

A tripartite free trade area law international essay

Law



Introduction

The concept of creating a tripartite Free Trade Area (FTA) that joins together the East African Community (EAC), the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) has gained currency and incitement in recent years. The COMESA-EAC- SADC Tripartite Summit of Heads of State and Government held in Kampala, Uganda on 22 October 2008 gave the political support needed and motivation for the creation of this Tripartite FTA. The marked date for the establishment of the Tripartite FTA is 2012 as it was believed that all necessary basic work is expected to be completed. To achieve the aim by the finalised date, it was more suitable to explain the concept of a free trade area. An FTA is established when two or more countries agree to eliminate duties and other restrictive regulations of commerce on substantially all trade in goods originating within these economies. Special rules had to be developed and used in order to identify the originating goods. The parties to an FTA had the right to apply their individual trade policies on trade with third parties. An FTA is therefore intended at encouraging and improving trade among the participating member countries. Since an FTA agreement allows its member to grant more favourable conditions to its trade with other parties forming part of the FTA agreement, this would appear to violate the most favoured nation (MFN) treatment principle of the WTO which forbids any favouritism. The establishment of FTAs is, however, legalized through Article XXIV of GATT, the Enabling Clause to GATT and Article V of GATS which provisions give permissible exceptions to the MFN principle (WTO, 2007). These WTO legal provisions are basically meant to encourage

liberalisation of trade in goods and services among WTO members. It is important that any FTA agreement complies with and is consistent with all the WTO rules governing trade and the prescribed conditions that an FTA must meet (WTO, 2008). There are many FTAs that are already operating on the global trading field but for Africa in particular, the dream of COMESA-EAC-SADC Tripartite FTA will be the first and the largest FTA as it will join together the three most successful and biggest Regional Economic Community (RECS) on the African continent, comprising of 26 countries with a population amounting over 500 million people.

THE TRIPARTITE FTA CONCEPT

In 1980, the Organization of African Unity (OAU) Extraordinary Summit adopted a plan named the Lagos Plan of Action. This was done to show that OAU political leaders are committed to promote Africa's economic integration, thus, facilitating the ultimate establishment of the African Economic Community (AEC). In 1991, the Treaty establishing the African Economic Community (The Abuja Treaty) was signed by the leaders in Abuja as a concretization of the commitments of the political leaders. Whole Africa's economic integration is picturised in the treaty of Abuja into continental customs union by the year 2019. To achieve the continental vision, Abuja considered establishing regional economic communities (REC's) as building blocks, which will eventually team up to set up the continental customs union. When Abuja Treaty came forward, many RECs consisting of SADC, COMESA and EAC were already present. The treaty was required to reinforce the REC's that already existed and also encouraging the setting up of new ones. In Article 88 of the Abuja treaty, it is clearly stated that future

and existing REC's will be operational if AEC is established as the last objective. The envisioned strategy was phased and ongoing liberalization of regional and intra-regional trade, coordination and concomitance of activities of all RECs, the setting up of Free Trade Area and a Customs Union at REC level and ensuing formation of the proposed African Economic Community.

RESOLUTIONS OF THE UGANDA TRIPARTITE SUMMIT ON THE PROPOSED FTA

The Tripartite Summit of Heads of State and Government of COMESA, EAC and SADC was held on 22 October 2008 in Kampala, Uganda in the quest of the broader aim of the African Union, that is to stimulate economic integration of the continent, with the objective to reduce poverty, attain sustainable economic development and achieve economic growth. Additionally, the committee stresses on the fact that the tripartite agreement is a fundamental building bloc towards achieving the African Economic Community as describe by the Treaty of Abuja and said that the three RECs should instantly begin to work towards a merger for a single REC with the intention of fast tracking the realization of the African Economic Community. In the field of trade, economic integration as well as customs, the summit agreed on a quick establishment of a Free Trade Area (FTA) grouping the members and the partner states of the three RECs with the main objective of establishing a single Customs Union. The Summit also advised the three RECs to undertake a study including, to the other set objectives, the following: the development of a roadmap for the establishment of the FTAthe legal and institutional framework to strengthen the FTA; measures to ease the progress of businessmen across the RECs; The report generated from the

study would then be shown to a special round up of the Tripartite Council of Ministers to determine the time frame for the establishment of the Tripartite FTA.

OBJECTIVE OF THE TRIPARTITE FTA

Among all the objectives present, the main one is to set up a FTA by considering the concepts of quota-free, tariff-free and exemption-free basis. This is to be done by associating the current SADC, COMESA and EAC FTAs. To substitute intra-regional trade in regions considered to be tripartite ones, a three-way FTA was envisioned to cover some corresponding programmes in the areas listed below: Facilitating trade and promoting cooperation of tradeCollaboration and organization of health and industrial standardsContest discriminated trade procedures and import flowsSettlement of disputes by using agreed and peaceful mechanismsUsing basic guidelines to identify inland cost of transportation as a section of value added in productionRelaxed restrictions considering certain thoughtfulness on business person's movementEasing up of some main service area based on current programs of the three groupsPromoting value added and transforming the area into a knowledge-based and information economy via stable use of rational property facts and information & communication technologyDeveloping vigorous infrastructure plans for the purpose of merging regional market by means of interconnectivity of all means of transport and promoting competition among ample suppliers of necessary resources.

STATUS OF INTEGRATION PROGRAMMES IN COMESA, EAC AND SADC

Even though SADC, EAC and COMESA are most likely to have the same long term aims, it might not be the same for the rate of provincial integration in terms of developing trade and cooperation in the three sections. Some REC's have evolved at a rapid rate than others in some areas. Actually there are negotiations among the three RECs with the European Union about the economic Partnership Agreements. The discussions are progressing at different levels and it is to be seen how these Economic Partnership Agreements will be accomplished in the tripartite set up. Here is a summing up of the set of circumstances in the three RECs by focusing on liberalizing trade.

COMESA

COMESA went forward in 1993, through the COMESA Treaty from the former Preferential Trade Area (PTA), which was in force in 1982. After 10 years, the PTA Treaty got transformed into a Common Market, then left room and anticipated for taking along new members. The PTA establishment and its transformation into COMESA matched with the objectives set by the Lagos Plan of Action and the Final Act of Organization of African Unity. Having a population of more than 300 million people, COMESA turned out to be the outsized regional economic community of Africa. Since that time, COMESA has attained massive progress in the agenda of liberalizing trade. This led to introducing a free trade area (FTA) as a crucial mechanism for easing up the intra-COMESA trade in the year 2000. The free trade agreement of COMESA's success can be calculated through the perspective of intense increase in the

capacity of intra-COMESA trade rising up to US\$15. 2 Billion in year 2008 while it was US\$3. 2 Billion in year 2000. In the year 2008, COMESA's Customs Union was finally launched in Victoria Falls, Zimbabwe, in its conference after an interruption. Despite the fact that it was a political launching, it made a noticeable significant breakthrough in the programme of the region's economic integration. The current operationalisation of the Customs Union is now only waiting for some remaining preliminary task in progress currently. Based on its economic cooperation, COMESA's main aim is to establish a Monetary Union. The Regional Economic Community has this aim attached to its vision and it has to be a completely incorporated, a worldwide competitive REC with high standards of living for its population all set to unite into an economic community of Africa.

EAC

The EAC was originally established in 1967. However, there were many disparities between the original founding members, Uganda, Kenya and Tanzania, led to its collapse. In November 1999, an agreement for the re-establishment of the EAC was signed for a new EAC establishment in the year 2000. In 2007, having accepting Burundi and Rwanda in 2007 as new members of the EAC has brought with their admission a population amounting over 120 million people as well as about a GDP estimated about \$41 billion. Taking into account the irregularities within the region, the EAC, in terms of Articles 2 and 5 of its Treaty, established a Customs Union as the entry point of the EAC, before liberalizing trade amongst the member states to establish an FTA. According to the Treaty, the main objective of regional integration in the EAC is the creation of a Political Federation in 2015. The

Federation would be guided by three stages; the Common Market, the Customs Union and the Monetary Union

SADC

The SADC Protocol on Trade which was enacted in the year 2000 has witnessed most of SADC countries liberalising their trade in goods to a level that has permitted the creation of the SADC Free Trade Area in August 2008. Principally, a regional market worth approximately \$360 billion a year was created by the FTA in a region with a population of over 200 million. The establishment of the SADC FTA has been beneficial, there was duty free on 85% of all intra-SAC trade and the region has committed itself to eradicating all tariffs by 2012. This aim did not appear impossible for countries which were already in the SADC FTA. Out of the 15 SADC Member States, 11 are participating in the FTA. Angola, DRC and Malawi are still to liberalise their tariffs to the required significant level while Seychelles only rejoined SADC recently. With a small delay, the regional community was in the process of preparing to launch its Customs Union in 2010. However, with a few months remaining before the year ends and with extensive preparatory work to be done, it was increasingly becoming too ambitious a target to achieve. Nevertheless, in August 2010 it was expected that the SADC Heads of State and Government Summit would make a pronouncement on the way forward regarding the establishment of the SADC Customs Union.

The Tripartite Region and the African Union

According to COMESA (2010), it was estimated that exports among the 26 Tripartite countries grew from USD 7 billion in 2000 to USD 27 billion in 2008, and imports increased from USD 9 billion in 2000 to USD 32 billion in 2008.

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This unbelievable increase was mostly encouraged by the FTA programmes of the three institutions. These demonstrate that much more can be achieved by the three RECs under an FTA arrangement. The table below shows the membership, GDPs and populations of the three RECs in the tripartite arrangement in relation to those of the African Union as a whole. The figures in the table underline the importance of the prospective in the tripartite region and how essential element the Tripartite FTA arrangement, if successful; will be to the realisation of the African Economic Community.