

**SECTION 5 - GUESTS (NON-EUROPEAN REGION)**

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**ROLE OF CUSTOMS IN FREE TRADE AGREEMENTS IN  
EASTERN AND SOUTHERN AFRICA**

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***Abstract***

*There has been a significant change in the role of Customs in recent years. With increasing global and regional trade, numerous economic blocs have emerged at multilateral, regional and bilateral level. The research addresses to the issues of the development, implementation and administration of regional integration initiatives having the impact on Customs.*

*The purpose of the study is to demonstrate the difficulties encountered by Customs Administrations in Eastern and Southern Africa where most countries have multiple memberships (SADC, COMESA, EAC, SACU, and IOC). This study will illustrate the importance of Customs in the execution of these trade policies. The research will also lay emphasis on the involvement of Customs in trade negotiations as very often trade experts involved in negotiations are not acquainted to the implementation phase. The scholars will focus mainly on the technicalities of rules of origin, the complexities of the tariff structure and the role of Customs in safeguarding trade interest of countries in preferential trade agreements. For the research methodology, an analytical study of trade policy measures and their impact on the implementation process will be conducted.*

*In a nut-shell, the purpose of this research is to encourage more Customs involvement in trade negotiations to ease the difficulties arisen in the implementation process.*

*Keywords: free trade agreements, Customs, Eastern and Southern Africa, trade policies, trade negotiations, implementation, measures.*

**Introduction**

Regionalism is not a new phenomenon in the world. In addition to various Bilateral Trade Agreements and Economic Partnership Agreements (further – EPAs), there are not less that 5 regional integration agreements notified under the Multilateral Trading System – Southern Africa Development Community (further – SADC), Common Market for Eastern and Southern Africa (further – COMESA), Southern Africa Customs Union

(further – SACU), East African Community (further – EAC), Indian Ocean Commission (further – IOC), among others in the Eastern and Southern Africa. Negotiation towards the establishment of a Tripartite Free Trade Agreements (COMESA, SADC and EAC) is also in the pipeline. So long as the regional organizations harmonize their trade policies, adopt uniform procedures, there is no problem. But the creation of a situation whereby each regional organization comes up with a unique set of trade rules or different trade instruments may make the system unwieldy.

A viable, vibrant and modern Customs operating environment in the Eastern and Southern Africa requires strong and agile national Customs administrations. The role of customs is likely to becoming more challenging with the rapid changes in the international trade environment and the resulting complexities that Customs must face with the proliferation of Regional Economic Communities (RECs).

### 1. Multilateral Trading System

Regionalism is described as “actions by governments to liberalise or facilitate trade on a regional basis, sometimes through free-trade areas or customs unions”.<sup>1</sup>

In the World Trade Organization (further – WTO), regional trade agreements (further – RTAs) are defined as reciprocal trade agreements between two or more partners. They include free trade agreements and Customs unions. RTAs may be agreements concluded between countries not necessarily belonging to the same geographical region. It also includes bilateral FTAs between countries and has become so widespread that all but one WTO member are now parties to one or more of them. It is estimated that more than half of world trade is now conducted under RTAs.

The surge in RTAs has continued unabated since the early 1990s. Some 575 RTAs have been notified to the General Agreement on Tariffs and Trade/ World Trade Organization (further – GATT/WTO) as at 31 July 2013 out of which 379 are in force. Of these, 408 RTAs were notified under Article XXIV of the GATT 1947 or GATT 1994; 38 under the Enabling Clause; and 129 under Article V of the General Agreement on Trade in Services (further – GATS).<sup>2</sup>

The GATT with article XXIV has created an open space where RTAs has become a prominent feature in the Multilateral Trading System. The WTO transparency mechanism for all RTAs is an important step towards ensuring that regional trade agreements become building blocks, not stumbling blocks to world trade. Regionalism can become an alternative to multilateralism.<sup>3</sup> With a great number of participants in the international trade negotiations are far more difficult than negotiations between a smaller numbers of trading blocs.

### 2. Overlapping membership in various Regional Groupings

The objective of Regional integration is to raise the living standards of the people of the region through the creation of market opportunities which is to be achieved through

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<sup>1</sup> WTO Dictionary - Dictionary of Trade Policy Terms, 4th Edition

<sup>2</sup> www.wto.org

<sup>3</sup> Krugman, P, *Regionalism vs Multilateralism: analytical notes*

deepening regional integrations and make the region more competitive in the global arena.

The increase in RTAs, coupled with the preference shown for concluding bilateral FTAs, has produced the phenomenon of overlapping membership. Because each RTA will tend to develop its own mini-trade regime, the coexistence in a single country of differing trade rules applying to different RTA partners has become a frequent feature. This can hamper trade flows merely by the costs involved for traders in meeting multiple sets of trade rules.

The multiplicity also creates a web of overlapping trade agreements. As a result of the spaghetti bowl effect some countries face conflicting obligations as trade policies are not harmonised across the trade agreements. As a member of COMESA for example such countries (with multiple memberships) will not be able to offer preferential market access to non-members who are in another free trade arrangement. This is because different RTAs contain variable regulations in terms of tariff preference, rules of origin, modalities and time frames. Governments trying to implement the rules and regulations of different RTAs are faced with conflicting commitments. Consequently, there is reduced commitment to one RTA or the other. In addition, political conflicts in Africa delay regional integration and are a stumbling block to trade.

Multiple memberships of overlapping FTAs with different trade regimes are geographically, economically and politically unsustainable. The dilemma of multiple memberships applies to all the regional institutions throughout the region; none of the regional groups is exclusive. For example, all five member states of SACU belong to SADC, with Swaziland also being a member of COMESA. Within SADC, only Mozambique does not belong to another regional grouping but is considering applying for SACU membership. Seven SADC member states are also members of COMESA. . In East Africa for example, five countries are members of EAC, four are members of COMESA while Tanzania in addition to the two is also a member of SADC.

The multiplicity of regional institutions and overlapping memberships will be challenged with the creation of an effectively functioning COMESA or SADC Customs union. Thus, the Customs union issue has the potential to either fragment the region or act as a catalyst to rationalize overlapping memberships and promote greater co-operation.

While it is technically possible for the FTAs of COMESA and SADC to co-exist,<sup>4</sup> it is not possible for any member state to belong to more than one Customs union regime, unless each of these regimes adopts identical trade regulations and the same Common External Tariff. In reality, one country cannot realistically belong to two different Customs unions.

### **3. Economic Partnership Agreement**

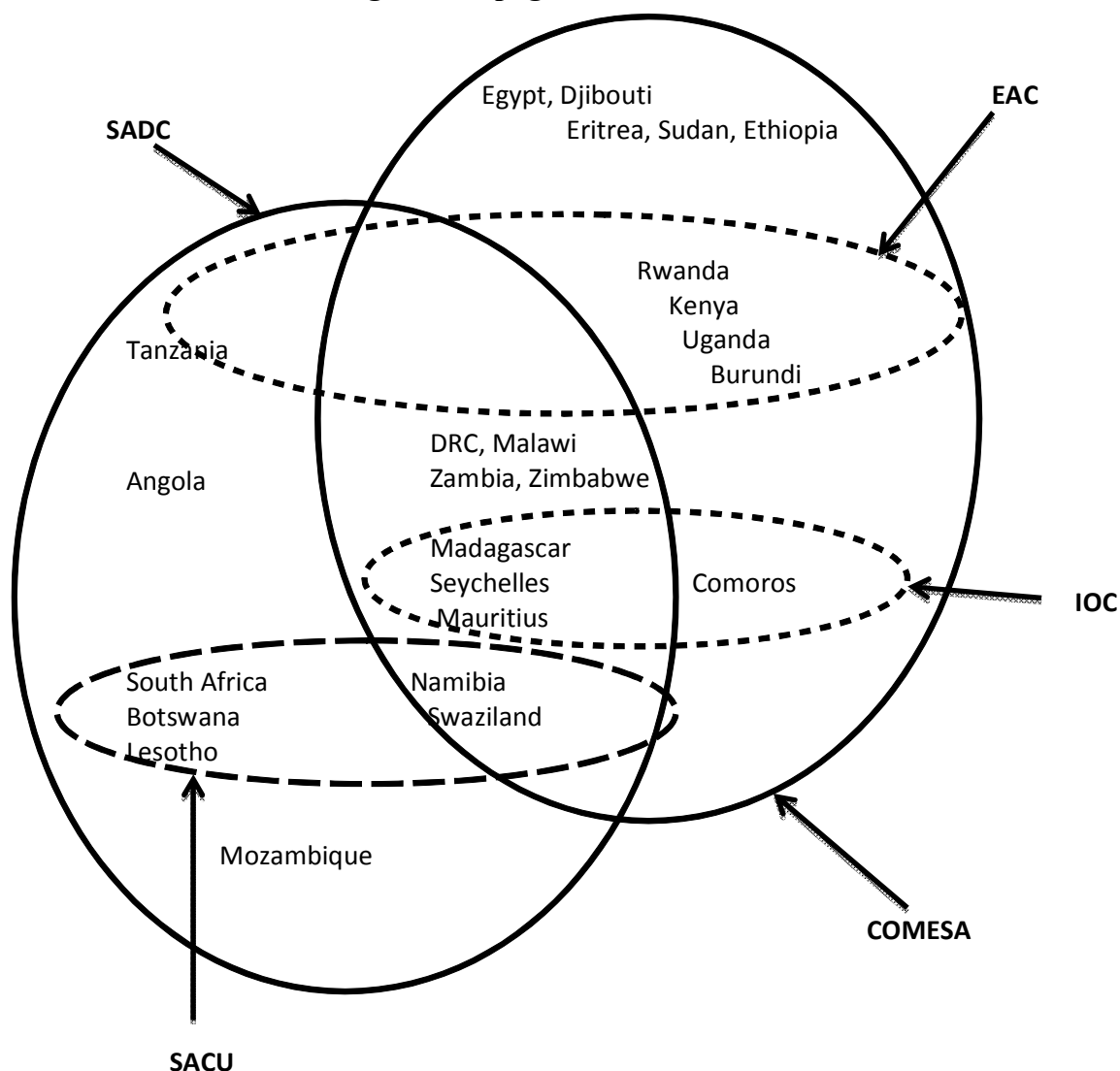
Economic Partnership Agreements (EPAs) are being negotiated by the European Union, with six groups of African Caribbean and Pacific (ACP) countries. Four negotiating

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<sup>4</sup> COMESA: 'Member states are free to enter into bilateral or multilateral agreements provided that such agreements are not, and would not be, in conflict and do not undermine the COMESA Free Trade Area and Customs Union.' (COMESA, 1994, Article 57)

SADC: Member states cannot enter into a trade agreement with a third countries 'that impedes or frustrates the objectives of the (trade) Protocol' (SADC, 1996, Article 28)

Diagram 1. Spaghetti Bowl Effect



groups of Africa are the following: SADC, ESA/ COMESA, CEMAC, and ECOWAS. The SADC EPA group is not made up of all member states of the regional economic community called SADC.

The SADC EPA group is made up of Botswana, Namibia, Lesotho, Swaziland (BNLS); as well as Mozambique, Angola, and Tanzania (MAT) – sometimes referred to as BNLS and MAT countries. (BNLS are in the SACU together with South Africa, while MAT countries are Least Developed Countries (further – LDC countries). South Africa participates in the SADC EPA group as an observer. Other member states of SADC are in the COMESA EPA group, which is known as the Eastern and Southern Africa group (the ESA group). These SADC members that are also in COMESA and have joined the ESA Group include Malawi, Mauritius, Madagascar, Zambia, and Zimbabwe. It can be pointed out that Congo DRC has recently joined the CEMAC EPA group; it is a member also of

the SADC and COMESA regional economic communities.

At the same time, some members of COMESA are not negotiating the EPAs; namely, Egypt and Libya. Egypt already has an association agreement with the EU – under the Euro-med agreements between countries around the Mediterranean and the EU – under which a free trade area is to be gradually formed between Egypt and the EU.

The existence of a Free Trade Area (further – FTA) between South Africa and the EU and one between Egypt and the EU raises serious issues if SADC and ESA EPAs are to be based on a Customs union approach. The level of flexibility in the South African FTA with Europe is more limited than what the LDC countries negotiating under SADC would expect. In the same vein, the sensitive products identified by Egypt in its FTA are also likely to have consequences on the structure of the common external tariff that ESA countries present in their EPA with the EU. This highlights the important issue of how the EPA configurations will affect the integration agenda of Africa.<sup>5</sup>

The original ESA group also included the East African Community (EAC) states of Burundi, Kenya, Rwanda and Uganda which agreed a separate interim EPA based on the EAC Customs union.

#### **4. Changing role of Customs**

Customs administrations envisage being “world class”. Customs has introduced wide range of progressive reforms and modernization program since Customs role as major revenue collector of Customs duty is declining. It’s role in protecting our borders against the threats of international terrorism, securing the international supply chain, battling the growing illegal trade in counterfeiting, the menace of illicit drugs and related money laundering, has increased significantly. Customs is in a unique position today to maintain a proper balance between trade facilitation on the one hand and apply controls on the other hand to protect the interests of the society.

Moreover, Customs is also an active partner in strengthening regional trade. With the proliferation of numerous regional blocs around the world, customs is playing key role in supporting regional trade integration. Customs participate in work leading to common tariffs, rules of origin, harmonized procedures and legislations. Customs is also participating actively in the development of bilateral agreements, implementation of international best practices and executions of foreign trade policies.

#### **5. Major challenges to implement RECs instruments**

The negotiation and implementation of preferential trade agreements has gained momentum in recent years. Given the range of agreements being simultaneously negotiated and implemented, there is potential for significant, and perhaps unanticipated, interactions between them. First, the focus is on a number of agreements, then the implications are considered and the outcomes are compared to a broader Economic Cooperation liberalization.

Customs plays an important role in safeguarding the economic and trade interests

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<sup>5</sup> African -Union

of countries in the context of RTAs. Customs has to administer tariffs, valuation and origin regulations. However, Customs faces challenges to execute trade policy decisions usually taken from ministries responsible for trade.

### **6. Multiple memberships in various RECs**

Due to multiple belongings to various RTAs, Customs faces difficulties with its limited resources to actively involve in trade negotiations, as well as implement instruments and procedures of different regional trading blocs such as SADC, COMESA and the EAC. It is difficult to implement the instruments of several RECs and lack of technical expertise to accede to international conventions.

### **7. Common Tariff Nomenclature (CTN)**

SADC, COMESA, SACU and EAC have developed their own CTN. Because of overlapping memberships, the implementation of a harmonized CTN is not feasible by member states of a RTA as most of them are member in additional RECs. For example, Tanzania is a member of both EAC and SADC, nonetheless, it implements the EAC CTN.

### **8. The complexities in the Tariff Structure**

Not all trading partners from different RECs have yet implemented the Harmonised System 2012. There are countries which are still on HS version 2007. There are certain products under HS version 2007 that have been negotiated for preferential tariff in RTAs. However, with certain modification brought in the HS 2012 whereby the goods have changed tariff classification but the preferential list has not been revised, some difficulties have occurred for the granting of preferential tariff rates.

### **9. Capacity Building**

Training and capacity development is critical for the development of a well-functioning customs administration. Customs basically needs technical support to align and adopt the various instruments and implement international best practices (Revised Kyoto Convention, WCO SAFE Framework of Standards to Secure and Facilitate Global Trade, Arusha Declaration, among others). There is a strong need for implementation guidelines and plan to make meaningful progress in addressing the challenges of regional integration.

### **10. Customs Cooperation**

There is a need for Memorandum of understanding between Customs Administrations for mutual administrative assistance in Customs matters to protect international supply chains and to achieve effective implementation of Customs legislation while facilitating legitimate trade. Greater regional cooperation on customs issues and harmonisation in documentation are important. Customs Administrations should also work towards exchanging knowledge and expertise in the priority areas (Post Control Audit and Risk Management).

### 11. Rules of Origin

The origin criteria established by various bilateral and regional groupings including the African Growth and Opportunity Act (further – AGOA) and EPAs differs. Customs must ensure that the goods being traded under the respective arrangements qualify for such treatment. Countries with overlapping membership have to apply the appropriate set of criteria in order to benefit preferential market access.

### 12. Certificate of Origin

Customs should also monitor the issuance of certificate of origin. However, it has been observed that in some countries in eastern and southern Africa, issuance of SADC and IOC certificate of origin is done by customs authorities whereas issuance of COMESA and AGOA certificates are carried out by ministries responsible for trade.

### 13. Customs Procedures and Trade Facilitations

One of the areas of trade facilitations is simplifications of Customs procedures. Customs administrations stress on the harmonized implementation of regulations and procedures. In this regard, it has been observed that adoption of the Revised Kyoto Convention (further – RKC) provisions would facilitate harmonization of customs legislations and procedures in the region. Moreover, Customs authorities have to be transparent and efficient in their operations.

### 14. Information requirements

A robust IT system would support information sharing amongst Customs officers. A computerized Customs and trade statistics system reduces documentation costs and delays to clear commercial consignments through Customs. Customs administrations are implementing international best practices through the use of technology to facilitate selection criteria for physical examination, risk analysis and alignment of working hours across borders to facilitate trade. In addition, it also eases constraint to international trade and facilitates responses to specialized statistical queries.

### Summary and concluding remarks

The Customs Administrations will be responsive to the changing trading environment at a regional and global level. Although Customs plays an important role in formulating and implementing appropriate tariff and trade policies, the inadequate involvement of Customs in trade negotiations process in the Eastern and Southern Africa is a matter of serious thought. Customs Administrations act as guardian of the principal values of the Customs Policy in international trade in goods in modern world.

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