.

5.7 Framework for Collection and Accounting for Revenue

- i) An importer wishing to clear goods through customs shall make a self assessment and pay customs duties in a designated financial institution at the country of destination.
- ii) Customs administrations at the country of destination shall assess the declaration by the importer and if acceptable notify the customs administration at country of entry that it is satisfied that full duties have been paid.

- iii) Document processing shall be done vide a centralised customs computer system.
- iv) The customs administration at the country of entry shall, relying on the declaration accepted by the country of destination, verify the goods and release the goods for free circulation in the customs territory.
- v) Customs administrations at the border stations shall allow free passage of goods to the country of destination without verification or further customs clearance save for statistical purposes.
- vi) Customs administrations shall strengthen post clearance units and activities to ensure that goods for which duty has been paid in one country are not diverted in another country
- vii) The procedure listed above shall apply to collection of VAT and excise taxes for goods imported from one partner state to another.

5.7 Recommendation

It is recommended that in the short run, partner states continue assessing their own revenue but goods be released only once at the time of first entry into the customs union and that pooling of revenue be stayed at the moment.

5.8 Section summary

In this section it has been observed that collection and accounting for customs revenue is an important subject in regional integration especially because of the proportion of customs revenue to total government revenue. In some regional groupings such as the EU, all the revenue is surrendered to a central body and not shared. In SACU, the revenue is surrendered and shared according to an agreed formula. It has observed that while revenue pooling and sharing is desirable in the long run, partner states can still continue collecting their revenue using information technology to facilitate free movement of goods.

6.0 REDUCTION OF INTERNAL CUSTOMS BORDER CONTROLS

6.1 Background

As mentioned earlier in this report, the private sector is only interested in regional integration to the extent that it removes NTBS and the cost of doing business in the partner states. Various attempts have been made to reduce NTBS in intraregional trade and indeed NTBS have been discussed in numerous fora in EAC.

Among the institutions established to deal with NTBS is the NTB monitoring mechanisms established in all the partner states. The mechanism has not been successful in managing NTBS because it does not have powers to sanction any state agency for introducing an NTB. Substantial progress has however been made in the harmonization of standards in the region.

6.2 Causes of NTBS

The main sources of NTBS in intraregional trade include:

- a) Numerous disharmonized laws governing trade
- b) Numerous non customs state agencies involved in clearance of goods
- c) Absence of a mechanism to harmonize most of the laws governing trade.
- d) Absence of an institution to sanction Partner States over NTBs outside the court

6.3 Findings from field interviews.

Most of the stakeholders were concerned that each time one NTB was removed, it mutated into another NTB and the EAC did not seem to be able to address complaints from the stakeholders. Others observed that the cost of dealing with NTBS was higher than import tariffs. They observed that any concession brought by elimination of tariffs between the Partner States could easily be lost to NTBS. In one of the stations visited, it was observed that customs delays were dealt with through concentrating all the agencies in one location. This however did not solve the problem of delays because it did not reduce the number of stages for clearance of goods. Some of the tasks being performed by the non customs agencies did not require any specialised skills and could be performed by customs (it does not for example require special skills to detect that goods are not accompanied by a Phytosanitary certificate from the port of origin)

6.4 Recommendation

The team recommends to the EAC to

- a) Review the NTB Monitoring Mechanism and establish an institution capable of dealing with NTBS
- b) Activate the EAC Dispute Settlement Mechanism (DSM)
- c) Review the customs clearance processes at ports, airports and entry points with a view to reduce the role of non customs agencies. In this regard it is recommended that customs officers be empowered with mandate and training to enforce the role of some of the non customs agencies at entry points.
- d) Implement the OSBP

6.5 Section Summary

It was observed in this section that NTBS have the power of negating the gains of EAC integration process. Although a lot of work has been done in the EAC to reduce NTBS, other NTBS often replace new ones. The current legal framework and indeed the absence of a harmonised trade regime have been identified as a primary source of NTBs in the region.

It has been recommended that the institutional and legal framework of the Directorate of Trade be reviewed to increase the capacity of the ditto deal with NTBS

6.6 Treatment of Domestic Taxes on Cross Border Movement of Goods

6.6.1 Background

In East Africa, VAT, excise duty and other levies are imposed on goods crossing internal borders in accordance with the national legislations. These duties and levies are collected by customs on behalf of the domestic tax departments. The computation of these taxes is based on customs value of the goods and the processes follow similar path like those goods which are subject to import duty. This means that local goods crossing the borders are subjected to the same processes as goods from outside the region at the internal borders because of the domestic taxes.

The collection of domestic taxes particularly at the time of importation by Partner States is convenient because the importers are under customs control. However, the intent and principles of VAT and excise are supposed to be applied at consumption levels. In EU where the internal borders have been removed such taxes are applicable at the wholesale and retail levels.

In order to achieve free circulation of goods across borders, both for local produced products and goods which have been imported and cleared by customs, the application of domestic taxes at the internal borders need to be reviewed. This however requires enhanced exchange of information between the exporting and importing Partner States so that the traders comply with their tax obligations on a periodic basis.

Key in the treatment of domestic taxes on cross border movement of goods is tax harmonization.

6.6.2 Tax Harmonization

Harmonization of tax is the process of removing fiscal barriers and discrepancies between tax systems of various countries in an economic block. It does not refer to either standardization or equalization, but rather the bringing of harmony and orderliness; some authorities call it tax rationalization. Musgrave (1967) defines tax harmonization as the process of adjusting fiscal systems to conform to a certain set of common economic aims. Larkin (2005) defines it as the elimination of differences of inconsistencies between tax systems of different jurisdictions or making such differences compatible with each other.

Under Article 83 of the Treaty for the establishment of the East African community, Partner States agreed to harmonize their monetary and fiscal policies. In this regard, they undertook to harmonize their tax policies with a view to removing tax distortions in order to bring about a more efficient allocation of resources within the Community. Tax harmonization is also emphasized in the Common Market Protocol in article 32 which states that the Partner States will progressively harmonize their tax policies and laws on domestic taxes.

The initiative for harmonization of VAT and excise tax began in February 2005 when a meeting of Permanent Secretaries of Kenya, Uganda and Tanzania agreed on the need to harmonize excise taxes of those goods that are most important in terms of revenue by setting minimum rates. It was then agreed at that time that excise duties for petroleum products, cigarettes, soft drinks and alcohol beverages should be the first to be considered. Hitherto, in its report on the fast tracking of the EAC political federation, a Committee of Imminent Persons had recommended the harmonization of taxes to facilitate free movement of goods.

6.6.3 Justification of harmonization

The concept of a common market involves the elimination of all obstacles to intraregional trade in order to merge national markets into a single market bringing about conditions as close as possible to those of a genuine internal market

The envisaged EAC common market is characterized by the abolition of obstacles to free movement of goods, persons and services, common commercial policy in the partner states, and a system of ensuring that competition in the internal market are not distorted. Thus it should be possible for corporations to run their business within the EAC without having their decisions regarding location, form of investment or financing influenced by taxation regulations. This neutrality can only be achieved through tax harmonization in the partner states. Thus tax harmonization in EAC will lead to promotion of free trade, realization of single market and political effect of bringing Partner States closer.

Several arguments have been put forward for tax harmonization

1. Distortion of competition

Differences in tax burden lead to different after tax rates of return and different payback periods among investors in the same industry thus distorting competition.

2. Obstruction of free movement of Capital

As mentioned above, tax policy should not influence investment decisions. (Capital export neutrality) However, distortions in tax regimes frustrate the ideal principles of capital export neutrality by hindering the free movement of Capital. These distortions occur through implementation of differing investment incentive schemes.

3. Distorted allocation of resources

In a harmonized tax environment, the location or capital investment strategies may not be based on purely economic factors such as relative labour and production costs but by tax considerations, thus the principle of fiscal neutrality which prevents buyers and sellers in efficient markets from taking courses of action for tax reasons alone is frustrated. Disharmony in tax regimes interfere with production and consumer choice. In many cases this is demonstrated by cross border smuggling of goods.

4. Lost revenue

Differences in tax regimes in partner states create an environment for tax planning schemes to reduce tax burden. The overall impact of these schemes is reduced government revenues which some tax administrations respond to with increased tax rates

The key objective of EAC tax harmonization is to eliminate tax distortions so as to bring about a more efficient allocation of resources in the common market. Without tax harmonization, partner states may compete by taxing rights that may harm other partner states and erode the tax base of the community. Harmful tax features include:

- Zero or low effective tax rates
- Lack of effective exchange of information
- Lack of transparency
- Artificial definition of tax base
- State aid and subsidies
- Failure to adhere to international transfer pricing guidelines
- Residence taxation principles
- Advance tax rulings
- Regimes promoted as tax minimization vehicles

Analogous with the harmonization of taxes is the harmonization of procedures, structures and incentive schemes.

6.6.4 The concept of harmonization

In its ideal state, tax harmonization has the following features:

1. A legal framework applied among all the members

2. A centralized economic structure where economic policy decisions are taken jointly to avoid diversities
3. A political structure to facilitate acceptability of uniform law and economic policies
4. A transfer of fiscal competence from national to supranational level.

6.6.5 Best Practices

Harmonization of excise taxes is not unique to EAC. Other economic blocks have attempted harmonization of excise taxes with varying degrees of success. The most notable examples are the Andean Community, European Union (EU), Southern Africa Customs Union (SACU) and the defunct EAC.

1 The European Union

In 1993 the EU “harmonized” its excise rules. The negotiations were lengthy and convoluted; there were 15 Member States at that time. The economic and cultural importance of excise duties differed between Member States with Southern Member States historically levying low excise while Northern Member States had high excise taxes. It was agreed to harmonize via “European Commission (EC) Directives” and four main excise directives were introduced covering the three commodities subject to the harmonized rules: mineral oils, alcohol and alcoholic beverages and tobacco products. The harmonization process standardized the calculation of excise and provided a covered basis for allowing exemptions or reduced rates. Many areas of excise control remain discretionary, including accounting periods, the extent to which a tax warehouse system can apply and the value of financial guarantees or other security.

2 Defunct EAC

The Partner States in the defunct East Africa Community operated a common Customs and Excise Management Act. The Partner States applied the same Common External Tariff, rules of origin, common exemption regime, and prohibitions and restriction lists. All import duties and excise on imports were collected at the first point of entry into the community and remitted to the consuming Partner State by the collecting State. The agreement then provided for the collecting State to transfer import duties and excise equivalent to 70% of the ordinary retail selling price. Nonetheless the level of transfer could be varied by the East Africa Community Authority from time to time. Excise duties on locally manufactured excisable goods were collected at the point of delivery from the manufacturer’s premises and equivalent transfers made to the consuming State.

By the time the EAC collapsed in 1977 the level of economic integration amongst Kenya, Tanzania and Uganda was very deep, hence the achievement of a high degree of excise taxes harmonization.

6.6.6 Findings from field interviews.

There was consensus among all the stakeholders that tax harmonization was a vital ingredient for further steps of integration. Some of the stakeholders however cautioned that tax harmonization should not be done in a way that would leave partner states worse off than they were prior to the harmonization process. It was also observed for some of the stakeholders that harmonization of taxes and especially excise taxes should not be understood to mean equalization but rather structures, procedures and definitions

6.6.7 Recommendations

Considering the current level of integration in EAC, the team recommends that the region harmonizes domestic taxes on goods through:

- a) Adopting common domestic laws
- b) Common procedures, codes structures and definitions

- c) Common incentive regimes
- d) Minimum and maximum tax rates in the short run with a view to adopting common rates in the long run.

6.6.8. Section Summary.

It has been observed in this section that harmonization is a crucial vehicle for driving the single customs territory and common market. It has also been observed that the free movement of goods will not work without harmonization. Also observed is that harmonization is not equalization. The study team recommends to the Partner to adopt minimum and maximum rates of tax plus a harmonised law in the short run.

6.7 Collection of Domestic Taxes

6.7.1 Background

At the time of signing of the treaty, it was agreed that the Partner States would continue collecting their own taxes on goods. Although there were negotiations on harmonization of domestic taxes, it was agreed that during the transitional period, Partner States would continue collecting Excise and VAT alongside import duties. Partner states have since then negotiated a double tax Treaty, and started work on development of a common VAT and excise tax regime.

While harmonization of taxes in General is important, the point of collection of domestic taxes is crucial to free movement of goods.

6.7.2 Domestic taxes

Domestic taxes imposed on goods in EAC include:

- a) Withholding tax
- b) Excise tax
- c) Value Added Tax.
- d) Other levies

At the outset, imposing corporate tax on goods in any form is not a good taxation principle and sets a bad principle. If all taxes and levies were to be imposed at the port of entry, it would be difficult to import and sell goods at affordable prices. Indeed corporate taxes by their very nature supposed to be imposed long after the goods are imported, converted through a process of manufactures or otherwise and sold.

Because Excise tax rates are high, they are prone to tax evasion schemes and it is thus imperative that they be collected at the point of entry into the Partner State. Both excise and VAT are consumption taxes and are therefore best administered in the destination state rather than port of entry. Because these taxes are collected at the point of first entry, their existence has been used to justify existence of borders. The collection of domestic taxes at border stations is likely to slow down free movement of goods. However, If domestic taxes will cease to be a barrier to free movement of goods, partner states should strengthen the VAT and corporate tax administrations to ensure that the taxes are collected at retail level instead of being collected at the border as is the case currently.

6.7.3 Findings from field study

The study team found customs officers in the border stations ting withholding tax, excise duty and VAT. This meant that all goods for which these taxes are applicable were the subjected to customs clearance at the borders, to some of the traders, there was nothing new in EAC integration because customs clearance did not change with signing of any of the protocols.

6.7.4 Recommendation

The team recommends that Domestic taxes on goods such as excise and VAT be:

1. in the case of imported goods, collected on first entry of goods into the customs Territory
2. In the case of goods transferred from a partner state to another , be remitted prior to those goods being released for transport to the country of destination.
3. Collection of withholding tax at the port of importation to be ceased.

6.7.5 Section summary

The point of collection of domestic taxes can affect free movement of goods. Partner states however to collect these taxes at borders because of the ease at which they can be collected. It has been observed that cooperation between partner states can remove the need for collection of domestic taxes at border stations.

7.0 APPLICATION OF THE RULES OF ORIGIN IN A SINGLE CUSTOMS TERRITORY

7.1 Background

Rules of origin denote the criteria for assigning citizenship of goods. In a REC, rules of origin are used to identify goods that require a discriminative tax treatment. In a customs Union, they are meant to identify goods originating the customs Union so that they can be granted tax free passage in the partner state. Theoretically, once goods enter a single customs territory, they are subjected to the CET and this gives them national Status. They no longer require identification when crossing to another Partner State

7.2 roles of Rules of Origin in a SCT

In a single customs territory, goods move either from one partner states to the other or they enter the customs territory from a third country. Where the goods enter from a third country, they are subjected to the CET and therefore do not require any rules of origin as they are not expected to undergo any special tax treatment. When these goods are exported to another Partner State, they do not require any rules of origin as they will have undergone the CET. Where originating goods are moved from one partner state to another in a single market, there is no need to prove their origin as they would have been subjected to the CET if at all they had originated from a third country. It is thus urged that rules of origin are not relevant in a single customs territory.

However, because Partner States on their own and indeed customs Unions tend to enter into trading arrangements with other RECS and other Nations, it is correct to argue that rules of origin are relevant in a single customs territory to the extent that they refer to trading arrangements between the customs territory and third parties.

7.3 Findings from field study

The stakeholders were of the view that rules of origin may not be needed in a single customs territory. However, they pointed out that Single customs territory should not be opened recklessly because some of the industries are still at a nascent state. The stakeholders argued that rules of origin would be required to identify goods imported from third parties with whom EAC had trading arrangements.

7.4 Recommendations

The team recommended that the current rules of origin be reviewed in view of the ongoing negotiations for the EAC/ COMESA/ SADC FTA. It also recommends that any future trading arrangements with third countries be negotiated by all members of the Community.

7.5 Section summary

It has been observed that rules of origin do not have a role play in a single customs territory. However, they are useful when the community negotiates a trading arrangement with a third party as is the case with COMESA and SADC.

8.0 INFORMATION AND COMMUNICATION TECHNOLOGY

8.1 Background

As indicated above, the attainment of a Single Customs Territory is dependent on an effective mechanism on revenue management, free circulation of goods, treatment of domestic taxes and a regional institutional framework. The operationalization of these key areas is dependent on an effective region wide ICT system. The EAC Customs Union will require intensive cooperation between customs administrations and other stakeholders in the use of information and communication technologies (ICTs) beyond the current levels where only revenue collection processes are automated in Partner States. Faster clearance of goods, elimination of Non Tariff Barriers (NTBs), and compilation of trade data to facilitate revenue sharing, risk analysis and security would be greatly enhanced through the use of ICT. The development of a reliable regional ICT infrastructure is therefore critical for the Single Customs Territory.

Currently, the Partner States are using different ICT systems on customs operations which are not interlinked. Kenya uses the SIMBA system and the other four Partner States implemented the Automated System for Customs Data (ASYCUDA). Other ICT interventions such as cargo tracking systems are being initiated independently at the national level. The biggest challenge with the information and communications technology utilisation is the lack of regional interconnectivity of Partner States customs systems.

The use of enhanced ICT will provide the following benefits:

- a) increased compliance through improved data quality and a decrease in the risk of errors and misinformation due to less repeated keying of information;
- b) accurate and timely data exchange leading to quicker risk assessment, increased profile effectiveness through targeted inspections, improved service and hence improved client satisfaction due to faster clearance and release of goods;
- c) faster exchange of valuation and other intelligence information between agencies;
- d) better management of transit and bond systems likely to reduce transaction costs;
- e) improved implementation and coordination of border management programmes;
- f) Electronic access to regulatory and requisite information related to the import and export of goods.

8.2 Findings from the field study

Stakeholders made it clear that centralised customs system at the centre would be superior to a decentralised one. They argued that for ease of administration and enforcement of agreed protocols, centre of the system would be best administered by the Customs Authority. Customs officials in the various Revenue Authorities agreed that the current IT platforms were mundane and therefore not adequate to meet demands of customs in the next ten years. Further, they appreciated the difficulties of persuading customs administrations to move from the current operating systems to adopt another system being applied in the region. This regard, it was noted that none of the operating systems in EAC could be termed as having 100% customs functionalities.

Most of the customs officers interviewed recommended a locally developed customs solution for the region. The initiative of the revenue Authorities to interconnect customs systems did not achieve the desired goals.

8.3 Recommendation.

The team recommends to EAC

- a) Establish a central reference database at the Directorate to serve as a depository of customs and trade information.

- b) Commission the development of a customs system for use in documenting customs transactions in the region.
- c) To implement the recommendations of the study on EAC interconnectivity.

8.4 Section Summary.

Considering the volume of transactions and the geographical span of the community, it is clear that the EAC can no longer rely on manual systems to facilitate free movement of goods. In this regard, it is imperative that the Partner states use an elaborate IT system to assess and monitor movement of goods. Further, the systems currently in use in partner states are not configured to handle region wide customs transactions and therefore a new system needs to be developed if seamless clearance on goods is to be achieved.

9.0 MODALITIES FOR IMPLEMENTATION OF PROPOSED MODELS

9.1 Background

Under this ToR, the study team was expected to develop a modality for implementation of the proposed models. In this regard, the team recommends that the council directs the directorate of customs to present to the council for approval;

- a) A legal and institutional framework.
- b) A legal framework for collection and accounting for Customs revenue

9.2 Framework for the EAC Customs Authority

9.2.1 Strategic drivers for the single customs territory

There are four key drivers of the process of economic integration, particularly the realisation of a fully fledged customs union, combination of which will be vital for EAC single customs territory. These are:

- a) A strong legal framework is required to give the process direction and aim and to set clear timescales and objectives. The Treaty, the Customs Union Protocol and the East African Community Customs Management Act 2004 constitute the requisite legal framework for the EAC Single Customs Territory.
- b) A set of common institutions since strong central institutions are necessary to drive the process forward and keep an impartial eye on developments. This is what is critically required for the EAC to achieve a single customs territory status particularly in the administration and management of customs.
- c) Elimination of identified barriers to trade will need to be done in a gradual sequence. That sequence will need to be debated with the participation of key players such as the private sector.

The need to create common policies, both core and flanking, to help in the elimination of barriers and advance the integration

9.2.2 Legal basis/justification for an EAC Customs administration

a) The Treaty

Article 5 of the Treaty Establishing the EAC envisaged the Community to be both an economic and political union. The integration process was to move from a customs union to a common market, as transitional stages and then to a monetary union and political federation as the ultimate.

To achieve this Article 75 required the Community to establish a Customs Union involving the removal of tariff and non-tariff barriers to trade and the establishment of a common external tariff. For the realization of its long-range strategic objectives, the Community had to be built on critical principles set out in the Treaty. There are, however two crucial conditions to the achievement of these principles. These are:-

- An extremely insightful strategic vision, and
- A great political courage.

The Community's starting position was the setting up of an economic cohesion model of a Customs Union as the transitional stage of integration with the objective of gradually developing common interest among the Partner States.

There are two other important elements required for the EAC integration namely the will and determination to develop a framework of authority for central institutions, and secondly, the strengthening of the rule of law. Important decisions will need to be taken through meticulous preparations and thoughtful calculations between the Partner States and the Community as

an international legal person, whose laws should transcend the laws of individual Partner States in terms of authority.

The Community has now reached its second and critical stage of integration as a Common Market. A common market is essentially a political and economic project that aims to realize economic integration through the removal of all barriers to free factor mobility. This can only be achieved through a variety of legislative and non-legislative measures and strong institutions to monitor decisions adopted by member governments. The implementation of both the EAC Customs Union and Common Market will need to be adapted to the specific regional circumstances such that the timing, sequencing and policy priorities may differ. Nonetheless points of comparison and notions of best practices can be developed.

As a Common Market, EAC has to be alive to the main economic features of a common market which include:-

- Removal of all tariff barriers;
- An effective common external tariff;
- Removal of all barriers to free factor mobility;
- A series of common policies; and the gradual coordination of economic policies.

These can only be achieved through harmonization, approximation or by legislation. Implementing, enforcing and sequencing these different features is a complicated task requiring significant amount of negotiations, bargaining and compromises.

(i) Article 7(d) of the Treaty- the Principle of Subsidiarity

Among the operational principles of the Community as set out in Article 7 of the Treaty, is the principle of subsidiarity with emphasis on multi-level participation and involvement of a wide range of stakeholders in the process of integration. Subsidiarity is a principle which directs attention to the level or levels at which certain policy objectives can best be formulated and realized. It explains the reasons for any shift of 'locus' of decision-making from member states to the Community level and the advantages which that level solutions provides. Under this principle, institutions must prove that they are better placed to realize particular objectives.

Embedded in the principle of subsidiarity is the sub-principle of responsibility gradualism. The Community has so far delivered on the mandate under the difficult circumstance it has been in. it has become of age and needs to be entrusted with more responsibilities to spearhead the integration process. Time is now ripe for the principle of subsidiarity to be implanted and in particular the responsibility gradualism in so far as customs administration is concerned. Partner States should show their commitment to this Treaty principle by agreeing on a single EAC Customs Administration within the single customs territory.

(ii) Article 75 of the Treaty.

The Treaty provides in Article 75(3) that for the purposes of that section, The Council may- *'...establish and confer powers and authority upon such institutions as it may deem necessary to administer the Customs Union.'*

The Treaty therefore, envisaged an institutional framework to administer the Custom Union. We believe that time is opportune for the establishment of the envisaged institution if the Community has to witness effective administration of customs within a single customs territory. The Council should implement its Treaty obligation by establishing an effective EAC Customs Administration.

b) The Customs Union Protocol: Articles 34 and 39 of the Customs Union Protocol

Article 1 of the Customs Union Protocol defines what a competent authority means under the Protocol. It means a body or organization designated by the Community to administer the customs law of the Community. Article 34 of the Protocol envisaged the enactment of the customs law of the Community. It provides that-

'...the administration of the Customs Union, including legal administrative and institutional matters, shall be governed by the customs law of the Community.'

Article 39 spells out what the customs law of the Community entails. These include the Treaty, the Customs Union Protocol and its annexes, Acts of the Community enacted by the Legislative Assembly and relevant principles of international law. The treaty principle of subsidiarity and Article 75(3) provide adequate Treaty legal basis for the establishment of the EAC Customs Administration to administer custom affairs within the single customs territory. Articles 1,34, and 39 of the Customs Union Protocol, buttress the legal justification in the Treaty for the establishment of such administration.

c) The East African Community Customs Management Act 2004

The East African Community Management Act No.1 of 2005 was assented to on 31st December 2004 and its date of commencement given as 1st January 2005. The objective of this law was to make provisions for the management and administration of customs within the EAC Customs Territory.

Section 3 of the Act refers to the Directorate of Customs at the EAC Secretariat, as the institution established by the Council pursuant to the provisions of Article 75(3) of the Treaty. However that section only confers on the Directorate of Customs the responsibility of initiating policies on customs and coordinating such policies. This falls short of what the Treaty envisaged in terms of institutional mandate. The Treaty envisaged the institution established pursuant to that Article to have power and authority to administer the Customs Union.

It is therefore proposed that either sections 3 and 4 of the Act be amended to clothe the Directorate with the requisite power and authority to administer customs issues of the Community within the single customs territory, or an appropriate institution be established and be clothed with the necessary power and authority to administer customs within the single customs authority, as envisaged in the Treaty.

9.2.3 A case for a regional customs administration

Institutions are central to any process of regional integration. Although EAC political leadership has expressed the desire to deepen integration, there has been a marked reluctance to develop institutions. The future success of EAC integration in general and its single customs territory in particular, can only be guaranteed if EAC has institutions that protect and project the EAC integration vision, and which are able to drive the single customs territory even when political will-power fails nationally. The establishment and gradual growth of an EAC Customs Administration, able to take regional decisions, and holding a clear mandate and financial resources, is required for the attainment of the EAC single customs territory.

The overriding objective of an EAC Customs Administration for the single customs territory is to tackle invisible barriers by ensuring that there are no non-tariff barriers of any nature embedded in the national legislation or practices.

The Treaty provides in Article 75(3) that for the purposes of that section, The Council may-
'...establish and confer powers and authority upon such institutions as it may deem necessary to administer the Customs Union.'

The Treaty therefore, envisaged an institutional framework to administer the Custom Union. We believe that time is opportune for the establishment of the envisaged institution if the Community has to witness effective administration of customs within a single customs territory. The Council should implement its Treaty obligation by establishing an effective EAC Customs Administration.

Article 1 of the Customs Union Protocol defines what a competent authority means under the Protocol. It means a body or organization designated by the Community to administer the customs law of the Community. Article 34 of the Protocol envisaged the enactment of the customs law of the Community. It provides that-

'...the administration of the Customs Union, including legal administrative and institutional matters, shall be governed by the customs law of the Community.'

Article 39 spells out what the customs law of the Community entails. These include the Treaty, the Customs Union Protocol and its annexes, Acts of the Community enacted by the Legislative Assembly and relevant principles of international law. The treaty principle of subsidiarity and Article 75(3) provide adequate Treaty legal basis for the establishment of the EAC Customs Administration to administer custom affairs within the single customs territory. Articles 1,34, and 39 of the Customs Union Protocol, buttress the legal justification in the Treaty for the establishment of such administration.

9.2.4 Implementation and enforcement

The implementation and enforcement of a single customs territory will require the-

- Passage of laws or amendments to existing domestic and regional laws and regulations;
- Issuance of directives and rules for the EAC Customs Administration; and
- Active enforcement of regional legislation by the EAC Customs Administration.

The will and determination of Partner States to implement and assist in the enforcement of regional legislation will be critical to the success of the single customs territory.

In the implementation of the single customs territory Partner States should show that countries different in size, resource, and access to markets can sensibly increase their political and economic weight because of a resolved capacity of sticking together in a system which guarantee a single customs territory, with a supra-national law and Customs Administration, because of common values and interests.

In order to gain the benefits of a single customs territory, Partner States will have to surrender some degree of policy freedom, particularly the ability to set independent fiscal and trade policies. An EAC Customs Administration as a supra-national institution is required to regulate customs related issues within the single customs territory to ensure uniform application of rules necessitating Partner States to ease individual control of the customs administration.

9.2.5 Establishment of EAC Customs Authority

The operationalization of the Single Customs Territory and indeed, realization of the goals of the Customs Union, presupposes that there is an effective administrative structure in place. That such administrative structure is vested with appropriate administrative and technical powers over the management of customs matters in the region without necessarily conflicting with the national roles of customs administrations.

There is therefore need to review the mandate, powers and structure of the Directorate of Customs as provided for under the East African Community Customs Management Act with a view of strengthening it to be more robust and directly take responsibility and account for specific aspects of the management and administration of the Customs Union and the Single Customs Territory.

In the alternative, there will be need to establish a new Customs Administration Authority. The legal and institutional framework for such Authority can be achieved by either effecting substantial amendments to the East African Community Customs Management Act to establish the Authority and clothe it with the necessary powers and authority to manage customs, or by enactment of a new legislation to establish the Authority and define its functions and powers.

The establishment and strengthening of such a regional institutional framework to carry out a regulatory role over national organs may be a sensitive subject. This is true in any instance and is the most natural response. However, this is the stark reality that Partner States have to confront: that they have agreed to undertake business jointly and the concept of sovereignty denies anyone state the opportunity to oversee the business unilaterally. There is therefore a compelling need to establish a strong administrative structure with regulatory powers on specific areas of the Customs Union and the Single Customs Territory, without at the same time compromising the sovereignty of Partner States.

Borrowing from the success story of the establishment of revenue authorities all over the world, and taking cognizance of the reality of the existence of competent customs agencies at national level, it is recommended that an East African Customs Authority be established. The Authority shall play a regulatory oversight role. Initially, its mandate shall be limited to specific aspects of the Customs Union and the Single Customs Territory but expanded with time as the creating authority may deem necessary.

The establishment of an East African Customs Authority (EACA) is a necessary institutional intervention in order to facilitate the effective management, administration, co-ordination and implementation of customs programmes in the EAC. The EACA will be an institution of the Community with appropriate administrative governance structures. The Council will be the policy making body through the Sectoral Council on Finance.

The Customs Authority will have regulatory oversight on the implementation of the regional customs programmes and instruments. In this regard, the Authority will work closely with National Customs administrations. Its main purpose is to drive, monitor and ensure compliance underpinned by regulatory responsibilities over policy implementation. It should be noted that the EACA will not be involved in day to day operational matters of the Customs except where technical guidance and compliance is required.

The Authority should be the centre for the following:

- a) policy initiation and review;
- b) customs research;
- c) customs data compilation;
- d) regional customs training through East African Customs Academy, in coordination with the Customs Training Institutes in Partner States;
- e) information dissemination on customs matters;
- f) providing opinions and rulings on customs technical issues and legal interpretation;
- g) compliance evaluation and assessment of customs work;
- h) reference centre for analysis of issues that require opinions, e.g. Regional Customs Laboratory;
- i) quality assurance and standard setting in customs (handling NTB related matters in Customs);
- j) trade facilitation measures in customs;
- k) customs interconnectivity;
- l) co-ordinating with international bodies on customs matters;
- m) regional wide customs reforms and modernisation programmes such as Risk Management and Cross border Customs Audits;
- n) Mobilising financial and technical support for customs programmes.

To avoid the pitfalls of long reporting lines, bureaucracy and therefore create administration that will respond to business faster, facilitate trade and fast-track the integration process, a flat organizational structure is recommended.

The Council of Ministers will be the policy body through the Sectoral Council on Finance. A Governing Committee comprised of Commissioners General and Tax Policy heads would oversee the running of the Authority.

There will be a Technical Committee comprised of Commissioners of Customs who will report to the Governing Committee. Working Groups of Experts will feed the Technical Committee.

The Authority should be headed by a Director General with the following Directorates headed by Directors:

- a) Procedures, Trade Facilitation and Compliance;
- b) Tariff Valuation and International Affairs;
- c) East Africa Customs Academy;
- d) Policy and Support Services.
- e) Finance and administration
- f) Legal counsel
- g) Country Commissioners

The proposed institutional arrangements will bring about the following benefits:

- a) Policy framework that is informed with in-depth quantitative and qualitative research;
- b) Enhance information sharing by customs;
- c) Improved compliance in implementation of customs instruments;
- d) Improved trade facilitation by customs;
- e) Networked customs through regional customs interconnectivity that will lead to better service delivery;
- f) Customs integration;
- g) Enhanced training based on international base practices leading to professionalization of customs.
- h) Quality assurance through monitoring and evaluation

To manage the customs function under the fully fledged Customs Union, it is proposed that EAC adopts a centralised customs union.

The advantages of having a centralised customs administration include:

- 1) It will form tidy administrative structure with a clear hierarchical management chain and responsibility,
- 2) It provides a single channel under one audit chain for revenue collection
- 3) It provides a better opportunity for the control of corruption because of reduced local interference,
- 4) It has potential for economies of scale in the long run
- 5) It is a step towards full economic and political integration.
- 6) The current structure may not be adequate for implementing the customs union because of :
 - a) Shortage of staff at the secretariat;
 - b) Inability of the secretariat to enforce the law in the partner States;
 - c) Inability to sanction States for non compliance.

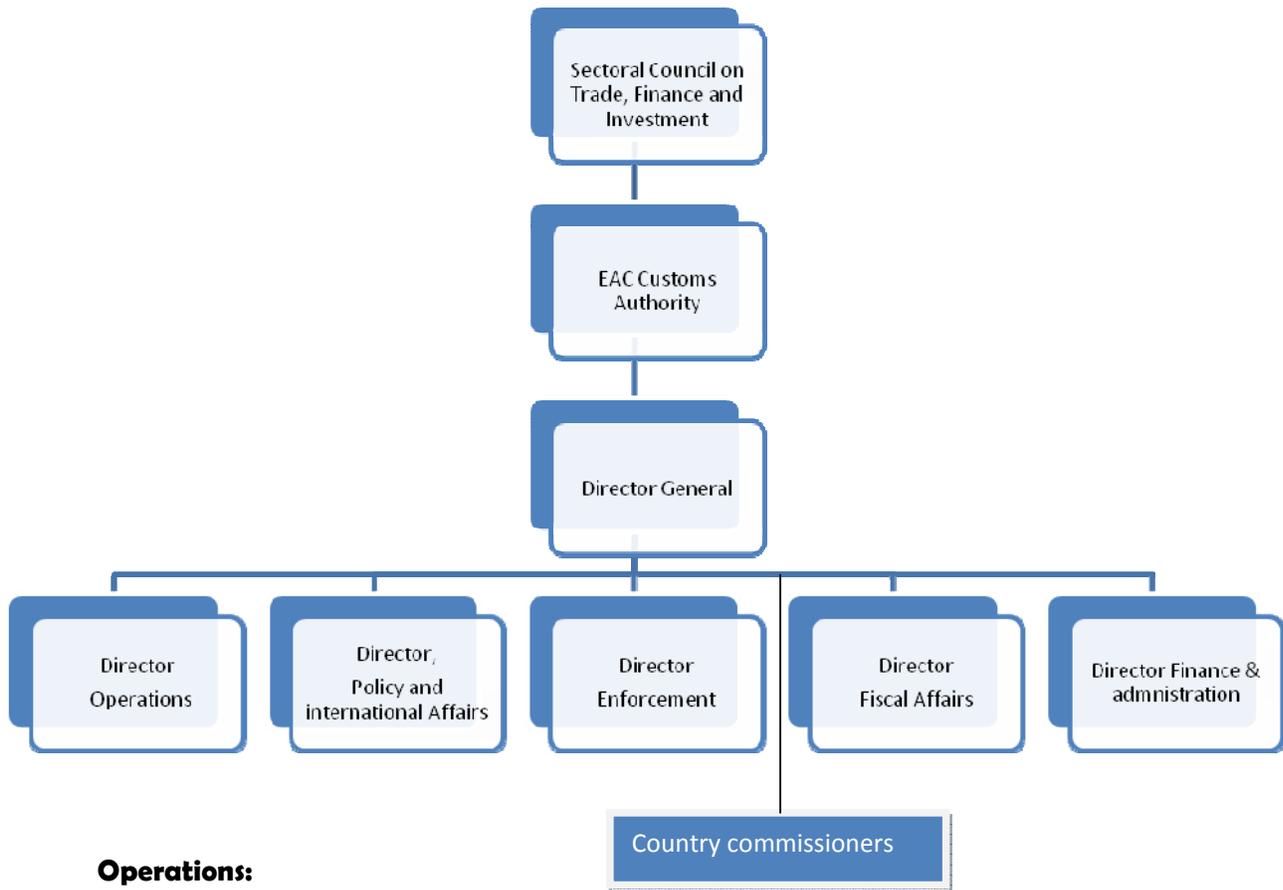
9.2.6 Recommendations

It is recommended:-

- a. That the Current Committee on Customs be converted into a Central Customs Authority, as an organ of the Community with a Mandate to:
- b. That the Central Customs Authority be clothed with power and authority to manage customs in the single customs territory including power and authority to
 - i. Implement decisions of the Council in relation to customs;
 - ii. Formulate policies and programmes on Customs administration in the Community
 - iii. Monitor implementation of the Customs law of the community;
 - iv. Ensure best possible cooperation between Customs Departments and other revenue collecting departments in each of the Partner States;
 - v. Make annual reports to the council concerning customs Operations in the community
 - vi. Manage training of Customs staff in the Union;
 - vii. Manage Customs modernization programmes in the Community;
 - viii. Coordinate and implement cross border customs projects;
 - ix. Make regulations for the smooth implementation of the Customs Law of the Community;
 - x. Render assistance in fiscal planning as may be desired by a Partner State;
- c. That a new law be enacted by the East African Legislative Assembly to establish the Authority and clearly spell out the Authority's mandate, functions and powers.

The proposed Central Customs Authority should be answerable to the Sectoral Council on Trade, Finance and Investment.

PROPOSED STRUCTURE



Operations:

Procedures
Trade facilitation
Investment incentives exemption regimes
Tariff, Valuation
Projects

Policy & international Affairs

Research
Customs Policy
Strategy formulation and implementation
International protocols

Enforcement:

Investigations
Audit & inspectorate

Fiscal affairs

Domestic taxes
Indirect taxes

Finance and administration

Customs academy
Finance

Human resources
IT and other support services
Corporate affairs

Legal counsel

Legal representation
Drafting and custody of legal instruments

Country Commissioners:

Collection and accounting for revenue.
Administration of customs activities in Partner States.

10.0 LEGAL AND INSTITUTIONAL FRAMEWORK SUITABLE FOR ADMINISTERING THE PROPOSED OPTIONS

10.1 Background

Under this TOR, the Study team was required to propose a detailed legal and institutional framework for administering the proposed model. This has been elaborated in part under section 15 of this Report.

During the negotiations of the Protocol on the Customs Union, the Partner States found it practical to adopt a transitional process which would be gradual and progressive in order to:

- a) Address the divergences in industrial production between the Partner States;
- b) Build trust and confidence between the Partner States in view of the defunct EAC;
- c) Build institutional capacity at the centre to drive the regional Customs Union programmes;
- d) Avoid disrupting the nascent revenue authorities;
- e) Enable the immediate start of the EAC CU which would have been delayed in setting up a mechanism for a centralized customs system;
- f) Allow conclusion of the negotiations which were still ongoing and the priority at that time was to conclude the Protocol and establish the Customs Union;
- g) Enable elimination of internal tariff which was best handled at the national level since internal tariffs formed a significant percentage of total trade revenues.

The administration of Customs Union is vested in the Council as a policy making body while the implementation of the policies is a responsibility of the national agencies. National Customs and Trade bodies are the lead agencies in the implementation of the Customs Union policies. The Directorates of Customs and Trade of the Secretariat are responsible for development, co-ordination and monitoring the implementation of the policies.

In implementing the EAC Customs Union, a number of challenges have been encountered which include:

- a) hindrances to the free movement of goods due to the multiple internal customs border controls. This is compounded by segmentation of customs territories which hampers free circulation of goods. This manifests in multiplication of customs bonds, cargo tracking systems, inspection of goods, declaration of goods, cargo holding terminals, charges, customs IT systems and procedures;
- b) persistent non-tariff barriers arising from administrative and legislative measures from Partner States which increases the cost of doing business in the region;
- c) poor infrastructure including roads, railway, energy, port and border facilities and communication bottlenecks;
- d) lack of harmonization of some laws and policies that apply on goods and investment such as the domestic taxes. There is continued conflict between Regional and National laws. For instance, some investment laws give duty exemptions outside the Customs exemption regime.
- e) sporadic national measures which are taken outside the regional framework;
- f) lack of regional enforcement mechanism to address non-compliance of regional instruments;
- g) a weak regional institutional mechanism to manage and monitor implementation of policies and programmes;
- h) multiple membership in different Regional Economic Communities (RECs) that distorts the tariff regimes and creates trade deflection;
- i) Over-dependence on Customs Revenue which continues to constitute a large portion of national revenues of Partner States, hence any proposals for change in collection of taxes may become sensitive.

10.2 Defunct East African Community,

The Treaty established the institutions responsible for administration of the Community. These were:

- a. The East African Authority;
- b. The East African Legislative Assembly;
- c. The East African Ministers;
- d. The Common market tribunal;
- e. The Communications Council;
- f. The Finance Council;
- g. The Economic Consultative and Planning Council;
- h. Research and Social Council.

Among the autonomous institutions of the Community was The East African Tax Board which consisted of:

- a) three members appointed by the Minister responsible for public finance in the Partner States;
- b) the Commissioners General of the East African Income Tax Department and the East African Customs and Excise Departments;
- c) the Commissioners of Income Tax and Customs and Excise in the Partner States;
- d) a senior officer of the central Secretariat designated by the Secretary General.

The Chairmanship of the Board was held by the members appointed by the Ministers on rotational basis.

The functions of the Tax Board included the following:

- a) Render assistance if requested by any Partner State in the study and correlation between taxes managed and collected by the community. And make proposals to improve this correlation and report directly to the Finance Council;
- b) Render assistance if requested by any Partner State in matters pertaining to fiscal planning;
- c) Keep under review the administration of Departments of Income tax and Customs and Excise;
- d) Ensure the best possible cooperation between the Income tax Department and the Department of Customs and Excise;
- e) Make annual report to the Finance Council concerning the operations of the East African Income tax Department and of the East African Customs and Excise Department;
- f) Make annual reports on the organization and personnel situation in those Departments.

The day to day functions of customs were performed by the East African Customs and Excise Department which was an institution of the Community. The Department was headed by a Director General with Commissioners in each member state reporting directly to the Director General. Although the tax departments operated with a considerable degree of independence, they were closely supervised by the East African Tax Board. Additional control of the tax departments was exerted by the Auditor General. All the revenues collected by the revenue departments were verified by the Auditor General who would ensure that the revenue was allocated and distributed in accordance with the Treaty.

The legal framework for Customs under the defunct EAC was provided under the defunct East African Customs Transfer Tax Management Act, the East African Tariff Management Act and the East African Excise Tax Management Act. These legal instruments were adopted from the previous integration processes under the East African Governance Conference, the East African

High Commission and the East African Common Services Organization. The Acts placed authority to the Commissioner General as the head of Customs in the region.

Under the defunct EAC, there was free circulation of goods from within the region and goods that had already been processed at the first point of entry into the region. This meant that once goods were duly admitted into the Customs Union, they were not subjected to further customs clearance. The region had a common external tariff enforceable at the first point of entry.

The Partner States operated under the same Income Tax Act and the same East African Customs Transfer Tax Management Act. Under the latter, they applied the same Common external tariff, rules of origin, import and export lists, Common exemption regime, and prohibitions and restriction lists.

10.3 Findings from field study

Stakeholders were unanimous in their agreement that there is an urgent need to review the current legal and administrative arrangement at the EAC. In particular, they were all in favour of a strong centralised customs administration. Equally, they were opposed to a decentralised administration that decentralised institution would reflect a lack of commitment to implement EAC customs legal instruments. Based on discussions held with senior officials in the ministries of Finance, Revenue Authorities and private sector institutions, it was clear that attainment of the single customs territory would depend on the creation of a Customs authority at the centre with a revised mandate to give it enforcement powers.

10.4 Recommendation

- a. It is proposed that a new Central Customs Authority be established by either effecting substantial amendments to the East African Community Customs Management Act or by the enactment of a new legislation by the East African Legislative Assembly, for this purpose.
- b. The established Authority should be clothed with the necessary power and authority to administer customs within the single customs authority, as envisaged in the Treaty.
- c. The proposed institutional structure should have the Sectoral Council on Trade, Finance and Investment at the political level, a Central Customs Authority as the main policy making body, and functional directorates to focus on specific mandates of the Authority.

10.5 Section Summary

In this section it was observed that successful implementation of the single customs territory would depend on the establishment of a strong customs Authority at the centre. It has been observed in the section that the failure the EAC secretariat to implement some aspects of the protocol can be attributed to the lack of an institutional and legal framework with substantive mandate. The treaty, it has been observed envisaged a strong institution with mandate to enforce the Customs Law. This mandate is lacking in the Customs Management Act.

11.0 SUMMARY OF RECOMMENDATIONS

The team recommends that:

1. EAC implements the remaining aspects of the protocol so as to realise the gains of a fully fledged Customs Union
2. The three RECS negotiate applicable rules of origin to govern trade between them and that the negotiated rules are applicable on first entry of goods into the Customs Union.
3. EAC adopt the third model of clearance of goods for free circulation in the single market with Variations to accommodate goods exported from one Partner States to another. Under this model, customs administrations at destination states retain control over assessment of taxes.
4. In the short run, partner states continue assessing their own revenue but goods be released only once at the time of first entry into the customs union and that pooling of revenue be stayed at the moment.
5. Considering the current level of integration EAC, the region harmonizes domestic taxes on goods through:
 - a) Adopting common domestic laws
 - b) Common procedures, codes structures and definitions
 - c) Common incentive regimes
 - d) Minimum and maximum tax rates in the short run with a view to adopting common rates in the long run.
6. Domestic taxes on goods such as excise and VAT be:
 - a) in the case of imported goods, collected on first entry of goods into the customs Territory
 - b) In the case of goods transferred from a partner state to another, be remitted prior to those goods being released for transport to the country of destination.
 - c) Collection of withholding tax at the port of importation is ceased.
7. The current rules of origin be reviewed in view of the ongoing negotiations for the EAC/ COMESA/ SADC FTA. It also recommends that any future trading arrangements with third countries be negotiated by all members of the Community.
8. EAC
 - a) Establishes a central reference database at the Directorate to serve as a depository of customs and trade information.
 - b) Commission the development of a customs system for use in documenting customs transactions in the region.
 - c) To implement the recommendations of the study on EAC interconnectivity.
9. The Current Committee on Customs with modification be converted into a Central Customs Authority, an organ of the Community with a Mandate to:
 - a) Implement decisions of the Council in relation to customs;
 - b) Formulate policies and programmes on Customs administration in the Community
 - c) implement of the Customs law of the community;
 - d) Ensure best possible cooperation between Customs Departments and other revenue collecting departments in each of the Partner States;
 - e) Make annual reports to the council concerning customs Operations in the community
 - f) Manage training of Customs staff in the Union;
 - g) Manage Customs modernization programmes in the Community;
 - h) Coordinate and implement cross border customs projects;
 - i) Make regulations for the smooth implementation of the Customs Law of the Community;
 - j) Render assistance in fiscal planning as may be desired by a Partner State;

10. EAC either:
- a) amend sections 3 and 4 of the Act to clothe the Directorate with the requisite power and authority to administer customs issues of the Community within the single customs territory, or
 - b) Establishes an appropriate institution clothed with the necessary power and authority to administer customs within the single customs authority, as envisaged in the Treaty.

Table 5: Roadmap

Action	Responsible	Timing
EAC Customs Authority	Council	By April 2012
Decision to establish a Customs Authority	Council and Summit	By May 2012
Preparation of the legal framework establishing the Customs Authority	Secretariat	By June 2012
Approval of the Legal Framework	Council	By End July 2012
Enactment of the Necessary Legislation	EALA	By End July 2012
Recruitment of necessary personnel	Secretariat	By End August 2012
Collection and Accounting for customs revenue	Customs Authority	By End September 2012
Development of procedure for clearance of goods	Customs Authority	By End October 2012
Interconnectivity of customs systems	Secretariat and Customs Authority	By End November 2012
TRIALS	Secretariat and Customs Authority	By End December 2012
Implementation of modality	Partner States, Secretariat and Customs Authority	By End February 2013
Free circulation of goods	Partner States, Secretariat and Customs Authority	By End March 2013
Interconnectivity	Secretariat and Customs Authority	By End April 2013
Development of procedure	Secretariat and Customs Authority	By End June 2013
Approval of procedure	Council	By End July 2013
Review of role at the border agencies	Secretariat and Customs Authority	By End August 2013
Customs IT system	Secretariat and Customs Authority	By End October 2013
Adoption of study on interconnectivity	Secretariat and Customs Authority	By End November 2013
Purchase of equipment	Secretariat and Customs Authority	By End December 2013
Deployment of staff	Secretariat and Customs Authority	By End December 2013

APPENDIX 1: LIST OF PEOPLE CONSULTED

	Name	Title	Institution
1	Bismarck Musyoki	Deputy Senior Commissioner, Southern Region-Kenya	Customs, Mombasa
2	Rose Gichira	Deputy Commissioner, Southern Region, Kenya	
3	Peter Nganga	Senior Assistant Commissioner CFS	Mombasa Port
4	John Ogwayo	Senior Assistant Commissioner, Kilindini	Mombasa Port
5	Cecily M. Njeru	Senior Revenue Officer	Namanga Border, Kenya
6	Marin Ojiambo Nabuye	Revenue Officer	Namanga Border, Kenya
7	Mungwa Asifiwe	Incharge Namanga CED	Namanga Border, Tanzania
8	Ramadhani M. Khijjah	Permanent Secretary and Pay Master General	Ministry of Finance
9	Ambrose Brixio Lugenge	Principal Trade Officer	Ministry of Industry and Trade
10	Uledi A. Mussa	Deputy Permanent Secretary	Ministry of east African Cooperation
11	Joyce K.G. Mapunjo	Permanent Secretary	Ministry of Industry and Trade
12	Susan Mwita	Principal Trade Officer	Ditto
13	Said Athumani	Manager Trade Facilitation	Tanzania Revenue Authority
14	Juma B. Hassan	Manager-Risk Management and Intelligence	Tanzania Revenue Authority
15	Simon Tumwesigye	Head of Katuna Station	Uganda Revenue Authority
16	Paul Muhure	Manager Gatuna Boarder	Rwanda Revenue Authority
17	Geoffrey Kabakaki	Principal Economist	Ministry of Finance Tanzania
18	Tadei August	Finance Management officer	Ministry of Finance Tanzania
19	Fatuma Mangunda	Economist	Ministry of Finance Tanzania
20	Shogholo Charles Msangi	Assistant commissioner Fiscal Policy	Ministry of Finance Tanzania
21	Adam Zuku	Chamber Development Officer	Tanzania Chamber of Commerce, Industry and Agriculture
22	Upendo Minja		Ditto
23	Elibariki Shammy		Ditto
24	Edwin Bingireki		Ditto
25	Dr. Richard Sozibera	Secretary General	East African Community
26	Peter Kiguta	Director General, Trade and Customs	Ditto
27	Kenneth Bagamuhunda	Director Customs	Ditto
28	Sydney Chibbabbuka	Customs Director	Ditto
29	Mwia George	Deputy Commissioner Customs	Kenya Revenue Authority
30	Nicholas Kinoti	Senior Deputy Commisiioner	Kenya Revenue Authority
31	Abdullahi S. Andy	P.A to Commissioner Customs	Kenya Revenue Authority
32	Agatha Munyaka	Economist	Kenya Revenue Authority
33	Barrack Ndegwa	Integration Secretary	Ministry of EAC, Kenya

34	Geoffrey Mwa	Economic Secretary	Ministry of Finance, Kenya
35	Stephen		Uganda Revenue Authority
36	Nicholas Kanubaita		Uganda Revenue Authority
37	Moses Waribu		Ministry of Finance, Uganda
38	Moses Ogwapus	Principal Economist	Ministry of Finance, Uganda
39	Innocent Safari	Ag. Commissioner Customs	Rwanda Revenue Authority
40	George William Kayonga	Permanent Secretary	Ministry of EAC, Rwanda
41	Jean Rigi	Permanent Secretary	Ministry of EAC, Burundi
42	Joseph		Burundi Revenue Authority
43	Senior Officer		Ministry of Finance, Burundi
44	Christian Nkengurutse	Secretary General	Chamber of Commerce for Burundi Industries

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APPENDIX 3: GENERAL INTERVIEW GUIDE

1. What policy actions need to be undertaken to enhance free circulation of goods?

Free circulation of goods and services is a major tenant of the Customs Union. Application of rules of origin tends to cease in fully fledged CU. Less border controls reduce transactions costs and promote trade among the member states thus the focus should be on the policy decisions which the Partner States needs to undertake so as to ensure free circulation of goods. One should probe further to find out what is the Partner States thinking on the rules of origin and the sensitive list.

2. What has been achieved in setting up proper institutions for implementing a fully fledged customs union?

Proper Institutions are a major driving force in the implementation process of a fully fledged CU. Comparing with other fully fledged CU territories, there is need to understand how far the requisite institutions have been put in place to drive attainment of a fully fledged customs union

3. What has been achieved in setting up the necessary legal framework for implementing a fully fledged customs union?

Proper legal framework removes legal uncertainties and gives proper grounding of a functioning CU. There is need to find out how far the necessary legal framework has been put in place and how adequate it is in attainment of a fully fledged customs union

4. How do you think the EAC single customs union should be administered?

The idea here is to find out between centralized system and decentralized system of administration which one is more preferred by the Partner State. The mood in the other Partner States is that customs administration should be separated from the Revenue Authorities especially the issue of customs administration but enforcement should be retained at the Partner States level. One should also probe to find out how they would prefer the central customs administration to be done if they opt for it.

5. What are your thoughts about coming up with revenue sharing modalities among the EAC Partner States?

Among other things revenue sharing was a major component that led to the collapse of the defunct EAC Customs Union. As such it is necessary to understand the current thinking on revenue sharing so as not to succumb to the pitfall that befell the former EAC Customs Union. One should probe to find out the expectations/attitude towards revenue sharing and tax harmonization.

In case they opt for revenue sharing then one should find out how they expect it to be shared. Some Partner States are thinking that we should use GDP per capita, population, or share the revenue proportionately according to each Partner States' contribution after deduction of customs administration amount i.e a certain percentage to be agreed.

6. What have been the major impacts of multiple memberships of partner states in various Regional Economic Communities in implementing the customs union?
 - overlaps have a bearing on the costs and benefits of integration both in human resources, institutional capacity and limited financial resources

- Need to analyse this impact and its implication to integration in fully fledged CU.
 - One should find out how effectively the fully fledged customs union will be realized while members belong to more than one customs union.
7. What do you think have been the main challenges towards realization of the single customs union?

The EAC anticipated having a fully fledged customs union by 2010 but we are in 2012 and the SCT is not yet operational. There is need to find out the main causes for the delay.

Table 6: Summary of operations of functional CUs

	Defunct EAC	SACU	EU	USA	CEMAC
Tax regime	<ul style="list-style-type: none"> ○ Common CET ○ Different internal tariffs ○ Common customs and excise taxes ○ Joint collection of common taxes 	<ul style="list-style-type: none"> ○ Common CET, Excise tax in the customs region ○ All taxes are paid into S. African national consolidated revenue fund ○ Different domestic taxes for the contracting parties 	<ul style="list-style-type: none"> ○ CET ○ Common import taxes ○ Differentiated state taxes but benchmarked to EC Tax Policy 	<ul style="list-style-type: none"> ○ Parallel tax systems for Federal, State and Municipal taxes and paid by both resident and non-resident nationals except where double taxation agreements exist ○ Taxes are indexed to inflation 	<ul style="list-style-type: none"> ○ High CET not implemented by all partners ○ Excessive fees levied by some countries (Congo)
Source, revenue sharing and priority areas	<ul style="list-style-type: none"> ○ Customs and excise taxes ○ Transfer taxes for purposes of addressing imbalances ○ Stabilisation of exchange rates ○ Development Agenda based on common services for Railways, harbours, Airways and posts and telecommunication services ○ Coordinated investment programmes 	<ul style="list-style-type: none"> ○ Revenue sharing based on the volume of the contracting parties trade with S. Africa i. customs pool- based on intra SACU trade with residual for S. Africa ii. excise pool- net of development tax (15%) to be shared on basis of 	<p>Customs revenue to support:</p> <ul style="list-style-type: none"> ○ Development (78%) with high proportion going to less developed regions ○ Social cohesion (18%) for regional competitiveness and employment ○ Cross border territorial cooperation (4%) 	<ul style="list-style-type: none"> ○ Income tax, customs and excise tax, sales tax, postal taxes, transfers, stamp duties ○ Federal taxes support federal functions - national defence, health, education, research, science 	<ul style="list-style-type: none"> ○ Customs union not fully operational

	Defunct EAC	SACU	EU	USA	CEMAC
		GDP iii. development component = 15% of excise distributed on the basis of the inverse of GDP/capita		and technology, natural resources and environment, transportation, agriculture, foreign policy, census and statistics, law enforcement, ICT	
Administration	<ul style="list-style-type: none"> ○ Apex body-of heads of state ○ Advisory council of ministers one from each partner state ○ Departments (councils) of common market, communication, finance, economic, consultative and planning council, Research and social council, EALA, Common Market Tribunal, Court of Appeal 	<p>All decisions taken by consensus</p> <p>i. Council of Ministers-for policy and political guidance</p> <p>ii. Commission - manned by experts to provide technical support</p> <p>iii. Tribunal-(Tariff Board) and anti-dumping mechanisms</p> <p>iv. Secretariat-day to day operations</p>	<ul style="list-style-type: none"> ○ Customs Authority for collection of import taxes ○ EC policy direction, sharing out the proceeds of customs revenues ○ state institutions manage state revenues 	<ul style="list-style-type: none"> ○ IRS stationed in all states on behalf of the Treasury collects Federal taxes and state taxes 	<ul style="list-style-type: none"> ○ Secretariat lacks resources for management
Flow of goods	<ul style="list-style-type: none"> ○ Free circulation of goods from within region 	Free circulation of goods from within region	<ul style="list-style-type: none"> ○ Free circulation of goods in the community 	Free circulation of goods provided they meet	<ul style="list-style-type: none"> ○ Limited intra-regional trade because

	Defunct EAC	SACU	EU	USA	CEMAC
				all Federal specifications	of non-compliance with rules and procedures leading to declining trade and tax revenues
Treatment of transit goods	<ul style="list-style-type: none"> Free circulation of transit goods since duty was collected at first point of entry 	<ul style="list-style-type: none"> all transit goods are subjected to same transit rules, rates 	<ul style="list-style-type: none"> All transit goods are subject to same rules/procedures but import duties are collected at first port of entry 	Goods destined for the landlocked states, pay federal taxes at first port of entry but would be exempted from state, county and municipal taxes	<ul style="list-style-type: none"> Partner states subject all originating exports including the ones to the region to export taxes
External trade relations	<ul style="list-style-type: none"> Joint external relations 	Joint external relations	<ul style="list-style-type: none"> External trade relations entered into jointly through EU 	<ul style="list-style-type: none"> USTR with Congress approval at Federal level handles all external trade relations 	<ul style="list-style-type: none"> Each country operates independently
RoO	<ul style="list-style-type: none"> Common RoO 	Single set of RoO which is preferential for the customs union	<ul style="list-style-type: none"> Common RoO within the Community 	Common RoO with restrictive requirements on selected products	<ul style="list-style-type: none"> Different RoO in operation
Trade related issues	<ul style="list-style-type: none"> Common trade facilitation measures 	Most trade related issues based on S. Africa's instruments	<ul style="list-style-type: none"> Common trade facilitation measures 	US stresses environment, democracy, governance, labour issues, IP etc issues	<ul style="list-style-type: none"> Each country operates its own system