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***“East Africa Common Market with Special  
Reference to Tanzania”***

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**LL.M (BUSINESS LAW)**

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## CERTIFICATE

This is certify that, this dissertation on topic titled as "*East Africa Common Market with Special Reference to Tanzania*" submitted by **ABBAS HAJI ABBAS**, Roll No. 356 for the degree of Master of Law [LLM] for the academic year 2008/10, of the NATIONAL LAW SCHOOL OF INDIA UNIVERSITY [NLSIU]. It is the product of the bona fide research carried out under my supervisor **Dr. A. JAYAGOVIND**. This dissertation is my original work and it has not been submitted elsewhere for any other degree.

.....*A. Jayagovind*.....

**Dr. A. JAYAGOVIND**

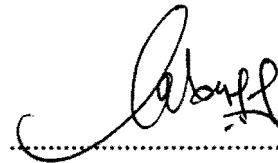
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## DECLARATION

I, **ABBAS HAJI ABBAS** do hereby declare that this dissertation entitle "*East Africa Common Market with Special Reference to Tanzania*" is the result of research undertaken by me in partial fulfilment of LLM [BUSSINESS LAW] programme at NATIONAL LAW SCHOOL OF INDIA UNIVERSITY [NLSIU], BANGALORE, INDIA. This dissertation has been prepared under the supervision of Dr. A. JAYAGOVIND.

I further declare that this dissertation is my original work and relevant materials taken from the other sources have been cited properly at appropriate place. I declare that this work has not been submitted either in part or whole for any other degree or any other course at any other University or Collage.



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You are all appreciated

# **LIST OF TREATIES, PROTOCOLS AND STATUTES**

## **TREATIES**

Common Market of Eastern and Southern Africa Treaty, 1993 (COMESA)

Economic Community of West African States Treaty, 1975 (ECOWAS)

East African Cooperation Treaty, 1967

East Africa Community Treaty, 1999

East African Community Mediation Agreement, 1984

General Agreement on Tariff and Trade, 1994 (GATT)

General Agreement on Trade in Services (GATS)

Southern Africa Development Community Treaty, 1992 (SADC)

## **PROTOCOLS**

East African Common Market Protocol, 2009

East African Custom Union Protocol, 2004

## **STATUTES**

Tanzania Investment Act No. 26 of 1997

The Immigration Act No. 6 of 1995

National Employment Promotion Service Act No. 9 of 1999

East African Customs Management Act, 2004

East African Community Competition Law

The Standards, Quality Assurance, Metrology and Testing Act, 2006

## **LIST OF ABBREVIATIONS**

COMESA	Common Market of Eastern and Southern Africa
CET	Common External Tariffs
DFI	Direct Foreign Investments
DSE	Dar Es Salaam Stock Exchange
EAC	East Africa Community
EAEC	Eurasian Economic Community
EAHC	East Africa High Commission
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
ECSC	European Coal and Steel Community
EEC	European Economic Community
EFTA	European Free Trade Association
EU	European Union
GATT	General Agreement on Tariff and Trade
GATS	General Agreement on Trade in Services

GCC	Gulf Cooperation Council
LDC	Least Developed Countries
NAU	North American Union
NSE	Nairobi Stock Exchange
SADC	Southern Africa Development Community
SAFTA	South Asia Free Trade Agreement
TCCIA	Tanzania Chamber of Commerce Industrials and Agriculture
WHO	World Health Organisation
WTO	World Trade Organisation

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# CHAPTER I

## 1:0 INTRODUCTION

It is customary to distinguish a variety of economic integrations in the world from viewpoints of their “degree; such as Free Trade Area (FTA), Customs Union (CU), Common Market (CM), Economic Union(EU). More specifically; FTA abolishes intra-regional tariffs and quotas, while a CU not only abolishes intra-regional tariffs and quotas, but also creates common external tariffs (CET). However, a **Common Market** is also abolishes restrictions on factor movements” (free movement of factors of production including persons and services). As a definition, a common market is an economic area in which free movement of goods, services, capital and persons (**the “four freedoms”**) is guaranteed. An Economic Union however, is a CM with “some degree of harmonization of national economic policies in order to remove discrimination due to disparities in these policies.” The total Economic Integration in Economic Union means, “Unification of monetary, fiscal, social and counter cyclical policies” and “setting up of a supranational authority whose decisions are binding for the Member States<sup>1</sup>

Common market is not a new phenomenon; it came into existence in middle twentieth century in Europe and other areas in the world. The purpose of common market is to facilitate the trade among the member countries. So on March 25, 1957, France, West Germany, Italy, the Netherlands, Belgium, and Luxembourg signed a treaty in Rome establishing the European Economic Community (EEC), also known as the common

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<sup>1</sup> Bamba ( ) *ECOWAS Common Investment Market Initiative*, Paper Presented, pg 1

market. The EEC, which came into operation in January 1958, was a major step in Europe's movement toward economic and political union.

By 1950, it was apparent that the centuries of Western European supremacy was at an end. The national markets of Europe, isolated from each other by archaic trade laws, were no match to the giant market enjoyed by the United States. And looming over Europe from the east was the Soviet Union, whose communist leaders' commanded vast territory and economic resources under a single system. Many European leaders also feared the resumption of conflict between traditional European antagonists such as France and Germany, which would only diminish the European economies further.

As a means of improving Europe's economic climate and preventing war, some influential statesman and political theorists suggested economic integration. The first major step in this direction was taken in 1951, when France and West Germany formed the European Coal and Steel Community (ECSC), integrating their coal and steel industries. French leaders proposed the organization primarily as a means of monitoring German industry, and West German leaders immediately agreed, to allay fears of German militarization. To supervise the ECSC, several supranational bodies were established, including an executive authority, a council of ministers, an advisory assembly, and a court of justice to settle disputes. Italy and the three nations of the Benelux Economic Union--Belgium, the Netherlands, and Luxembourg--soon joined. The groundwork for the EEC was laid<sup>2</sup>.

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<sup>2</sup> [www.wikipedia.org/wiki/Single\\_market](http://www.wikipedia.org/wiki/Single_market)

On March 25, 1957, representatives of six European nations signed two treaties in Rome. One created the European Atomic Energy Community (Euratom) for the common and peaceful development of Europe's nuclear resources. The other created the EEC with the view to creating Common Market under their system. Actually after establishment of common market most of the trade barriers between member nations were gradually eliminated, and common policies regarding transportation, agriculture, and economic relations with non - member countries were implemented. Eventually, labor and capital were permitted to move freely within the boundaries of the community. The EEC, the ECSC, and Euratom were served by a single council of ministers, representative assembly, and court of justice. In 1967, the three organizations were fully merged as the European Community.

Britain and other European nations initially declined to join the Common Market and they established the weaker European Free Trade Association (EFTA) in 1960 as an alternative. By the early 1960s, however, the Common Market nations showed signs of significant economic growth, and Britain changed its mind. Because of Britain close ties with the United States, French President Charles de Gaulle twice vetoed British admission, and Britain did not join the EC until January 1973, when Ireland and Denmark also became EC members. Greece joined in 1981, Portugal and Spain in 1986, and the former East Germany as part of reunified Germany in 1990.

In early 1990s, the European Community became the basis for the European Union (EU), which was established in 1993, following ratification of the Maastricht Treaty. The treaty called for a strengthened European parliament, the creation of a Central

European Bank and common currency, and a common defense policy. In addition to a single European common market, member states would also participate in a larger common market, called the European Economic Area. Austria, Finland, and Sweden became members of the EU in 1995. As of early 2007, there were twenty-seven member states in total, and further growth was expected<sup>3</sup>.

### **1:1 HISTORY OF COMMON MARKET IN EAST AFRICA**

In East Africa, common market has a long history; it started in twentieth century, when the former British East Africa includes three territories (Kenya, Tanganyika and Uganda) on the mainland, plus Zanzibar islands. The mainland territories together account for 20% of the land in Africa, and they support a 12% of the Africa population, with 22 million people<sup>4</sup>. The territories have always been governed separately. Tanganyika achieved independence in 1961 and Uganda in October same year.

The East Africa common market has grown gradually since 1917, when the colonial governments of Kenya and Uganda formed custom union. In 1923, mainly through Kenya's initiative, Tanganyika joined the union. The free interchange of local produce was permitted but not interchange of imported goods, at this would have meant (especially from Tanganyika's view), a magnification of Kenya's intrepid function. Furthermore, Kenya's attitude to the common tariff was strongly protectionist. And it was not prepared for common tariff for all the goods.

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<sup>3</sup> [www.wikipedia.org/wiki/Single\\_market](http://www.wikipedia.org/wiki/Single_market)

<sup>4</sup> People Republic of Tanganyika (1960) "*Tanganyika Sensor Book*" Government Press, Dar es Salaam

In 1926 an attempt was made to bring Nyasaland into custom unions, but the colonial government of that territory rejected the plan. Continuous pressure from Kenya and backing from the colonial office in London forced Uganda and Tanganyika in 1927 to accept free interchange of imported goods and complete freedom of re exportation. All this caused intergovernmental friction. By 1929, Kenya was still urging increased tariffs to protect her own agriculture, and the other two territories were unwilling to formalize their customers. The union was on the verge of dissolution. However, the compromise was reached with the introduction of "suspended duties" that is suspended until adopted by the government singly. Kenya made immediate use of this provision, doubling duties on butter, cheese, ghee, etc, but Tanganyika used it only rarely and Uganda not at all. In 1948 the East Africa High Commission (EAHC) was formed to solidify interterritorial cooperation. The union of settlers in Kenya looked to it as a means of extending their domination of Uganda and Tanganyika. The commission had its own legislature with power to legislate in the common service. Since then, the main fields of interterritorial integration have been a common tariff and internal free trade; a common income tax system and common rates of excise; the common monetary system with internal movement of funds; the east Africa court of appeals; and a number of economic and research service. In private sectors, many commercial enterprises have operated freely in all three territories, with headquarters either in east Africa or abroad<sup>5</sup>.

Due to that long history of East Africa common market and the integrations of the people of these three (3) countries in economic and social affair, the leaders of these three (3) countries saw that, there is need to establish the community and within it there is

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<sup>5</sup> Semei Nyanzi (1962) *Common Market for East Africa: Africa Today*, Indiana University Press. Vol. 9, No. 8, pp. 5-6

agreement of common market. The aim of *common market* is to remove the physical (borders), technical (standards) and fiscal (taxes) barriers among the member states. These barriers obstruct the freedom of movement of goods and service from one country to another. But to remove these barriers the member states need political will and they have to formulate common economic policies.

## **RESEARCH METHODOLOGY**

### **Research Objectives**

The researcher of this dissertation which is entitled as "*East Africa Common Market with Special Reference to Tanzania*" has endeavor to prepared this dissertation with guidelines of the following main objectives:-

- To understand the concept of common market in general.
- To show the interrelations between common market under GATT/WTO and Regional common market.
- To examine the common market in East Africa Community.
- To analyses the challenges faced by Tanzania in East Africa common market.

### **Research Methodology**

The methodology will be secondary data collection (doctrinal). In other words this research will also based on doctrinal and other related factual data which are provided in conventions, treaties, statutes (if any), books, reports, web site, the speech of prudent persons and any other information which are relevant and made in documentation. The researcher understands that there are many data in primary sources which are very



important and useful. But due to physical, financial, and time limits, the researcher will rely only on secondary data.

### **Research Questions**

On writing this dissertation the researcher has the following questions that will be answered either negative or positive at the end of this research. Those questions are:-

- What is East Africa Common Market?
- What are the benefits which Tanzania will gain for joining in East Africa Common market?
- Whether Tanzanian entrepreneurs are well knowledgeable and they have financial capacity to participate well in East Africa Common Market.
- Whether the opening cross - border business in East Africa will increase the criminal activities in East Africa territory.
- Is Zanzibar a member/partner of East Africa Community?
- If no, what is the legal impact for the Union Government of Tanzania to join in East Africa Community on behalf of Zanzibar in matters that are not union matters?

### **Chapters of the Dissertation [Chapterisation]**

The *chapter one* which is introductory chapter, the researcher will provides the concept common market in general and the research methodology. In *chapter two* I will endeavor to show the interrelation between common market under GATT/WTO and common market in regional organizations. Under *chapter three* I will discuss the establishment of East Africa Community, the purpose the common market in East Africa and the

obligation of country members. Further under *chapter four* the researcher seeks to show the position of Tanzania in East Africa common market and the challenge faced by it. Further more in *chapter five* it will contain the position of Zanzibar in East Africa Community and the legal impact for the Union Government of Tanzania to join in East Africa Community on behalf of Zanzibar in matters which are not union matters. Finally, there will be conclusions and suggestions.

### **Scope and Limitation**

The scope of this dissertation paper is limited to its objectives, which are, to examine and to understand the concept of common market in general, to show the interrelations between common market under GATT/WTO and regional common market and finally to examine the common market in East Africa Community. The researcher will not examine the concept of common market beyond the objective mention above, and due to physical, financial, and time limits, the researcher will rely only on secondary data.

## CHAPTER II

### 2:0 INTERRELATIONS BETWEEN COMMON MARKET UNDER GATT/WTO AND REGIONAL COMMON MARKET

The concept of common market is not new phenomenon in East Africa as well as around the world. The World Trade Organization [WTO] facilitates the freedom of trade in the world<sup>6</sup> and recognizes the advantage of economic integration and trade liberalization even when these efforts involve only some of its members. The assumption is that at a regional level, it may be possible to achieve a degree of trade liberalization while it is out of reach of global level. Also regional trades liberalizations may create significant economic growth within the regional which can in turn, generate more trade with the rest of world<sup>7</sup>. Due to that reasons Article XXIV (4) and (5) of General Agreement on Tariff and Trade [GATT] 1994 and Article V and Vbis of the General Agreement on Trade in Services [GATS] elaborate the concept of regional integration in trade of goods, services and labour.

Since the early 1990s, there has been a proliferation of regional trade agreements. Currently over 250 regional trade agreements are in force, and this number are likely to increase further in the near future<sup>8</sup>. Article XXIV (4) (5) of GATT 1994 states that:-

*“The contracting parties [members] recognize the desirability of increasing freedom of trade by developing, through voluntary agreement of closer integration of economies of countries parties of such agreement”*

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<sup>6</sup> Preamble of of General Agreement on Tariff and Trade [GATT],1994

<sup>7</sup> Peter Van den Bosscher (2005) *The Law and Policy of The World Trade: Text, Cases and Materials*; Cambridge University Press, New York p.651

<sup>8</sup> Ibid p.650

*“Accordingly, the provision of this agreement shall not prevent, as between the territories of contracting parties, the formation of the custom union or of free- trade area or the adoption of an interim agreement necessary for the formation of the custom union or of a free- trade area.....”*

Both provisions above recognize the needs for the country members to formulate their custom union on free- trade area. This give the picture that the GATT/WTO does not prohibits the country members to formulate their own regional agreement in regard of economic and common market for the benefits of their areas and societies. The WTO law recognizes the advantages of economic integration and trade liberalization at the regional level. It is difficult to have high standard of trade liberalization at the global level because of the difference in development in different sectors from one country to another, therefore in order for the trade liberalization to be implemented effectively, the idea of the regional blocs come into picture. However economic study of custom unions and free trade areas have revealed that the trade creation effects may often be smaller than the trade - diversion effects as trade between the participants replace trade between the participants and non participants. It is not clear whether regional trade agreements divert rather than create trade. Apart from economic reasons, countries may also have political reason to pursue deeper economic integrations and trade liberalizations with some other countries. The example here is European communities deal with economic integrations and trade liberalizations between its members, also they seeks to create, “an ever closer union” among the people of Europe to avoid reoccurrence of war.<sup>9</sup>

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<sup>9</sup> Peter Van den Bosscher (2005) *The Law and Policy of The World Trade: Text, Cases and Materials*; Cambridge University Press, New York p.651

Further, the purpose of regional trade is to facilitate the trade among the country members and at the same time not to prevent the trade with the country which is not a member of that particular organization, The GATT/WTO insist that those regional agreements in trade should not taken as barriers to the trade of other countries which are not a member of such particular organization,. The GATT/WTO jurisprudence is set out clearly on preamble of Article XXIV, where it states that:-

*“...The purpose of [regional trade] agreements should be to facilitate trade between the constituent territories and not to rise barriers to the trade of other members with such territories.....in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other members”<sup>10</sup>.*

Furthermore, the WTO through The General Agreement on Trade in Services (GATS) also recognizes the importance and service in trade liberalization. The agreement says that; “this agreement shall not prevent any of its members from being a party or entering into an agreement liberalizing trade in services between or among the parties to such an agreement provided such an agreement has substantial sector coverage and provides for the absence or elimination of substantially all discrimination in the since of Article XVII, between or among the parties in the sectors covered.<sup>11</sup> Also the agreement shall not prevent any of its members from being a party to an agreement to establish full integration of the labor markets between or among the parties to such an agreement”<sup>12</sup>

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<sup>10</sup> Article XXIV of General Agreement on Tariff and Trade (GATT), 1994

<sup>11</sup> Article V of General Agreement on Trade in Services (GATS)

<sup>12</sup> Article Vbis of General Agreement on Trade in Services (GATS)

As we have pointed out earlier, the aim of GATT/WTO is to provide the free movement of goods from one country member to another without any type of discrimination. This is the key characteristic of regional trade agreements to offer each other more favorable treatment in trade matters than they offer trading partner. On doing that the GATT/WTO agreements provides two principles which are the principles of “*most favoured nation*” (MFN)<sup>13</sup> and “*national treatment*”<sup>14</sup>, these principles established in order to make the concept of “*free trade*” to be implemented without any type of discrimination between richest countries and poorest countries or between northern countries and southern countries.

Therefore, those two principles are very important for the improvement of trade among the country members, these two principles have created the level playing field to all products regardless of their origin; and it is the discretion of the customers to buy one and reject the other. The laws, regulations, administrative decision should not made to create discrimination between the domestic products and foreign products, but the laws, regulations etc must be made only to facilitate the trade to going in smooth manner for the benefits of all.

The regional organizations now have been proved as the important organization of improving economies among the country members; the best known and most successful of the regional trade agreement are EU/EC and the North American Free Trade Agreement (NAFTA). Relatively successful regional agreements exist in every continent, and more are contemplated. Some regional agreements may ,in fact, become mult -

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<sup>13</sup> Article I of General Agreement on Tariff and Trade [GATT], 1994

<sup>14</sup> Ibid Article III

regional, NAFTA for example, could transformed into free trade agreement of the America consisting of the whole western hemisphere, the Asia Pacific Economic Cooperation (APEC) forum could involve into free trade area.<sup>15</sup> Other regional organizations which formed for the purpose of common market among the particular countries are as following:-

- Eurasian Economic Community (EAEC)
- ASEAN Economic Community (AEC)
- African Economic Community (AEC)
- Gulf Cooperation Council (GCC)
- North American Union (NAU)
- Economic Community of West African States (ECOWAS)
- Common Market in Southern Africa (COMESA)
- Economic Community of Central African States (ECCAS)
- South Asia Free Trade Agreement (SAFTA)

## **2:1 COMMON MARKET IN AFRICA**

In 1960s many African countries have got their independence, but many problems like political, economic, educational and social area. The leaders of such countries came to recognize the need for their countries to formulates the trade block in the region in order to facilitate trade and to increase the growth of their economic as well as to increase the standard of life of the individual person. It is believed that at the period of colonialism the African countries have weakened socially, politically and economically.

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<sup>15</sup> Mitsuo Matsushita and other (2002), *The world trade organization: law, practice and policy*; Oxford University Press Inc; New York, p.343

Due to those economic and political reasons the Organization of Africa Union (OAU) was established on 25 May 1963. The main purpose of this union was to bring together the African countries and to have one voice in political and economic matters.<sup>16</sup> The political issue was the primary aim of OAU and other aims were:-

- To promote the unity and solidarity of the African states and act as a collective voice for the African continent. This was important to secure Africa's long-term economic and political future.
- The OAU was also dedicated to the eradication of all forms of colonialism.
- Ensure that all Africans enjoyed human rights.
- Raise the living standards of all Africans.
- Settle arguments and disputes between members – not through fighting but rather peaceful and diplomatic negotiation<sup>17</sup>.

Even though the primary aim of the OAU now known as African Union (AU) was political it also emphasized economic issues. The African Union (AU) was officially launched in Durban, South Africa, on 9<sup>th</sup> July 2002 to replace the Organization of African Unity (OAU). Its structure is based loosely on that of the European Union. The African

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<sup>16</sup> Terry M. Mays, (2002) "*Africa's First Peacekeeping Operation: The OAU in Chad, 1981-1982*" Praeger; ISBN 0-275-97606-8, as, when OAU was established, there were several states that had not yet won their independence or were minority-ruled. South Africa and Angola were two such countries. The OAU proposed two ways of ridding the continent of colonialism. Firstly, it would defend the interests of independent countries and help to pursue those of still-colonized ones. Secondly, it would remain neutral in terms of world affairs, preventing its members from being controlled once more by outside powers.

<sup>17</sup> Terry M. Mays, (2002) "*Africa's First Peacekeeping Operation: The OAU in Chad, 1981-1982*" Pub. Praeger; ISBN 0-275-97606-8;



Union upholds the sovereign equality and independence of its 53 member states and aims to promote peace, security and solidarity on the African continent.<sup>18</sup> This new African Union (AU) focuses on the economic issues, and for this reason it established Specialized Technical Committees. These committees deal with monetary and financial issues, the rural economy, trade, immigration, industry and science and technology. They are responsible for the implementation of projects and programmes of the union; and also they have financial institutions. These financial institutions will be set up under the auspices of the AU to provide funding for projects and programmes. They are African Central Bank, the African Monetary Fund and the African Investment Bank<sup>19</sup>.

Article 28 of African Economic Community (AEC) stating that:-

*“.....Member States undertake to strengthen the existing regional economic communities and to establish new communities where they do not exist in order to ensure the gradual establishment of the Community”<sup>20</sup>.*

This means the member states shall take all necessary measures aimed at progressively promoting closer co-operation among the countries through co-ordination and harmonization of their activities in all fields or sectors in order to ensure the realization of the objectives of the community. Article 43 of General Provisions insists on the needs to the country members to formulate the community in the regional level which will help the integration of people from one country to another and also to increase the trade in the particular regional. That provision states that:-

*“Member States agree to adopt, individually, or at bilateral or regional levels, the necessary measures, in order to achieve progressively the free movement of persons, and*

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<sup>18</sup> [www.mbendi.com/oroau.htm](http://www.mbendi.com/oroau.htm)

<sup>19</sup> Ibid

<sup>20</sup> Article 28 the African Union Treaty, 2002

*to ensure the enjoyment of the right of residence and the right of establishment by their nationals within the Community”.*

Therefore the AU allows the country members to formulate the community either at bilateral or regional level for the purpose of improving economic condition of Africa States and the standard of individual life. Therefore, the different regional common market has been established or sustains into existence today for the same purposes of improving the economic and life standard. The main common market regions which now existing in Africa are:-

- Common Market for Eastern and Southern Africa (COMESA)
- The Southern African Development Community (SADC)
- Economic Community of West African States (ECOWAS)
- East Africa Common Market (EACM)

### **2:1:1 Common Market for Eastern and Southern Africa (COMESA)**

The Treaty establishing COMESA was signed on 5th November 1993 in Kampala, Uganda and was ratified a year later in Lilongwe, Malawi on 8<sup>th</sup> December 1994. Member countries were Angola, Burundi, Comoros, D.R. Congo, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe<sup>21</sup>

COMESA replaced the former Preferential Trade Area (PTA) which had existed from the early days of 1981<sup>22</sup>. COMESA was established as an organization of free independent sovereign states which have agreed to co-operate in developing their natural and human

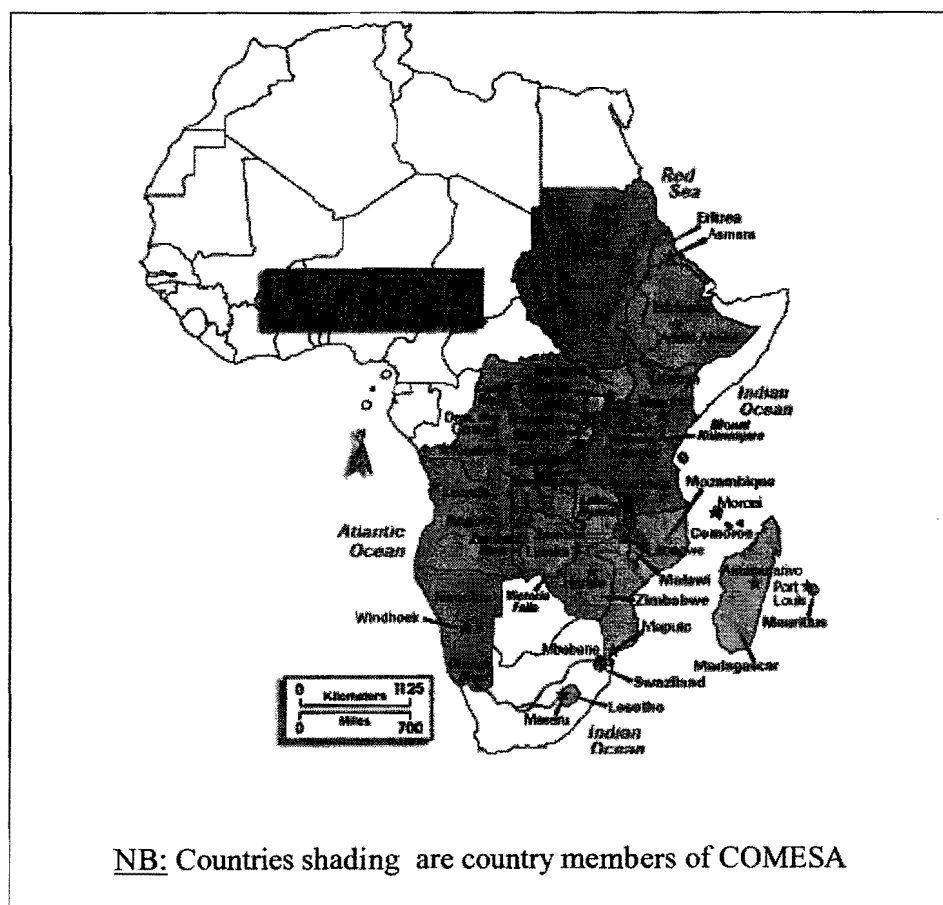
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<sup>21</sup> Article I (2) of COMESA Treaty, 1993

<sup>22</sup> Preamble of COMESA Treaty, 1993

resources for the good of all their people. Its main focus is on the formation of a large economic and trading unit that is capable of overcoming some of the barriers that are faced by individual states. By the year 2000, all internal trade tariffs and barriers were expected to be removed. Within 4 years after that COMESA would have introduced a common external tariff structure to deal with all third party trade and will have considerably simplified all procedures. It has a wide-ranging series of other objectives which necessarily include in its priorities the promotion of peace and security in the region.

#### MAP OF COMESA'S COUNTRY MEMBERS



## **History of COMESA**

At the first and second conferences of independent African States, held in Accra, Ghana, in April 1958 and in Addis Ababa, Ethiopia in June 1960, respectively, economic problems faced by independent Africa were discussed. There was a consensus that the smallness and fragmentation of post-colonial African national markets would constitute a major obstacle to the diversification of economic activity, away from a concentration on production of a narrow range of primary exports, to the creation of modern and internationally competitive enterprises, which would satisfy domestic needs and meet export requirements. It was, therefore, agreed that African countries which had gained political independence, should promote economic co-operation among themselves. Two options were advocated for the implementation of the integration strategy in Africa:

- a) The Pan-African, all-embracing regional approach, which envisaged the immediate creation of a regional continental economic arrangement; and
- b) The geographically narrower approach that would have its roots at the sub-regional levels and build on sub-regional co-operation arrangements to achieve geographically wider forms of co-operation arrangements.

The majority of the countries favoured the narrower sub-regional approach. Based on this, the United Nations Economic Commission for Africa (ECA) proposed the division of the continent into four sub-regions: Eastern and Southern, Central, West and North Africa. The Commission's proposals were adopted by the OAU Conference of Heads of State and Government. All independent African States were enjoined to take, during the 1980's, all necessary steps to strengthen existing sub-regional economic co-operative

groupings and, as necessary, establish new ones so as to cover the whole continent sub-region by sub-region and promote co-ordination and harmonization among the groupings for the gradual establishment of an African Economic Community by the end of the century.

The origins of the COMESA can be traced as far back as the mid-sixties. Before the Lagos Plan of Action and the Final Act of Lagos were adopted, the countries of Eastern and Southern Africa had already initiated the process towards creating an Eastern and Southern African co-operation arrangement. In October 1965, the ECA convened a ministerial meeting of the then politically independent states of eastern and southern Africa to consider proposals for the establishment of a mechanism for the promotion of sub-regional economic integration. The meeting, which was held in Lusaka, Zambia, recommended the creation of an Economic Community of Eastern and Southern African states. To achieve this objective, the meeting also recommended that an Interim Council of Ministers, assisted by an Interim Economic Committee of officials, should be set up to negotiate the treaty and initiate programmes on economic co-operation, pending the completion of negotiations on the treaty.

At the first meeting of the interim Ministerial Council held in Addis Ababa, in May 1966, the Terms of Association to govern the interim arrangements before the signing of the formal Treaty were adopted and signed by Burundi, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Somalia, Tanzania, and Zambia. In November 1967, a meeting of the Interim Economic Committee of officials recommended an interim programme of action for implementation which would be integrated into the Treaty when

approved. Parallel with these developments, two other organizations were established, the Pan-African Freedom Movement in East, Central and Southern Africa (PAFMECSA), and the conference of East and Central African states. Although these were mainly political in their orientation, their membership extended beyond the sub-region and they included in their activities programmes on economic co-operation.

In the 1970's, the need for a sub-regional economic arrangements became more urgent as a result of three major developments. First, the collapse of the federations in Eastern and Central Africa reduced political co-operation amongst States of the region and this needed to be addressed. Second, the destabilization of the economies of the southern African States by apartheid in South Africa made it necessary to create, as matter of urgency, a sub-regional organization which would be an economic counterweight to South Africa. Third, despite the failure of earlier efforts to establish a sub-regional economic co-operation arrangement, the countries of Eastern and Southern Africa recognized that there was no alternative to reducing their traditional economic dependence on the industrialized countries of the north and that this could only be done through the adoption of self-sustaining development measures in all sectors.

In March 1978 the First Extra-ordinary meeting of Ministers of Trade, Finance and Planning met in Lusaka. The meeting recommended the creation of a sub-regional economic community, beginning with a sub-regional trade area which would be gradually upgraded over a ten-year period to a common market until the community had been established. To this end, the meeting adopted the "Lusaka Declaration of Intent and Commitment to the Establishment of a Preferential Trade Area (PTA) for Eastern and

Southern Africa” and created an Inter-governmental Negotiating Team on the Treaty for the establishment of the PTA. The meeting also agreed on an indicative time-table for the work of the Intergovernmental Negotiating Team.

After the preparatory work had been completed a meeting of Heads of State and Government was convened in Lusaka on 21st December 1981 at which the Treaty establishing the PTA was signed. The Treaty came into force on 30th September 1982 after it had been ratified by more than seven signatory states as provided for in Article 50 of the Treaty.

The PTA Treaty envisaged its transformation into a Common Market and, as such, the Treaty establishing COMESA was signed on 5th November 1993 in Kampala, Uganda and was ratified a year later in Lilongwe, Malawi on 8th December 1994. The process of economic integration in Eastern and Southern Africa has, therefore, not been episodic, but rather systematic, following a logical progression on a step by step basis. Firstly, a Preferential Trade Area was established and operated for over a decade, which was then transformed into a common market. The third phase will involve the eventual establishment of an Economic Community.<sup>23</sup>

### **Priorities and Objectives of COMESA According to the Treaty**

The Treaty establishing COMESA binds together free independent sovereign States which have agreed to co-operate in exploiting their natural and human resources for the common good of all their peoples. In attaining that goal, COMESA recognizes that peace, security and stability are basic factors in providing investment, development, trade and

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<sup>23</sup> [www.COMESA.int](http://www.COMESA.int)

regional economic integration<sup>24</sup>. Experience has shown that civil strife; political instabilities and cross-border disputes in the region have seriously affected the ability of the countries to develop their individual economies as well as their capacity to participate and take full advantage of the regional integration arrangement under COMESA. It has now been fully accepted that without peace, security and stability there cannot be a satisfactory level of investment even by local entrepreneurs.

Therefore, in pursuit of the aims and objectives stated in Article 3 of the COMESA Treaty, and in conformity with the Treaty for the Establishment of the African Economic Community signed at Abuja, Nigeria on 3<sup>rd</sup> June 1991, the member States of COMESA have agreed to adhere to the following principles:

- (a) Equality and inter-independence of the member States;
- (b) Solidarity and collective self-reliance among the member States;
- (c) Inter-State co-operation, harmonization of policies and integration of programmes among the member States;
- (d) Non-aggression between the member States;
- (e) Recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and People's Rights;
- (f) Accountability, economic justice and popular participation in development and the recognition and observance of the rule of law;
- (h) The promotion and sustenance of a democratic system of governance in each Member State;

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<sup>24</sup> Article 3 (d) of COMESA Treaty, 1993



(i) The maintenance of regional peace and stability through the promotion and strengthening of good neighborliness<sup>25</sup>.

COMESA is an all-embracing development organization involving co-operation in all economic and social Sectors. However, due to resources constraints, the implementation of activities and programmes will be prioritized to areas where the greatest impacts can be made. To that end, the first COMESA Authority of Heads of State and Government, at its meeting held in Lilongwe, Malawi from 8<sup>th</sup> to 9<sup>th</sup> December 1994, adopted the following five priorities to be the basis of COMESA's focus for the next five to ten years significant and sustained increases in productivity in industry, manufacturing, processing and agro-industries to provide competitive goods as the basis for cross-border trade and to create more wealth, more jobs and more incomes for the people of the region; and;

- increase agricultural production, with special emphasis on the joint development of lake and river basins so as to reduce dependence on rain-fed agriculture and new programmes on food security at the provincial or district levels, national and regional levels;
- development of transport and communications infrastructures and services with special emphasis on linking the rural areas with the rest of the economy in each country as well as linking the member States
- new programmes for trade promotion, trade expansion and trade facilitation especially geared to the private sector, so as to enable the business community to take maximum advantage of the Common Market, and

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<sup>25</sup> Article 6 of COMESA Treaty, 1993

- development of comprehensive, reliable and up to date information data bases covering all sectors of the economy including industry, energy, environment, agriculture transport, communications, investments and finance, trade, health and human resources to form the basis for sound investment decisions and macro-economic policy formulation and programming<sup>26</sup>.

The aims and objectives of COMESA have been designed so as to remove the structural and institutional weaknesses in the member States by pooling their resources together in order to sustain their development efforts either individually or collectively. These are as follows:

- to attain sustainable growth and development of the member States by promoting a more balanced and harmonious development of its production and marketing structures;
- to promote joint development in all fields of economic activity and the joint adoption of macro-economic policies and programmes; to raise the standard of living of its peoples, and to foster closer relations among its member States;
- to co-operate in the creation of an enabling environment for foreign, cross-border and domestic investment, including the joint promotion of research and adaptation of science and technology for development;
- to co-operate in the promotion of peace, security and stability among the member States in order to enhance economic development in the region;
- to co-operate in strengthening the relations between the Common Market and the rest of the world and the adoption of common positions in international fora; and

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<sup>26</sup> COMESA Annual Report, 1995

- to contribute towards the establishment, progress and the realization of the objectives of the African Economic Community<sup>27</sup>.

The COMESA agenda is to deepen and broaden the integration process among member States through the adoption of more comprehensive trade liberation measures such as the complete elimination of tariff and non-tariff barriers to trade and elimination of customs duties; through the free movement of capital, labour, goods and the right of establishment; by promoting standardized technical specifications, standardization and quality control; through the elimination of controls on the movement of goods and individuals; by standardizing taxation rates (including value added tax and excise duties), and conditions regarding industrial co-operation, particularly on company laws, intellectual property rights and investment laws; through the promotion of the adoption of a single currency and the establishment of a Monetary Union; and through the adoption of a Common External Tariff (CET)<sup>28</sup>.

By agreeing to the above, member States have agreed on the need to create and maintain:

- a full free trade area guaranteeing the free movement of goods and services produced within COMESA and the removal of all tariffs and non-tariff barriers;
- a customs union under which goods and services imported from non-COMESA countries will attract an agreed single tariff all COMESA States;
- free movement of capital and investment supported by the adoption of common investment practices so as to create a more favourable investment climate for the entire COMESA region:

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<sup>27</sup> Article 3 and 4 of COMESA Treaty, 1993

<sup>28</sup> [www.COMESA.int](http://www.COMESA.int)

- a gradual establishment of a payments union based on the COMESA Clearing House and the eventual establishment of a common monetary union with a common currency;
- the adoption of a common visa arrangement, including the right of establishment leading eventually to free movement of bona fide persons.

### **COMESA institutions**

There are eight organs of COMESA which have the power to take decisions on behalf of COMESA, these being: the Authority of Heads of State and Government; the Council of Ministers; the Court of Justice; and the Committee of Governors of Central Banks. The Intergovernmental Committee, the Technical Committees, the Secretariat and the Consultative Committee<sup>29</sup> make recommendations to the Council of Ministers, which in turn make recommendations to the Authority.

- **The Authority**<sup>30</sup>, made up of Heads of State and Government is the supreme Policy Organ of the Common Market and is responsible for the general policy, direction and control of the performance of the executive functions of the Common Market and the achievement of its aims and objectives. The decisions and directives of the Authority are by consensus and are binding on all subordinate institutions, other than the Court of Justice, on matters within its jurisdiction, as well as on the member States.

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<sup>29</sup> Article 7 (1) of COMESA Treaty, 1993

<sup>30</sup> Ibid Article 8

- **The Council of Ministers (Council)**<sup>31</sup> is the second highest Policy Organ of COMESA. It is composed of Ministers designated by the member States. The Council is responsible for ensuring the proper functioning of COMESA in accordance with the provisions of the Treaty. The Council takes policy decisions on the programmes and activities of the COMESA, including the monitoring and reviewing of its financial and administrative management. As provided for in the Treaty, Council decisions are made by consensus, failing which, by a two-thirds majority of the members of the Council
- **The COMESA Court of Justice**<sup>32</sup> is the judicial organ of COMESA, having jurisdiction to adjudicate upon all matters which may be referred to it pursuant to the COMESA Treaty. Specifically, it ensures the proper interpretation and application of the provisions of the Treaty; and it adjudicates any disputes that may arise among the member States regarding the interpretation and application of the provisions of the Treaty. The decisions of the Court are binding and final. Decisions of the Court on the interpretation of the provisions of the COMESA Treaty have precedence over decisions of national courts. The Court, when acting within its jurisdiction, is independent of the Authority and the Council. It is headed by a President and consists of six additional judges appointed by the Authority. Consideration is being given to establishing the Court of Justice in the not too distant future.

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<sup>31</sup> Article 9 of COMESA Treaty, 1993

<sup>32</sup> Ibid Article 19

- **The Committee of Governors of Central Banks<sup>33</sup>** is empowered under the Treaty to determine the maximum debt and credit limits to the COMESA Clearing House, the daily interest rate for outstanding debt balances and the Staff Rules for Clearing House staff. It also monitors, and ensures the proper implementation of the Monetary and Financial Co-operation programmes.
  
- **The Inter-governmental Committee<sup>34</sup>** is a multi-disciplinary body composed of permanent secretaries from the member States in the fields of trade and customs, agriculture, industry, transport and communications, administrative and budgetary matters and legal affairs. Decisions of the Committee are by a simple majority. Its main functions include:
  - the development of programmes and action plans in all the sectors of co-operation, except in the finance and monetary sector;
  - the monitoring and keeping under constant review and ensuring proper functioning and development of the Common Market; and
  - Overseeing the implementation of the provisions of the Treaty and, for that purpose, requesting a technical committee to investigate any particular matter.
  
- There are 12 **Technical Committees<sup>35</sup>**, namely, on Administrative and Budgetary Matters; on Agriculture; on Comprehensive Information Systems; on Energy; on Finance and Monetary Affairs; on Industry; on Labour, Human Resources and Social Affairs; on Legal Affairs; on Natural Resources and Environment; on

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<sup>33</sup> Article 13 of COMESA Treaty, 1993

<sup>34</sup> Ibid Article 14

<sup>35</sup> Ibid Article 15

Tourism and Wildlife; on Trade and Customs; and on Transport and Communications. The Technical Committees are responsible for the preparation of comprehensive implementation programs and monitoring their implementation and then making recommendations to the Council.

- **The Consultative Committee of the Business Community and other Interest Groups**<sup>36</sup> is responsible for providing a link and facilitating dialogue between the business community and other interest groups and other organs of COMESA
- **The Secretariat**<sup>37</sup> is headed by a Secretary General who is appointed by the Authority for a term of five years and is eligible for re-appointment for a further term of five years. The basic function of the Secretariat is to provide technical support and advisory services to the member States in the implementation of the Treaty. To this end, it undertakes research and studies as a basis for implementing the decisions adopted by the Policy Organs. The various activities of the Secretariat encompass: Agriculture; Transport and Communications; Industry and Energy; Trade and Customs; Monetary Co-operation; and Administration. The Office of the Secretary General includes the Legal Office, Technical Co-operation, Women in Development and an Audit Unit.

An important COMESA innovation is that the establishment of Court of Justice to oversee the legal relations within COMESA. Persons resident in the Common Market may contest the legality of acts of Common Market institutions as well as that of member States. In effect, the Treaty establishes a "legal community", being whereby

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<sup>36</sup> Article 18 of COMESA Treaty, 1993

<sup>37</sup> Ibid Article 17

entrepreneurs will be guaranteed that business decisions and transactions are not unduly frustrated by unnecessary bureaucratic interventions.

The COMESA Court of Justice will inter alia: (a) have jurisdiction to adjudicate upon all matters which may be referred to it pursuant to the COMESA Treaty; and (b) have jurisdiction to hear disputes between COMESA and its employees that arise out of the application and interpretation of the Staff Rules and Regulations of the Secretariat or the terms and conditions of employment of the employees of COMESA, and to determine claims by any person against COMESA or its institutions for acts of their servants or employees in the performance of their duties.

### **COMESA Achievements**

COMESA, as well as its predecessor the PTA, has achieved a lot in the area of trade, customs, transport, development finance and technical co-operation. Impressive progress has also been made in the productive sectors of industry and agriculture. The trade facilitation and trade liberalization measures are bearing fruit. Intra-COMESA trade has grown from US\$834 million in 1985 to US\$ 1.7 billion in 1994, an annual growth rate of 14%, and studies indicate that this can increase to about US\$4 billion annually<sup>38</sup>. The challenge facing COMESA is to exploit this potential further.

As a result of COMESA traffic facilitation measures, transport costs have been reduced by a factor of about 25% and efforts are underway to reduce them further. In the sector of telecommunications, special emphasis has been placed on network development to enable direct telecommunication links through more reliable infrastructure in order to avoid third

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<sup>38</sup> COMESA Annual Report, 1995



country transit systems, which prove to be very costly. COMESA has established several important institutions including the PTA Trade and Development Bank, the COMESA Clearing House, the COMESA Re-insurance Company and the COMESA Leather and Leather Products Institute. The PTA Bank has, over the years, been very active in promoting investments and providing trade financing facilities. The Bank's cumulative project approvals, 1995-1996, stand at US\$148 million and cumulative trade finance activities, 1992 - 1996 totaled US\$345 million<sup>39</sup>.

## **2:1:2 Southern African Development Community (SADC)**

The Southern Africa Development (SADC) has been in existence since 1980, and it was formed as a loose alliance of nine majority-ruled States in Southern Africa known as the Southern African Development Coordination Conference (SADCC), with the main aim of coordinating development projects in order to lessen economic dependence on the then apartheid South Africa. The founding Member States are: Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe<sup>40</sup>

### **History of SADC**

The concept of a regional economic co-operation in Southern Africa was first discussed at a meeting of the Frontline States foreign ministers in May 1979 in Gaborone. The meeting led to an international conference in Arusha, Tanzania two months later which brought together all independent countries, with the exception of the then Rhodesia, South West Africa and South Africa, and international donor agencies. The Arusha

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<sup>39</sup> COMESA Annual Report, 1995

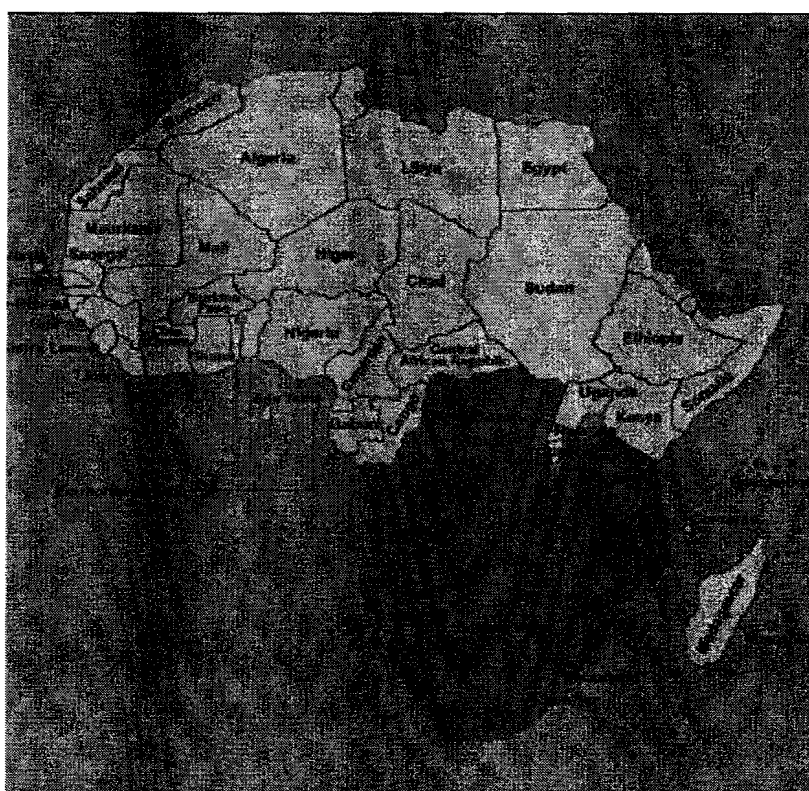
<sup>40</sup> Preamble of the SADC Treaty, 1992

conference in turn led to the Lusaka Summit held in the Zambian capital in April 1980. After adopting the declaration, which was to become known as 'Southern Africa: Towards Economic Liberation', Sir Seretse Khama, President of Botswana was elected the first chairman of the SADCC.

### MAP OF SADC'S COUNTRY MEMBERS

SADC

The Southern African Development Community



The Declaration committed the signatory governments to pursue policies aimed at economic liberation (i.e. to reduce economic dependence on South Africa) and the integrated and equitable development of the economies of the region. The Southern African Development Co-ordinating Conference (SADCC) was subsequently

formalized by means of a Memorandum of Understanding on the Institutions of the Southern African Development Co-ordination Conference dated 20th July 1981.<sup>41</sup>

In 1989 the Summit of Heads of State or Government, meeting in Harare, decided that SADCC should be formalized to “give it an appropriate legal status ... to replace the Memorandum of Understanding with an Agreement, Charter or Treaty.” In 1992 the SADCC transformed itself into the Southern African Development Community (SADC), it is provides under SADC Treat<sup>42</sup> that:-

*“By this Treaty, the High Contracting Parties establish the Southern African Development Community (hereinafter referred to as SADC)”.*

The SADC Treaty was signed in Windhoek and dated 17th August 1992. In Blantyre on 14 August 2001, Head of State and Government signed an Agreement Amending the SADC Treaty.<sup>43</sup>

### **Priorities and Objectives of SADC according to the Treaty**

The SADC as other economic communities have different visions in economic and life standards of the people of that particular area according the preamble of the SADC treaty it states that:-

*“The SADC vision is one of a common future, within a regional community that will ensure economic well-being, improvement of the standards of living and quality of life, freedom and social justice; peace and security for the peoples of Southern Africa<sup>44</sup>”*

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<sup>41</sup> www.SADC.int

<sup>42</sup> Article 2 of SADC Treaty,1992

<sup>43</sup> www.SADC.int

<sup>44</sup> Preamble of the SADC treaty, 1992

Due to that vision the SADC as community has provided in its treaty certain objectives which are must be fulfilled by the community members in order to achieve their goals<sup>45</sup>

The SADC objectives are to:

- achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa and support the socially disadvantaged through regional integration;
- evolve common political values, systems and institutions;
- promote and defend peace and security;
- promote self-sustaining development on the basis of collective self-reliance, and the inter-dependence of Member States;
- achieve complementary between national and regional strategies and programmes;
- promote and maximize productive employment and utilization of resources of the region;
- achieve sustainable utilization of natural resources and effective protection of the environment;
- strengthen and consolidate the long-standing historical, social and cultural affinities and links among the peoples of the region;

In order to achieve those objectives of SADC, The SADC as the institution have several duties oblige to do some of them are;

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<sup>45</sup> Article 5 of the SADC Treaty, 1992

- To harmonize political and socio-economic policies and plans of Member States; and mobilize the peoples of the region and their institutions to take initiatives to develop economic, social and cultural ties across the region, and to participate fully in the implementation of the programmes and projects of SADC;
- To create appropriate institutions and mechanisms for the mobilization of requisite resources for the implementation of the programmes and operations of SADC and its institutions;
- To develop policies aimed at the progressive elimination of obstacles to free movement of capital and labour, goods and services, and of the peoples of the region generally within Member States;
- To promote the development of human resources; and also promote the development, transfer and mastery of technology;
- To improve economic management and performance through regional cooperation;
- To promote the coordination and harmonization of the international relations of Member States; and to secure international understanding, cooperation and support, mobilize the inflow of public and private resources into the region; and

The signatories of the SADC Treaty agree that underdevelopment, exploitation, deprivation and backwardness in Southern Africa will only be overcome through economic cooperation and integration. The Member States recognize that achieving regional economic integration in Southern Africa requires them to put their full support behind SADC to act on behalf of all Southern Africans for their common prosperity, peace and unity.

percent in the value of planned investments from US \$ 5,877.3 million in 2006 to US\$ 5,715.6 million in 2007<sup>97</sup>. Kenya has more than 900 biggest industries and within those 200 are joint ventures. In Tanzania have many opportunities for investment as shown in statistic above but many of those industries are small industries and their production also is lower. The companies that make application to invest in Tanzania from country members of east Africa community are high especial from Kenya, and the companies which already invest are Neptune Flower ltd, Kiberege Rice Farm, Victoria Diary Farm, Export Trading Co. Ltd, Saving and Finance Ltd, Jubilee Insurance Co. Ltd., Lion Insurance of TZ Co. Ltd., Saving and Finance Ltd, United Bank of Africa Ltd., ARM (T) Ltd., ARM (T) Ltd., Fish Pack Ltd etc. On other side the number of businessmen or entrepreneurs and industries from Tanzania which invested or penetrates in the markets of Kenya, Uganda Rwanda and Burundi are very low; this is due to different reasons such as the high costs of doing business due to inadequate utilities, hard administrative formalities, and negative perception of the region by the rest of the world, especially western countries, poor infrastructure, as well as lack of adequate skilled labour.

### **Investments in Agricultural Sector**

In Tanzania investment in agricultural sector is also very important place in the life of Tanzanian as well as national economy. It provides full time employment to over 75% of population as well as the bulk of food we consume. It is estimated that Tanzania enjoy 100% self - sufficiency in food. Agricultural sector contribute to GNP average of 50% while bringing in approximately 66%<sup>98</sup> of foreign exchange in national income apart from providing raw material to local industries. The statistics show that Tanzania we

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<sup>97</sup> East Africa Trade Report, 2008 pg 70

<sup>98</sup> Annual Report of A Minister for Agriculture Food Security and Co-operatives ,2007

In pursuit of this agenda, SADC has adopted milestones to facilitate the attainment of the SADC Free Trade Area (FTA) by 2008, the Customs Union (CU) by 2010, the Common Market (CM) by 2015, Monetary Union (MU) by 2016 and the Single Currency by 2018. The SADC Free Trade Area (FTA) was launched on August 17, 2008 at Sandton, South Africa during the 28th Summit of SADC Heads of State and Government.<sup>46</sup> Due to the schedule above it shows that till now the SADC is not in the stage of common market but it is in the stage of free trade area, even though it is not in the common market stage but they supposed to achieve their goals in 2015.

### **2:1:3 Economic Community of West African States (ECOWAS)**

The Economic Community of West African States (ECOWAS) was established in 1976 by Article 1 of ECOWAS Treaty states that;

*“THE HIGH CONTRACTING PARTIES, by this Treaty, hereby reaffirm the establishment of the Economic Community of West African States (ECOWAS) and decide that it shall ultimately be the sole economic community in the region for the purpose of economic integration and the realization of the objectives of the African Economic Community<sup>47</sup>”*

The Economic Community of West African States (ECOWAS) is a regional group of fifteen West African countries, founded on May 28, 1975 with the signing of the Treaty of Lagos. Its mission is to promote economic integration. In 1976 Cape Verde joined ECOWAS, and in December 2000 Mauritania withdrew, having announced its intention to do so in December 1999. Because of withdrawing of Mauritania now the number of members of ECOWAS is fourteen which include Benin, Burkina Faso, Cape Verde, Côte

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<sup>46</sup> www.SADC.int

<sup>47</sup> Article 1 of ECOWAS Treaty, 1975

d'Ivoire, Gambia Ghana, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal Sierra Leone and Togo<sup>48</sup>.

It was founded to achieve "collective self-reliance" for the member states by means of economic and monetary union creating a single large trading bloc. The very slow progress towards this aim meant that the treaty was revised in Cotonou on July 24, 1993 towards a looser collaboration. The ECOWAS Secretariat and the Fund for Cooperation, Compensation and Development are its two main institutions to implement policies. The ECOWAS Fund was transformed into the ECOWAS Bank for Investment and Development in 2001.

### **Priorities and Objectives of ECOWAS According to the Treaty**

The aims of the Community are to promote cooperation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African Continent.

In order to achieve the aims set out in the paragraph above, and in accordance with the relevant provisions of this Treaty, the Community shall, by stages, ensure;

- The harmonization and coordination of national policies and the promotion of integration programmes, projects and activities, particularly in food, agriculture and natural resources, industry, transport and communications, energy, trade, money and finance, taxation, economic reform policies, human resources,

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<sup>48</sup> Article 3 of ECOWAS Treaty, 1975



education, information, culture, science, technology, services, health, tourism, legal matters; the harmonization and coordination of policies for the protection of the environment; and the promotion of the establishment of joint production enterprises;

- Also the members aim to the establishment of a common market through:
  - (i) the liberalization of trade by the abolition, among Member States, of customs duties levied on imports and exports, and the abolition among Member States, of non-tariff barriers in order to establish a free trade area at the Community level;
  - (ii) the adoption of a common external tariff and, a common trade policy *vis-à-vis* third countries;
  - (iii) the removal, between Member States, of obstacles to the free movement of persons, goods, service and capital, and to the right of residence and establishment.
  
- Furthermore, the objectives of ECOWAS are to promote the harmonization of standards and measures; the promotion of balanced development of the region, paying attention to the special problems of each Member State particularly those of land-locked and small island Member States; and the encouragement and strengthening of relations and the promotion of the flow of information particularly among rural populations, women and youth organizations and social

professional organizations such as associations of the media, business men and women, workers, and trade unions<sup>49</sup>

In order to fulfil the objectives of ECOWAS in the manner which is profitable to all country member without any discrimination, ECOWAS Treaty provides fundamental principles which will help to accommodate that objectives; that Treaty states that:-

*"The High Contracting Parties*, in pursuit of the objectives stated in Article 3 of this Treaty, solemnly affirm and declare their adherence to the following principles:

- (a) Equality and inter-dependence of Member States;
- (b) Solidarity and collective self-reliance;
- (c) Inter-State cooperation, harmonization of policies and integration of programmes;
- (d) Non-aggression between Member States;
- (e) Maintenance of regional peace, stability and security through the promotion and strengthening of good neighborliness;
- (f) Peaceful settlement of disputes among Member States, active cooperation between neighboring countries and promotion of a peaceful environment as a prerequisite for economic development;
- (g) recognition promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;
- (h) Accountability, economic and social justice and popular participation in development;”<sup>50</sup>

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<sup>49</sup> Article 3 of ECOWAS Treaty, 1975

## **Common Market under ECOWAS**

The aim of establishment of common market in West Africa is stipulated under ECOWAS Treaty which states that:-

*“In order to achieve the aims set out in the paragraph above, and in accordance with the relevant provisions of this Treaty, the Community shall, by stages, ensure....the establishment of a common market...”<sup>51</sup>*

To have the Regional Integration or common market is, first of all, the gradual elimination or abolition of economic barriers which impede free movement of goods, services, capital and persons among a group of nation; due to that ECOWAS was established on the 28th May 1975, its Treaty was mandated to:

- Eliminate tariffs and non-tariff barriers among member states,
- Establish a common external tariff structure and commercial policy towards nonmembers
- Eliminate obstacles restricting factor movements<sup>52</sup>

Having achieved some success with respect to ECOWAS Trade Liberalization Scheme (ETLS) ; and the customs union phase in our integration process with the putting in place of common external tariff (CET) with 5-bands last year, the Community is on its way to a Common Market by allowing the inter- regional flow of factors of production. In line with Articles 3.2 (f) and 3.2 (i) of the revised ECOWAS Treaty therefore, a key and immediate concern is to develop a regional investment (one of the factors of production) code, compliant with West African macroeconomic convergence criteria that will make

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<sup>50</sup> Article 4 of ECOWAS Treaty, 1975

<sup>51</sup> Ibid Article 3 (2) (d)

<sup>52</sup> Ibid Article 3

the countries in the community to improve their macroeconomic stability as well as to enhance credibility of the regional economic policy in a manner that will make the region a good candidate as investment site. This will not only strengthen the development of the private sector as well as lead to long term economic growth of the Community, but also will reinforce the existing regional economic integration towards the goals of the Founding Fathers of ECOWAS.

Building on this commitment to better policies and regulations for investment, ECOWAS Member States decided to use the impetus of preparations towards the Economic Partnership Agreements (EPAs) to harmonize their regulations on investment and work for the establishment of a common regional investment rule and code, to establish the common investment market. The Road Map to EPAs negotiations between West Africa and the European Union (EU) was adopted on August 4, 2004 in Accra, Ghana.

## CHAPTER III

### 3:0 HISTORY OF EAST AFRICA COMMUNITY (EAC)

The Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania have enjoyed close historical, commercial, industrial, cultural and other ties for many years; and formal economic and social integration in the East African Region commenced with, among other things, the construction of the Kenya Uganda Railway 1897 - 1901, the establishment of the Customs Collection Centre 1900, the East African Currency Board 1905, the Postal Union 1905, the Court of Appeal for Eastern Africa 1909, the Customs Union 1919, the East African Governors Conference 1926, the East African Income Tax Board 1940 and the Joint Economic Council 1940<sup>53</sup>;

The provision was made by the East Africa (High Commission) Orders in Council 1947 - 1961, the East African Common Services Organization Agreements 1961 - 1966, and the Treaty for East African Cooperation 1967 for the establishment respectively, of the East Africa High Commission, the East African Common Services Organization and the East African Community as successive joint organizations of the said countries to control and administer certain matters of common interest and to regulate the commercial and industrial relations and transactions between the said countries and by means of a central legislature to enact on behalf of the said countries laws relevant to the purposes of the said joint organizations. In 1977 the Treaty for East African Co-operation establishing the East African Community was officially dissolved. The main reasons were lack of strong political will, lack of strong participation of the private sector and civil society in the co-operation activities,

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<sup>53</sup> Preamble of East African Community Treaty, 1999

the continued disproportionate sharing of benefits of the Community among the Partner States due to their differences in their levels of development and lack of adequate policies to address this situation.<sup>54</sup> Upon the dissolution of the East African Community, the country members signed on the 14th day of May, 1984, at Arusha, in Tanzania, the East African Community Mediation Agreement 1984, hereinafter referred to as "the Mediation Agreement" for the division of the assets and liabilities of the former East African Community<sup>55</sup>;

According to the Mediation Agreement<sup>56</sup> the said countries agreed to explore and identify areas for future co-operation and to make arrangements for such cooperation. And on the 30th day of November, 1993, provision was made by the Agreement for the Establishment of a Permanent Tripartite Commission for Co-operation between the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania. This Tripartite Commission was responsible for the co-ordination of economic, social, cultural, security and political issues among the said countries and a Declaration was also made by the Heads of State of Kenya, Uganda and Tanzania for closer East African Cooperation;

On the 26th day of November, 1994, provision was made by the Protocol for the Establishment of a Secretariat of the Permanent Tripartite Commission for Co-operation Between the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania. And on the 29th day of April 1997 at Arusha in Tanzania, the Heads of State of the said countries after reviewing the progress made by the Tripartite Commission, in

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<sup>54</sup> Preamble of East African Community Treaty, 1999

<sup>55</sup> Department of Political Federation EAC Secretariat (2007), *Report Of The Committee On Fast Tracking East African Federation*, p6

<sup>56</sup> Article 14.02 of the Mediation Agreement, 1984

the development of closer co-operation between the said countries in the fiscal, monetary, immigration, infra structure and service fields and after approving the East African Co-operation Development Strategy for the period 1997 - 2000, directed the Tripartite Commission to embark on negotiations for the upgrading of the Agreement establishing the Tripartite Commission into a Treaty<sup>57</sup>; The former president of Tanzania emphasises the objective of establishing the East Africa community by declaring that:-

*"Everything that we have done up to now has just been the preparation, the work for integration has just begun, and the important goals of the EAC are to improve our economies, quality of life and relations between the three countries....."*<sup>58</sup>

The United Nations Secretary-General Kofi Annan welcomed the creation of the new association, calling the newly established regional body as a "building block" for a future African Economic Community. He said that:-

*"The United Nations supports the strong commitment of African countries to multilateralism and initiatives such as the EAC (East African Community) that strengthen Africa's capacity to meet the challenges of globalization,"*<sup>59</sup>

Presidents Moi, Museveni and Mkapa had signed the Treaty for the Establishment of the East African Community in Arusha on 30 November 1999. The Treaty entered into force on 7 July 2000 following the conclusion of the process of its ratification and deposit of the Instruments of Ratification with the Secretary General by all the three Partner States. The EAC was inaugurated in January 2001.<sup>60</sup> The partners sought to strengthen their economic, social, cultural, political, technological and other ties for their fast balanced

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<sup>57</sup> Preamble of East African Community Treaty, 1999

<sup>58</sup> The Guardian of October 22, 2009

<sup>59</sup> Daily news, Nov. 17, 2009

<sup>60</sup> www. East Africa community.int

and sustainable development through their East African Community. They that have planned the EAC would pass through four stages: Customs Union, a Common Market, a Monetary Union and ultimately a Political Federation<sup>61</sup>;

The country members realized the need for creating an enabling environment to attract investments and allow the private sector and civil society to play a leading role in the socio-economic development activities. They also appreciate necessity for sound macro-economic and sectoral policies and their efficient management while taking cognizance of the developments in the world economy as contained in the Marrakesh Agreement Establishing the World Trade Organization, 1995 referred to “as the WTO Agreement” and as may be decided by the Partner States, the development of technological capacity for improved productivity;

### **3:0:1 Characteristics of the East African Region**

The East African region (Tanzania, Kenya Rwanda, Burundi and Uganda) covers an area of 1.82 thousand square kilometers.<sup>62</sup> During the 2007, the EAC’s total land for agriculture was estimated at 124,718 thousand hectares of which Burundi, Tanzania, Uganda, Kenya and Rwanda accounted for 1,135, 48,100, 16,275, 56,914 and 2,294 thousand hectares respectively. Under forest and tree resources, Rwanda has the highest plantation forest coverage of 5.3 thousand square kilometers, followed by Burundi (1.6 thousand Sq Km), Tanzania (1.3 thousand Sq Km), Kenya (1.3 thousand Sq Km) and Uganda (0.3 thousand Sq Km).

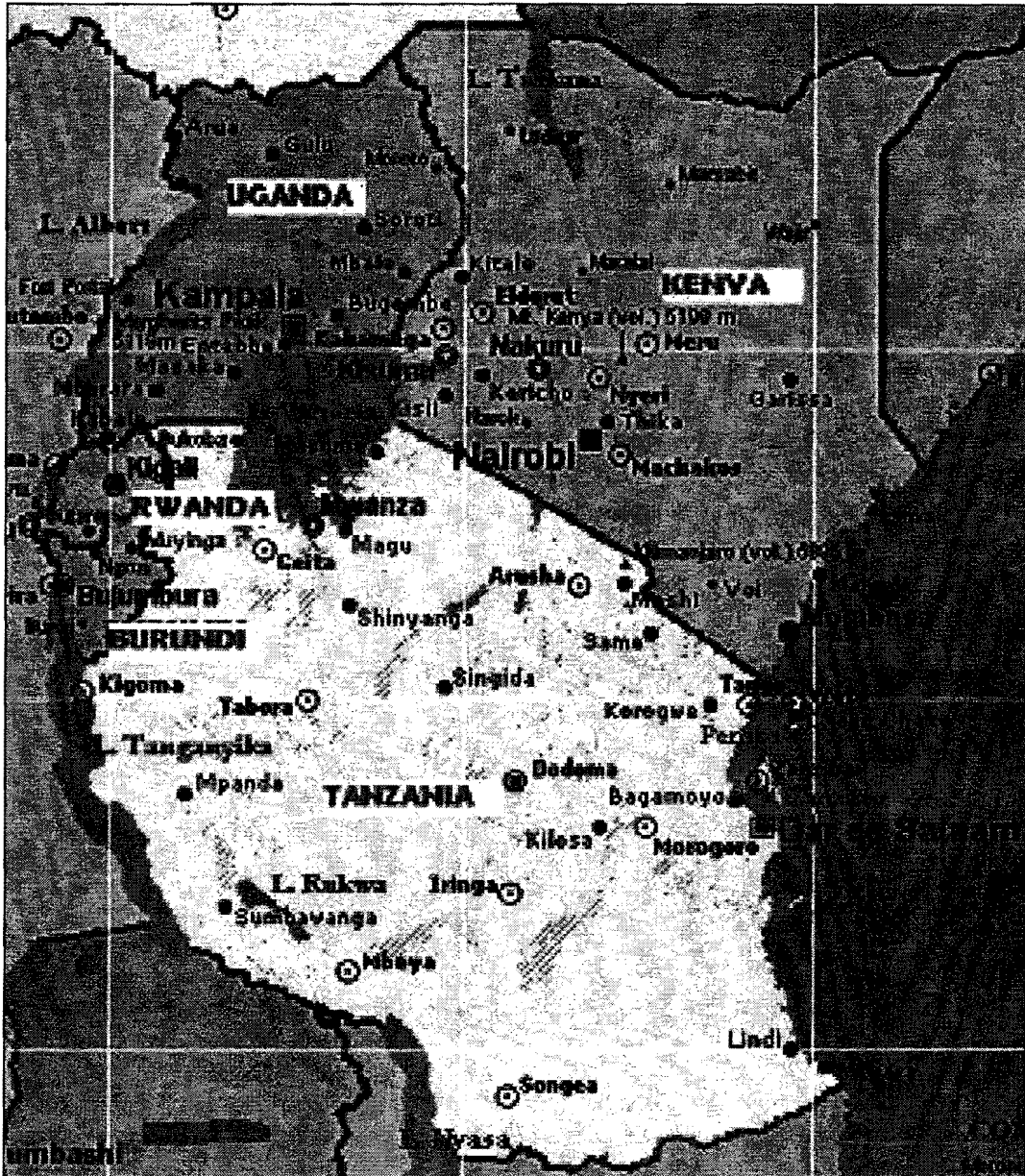
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<sup>61</sup> Article 5 (2) of East African community Treaty, 1999

<sup>62</sup> East African community facts & Figures – 2008 Arusha, Tanzania, p. 2



MAP OF EAST AFRICA COMMON MARKET'S COUNTRY MEMBERS



On the other hand the United Republic of Tanzania has the largest coverage under natural forest cover of 352.6 thousand square kilometers and Burundi has the least of 1.0 thousand square kilometers as shown in table 1.1c<sup>63</sup>.

<sup>63</sup> East African community facts & Figures – 2008 Arusha, Tanzania, p. 2

Here under is the table which show the total surface area of east Africa community including water body as well as excluding water bodies

**Table 1: Total surface area, '000 square kilometer, 2007**

States/Years	Including water bodies	Excluding water bodies
<b>Burundi</b>	27.8	<b>25.0</b>
<b>Tanzania</b>	939.3	<b>886.3</b>
<b>Uganda</b>	241.6	<b>199.9</b>
<b>Kenya</b>	582	<b>580.7</b>
<b>Rwanda</b>	26.3	<b>24.2</b>
<b>EAST AFRICA</b>	1,817.7	<b>1,716.0</b>

*Source: EAC Partner States*

## Population

A total combined population of east Africa community till midyear population was estimated at 122.1 million by June 2007 with average annual growth rate of 3 percent<sup>64</sup>.

**Table 2: Mid Year Population, million persons**

State/years	2000	2001	2002	2003	2004	2005	2006	2007
Burundi	6.7	6.8	7.0	7.4	8.0	8.0	8.0	8.0
Tanzania	32.8	33.9	34.4	35.3	36.3	37.3	38.0	39.4
Uganda	22.6	23.3	24.1	24.9	25.7	26.5	27.4	28.2
Kenya	30.4	31.3	32.2	33.2	34.2	35.1	36.1	37.2
Rwanda	-	-	8.1	8.3	8.6	8.8	9.1	9.3
<b>EAST AFRICA</b>	-	-	<b>105.8</b>	<b>108.9</b>	<b>112.1</b>	<b>115.7</b>	<b>118.6</b>	<b>122.1</b>

*Source: EAC Partner States*

<sup>64</sup> East African community facts & Figures – 2008 Arusha, Tanzania, p 6

## **Language & Opportunities**

In the East Africa region there are a variety of official languages; Burundi, Tanzania and Kenya have two official languages while Uganda and Rwanda have one and three respectively. These include English, Swahili, French, Kirundi and Kinyarwanda.<sup>65</sup> East Africa has vast potential in mineral, water, energy, and forestry and wildlife resources. It also has agricultural, livestock, industry and tourism development. Its people have a common history.

## **Economic Growth**

For the year 2006, real GDP growth was above 5 percent in all countries. The growth rates of Rwanda and Burundi have not been consistent, though high in 2006. The problem facing the two countries is high reliance on the agricultural sector that is subject to climatic fluctuations.<sup>66</sup> Due to the needs of major development in East Africa; Kenya, Uganda and Tanzania decided to join hands and form a trade bloc called East African Community (EAC) in 2001. The new trade bloc aims to work towards economic policies that are pro-market, pro-private sector and pro-liberalization. By pooling in their resources and promoting free trade within the region, the East African Community aims to emerge as a leading trade entity in East Africa. In a simple ceremony held in Arusha, Tanzania, Kenya's former President Daniel Arap Moi, Uganda's Yoweri Museveni and Tanzania's Benjamin Mkapa, formalized the EAC treaty to pave way for an economic and, ultimately, political union of the three countries.

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<sup>65</sup> East African community facts & Figures – 2008 Arusha, Tanzania, p 6

<sup>66</sup> The East African Community Trade Report 2007, p 7

### **3:1 ESTABLISHMENT OF EAST AFRICA COMMON MARKET**

The Treaty of the Establishment of the East African Community envisages integration among the countries of East Africa to progress from a Customs Union to a Common Market, then a Monetary Union and ultimately to a Political Federation.<sup>67</sup> The East African Customs Union Protocol was signed in March 2004 and came into effect in January 2005. The main elements of the Protocol are: removal of internal tariffs and all non-tariff barriers on intra-EAC trade; introduction of common external tariffs (CET)<sup>68</sup>; and, agreement on a list of products classified as sensitive and therefore requiring additional protection. However, non-tariff barriers to trade remain a major challenge. National Committees have been established through a directive of the Council Ministers and have been inaugurated in all the Partner States to monitor the removal of NTBs. The implementation of CET is going well. The initial fear of revenue losses from the implementation of the Customs Union failed to materialize as revenues have increased in all the countries. The problem of country specific exemptions that dogged the Community for a while was eventually dealt with by Council through duty remissions. In accordance with Article 5 of the Treaty, the Council in April 2006 directed the Secretariat to initiate, conclude negotiations and commence implementation of the Common Market by 2010 when the Customs Union is fully operational.<sup>69</sup>

Having achieved the level of a Customs Union, the next step in the integration process envisaged in the EAC, is the creation of a Common Market whose primary objective is a single internal market. Due to that the East Africa common market has been established

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<sup>67</sup> Article 5 (2) of The East African Community Treaty, 1999

<sup>68</sup> The East African Customs Union Protocol, 2004

<sup>69</sup> The East African Community Trade Report 2008, p 6

under Article 76 (1) East Africa community treaty provided the concept of a Common Market in East Africa, that provision states that:-

*“There shall be established a Common Market among the Partner States. Within the Common Market, and subject to the Protocol provided for in paragraph 4 of this Article, there shall be free movement of labour, goods, services, capital, and the right of establishment”*

Also under Common Market Protocol has emphasis the establishment of common market by saying that:-

*“In order to promote the objectives of the Community provided for under Article 5 of the Treaty and in accordance with the provisions of this Protocol, the Partner States hereby establish a common market as an integral part of the Community. The Common Market established... shall be called the East African Community Common Market....”<sup>70</sup>*



**The region’s leaders take another step towards building a common market**

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<sup>70</sup> Article 2 (1, 2) of Common Market Protocol, 2009

Signing of the Common Market Protocol by Presidents Jakaya Kikwete, Presidents Yoweri Museveni, Mwai Kibaki, Paul Kagame, and Pierre Nkurunziza in Arusha on 19th November 2009 was expected to write a new history of the EAC that would see the beginning of free movement of persons, capital, labour, goods and services within the member countries. Also to be enjoyed under the Common Market, the Common Market Protocol provides the right of establishment, the right of residence, and free movement of capital across the country members. The Common Market is the second stage in the integration of the 122-million people economic bloc. The signing of the protocol, come barely five years after the launch of the Customs Union, the first stage in the integration process. Under the Common Market, which was expected to come into force 2010, East African citizens have the freedom to enter the territory of another partner state without a visa. Except Tanzania, all the other East African countries have agreed to use national identity cards as travel documents. However, free movement of persons is subject to limitations imposed by the host partner state on grounds of public policy, public security and public health<sup>71</sup>.

A common market is an area without internal frontiers in which free movement of goods, persons, labour, services and capital<sup>72</sup> is ensured. The Common Market Protocol has incorporated the key pillars of such a market including the four freedoms. For the Partner States, and their nationals, the opportunity to access a single, community-wide market is one of the primary reasons for membership in a common market. Common Market Protocol are therefore designed to create within the Partner States a single market, free of all internal restrictions on trade; and basic principle of free competition. The free play of

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<sup>71</sup> Africa news online: *East Africa sign Common Market Protocol*, 19th November 2009

<sup>72</sup> Article 1 of East Africa Community Treaty, 1999

market forces within the market is expected to increase economic efficiency, widen consumer choice, and enhance the Community's competitiveness in world markets. On ensuring that the establishments of common market is for the benefit of all east Africa countries, the Ugandan Minister for East African Community Affairs Eriya Kategaya, who opened the meeting, said that:-

*"The community is at a stage where cooperation is upgraded to a level of a Common Market with the objective of widening and deepening cooperation in the region, East Africans will enjoy free movement of goods, of persons, of labour, capital, services and a right of establishment and residence under the Common Market," the emphasized that "in today's world there is no country that can go alone and succeed, as a result our economies are weak when they act as individual's, when the EAC is in place with a population of 120 million people, it will attract investments and the people will enjoy the multiplier effects that will come with it."*<sup>73</sup>

In accordance with the provisions of Articles 76 of the Treaty<sup>74</sup>, and Protocol of East African Community Common Market<sup>75</sup> the common market aim to cover the following areas which are the free movement of good, persons, labour and capital; the right of establishment; the right of residence and the free movement of services

### **3:1:1 Principles of the East Africa Common Market**

In order for the Common Market to be implemented in smooth way and for the benefit of all country members, Articles 6 and 7 of the Treaty<sup>76</sup> and also under Article 3 of Common Market Protocol, 2009 have provides some fundamental and operational

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<sup>73</sup> GAZETI

<sup>74</sup> Article 76 of East Africa Community Treaty,1999

<sup>75</sup> Article 2(4) of East African Community Common Market Protocol,2009

<sup>76</sup> East Africa Community Treaty,1999

principles of the Community that guides such implementation of the protocol of common market; such principles are:-

- Non-discrimination,
- Nationals treatment,
- Transparency, and
- Share information for the implementation of a Protocol

### **3:2 PURPOSES & OBLIGATION OF COUNTRY MEMBERS IN EAC**

The main elements of Common Market are the “four freedoms” involving free movement of goods, labour, services and capital. The freedoms to be granted to East Africans under the Protocol comprise the right to freely leave, or enter and reside in a Partner State for the purpose of work, or establishment, or provision of services. The overall purposes or objectives of the Common Market are to widen and deepen cooperation among the Partner States in the economic and social fields for the benefit of the Partner States.

#### **Purposes of Country Members**

The specific objectives of the Common Market are mentioned under common market protocol<sup>77</sup> as followed:-

- To accelerate economic growth and development of the Partner States through the attainment of the free movement of goods, persons and labour, the rights of establishment and residence and the free movement of services and capital;

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<sup>77</sup>Article 4 of Common Market Protocol,2009



- To strengthen, coordinate and regulate the economic and trade relations among the Partner States in order to promote accelerated, harmonious and balanced development within the Community;
- To sustain the expansion and integration of economic activities within the Community, the benefit of which shall be equitably distributed among the Partner States;
- To promote common understanding and cooperation among the nationals of the Partner States for their economic and social development; and enhance research and technological advancement to accelerate economic and social development

### **Obligations of Country Members**

In order to realize and attain the objectives provided for in this Article<sup>78</sup>, the Partner States have some obligations; the country members have the duties to co-operate in, integrate and harmonize their policies in areas provided for in the Common Market Protocol and in such other areas as the Council may determine in order to achieve the objectives of the Common Market. Article 104 of the Treaty<sup>79</sup> insists the country members to adopt measures to achieve the purposes or objectives of the common market such as free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the Community; and for this purposes, the Partner States agree to conclude a Protocol on the Free Movement of Persons, Labour, Services and Right of Establishment and Residence at a time to be

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<sup>78</sup>East Africa Community Treaty,1999

<sup>79</sup> Ibid

determined by the Council. The Article goes further to articulate the means by which the Partner States are to achieve those objectives by:

- (a) Ease border crossing by citizens of the Partner States;
- (b) Maintain common standard travel documents for their citizens;
- (c) Effect reciprocal opening of border post s and keep the post s opened and manned for twenty four hours;
- (d) Maintain common employment policies;
- (e) Harmonize their labour policies, programmes and legislations including those on occupational health and safety;
- (f) Establish a regional centre for productivity and employment promotion and exchange information on the availability of employment;
- (g) Make their training facilities available to persons from other Partner States; and
- (h) Enhance the activities of the employer s' and worker s' organizations with a view to strengthening them.<sup>80</sup>

And also for purposes of facilitating the implementation of the Common Market the Partner States agree to:

- Co-ordinate and harmonize their economic, financial and monetary policies;
- Co-ordinate their trade relations to govern international trade and trade relations between the Community and third parties;
- Undertake to evolve co-ordinate, harmonized and complementary transport policies and develop their transport infrastructure modes;

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<sup>80</sup> Article 104 (3) of East Africa Community Treaty, 1999

- Undertake to ensure sound environmental and natural resources management principles;
- Cooperate to ensure the availability of relevant, timely and reliable statistical data;
- Undertake to promote research and technological development;
- Co-operate in the promotion and protection of intellectual property rights;
- promote sustainable industrial development; and
- Undertake to sustainably develop and promote agriculture and ensure food security.

## CHAPTER IV

### 4:0 EAST AFRICA COMMON MARKET AND ITS CHALLENGES TO TANZANIA

Tanzania is a founding member of East Africa Common Market in East Africa. Tanzania believes that opportunity of doing business or trade which existing around East Africa countries is better to be used effectively than to follow the opportunities which are very far. It is very important to for the East Africa countries to improve the capacity of small and medium entrepreneurs who don't have enough capital to invest in the East Africa market rather than waste time and facilities to achieve the market of Europe, Asia and America.

In encouraging the Tanzania citizens and businessman President of Tanzania Mr. Jakaya Mrisho Kikwete said that: "I believe that the introduction of the common market will benefit us even more. It is time we started making preparations and preparing our strategies. I believe we are able. If we have reached this stage, there is no doubt we can go all the way."<sup>81</sup> Therefore the creation of East Africa Common Market is very important not only for the individual person but also for the development and growth of the Tanzania economic. However some politicians, economists, academicians and the general public expressed mixed feelings on the agreement reached by the East African member states on the Common Market Protocol. The Civic United Front (CUF) national chairman Prof. Ibrahim Lipumba emphasized that "We [Tanzania] are not yet prepared for the common market, which means free movement in capital, labour and the right to establish businesses. Without land you cannot establish a farm business and due to the

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<sup>81</sup> The Citizen of 8<sup>th</sup> Aug,2009

fact that Kenya has land problems its people will come to buy our land, and also the agreement would put at risk even the few jobs that Tanzanians have as Kenyans and Ugandans, who are better English speakers, would grab all the plum jobs”<sup>82</sup>.

While Prof. Issa Shivji has said that, “the country should first look into local production before signing the East African Common Market. According to him, the country would never develop if the local market was killed. And since the common market has been fuelled by political interests, it is better for our governments first to form a political federation, and then introduce a common market”<sup>83</sup>.

Also members of Parliament of Tanzania who were attending a seminar regarding the East African Union Common Market Protocol, organized by the Ministry of East African Co-operation, ahead of the tabling of the protocol, majority of them flatly rejected to support saying they needed more time to study it, and they emphasized that Kenya was not a good neighbor because Kenya was against Tanzania selling its ivory at the CITES meeting in Doha, so there was no need to take them as a good partner or neighbor. However, the Prime Minister of Tanzania, Mr. Mizengo Pinda urged the MPs to support the protocol. He agreed that Kenyans had vested interest in the EAC but promised that the government would be careful, particularly in the areas of tourism in which Kenya has keen interest.<sup>84</sup> Even though there are some doubt among Tanzanian on establishment of East Africa common market, but Tanzania as the country cannot avoid to co-operate with another countries simply because its economic growth is not in good condition or because

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<sup>82</sup> The Guardian 3<sup>RD</sup> NOV,2009

<sup>83</sup> The Guardian 3<sup>RD</sup> NOV,2009

<sup>84</sup> Daily News 18<sup>th</sup> April,2010

the citizen of other countries will come and take away some jobs. Tanzanian should take it as challenges in order to improve their economy and standard of living.

#### **4:0:1 Targets of Tanzania in East Africa Common Market**

The need to make relationship in trade with East Africa countries it comes from the truth that Tanzania is one among the developing countries and in order to make rapid development, those developing countries must join together in different economic sectors in order face the challenges of globalization and trade liberalization. Therefore Tanzania has set out several targets;

- To have competent economy which allow to give the opportunity of developments
- To have the common market will lead to have good and efficient investment
- To have good control of natural resource like lake victoria
- To advertice East Africa as one among the best place for investment
- The free movement of people, goods and labour in East Africa countries and without discrimination will lead the rapid development and standard of living
- To maintain democracy, rule of law and to maintain peace and tranquility and good relation among the countries member;
- To have one strong voice in international matter
- To improve secutity in whole area of East Africa

The East African Community as an organization is primarily concerned with economic issues. As it progresses towards a Common Market, there is need to ensure that the essential factors of production, are able to circulate freely within the Community in the

same way as goods. This fundamental principle, enshrined in the common market Protocol seeks to establish, in the interest of economic efficiency, “an internal market,” characterized by the abolition of obstacles to the free movement of goods, persons, labour, services and capital between Partner States.

#### **4:1 FREE MOVEMENT OF GOODS**

This is one among the areas where country members agreed with, the free movement of goods means the goods shall be free to move from one country member to another subject to the customs law which agreed by country members. The intention of common market in this area of free movement of goods is to remove all unnecessary obstacles which are non – tariff. No prohibition or restriction other than duties taxes or other charges whether made effective through quotas, import or export incense or other measures shall be maintain by any country members on the importation of any goods of territory of any other country member or on the exportation or sale for export of any goods destined for the territory of any other country member. And also all types of discrimination of goods must be avoided. All the goods from country members shall be treated according the principle of national treatment.

Article 6 of Common Market Protocol<sup>85</sup> provides that, the free movement of goods between the Partner States shall be governed by the Customs Law of the Community as specified in Article 39 of the Protocol on the Establishment of the East African Community Customs Union., and in addition to the Customs Law of the Community, the free movement of goods shall be governed by:

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<sup>85</sup> 2009

- (a) The East African Community Protocol on Standardizations, Quality Assurance, Metrology and Testing;
- (b) The East African Community Standardization, Quality Assurance, Metrology and Testing Act, 2006;
- (c) The provisions of this Protocol;
- (d) Protocols that may be concluded in the areas of cooperation on sanitary and phyto-sanitary and technical barriers to trade.

This means that the goods from one country member may imported to other country member if that goods/products meet all requirements, no discrimination and all the goods either local or foreign will treated the same in the matter of law, requirements, standards and charges. Tanzania has made several laws for the purpose making good enviroment of trade in East Africa territory and also to make sure that the citizen of East Africa benefit on their organization which is East Africa Common Market. Some of those laws are:-

- East African Community Customs Management Act, 2004
- East African Community Competition Law
- The Standards, Quality Assurance, Metrology and Testing Act, 2006

#### **4:1:1 Level of Trade between Tanzania and Country Members**

Since the country members made laws to harmonize the common market in East Africa territory, the exportation of goods from Tanzania to Kenya, Uganda, Rwanda and Burundi has increased. Some of those goods are coffee, tea, mate and spices, cotton, fish & crustacean, mollusc and other aquatic invertebrate, paper and paperboard; art of paper



pulp, paper/paperboard, sets; worn clothing, plastics, beverages, spirits and vinegar, wood and articles of wood; wood charcoal, mineral fuels, oils & product of their distillation.<sup>86</sup> Tanzania's trade balance with Kenya improved to a surplus of US\$ 19.8 million in 2007 compared to a deficit of US\$ 111.5 million in 2006. This was largely due to increased exports of tea, wood, petroleum products, textile articles and maize coupled with a decline in commodity imports particularly oil. However, there was a marginal decline in trade surplus with Uganda from US\$ 39.6 million in 2006 to US\$ 38.3 million in 2007.

### **Imports**

The total imports from EAC Partner States declined by 50.1 percent to US\$ 110.1 million in 2007 compared to US\$ 220.6 million in 2006. The decrease was more pronounced on imports from Kenya, which decreased to US\$ 103.6 million in 2007 compared to US\$ 215.6 million recorded in the previous year. The decline could be attributed to reduced imports of petroleum products. On the other hand, Tanzania's imports from Uganda increased marginally from US\$ 5.4 million in 2006 to US\$ 6.5 million in 2007 with cement being the main imported product.

### **Domestic Exports**

Tanzania's domestic exports to EAC Partner States increased by 6.6 percent to US\$ 127.2 million in 2007 compared to US\$ 119.4 million in 2006. The increase was largely attributed to the surge in exports to Kenya, as the level of exports to Uganda recorded a marginal fall during the period under review. Overall, Tanzania's exports to Kenya rose by 8.2 percent in 2007 from US\$ 106.9 registered in 2006. The major exports to Kenya

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<sup>86</sup> East Africa community Trade Report, 2008 Pg 130

included tea, wood and petroleum products as well as fish and fish products. However, it is worth noting that tea exports to Kenya were mostly destined for the Mombasa Auction, while fish and fish products were en route to the European market. Exports to Uganda declined marginally to US\$ 20.3 million in 2007 from US\$ 20.6 million in 2006, with the major items being palm oil, rice, hot rolled iron/steel products, plastic items, sacks and bags.

### Re-Exports

In 2007, Tanzania's re-exports to EAC Partner States increased by 50.7 percent to US\$ 42.2 million with Kenya accounting for the largest share. In 2007, re-exports to Kenya increased to US\$ 16.5 million from US\$ 4.9 million in 2006. Among the items re-exported to Kenya included machinery and spares thereof, vehicles and electrical equipment. Likewise, there was an increase in re-exports to Uganda by 11.4 percent to US\$ 25.7 million in 2007 with the main products being cereals (mainly wheat), electrical equipments and vehicles.

**Table 3: Tanzania's Intra-EAC Exports, 2004 – 2007 (US\$ million)<sup>87</sup>**

Intra-export flows	2004	2005	2006	2007
Intra-EAC Domestic Exports	96.3	101.3	119.4	125.2
Intra-EAC Re-exports	49.33	40.69	28.02	42.2
Total Intra-EAC Exports	<b>145.67</b>	<b>141.97</b>	<b>147.41</b>	<b>169.5</b>
Percent Share of Intra-EAC Re-exports	33.87	28.66	19.01	25.2

*Source: TRA and NBS*

<sup>87</sup> East Africa Community Trade Report, 2008 Pg 40

However even though the tables above show that the trade of Tanzania in East Africa increase especial in export and decrease in import, but still there are some difficulties which hindering the trade of Tanzania. Tanzania have many entrepreneurs and big industries which produces different items which are marketable in regional of East Africa, but the exportation of those items are very slow due to those difficulties, some of them are lack of aggressiveness, daring and low capacity to deliver, security, Infrastructures (road and railway) and telecommunication.

- *Lack of aggressiveness, daring and low capacity to deliver.*

Many entrepreneurs in Tanzania have low capacity and daring of doing international trade. They are always interested to do local trade instead of international trade. This is the big challenge to the government of Tanzania and Tanzania Chamber of Commerce Industries and Agriculture (TCCIA)<sup>88</sup> to empower and educates the business men of all level to have the daring to do international trade. In many market in Tanzania there are a lot of items from Kenya and Uganda but the item from Tanzania is very low in the market of Kenya and Uganda, Rwanda and Burundi, this is because the businessmen or entrepreneurs of Tanzania are reluctant or they have not daring of doing cross border business in those countries.

- *Security*

The security is another area which hinders the business between Tanzania and Rwanda as well as Burundi. In the borders of these two countries (Rwanda and Burundi) are not safe, there are many events of robbery and gun fighting. This situation hinders the

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<sup>88</sup>The Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA) is a government agency of Tanzania with a mandate to promote business and industry, and to facilitate an interface between the private sector and public sector in the country. TCCIA was founded in 1988 and its head offices are in Dar es Salaam. It has played in important role in the privatization and liberalization of Tanzania's economy.

businessmen from Tanzania to export their goods in these countries, thus why the business between Tanzania and these two countries are no run well.

- ***Infrastructures (road and railway)***

The infrastructure is the big problem in the area of East Africa Community. Many roads in east Africa are seasonal or other under construction. Also there is no net work of railway or roads which connects all country members. Due to this reasons the transportation of goods from one county to another by railway or roads as means of communication does not run in efficiency. However the Partner States under take to evolve coordinated, harmonized and complementary transport and communications policies; improve and expand the existing transport and communication links; and establish new ones as a means of furthering the physical cohesion of the Partner States, so a s to facilitate and promote the movement of traffic within the Community.<sup>89</sup> Further the Partner States agree to establish and maintain co-ordinate railway services that would efficiently connect the Partner States within the Community and where necessary, to construct additional railway connections<sup>90</sup>

- ***Telecommunications***

The communication like telephone, post and internet is also another problem in the East Africa territory. The communication of telephone in east Africa is very expensive and not coverage in all area of East Africa territory. Some area where there are big agricultural activities but there is no telephone net work and this for some extent hindering the efforts of increasing business in East Africa territory. The internet communication also its coverage is not wider, it covered only in the big cities like Dar es Salaam, Nairobi, Kigali

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<sup>89</sup> Article 89 of East Africa Community Treaty,1999

<sup>90</sup>Ibid. Article 91

and Kampala but in the many areas there are no internet services. This is the problem, because now a day internet service takes second rank after mobile phone in the communication. However in 2009 the first undersea fibre optic cable went live in five African countries simultaneously, marking the beginning of an era of faster and cheaper internet connections. A privately-funded consortium, Seacom, commissioned its TSh/=59 billion (\$760m) undersea cable in Kenya, Tanzania, Mozambique, Uganda and South Africa with Rwanda set to be linked up. This effectively means that Tanzania and Kenya form part of the global information superhighway and will be able to compete on a more level platform with more established economies<sup>91</sup>

#### **4:2 THE RIGHT OF ESTABLISHMENT**

The Article 13 of Common Market Protocol,<sup>92</sup> the Partner States guarantee the right of establishment of nationals of the other Partner States within their territories, for this purposes the Partner States shall ensure non discrimination of the nationals of the other Partner States, based on their nationalities. This means that the firm or company incorporated in one country member is allowed to open office or place of business in other country member without any national discrimination. This will help the increasing of business in the east Africa territory and also it improve the availability of service in the society for example now in the bank from Kenya that is the Kenya Commercial Bank Tanzania Ltd (KCB) and Uganda bank open their branches in Tanzania, this help the financial activity to be easily available.

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<sup>91</sup> Daily Nation, 23 July 2009

<sup>92</sup> 2009

In addition the Regulation 12<sup>93</sup> emphasis that, a Partner State shall ensure that the nationals of other Partner States who enjoy the right of establishment in the territory of the Partner State have the right to join professional or trade organizations under the same conditions and with the same rights and obligations as the nationals of the Partner State<sup>94</sup>. And the Partner States shall ensure that all restrictions on the right of establishment based on the nationality of companies, firms and self employed persons of the Partner States are removed, and shall not introduce any new restrictions on the right of establishment in their territories, save as otherwise provided in this Protocol. Therefore unless this protocol singled individual persons, companies or firms are allowed to establish in accordance with the national laws of a Partner State and having their registered office, central administration or principal place of business and which undertake substantial economic activities in the Partner State shall, for purposes of establishment, be accorded non discriminatory treatment in other Partner States. This open door for foreign company to invest in Tanzania in any sectors or opportunities where by foreigners are interested for investments, such opportunities like agricultural, livestock, education, health, natural resource, mining, manufacturing, economic infrastructure, petroleum and gas, tourism, road, railway transport, sea and lake transport, airport, telecommunications, banking and insurance services<sup>95</sup>

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<sup>93</sup>Regulation 12 (5,6) of The East African Community Common Market (Right of Establishment) Regulations,2010

<sup>94</sup> Ibid

<sup>95</sup> United Republic of Tanzania (2002) *Tanzania investment guide 2002 and beyond: "investment opportunity"*, dar es salaam pg 20 - 38

## **Investments in Tanzania**

Tanzania is an emerging economy with high growth potential. Whilst the economy is relatively diversified, a number of opportunities as shown above remain untapped in many sectors. In an attempt to make Tanzania the preferred destination for foreign direct investment [FDI], continuous improvements towards the creation of an enabling environment have been made. In 1997 Tanzania Investment Centre (TIC) was established by the Tanzania Investment Act No. 26 of 1997 to be “the primary agency of Government to coordinate, encourage, promote and facilitate investment in Tanzania and to advise the Government on investment related matters”. All Government departments and agencies are required by law to cooperate fully with TIC in facilitating investors. TIC is the focal point for investors. As a primary agency of the Government in all investment matters, TIC is charged with the following functions: -

- Assist in establishment of enterprises e.g. incorporation and registration of enterprises.
- Obtain necessary licenses, work permits, visas, approvals, facilities or services;
- Sort out any administrative barriers confronting both local and foreign investments;
- Promote both foreign and local investment activities;
- Secure investment sites and assist investors to establish EPZ projects;
- Grant Certificates of Incentives, investment guarantees and register technology agreements for all investments.

## **Industrial Investment**

The cross-border investment within the EAC region is represented by the number of projects from the Partner States that are approved by each Partner State. In Kenya, there were no reported approved projects from EAC Partner States in 2006 and 2007. However, the number of projects from the rest of the world increased from 70 in 2006 to 73 projects in 2007, attracting an average investment value of US \$ 2.0 million per project. In Tanzania, the total number of projects approved slightly rose from 679 in 2006 to 701 in 2007 giving rise to an average investment value per project of about US \$ 8.6 million and US \$ 8.1 million in 2006 and 2007 respectively. Meanwhile, Uganda recorded a reduction in the number of approved projects from 279 in 2006 to 259 in 2007 although its average investment value per project rose from US \$ 3.7 million in 2006 to US \$ 4.5 million in 2007.

For Rwanda, the number of investment projects increased to 44 in 2007 from 31 projects registered in 2006. The ratio of investment portfolio per project stood at US \$ 3.8 million in 2006 and US \$ 5.2 in 2007. Overall, Tanzania had more number of approved projects and a higher value of investment per project compared to other EAC Partner States<sup>96</sup>.

## **Individual Country Value of Planned Investment**

For Kenya, the value of planned investment reduced drastically from US\$ 1,115.11 million in 2006 to US\$ 213.9 million in 2007. Conversely, Uganda and Rwanda recorded significant increases in investment inflows valued at US \$ 230.5 million and US \$ 1,189.0 million in 2007 respectively. For Tanzania, there was a slight reduction of 2.8

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<sup>96</sup> East Africa Trade Report, 2008 pg 70



have 44 millions of hectares which is best for agriculture but till now the area which is used or cultivated is only 10.8 which is equivalent of 24% only. In irrigation sector Tanzania have 29.4 millions hectares which is useful for irrigation, however the area which used for irrigation till now is only 290,000 hectares, it is equivalent of 0.1

In spite of all the effort, Tanzania's agriculture has not performed well. For example, Table 4 below shows that between 1976/77 and 2003/4 i.e. duration of 25 years, there was a major decrease in the volume of production of most major commodities. The serious decline in the production of these crops took place within a duration in which the population more than doubled. Thus, if measured in per capita terms the drop is much greater<sup>99</sup>.

**Table 4: Tanzania's agriculture performed from 1976/77 to 2007/8**

Products (in tons)	1976/77	2003/4	2006/7	2007/8
Cotton	194,694	139,969	130,565	200,662
Coffee	48,689	41,369	51,117	41,764
Cashew nuts	97,645	92,810	88,213	99,107
Made tea	17,334	30,260	34,969	32,000
Sisal	119,077	23,888	30,847	33,000
Tobacco	17,137	17,137	50,784	57,454
Pyrethrum	2,552	2,700	2,046	2,300

**SOURCE:** Annual Reports of Ministry of Agriculture, Food and Cooperatives

This situation will not lead to the agricultural revolution, Tanzania needs big plantation which use the modern technology and also they need commercial agriculture. The situation is different when we compare with Kenya. In Kenya they have many large

<sup>99</sup> Salum Shamte( ) *Tanzania National Business Council 6th* Dar es Salaam and to Kunduchi Beach Hotel & Resorts

plantation of coffee, wheat, flower and tea. Kenyan horticulture has become prominent in recent years, and is now the third leading agricultural export, following tea and coffee. Fresh produce accounted for about 30% of horticultural exports, and included green beans, onions, cabbages, snow peas, avocados, mangoes, and passion fruit. Flowers exported include roses, carnations, statice, astromeria, and lilies.

Kenya is the world's largest producer and exporter of pyrethrum, a flower that contains a substance used in pesticides. The pyrethrum extract, known as pyrethrum, is derived from the flower's petals. A drop in production during the mid-1990s was due to increasing production costs, disease damage, and slow payment by the parastatal Pyrethrum Board of Kenya. The growing demand for "organic" and "natural" pesticides has increased international demand for pyrethrum, despite the existence of synthetic chemical substitutes. Kenya also produces sisal, tobacco, and bixa annatto (a natural food coloring agent) for export. Other important crops in 1999 were sugarcane, 5,200,000 tons; corn, 2,110,000 tons; wheat, 135,000 tons; rice, 40,000 tons; and cotton, 5,000 tons. Smallholders grow most the corn and also produce significant quantities of potatoes, beans, peas, sorghum, sweet potatoes, cassava, bananas, and oilseeds<sup>100</sup>.

However, Tanzania has tried to do several strategies and initiated several programmes in order to improve the agricultural sector. In the financial year 2007/08 marked the second year of implementing the **Agricultural Sector Development Strategy (ASDS)** through the Agricultural Sector Development Programme (ASDP). ASDP plans to spend a total of 2.5 trillion shillings over a period of seven years. During the reporting period (2007/08), a number of activities have been implemented at national level by the

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<sup>100</sup> <http://www.nationsencyclopedia.com/Africa/Kenya>

Agricultural Sector Lead Ministries (ASLMs), and at local level by the Local Government Authorities (LGAs) through District Agricultural Development Plans (DADPs). The major activities implemented include:

- Providing technical backstopping to Regional Secretariats (RS) and LGAs on DADPs planning and implementation.
- Strengthening sector coordination, monitoring and evaluation.
- Strengthening Zonal Agricultural Research, Extension and Training institutes
- Developing irrigation, marketing and livestock infrastructures.
- Coordination of policy reforms in the agriculture sector and enhancing public-private sector partnership.
- Reviewing and formulating agricultural sector legislations.
- Providing enabling environment for the development of sustainable member-based cooperatives.

Another programme which is initiated in 2009 for the same reason of improving agricultural sector is called “KILIMO KWANZA” (Agriculture first). Through “**Kilimo Kwanza**” participating agencies, authorities, companies, corporations, institutions and Regions will have an opportunity to show-case their agri-business opportunities to potential investors, business support agencies and financial institutions. The main objectives of this program “**Kilimo Kwanza**” aimed at forging of common approach and commitment for implementation of major agricultural oriented reforms guided by proposals from TNBC Agriculture Working Group<sup>101</sup> some of which are as follows:

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<sup>101</sup> TNBC Working Groups include Empowerment, Agriculture, Finance, Lands, Tourism and Image, Manufacturing Agribusiness and Export Development, Human Capital Development and Infrastructure Development

- Political commitment to “**Kilimo Kwanza**”.
- Development of financial instruments for raising capital locally for investments into agriculture and agri-business sector
- Participation in the establishment of Tanzania Agricultural Development Bank and Agricultural Development Fund to offer access to long term finance to small, medium and commercial farmers and agri-businesses at affordable cost
- Commitment on practical ways to exploit the emerging food and food crops opportunities for transforming Tanzania’s agriculture to a modern commercial sector by application of modern technology, value chain, diversification to new food crops, investing in high yield seeds, fertilizers, herbicides, commercial farming, contract farming, value addition, backward integration and private sector investing in irrigation infrastructure with the government.
- Fiscal and non-fiscal incentives for the transformation of agriculture. The proposals may be reflected in budget proposals.
- Propose green revolution based on paradigm shift from traditional cash crop farming to cultivation of what we consume and consuming what we produce thus reduce dependence on vulnerable commodities and ensure food security while enjoying lucrative regional export markets.
- Revolutionizing research centers, extension services, financial services such as insurance, marketing etc.
- Possibility of creating an institutional framework merging agriculture with irrigation, livestock, forestry and marketing to create synergy,

- Obtain private sector commitment to invest heavily in commercial agriculture and offer areas for investment under “land bank” and Special Economic Development Zone concepts.
- Tasking institutions and corporations to embark on industrialization anchored on agriculture involving production of agricultural tools, farm implements, tractor assembly, fertilizers, chemicals, agro-processing industries for value addition.
- Explore agricultural export opportunities given the resource base and geographical advantage of Tanzania in the region with ideas ranging from commitment to implement corridor projects, clusters, local assembly for re-export to neighboring countries especially under Agrarian EPZs.
- Obtain private sector commitment to invest in agro-manufacturing and value addition
- Delve on agricultural and pastoral land issues particularly the framework for accessing agricultural land through TIC land bank and special economic development zones along with encouraging participation in agricultural real estate, mortgage financing, leasing etc.
- Affirmative measures to make agricultural land a tool for economic empowerment of Tanzanians in rural areas.
- Commitment to embark on initiatives to fast track investments in agricultural infrastructure in order to reduce cost of doing business, post harvest losses and cognizant of the geographical potential of Tanzania in the region.

- Encourage participation in corridor projects through PPPs especially in rural roads, ports and airports modernization, irrigation schemes and rural electrification.
- While addressing the adverse impact of the world economic crisis, discussions will focus on means to attract investments to the agricultural and agri-business sector of the Tanzania economy as a long term alternative and approach to dealing with the global meltdown.

These two programmes are seemed to be implemented and very useful. It is the duty of the government to educate and co-operates other stake holder like farmers, banks, and fertilizer industries, all to be committed on the implementation of such programmes. To increase commitment in initiatives of fast track investments in agricultural infrastructure, and to encourage participation in corridor projects through PPPs especially in rural roads, ports and airports modernization, irrigation schemes and rural electrification.

#### **4:3 FREE MOVEMENT OF PERSONS, LABOUR AND SERVICE**

The free movement of persons, labour and service are also is the area which the country members agreed. The country members agreed on the matter of free movement of persons, labour and service in EAC in order to increase trade integration in East Africa territory. Article 104 provides that:-

*“The Partner States agree to adopt measures to achieve the free movement of persons, labour and services....”<sup>102</sup>*

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<sup>102</sup> East Africa Community Treaty, 1999

Due to this provision the citizens from country member may travel to any country within the East Africa community for the purpose of employment or bring services like open school, hospital, legal office etc without any discrimination subject to the laws of that particular country member.

### **Free Movement of Persons**

The right of free movement of persons means right for every EAC citizen to move and reside freely within the EAC territory. This agreement will help the governments of Burundi, Kenya, Rwanda, Tanzania and Uganda to implement the commitment, made in the EAC Common Market Protocol that East African citizens will be able to move and settle freely in the region, and it guaranteed the right to move between countries and reside in the country of their choice, further it will help to increase the trade integration among the country members. The head of the United Kingdom Department for International Development Kenya office, Alistair Fernie, said that "The British Government supports the aspirations of East Africa for a strong and prosperous East African Community. It's exciting to see these ambitions lead to tangible actions like the Common Market Protocol, and that allowing people to migrate freely will stimulate economic growth and reduce poverty in the region."<sup>103</sup>

However, in order to facilitate the free movement of person and settle freely in the country of their choice, the country members have the duties to implement several requirements as provides under Article 104(3)<sup>104</sup>. That article states that the Partner States shall as may be determined by the Council:

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<sup>103</sup> Pan – African news Tuesday, 15 December 2009

<sup>104</sup> East Africa Community Treaty, 1999

- Ease border crossing by citizens of the Partner States;
- Maintain common standard travel documents for their citizens;
- Effect reciprocal opening of border post s and keep the post s opened and manned for twenty four hours;

These three requirements are very important to be fulfilled by all country members in order to facilitate the concept of common market to work easily and for the benefit of all country members. Once the unnecessary obstacle removes in the borders and the travel documents have the common standard for the citizen of East Africa territory, this will help to increase the across the borders business.

In addition, Regulation 5<sup>105</sup> provides the procedures to be followed by a citizen of a partner State who seeks to enter or exit the territory of another Partner State as a worker, shall do so at entry or exit points designated in accordance with the national laws of the Partner State and shall comply with the established immigration procedure. Those procedure states that, a citizen of a Partner State who seeks to enter the territory of another Partner State as a worker shall:

1. Present to the immigration officer a valid common standard travel document or a national identity card where a Partner State has agreed to use a machine readable and electronic national identity card as a travel document;
2. Declare all the information required for entry and exit; and
3. Present a contract of employment to the immigration officer.

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<sup>105</sup> The East Africa Common Market (Free Movement of Workers) Regulations, 2009



The provisions of Regulations mention above shall not apply to the spouse and child of a worker.

- Upon fulfillment of the requirements in paragraph 2 of this regulation, a citizen to whom these Regulations apply, shall be issued with a pass which shall entitle the citizen to enter into the territory of the host Partner State and stay for a period of up to six months for purposes of completing the formalities for obtaining a work permit.
- The spouse or child of a worker shall be issued with a pass of a period not exceeding six months upon fulfillment of the requirements of paragraph 2 (a) and (b) of this regulation pending completion of formalities to obtain a dependant pass.
- A pass issued under this regulation shall be issued without a fee.

The government of Tanzania on this issue is very committed, and till now has made different amendments in immigration laws and regulations in order to fulfill all requirements as provides under Article 104(3)<sup>106</sup> which are:

- Ease border crossing by citizens of the Partner States;
- Maintain common standard travel documents for their citizens;
- Effect reciprocal opening of border post s and keep the posts opened and manned for twenty four hours;

However even though Tanzania fulfilled those requirements, but it must be very careful in the opening of border especial by the borders between Tanzania and Rwanda and

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<sup>106</sup> East Africa Community Treaty, 1999

between Tanzania and Burundi. Because Rwanda and Burundi just came out from civil war, and there is highest spread of light arms. So if Tanzania ease borders between these two countries carelessly it will amount to the increasing cross border criminals. Because now there are much information that the criminals and bandit activities increase in Kigoma and Kasulu (these areas are situated near by the borders of Rwanda and Burundi). Also the careless easement of borders will endanger the security of Tanzania. Special step must be taken in order to prevent the peace and tranquility of the country at the same time to increase the integration of trade without endangers the national security.

Furthermore, the Secretary General of the East African Community, Ambassador Juma Mwapachu, has announced that free cross-border movement of people, between member states will not be effected in the near future. Despite being a major component of the East African Common Market which goes into operation next July 2010, free movement of residents will be put on hold until all five member states have sorted out their national identity card issues. So far only Kenya and Rwanda have national IDs for their citizens. Rwanda's IDs are at internationally accepted standards. "The Rwandan ID tags are 'Third Generation' digital documents containing practically every detail in machine readable information about the holders. Kenyans have National IDs but theirs are not machine readable while Tanzania, Uganda and Burundi, on the other hand, have none," Mwapachu explained. The Secretary General however assured that efforts were being taken by EA member countries towards ID projects. He said once all five East African countries had in place standardized, 3<sup>rd</sup> generation IDs, EAC will contemplate free movement for their citizens across the regional borders. Ambassador Mwapachu also

said that EAC has stopped issuing regional passports in a move to standardize the EAC travelling documents. He noted that the EA passports need first to be upgraded to meet international standards. "The East African Passports should be of internationally accepted digital standards," Mr Mwapachu stated. According to the EAC secretary general, the current passports are only accepted and valid within the five East African Countries; that is Kenya, Uganda, Burundi, Rwanda and Tanzania, not elsewhere. He emphasizes that "we want the EAC passports to be used throughout the African Continent just like the SADC travelling documents", he explained. East African residents will still need their respective countries' International Passports to travel overseas. Formerly issued at 25,000/- in Tanzania or the currency equivalent in other member states, the East African passports doubled as residence permit granting holders an automatic 'six-month' visa after being stamped at the border upon entry to any of the EA states<sup>107</sup>.

### **Free Movement of Labour**

The free movement of workers/labours also provides in Article 104,<sup>108</sup> the Partner States agree to adopt measures to achieve the free movement of persons, labour and services. Because of this provision the citizen from one country member may travel and find a job to any country within the East Africa Community without any discrimination subject to the laws of country member. Nevertheless, while such an article requests that, the EAC member states should remove every nationality-based restriction for all citizens of East Africa countries with regard to employment, it explicitly refers only to qualified workers in

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<sup>107</sup> Daily News Sunday April 04, 2010

<sup>108</sup> East Africa Community Treaty, 1999

the indicated sectors and not to the whole workforce. And in order to facilitate the needs of free movement of labour the countries member have several duties must be fulfilled, those duties are:

- Maintain common employment policies;
- Harmonize their labour policies, programmes and legislation including those on occupational health and safety;
- Establish a regional centre for productivity and employment promotion and exchange information on the availability of employment;
- Make their training facilities available to persons from other Partner States; and
- Enhance the activities of the employer s' and worker s' organizations with a view to strengthening them<sup>109</sup>.

The aim of article 104 of East Africa Community Treaty is to ensure uniform standards of worker protection and the principle of equal pay for equal work for men and women. The basic principles relating to the free movement of persons and labour; and the freedom to provide services are adequately provided for in the Protocol. These principles have been successfully tested in other integration groupings such as the European Union. These rights to be granted to EAC firms formed in accordance with the law of the Partner States comprise the right to freely leave, or enter and reside in a Partner State for the purpose of work, or establishment, or the provision of services. Their right to be treated in the host Partner State free from discrimination on the grounds of nationality is only subject to derogation on the grounds of public policy, public security and public health. Equally, exceptions from non-discrimination principles have been provided for, particularly as regards "employment in the public service" and the provision governing

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<sup>109</sup> Article 104 (3) of East Africa Community Treaty, 1999

“activities connected with the exercise of official authority.” It is important to clarify here that the derogations are applicable under the meanings of public policy, health and security commonly acceptable in international law.

Beside the East Africa Community Treaty, also Tanzania has several laws which deal with foreign labours. The Immigration Act No. 6 of 1995, Tanzania Investment Act No 26 of 1997, and National Employment Promotion Service Act No. 9 of 1999 all these regulates the entry of foreign workers to Tanzania. The Immigration Department, under the Ministry of Home Affairs, has the final say on who can stay in the country and who cannot. Applications for Class B (Foreigners Work) permits are first channeled through the Department of Employment and Tanzania Investment Center (TIC).

The employment of foreign workers within the country falls under the guidance of the Department of Employment, which is responsible for employment issues in the country. As far as labour migration is concerned, the Department is vested with the power to determine the need for foreign workers in Tanzania. The Tanzania Investment Center is a primary agency of the government, which coordinates, encourages, promotes and facilitates investment in Tanzania. It is responsible for obtaining the necessary residence/work permits and visas for foreigners wishing to establish businesses in Tanzania. The two departments recommend whether to grant or reject applications for work permits. Article 102<sup>110</sup> insists the co-operation in education and training within the Community In order to promote the achievement of the objectives of the Community as

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<sup>110</sup> East Africa community Treaty, 1999

set out in Article 5 of the Treaty. The Partner States agree to undertake concerted measures to foster co-operation in education and training within the Community by:

- Co-ordinate their human resources development policies and programmes;
- Strengthen existing and where necessary establish new common research and training institutions;
- Co-operate in industrial training;
- Develop such common programmes in basic, intermediary and tertiary education and a general programme for adult and continuing education in the Partner States as would promote the emergence of well trained personnel in all sectors relevant to the aims and objectives of the Community;
- Harmonize curricula, examination, certification and accreditation of education and training institutions in the Partner States through the joint action of their relevant national bodies charged with the preparation of such curricula;
- Revive and enhance the activities of the Inter -University Council for East Africa;
- Encourage and support the mobility of students and teachers within the Community;
- Exchange information and experience on issues common to the educational systems of the Partner States;

This area is very important because the Article 102 insists cooperation among the country members in the matter of education and training. Also it insists to have the same curricula, examination, certification and accreditation of education and training

institutions in the Partner States. The intention of this is to provide the same qualification in the matter of education which has the same status in all East Africa countries. And the will result on fair competition of job to all citizen of East Africa countries. This also will help the availability of job to any citizen of East Africa territory without discrimination in matter of nationality and only qualification will take into account.

On other hand Tanzania must work hard in this area, because now the number of citizen from Uganda, Kenya and Rwanda who work in Tanzania in gradually increase when we compares with the number of Tanzanian who work in other country members in East Africa. This is because of two major reasons which are number of graduates and language.

- *Number of graduates*

Tanzania has only 40,000 university graduates<sup>111</sup> one of the lowest rates in the world. Low enrollment rates caused by low resources, is one of the factors behind a situation. However, despite having a small number of university graduates, the country's rate of unemployment is very high graduates main the victims. Dr. C. Ndibalema from the Faculty of Education of the University of Dar Es Salaam says that, "almost 40 years after the country's independence, and currently with the population of 32 million, the country had only 1,000 university graduates for each one million people. This is one of the lowest rates in the world."<sup>112</sup> This number of graduates is very lower when we compare with the number of graduates in Kenya and Uganda. Now Tanzania has 20 registered

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<sup>111</sup> Copyright 2000 TOMRIC Agency. Distributed by allAfrica.com.

<sup>112</sup> Ibid

universities<sup>113</sup> while Kenya has 47 registered universities<sup>114</sup> and Uganda 33 universities<sup>115</sup>. Due to that Kenya and Uganda have high number of graduates who seek job everywhere in East Africa. Till now according the data there are many workers from Kenya and Uganda who work in Tanzania.

- *Language*

Language also another problem that faced by the citizen of Tanzania. Many Tanzanian speaks Swahili language as the first language and English is the second language while other countries like Uganda and Kenya English is the first language. One among the qualifications for the person to get job especially in private sector is knowledge of English. Due to that “language” conditions the opportunity for citizen of Tanzania to get job it very narrow when we compare with peoples from Kenya and Uganda.

Here we must abolish this stereotype of language as one of the qualification to get job and instead of this it is better to look on the competence of applicant for that particular job. This doubt also started by the Civic United Front (CUF) national chairman Prof. Ibrahim Lipumba emphasized that “We [Tanzania] are not yet prepared for the common market, which means free movement in capital, labour and the right to establish businesses. And also the agreement would put at risk even the few jobs that Tanzanians have as Kenyans and Ugandans, who are better English speakers, would grab all the plum jobs”<sup>116</sup>.

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<sup>113</sup> [www.wikipedia.org/wiki/List\\_of\\_universities\\_in\\_Tanzania](http://www.wikipedia.org/wiki/List_of_universities_in_Tanzania)

<sup>114</sup> [www.wikipedia.org/.../List\\_of\\_universities\\_and\\_colleges\\_in\\_Kenya](http://www.wikipedia.org/.../List_of_universities_and_colleges_in_Kenya)

<sup>115</sup> [www.wikipedia.org/wiki/List\\_of\\_universities\\_in\\_Uganda](http://www.wikipedia.org/wiki/List_of_universities_in_Uganda)

<sup>116</sup> The Guardian 3<sup>RD</sup> NOV,2009



#### **4:4 FREE MOVEMENT OF CAPITAL**

Free movement of capital is at the heart of the common market (Single Market) and is one of its 'four freedoms'. It enables integrated, open, competitive and efficient East Africa financial markets and services - which bring many advantages to regional. For citizens it means the ability to do many operations abroad, as diverse as opening bank accounts, buying shares in non-domestic companies, investing where the best return is, and purchasing real estate. For companies it principally means being able to invest in and own other East Africa companies and take an active part in their management.

Article 86 of East Africa Community Treaty<sup>117</sup> insists the Partner States to permit the free movement of capital within the Community, develop, harmonize and eventually integrate their financial systems. In this regard, the Partner States shall:

- Ensure the unimpeded flow of capital within the Community through the removal of controls on the transfer of capital among the Partner States;
- Ensure that the citizens of and persons resident in a Partner State are allowed to acquire stocks, shares and other securities or to invest in enterprises in the other Partner States; and
- Encourage cross-border trade in financial instruments

Article 86 (b) insists the county member to ensure that the citizens of and persons resident in a Partner State are allowed to acquire stocks, shares and other securities or to invest in enterprises in the other Partner States. Here it means the country member to allow the establishment of stock exchange and within it the person can acquire or buy

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<sup>117</sup> Article 86 of East Africa Community Treaty, 1999

shares and other securities. In Tanzania there is only one stock exchange which is called the Dar es Salam Stock Exchange (DSE), which was incorporated in 1996 as a company limited by guarantee without a share capital. It became operational in April, 1998.

The DSE has two market segments the first one is known as Main Investment Market Segment (MIMS) that cater for big companies and the second one is known as Enterprise Growth Market Segment (EGMS), which cater for medium growth oriented companies. The two segments differ slightly in entry requirements. Currently there are only fifteen (15) listed companies<sup>118</sup> which are:

1. Tol Gases Limited (TOL)
2. Tanzania Breweries Limited (TBL)
3. Tanzania Tea Packers Limited (TATEPA)
4. Tanzania Cigarettes Company Limited (TCC)
5. Tanga Cement Company Limited (SIMBA)
6. Swissport Tanzania Limited (SWISSPORT)
7. Tanzania Portland Cement Company Limited (TWIGA)
8. National Investment Company Limited (NICOL)
9. Dar Es Salaam Community Bank (DCB)
10. National Microfinance Bank Plc (NMB)
11. Kenya Airways Limited (KA)
12. East African Breweries Limited (EABL)

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<sup>118</sup> Dar es Salaam Stock Exchange (DSE) (2008) "*Dar es Salaam Stock Exchange (DSE) Hand Book*" Dar es Salaam

13. Jubilee Holdings Limited (JHL)

14. Kenya Commercial Bank Limited (KCB)

15. CRDB Bank Public Limited Company (CRDB)

And among those fifteen (15) listed company four (4) of them are from Kenya, those are Kenya Airways Limited, East African Breweries Limited, Jubilee Holdings Limited and Kenya Commercial Bank Limited. Actually DSE have very low number of listed companies. Tanzania now has many biggest companies in different area of investments such as mining, petroleum, infrastructure, telecommunication, transportation etc. for example in the sector of telecommunication there are four (4) biggest companies operating in Tanzania which are Zain Telecom, Vodacom Tanzania, Zanzibar Telecom Ltd (*ZANTEL*) and Tanzania Telecommunications Company Ltd (TTCL), but unfortunately those companies are not listed in the Dar es Salam stock exchange (DSE). These situations hinder the efforts of making East Africa as place of business integrations especial in the area of free movement of capital. And if this situation remains intact, it means the many people will not get opportunity to buy or acquire share and security in the big companies and those big company will be owner by only few persons.

The government of Tanzania must take intentional efforts to make sure that all the biggest companies which gain a lot of profit must be register in DSE and sell their some share to public. And also the government with cooperation with the DSE they should educate the society in this new business of investing capital by selling and buying shares otherwise the business of capital market will not benefit the citizen of Tanzania. However the vision and mission of DSE is to be a model Securities Exchange in the

Region. And to provide a responsive securities market which mobilizes savings and channels them into productive sectors, encourages a savings culture that contributes to the country's economic growth and facilitates wider access to resources<sup>119</sup>

The Nairobi Stock Exchange (NSE) is the principal stock exchange of Kenya. It began in 1954 as an overseas stock exchange while Kenya was still a British colony with permission of the London Stock Exchange. The NSE is a member of the African Stock Exchanges Association. **Nairobi Stock Exchange** is Africa's fourth largest stock exchange in terms of trading volumes, and fifth in terms of market capitalization as a percentage of GDP<sup>120</sup>

**Nairobi Stock Exchange** (NSE) has more than 47 listed companies. But there is no any company from Tanzania. This is big challenge for the government of Tanzania and entrepreneurs themselves to break the ice and to penetrate in this big stock exchange market. There are some company from Kenya penetrate in the stock market of Tanzania, why the entrepreneurs of Tanzania are very reluctant on the commercial competition. There is need to build the ability and to empower the private sectors and as well as entrepreneurs to be competent in this modern business and this competence commercial.

Therefore the research shows that the in the East Africa territory there are many opportunities and sectors like infrastructure Development of Airports, Seaports and General transportation; Energy & Mining; Trade – Import/Export; Agricultural business (Agribusiness); Hotel & Tourism; Manufacturing construction & Engineering; and

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<sup>119</sup>Dar es Salaam Stock Exchange (DSE) (2008) *Dar es Salaam Stock Exchange (DSE) Hand Book*, p 3

<sup>120</sup> [http://www.millenniumit.com/esp/news\\_7.php](http://www.millenniumit.com/esp/news_7.php).

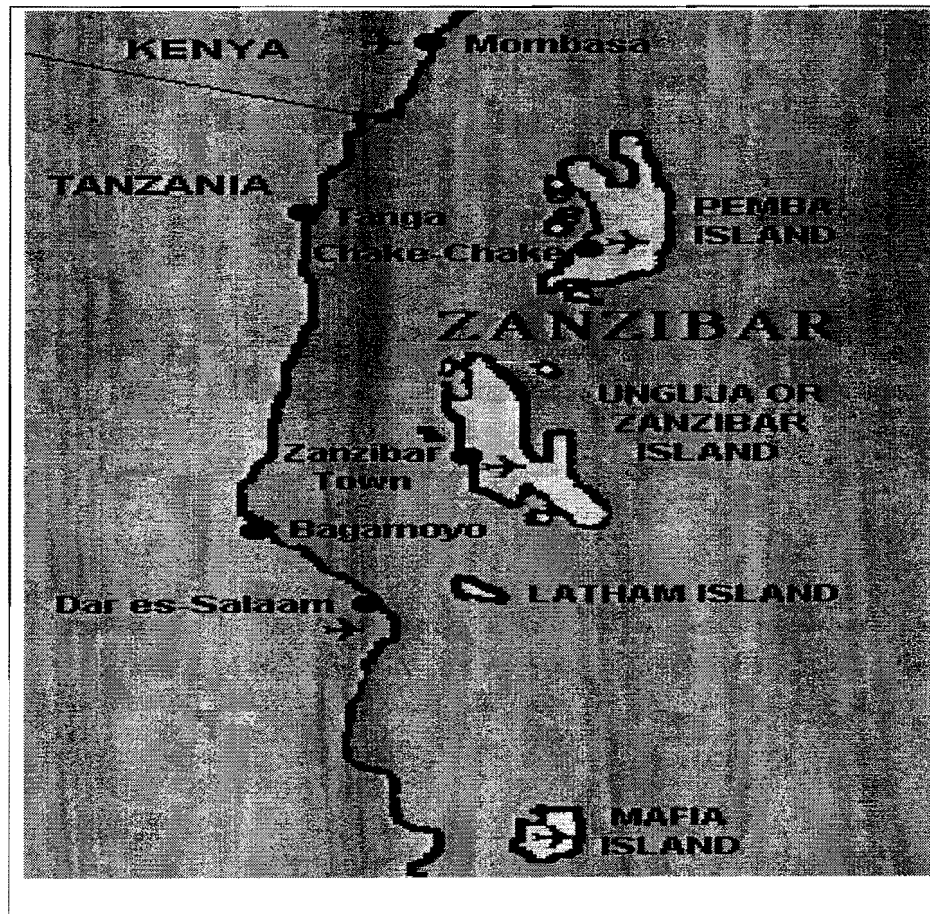
Financial Services, in all these sectors the entrepreneurs of any countries can invest. And the common market protocol is one among the agreements which come to facilitate the business and trade integration in East Africa territory. Now the persons from any country within the territory may travel from one country to another without national discrimination for searching job. The laws and regulations regarding immigration, investment, trade etc have been harmonized for the benefits of East Africa citizens. On other hand the Tanzania's government has the duty to make sure the Tanzania entrepreneurs have empowered in matter of capital and given knowledge regarding cross border business in order to compete fairly in this new market in East Africa. Otherwise the common market will benefit the entrepreneurs of Kenya, Uganda and Rwanda, and leave the entrepreneurs of Tanzania as audience.

## CHAPTER V

### 5:0 POSITION OF ZANZIBAR IN EAST AFRICA COMMUNITY

**Zanzibar** is a semi-autonomous part of the United Republic of Tanzania, in East Africa. It comprises the Zanzibar Archipelago in the Indian Ocean, 25–50 kilometers (16–31 mi) off the coast of the mainland, and consists of numerous small islands and two large ones: Unguja (the main island, informally referred to as **Zanzibar**), and Pemba. Other nearby island countries and territories include Comoros and Mayotte to the south, Mauritius and Reunion to the far southeast, and the Seychelles Islands about 1500 km to the east.

#### MAP OF ZANZIBAR



Zanzibar was once a separate state with a long trading history within the Arab world; it united with Tanganyika to form Tanzania in 1964 and still enjoys a high degree of autonomy within the union. The capital of Zanzibar, located on the island of Unguja, is Zanzibar City<sup>121</sup>. According to the Article of Union between Zanzibar and Tanganyika,<sup>122</sup> the governments of Zanzibar surrendered only few matters (eleven matters) to the Union Government and remain others under the authority of Zanzibar government. The Union that was created is the Union of two governments; the Government of United Republic of Tanzania and the Government of Zanzibar. On which they agreed on eleven (11) matters to be the union matters. Those original union matters were:

- (i) The Constitution and government of the United Republic,
- (ii) External Affairs;
- (iii) Defense;
- (iv) Police;
- (v) Emergency Powers;
- (vi) Citizenship;
- (vii) Immigration;
- (viii) External trade and borrowing;
- (ix) The Public Service of the United Republic;
- (x) Income tax, corporation tax, customs and excise duties;
- (xi) Harbors, civil aviation, posts and telegraphs

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<sup>121</sup> [www.wikipedia.org/wiki/Zanzibar](http://www.wikipedia.org/wiki/Zanzibar)

<sup>122</sup> Article of union between the People Republic of Zanzibar and People Republic of Tanganyika Treaty, 1964

But these union matters have gradually increasing from time to time, depends on the circumstance and need to do so. Now the Union matters have increased from eleven (11) to twenty two (22) as enshrined in the first schedule of The Constitution United Republic of Tanzania<sup>123</sup>. Those matters are:

- (1) The Constitution and Government of the United Republic,
- (2) Foreign Affairs;
- (3) Defense and Security;
- (4) Police;
- (5) Emergency Powers;
- (6) Citizenship;
- (7) Immigration;
- (8) External borrowing and trade
- (9) Service in the Government of the United Republic;
- (10) Income tax payable by individuals and by corporation, customs duties and excise duties on goods manufactured in Tanzania collected by Customs Department.
- (11) Harbor, matter relating to air transport, ports and telecommunication.
- (12) All matter concerning coinage, currency for the purpose of legal tender (including notes), banks (including serving banks) and all banking business, foreign exchange and exchange control.
- (13) Industrial License and Statistic
- (14) Higher Education
- (15) Mineral oil resources, including cruel oil and natural gas.

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<sup>123</sup> The Constitution of United Republic of Tanzania, 1977



(16) The national examination council of Tanzania and all matter connected with the functions of that Council.

(17) Civil Aviation

(18) Research

(19) Meteorology

(20) Statistic

(21) The Court of Appeal of Tanzania

(22) Registration of political parties and other matter related to political parties.

Therefore according the Constitution United Republic of Tanzania, the Government of United Republic of Tanzania has full mandated to act on such union matters and all matters concerning Tanzania mainland. On exercising of those matters only the union government has an authority and it is not obliges to delegate its exercising power to any authority; Constitution United Republic of Tanzania insists that by states that:

*“There shall be a government of united republic which shall have authority over all union matters in united republic and over all other matters concerning mainland Tanzania.”<sup>124</sup>*

Due to this provision, the authority of the Union Government of Tanzania is only for matters of union and for matters concerning Tanzania mainland. Union Government of Tanzania cannot overlap to exercises other matters which are not matters of union or not matter concerning Tanzania mainland. On the matters concerning Zanzibar and that matters are non union matter, the government of Zanzibar only and alone has mandate to act on that matters.

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<sup>124</sup> Article 34 of The Constitution United Republic of Tanzania, 1977

Recently Tanzania became a member of East Africa Community, and this community is aim to pass in four phases which are custom union, common market, monetary union and political federation. Now the Community is placed in second phase which is common market. In the Common Market Protocol provides several areas of corporations and also aim to open the door in four areas, that are (a) free right of movement, (b) right of establishment, (c) free movement of capital and (d) free movement of persons, labour, and service.<sup>125</sup> On those areas of corporation in East Africa Community there are some areas or matters which are not matter of Union between Tanganyika and Zanzibar. On this situation there are two issues are very important to be discussed before to jump in the conclusion of position of Zanzibar in East Africa Community. Those important and crucial issues are:

- Whether Zanzibar is the partner/member of East Africa Community.
- Whether the Union Government of Tanzania has legal authority to act on behalf of Zanzibar in the non-union matters.

### **Whether Zanzibar is the Partner/Member of East Africa Community**

On answering this *first* crucial issue, it is not easily to get answer because it is a legal issue. Therefore for the purpose to get accurate answer it is better to examine in detail the Articles of East Africa Community Treaty of 2002, which establish the East Africa Community. Article 3 of East Africa Community Treaty<sup>126</sup> mention all Members of the Community and also explain how other countries may acquires the membership of the Community. That Article states that:-

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<sup>125</sup> East Africa Community Common Market Protocol,2009

<sup>126</sup> East Africa Community Treaty,1999

*“The members of the Community, in this Treaty referred to as “the Partner States”, shall be the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership to the Community under this Article”.*

Therefore, according to the Article above the East Africa Community have three (3) members or partners which are Tanzania, Kenya, and Uganda at that time being. And the provision give opportunity to other countries to be granted the membership of East Africa Community, due to that now Rwanda and Burundi have granted membership and it result to five (5) country members or partners of East Africa Community.

In all provisions of the East Africa Community Treaty<sup>127</sup> Zanzibar is not mention anywhere by one way or another. Obviously Zanzibar is not a member per se. The Article above mentions only Tanzania, Uganda and Kenya and latter on Rwanda and Burundi granted membership of the Community, Zanzibar is not mention at all. Some scholars and Politicians argue that there is no need for Zanzibar to be mention because when we say the United Republic of Tanzania, Zanzibar included. It is fine, but the fact that the East Africa Community has includes many things/matters to be dealt with, and among them there are some matters are not matters of union between Tanganyika and Zanzibar. Therefore the United Republic of Tanzania has no mandate or legal authority to act on such matters. On such reason the involvement of the Government of Zanzibar as a member is very important and it cannot be avoided; otherwise those matters will not work effectively. For instance in Article 5 of East Africa Community Treaty<sup>128</sup> provides the objectives of the Community that Article saying that:

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<sup>127</sup> East Africa Community Treaty, 1999

<sup>128</sup> Ibid

*“The objectives 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, defence, security and legal and judicial affairs, for their mutual benefit”*

According to the above Article, the objectives of the community are 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. But for sure, in that list of matters which the Community aims to develop, there are some matters that are not matters of Union between Zanzibar and Tanganyika, such matters are *social and cultural fields, legal and judicial affairs*,<sup>129</sup> and because those matters are non-union matters and the United Republic of Tanzania has no mandate to act on that. The question is how the union government will act on the matter which they don't have legal mandate to act upon? Actually, it will create confusion and misunderstanding between the government of Zanzibar and the union government of Tanzania, because the government of Tanzania will seem to overlap on exercising the duty which would not have the authority to do so. Thus, we advise that, it will be better for those matters that are non-union matters to be represented by Zanzibar itself. Therefore, Zanzibar is very important to be a member of the East Africa Community and not to be represented by the Union Government of Tanzania.

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<sup>129</sup> Article 5 of East Africa Community Treaty, 1999

Further, in other provisions East Africa Community Treaty, 1999 provides many issues or matters which are non - union matter between Zanzibar and Tanganyika such as Energy,<sup>130</sup> Education and Training,<sup>131</sup> agriculture and food security,<sup>132</sup> Livestock Multiplication and Distribution,<sup>133</sup> Plant and Animal Diseases Control,<sup>134</sup> Environmental Issues and Natural Resources,<sup>135</sup> Tourism,<sup>136</sup> Health,<sup>137</sup> Culture and Sports,<sup>138</sup> Social Welfare<sup>139</sup> etc, all these matters are non – union matters between Zanzibar and Tanganyika. And because the East Africa Community includes some matters which are non - union matter between Zanzibar and Tanganyika it will be wisely and better for Zanzibar to have its own participation as a member in all matters which are non - union matters rather than to be represented by the Government of Union of Tanzania which is total against the Constitution of Tanzania.

### **Whether the Union Government of Tanzania has legal authority to Act on behalf of Government of Zanzibar**

In this *second* issue, also it needed to be answers legally not the politically, therefore only law, Constitution and East Africa Community Treaty, 1999 can answer it properly. Articles 34 and Article 105 (2) of the Constitution of United Republic of Tanzania has shows the demarcation between the Government of Zanzibar and the Union Government

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<sup>130</sup> Article 101 of East Africa Community Treaty, 1999

<sup>131</sup> *Ibid Article 102*

<sup>132</sup> *Ibid Article 105*

<sup>133</sup> *Ibid Article 107*

<sup>134</sup> *Ibid Article 108*

<sup>135</sup> *Ibid Article 111*

<sup>136</sup> *Ibid Article 115*

<sup>137</sup> *Ibid Article 118*

<sup>138</sup> *Ibid Article 119*

<sup>139</sup> *Ibid Article 120*

of Tanzania on exercises their daily functions. Article 105 (2) of the Constitution of United Republic of Tanzania given the power the Government of Zanzibar to exercise its function to all matter concerning Zanzibar and those matters which non - union matter.

That article states that:

*“Without prejudice to the power of Chairman (president) of Revolutionary Council as head of Revolution Government of Zanzibar, the Revolutionary Council shall be the principal organ for the advising the head of Revolutionary Government of Zanzibar regarding all matters concerning the exercise of his functions of leadership and supervision over the affairs of the Executive for Zanzibar and also in discharge of his function over all affair of the government concerning all matters which are not union matters in according with the provisions of this constitution and those of the constitution of Zanzibar,1984”.*

This it means that the government of Zanzibar has full mandate to function all matters which are not matters of union. The United Republic of Tanzania has no mandate to say or to do anything on the non – union matter concerning Zanzibar. The United Republic of Tanzania has only mandate to say or to do something only for “the matter of union’ according the Article 34 of Constitution of United Republic of Tanzania which saying that:

*“There shall be a Government of United Republic which shall have authority over all union matters in United Republic and over all other matters concerning mainland Tanzania”<sup>140</sup>*

Therefore, hence the East Africa Community has contained some matters which are not matter of union between Tanganyika and Zanzibar it is obviously the government of Tanzania has no mandate to act on behalf of Zanzibar. Therefore, for the Union

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<sup>140</sup> Article 34 of Constitution of United Republic of Tanzania,1977

Government of Tanzania to act on behalf of Zanzibar for the matter which are not union matters is contrary to the provisions of Constitution of United Republic of Tanzania and also is not fair and justice for the Zanzibar citizen to be represented by Union Government of Tanzania in the matters which are not union matters. This is a big mistake and it will cause big legal impact latter on, not for Tanzania only but for whole East Africa Community.

### **5:1 HOW ZANZIBAR CAN PARTICIPATES IN EAC**

Hence **Zanzibar** is a semi-autonomous part of the United Republic of Tanzania, and surrender only some matters to the United Republic of Tanzania as provided under Second Schedule of the Constitution of United Republic of Tanzania. It is clear that Zanzibar has full mandate on all matters which are not matter of union. Due to the article 105 (2) and article 34 of the Constitution of United Republic of Tanzania which draws demarcation of the functions of the Government United Republic of Tanzania and the Government of Zanzibar, and there is no any provision of the Constitution of Tanzania which give power to the United Republic of Tanzania to overlap or to act on behalf of the government of Zanzibar on the matters which are non - union matters. This give the picture that Zanzibar has the power to participates on its own in all matters concerning Zanzibar and at the same time not matter of union.

Some person may ask how Zanzibar can participate as a member in East Africa Community (EAC). As I have said above Zanzibar in this union is exist as country and have all three things which make it to exist as country which are executive, judiciary and parliament. Even though Zanzibar has surrender some matter to the Union Government

but it does not mean Zanzibar disappears in the face of global. Zanzibar is there, exists and is active. Zanzibar can participate as a member of East Africa Community as an associate member. The question is what is the meaning of associate? The associate member "is one connected with an association or institution without the full rights or privileges of a regular member."<sup>141</sup> The associate membership is not a new phenomenon in the world, it is the way that the member who is associated has a partial right on the particular organization, for example, has the right to attend the meeting and a right to vote only in some issues. Iceland and Faroe Islands are good examples of the countries which have associate membership in some organizations.

Iceland is a country with deep democratic roots and has a tradition of good governance, high social and environmental standards and a historical background closely linked to many other European countries. Iceland enjoys already a high degree of integration with the EU - through its membership in the European Economic Area (EEA) since 1994 as well as by participating in Schengen. Moreover, Iceland is also associated to the Dublin Convention and was a founding member of NATO.

Also Faroe Islands as a small country in the Atlantic Ocean had the associated membership in EU's Seventh Research Framework Programme (FP7). The European Commissioner in Science and Research, Potočník, met with the Prime Minister of the Faroes, Jóannes Eidesgaard, in Brussels on December 5<sup>th</sup>. The two parties met to discuss associate membership for the Faroes in EU's Seventh Research Framework Programme (FP7). The Prime Minister advocated that there should also be room for small countries in EU's Research Programme. He underlined that the Faroe Islands have the authority to

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<sup>141</sup> [www.EuropeanCommission.org](http://www.EuropeanCommission.org) › CORDIS › FP7



conclude agreements with other countries and organizations within a range of areas. Eidesgaard also made the point that participation in the FP7 should not be judged by a country's size, but rather from the ability and research results.

Further, WHO (World Health Organization) also has two Associate Members, that are Puerto Rico joined as associate member on 7 May 1992 and Tokelau joined as associate member on 8 May 1991.<sup>142</sup> Therefore according my knowledge and because in East Africa Community Treaty involves many issues which are non - union matters, and hence Zanzibar can inter into agreement in all matters which are non - union matters, it will be better for Zanzibar to have associated membership in East Africa Community rather than to be represented by the Government of Union of Tanzania. This will help to avoid miss understanding and unnecessary confrontation between the Government of Union of Tanzania and the Government of Zanzibar and also it will help to maintain and safe guard the Article of Union and the Constitution of Tanzania of 1977.

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<sup>142</sup> [www.who.int/whr/1998/en/whr98\\_annex.pdf](http://www.who.int/whr/1998/en/whr98_annex.pdf)

## **CHAPTER VI**

### **6:0 CONCLUSION**

In nutshell the establishment of the common market in East Africa means the opening of the doors for the goods or products of one country member to enter into market of another country member without charging custom duty. In other words it will be free custom duty. Also there will be the common market in labours and capital. This means that any citizen in East Africa country members will be free to find a job at any country within the territory. Also all obstacles in transfer of capital from one country member to another will be removed. Logically to have the common market is to increase the competition in trade and this will result increasing of products in reasonable price and to improve the quality of products in order for East Africa countries product to be competent to penetrate in the global market.

In order for the Tanzania to achieve those goals and to avoid to remain as audience of improving of economic of Uganda and Kenya; Tanzania face many challenges, indeed, at this moment, Tanzania still lags behind Kenya and Uganda in terms of education, infrastructure development and other comparative advantages, but this is bound to change soon considering a big numbers of universities being opened and huge infrastructural investments being undertaken but the Government in all sectors including rail network, ports and power generation to attract investments.

Further Tanzania to be able and competent in the common market it should improve its products and also to have good and acceptable parking of products. The main goal for the

East African Community, as an economic and political entity, stems from the desire by the EAC Partner States to improve the standard of living of the population through increased competitiveness, value-added production; trade and investment. However the data show that there is gradually increasing of sell come from selling of products to Kenya which is raw materials such as milk and fruits, then that product re-sale in Tanzania from Kenya like finished products. The data which was released by Bank of Tanzania (BOT) is show the cross border business has increased up to 2.7 US Dollar, and this increasing come from the selling of nontraditional products especial manufactured products. The research done by Prof. Haji Semboja of Dar es Salam University on the cross border trade it revealed likely the same information as reveals by Bank of Tanzania (BOT) that the importation of manufactured products from Kenya has gradually increased.

Even if East African countries are enjoying some positive strength such as peace and political stability, investor-friendly governments committed to the market economy, as well as the preferential access to several developed country markets, they also are confronted with some challenges, like good governance, democracy, rule of law, security, lack of commitment, lack of communication network etc. The East Africa countries together have a duty to make sure that the democracy and rule of law are maintain in their country, and any type of action which is contrary with rule of law and democracy must be avoided. This will help to create good environment for improving of trade within the particular country as well as cross border business. Further the peace and political stability will attract the investor from every conner of the world to invest in East Africa

region. Unless peace and political stability maintain in East Africa region the main goals of improve the standard of living and national economic will be maintain.

## **SUGGESTIONS**

As point out earlier, the main goal for the East African Community, as an economic and political entity, stems from the desire by the EAC Partner States to improve the standard of living of the population through increased competitiveness, value-added production; trade and investment. Therefore in order for the Tanzania as Partner to achieve those goals it needs to work a bit harder to catch up with the rest of the pack to be able to draw benefits from integration. Further I have suggest the Government of Tanzania and Tanzania Chamber of Commerce in Industries and Agriculture (TCCIA) to should work harder in the following suggestions in order to achieves those goals and purposes of establishment of common marker in East Africa community:-

- The government of Tanzania must educate the society and entrepreneurs of all level on the existence of common market in East Africa, and the benefit of that market.
- The government of Tanzania must make or amend the immigration law, investment law etc and to remove all cumbersome in order to attract the foreign investor to invest in Tanzania
- The government of Tanzania must abolish all unnecessary obstacle in cross border business
- The government of Tanzania must corporate with Tanzania Chamber of Commerce in Industries and Agriculture (TCCIA) to find out all trade opportunity

which Tanzanian entrepreneurs can use for benefit of those entrepreneurs and the growth of Tanzania economy.

- And also to provide opportunity for emerging Tanzania firms as well as Tanzania Entrepreneurs to penetrate to the lucrative and fast growing markets in Kenya and Uganda countries
- The position of Zanzibar must mention clearly for those matters which are not matters of union in order to clear misunderstanding between the Government of Republic of Union of Tanzania and the Government of Zanzibar.
- The Government of Tanzania must improve the Dar es Salaam stock exchange (DSE), and also it must make the law which attracts the companies to register them in stock exchange.
- The citizen of Tanzanian and as well as the businessman of Tanzania must be enlighten on the benefit of stock market and they must be motivate on buying and selling of shares
- To improve the education system and to increase the number of students in the universities and other collages of Tanzania in order to compete well with other countries in East Africa Community.
- To empower the young person by giving the education regarding business, to build capacity of doing cross border business and also to provides loans.
- To improve security in the border, example border between Tanzania and Rwanda
- Undertake to evolve co-ordinate, harmonized and complementary transport policies and develop their transport infrastructure modes.

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