

THE EAST AFRICAN
COMMUNITY CUSTOMS
UNION

WOMEN & CROSS
BORDER TRADE IN
EAST AFRICA

Opportunities and Challenges
for Small Scale Women Traders



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Foreword



On the political level, regional integration in East Africa can be viewed as a stop-and-go process. Domestic issues clearly take centre stage in all three member states of the East African Community (EAC). Regional integration mainly finds itself in the headlines when the issue helps to score points with the domestic audience. “The people”, who are supposed to be in the centre of the integration process, have no means of setting the agenda. The actual course is set by technocrats, who on the one hand have to deal with the details of the regional harmonisation process, while having no inherent interest in fast progress. There exist only very few regional civil society organisations, which can lobby for a speedy and committed approach to building East Africa.

The recent start of the implementation of the customs union provides great chances for East African regional integration. Members of the private sector and other citizens can take matters into their own hands and exploit new opportunities, while increasing the welfare of the participating economies. It is safe to assume that the majority of these actors from the private sector are small-scale women traders. These women provide the foundation for a people-centred and market-driven integration process. At the same time, many conditions, which would allow these women to maximise their contributions, are not in place.

This study provides a comprehensive analysis of the “big picture”, which must be looked at in order to facilitate the work of small-scale women traders in the context of the East African Customs

Union. It is a good foundation for concrete policy initiatives by Government as well as lobbying activities by the relevant interest groups. It is hoped that this work will contribute to a successful and gender sensitive integration process in East Africa.

*Fritz Kopsieker
Resident Representative
Friedrich Ebert Stiftung, Kenya*



Preface



The struggle to transform women's lives and their place in society is moving to counting houses. Thus there is need to ensure that resources both financial and other productive resources are shared equitably both among ethnic communities, among men and women and other groups in society. Women are looking more to the institutions that distribute resources and addressing questions of how those institutions are taking their issues on board. Therefore women are expecting accountability from the economic political and other institutions.

The fallacy that women would automatically gain from economic growth has been exposed. There are countries where the economic growth is high but poverty levels still remain high. For instance, resource allocation in the three countries shows the disparities between men and women in terms of access and control of resources and continue to perpetuate the gap between the rich and the poor. It is clear that resources do not automatically reach poor women, more focus should be on ensuring that resource allocation targets both men and women at the grassroot level so that the gap between the rich and the poor is reduced.

Deliberate micro economic policies that take womens issues on board are critical and must ensure that this happens. These policies must be recast for the benefit of women and communities.

In trade policies for instance the need for greater flexibility and addressing women's experiences and strategies are important to look at. If the customs union is properly implemented and gender

issues are taken on board, with gender aware targets and monitoring tools and indicators, it will go along way in empowering women in our subregion.

The goal and objectives of the customs union are noble, but in enhancing the potential of women and men to participate fully in their own economic empowerment we need to recognise the women's struggle to change the world through their day to day activities. This is what women go through in their daily cross border trade activities.

Policies like the customs union must be able to recognise these efforts and create a more women friendly environment.

Let us look at the cross border trade through women's eyes.

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Abstract



This report presents a gender analysis of the East African Community Customs Union Protocol. The objective of this analysis is to sensitise women traders on the customs union and the benefits/opportunities accruing so that they can take full advantage of the customs union ideals. It is written within the framework of increasing women's participation in economic activities, specific focus being on regional cross border trade, so as to enhance women's economic autonomy as a key strategy to accelerate economic development within the three East African countries and reduce poverty within the region in line with the achievement of the Millennium Development Goals (MDGs). It consists of two main parts.

Part I gives a background and conceptual framework on women, economy and trade. It then proceeds to giving a highlight of regional trade agreements in Africa laying a special emphasis on the East African Community Treaty under the auspices of which the East African Community Customs Union Protocol is formulated. In the context of the EAC treaty, the report then explores the establishment of the East African Trade Regime and a Customs Union and proceeds to outline the framework of the customs union protocol negotiations and the process of its ratification. An overview of the customs union is given including its goal, principles and objectives.

Concluding Part I, the paper gives a highlight of the new tax regimes under the East African Community Customs Union. It ches on the

abolished taxes and the applicable tax schedules. Also mentioned are the categories of goods, clearing procedures for goods at the customs offices as well the most common crimes related to trade that are committed at the border points and the associated penalties.

Part II covers extensively the gender analysis findings of the Customs Union Protocol, including the opportunities that exist for women cross border traders as well as challenges that the Customs Union may present to women traders in its implementation. However to put the gender analysis in context of the cross border trade the paper first examines the role of women in cross border trade including the common goods they trade in. It then explores the impact the Customs Union will have on small scale cross border women traders. The paper thereafter moves to examine some of the challenges that women cross border traders face in the course of their trading activities. The paper then proceeds to offer practical policy and legislative recommendations that can improve and enhance trade related activities within the region and enhance women's participation in regional trade with the aim of strengthening regional economies. Finally conclusion and a way forward are made.

Introduction

Women, Economy and Trade



There are considerable differences in women's and men's access to and opportunities to exert power over economic structures in their societies. In most parts of the world, women are virtually absent or are poorly represented in economic decision-making including the formulation of financial, monetary, commercial and other economic policies as well as tax systems and rules governing pay. It is often within the framework of such policies that individual women and men make their decisions on how to divide their time between remunerated and unremunerated work. Thus the actual development of these economic structures and policies has a direct impact on women's and men's access to economic resources, their economic power and consequently the extent of equality between them at the individual and family level as well as in society as a whole. This has had far reaching implications on the economic status of countries especially the developing countries.

Many women have entered the informal sector owing to the lack of other opportunities. Women's participation and gender concerns are still largely absent from and should be integrated in the policy formulation process of the multilateral institutions that define the terms and in cooperation with governments, set the goals of various programmes, loans and grants.

Insufficient attention to gender analysis has meant that women's contributions and concerns remain too often ignored in economic

structures, such as financial markets and institutions, trade systems, labour markets, economics as an academic discipline, economic and social infrastructure, taxation and social security systems, as well as in families and households. As a result, many policies and programmes, related to the aforementioned, may continue to contribute to inequalities between women and men. Where progress has been made in integrating gender perspectives in programme and policy formulation, implementation, monitoring and evaluation, effectiveness has also been enhanced in achieving set policy and programme objectives.

Although many women have advanced in economic structures, for the majority women, particularly those who face additional barriers, continuing obstacles have hindered their ability to achieve the economic autonomy and to ensure sustainable livelihoods for themselves and their dependents. Women are active in a variety of economic areas, which they often combine, ranging from wage labour, subsistence farming, fishing, trade, to the informal sector. However, legal and customary barriers to ownership of or access to resources including natural resources, appropriate information, capital, credit, technology and other means of production, as well as wage differentials, contribute to impeding the economic progress of women.

Although some new employment opportunities have been created for men and women as a result of the globalisation of the economy, there are also trends that have exacerbated inequalities between men and women. At the same time, globalisation, including economic integration, can create pressures on the employment situation of women in adjusting to new circumstances and in adding new sources of employment as patterns of trade change. This is the case for instance with the coming into force of the East Africa Community Customs Union, which seeks to promote trade within the three East African countries through abolishing tariff and non-tariff barriers to trade. There is, therefore a dire need to focus more on the impact of the regional trade agreements on women's socio-

economic status as well as their empowerment, considering the increasing trend of female-headed households in the region.

Female traders especially those in the rural sector and those practising informal cross border trade have for a long time remained the least protected by trade agreements and immigration laws. Women, particularly those who are heads of households with young children, are limited in their economic ventures and trading opportunities for reasons that include inflexible and unfriendly trading conditions and procedures and unproportional sharing, by men and by society, of family responsibilities.

It is against the background of unfavourable work environment as well as the limited number of employment opportunities available that has led many women to seek alternatives. Women have increasingly become self-employed, owners and managers of micro-small and medium scale enterprises and majority participants in small-scale trade. It also bears noting that the expansion of the informal sector in many countries and of self-organised and independent enterprises is largely due to women whose collaborative self-help and trade represent a vital economic resource. When they gain access to and control over relevant and appropriate information, capital, credit, and other resources, technology and training, women can increase production, marketing, and income for sustainable development.

Basically, in countries that are undergoing fundamental political, economical and social transformation, which is characteristic of the East African countries, the skills of women, if better utilised, could constitute a major contribution to the economic well being of their respective countries. Their input should continue to be developed and supported and their potential further realised and enhanced.

To fully realize equity between men and women in their contribution to the economy, active efforts are required for equal recognition and appreciation of the influence that the work,

experience, knowledge and values of both women and men, have in society. Therefore in addressing the economic potential and independence of women, it is important for governments and other actors to promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that before decisions are taken an analysis is made of the effects on women and men respectively. Therefore the need for a gender- based analysis of the Customs Union Protocol and the opportunities available thereunder, for women, cannot be over-emphasised.

PART I

Towards a Regional Economic Bloc In East Africa



Regional Trade Agreements/Partnerships in Africa

Regional integration is neither peculiar in the African Continent nor a new phenomenon. It is a global trend. Regional integration refers to the process of creation or enlargement of regional arrangements of cooperation and the efforts of nations to connect or reconnect themselves to an organisation spearheading the cooperation. Most cases of regional integration involve both political and economic aspects, although in recent times emphasis has been placed on economic integration. Owing to the scope of this study, the practice of political integration will not be examined.

In Africa, regional integration became an enterprise whose aim was to enhance domestic economies. The African countries having sought ways of enhancing their domestic economies came up with the Lagos Plan of Action in 1980 and in 1991 the Abuja Treaty of Declaration. The two policy documents underscored the need for regional integration, by 2020 for Africa but also recognized the regional initiatives already undertaken. Nonetheless it is worth noting that these were not the first efforts aimed at regional integration in Africa.

The United Nations Economic Commission for Africa, UNECA, for example, emphasized regional Integration in Africa in the 1960s.

This was also enshrined in both the OAU Treaty of 1963 and as pointed above, the Abuja Treaty of 1991.

Other efforts towards regional integration include the ECOWAS (1975), Mano River Union (1973), West Africa Monetary Union (1994), COMESA (1981), SADC (1980), Arab Maghreb Union (1989) and EAC (1967 and then revamped 2000) with the ultimate goal of linking to the Africa Union.

Why the preoccupation with regional integration? The main purpose of regional integration is not only to improve the economic status of the partner/member states but also to increase Africa's visibility in the global market.

Trade Agreements/Partnerships in East Africa The East African Community

The three East African countries namely Kenya, Tanzania and Uganda have enjoyed close historical, commercial, industrial, cultural and other ties for many years by virtue of their being neighbours, trading together with people moving across the three countries and the fact that they were administered by the British during the colonial period.

Organized cooperation among the three countries commenced with, among other things, the construction of the Kenya-Uganda railway between 1897 and 1901; establishment of a Customs Collection Centre in 1900; the East African Currency Board in 1905; the Court of Appeal for Eastern Africa in 1909; the East African Governors conference in 1926; the East African Income Tax Board in 1940 and the Joint Economic Council in 1940.

During 1947 and 1961 an East African High Commission existed to control all cooperation activities. Between 1961 and 1966, there was the East African Common Services Organization.

In 1967, the (former) East African Community was established. Under this partnership there was joint ownership of Harbours, the East African Airways, the East Africa Posts and telecommunications, the Inter-University Council of East Africa and the East African Currency Board. There was also the Legislative Assembly in addition to other services, which included research in plant and animal diseases, marine sciences, statistics and education.

However in 1977 the (former) EAC collapsed due to a host of factors including lack of strong political commitment to cooperate, use of different economic systems which made it difficult to implement the community activities, lack of fair distribution of the benefits from the community, lack of strong participation by the business community and general public, including the Civil Society among other factors.

The current EAC regional integration initiative has its origin in the Mediation Agreement for Division of Assets and Liabilities of the East African Community, which collapsed in 1977. In that Agreement, signed on 14 May 1984, there was a provision that the three East African countries could explore areas of future co-operation. It was on that basis that the three Heads of State held a Mini – Summit on the sideline of the Commonwealth Heads of Government and States (CHOGS) Summit held in Harare in November 1991, during which they announced their intention to re-launch the East African co-operation.

Later on 30 November 1993, the Heads of State signed the Agreement on the establishment of the Permanent Tripartite Commission for East African Co-operation. However, full-fledged co-operation took root after the launching of the Secretariat in Arusha on 14 March 1996.

In 1997, negotiations to transform the Tripartite Agreement into a Treaty begun. The treaty was signed in 1999 and under the treaty the partner states of Kenya, Tanzania and Uganda, set out bold vision for their eventual unification and outlined a comprehensive system of cooperation among themselves.

The Treaty for the Establishment of the East African Community:

A Glance from the development lens.

The EAC Development Strategy, 1997 – 2000, which is largely the basis of the Treaty, tried to avoid the shortcomings associated with the earlier integration initiative. It also took into account the ongoing globalization process, as exemplified by the intensification of competition brought about by the liberalization of international trade and financial market systems. Within this context, the Treaty emphasized that:

- i. The objective of the Community shall be to develop policies and programmes aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defense, security and legal and judicial affairs, for their mutual benefit.
- ii. To achieve these objectives, one of the important guiding principles of the Community shall be people centred and market driven co-operation.
- iii. The priority of the Community shall be economic co-operation, which is expected to form the basis for political co-operation in the long term.
- iv. The integration process shall be carried out in a participatory manner, involving broad participation of key stakeholders including women, youth, private sector and the civil society.
- v. The vision of regional integration in East Africa is to create wealth, raise the living standards of all people of East Africa and enhance the international competitiveness of the region through increased production, trade and investments.
- vi. The East African regional integration process shall be a progressive process, commencing with a Customs Union as the entry point to the Community. This will be followed up by a Common Market, then a Monetary Union and ultimately a Political Federation.
- vii. Movement from one level of economic integration to another shall be through negotiated protocols, starting with that on the establishment of an EAC Customs Union.

The Treaty for the establishment of the East African Community came into force on 7th July 2000.

Establishment of an East African Trade Regime and Customs Union

Regional integration is a systematic process that proceeds in stages and through different processes with its main objective being to increase division of labour among nations and in particular enhance trade among the participating states. The ultimate aim of regional integration is to stimulate economic development and hence enhance the economic status of the people. This is the basis upon which the East African Trade Regime and Customs Union was founded.

The establishment of the East African Trade Regime and Customs Union is enshrined in the EAC treaty. According to Article 74 of the Treaty:

“ in order to promote the achievement of the objectives of the Community as set out in Article 5 of this Treaty, and in furtherance of Article 2 of this treaty, the Partner States shall develop and adopt an East African Trade Regime and co-operate in trade liberalization and development in accordance therewith”.

Article 75(1) of the Treaty, on Establishment of a Customs Union, provides that:

“For purposes of this Chapter, the Partner States agree to establish a Customs Union details of which shall, inter alia, include the following:

- i. Application of the principle of asymmetry;
- ii. The elimination of internal tariffs and other charges of equivalent effect;
- iii. Elimination of non tariff barriers;
- iv. Establishment of a common external tariff;
- v. Rules of origin;

- vi. Dumping;
- vii. Subsidies and countervailing duties;
- viii. Security and other restrictions to trade;
- ix. Competition;
- x. Duty drawback and remission of duties and taxes;
- xi. Customs cooperation;
- xii. Re-exportation of goods; and
- xiii. Simplification and harmonization of trade documentation and procedures.

Thus in establishing the treaty, the East African states were unambiguous that the new regime would enhance cross-border trade through the new trade liberalization and ultimate elimination of all barriers to trade.

Finally, Article 75(7) of the Treaty provides that:

“For purposes of this Article, the Partner States shall within a period of four years conclude the Protocol on the Establishment of a Customs Union”.

Notably, although these provisions were stipulated, during the Treaty negotiations, details on the East African Trade regime, stipulating the process of trade liberalization and development in the East African Community, were not finalized. These were left out to be concluded later during negotiations on the establishment of an EAC Customs Union, in accordance with Articles 7 5(1) and (7) of the Treaty. This was a departure from the EAC Cooperation Treaty of 1967, which had provisions institutionalizing the East African Common Market.

Framework for Customs Union Protocol Negotiations

Since the EAC Customs Union is the subject of focus and considering the secrecy surrounding treaties negotiations, it is important to provide a brief overview of the process of negotiation and ratification of the Protocol the Establishment of the East African Customs Union.

At the signing of the EAC Treaty in November 1999, the Council of Ministers of member states established a High Level Task Force (HLTF) on implementation of Article 75(7) of the Treaty. The Task Force, comprising of senior officials of the Partner states, was charged with the responsibility of conducting negotiations on the EAC Customs Union Protocol. The Task Force was expected to report progress of its work to the Council.

However, at its meeting held in November 2001, the Council expressed concern at the slow speed the High Level Task Force was taking to conclude negotiations on the outstanding matters. To expedite negotiations, the Council directed that a Committee of Permanent Secretaries responsible for Trade, Industry, Finance and Regional Cooperation be formed to address outstanding matters, with a view to finalizing a draft protocol by March 2002.

This decision of the Council, therefore, removed the mandate of spearheading Customs Union Protocol negotiations from the HLTF to the Committee of Permanent Secretaries. The Task Force would then handle technical matters and report to the Committee of Permanent Secretaries, which in turn reported progress of negotiations to the Council.

Ratification of the EAC Customs Union Protocol

The signing of the EAC Customs Union Protocol was scheduled for 30 November 2003. However, due to unresolved issues, this was postponed and re-scheduled for 16 February 2004. At the preparatory meeting for the November 30th 2003 Summit, the mood was that all outstanding matters were to be cleared in time for the signing ceremony.

Some of the critical outstanding issues included:

- i. Whether there should be a progressive reduction of the maximum rate of the Common External Tariff from 25% to 20% within 5 years, following coming into force of the Customs Union Protocol; and

- ii. Whether excise duties and other forms of indirect taxation applicable to trade between the Partner States should be harmonized.

Others included the following:

- i. The EAC Common Customs Law (a working group drafting the EAC common customs law was scheduled to finalize its work on 31 January 2004)
- ii. Completion of the EAC Common External Tariff
 - Unresolved tariff lines within the EAC-CET (however, the unresolved tariff lines are less than 2%)
 - Proposed EAC-CET tariff splits;
 - Criteria for selection of sensitive products on the basis of impact on public revenue;
 - List of unresolved sensitive products;
 - Additional measures for application to the sensitive products already adopted by the Council.

With agreement reached on the two articles (12(2) and 15(4)), it was envisaged that the protocol would be ready for signature. Other outstanding issues related generally to the implementation and, therefore, could not impede the signing of the protocol.

The Council at its 6th meeting in November 2003 adopted an Indicative Programme for implementation of the Customs Union Protocol. Within that programme, implementation of the Customs Union Protocol was due to commence on 1st July 2004. However due to unforeseen circumstances the implementation of the customs union did not take place until January 2005.

At last, the protocol for the establishment of the East African Community Customs Union was finalised and signed on 2nd March, 2004. It was launched on December 2004 with its implementation starting in January 2005.

Overview of the EAC Customs Union

Fundamentally, it is important to note that Customs Unions in the world over are similar in principle. Their overarching goal is to liberalise and enhance cross border trade among the participating countries. Thus in design and in effect, Customs Union have some basic features, which are aimed at fully utilizing the existing potential of member countries for promoting economic co-operation in the areas of investment, industry, technology, human resource development, agriculture and infrastructure. A Customs Union provides an opportunity to optimize complementarities in trade, investment and production of the participating countries. The basic features of a Customs Union include:

- Elimination of all intra-state tariffs and other charges of equivalent effect.
- Abolition of all non-tariff barriers (NTBs).
- Harmonized commodity description and coding systems.
- Adoption of a uniform tariff classification of goods called the Common Tariff Nomenclature (CTN).
- Adoption of a Common External Tariff (CET) and a standard system of valuation.
- Harmonized customs services and procedures.
- Uniform national customs legislation.
- Simplified and harmonized trade documentation and procedures.
- Common requirements for transit of goods within the customs territory and re-exportation of goods from member countries.
- Established rules of origin with respect to products originating in the partner states.
- Adoption of uniform standards/requirements for anti-dumping practices, subsidies, countervailing measures, duty drawback, and other export promotion schemes i.e. refund and remission of duties.
- Enhanced movement of persons within the customs territory.
- Effective collection of all import duty at the first points of entry into the customs territory.
- Effective mechanisms for sharing out common customs revenue as collected in entry points.

The EAC Customs Union is guided by the following principles

- The application of the principle of asymmetry
- The elimination of internal tariffs and other charges of equivalent effect
- The elimination of non tariff barriers
- The establishment of a common external tariff
- Rules of origin
- Anti-dumping measures
- Subsidies and countervailing duties
- Security and other restrictions to trade
- Competition
- Duty drawback, refund and remission of duties and taxes
- Customs cooperation
- Re-exportation of goods
- Simplification and harmonisation of trade documentation and procedures
- Exemption regimes
- Harmonised commodity description and coding system;
- Freeports

The specific objectives of the East African Community Customs Union are to;

- Further liberalise intra-regional trade in goods on the basis of mutually beneficial trade agreements among the partner states;
- Promote efficiency in production within the community;
- Enhance domestic, cross border and foreign investment in the community; and
- Promote economic development and diversification in industrialisation in the community.

These are the key pillars of the customs union that the member states should build upon to strengthen the regional trade geared towards reducing the biting poverty in the region. It is anticipated that the three countries will strive to uphold the key elements of the customs union cohesively so as to achieve the overall goal of the customs union.

Tax regimes under the EAC Customs Union

Taxation under the customs union focuses on goods that are imported or exported from the three East African countries. It revolves around the import duty. Export duty is zero-rated.

Abolished taxes under the new EAC Customs Union Import duty:

For goods entering Kenya from Uganda and Tanzania

The Customs Union basically deals with the import duty. Since the customs union came into force in January 2005, all goods from Tanzania and Uganda to Kenya are now duty free as long as they satisfy rules of origin. To qualify for duty exemption, such goods/products should be;

- Grown in Uganda/Tanzania in case of agricultural products
- Born in Uganda/Tanzania in case of animals
- 65% of the product is made from Uganda/Tanzanian raw materials in case of processed goods.

No tax is supposed to be paid for such goods whatsoever. However, duty is charged for goods that are not produced in either of the member states (imported from other countries) even though they will be re-exported to any of the member countries under the EAC Customs Union.

Applicable taxes under the customs union Import duty

Though goods from Uganda and Tanzania are exempted from duty, goods from Kenya to Tanzania and Uganda attract duty, which varies depending on the country and the nature of goods. Goods to Uganda attract a 10% duty, which reduces by 2% each year till its 0% in the sixth year. For goods to Tanzania duty ranges from 25% but varies with specific commodities, which also reduces progressively each year to be at 0% by the sixth year. Simply stated

the tax for goods from Kenya to Tanzania and Uganda reduces progressively within a period of five years since customs union implementation in 2005 such that by the sixth year i.e. year 2010, it will be at 0%. Then the East African region will be a free trade area. The rationale for this arrangement (i.e. principle of asymmetry) is to give Uganda and Tanzania time to catch up with Kenya in terms of economic development since Kenya is perceived to be at a higher level in terms of economic development. It is assumed that after the five years the economies of Kenya, Uganda and Tanzania will be at par and then at that time a free trade area within the region would be feasible, with neither country being disadvantaged or exploited.

Import Declaration Form fees (IDF Fees)

This is not a tax. These are charges paid to processed goods entering Kenya from either Tanzania or Uganda to keep statistics of what goods are imported/exported within the country. The IDF fees go directly to the government and not to the KRA. The fees are charged at the border (especially for small scale traders) but they can also be paid at the National Bank of Kenya. The rate for the IDF fees is 2.75% of the value of goods.

However if the total amount charged for goods is less than Kshs 100, then the customs don't charge for the goods. This is because the value of the KRA receipt is about Kshs 90 and if the KRA issues out the receipt for any less amount then they would be incurring a loss. Therefore they don't charge for such goods, whose total fee chargeable is less than Kshs 100. However the trader with such is given an F88 form, which will enable him/her to move with the goods freely within the country without being harassed by anybody, since the trader will not be issued with a receipt. Such goods, which are not subject to tax since the total fee charged on them is less than Kshs 100, are called *goods of no commercial value*.

A practical example for such a case is that, for instance, if a woman trader has bought, lets say, *kitenges* from Uganda worth Kshs 2000 (about 5 pieces) the only amount she is supposed to pay is the IDF

fees which is; 2.75% of 2000 = 55/= . Since this amount is less than Kshs 100, the trader will not be charged anything but will be given a form (F88 form) to be able to move freely across the border and any other police check points without being harassed.

Unfortunately even with such small quantities of goods traders are still using panya routes, which are risky and expensive in the following ways;

- It is expensive to pay the smugglers who illegally move goods across the borders.
- Loss of goods to the smugglers – sometimes they steal some of the goods and later sell them
- Loss of goods when they are confiscated by the customs people when the smugglers are ambushed while crossing goods illegally across the border
- The fines to pay for smuggled goods are heavy and punitive once one is caught by the customs officials in collaboration with the border security personnel.

It's only the Customs office, which by law is authorised to collect money in form of taxes for goods traded across the border AND not any other office, group or individuals. Any other person demanding tax money from the traders should be reported to the customs office to institute legal measures on him/her.

Other Applicable Taxes

Other internal/domestic taxes (specific for each country within the region) such as VAT are still applicable but are not regulated by the Customs Union. Rates for internal taxes differ per country. For example VAT in Kenya is different (16%) from the other two countries, Uganda and Tanzania (20%). VAT is charged on all goods entering the country. But in Kenya VAT is exempted for all agricultural goods e.g. maize.

Common External Tariffs

Under the EAC custom union the external tariffs for goods entering the East African countries are as follows.

- 0% (minimum rate) – for raw materials to manufacture products e.g. palm oil
- 10% (middle rate) – for semi-finished goods i.e. goods to be processed a bit to make a final product e.g. cotton rns to make clothing.
- 25% (maximum rate) – for finished goods e.g. imported vehicles.

The maximum rate to be charged on goods is 25% and would be reviewed after 5 years.

Information on taxation and any other relevant information related to cross border trade is available at the customs office in every border point and is given free of charge to anybody seeking the information.

It is important to seek information on any trade activities to be engaged in to be able to make informed choices and avoid being exploited due to lack of necessary and important information.

Clearing Procedures At The Customs Office

Procedures for export and import vary depending on the type and quantity of goods. When dealing with large quantities of goods a C63 form needs to be filled. The C63 form is processed at the customs longroom at the port of loading. The C63 form is used in Kenya and other COMESA countries. However the form is used by the large-scale traders trading in large quantities of commercial goods and not small-scale traders.

When dealing with goods of no commercial value i.e. small quantities of goods whose tax is less than Kshs 100 an F88 form is issued.

Category of Goods

Transit Goods

Transit goods are goods moving through a certain country but the destination of the goods is another country e.g. goods destined for Uganda but moving through Kenya after being cleared at the port of Mombassa. To ensure that goods in transit are not sold locally certain measures are taken. For instance if the tax for imported goods by Uganda through Kenya is Kshs 100,000, the importer is asked to get surety, as bond, of equivalent value and deposit it with the customs office at the point of entry, lets say, Mombasa. If the trader cannot raise the bond she/he can get it from insurance companies and clearing agents around the port of entry. If the goods are sold within the country of transit (Kenya), the surety i.e. the bond is not given back and the government of Kenya seizes it. However if the transit goods crosses over the border e.g. at Busia, the documents of clearance are taken back to Mombassa and the customs office after scrutinizing the documents releases the bond. The trader doesn't need to go back to Mombassa to get the money but the money is credited to the traders account. If the clearing agent or the insurance company had paid the bond, they take responsibility of ensuring that the goods reach the right destination lest they lose their money.

Prohibited Goods

Some goods are prohibited across the border. Some of the prohibited goods in Kenya include;

- Weapons e.g. guns, grenades, bullets, missiles, bombs etc
- Banned Drugs e.g. bhang, heroine, hashish, etc
- Pornographic materials
- Toy pistols
- Banned chemicals e.g. DDT
- Among others

However it is very important to seek information on any commodity from the customs before engaging in trade. It is good practice, before engaging in any trade activity, to seek comprehensive

information relating to the commodities a trader would like to trade in to avoid losses. Many people incur heavy losses simply because they don't solicit information, which is always available and given free of charge, before engaging in trade.

Common Offences And Associated Penalties At Border Points

Smuggling: This is the most common offence at most border points. In the event that a trader is caught smuggling or with smuggled goods the penalty is a maximum of 5 years imprisonment or a fine equal to 50% of the value of goods or both. This is clearly outlined in section 200 (d) of the EAC Customs Management Act. The EAC Customs Management Act is more punitive than the previous Kenyan one where the smuggler was expected to pay a fine of not more than Kshs 1.5 million irrespective of the value of goods (even if it is billions). Section 202 of the Act stipulates that if a person is caught with goods that are:

- Concealed (e.g. wearing 4 *kitenges*)
- Packaged in a way to conceal (putting kitenges in a sack of maize)
- Contained in a package that is not in the receipt (hiding some packages),

the person will be liable for imprisonment not exceeding 5 years or a fine equal to 50% of the value of goods or both.

Concealing information or lying: a trader who conceals information (e.g. refusing to answer a question) or gives false information (lying) to customs officials is liable to a jail term of a maximum of 3 years or a fine not exceeding US\$ 10,000.

Fraudulent evasion of duty: the penalty for a person who tries to evade duty fraudulently e.g. by presenting fake documents is imprisonment for a period not exceeding 3 years or a maximum fine of US\$ 10,000 (section 203 of the EAC CMA)

Trading in prohibited goods: a person caught dealing with such goods is taken to police and then criminal charges proffered against him/her and if found guilty punished accordingly based on the penal code.

It is important to seek information from the customs office before engaging in any trade activity. This will enable the trader make informed decisions as well as know the right tax rates to pay for commodities to trade in to avoid being cheated and exploited.

To note is the fact that, the EAC Customs Union is viewed as an arrangement for the creation of trade opportunities, which, so far has remained either under-exploited or unexploited before its introduction. However based on the elements of the EAC Customs Union, particularly through the liberalization regime that it introduces, its implementation will certainly have effects not only on the economies and the trade environment in the region but also on the citizens of the three countries. Nevertheless its implementation will have a differential impact on men and women. For this reason the ensuing chapter will deal exclusively on the gender perspectives of the EAC Customs Union in light of its implementation.

PART II

The EAC Customs Union Protocol Through A Gender Lens



Introduction

The implementation of the East African Customs Union will have profound effects on women cross border traders. This is because they are the majority small-scale cross border traders. In addition most of them trade in agricultural products.

For ease of appreciation of the gender dimensions in the EAC Customs Union implementation it is important to first examine the status of women participation in cross border trade within the East African region.

Women Participation In Cross Border Trade In East Africa

The main type of cross border trade practiced across the East African borders is the Informal Cross Border Trade (ICBT). The ICBT refers to registered or unregistered business activities undertaken across the borders based mainly on popular economy. One of the main characteristics of this trade is that it is not mandatory to submit tax returns at the end of each financial year hence not entered in national accounts.

Generally, in the East African region, informal cross border trade is conducted by small-scale quasi-professional traders, who use vari-

ous means to move small quantities of goods across national frontiers, to conduct trade.

It has been established that women constitute the larger proportion of those who practice the small scale cross border trade. This is significantly contributed to the fact that women have less access and control over productive resources and majority of them have limited literacy levels. This generally lessens the trade opportunities for the women as compared to men. In addition, traditions, customs and sometimes religious practices are restrictive to women limiting their participation to trade. This therefore limits their knowledge on the trade structures and the trade environment. Majority of the women cross border traders in the region rely on agriculture, thus their cross border trade is mainly dominated by agricultural products such as grains, fruits, vegetables, food crops, cash crops, just to name a few. For instance the Tanzanian oranges are a favourite in many Kenyan food markets just as the Kales (*Sukuma Wiki*) from Kenya are in Tanzania and especially in Dar-es-Salaam whereas maize from Uganda is dominant in Kenyan and Tanzania market. In addition to agricultural products, women cross border traders also trade in other goods such as textiles, hides and skins, clothes and garments, statuettes, industrial products etc based on the principle of comparative advantage. However owing to scarce capital, women's stocks are usually limited and as such they keep on moving between the borders for merchandise.

Previously disregarded, the cross border trade, with women being the majority participants, has increasingly been seen as a source of development and poverty alleviation within the East African region.

Article -By-Article Gender Analysis of the Customs Union Protocol:

Informal cross-border trade is thus coming under the spotlight. Unfortunately, little has been done to provide an enabling environment or to improve the welfare of small-scale traders. It is envisaged that with the introduction of the Customs Union things

will change this scenario and small scale cross border traders will be facilitated to eke out a living efficiently and effectively through their cross border trade. This forms the basis of the article by article gender analysis of the EAC Custom Union to identify opportunities and challenges presented by the protocol to small scale women traders with the intention of sensitizing them to enable them take advantage of the benefits presented as well as preparing them on the emergent challenges and how best to deal with them.

This section raises various issues relating to the implementation of the customs union with special focus on women cross border traders. The section presents the opportunities that exist for women traders, as flagged out from the various articles of the customs union protocol, that East African women cross border traders can take advantage of and enhance their trade thereby improving their economic status and by extension that of their respective countries and the region as a whole.

In addition it brings to the fore the obstacles/challenges that the customs union may present to women cross border traders, which can adversely affect their trade activities. This is in a bid to prepare the women on the same and enable them come up with counter strategies that would enable them overcome these obstacles.

Opportunities Presented To The Small-Scale Women Traders By The EAC Customs Union

The Preamble to the EA Protocol notes that the formation of the Customs Union is intended to be progressive in the course of the transitional period of five (5) years (**See also Article 11 (1)**). The idea of progressive realization of the Union is aimed at a smooth transition especially for small-scale trade and industry in member countries that have fairly low levels of technology and expertise. The opportunity here is that small scale cross border traders will be able to “learn the game” of the new Customs Union over this period, and consider the trade commodities that are best suitable for them. *The East African entrepreneurs and in particular women*

traders should be progressively sensitised on trade cooperation principles to enable them take full advantage of the Union's ideals.

Articles 2 and 10 envisage the elimination of both tariff and non-tariff barriers, customs duties and other charges of equivalent effect in order to create the most favourable environment for regional trade. Small-scale women traders have in the past encountered numerous deficiencies and difficulties in raising the requisite tariffs and import duties. The creation of a tariff-free environment is therefore aimed at making trade more competitive in the region.

The following is an example of the phasing-out plan for import duty over five years in some selected goods, so that from the sixth year we would have realised a free trade area.

Uganda's Tariff Offers to Kenya

The following categories of goods exported from Kenya to Uganda will attract a 10%, 8%, 6%, 4% 2% and 0% customs duty in years one, two, three, four, five and six respectively upon coming into force (January 2005) of the Customs Union.

- (a) Dairy products;
- (b) Tea and its products;
- (c) Vegetable oils and fats;
- (d) Confectioneries
- (e) Fruit juices;
- (f) Mineral water and aerated waters;
- (g) Tobacco and its products;
- (h) Domestic and industrial detergents;
- (i) Water pipes (non-metal), tubes, hoses etc;
- (j) Exercise books and stationeries;
- (k) Clothes and fabrics in general including khanga, kikoï and kitenges.

The progressive tax reduction will have a lot of positive impact especially on Kenyan women cross border traders. This is because Kenyan traders exporting these goods to Uganda and Tanzania are

taxed but Ugandan and Tanzanian traders bringing these goods into Kenya enjoy tax exemption. The benefit to Kenyan women traders would be in the following ways.

Women will be in position to trade in larger quantities of goods than before since the tax will be less. In favourable trade they will realise larger profit margins due to economies of scale.

Women who initially could not engage in regional trade due to the high tariffs will be able to join the trade due to the decreasing tax regimes and eventually tax free cross border trade.

This will create economic autonomy to larger cross-section of women, which will improve the quality of life not only at the family unit level but also at national and regional level.

To illustrate further, consider women's trade opportunities in Tanzania under the Customs Union as follows:

Tanzania's Tariff Treatment on Imports

The following categories of goods imported into Tanzania will attract a 25%, 20%, 15%, 10%, 5% and 0% customs duty in years one, two, three, four, five and six respectively upon coming into force (January 2005) of the Customs Union:

- (a) Mixture of juices;
- (b) Tomato Ketchup and other tomato sauces;
- (c) Dairy products;
- (d) Crude oil, vegetable and animal fats/oils and their fractions;
- (e) Sausages and similar products;
- (f) Chewing gum, whether or not sugar coated;
- (g) Whiskies, rum, gin, vodka, liqueurs and cordials, distilled spirits e.g. Konyagi, Waragi etc;
- (h) Lubricating oils;
- (i) Perfumes, deodorants, manicure or pedicure preparations, shampoos, pre- and after-shave preparations etc; and
- (j) Polymers of vinyl chloride, ethylene etc;

Duty to these (plus other) products to Tanzania is high, especially in the first and second year. This can discourage women from trading in such items, considering the fact most women have limited or no access and control of resources including capital. However reduction and eventual exemption of tax on these commodities will encourage women to start trading in such commodities because they would not be worried of the high tax regimes. This would have the same effect as highlighted above.

Article 3 of the Protocol envisages trade liberalization, efficiency in production, enhanced domestic, cross-border and foreign investment and promotion of economic development and diversification. These objectives open up a very wide window of opportunities for small-scale women traders in terms of enhanced production and consumption of varied goods and services, quality and even the volume of production. The idea here is not only to enhance intra-regional trade but also domestic and interregional trade. Needless to say, this will create a myriad of opportunities for small-scale women traders.

Article 4 provides a very wide scope of cooperation within the Customs Union relating to matters of trade liberalisation. Specific mention is made of cooperation in training facilities and programmes on customs and trade. Women should be first and foremost in such programmes because they constitute both the majority of the population in East Africa and majority of small-scale traders. Such training and technical know-how will go a long way towards enhancing the real and potential capabilities of small-scale women traders. This opening cannot therefore be over-emphasised.

Article 4(2)(b) talks of a standard system of valuation of goods based on principles of equity, uniformity and simplicity. No one appreciates and deserves the exercise of the principles of equity, simplicity, uniformity and consistency more than the small-scale female trader. This is particularly because the inequalities existing in trade rules and regulations have for a long time placed women at the periphery of mainstream trade. But when equity is guaran-

teed and ensured this will encourage women to venture in trade more confidently. Also the simplification of application procedures will encourage more women to practise cross border trade. The tedious and time consuming procedures at the customs border points keep at bay many women from practising cross border trade considering that women have other crucial roles and responsibilities at the domestic level. The adoption and implementation of the above mentioned principles in Article 4 (2) (b) will be a major incentive to women to engage in cross border trade. This will then enhance women's economic status in general and translate to strengthened regional economies.

Article 6 addresses the need for trade facilitation through reducing the number and volume of documentation in respect to trade and the adoption of common standards of trade documentation and procedures. Firstly, heavy documentation has to a considerable extent hampered trade locally, regionally and internationally. The situation becomes worse when we deal with small-scale women traders. In the premise, it is only logical that documentation be reduced and simplified in order to make it small-scale user-friendly. Secondly, the adoption of uniform or common trading standards is necessary to enable women from the three different East African states to transact business on terms that they can easily understand, appreciate and identify with.

The collection and dissemination of trade information on terms that are easy to comprehend and fathom is very necessary and small-scale traders, particularly women stand to benefit immensely from such dissemination in terms of access to reliable and user-friendly information on products availability, quality assurance, standardisation etc.

The availability of such information and gender desegregated data would be very beneficial to women since it will enable them make informed choices on issues related to trade. As earlier identified lack of information on regional trade to especially have led to stagnation or retardation of cross border related activities particularly among women. Information is power and without

information women traders can make uninformed choices as well as they stand a higher chance to be cheated or exploited which has been happening at border points. Ignorance leads to hefty resources losses, which has continued to chain women at the lowest ebb of the economic ladder. Therefore the need to simplify and disseminate trade related information for easy access to women cannot be gainsaid.

Article 7 obliges state parties to simplify, standardize and harmonize trade information and documentation. The challenge, as noted in the foregoing, is to do so in a language and through measures that are capable of being understood by the common masses. Another challenge is how small-scale traders will access the customs data bank to be established at the Secretariat pursuant to **Sub-article 3(b)**.

Article 14 provides that for purposes of the Protocol, goods shall be eligible for Community tariff treatment only if they originate in the Partner States. This section aims to preserve the identity of the Community's goods and to preserve or conserve the accrued benefits of economic integration so as to ensure that EA traders, particularly small-scale traders, get the most of the Union's benefit and gains.

The Protocol at **Article 15** recognizes the National Treatment principle of non-discrimination. Uganda cannot discriminate against goods from Kenya and vice-versa. This technically means that the small-scale women traders from either country can criss-cross the EA territory with whatever wares or merchandise they have to sell or buy without any discrimination provided they comply with the customs requirements.

By Article 16, Partner states are permitted to take anti-dumping measures in case there is potential or real injury to their domestic industries. The third world, EA inclusive, has been a fertile dumping ground for cheap Western products, which has led to the collapse of key EA industries like the textile industry. The anti-dump-

ing measures envisaged under the Protocol are intended to prevent dumping and to restore equilibrium in case the same occurs. Small-scale industries stand to gain, as they will be allowed to thrive and eventually be restored to equilibrium if dumping occurs, much to the advantage of small-scale traders in EA, majority of whom are women.

The provision of subsidies by partner states is sanctioned by **Article 17** provided the obligation of notification to other partner states is met. Small-scale women traders often find themselves in situations whereby they can hardly raise the necessary capital to start or sustain business. This is where subsidies (in the form of provision of capital/business loans, waiver of business levies, assistance in marketing) may come in handy. The notification of the same to fellow Union members serves the dual purpose of setting for them a good example worth emulating and secondly, enabling them to put in place countervailing measures (pursuant to **Article 18**) of commensurate value to the subsidy in order to off-set the effect of the subsidy.

Safeguard measures too are allowed under the joint-provisions of **Articles 19** and **36** (which is referred to as the 'Safeguard Clause' in trade terminology) in order to protect industries that are likely to suffer in case of a sudden surge of a product imported into a Partner state. More often than not, the industries that stand to suffer more harm in case of a sudden surge of imported goods are small-scale industries whose architects or proprietors, in the majority of cases, have just one line of livelihood to depend on. The situation becomes worse when these micro-industries belong to small-scale women traders. Therefore, the safeguard measures would come in most handy for small-scale women traders.

Moreover, under **Article 20**, the Partner States are supposed to cooperate in the detection, investigation and solution of dumping and subsidies measures and in the application of safeguard measures.

The Protocol intends and supports free trade. Under **Article 21**, competition is to be encouraged. Any practice that adversely affects free trade or prevents, restricts or distorts competition is prohibited. Great economies are built on the idea of competition. Competition results in increased production and productivity, diversified production, better quality, aggressive marketing, increased profits, the economies of scale and ultimately, lower prices. Thus, the practical benefits that will accrue to the small-scale female buyer or seller of a Union commodity cannot be gainsaid.

Disputes will inevitably arise out of regional interaction. When disputes take on an inter-state or multi-state character, the conflict becomes compounded because complexities of jurisdictional and choice of law nature arise within the same gamut of legal controversy. A regional policy on dispute resolution would help manage the multifarious legal and economic problems that may arise from the constant criss-crossing of people and their affairs among territorially organized legal systems. The combined letter and spirit of **Articles 24** and **41** reveals a two-level approach to the settlement of disputes relating to rules of origin, dumping, subsidies and safeguard measures etc. Under **Article 24**, there is established a Committee on Trade Remedies which works through various investigating authorities within the territories of the partner states. But, the claimants before the Committee can only be the Partner States and not individual citizens. Therefore, traders are obliged to channel their grievances through their parent states for redress by the Committee.

The establishment of Export Promotion Schemes and Bond Schemes is to be encouraged under **Articles 25** (see also **Article 29**) and **28** of the Protocol respectively. **Article 29 (2)** goes further to provide that entry into an EPZ shall allow total relief from payment of duty on imported goods to be used directly in the production of export goods. Small-scale women traders can take advantage of these provisions by forming closely-knit production outfits that would guarantee them access to external markets (with their huge gains) and at the same time attract the usual spill-over ef-

fects of export promotion schemes, like the development of local and micro-economies and provision of employment to locals.

Article 26 permits the draw-back of import duties upon exportation to external markets on such amounts and upon such conditions as may be prescribed by the competent authority. However it is not clearly outlined how to ensure that these draw-backs trickle down to the individual exporters. That is more the reason why small-scale women traders should be encouraged to take advantage of existing and yet-to-be established export schemes.

Small-scale women traders should be encouraged to pay tax (i.e. duty and V.A.T) as provided for under the remission schemes to be established pursuant to **Article 27** of the Protocol. They should pay tax with zeal and enthusiasm in order to, not only enable their governments to establish small-scale trade-conducive environments, but also sustain such environments in the interests of small-scale traders, for the eventual benefit of the Community as a whole.

Article 31 allows for the establishment of Free ports at seas, rivers, airports etc for the purpose of facilitating international trade and accelerating development. Under **Sub-article 3**, goods entering a free port shall be granted total relief from payment of duty and other import levies except where the goods are removed from the free port for home use. Who needs duty-exemption or tax relief much more than a small-scale female trader? They need to participate more in importation and exportation in order to take advantage of the free storage, warehousing, simplified customs procedures and supply chain centres services offered by the freeports. This would lead to lowered production costs and therefore higher profits.

Article 32 gives the EA Council ample room to, from time to time and as circumstances may so require, approve the establishment of other special economic arrangements for purposes of the development of the economies of the partner states. 'Special' means, *inter alia*, a special group of people like small-scale women traders.

'Special' may also mean special circumstances like the circumstances of small-scale women traders, either individually or collectively. The best proactive action that these traders can take is to form formidable associations with more bargaining power(s) sufficient to canvass their case and convince the Council that they deserve preferential treatment like exemption of import goods from duty provided for under **Article 33**.

The Protocol at **Article 37** envisages the formation and continuation of trade linkages with other parts of the world and the world at large. The three partner states are members of the WTO and the ACP-EU trade arrangement. Tanzania is also a member of the SADC, while Uganda and Kenya are members of COMESA. The WTO recognizes the role played by small-scale trade in the global economy and allows for the provision of preferential terms to small-scale traders, but in most cases, through their umbrella countries. The small-scale women trading groups should go a long way towards tapping such potential benefits. However, a glaring challenge that merits comment is the multiple membership of a country (and therefore its citizens/traders) in different economic groupings.

Article 38 allows for the establishment of inter-linkages in various areas of cooperation. These include the critical governance areas of the environment and natural resources management, standardisation, sanitary and phyto-sanitary measures and intellectual property rights. Sound and prudent environmental management facilitates trade and ensures that the gains made are not reversed. From the perspective of the small-scale female trader, the Community's resolution to establish and maintain a clean and healthy environment, adherence to quality maintenance and sound sanitary and phyto-sanitary measures translates the EA customs union not only into a Cape of Good Hope but also a safe and conducive haven for meaningful trade.

As already noted earlier, the Protocol recognizes the fact that women too contribute in the cross-border business although in a very limited sense. Difficulties arise in the fact that the women are

faced by so many challenges that lower their contribution to trade in the region.

However, if the Protocol is properly interpreted and disseminated from a gender perspective, women particularly small-scale cross-border traders can overcome these challenges and exploit the opportunities created by the Union.

In a nutshell the woman's position in the society, which mostly is based on her individual and collective financial status, will be enhanced. This is because she will have been given the opportunity not to trade only within her borders but to go further and capture the regional markets.

At the household level, just as the man, she too will be able to cater for the household needs so that she will earn that respect and financial position she deserves at least to achieve economic autonomy just as the 'hypothetical man of law.'

In addition the Protocol gives the woman ample room for expanding her trade ventures. She will be able to add value not only to her life but also to her family and the whole society at large. She will be able to trade alongside her male counterparts and/or dominants and by this create competition, which is healthy for each and every market.

Emergent Challenges

As alluded earlier, it is not unusual that where there are opportunities, challenges also abound. Having considered the challenges faced by women generally in trade, it is important to note some of the challenges that may be brought about by the implementation of the Customs Union.

One of the main challenges, taking cognisance of article 3, is how to ensure that the information on the customs union is available to stakeholders involved in cross border trade with the small scale

cross border women traders being an integral component. It is only by sensitizing them on this that they will take advantage of the benefits accruing from the customs union.

Another challenge in **Article 7** is how to simplify, standardize and harmonize trade information and documentation in a language and through measures that are capable of being understood and accessed by the common masses.

Another related challenge is how small-scale traders will access the customs data bank to be established at the Secretariat pursuant to **Sub-article 3 (b)**

Competition as is being encouraged Under **Article 21**, is a double-edged sword, which can also work against small-scale women traders, if they are not competitive enough, pushing them out of trade. Those whose productivity and efficiency is low cannot survive and are in the long run driven out of business. The challenge in this case is to what extent competition will favour or on the other hand disadvantage women traders. As has happened in other places uncontrolled competition invariably puts small-scale operators out of business rather easily than medium scale and large-scale traders.

Articles 25 (see also Article 29) and 28 of the Protocol respectively encourage the establishment of Export Promotion Schemes and Bond Schemes. Under this arrangement the challenge for EA, on one hand, is to empower the women traders, individually or collectively, financially through loans and credit facilities so that they can benefit from the EPZ arrangement. On the other hand, for the sake of feasibility, small-scale women traders need to join hands and collectively pool resources to be active and visible participants in the EPZ zones in order to attract, *inter alia*, the said benefits. Otherwise small-scale traders may not benefit from these schemes owing to the huge capital outlay required. However the EPZ scheme could perhaps help resuscitate the dying cotton and textile industries in Kenya, where we have majority of the women.

While hailing **Article 26** for permitting the draw-back of import duties upon exportation to external markets as may be prescribed by the competent authority, the challenge is how to ensure that these draw-backs trickle down to the individual exporters. In this case therefore, the small-scale women traders should be encouraged to take advantage of existing and yet-to-be established export schemes. It is also important that these schemes be established as soon as possible.

Though **Article 37** envisages the formation and continuation of trade linkages with other parts of the world, a major challenge existing currently is the status of Tanzania, which is a member of SADC while Kenya and Uganda are members of COMESA. Each grouping has its own objectives and operational principles related to tariffs and other logistics. For a country to apply different operational principles is not only confusing but also administratively cumbersome and may only serve to disadvantage traders both in the short-term and long-term, especially small-scale traders. The continued membership of Tanzania in SADC and Kenya and Uganda in COMESA therefore has potential challenges for the success of the implementation of the customs union and will have an effect too on women traders.

Aggressive publicity and dissemination of the EAC Treaty, the Protocol, the Community's policies and other applicable laws and principles as provided for under **Article 39** of the Protocol will need to be put in place in order to make small-scale traders part and parcel of the Union and its trade. This has to be done in a language that is simple and accessible.

There is the challenge of improving the welfare of citizens and traders in particular, more so the small-scale women traders. In brief, the provisions and ideals of the Protocol should be applied to confer real economic benefit/change on the small-scale trader.

One of the reasons that led to the collapse of the former EAC was the non-involvement of the people in its formation, implementa-

tion and dissolution. Regional trade should be a bottom-up affair rather than a top-bottom affair. Similarly, the people at the bottom of the social ladder, mostly small-scale women traders, should be actively involved in the whole processes ranging from design to implementation. Publicity of the Protocol should start with the small-scale women cross border traders.

Challenges Faced by Women in Cross Border Trade in the Region

Though the East African Community Customs Union Protocol, Article 3, highlights that trade protocol shall promote efficiency in production, enhance domestic, cross border and foreign investment to promote economic development and diversification in industrialization in the partner states, women traders continue to face myriad obstacles in cross border trade.

Despite the fact that the customs union presents a lot of benefits to the small-scale women traders they continue to be trapped in a complex web of trade challenges that adversely affect their trade activities. Thus the benefits that the custom union presents to the women traders may not be fully realized if these challenges are not adequately addressed.

As has been established, these obstacles, which hamper the women's ability to optimally enjoy the full benefits accruing from the cross-border trade, as stipulated by the customs union include the following:

- a) It is a fact that women traders are lacking access to information related to trade, both domestic and regional. Despite the fact that the EAC Customs Union have been in existence and operational for over almost one year women cross border traders are not aware of it. They are least enlightened with regard to the essential basics of the

Protocol and the opportunities and challenges it poses in their day-to-day activities. For instance despite the abolishment of taxes for agricultural goods from Uganda and Tanzania to Kenya, women traders still complain of being taxed exorbitantly. Also since most of them are not aware of the new tax regimes whereby some goods (e.g. goods of no commercial value) are not taxed most of them are still using illegal (*panya*) routes to move goods across the borders. This illegal transit points are not only risky and dangerous for the female traders but they are also very expensive, and in some cases women traders end up losing their goods to unscrupulous smugglers. They are not aware of the customs regulations, offences and penalties related to cross border trade and due to their ignorance they are heavily exploited thereby losing colossal sums of money. This whole scenario has affected their mode of operation in trade, which has in turn affected their investment options, marketing strategies, available marketing opportunities etc, which have had an impact on their financial well-being. The women traders therefore urgently require information not only on the customs union but also about various trade policies and agreements and how they would impact on them, how capital markets operate, alternative investments and the working capital of markets.

- b) It has been established that majority of the women practicing cross border trade have low or zero literacy levels. They have therefore entirely depended on brokers/agents to transact business and clear goods on their behalf. These brokers fleece women a lot of money since even after the new tax regimes have come into force most women continue to pay rates and charges they were previously paying. This affects their profit margin and overall economic well-being. Though currently the clearing procedures have been simplified most of the women traders are still using middlemen incurring unwarranted costs. Though sharing information on the customs union is crucial it would be important to put it in a language and format that majority of the traders would

understand to ensure that they benefit from the information. Translation of such information into popular languages would be very helpful. Consequently enhancing literacy among the women traders is equally important, as it would facilitate easier completing of documents related to cross border trade. This would better enable them to promote trade and then make strategic decisions for investments with the finances generated from the trade.

- c) The women traders, in some border points also face excessive harassment especially from the customs officials, police and municipal askaris. Generally at some port of entry it is men officers who do body search for any hidden goods. Women traders have complained of embarrassment and discomfort and would prefer any inspection to be done by women colleagues at the border post. The municipal council harasses the women traders especially in areas where there are no markets and when women are unable to raise the daily council charges.
- d) High taxes and municipal council charges. Despite the reduction or abolishment of tariffs on goods traded across the border, women traders still complain of being taxed heavily by the customs some payments of which they are not given receipts. Also the levies charged by the council are also high to the small scale women traders who are struggling to make a living. An adjustment downwards of the council levies would boost women a great deal.
- e) Dehumanizing punitive measures: due to the high taxes and the weak economic base of the small scale traders, most of them opt to use illegal/panya routes. Sometimes when they are caught they are detained the whole day while their wares are confiscated and asked to pay heavy bribes to be released. Sometimes sexual favours are demanded from the women to avoid arrest or confiscation of their goods. This has significantly contributed to the spread of HIV/AIDS.
- f) Lack of market access: Some of the cross border traders especially in Namanga have no access to external market for some of their commodities e.g. Ushanga. They mainly

depend on the tourists across the border, which are not as many to sell their wares. When the tourists' season is low their business is also adversely affected making poor or no sales. It would be important to assist the traders to seek external markets for such commodities, which would empower them economically.

- g) The women traders face challenges in accessing finance to initiate and even expand their businesses. The stringent measures demanded by banks, with banks being reluctant to loan out funds to individuals with little - if any - collateral, makes it difficult for small-scale women traders to access loans and credit since majority of women don't own property and therefore have no security. Even micro finance institutions have strict conditions which majority of the small-scale women may not be able to meet. For instance, in some micro finance institutions, since in most cases women do not have collateral, a trader is required to have a running business to qualify for credit facilities. This is discriminatory to women traders who are initiating trade activities and do not have sufficient capital. Interventions should be made to compel banks and micro finance institutions to relax these conditions so that as many women can access loans and credit facilities to initiate or boost their businesses. What is essentially required is an effective money recovery system, and not such stringent discriminatory conditions.
- h) The shortage of foreign currency experienced in border points compound the situation for this partially developed sector. Concern is that even in countries with adequate foreign currency supply, the many demanding processes of trading particularly penalize women, which negatively impact on the growth of their businesses. The women cross border traders experience problems with currency exchange due to lack of local currency exchange facilities. There are private individuals at border points who offer informal currency exchange services but who charge very high commission and arbitrarily determine the exchange rates for

the various currencies. As such the exchange rates are not constant. Monetary policies that could enable the traders to convert their currencies into the currency of the country in which they would be trading are required. That would facilitate trade and create less demand for hard currencies.

- i) Lack of a market space is another obstacle that female traders face. Though they may be willing to engage in trade as a means of livelihood they don't have space where to operate from. In some border points e.g. Namanga there is no space for a market. In most cases the traders play hide and seek with the municipal council personnel who harass women conducting trade activities near the borders. Sometimes their goods are confiscated by the municipal council askaris and they are only released after the traders pay hefty "fines". The women traders end up incurring heavy losses since they may not be able to sell anything the whole day and the perishable goods e.g. milk goes bad at the end of the day. It would benefit women traders very much if a market is created where they can trade their wares freely.
- j) Poor infrastructure, which then result in market distortion, is another obstacle. Due to poor infrastructure transporting of goods from the border points to other parts of the country become very high. In turn the cost of such goods becomes expensive and returns to investment are reduced significantly. Profit margins remain small leaving limited funds for reinvestment, hence traders tend to remain poor. Investment in improving the infrastructure would be a great precursor to favourable cross border trade.
- k) Lack of standardization of their products is another obstacle faced by the cross border women traders. It is clear that they need support from institutions responsible for standards and quality control. Such services would make their products competitive not only in the region but also in the global market where competition is stiff. The demand for design studios for instance for furniture, crafts, textile materials and jewellery is very important for standardization and the women traders do not have access to such facilities which would help add value to their products.

- l) Commodities traded by women across the border in the region are diverse including food items (cereals, beans, vegetables, fruits), crafts, furniture, jewellery, electrical goods, perfumes etc. Some goods have to undergo sanitary and phyto-sanitary (SPS) conditions. Most women traders do not have the capacity to ensure their goods meet the set minimum conditions. Hence women traders need technical support in this area to improve the quality of their products and the packaging to suit required standards.
- m) Another problem that women face in cross border trade is the tedious and time consuming immigration laws that hamper free movement. The security procedures at the border points are extremely extensive and exhausting causing a lot of delays. Also women traders often complain about pass permits, which stifle their businesses. In addition the pass permits allow entry and residence for a limited period, 90 days. Studies done on ICBT indicate that traders enter these countries for three to four days and they exit shortly after that. They stay in their home country for two to three weeks and then return for business. For that reason they need a policy framework that allows for multiple entry and to spread the 90 days or 180 days over the year. In that way they would not be seen as breaking legal requirements of entry.
- n) The majority of the women traders involved in trading food products are engaged in small-scale agricultural production. However research shows that, they do not receive a lot of technical and financial support from their governments. Though women constitute more than 75% of the laborers in agricultural production in the three countries, their unpaid labour in agricultural production still remains unremunerated and unaccounted for in national accounts. Due to Economic Structural Adjustment Programme (ESAP) and ESAP policies, governments within the East African region have withdrawn agricultural subsidies thereby making export commodities uncompetitive. Technical support is needed especially for out-growers scheme for

farmers, access to information, agro-processing etc. This is encouraged even within WTO Agreement on Agriculture. The governments should therefore demand credits from WTO as subsidies in agriculture and several other sectors were withdrawn. This refund in credits could be ploughed back into capacity building of the Informal Cross Border Traders. The need to build the capacity of women Cross Border Traders, in marketing strategies, sources of capital, new markets, business management etc cannot be emphasized.

- o) Domestic responsibilities are another challenge. With the increasing number of female-headed households the women are torn between engaging in full time trade and the domestic chores. It is difficult to strike a balance between the two with the latter taking more than half of their time. Lack of sound financial standing prevents women from hiring house helps and thus the woman who doubles up, as the breadwinner has to take care of the family. This affects women traders very much since they spend a lot of time in domestic chores to the detriment of their trade activities. Sharing of roles between husbands and wives should be encouraged through an intense gender sanitization programme and also the government can chip in by supporting day care services country wide where children would be taken care of while the parents engage in other productive activities.
- p) The parallel market- illicit cross border trade has been another major obstacle for women's advancement in cross border trade. One, this leads to tax evasion creating unhealthy competition. This is because tax evaders sell their commodities at lower prices putting those who have paid tax at an undue disadvantage. In this case, women, based on their poor economic base are greatly disadvantaged as they suffer immense economic backlash, when they are subjected to uneven ground of competition.
- q) In addition it has been established that the parallel market leads to hefty losses in terms of uncollected revenue. Recent

findings, shared at a workshop held in Nairobi indicated that illicit cross-border trade and smuggling between Kenya and Uganda is estimated to cost about \$140 million, 63 percent of which was in agricultural products, annually in losses to their national treasuries. This figure is about 60 percent of the value of formal trade between the two countries. The governments of the East African partner states are losing colossal sums of badly needed tax revenues through smuggling. Smuggling has severely impacted on the East Africa countries efforts at attaining self-reliance, leaving them at the mercy of donors. The illicit trade has not only affected their revenue base but has also posed a threat to human lives. The loss of projected revenue through smuggling and other forms of illegal trade has led to the cutting expenditure to finance crucial sectors such as health, education, roads and agriculture, which are crucial to poverty reduction. Particularly the effect on women has been devastating. Researchers contend that illicit trade has serious implications on the economies of the East African countries. Poor economies lead to escalated poverty levels and considering that poverty has a differential impact on men and women, with women bearing the brunt end of poverty implications, measures to reduce illicit cross border trade need to be looked at in the broad context of trade policies and macro-economic policy issues and governance. With effective monetary and macro economic policies this could be contained.

- r) The small-scale women traders depend mostly on agricultural products for their trade. Costs of production for such small-scale farmers are normally too high or prohibitive for them to compete in the competitive and aggressive markets. The fact that they are not so influential in terms of market power lowers their chances of getting any subsidies from their governments.

These barriers, among others, have greatly hampered and reduced trade activities, not only among women but also amongst the East

African countries, which have in turn affected adversely the economies of the regional countries.

In addition to what has been proposed above, the following ideas would be worth some thought;

- 1). The recognition that Agriculture is key to economic growth and that majority of women depend on agriculture for their subsistence and survival. Recognizing the role agriculture could play in the development of evolving economies would mean recognizing the cardinal role played by women in transforming micro and macro-economies and then allocate resources for her support to carry out agricultural production activities. Enhancing access and control of productive resources by women will be a major catalyst to hasten production and then improve economic well being of the society at large.
- 2). The need to enlighten the small-scale women traders on the EAC Customs Union and the opportunities presented cannot be gainsaid. This would enable them take advantage of the opportunities created by the Union as well as becoming streetwise in dealing with the emergent challenges. The respective governments and organizations have to take the initiative to educate the communities involved in inter-border trade as a matter of urgency. Entrepreneurs in the region and in particular women traders should be progressively sensitised on trade cooperation principles to enable them take full advantage of the Union's ideals. The objectives of the customs union may not be achieved if more than half of the beneficiaries are not aware of it.
- 3). The spill over effects of such harmonized trade will be felt in both the market and non-market arenas where goods of quality and in a competitive environment will be available for trade and thus sold at the 'right' price.
- 4). Closely related is the need for training programmes on trade related issues generally, and in particular on the skills and strategies for cross border trade such as marketing strategies, sources of capital, new markets and business man-

agement. Such training should be tailored for women because they constitute both the majority of the population in East Africa and majority of small-scale traders. The training and technical know-how will go a long way towards enhancing the real and potential capabilities of small-scale women traders.

Conclusion

The Protocol for the Establishment of the East African Community Customs Union marks a watershed in regional trade in East Africa. It is full of opportunities and provisions that, women could take advantage of in order to realise meaningful benefits and enhance their economic status. However, as emphasized herein, much depends on what they are capable of fighting for collectively as a group than as individual traders.

Fundamentally, the implementation of the EAC Customs Union should ensure quantitative and qualitative participation of all actors (men and women), all sectors of the economy as well as governments. The business community in the mainstream and informal sectors, the civil society organizations, (including labour, CBOs/NGOs, Faith based institutions, cultural groups etc.) must be actively involved and gender perspectives should be integrated at all levels.

In addition, in order to maximise the gains from the Customs Union implementation and promote the social and economic empowerment of women, the three East African governments should embark on the following;

- Programmes aimed at promoting men and women access to resources including information, technology and equipment
- Education, skills and training for men and women to take advantage of new opportunities and openings presented by trade liberalisation.
- Rethinking and reconstituting as well as decentralization

of the provision of government services (day care, health care, subsidisation of basic services etc) in order to help women meet their multiple obligations e.g. trade, domestic responsibilities, care work etc;

- Gender sensitive and gender equality oriented modification of trade rules and other related policy areas.
- Programmes and policies to remove or offset the information bias that women face in relation to men in terms of credit, market intelligence, government services and technology.
- Promote and support women's self-employment and the development of small enterprises, and strengthen women's access to credit and capital on appropriate terms equal to those of men through the scaling-up of institutions dedicated to promoting women's entrepreneurship, including, as appropriate, non-traditional and mutual credit schemes, as well as innovative linkages with financial institutions.
- Enhance, at the national and local levels, rural women's income-generating potential by facilitating their equal access to and control over productive resources, land, credit, capital, property rights, development programmes and cooperative structures.
- Pay special attention to women's needs when disseminating market trade and resource information and provide appropriate training in these fields.

To promote women's social and economic well being, through the EAC Customs Union, the CSOs should emphasise on;

- Surveys and needs assessments to determine the exact nature and the negative impacts to men and women respectively.
- Proactive measures in the areas of capacity building, information dissemination, skills development and upgrading.
- Supportive measures to boost women's access to credit and technical and marketing knowledge including any relevant information on trade.
- Grants and low interest loans to small enterprises disad-

vantaged by the customs union (as a result of the comparative advantage principle) and any other form of trade liberalisation.

- Collection and analysis of sex disaggregated trade and trade related data.
- Undertaking a gender impact assessment of all trade agreements whether at the multilateral, regional national or bilateral level.
- Lobbying and advocacy to modify trade measures to limit the negative impact on disadvantaged groups.
- Reforming/repealing laws that, are injurious to women's short term and long-term trade interests.
- Disseminate information about successful women entrepreneurs in both traditional and non traditional economic activities and the skills necessary to achieve success and facilitate networking and exchange of information.
- Provide outreach programmes to inform low income and poor women particularly in rural and remote areas for opportunities for market and technology access and provide assistance in taking advantage of such opportunities.

In order to facilitate the process of gender mainstreaming in the member states, all the actors involved in the Customs Union as well as the regional trade fora should ensure that;

- Gender analysis and a gender perspective are incorporated in all policies, projects and programmes.
- Gender impact assessments of policy, programmes and project proposals are implemented at all stages from design and decision making through to implementation and evaluation.
- A coherent and effective policy framework and institutional process for gender mainstreaming is developed.
- The development and functioning of strong independent/autonomous women's leadership and professional trade organisations supported by the member states.
- Provide public infrastructure to ensure equal market access for women and men entrepreneurs.

- Develop programmes that provide training and retraining particularly in new technologies and affordable services to women in business management product development, financing, production and quality control and marketing and the legal aspect of business.
- Create non discriminatory support services including investment funds for women's businesses and target women particularly low income women in trade promotion programmes.

The importance of demystifying the economic policy initiatives, within the East African region such as the East African Community and the East African Community Customs Union to encourage more participation and input from the ordinary people, particularly women traders, cannot be overemphasised. It is an initiative that could provide opportunity to rebuild not only the East African region but also the continent. But conversely it could easily be used to marginalize the very people who are to benefit from its implementation.

By pertinently sensitising women cross border traders on the opportunities and challenges of the customs union, the region would not only be on an effective path towards integration but also it would ensure economic autonomy of all citizens of the three countries, which would contribute immensely to poverty reduction within the region, which clearly is the ultimate spirit and goal of the East African Community and the Customs Union. When this is achieved then significant strides would have been made towards enhancing the regional economic development and the achievement of Millennium Development Goals (MDGs). These are the prospects and challenges.

Finally as we sensitize women on the cross-border trade policies, we need to deal with the larger question of trade policies in general and how they can take women's concerns, experiences and vision on board. we need to go further and look at our set targets, our review mechanisms, to ensure that they reflect the aspirations and interests of women in this region.

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