

UNIVERSITY OF THE WESTERN CAPE

FACULTY OF LAW

**THE INCORPORATION OF COMPETITION POLICY IN THE NEW
ECONOMIC PARTNERSHIP AGREEMENT AND ITS IMPACT ON
REGIONAL INTEGRATION IN THE CENTRAL AFRICAN SUB-REGION
(CEMAC)**

By

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*A Mini-thesis Submitted in Partial Fulfilment of the Requirements for the Degree
of Magister Legum (LLM) in the Faculty of Law, University of the Western Cape*

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DECLARATION

I, Belebema Michael Nguatem, declare that this Mini-Thesis titled: *The Incorporation of Competition policy in the new Economic Partnership Agreement, and its impact on Regional Integration in the Central African Sub-Region (CEMAC)*, is the original work of my research and therefore has not been submitted for any examination, publish in any local or international journal, or book, and that all the sources used have been duly acknowledged by complete referencing.

BELEBEMA Michael NGUATEM

Signed.....

December 2010

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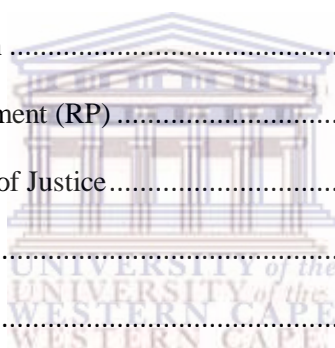
Prof. Wandrag: Supervisor



TABLE OF CONTENT

DECLARATION.....	i
TABLE OF CONTENT.....	iv
Dedication.....	vii
Acknowledgement.....	viii
List of Acronyms.....	ix
Keywords.....	xi
CHAPTER ONE.....	1
BACKGROUND OF THE STUDY.....	1
1.1.1 Introduction.....	1
1.1.2 Historical Development.....	2
1.1.3 The Yaoundé I & II Conventions.....	4
DEVELOPMENT OF THE PROBLEM.....	7
1.2.1 The Lomé Conventions.....	7
1.2.2 The Principle of Non-discrimination.....	9
1.2.3 Criticisms of the EU Preferences.....	10
RESEARCH FRAMEWORK.....	17
1.3.1 Research Statement.....	17
1.3.2 Research Question.....	17
1.5.3 Research Methodology.....	18
1.3.4 Research hypothesis.....	18
1.3.5 Objectives of Research.....	19
1.3.6 The scope of the Research.....	19
1.3.7 Chapter Outline.....	19

1.3.8 Conclusion.....	20
CHAPTER TWO	21
GENERAL OVERVIEW OF CEMAC	21
2.1.1 Introduction	21
2.1.2 The Creation of CEMAC and its Institutions	22
2.1.3 Why UDEAC failed.....	25
2.2.1 CEMAC.....	28
2.2.2 Institutional Framework	28
2.2.3 The CEMAC Economic Union (UEAC).....	31
2.2.3.1 The Customs Union	31
2.2.4 The CEMAC Monetary Union	35
2.2.5 The CEMAC Regional Parliament (RP).....	37
2.2.6 The CEMAC Regional Court of Justice.....	39
2.2.7 The CEMAC Organs.....	40
2.3.1 Conclusion.....	41
CHAPTER THREE.....	42
THE CEMAC LEGAL INSTRUMENT FOR INTERNATIONAL TRADE.....	42
3.1.1 Introduction	42
3.1.2 Non-reciprocity to Reciprocity	43
3.1.3 STABEX and SYSMIN	45
3.2.1 The Cotonou Agreement - A New Paradigm	46
3.3.1. Economic Partnership Agreement (EPA).....	51
3.3.2 EPA and CEMAC Disintegration	54
3.4.1 The Generalized System of Preference	55
3.4.2 Effects of European Union GSP Scheme on CEMAC.....	56



3.4.3 Everything-but-Arms (EBA)	59
3.4.4 The Rules of Origin (RoO).....	61
3.4.5 Conclusion.....	64
CHAPTER FOUR	66
COMPETITION LAW AND POLICY IN CEMAC.....	66
4.1.1 Introduction	66
4.1.2 Defining competition law	67
4.1.3 Purpose of competition law	68
4.1.4 The necessity for Competition Law in the CEMAC region	70
THE LEGAL FRAMEWORK FOR COMPETITION IN CEMAC	73
4.2.1 Legal framework under the Cotonou Agreement	73
4.2.2 Framework under CEMAC	75
4.2.2.1 OHADA Laws and the CEMAC Integration Process	75
4.2.2.2 OHADA and domestic laws	76
4.2.2.3 The structure of OHADA	77
4.3.1 Enforcement of competition law in CEMAC	79
4.3.2 CEMAC Competition Regulatory Framework	83
4.3.3 Regulating Competition in CEMAC: National and Regional Interest.	84
4.4 Conclusion.....	85
CHAPTER FIVE.....	86
CONCLUSION	86
5.1 Introduction	87
5.2 Recommendations.....	90
BIBLIOGRAPHY	89
APPENDICES	105

DEDICATION

This thesis is dedicated in memory of my late sister, Nkengafac Benedict and her son Annukangna Robert, who departed to glory in June and July 2009 respectively. Thus they have passed from the earth and its toiling, and will only be remembered for what they have done.



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LIST OF ACRONYMS

ACP	African, Caribbean and the Pacific countries
AU	African Union
AGOA	African Growth and Opportunity Act
BEAC	Bank of Central African States
BCEAC	Bank of Central African States and Cameroon
BDEAC	Central African Development Bank
CEMAC	Central African Economic and Monetary Community
CET	Common External Tariff
COBAC	Central African Banking Commission
CU	Customs Union
DC	Developing Countries
EBA	Everything-But-Arms
EC	European Community
ECCAS	Economic Community of Central African States
EEC	European Economic Community

ECOWAS	Economic Community of West African States
EDF	European Development Bank
EPA	Partnership Agreement
EU	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of preference
IMF	International Monetary Fund
LDC	Least Developed Countries
MFN	Most Favoured Nation
OHADA	Organisation for the Harmonisation of Business Laws in Africa
RTA	Regional Trade Agreement
UDE	Equatorial Custom Union
UEAC	Central African Economic Union
UMAC	Central African Monetary Union
WTO	World Trade Organisation

KEYWORDS

African Caribbean and Pacific Countries (ACP)

Central African Sub-region

Competition Policy

Developing Countries

Economic Integration

Economic Partnership Agreement (EPA)

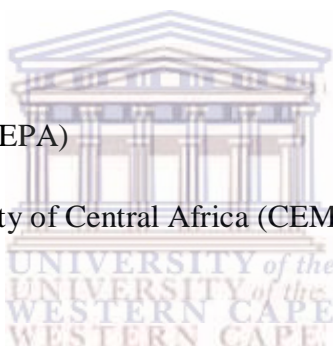
Economic and Monetary Community of Central Africa (CEMAC)

European Economic Community

General Agreement on Tariffs and Trade (GATT 1994)

Regional Integration

World Trade Organization (WTO)



CHAPTER ONE

BACKGROUND OF THE STUDY

1.1.1 Introduction

The Central African Monetary and Economic Community, known by its French acronym CEMAC (*Communauté Economique et Monétaire de l'Afrique Centrale*), is one of the oldest regional economic blocs in the African, Caribbean and Pacific (ACP) group of states. Its membership comprises of Cameroon, the Central African Republic, Chad, the Republic of Congo, Equatorial Guinea, and Gabon. It has a population of over 32 million inhabitants in a three million (3 million) square kilometre expanse of land.¹ The changes in the world economy, and especially between the ACP countries, on the one hand, and the European Economic Community-EEC (hereinafter referred to as European Union (EU)), on the other hand,² did not leave the CEMAC region unaffected. CEMAC region, like any other regional economic blocs in Africa was faced with the need to readjust in the face of a New International Economic Order (NIEO).³ The region which had benefited from preferential access to the EU market including financial assistance through the European Development Fund (EDF) had to comply with the rules laid down in the World Trade Organisation (WTO). This eventually led to a shift in the EU trade policy, in order to ensure that its trade preferences to developing countries were compatible to the rules and obligations of the WTO.⁴

This chapter discusses the trend of events that have contributed in shaping the trade relationship between the EU and CEMAC in the past 40 years. These events are both *de jure* and *de facto* in character and implications for the two regions. *De jure*, means those incidents of law and *de facto*, factual circumstances which cannot be undermined, or avoided. The chapter is divided into

¹Zafar, A & Kubota A, (2003). *Regional Integration in Central Africa Region*, Working Paper Series No. 52 June 2003

² Bartels L, (2007). *The Trade and Development Policy of the European Union*

³ Muni, S D, (1976) Major Developments in India's Foreign Policy and Relations, July-December 1975 *Muni International Studies*. 15: 393-417.

⁴ GATT Article I and GATT Article XXIV

two sections; the first part gives an introduction to the thesis, and the development of the problem. The second part focuses on the research framework, which includes: the research statement, research question, the methodology, hypothesis, research objectives, an outline of the chapters and conclusion.

1.1.2 Historical Development

The EU had existed under the banner of the EEC since its creation in 1957 at the Treaty of Rome. The historical development of the economic and political co-operation between CEMAC and the EU could be best understood if traced in part, from the creation of French Equatorial Africa (*Afrique Equatoriale Francaise* – AEF) in 1901, and the treaty of Rome 1957, on the other. The first part of this history dealt with the formation of the Custom and Economic Union of Central Africa (*Union Douiniere Economique de la Afrique Central* (UDEAC)). This will be discussed under the institutional framework for CEMAC.⁵

However, it will be best to begin with events that led to the association of EU and African states. According to Kiplagat P.K, the intention of including the “African Associates” (Association of African States and Madagascar -AASM) in the agenda of the Treaty of Rome was based on the premise that colonialist rule will continue. Unfortunately for Europe, this strategy was ruptured by the wave of independence that swept across Africa from 1957 to the 1970s.⁶ These states were associated to the European Six (France, Belgium, Italy, the Netherlands, Luxemburg, and West Germany) by virtue of their colonial relationships.⁷ France, Italy, and Belgium in particular, expressed solidarity to their overseas colonies, or territories, towards economic growth and development, by ensuring that the economies and political needs of these countries, were given significant considerations, during the negotiations of the Treaty of Rome.⁸ The securing of the “interest” of the AASMs during the negations was a prerequisite for France to

⁵ See Chapter two.

⁶ Kiplagat, P. K, (1993). *The Fortress Europe and Africa Under the Lome Convention: From Policy of Paralysis to a Dynamic Response*. *HeinOnline—18N.C.J. Inter'l L. & com. Reg.594*

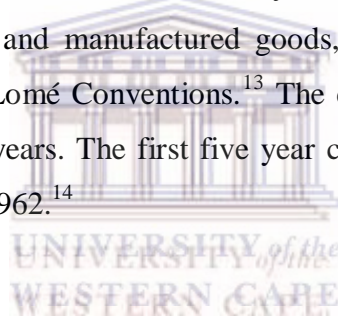
⁷ Isebill V. G, (1976). *The Lomé Convention: Inching Towards Interdependence*. *International Organization*, Vol. 30, No.2 (Spring, 1976), pp. 241-262

⁸ Bach, D.C, (1999) p.125. *Regionalisation in Africa: Integration and Disintegration*.

join the EU.⁹ As a consequence of the Treaty of Rome, a commercial and financial association was established between the European Six and the “Associated States”.¹⁰ The treaty also established a Free Trade Area (FTA) between the AASMs on preferential basis. The AASMs’ exports were given preferential access to the EU market.

By the end of 1970, most of the Associated States had become independent. The period between the signing of the Treaty of Rome and the Yaoundé Conventions was characterised by a wave of independence that swept through the African continent, leading to political and economic independence from former colonial powers in Europe and the Americas.¹¹ However, faced with the reality of the smallness of their economies, a request was made for the continuation of preferences and aid that had existed under the Treaty of Rome. Indeed the AASMs were able to request for a continuation of preferences and aid under Article 131 of the Treaty of Rome.¹²

The changes in Europe’s political and economic history at the time, especially the securing of markets abroad for raw material and manufactured goods, prompted the signing of the two Yaoundé Conventions and later the Lomé Conventions.¹³ The convention of associated states and the EU were renewed every five years. The first five year convention between the EU and the AASMs took place from 1958 to 1962.¹⁴



⁹ “It is generally agreed that the issue for France was not merely trade preferences, but its desire to distribute the burden of overseas aid among the six European Community members.”

¹⁰ Enzo R. Grilli, (1996), P.20. *The European Community and the Developing Countries*. 3rd Ed, Cambridge University Press. These were the former French overseas associated to France by virtue of their colonial linkages. Article 131-136 of the Treaty of Rome granted associated status to former European colonies in Africa and Madagascar. They were called the Association of Africa States and Madagascar (AASM)

¹¹ Kiplagat P. K, *op cit* 597

¹² *Ibid*

¹³ The first Yaoundé Convention was signed in 1964 and ended in 1969. The second Yaoundé Convention lasted from 1971 to 1975.

¹⁴ Isebill V. G, *op cit* 242

1.1.3 The Yaoundé I & II Conventions

The Yaoundé I Convention was the second of five year trade negotiation between the EU and the AASMs. Though seen as the second convention, it was actually the first convention between the parties, since the AASMs were not present during the first convention at the Treaty of Rome. The Yaoundé Convention has been acclaimed as a major breakthrough that brought the AASMs to negotiate on equal basis with the European Six.¹⁵ By virtue of their political and economic independence and the necessity for the continuity of trade and aid under the Treaty of Rome, the 18 African Associates began to negotiate for stronger economic ties with their European Six counter parts.¹⁶ This led to the birth of the first Yaoundé Convention in 1963, which came into force in 1964, due to delays in the ratification process.

The Yaoundé Convention, unlike the Convention of Association under the Treaty of Rome, was the first independent negotiation of the AASMs after their independence from colonial rule. Though it is argued that the Yaoundé Convention was not a bilateral negotiation but a continuation of Part IV of the Treaty of Rome, other schools of thoughts believed that it was a great step towards self-determination.¹⁷ The Yaoundé I Convention basically dealt with trade, technical and financial assistance, rights of establishment and institutions.¹⁸ It guaranteed the preferences under the Treaty of Rome, but with a condition on the AASM to grant better access to EU products than they do for other countries.¹⁹

The Yaoundé I Convention was based on the principle of association, stated in Article 132 of the Treaty of Rome, to the effect that the “Associated countries and territories would apply to the EU and to each other the same treatment as had been accorded to the ‘European State with which it had special relations.’”²⁰ In addition, “[the] EEC six would apply to their trade with Associate

¹⁵ *Ibid*

¹⁶ The 18 Associates were Burundi, Cameroon, the Central African Republic, Chad, Congo (Leopoldville), Congo (Brazzaville), Dahomey, Gabon, Upper Volta, Ivory Coast Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia and Togo, as cited in Kiplagata *op cit* 598.

¹⁷ Montana Ishmael M (2003)

¹⁸ Enzo R. Grilli *op cit* 21

¹⁹ It worth noting that preferences were supposed to be granted on an unconditional manner. The granting of preferences to the AASMs on condition of market access was a violation of the Most Favored Nation Clause as will be seen in chapter three.

²⁰ *Ibid*

states and territories the same treatment that they accord each other under the Treaty of Rome. All members of EEC would contribute to aid required by the associated states and territories. Provision was made in the Treaty for the eventual establishment of a Development Fund.” Thus, the Most Favoured Nation (MFN) principle and reciprocity emerged as the AASM negotiated trade on bilateral terms with the EU.²¹

On the 29th of July 1969, a second Yaoundé Convention was held which did not change much from the former, but added a development fund, the European Development Fund (EDF). The fund granted an aid package worth “918 million for the period 1970 to 1974 compared with \$730 million in 1964-69. Of the \$918 million, \$748 million constituted grant money; the rest was loans and share holdings.”²²

Trade preferences continued as the AASMs’ access to the EU market was maintained. However, these preferences were based on the Most Favoured Nation (MFN) principle under General Agreement Tariff and Trade (GATT) 1947. Thus, albeit the AASMs did not participate at the negotiation of the GATT in 1947, like other Third World countries, they were subsequently engulfed in the practice of its rules. The preferences granted the AASMs were enshrined under the principle of non-discrimination of GATT Article 1.

The EU relationship and trade preferences to the AASMs sparked criticisms from other African countries.²³ At the same time, attempts by Great Britain to integrate the EU were vetoed by the French. This to an extent left the members of the Commonwealth Africa, in a position of uncertainty of their trade with the EU. These fears caused Nigeria to sign an independent trade agreement with the EU in 1966, albeit it never came to existence because it was opposed by the French who were against the civil war in Nigeria.²⁴

The EU also signed a trade agreement with the East African States (Kenya, Tanzania, and Uganda), in 1969, known as the Arusha Agreement. This agreement contained reciprocal rights

²¹ Article 132 of the Treaty of Rome.

²² Isebill. V. G, *op cit* 246-247

²³ During the very time of the negotiations culminating in the first Yaoundé Convention, a number of continental African issues were being debated. African unity on a continental scale was being called for by a number of African leaders. President Nkrumah of Ghana accused the EU of running interference with African unity. Nkrumah called the EEC "a new system of collective colonialism which will be stronger and more dangerous than the old evils we are striving to liquidate.

²⁴ Isebill. V. G, *op cit* 246-247

in the trade between the parties and ran concurrently with the Yaoundé II Convention but, it did not include financial assistance from the EU as was the case with the Yaoundé conventions.²⁵

Isebill. V.G, states that the Yaoundé Conventions did not require the AASMs to grant tariff preferences to the EU members. One of the reasons advanced was that the common agricultural policy of the EU had exempted some of the products from the AASMs that could have competed with EU products. Thus to balance the trade of the 18 FTAs, AASMs were to impose custom duties on EU products entering their markets.²⁶ It is interesting to note that the AASMs did not constitute a FTA though they were not precluded from doing so. The following chapters will show how this is going to impact on the trade of CEMAC members because the same phenomenon continued where trade between African regional blocs has remained very low since independence.

By 1973, membership in the EU grew from six to nine while the AASMs, Nigeria, the members of the Arusha Agreement and the Caribbean nations regrouped to form the African Caribbean and the Pacific states-ACP, including other sub-Saharan African nations. There were 46 ACP states that negotiated trade with the EU in Brussels in 1973 and concluded after 18 months of negotiations in Lomé, Togo, on February 28, 1975.²⁷ This led to the birth of the first Lomé Convention in 1975. The Lomé agreements and their trade options, form the premise on which this work is based.

²⁵ *Ibid*

²⁶ *Ibid*

²⁷ *Ibid*

DEVELOPMENT OF THE PROBLEM

1.2.1 The Lomé Conventions

The ACP countries established a special relationship with the EU through successive agreements, under the Lomé Conventions.²⁸ The first Lomé Convention was signed in 1975, widening the scope of the Yaoundé I and II Conventions.²⁹ Since 1975, the Lomé I to IV Agreements outlined the economic and political relationship between the ACP and the EU, culminating to the Cotonou Agreement (CA) of 2000.³⁰ The CA, sought the establishment of Economic Partnership Agreements (EPA) as an alternative to the Lomé preferences to ACP.³¹ It included 77 developing countries (DCs), among which were Least Developed Countries (LDCs).³²

The Lomé I Convention provided for free access to the EU market without reciprocity, which was a great achievement by a unified ACP negotiation against the notion of “reverse preference”. The EU option of “reverse preference” meant that, in response to free access to EU’s market, the ACP countries were to allow EU products to enter ACP states tariff free.³³ “Reverse preference” was a reciprocal system of trade between the EU and the AASMs. However, under the new trade arrangements involving non-AASMs, members, or ACP states negotiated trade with the EU on a non-reciprocal bases.

Isebill. V. G argued that, there existed a dissymmetry between the EU and the ACP to warrant trade on reciprocal basis. In addition, “revers preference” was going to prevent ACP states from

²⁸ Bjornskov C & Krivonos E (2001), *From Lome to Cotonou: The New EU-ACP Agreement*.

²⁹ Membership of the United Kingdom to the then EEC in 1973 led to the signing of the wider reaching Lomé I agreement between 46 ACP and the then 9 EEC member states (1975-80). Yaoundé I and II was based on free trade with the EEC and its associate states, the Lomé Convention introduced a trade régime that was characterized by granting preferential access to the majority of ACP states’ exports on a nonreciprocal basis, thus paving the way for a new stage of privileged relations with the EEC. *European Law Journal*, Vol. 10, No. 4, July 2004, pp. 439–462.

³⁰ The Cotonou Treaty of 2000 concluded the first phase of an ongoing negotiating process that shifted trade between the EU and some ACP countries away from non-reciprocal, preferential trade to eventual free trade agreements (FTAs)

³¹ <http://ec.europa.eu/development/geographical/cotonou/lomegen/lomeitoiv_en.cfm#0> [Accessed on 25 June 2009]

³² www.dft.gov.uk>>[Accessed on 10 March 2009]

³³ Isebill.V. G, *op cit* 255.The notion of revers preference was an intention of a continuation of Yaoundé agreements which were based on reciprocity.

buying from less expensive markets. The EU's acceptance of this agreement instituted the principle of non-reciprocity in the trade between the EU and the ACP. As a consequence, ACP products entered the EU market duty free, quotas free and without any requirement to reciprocate. However, a separate protocol on certain products was granted preferential access because they competed with like products in the EU market. Sugar was traded under a separate protocol. Nevertheless, 99.2% of ACP products entered the EU market duty free. Only a few products such as sugar, beef and veal were restricted on quantitative basis.³⁴

It also provided for a stabilization fund (Stabilisation of Export Earnings-STABEX) to compensate the ACP states in the event of a fall in price in the world market, financial aid under the European Development Fund (EDF) and a possibility to access loans under the European Investment Bank (EIB).³⁵

The Lomé II (1980 to 1985) and Lomé III (1985 to 1990) continued the trade regime under the Lomé I Convention. While Lomé II added the protocol on the Stabilisation of Export Earnings from Mining Products (SYSMIN), provided a special quantity and price for rum and a guaranteed quota for beef and veal; the Lomé III Convention took a rather pragmatic approach, with emphases placed on self-reliance, regional trade cooperation, human rights and agriculture.³⁶

The Lomé IV Convention was negotiated with a lot of mixed feelings both by the ACP and the EU. The EU went into the negotiation with a protectionist approach which left the ACP states in doubt as to the position of the EU. Despite all the restrictive characteristics of the Agreement, the outcome was an "Old wine in new wine skin".³⁷ The Agreement continued the provisions of the Lomé III Convention, maintaining all the protocols on agriculture, increased annual quantity, and eliminating export tax on ACP products. While tariff quotas on rum was gradually eliminated, the banana protocol was maintained and given an even longer period from five to ten years duration. Preferences to ACP products entering the EU market were strengthened. The Rule of Origin (RoO) provision was relaxed by lowering the local content from sixty percent to forty-five percent. This made it easier for ACP products to enter the EU duty free without the usual

³⁴ *Ibid*

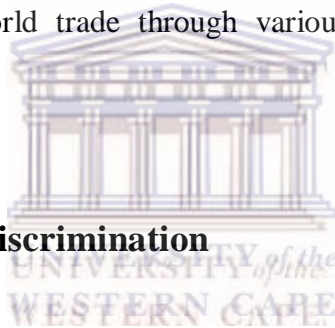
³⁵ Isebill.V. G, *op cit* 247

³⁶ Roby, J. L. (1990)

³⁷ *Ibid*

restriction on RoO. In addition, the STABEX fund was increased and made into a full grant with no requirement for replenishment by ACP states.³⁸ Generally, the Lomé Agreements were based on the principle of non-reciprocity and financial assistance which were totally inconsistent with WTO rule.

The development and the changes that have occurred in the ACP EU trade as a result of the principle of non-reciprocity will be seen in subsequent discussion on the issue. The members of the CEMAC are also ACP members and signatories to the General Agreement on Tariffs and Trade (GATT), as a result of their colonial history.³⁹ Thus, whatever negotiations and the consequences thereafter, with respect to the multilateral trade agreement under the WTO, have had a direct and indirect effect on CEMAC states. These DCs and LDCs that had become members of GATT⁴⁰ were subjected to the rules⁴¹ laid down in World Trade Organisation (WTO),⁴² which explicitly incorporate GATT 1947 and 1994. The one of the objectives of GATT was the liberalization world trade through various trade instruments including the principle of non-discrimination.



1.2.2 The Principle of Non-discrimination

The most fundamental principle of GATT 1947 is the non-discrimination principles, composed of the Most Favoured Nation principle (MFN) and the National Treatment principle as stated in GATT Article I and Article III respectively.⁴³ These principles govern international economic transactions for developed and developing countries. They were established to prevent countries from discriminating or establishing a system of protectionism against other trading partners.⁴⁴ It stated that a member of GATT was precluded from discriminating against other trading

³⁸ *Ibid*

³⁹ Beverly M. Carl *Trade and the Developing World in the 21st Century* (2001) p.301-302

⁴⁰ *Op cit*, p. 301-302

⁴¹ *Ibid*

⁴² See Marrakesh Declaration of 15 April 1994 at www.wto.org [Accessed on 8 November 2010]

⁴³ Beverly M. Carl (2001) p. 75-76

⁴⁴ *Ibid*

partners, by lowering tariffs for some trading partners, imposing restrictions, or discriminating between nationals and foreigners.⁴⁵

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.⁴⁶

Thus, these principles advocated for equity and equality in trade without considering the dissymmetry of the member states in terms of their population, economic stability, political and social strengths and weaknesses.⁴⁷ This view was supported by Hoekman B.,⁴⁸ who asserts that states are different from each other. This contributes to the lack of willingness for members to fulfil their obligations under the WTO or other regional trade arrangements.⁴⁹

⁴⁵ *Ibid*

⁴⁶ Article 1 GATT 1947

⁴⁷ Henrik H, Petros C. M, (2009). *The WTO Case Law of 2006-2007: Legal and Economic Analysis*. Cambridge University Press. Editors.

⁴⁸ Hoekman B, (2005). Operationalizing the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment. *Journal of International Economic Law*: 8 (2): 405-424

⁴⁹ *Ibid*

1.2.3 Criticisms of the EU Preferences

As part of the objectives of the WTO,⁵⁰ developed countries have often established a tariff scheme to stimulate export from developing countries, by lowering tariffs or granting duty free import from developing countries under the Generalized System of Preference (GSP)⁵¹ which was an exception to the principle of non-discrimination as stated in Article 1(1) of GATT.⁵² Based on this exception, the EU, granted preferential treatment to ACP countries under the GSP.⁵³ It also established a system of Special Preferential Treatment in the Lomé agreement for specific countries in the ACP. These preferences came under heavy criticisms as early as 1965 for being unsuitable for developing countries. Criticisms came from both developed and developing countries that were not members of the ACP/EU trade regime.⁵⁴ These preferences were interpreted as EC's trade expansionist mechanism, to discriminate amongst other WTO members, thus, defeating the purpose of the MFN.⁵⁵ Despite the criticisms, the EU seemed to have taken advantage of the porosity and the lacunae that existed in the GATT framework to engage in some of its trade relationships with developing countries. Nevertheless, paragraph II of GATT Article 2(a) made provision for such trade preferences to developing countries in terms of tariffs and custom duties.⁵⁶

The criticisms prompted the member of GATT in 1965 to include Part IV of GATT which recognises the special need of developing countries at the time and asserts the principle of non-reciprocity. It consists of Article XXXVI, XXXVII, and XXXVIII.⁵⁷ These provisions place an injunction on developed countries, not to expect reciprocity in their trading relationship with DCs or LDCs. The EU therefore, argues that her trade preferences to ACP countries which were and are largely developing countries were based on non-reciprocity and, fall under the conditions

⁵⁰Gallagher P (2000), p. 96. *Guide to the WTO and Developing Countries*. Kluwer International Law. The main objective of the WTO is to eventually, eliminate all barriers to the world trading system.

⁵¹ See Discussion on the EU GSP in chapter 3

⁵² Beverly M. *op cit* p. 77-78

⁵³ Patrick L. (1998). p.150 *Trading Free, The GATT and the US Trade Policy*

⁵⁴ WTO Dispute Settlement Understanding Dispute DS27

⁵⁵ Beverly M. C, (2001) p. 76. MFN was aimed at a progressive and rapid reduction of tariffs views as the fastest way to liberalise world trade

⁵⁶ *Ibid*

⁵⁷ Kipligate P. K, (1993) *supra*, p. 90.

laid down in the Enabling Clause,⁵⁸ the GSP and under the exception of Article XXIV.⁵⁹ The EU held that her trade arrangement with ACP states perfectly met those conditions as laid down in GATT for a country to derogate from the MFN⁶⁰. According to the principle of non-discrimination, and non-reciprocity, such preferences were to be extended to all developing countries to comply with the condition for granting preferential treatment to a developing country. “Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.”⁶¹

Despite those conditions, the EU preference was only granted to ACP states, leaving out other developing countries.⁶² It is important to note that the issue creating controversy was not the preference itself but the conditions surrounding the preferences. Under GSP, preferences were conditioned on non-reciprocity and non-discriminatory basis. “The dispute between India and the European Communities (EC) stemmed from an EC Regulation which awarded tariff preferences to a closed group of 12 beneficiary countries on the condition that they combat illicit drug production (the Drug Arrangements). India brought the claim alleging that the Drug Arrangements were inconsistent with GATT Article 1(1) and unjustified by the Enabling Clause.”⁶³

Based on increasing criticisms, GATT members in 1971 adopted two waivers with the objective being to favour developing countries. The first waiver was aimed at bypassing the MFN principle, and allowing the use of GSP in favour of developing countries.⁶⁴ The second waiver was aimed at enabling developed countries to grant preferences to other developing countries

⁵⁸ “Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.” The Enabling clause was incorporated into the WTO in 1994.

⁵⁹ Kiplagate P.K *op cit* 90

⁶⁰ Patrick L, (1998) p. 145-150. *Trading Free: the GATT and the US Trade Policy*. Twentieth Century Fund Press, USA

⁶¹ Enabling Clause Article 1(1)

⁶² Kiplagate P. K, *op cit* p.90

⁶³ Grimmatt J. J, (2008) Trade Preferences for Developing Countries. *Congressional Research Service (CRS), Library of Congress. R22183*

⁶⁴ Decision of 28 November 1979 (L/4903) available at www.wto.org <[Accessed on 13 November 2010]

without necessarily granting such preferences to developed contracting parties.⁶⁵ The EU has applied especially the first exception to justify her continued preferences to ACP states.⁶⁶ Again, mentions needs to be made of the fact that, though the EU applied the Enabling Clause, GSP and the exceptions of Article XXIV.⁶⁷ The EU has since 1975 granted preferences under the Lomé I-IV to ACP states, such as:

- Non-reciprocal trade preferences
- All industrial goods enter the EU duty free
- 80% of agricultural products enter the EU duty free, and the remaining 20% benefit from preferences.⁶⁸

ACP countries, under the Lomé Agreement invoked the waiver that was granted under the Enabling Clause permitting developed countries to grant non-reciprocal treatment to developing countries. During the Lomé II convention, this waiver was granted to ACP states and made permanent at the Tokyo Round in 1979 under the Enabling Clause.⁶⁹ ACP countries depended solely on this trade regime to access the European market.⁷⁰ This kind of preferential trade regime, fall short of being compatible with WTO rules. They did not meet the requirements of Article 1(1) and Article XXIV, therefore, were bound to come under increase criticisms.

⁶⁵ Nwobike C. (2008) p.90

⁶⁶ Patrick. L (1998) p. 149 Trading Free, The GATT and the US Trade Policy

⁶⁷ "Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties." The Enabling clause was incorporated into the WTO in 1994
http://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm

⁶⁸Grynberg R. (1998). *The WTO incompatibility of the Lome Convention Trade Provisions*.
<<http://dspace.anu.edu.au/bitstream/1885/40346/1/sp98-3.pdf>> [Accessed on 5 January 2009]

⁶⁹ Then in 1979, at the Tokyo Round, special and differentiated treatment encompassing the GSPs was also introduced on the basis of a decision entitled: 'Differentiated and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries'. *European Law Journal*, Vol. 10, No. 4, July 2004, pp. 439-462.

⁷⁰Naheed K, Calika N. (1994) p. 14-20 *International Trade Policies: Background Paper*. International Monetary Fund Available at
<<http://books.google.co.za/books?id=AUhPB9n7HZoC&pg=PA15&lpg=PA15&dq=ACP+and+MFN+scheme&source=bl&ots=EDk7rNNO7V&sig=MgSG4b54X5E0bxUGyINs4DENpjw&hl=en&ei=pLuSSoPQHsj3> [Accessed on 5 January 2009] <[QacuZHxDQ&sa=X&oi=book_result&ct=result&resnum=1#v=onepage&q=&f=false](http://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm)> [Accessed on 5 January 2009]

At the United Nations Conference on Trade and Development (UNCTAD), the Community's trade preference to ACP was criticized since it was seen as a direct violation of the exception under the GSP.⁷¹

According to GATT 1947, countries were only allowed to derogate from the MFN principle if their trade preferences to any developing country were extended to all developing countries and were non-reciprocal.⁷² Secondly, according to Article XXIV exception, granting preferential treatment to developing countries was conditional upon the fact that such preferential treatment should envisage the creation a free trade area, or a custom union.⁷³ The EU arrangement did not reflect such conditions as was seen in the special preferential treatment granted to ACP under the Banana and sugar protocol. A waiver was necessary for the EU to continue to grant preferential trade preferences to the ACP states, though, under GATT 1947 but not under the WTO.⁷⁴

The rationale was that GATT 1947 did not provide for any mechanism through which countries that violate its laws were to be sanctioned and since a waiver could be sought for derogating from the MFN condition under Article IX and Article XXV.5, there was no limitation as to the duration of the waiver.⁷⁵

The coming into force of the WTO in 1995⁷⁶ established a Dispute Settlement Body through which all members of the WTO could petition another member in case of a violation. A WTO waiver could only be granted for a period of one year and this would warrant the EU to keep coming to the WTO every year if such trade preferences were to continue.⁷⁷ Cotonou replaced the Lomé IV agreement which had existed for close to two decades. Waivers could no longer be for an indefinite period as the case before GATT/WTO 1995. During the Doha Ministerial meeting of 2001, the WTO extended the waiver for EU to continue to grant preferential trade

⁷¹ Abass A (2004) .The Cotonou Trade Régime and WTO Law, *European Law Journal*, Vol. 10, No. 4, July 2004, pp. 439–462.

⁷²Grynberg R. (1998). The WTO Compatibility of the Lome Convention Trade Provisions <http://dspace.anu.edu.au/bitstream/1885/40346/1/sp98-3.pdf><Accessed on 5 January 2009>

⁷³ Patrick low (1998)p.150 Trading Free, The GATT and the US Trade Policy

⁷⁴ Under the WTO, as shall be seen subsequently, waivers were non permanent.

⁷⁵ Feichtner I. (2008) Administration of the Vocabulary of International Trade: The Adaptation of WTO Schedules to Changes in the Harmonized System - Part II/II *German Law Journal* Vol. 9 No. 11. The legal requirements that waivers may only be of a limited duration and have to be reviewed annually did not exist under the GATT 1947 and were negotiated during the Uruguay Round.

⁷⁶ The WTO was created in 1995 by the Marrakech agreement.

⁷⁷ Grynberg R. (1998),

preferences to the ACP which was to end in 2007,⁷⁸ while seeking ways to resolve the ambiguity that exist in the WTO rules themselves. However, the content of the Cotonou did not change in terms of scraping-off the inconsistent issues in relation to WTO compatibility; instead it added Development Aid into the new agreement.⁷⁹ Under their successor, the Cotonou Agreement signed in June 2000, preferences were extended for eight more years (until the beginning of 2008) for all countries of Sub-Saharan Africa, except South Africa, as well as most independent developing countries in the Pacific and the Caribbean.⁸⁰

The Cotonou Agreement introduced a system of gradual co-operation through negotiation by both parties to establish economic partnerships that will enhance trade and development through trade liberalisation, thus bringing an end to non-reciprocal trade arrangements.⁸¹ The new EPAs are being negotiated⁸² as a result of the expiration of the waiver granted the ACP/EC in 2001 during the Doha Ministerial Rounds which permitted the EU to continue to grant preferential treatment to goods originating from ACP countries as provided by Article 36:1 of GATT 1994. The waiver which ended on 31st December 2007 had to be replaced by a new agreement compatible with WTO rules.⁸³

The Cotonou Agreement stipulated that economic partnerships had to be negotiated before the end of December 2007 when the waiver granted to the EU was to officially come to an end.⁸⁴

⁷⁸ Grimmett J. J (2006) *op cit p. 3*. Regarding the Article XXIV claim, the 1994 report concluded that because the Lomé Convention involved non-GATT Parties, the Article did not cover the agreement and thus could not be used to justify the inconsistency with Article I of trade preferences for bananas imported from ACP countries.” The European Communities (EC) subsequently obtained a temporary waiver as per GATT Article 2:1 for the Lomé agreement; a waiver was later granted for the successor ACP-EC Partnership (Cotonou) Agreement until December 31, 2007.

⁷⁹ Robbins. P & Ferris, R. S. B. (2003). *The impacts of globalization on the agricultural sectors of East and Central Africa*. (Organization of International institute of Tropical Agriculture. p. 29-32

⁸⁰ Henri-Bernard Solignac 2001

⁸¹ Grimmett J. J (2006) *op cit p.3*. The non-reciprocal trade preferences that were a corner stone of the previous Lomé Conventions will expire at the end of 2007 and be replaced in 2008 by a very different arrangement. As discussed already. These new trading arrangements were to be compatible with the multilateral trade rules of the WTO.

⁸² The EPAs are being negotiated within the framework of the Cotonou Agreement. The Cotonou Agreement replaced Lomé IV as a temporary measure in 2000 and includes similar non-reciprocal preferential access to the EU market for certain ACP agricultural and other goods, through to the end of 2007. Trade provisions in the Cotonou Agreement have been sanctioned by a waiver granted by the World Trade Organisation (WTO). <http://www.sia-acp.org/acp/uk/index02.php#bottom>>[Accessed on 25 June 2009]

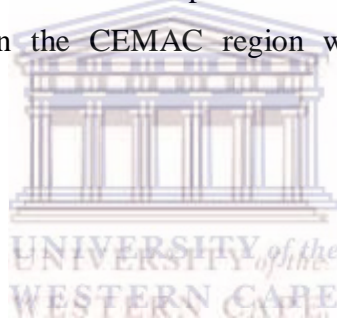
⁸³ Grimmett J.J *supra*

⁸⁴ Article 37 (1) of Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at the latest. Formal negotiations of the new trading arrangements shall start in September

The implication of the new trend of events especially in the CEMAC region willing looked into from two fronts: the effects on CEMAC's LDCs, and DCs. Though a detailed analysis will be provided in the subsequent chapters, cognizance should be taken of the fact that LDCs automatically have been offered a different scheme, the Everything-But-Arms (EBA) scheme.

The Cotonou agreement, which is transitional, required that each member or economic group enter into an EPA with the EU for there to be a continuity of trade between the parties, that is, EU and ACP member states. As of 2008, only Cameroon in the CEMAC region had signed an interim EPA with the EU thus establishing continuity of trade while negotiations continue with other CEMAC members who are yet to negotiate an EPA.

According to Article 45 (1)⁸⁵ of the Cotonou Agreement, one of the issues agreed upon by the parties is the negotiation of a competition policy between the EU and ACP states during EPA negotiations. This research is based on the incorporation of competition policy in EPA and its effects on regional integration in the CEMAC region where there are great competitive challenges.⁸⁶



2002 and the new trading arrangements shall enter into force by 1 January 2008, unless earlier dates are agreed between the Parties.

⁸⁵Articles 45(1) The Parties agree that the introduction and implementation of effective and sound competition policies and rules are of crucial importance in order to improve and secure an investment friendly climate, a sustainable industrialisation process and transparency in the access to markets.

⁸⁶ Gustavo R and Charalambos G (2007)

RESEARCH FRAMEWORK

1.3.1 Research Statement

In this new era of globalization countries of the West or developed countries, are pressing hard through the WTO for a multilateral trading system that enhances increased market access especially by developing countries, to accelerate economic growth within their various regions and in the world trading system. Statistics have shown⁸⁷ that trade flow among developing countries are far less than trade between developed and developing countries. In the CEMAC region in particular, an observation of the level of integration and competition in the Banking sector reveal that cross-border banking competition in the region is limited or otherwise absent.⁸⁸

There is the fear of an eventual European dominance in the region if CEMAC countries negotiate trade on competitive basis as this is one of the agendas of the Cotonou Agreement. Lucian Cemat expressed the view that "...foreign firms feel free to engage in across-anti-competitive behaviour, when the countries to which they are exporting do not have a competition law and can neither individually nor through cooperation with foreign competition authorities challenge that firm's market behaviour."⁸⁹ The aim of the thesis therefore is to ascertain the effects of negotiating competition policy between CEMAC and the European Community, to understand the level of CEMAC's legal preparedness, towards setting up a regional competition policy with the European Union.

1.3.2 Research Question

⁸⁷ Gallagher P (2000) p. 111-115 Guide to the WTO and Developing Countries

⁸⁸ Samer S & Vacher, J (2007): *Banking Sector Integration and Competition in CEMAC (Abstract)* <http://www.competition-regulation.org.uk/conferences/southafrica04/Cernat.pdf> [Accessed on 25 June 2009]

⁸⁹ Cemat L. (2004). UNCTAD. p.8 The role of Competition in the promotion of competitiveness and Development: Experience from a sample of developing and least developing countries. Available at <<http://www.competition-regulation.org.uk/conferences/southafrica04/Cernat.pdf>> [Accessed on 25 June 2009]

The research questions are as follows: To what extent will the incorporation of a competition policy in CEMAC/EU EPA affect CEMAC's regional integration? Secondly, is CEMAC legally able to engage a competition policy with the EU? Thirdly, how will competition policy with the EU bring about increased integration in CEMAC?

1.5.3 Research Methodology

The research will be based on the available literature on the new economic partnership agreements that are in process, although not much has been written about the subject for the region. A critical analysis of available literature (books, journal articles and news reports) will all be relevant to the research. Information from the internet will also be of prime importance since most of the current debates on EPAs and competition policy are discussed through this medium.

1.3.4 Research hypothesis

The hypothesis of the investigation is that there will continue to be an economic downturn and continuous difficulties for regional integration to fully take effect in the Central African sub-region if the competition policies are included in the current EPA negotiations with EU. The background of this hypothesis stem from the fact that since preferences have not been able to integrate and develop the economy of this region, incorporating competition policy in EPA which already is fraught with various challenges, competition policy may only worsen the situation of CEMAC. Since the economies of the countries that make up the CEMAC region are still developing and have very small private sectors, an EPA that leads to full liberalization of the market may obviously lead to the collapse of home industries which would not be able to compete with the more industrialised European industries.

1.3.5 Objectives of Research

The objectives of the research are first, to evaluate the positive and negative effects on the CEMAC region if a competition policy is incorporated in the EPA with the goal of creating a competitive market between the European Union and CEMAC; and Secondly to make a finding on the legal ability of the CEMAC region vis-à-vis establishing a competition policy with the EU, that goes beyond its regional market. This is to ascertain whether the region is ready to negotiate a competition policy of the type that will lead to regional integration and eventual integration into the world economy, which is one of the objectives of the Cotonou Agreement.

1.3.6 The scope of the Research

Observing the developments that have taken place in the EU CEMAC relationship, relating to trade and development under the Lome Conventions, and in addition development aid under certain conditions in the Cotonou Partnership Agreement, there is a lot to write about. However, this research is limited to the CEMAC region and its trade relationship under EPA. Furthermore, it is limited to discussing the impact of EPA enhancing regional integration, with particular focus on how EPA is disintegrating the CEMAC region instead of integrating the regional market.

1.3.7 Chapter Outline

Chapter one is an introduction to the entire thesis with respect to its background, objectives, research statement, the hypothesis and the research questions and limitations. It is divided into two sections; the first part gives an introduction to the thesis and the development of the problem. The second part focuses on the research statement, the research question, methodology, hypothesis, research objectives and finally concludes with an outline of the chapters.

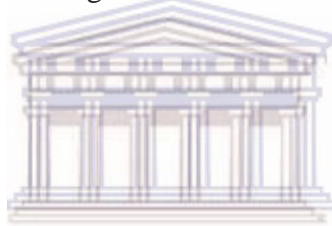
The Second chapter gives an overview of the CEMAC Region. The chapter will discuss the formation of CEMAC and its institutional framework for integration. The aim of the chapter is to

examine the developments in the CEMAC's institutional framework for integration from the events that led to the creation of UDEAC.

The third chapter will examine various trade instruments used to achieve the objective of regional economic integration in CEMAC such as non-reciprocal trade, under the Lome regime and will review the extent to which these instruments have contributed towards regional economic integration in CEMAC. It will concurrently examine the implications of EPA in the CEMAC region before and after 2007.

Chapter four, will look at the legal effects of competition for integration. It examines the impact of competition policy within the current legal framework in CEMAC and the Cotonou Agreement. It will elaborate on the effects of competition policy on regional integration within the ambits of the CEMAC competition policy, Cotonou Agreement, the WTO. Finally, chapter five will draw conclusions from the findings and make recommendations.

1.3.8 Conclusion



This chapter has briefly given a historical development of the problem. It can be deduced from the above discussion that trade agreements with the EU started on a reciprocal basis with the AASM. At the Lome Convention, the ACP states were able to negotiate trade on a non-reciprocal basis. From the forgone, the trade cycle of the EU and ACP states will soon complete its cycle of 360. That is, from reciprocity from 1959 to 1975, non-reciprocity from 1975 to 2007 and now negotiations for trade on reciprocal bases. The chapter has also given the developments that culminated to EPA. In addition, it has provided the framework of the research in terms of the research statement, hypothesis, the research question, the methodology, the scope and the outline of chapter.

CHAPTER TWO

GENERAL OVERVIEW OF CEMAC

2.1.1 Introduction

CEMAC was created in 1994 by the heads of states from member countries-Cameroon, the Central African Republic, Chad, the Republic of Congo, Equatorial Guinea and Gabon.⁹⁰ CEMAC is the “end product” of several treaties and agreements from 1910 to 1994. Thus, CEMAC replaces UDEAC, which was created in Brazzaville-Congo, on 23rd June 1959.⁹¹ The CEMAC Treaty was signed to close the gaps created by UDEAC and to curb some of the problems that had emerged from the monetary and economic crisis of the 1980s. Prior to the signing of the CEMAC Treaty, certain objectives were set out in its predecessor agreements such as AEF, UDE, and UDEAC.⁹² These objectives include amongst others, the extension of national markets through the removal of barriers to trade within the region, equitable distribution of industrialisation projects, and free movement of persons. By 1994, due the failure of UDEAC in financing the activities of the region, and the lack of a comprehensive structure for decision making, the Heads of State of UDEAC thought it necessary to broaden the scope of UDEAC and give it a wider meaning. This led to the constitutive Act creating CEMAC, in N'Djamena, Chad.⁹³ However, CEMAC only came into force in August 1999, after it was ratified by the six member states: Cameroon, the Central African Republic, Chad, the Republic of Congo, Equatorial Guinea, and Gabon.⁹⁴

⁹⁰ Preamble of CEMAC Constitutive Act 1994

⁹¹ Shillington. K (2005) Encyclopaedia of African history Vol.1 p.1636

⁹² Akintan S. A *op cit* 168

⁹³ Bongyu. M. G, (2009). The Economic and Monetary Community of Central Africa (CEMAC) and the Decline of Sovereignty. *Journal of Asian and African; Vol.44 p.389n Studies*

⁹⁴ For the Treaty to take effect, the must unanimous ratification as provided by Article 57 of the CEMAC Treaty, 1994

To understand the dynamics of regional integration in CEMAC, it is necessary to look at the historical developments in the region with the intention of contextualising the premise on which the current problem is based.

2.1.2 The Creation of CEMAC and its Institutions

In 1910, France created the France Equatorial Africa (*Afrique Equatoriale Française* (AEF)). Its members were Chad, the Central African Republic (CAR), the Republic of Congo and Gabon.⁹⁵ These territories were not independent from France until the early 1960s. Since their political and economic policies depended on France, they were given representative positions in the French Parliament as associated territories.⁹⁶ In 1945, as the surge for independence continues to gain grounds in colonial Africa, self-determination took roots. In that same year, the *Colonies Françaises d'Afrique* (CFA) was created in the AEF as a legal tender and a medium of exchange for goods and services.⁹⁷ The acronym-CFA was later name *Coopération Financière Africaine*. The objective was to protect the economy of the AEF from the effects of the devaluation of the French Franc after WW II.⁹⁸

Regional integration exponents in the AEF advocated for a unified political and economic system to strengthen cooperation ties within the AEF. After several failed attempts were made by the Prime Ministers of the AEF to form a political and economic union, they succeeded in establishing the Equatorial Customs Union (*Union Douanière Equatoriale-UDE*), in 1959. The UDE became the first regional institution created as a strategy for integration, and was signed in Brazzaville-Congo, on 23 June 1959.⁹⁹ It had as objectives to extend the national markets of member states through the removal of barriers to intraregional trade, harmonies its fiscal policy, adopt a procedure of equitable distribution of industrialisation projects and the co-ordination of development programmes for various production sectors.¹⁰⁰

⁹⁵ Zafar A, and Kubota K (2003) p.2

⁹⁶ *Ibid*

⁹⁷ *Ibid*

⁹⁸ *Ibid*

⁹⁹ Shillington. K (2005) Encyclopaedia of African history Vol.1 p. 1636 *op cit*

¹⁰⁰ Akintan S.A, Law of International Economic Institutions in Africa

Cameroon became the fifth member of UDE in June 1961. The integration of Cameroon was economically beneficial to the AEF. Nantang J, states that by 1977, Cameroon accounted for over 50% of total Gross Domestic Product (GDP) in the region.¹⁰¹ The “Convention Regulating the Economic and Customs Relations between the States of the UDE and the Republic of Cameroun', signed ... in June 1961, did not create a customs union among the five countries, but rather a partial free-trade area between equal partners- the U.D.E. and Cameroon.”¹⁰² In addition, as a major economic giant of the region, Cameroon’s integration into the UDE brought remarkable changes to the organisation, though some members saw it as a threat to their economic and political influence.¹⁰³ In 1964, the UDE was transformed into Custom and Economic Union of Central Africa (*Union Douniere Economique de la Afrique Central- UDEAC*), which came into force on 1 January 1965.¹⁰⁴

UDEAC was one of the oldest custom union institutions created in the Central African Sub-region to enhance integration. Its objectives were the same as its predecessor UDE, as stated above, that is, the establishment of a common market and monetary union. Under the UDE, a Solidarity Fund was created to compensate Landlocked Countries, that is, Chad and the CAR, for any loss of revenue incurred during their trade. Besides, it envisaged the harmonisation the fiscal policy of the member. These objectives were incorporated into UDEAC in 1964.¹⁰⁵

In an effort to harmonise its fiscal policy, a common Central Bank of the States of Equatorial Africa and Cameroon was created in 1959 (*Banque Centrale des Etats de l’Afrique Equatoriale et du Cameroun* BCEAC).¹⁰⁶ In the late 1970s, the BCEAC headquarter was transferred from Paris to Yaoundé, Cameroon. The BCEAC was officially handed to Africans and a new name given to the institution, BEAC (*Banque des Etats de l’Afrique Centrale*).¹⁰⁷ BEAC began to issue a common currency through a common central bank within the UDEAC sub-region. There are

¹⁰¹ Natang J (1986) UDEAC: Dream Reality or the Making of Subimperial States. *Institute of African Affairs at GIGA, Hamburg/Germany, Vol. 21, No. 2. pp. 211-223*

¹⁰² Mytelka L.K (1974). A Genealogy of Francophone West and Equatorial African Regional Organisations. *The Journal of Modern African Studies, Vol. 12, No. 2*

¹⁰³ Maurice W. Schiff, L & Alan W. (2003) p.98

¹⁰⁴ *Ibid*

¹⁰⁵ Mytelka, L.K (1974) *op cit* p. 16

¹⁰⁶ <http://www.beac.int/index.html>

¹⁰⁷ Gulde A, Charalambos G. Tsangarides (2008), p.6. The CFA franc zone: common currency, uncommon challenges. *International monetary Fund*.

close to 51 commercial banks and 25 other financial institutions of the Central African states (treasuries, cash funds agencies, liquidity and guarantee funds management departments, clearing systems etc.).¹⁰⁸

However, UDEAC began to disintegrate immediately after its formation. Chad, CAR and Congo Kinshasa (formally known as Zaire Republic), left UDEAC in 1968 to form the Economic Union of Central Africa-UEAC (*Union Economique de l'Afrique Central*). This led to a series of crisis within the region.

[In] particular, [] the severe crises of 1966, 1968 and 1984 caused by the withdrawal and return of the Central African Republic and Chad; the successive economic crises of the 1980s and 1990s, characterised by the inability of states to honour their [financial] commitments, and [] caused UDEAC to suspend payments...¹⁰⁹

It can be deduced from the above that regional integration was not born on a “bed of roses” for UDEAC. Besides the economic crisis of those years, the principle of regional integration that started albeit timidly, was heavily affected by regional strives for dominance, a phenomenon that is yet to be eradicated from the political spectrum of the region. “[The] UDE helped attenuate the conflict between those leaders pressing for political unification and those who advocated a minimum infringement of national sovereignty.”¹¹⁰ These conflicts of ideologies still exist in the current leadership in the region.

The UDEAC Treaty went through several modifications (1974, 1983, 1984 and 1991) before the 1994 modification that led to its transformation into CEMAC.¹¹¹ Equatorial Guinea later joined UDEAC on 1 January 1983. One of the main objectives of UDEAC was to stabilise the economy of the region, and ensure a balanced economic growth. In addition, it was aimed at giving a new and decisive impulse to regional integration in central Africa through increased harmonisation of

¹⁰⁸ <http://www.beac.int/index.html> [Accessed on 28 November 2009]

¹⁰⁹ Côme Damien Georges Awoumou (2008)p.4 6 *ECCAS or CEMAC* Which Regional Economic Community for central Africa

¹¹⁰ *Ibid*

¹¹¹ Khan S. (2006)

the policies and legislation of the various countries, to facilitate the much need regional integration for economic growth and development.¹¹²

2.1.3 Why UDEAC failed

Despite UDEAC's objectives of economic liberalization and the creation of a common market, its failure to attain regional integration has been blamed on several causes.

First, it is argued that integration failed partly because it did not originate from within UDEAC but from outside the region. That is, the notion of integration was not originate from members but from former colonial master.¹¹³ UDEAC was one of those regional groupings that were immediately trapped into the EuroAfrican philosophy of the French.¹¹⁴ This resulted in inseparable colonial linkage with former colonial master-France.¹¹⁵ The establishment of a common central bank; its Paris Based *Banque Centrale de l'Afrique Equatorial* is evidence of the region's dependence on its colonial routs.

Furthermore, the dependence on aid for development under the European Development Fund (EDF) continued to hamper regional competitiveness.¹¹⁶ This made UDEAC more of a French colonial entity, rather than a structure to facilitate development and integration in the Central African Sub-region.¹¹⁷ There was no incentive, no motivation for growth since there was always a guaranteed source of support. Alex E. Fernández Jilberto and Mommen A, assert that the French domination of the UDEAC economy caused it to follow a French pattern of trade which was not beneficial to the states.¹¹⁸

¹¹² *Ibid*

¹¹³ *Ibid*.125

¹¹⁴ *Op cit*

¹¹⁵ Gabon inherited the status of contracting party on 3 May 1963 (Article XXVI:5(c) of the GATT 1994) after having applied the GATT de facto since its independence from France on 17 August 1960.

¹¹⁶ Dominique Njinkeu, Hugo Cameronn, (2008). Aid for trade and development, Cambridge University press By Miroslav N. J (1998) International Economic Integration: Critical Perspectives on the World Economy

¹¹⁷ *Op cit* p.130

¹¹⁸ Jilberto A E. F & Mommen A. (2002). P. 131. Regionalization and globalization in the modern world economy: perspectives on the Third World and transitional economies. 2nd Ed, Routledge Publishers, London.

The exigencies of the lack of a common economic and political interest in the region, compromised by the demand for national economic and political interest, nation-building and domestic economic growth, overshadowed the process of regional integration in UDEAC.¹¹⁹

Besides, preferential treatments among member states were also limited to a few products, which were contrary to the WTO rule on customs Union.¹²⁰ Intraregional trade for example represented only 5% of UDEAC's total trade.¹²¹ According to Nantang J, Cameroon and Gabon account for 32% of total intraregional trade. He argued that the lack of intraregional trade can be attributed to insufficient infrastructure in the region and the use of market opportunities.¹²²

Another strand of problems faced by UDEAC members that made integration difficult were the continuous instability of the region. The war in Congo and the Central African Republic were major setbacks to the regional integration process. Besides, conflicts within the UDEAC hampered its effort to integrate the economies. These conflicts have been partly blamed on the way distribution of the UDEAC Solidarity Fund (created under the UDE to compensate landlocked countries for the loss of customs duty) was managed. The dissatisfaction by Chad and the CAR prompted the creation of the UEAC which was chaotic for the region's integration.

Furthermore, there was scepticism as to the establishment of a common currency under a common monetary union. At the early stage of its creation, members were sceptical to commit to a strong monetary union for fear of loss of sovereignty, which has been a major obstacle to economic integration of the sub-region.¹²³

In 1981 UDEAC members, including Sao Tome and Principe and members of the Economic Community of the Great Lakes (CEPGL),¹²⁴ met to form an umbrella organisation, the Economic

¹¹⁹ Mytelka L. K (1974) *op cit* p.18

¹²⁰ Article XXIV

¹²¹ Mytelka L. K (1974) *op cit* p. 17

¹²² Nantang J (1986) *op cit* p. 215

¹²³ Zafar A. (2003) p.6. Regional Integration in Central Africa: Key Issues Africa Region Working Paper Series No.52

¹²⁴ Members of CEPGL were Democratic Republic of Congo, Burundi, and Rwanda. Angola took an over status until 1992.

Community of Central African States (ECCAS). ECCAS only became active in 1992 and was recognised by the African Economic Community (AEC).

The formation of ECCAS has increased the financial and human resources burden for many of the member states.

Figure 1

Multimember in Central Africa

Country and Region	Cameroon	CAR	Congo	Chad	Gabon	Equatorial Guinea	Sao Tome and Principe ¹²⁵	The CEGL countries
CEMAC	√	√	√	√	√	√		
ECCAS	√	√	√	√	√	√	√	√
LCBC	√			√				
AEC	√	√	√	√	√	√	√	√

AEC = African Economic Community, CEMAC = Central African Economic and monetary Community, ECCAS = Economic Community of Central African States, CEGL= Economic Community of the Great Lakes Countries, CILSS = Permanent Interstate Committee on Drought Control in the Sahel.

Dual-membership in the region has also been blamed for the failure of UDEAC/CEMAC. Part of the reason for overlapping membership is the lack of identity. “The main problem lies in attempting to objectively delimit the area referred to as Central Africa. It has been difficult to situate central Africa.”¹²⁶ This led to the creation of the Economic Community of Central African States (ECCAS) in 1983. The initiative to establish a wider forum for integration in Central Africa by UDEAC and the Economic Community of the Great Lakes States (CEPGL- Burundi, Rwanda and the then Zaire), was to ease the tension between the two regional organisation. Yet the institution of a third regional organisation also meant increase in the administrative and financial burden on the member states. ECCAS was immediately paralysed by the lack of funds and lay dormant until 1999.¹²⁷ In the same year, it was postulated by the

¹²⁵ Sao Tome & Principe is part of Central Africa but not part of CEMAC. It however participate in CEMAC as an observer member.

¹²⁶ Côme D (2008) p. 128

¹²⁷ *Ibid*

creation of ECCAS will subsequently result in conflict. This conflict, already exist between ECCAS and CEMAC.¹²⁸

2.2.1 CEMAC

In 1994, the Heads of States of UDEAC met in N'Djamina, Chad to revamp cooperation ties and to resolve the issues that had rendered UDEAC ineffective for over a decade from achieving regional integration. The outcome was the transformation of UDEAC into CEMAC. This was part of a wider initiative to boost the integration process.¹²⁹ The reform established a common market by introducing a common external tariff, harmonisation of indirect tax with VAT, members agreed in principle to remove all barriers to intraregional trade, and the replacement of quantitative import restrictions with temporary import surcharges.¹³⁰ CEMAC is an institution with legal personality based on public law as per the 1994 Treaty. This was further expanded by Article 35 and 36 of the Treaty empowering the organisation to sign cooperation agreements whether they are sub-regional, regional or international. The current institutional makes it capable of operating as an independent institution.¹³¹



2.2.2 Institutional Framework

Institutional development in the CEMAC sub-region has been lauded as a great step towards regional economic integration, such that, if harnessed, will accelerate its integration process.¹³² CEMAC incorporate the institutional framework of its predecessor UDEAC, aimed at fostering the objective of a common market for goods, services, capital and eventual free movement of

¹²⁸ Amuwo K, (1999) p.9 France And The Economic Integration Project In Francophone Africa. *Afr. j . pulit. sci. (1999).Vol. 4 No. 1, 1 -20*

¹²⁹ *Ibid*

¹³⁰ *Ibid*

¹³¹ Schlumberger C. E (2010) Open Skies for Africa: Implementing the Yamoussoukro Decision. The International Monetary Fund. Washington

¹³² Borrman 2007 *op cit*

people.¹³³ The role played by the institutional framework for economic growth and development under UDEAC, cannot not be undermined.¹³⁴

The CEMAC regional institutions are harmonised to achieve the political economic and monetary objectives of the region. These institutions include; The Economic Union, the Monetary Union, the Regional Parliament and the Regional Court of Justice. The Economic Union which replaces the UDEAC Custom Union. The Monetary Union is responsible for handling the monetary policy issues of CEMAC, and has a regulatory organ- the Central African Banking Commission (COBAC).The Regional Court of Justice is composed of a Court of Auditors and a Judicial Bench.¹³⁵ These strategic institutions have contributed towards the advancement of the region's integration process. Through these institutions, several reforms have been put in place, especially in the area of facilitating intraregional trade, transport, and tax. These reforms are part of an on going regional reform programme to ensure smooth integration process.

In 2006, a transport facilitation programme was adopted to ensure the effective implementation of institutional reforms in the transport sector. It harmonised national regulation scheme to conform to regional policy and to facilitate the customs information technology system.¹³⁶

CEMAC instituted a Common External Tariff (CET) in 2007, which is currently operational in the region. Besides, its members have also adopted the WTO custom valuation scheme excepted for Equatorial Guinea and Chad. Apart from the CET, indirect tax systems of the various states have been harmonised. In 2005, Cameroon carried out a tax reform programme as well as Central African Republic (CAR) and Chad which completely dissolve the Department of Tax, to set up an efficient system, in order to comply with regional policy frameworks.¹³⁷ In addition, a common CEMAC passport, a common regional stock exchange has also been established in

¹³³ *Ibid*

¹³⁴ Borrman A (2007). Institutions can be defined as humanly devised constraints that structure political, economic and social interactions in order to reduce uncertainties arising from incomplete information about the behaviour of others. Above all, institutions are introduced by the setting of formal rules (laws, property rights) and the development of informal rules of behaviour (customs, traditions). Formal rules are usually designed and made explicit in the constitution, in legislation and in regulations (public institutions) or come into existence by formalised private agreements such as codes of conduct and contracts (private institutions).

¹³⁵ Article 2 and 10 of CEMAC Treaty 1994

¹³⁶ Project Information Document (PID). Appraisal Stage, Report No. 1178.

¹³⁷ *Ibid*

Libreville to manage the free flow of capital, supervised by the Central African Financial Supervision Commission (COSUMAF).¹³⁸ A careful observation of the development of the institutions in the sub-region, however, provides an appraisal as to the nature of its economic stagnation partly caused by the slow progress of the region's integration process.

CEMAC institutions are modelled in the patterns of the EU. These patterns were adopted by the member states with the belief that the EU system is well structured and have been very successful for decades.¹³⁹ The setting up of institutions without a strong binding rule to regulate the functioning and management of those institutions will certainly lead to a collapse of the institutions, causing a negative impact on its objectives. The failure of CEMAC in achieving its objectives could be partly blamed, among other causes, on the poorly managed institutions or on the nature of its regulatory policies. Strictly speaking, where there is overregulation there will certainly be limited freedom.¹⁴⁰ Thus, it is not enough to create institutions, but to determine how these institutions are regulated for effectiveness and efficiency, to bring about regional competitiveness and integration. The focus here is to acknowledge the role that CEMAC institutions have played in its level of integration, but also to show that much is yet to be done in this regard, especially in terms of promoting regional competitiveness, through a regional institution that is aimed at regulating and supporting competition in the region.

In fact, it is postulated that countries with high-quality institutions are more likely to benefit more from international trade than those with poor institutional structures.¹⁴¹ Thus, Borrmann asserts that CEMAC falls among those countries in the ACP group with very weak institutional framework and they are likely not to benefit from EPAs. The literatures suggest that, trade restriction is higher in the CEMAC region than any other regional bloc in the ACP.¹⁴² Besides, the dismantling of tariff barriers makes the region the most vulnerable to suffer from the effects of the EPA- because of its weak institutions that may not be ready to embrace the shock of trade liberalisation.¹⁴³ In the light of the above arguments, the CEMAC institutional framework for

¹³⁸ Côme, D. G. A (2008) p. 6

¹³⁹“Not surprisingly, the ACP countries might have a preference for imitating models of institutional reform that have been successfully applied elsewhere, thus saving time and resources.”

¹⁴⁰ Borrmann A. (2007) Development Policy Review, , 25 (4): 403-416

¹⁴¹ *Ibid*

¹⁴² *Ibid*

¹⁴³ *Ibid*

integration has not benefited the region in order to facilitate economic growth. Trade policies are still restrictive, compared to the trade policies and custom union rules, of other custom unions within the ACP.¹⁴⁴ The impact of these institutions on CEMAC is examined below.

2.2.3 The CEMAC Economic Union (UEAC)

The CEMAC Economic Union was established as a regional institution to strengthen and facilitate regional competitiveness and financial activities by harmonising the rules governing the operation of these activities, the harmonisation sectoral policies, to ensure the coherence of national fiscal policy and the establishment of the common market. To achieve these objectives, a five year plan of action was set up in Article 3 of the CEMAC Treaty.¹⁴⁵ The period ran from 1999 to 2004. Within that period certain regional goals were expected to be accomplished: the creation of conditions for the smooth functioning of the common market, develop a strategy to coordinate national agricultural policies, institute a process of ensuring the free movement of persons, goods and capital. Within the economic union is the CEMAC Customs Union. The importance of this institution is monumental in the region's integration history.¹⁴⁶



2.2.3.1 The Customs Union

The CEMAC customs union was created in 1994 to revive UDEAC, which was created in 1964. From the UDE to the UDEAC, it accentuated that the members of UDEAC were committed to establish a regional economic structure that went beyond their national boundaries. Thus, the UDEAC/CEMAC customs union was established to liberalise the economy of members so as to facilitate economic growth which is the main objective of custom unions.¹⁴⁷

The customs union of CEMAC introduced:

- A common external tariff;
- Gradual removal of tariffs on intraregional trade which was completed in 1998;

¹⁴⁴ Oliva, M. (2008), Trade restrictiveness in the CEMAC region, p.3

¹⁴⁵ <http://www.cemac.int/institutionsCEMAC.htm#institution> >[Accessed on 10 December 2010]

¹⁴⁶ *Ibid*

¹⁴⁷ Hansson. G & Södersten B (1993) P. 308

- The harmonisation of indirect taxation; and
- The replacement of import barriers to trade with temporary import surcharges.¹⁴⁸

The meaning and definition of customs union is provided in Article XXIV (8) of GATT 1947, which states that:

For the purposes of this Agreement:

(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and, (ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories¹⁴⁹

The above Article, articulates the key purpose of a customs union. In the CEMAC context, a customs union did not involve the reduction of tariff and tariff barriers only, but cuts across the social, cultural economic and political spectrums of the region. UDEAC was regarded as an economic union in a broader perspective, an agreement between two or more member states to

¹⁴⁸Martijn J. K and Charalambos G. T (2007). Trade reform in the CEMAC: Development and opportunities. *IMF Working Paper WP/07/137*. The import of sugar, cigarettes, and drinks from non-member countries are still subject to a temporary 25% surcharge, which were scheduled to be removed by 2000.

¹⁴⁹ GATT 1947, Article XXIV

remove all barriers to trade between the parties. These barriers, as shall be seen subsequently still exist in respect of CEMAC trade.

The trade regime under UDEAC suggested a substantial effort towards trade liberalization, through the establishment of a customs union, common market and single currency (the CFA franc), issued by a common central bank- BEAC, all of which has contributed towards achieving a certain degree of integration. In discussing the customs union in this region, cognisance is taken of the fact that the customs union in the region is largely associated to UDE. This was actually the first phase of integration- the customs union era.¹⁵⁰

The customs union in UDEAC/CEMAC created a free trade area within the region and a common market. A single external tariff was also established, which led to growth in intraregional trade of 25% in the early 1970s. However, the increase in intraregional trade did not last. What accounted for the decline was that the region lacked the infrastructure to manage the growth.¹⁵¹

The UDEAC Treaty ambitiously sought to remove all barriers to intraregional trade without recognising the homogeneity of their products.¹⁵² In recognition that the UDEAC countries have “like products,” an incentive was created in the 1964 UDEAC Treaty to boost intraregional trade. One of such incentives was the establishment of the Single Tax System (*Tax Unique*).¹⁵³ The Single Tax System provided that industrial products manufactured in, and sold within the Union, was subject to the Single Tax System.¹⁵⁴ Thus, as an incentive, the marketing of industrial products that extends to other member states were exempted from the Single Tax System which facilitated industrial development.¹⁵⁵

¹⁵⁰ Natang J (1986) UDEAC: Dream Reality or the Making of Subimperial States. *African Spectrum*, Vol. 21, No. 2. pp. 211-223

¹⁵¹ *Ibid*

¹⁵² Kirmani N & Calika N, (1994) P.121, International trade Policies: Background Paper, International Monetary Fund

¹⁵³ Article 60 UDEAC Treaty 1964

¹⁵⁴ Miroslav N. J, (1998) p. 372-3. International Economic Integration Scheme. 2nd Ed, Routledge Publishers.

¹⁵⁵ Article 60 of 1964 and Article 68 of 1974 revised Treaty. “The single charge shall be exclusive of the following: ‘...duties and charges applicable upon importation on raw materials and essential products used in industry or the preparation of manufactured products in the form in which they enter into trade; all internal charges on raw materials and essential products used in industry as well as on manufactured products.’”

However, by the 1970s, intraregional trade was greatly limited to unprocessed agricultural products, and other raw materials.¹⁵⁶ Even though economic liberalization was the final objective, a number of the Treaty's provisions were rather restrictive. The Single Tax System limited the trade amongst members by identifying a few products that could be considered for intraregional trade and competition.¹⁵⁷ Free trade in manufactured product was limited via the establishment of the system within the custom union.¹⁵⁸ The domination of Transnational Corporations (TNCs) in the region, explains why competition within the sub-region was, and is greatly limited or otherwise absent.¹⁵⁹

In addition, under the Single Tax System, intraregional trade was further limited in that industrial products not named under the treaty could be imported by member state, but will be taxed based on the common external tariffs imposed on all products not originating from UDEAC.¹⁶⁰ The introduction of a tax policy not contemplated under the WTO in the Congo economy, further increased its restrictiveness, including a restrictive policy that already exist under the CEMAC agreement itself.¹⁶¹ The import of sugar, cigarettes, and drinks from non-member countries are still subject to a temporary 25% surcharge, which were scheduled to be removed by 2000.¹⁶² The result has been a slow intraregional trade which has stifled the integration process in the region.

When UDEAC was transformed into CEMAC in 1994, the objective was to facilitate regional trade since its predecessor had been largely ineffective. The current situations show that the pace of implementing regional customs rules is still slow.

The occasional double taxation of landlocked-countries-bound products at the ports of entry (mainly Douala port) and the administrative roadblocks along the Douala-Bangui and Douala-Ndjamena axes have raised the transaction costs for CAR and

¹⁵⁶ Natang J *op cit*

¹⁵⁷ *Op cit p. 121*

¹⁵⁸ Miroslav N. J (1998) *op cit p.372-3*

¹⁵⁹ *Ibid*

¹⁶⁰ *Ibid*

¹⁶¹ Oliva, M. (2008), Trade restrictiveness in the CEMAC region, p.3

¹⁶² Martijn J. K and Charalambos G. T (2007)

Chad importers to inordinate levels: for example, the average cost to import a 20 foot container from Douala to Chad/RCA is about 4,000euros, i.e. four times the cost of maritime transport from Europe to Douala).¹⁶³

‘The implementation of the agreed regime by the member countries, however, has remained unsatisfactory.’¹⁶⁴ This is an example of inefficiency and ineffectiveness that characterize the regions’ institutions.

2.2.4 The CEMAC Monetary Union

Regional integration may take the form of a monetary union, free trade area, customs union, a common market and economic union.¹⁶⁵ Where a particular region chooses to use the methodology of a monetary union, it is expected to adhere to the rules thereof. A monetary union functions through the operation of a central monetary authority which issues a common currency to all member states.¹⁶⁶ CEMAC is a combination of an economic union (*Union Economique de l’Afrique Centrale-UEAC*) and monetary union (*Union Monetaire de Afrique Centrale-UMAC*). The Constitutive Act of CEMAC signed in 1994 harmonised the two structures to form a monetary and economic union.¹⁶⁷ CEMAC replaces the UDEAC customs union to establish a framework for sub-regional integration through a common monetary policy.

Within this framework, a regional central bank was established to give a face-lift to regional integration processes. The creation of BEAC as a regional monetary authority was applauded to be a great move towards economic integration strategy of the Central African Sub-region. In spite of resistance and the lack of commitment at the time of its creation, due to the fears of some members to commit to a strong monetary policy, the institution has stood the test of time. Reforms carried out by the Heads of States in 1973, transferred the headquarter of BEAC from

¹⁶³Project Information Document (PID) Concept Stage. Report No.: ab1178.
<http://siteresources.worldbank.org/INTCUSTOMPOLICYANDADMIN/Resources/615371-1115072506850/P079736_PID_Concept_Stage.pdf> [Accessed on 8 December 2010]

¹⁶⁴ Martijn J. K and Charalambos G. T (2007)

¹⁶⁵ SESRTCIC, (2000). Regional Economic Groups of the OIC countries. *Journal of Economic Cooperation*, 21, 2, 67-114

¹⁶⁶ *Ibid* p.4

¹⁶⁷ Article 1 of Act n°7/93-UDEAC-556-SE1 du

Paris to Yaoundé. Besides, its management was also transferred to Africans and the voting power of the French terminated.¹⁶⁸ The most important of the reform was the maintenance of the fixed parity to the French Francs that existed since its creation. Despite criticism of the fixed parity, and the economic crisis of the 1980s, BEAC was not given the authority to devalue the CFA.¹⁶⁹

The monetary union, which was evidenced through its single currency, had been instrumental as tool for development in the sub-region. This had led to the convergence of macroeconomic policies partly drafted by BEAC which oversees the monetary policy of CEMAC.¹⁷⁰ Besides BEAC, the Banking Commission of Central Africa (COBAC) regulates the entry into the banking sector in the CEMAC region.¹⁷¹ Despite COBAC's supervisory rule in the Union, its independence is still pending. COBAC is headed by the Governor of BEAC which makes it difficult for the regulatory organ to operate as an independent entity. BEAC as well is not independent from the executive branch of CEMAC government. The Heads of States are the custodian of policy in the region and therefore, the central bank does not truly decide on policy issues. . "COBAC and BEAC need to be reinforced and their independence properly guaranteed."

In addition, the Central African Development Bank (BDEAC) is the main financial institution aimed at financing regional integration projects within CEMAC. In 2007, reforms were carried out to boost the activities of BDEAC

BDEAC has put in place a strategic plan for the 2008-2012 period and a series of measures to enable the institution to fulfill a number of roles: to become the principal source of financing development in CEMAC, a major actor at the level of the regional financial market, a sponsor of the financing of regional integration, and a key institution for private financing in the region.¹⁷²

¹⁶⁸ Zafar A. & Kubota K, (2003) *op cit* P.3

¹⁶⁹ *Ibid*

¹⁷⁰ Bache D (supra) p. 134

¹⁷¹ Convention Establishing the Banking Commission of Central African amended in 1990 Article 1

¹⁷² Africa Development Bank (2010). How Regional Financial Integration Can Support Growth, Development, and Poverty Reduction.

However, the extent of BEAC facilitating competitiveness in the sub-region¹⁷³ is yet to be realistic. Indeed in the views of Saab Samer, Competition in the banking sector is still very absent. Though the financial market in CEMAC is largely dominated by banks, the sector is under developed. Banks are sparsely located in the region. One third of the 35 credit institutions in the region are located in Cameroon, while the other is located in Gabon.¹⁷⁴

2.2.5 The CEMAC Regional Parliament (RP)

Regional parliamentary democracy is a political phenomenon that is gradually paving its way in the African democratic system. Regional Parliaments have been established in many economic groups in the world including African countries since the early 1990s. Within Africa, the concept was first implemented by the Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC), and recently the CEMAC region. The CEMAC RP is among the four regional institutions created under Article 2 of the CEMAC Treaty. In April 2000, CEMAC members unanimously agreed to establish an Inter-Parliamentary Commission, at the CEMAC heads of states submit in N'Djamena-Chad. Besides its supervisory role, one of its objectives has been to ensure democratic monitoring of the community's institutions and its organs.¹⁷⁵

The Community Parliament (CP) is charged with the duty of monitoring the institutions and the decision-making organs of the organisation. The objective was to contribute to regional integration through a process of debates and dialogue. The activities of the Parliament which started as albeit timidly as a parliamentary commission had five members appointed by the Heads of States of CEMAC. The outcomes of the Commission's work are published as Reports or resolutions. The Commission was also authorised to review the Annual Report of the Executive Secretary, after which a report is submitted for hearing to the President of the Ministerial Committee, and the Executive or the Governor of BEAC.¹⁷⁶

¹⁷³ Samer S & Vacher, J (2007).

¹⁷⁴ *Ibid*

¹⁷⁵ Côme, D. G. A (2003)

¹⁷⁶ < <http://www.cemac.int/institutionsCEMAC.htm#institution> >[Accessed on 9 December 2010]

Though CP was established in 1994, its structures were only fully established in April 2010 at the inauguration of the CP's headquarter in Malabo, Equatorial Guinea.

This a particularly important occasion for my people... and I wish to show my feelings of gratitude for the confidence that was given to my country with this important institution, whose work is to consolidate democracy, dialogue and tolerance for the progress of our people and to evolve in our activities with complete transparency. The defense of the current analysis system, the ability of our States and of our human resources and the circulation of goods require the adoption of appropriate government systems. Integration must be for us an African renaissance that allows us to project out future.¹⁷⁷

Speaking during the ceremony, the President of the CEMAC Parliament, Pierre Ngolo, stated that “[Their] role in the process of integration must be like a lever, to promote good governance and proper balance among the powers, as well as to instil and promote the community spirit”.¹⁷⁸ The 30 member Parliament is composed of 5 members from the 6 states that make up the CEMAC region.¹⁷⁹

From the above statements, it is clear that the member states are aware of the contribution of the CP to advance regional integration. However, as mentioned before, the effectiveness and the efficiency of the institution will depend on the amount of loos of sovereignty and control that the states are ready to offer to allow a smooth functioning of the institution.

¹⁷⁷ President Obiang, at the inauguration of the Community parliament on 20th April 2010, available at <<http://www.guineaecuatorialpress.com/noticia.php?id=481> >[Accessed on 9 December 2010]

¹⁷⁸ *Ibid*

¹⁷⁹The Report: Gabon 2010. Oxford business Group, available at <http://books.google.co.za/books?id=69tc87BdhCsC&pg=PA89&dq=cemac+parliament&hl=en&ei=hzaCTeaAM4aN4Ab2kuWICg&sa=X&oi=book_result&ct=bookthumbnail&resnum=1&ved=0CCcQ6wEwAA#v=onepage&q=%20parliament&f=false >Google book, [Accessed on 9 December 2010]

2.2.6 The CEMAC Regional Court of Justice

The CEMAC Court of Justice is a regional institution charged with the duty of ensuring judicial compliance in the execution of regional activities by the institutions and organs of the region. It was established by Article 5 of the CEMAC Treaty and Article 73-74 of the Convention of the UEAC. In 2008, the Treaty was modified and the jurisdiction of the court set out in its Article 10, 46 and 48. Its headquarter is based in N'Djamina, Chad. The court which has a judicial chamber and an audit bench is composed of thirteen judges elected from a college of judges within the region.

The President of the Court is assisted by two judges elected from the chambers.¹⁸⁰ The objective of the court is to ensure compliance of regional laws such as the CEMAC Treaty, compliance with regards to the obligations of states vis-à-vis regional institutions and their respective organs. In addition, it is also a dispute settlement institution for member states and the CEMAC community members.¹⁸¹

The CEMAC Court of Justice and the Parliament seem to play more of a supervisory role. The RCJ seats in two benches - the judicial and the audit bench. However, the methodology of application follows a rather pragmatic approach. Coupled with the fundamental problem of limited level of sovereignty, the implementation and enforcement of regional objectives largely depends on member states.

Observing that the need for a supra community regulatory structure to oversee the entire regulatory framework, neither the RP nor the CJ, has the prerogative to ensure complete regulation of CEMAC institutions and organs. These structures are yet to be given sufficient powers to bring the necessary regulation that the community needs.

“The CEMAC audit report ... pointed out that eight years after the official inauguration of the community Court of Justice, this court’s enforcement powers remained limited in practice. Its

¹⁸⁰ < <http://www.cemac.int/institutionsCEMAC.htm#institution> >[Accessed on 9 December 2010]

¹⁸¹ < <http://www.cemac.int/institutionsCEMAC.htm#institution> >[Accessed on 9 December 2010]

output seemed small, as it had made only 17 judgments and given five opinions in its five years of existence. National courts had never referred any preliminary question (application for interpretation of community law) to the chamber, nor had any member state or the executive secretariat ever referred matters of legality of national instruments, in the light of community treaties and conventions, to it.”¹⁸²

2.2.7 The CEMAC Organs

The above notwithstanding, the Conference of Heads of States (CHS) is the Supreme Organ of the region. This organ oversees and decides on policy issues as well as guides the actions of the economic union and the monetary union. With directives from the Council of Ministers, the decision of the CHS is binding on all members states once they are ratified. In the organisational structure, after the CHS is the Council of Ministers. The Council of Ministers govern UEAC. Given that its objective is to ensure the harmonisation of community economic laws and regulations, in 2000, the Council of Ministers adopted the CEMAC Civil Aviation Code to facilitate intra-CEMAC Air transport and a joint Competition Regulation. The Council is composed of Ministers of Finance and Economic Affairs of the six member states. Whereas the CHS meet once a year, the Council of Ministers meet twice a year. ¹⁸³

Another organ of relevance is the Ministerial Committee in charge of the UMAC. It is charged with the role facilitating monetary policy within the region to ensure that national economic policies are in conformity with community regulations and monetary policies. The Central African Banking Commission (COBAC) headed by the Governor of BEAC function as a regulatory organ of financial institutions of the region. This organ is directly placed under the supervision CHS. It is only empowered to make recommendations. It does not have any prerogative to make binding decisions. Nevertheless, its role is important in stabilizing the economic and monetary policies. ¹⁸⁴

¹⁸² *Jeune Afrique/L'intelligent* 2005a, cited in Côme D. G. A (2008)

¹⁸³ < <http://www.cemac.int/institutionsCEMAC.htm#institution> >[Accessed on 9 December 2010]

¹⁸⁴ < <http://www.cemac.int/OrganesCEMAC.htm#organe2> >[Accessed on 9 December 2010]

2.3.1 Conclusion

The institutional reforms in the region should not be underestimated. The CEMAC region is one of few regional economic groups within the ACP to have made great strides towards regional integration. The establishment of the above regional economic community in 1994 and most recently the inauguration of the CEMAC Parliament in Malabo by the Heads of States of CEMAC is an indication of a positive outcome. “[The] opening of the Community Parliament is fruit of our common will expressed from the institution.”¹⁸⁵ Thus the four basic institutions are the Economic Union, the Monetary Union, the Regional court of Justice and the regional Parliament. Since the trade regime under UDEAC and its institutions was faced with numerous obstacles, the decision of the Heads of States in 1994, from the above discussion seem to be yielding fruits of integration.

The CEMAC has put in place these fundamental institutional structures to facilitate its integration process. However, being one of the first African regions to establish a monetary union and customs union, its full integration still lags behind when compared to other regional economic bloc in Sub-Saharan Africa.

First, it can be deduced from the literature that a fundamental problem exist in the sub-region, that of slow intraregional trade. One of the reasons behind this problem is that the products in the region are homogenous in nature, and basically raw materials, which are mainly exported to Europe and other developed countries.

Secondly, the CEMAC laws are protective in character especially the tax system. Investors are likely to be taxed twice for their products, especially if they are produced in one of the member states and sold in more than one state within the region. The laws impose tariffs above the WTO limit. Furthermore, CEMAC institutions were created for other economic activities and not necessarily for the integration of these activities within the region. These concerns and more will be elaborated upon as trade practices within the region in the subsequent chapters.

¹⁸⁵ Denis Sassou, at the inauguration of the CEMAC Parliament.

CHAPTER THREE

THE CEMAC LEGAL INSTRUMENT FOR INTERNATIONAL TRADE

3.1.1 Introduction

The relationship between the ACP states and CEMAC can be likened to that of yolk and the embryo of an egg, such that it would be practically impossible to discuss trade practices in CEMAC without reference to the ACP trade regime under the Lomé Conventions and CA. As earlier mentioned, the first Lomé Convention was signed in 1975. Between 1975 and 2000, four successive agreements were negotiated. These agreements formed the legal framework for trade and development between EU and CEMAC in the last three decade.¹⁸⁶

The CA was signed on the 23rd of June 2000, and is believed to be the most comprehensive trade agreement between the EU and the ACP states. Taking a retrospect of the development of the relationship between the EU and the ACP, the trade relationship between these two groups of states, was facilitated first, by the Lomé Conventions.¹⁸⁷ Though these trade agreements were preferential in character, causing the ACP to access the EU market duty free, on non-reciprocal basis, they also included financial assistance and commodity stabilization instruments. The CA replaced the Lomé Conventions in 2000. This new agreement which will be revised every five years, will last for 20 years, a period which according to the CA, is reasonable enough for a new trade regime to be put in place.¹⁸⁸ After the renegotiation of Lomé IV agreement that birth the Cotonou ACP/EU agreement, CEMAC, as well as most ACP groups, was immediately faced with the challenges of the new framework for trade, both regionally and internationally.

This chapter focus on some of the most important instrument used by the EU and the ACP in achieving their objectives of cooperation and aid agreement under the Lome era and EPA

¹⁸⁶ Delport, C.E, (2005) *Towards a Fair Multilateral Trade Relations Between the European Union and Africa Caribbean and Pacific countries*. The University of the Western Cape-Library.

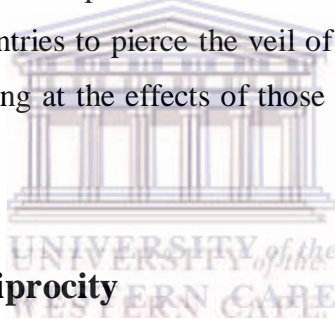
¹⁸⁷ See chapter 1 above

¹⁸⁸ Article 37 of Cotonou Agreement 2000

in the Cotonou era. Thus, only those that are of prime importance to this thesis will be discussed.

Several factors necessitated the signing of the CA of 2000. First, the ACP economy, for over 25 years was increasingly facing a decline in its exports to the EU market. This was an indication that preferences were not working for the ACP states. Secondly, the establishment of the EU common market in 1992 and the increase in membership of the EU, coupled with the EU Green Paper of 1992, contributed in shaping the trade relationship between the EU and the ACP. In addition, the establishment of the WTO in 1995 the strengthening of its Article I rule on non-discrimination, made it difficult for the EU to continue its preferences under the Lomé IV.¹⁸⁹

The changes that have occurred in the last forty years between the EU and the ACP have not only affected trade between the two parties but have drawn the attention of non-ACP members and other developed countries to pierce the veil of the EU/ACP partnership. The discussion below is aimed at looking at the effects of those trade instruments on CEMAC and its regional integration efforts.



3.1.2 Non-reciprocity to Reciprocity

To evaluate the extent to which there has been a paradigm in CA, one would need to look back to the former regime. The Lomé trade regime had as a pillar to it, the principle of non-reciprocity.¹⁹⁰ It was well established in, Article 7 of Lomé I that, “In view of their present development needs, the ACP States shall not be required, for the duration of this Convention, to assume, in respect of imports of products originating in the Community, obligations corresponding to the commitments entered into by the Community in respect of imports of the products originating in the ACP States...” This was a clear derogation from the general rule of non-discrimination under GATT Article 1 provision. The principle of

¹⁸⁹ Hennie S (2007), p. 133 to 137. Will Cotonou Succeed where Lome failed? Heinonline 32 s.Afr. Y.B Int’L

¹⁹⁰ Delport, C. E. (2005) *Towards a Fair Multilateral Trade Relations Between the European Union and Africa Caribbean and Pacific countries*. The University of the Western Cape-Library. An elaborate discussion of the origin of Lome Convention has been discussed in the this cited thesis.

non-reciprocity as seen under the Lome I agreement was made with an understanding that contracting parties had, in 1966, unanimously agreed to exclude Developing Countries (DCs) worldwide from the GATT framework, which had establish a certain normative standard of trade. In order for this to happen, part IV was added into the GATT trade regime, which allowed developed countries to discriminate amongst other developed countries in granting preferences to DCs, “based on Article XXV.5 [of GATT 1947 which set up a generalised system of preferences (GSP) on a ‘non-reciprocal and non-discriminatory basis’ to be applied by developed countries in favour of DCs, by way of exemption to the MFN treatment under Article 1”.¹⁹¹ The rational was to increase export, facilitate industrialisation, and accelerate economic growth in DCs worldwide.¹⁹²

According to Abass A, the Lomé trade preference though legally correct in terms of its nature and content, was not open to all DCs as provided by GATT GSP, but was specific to ACP states and therefore came under heavy criticism. The EU preference to the ACP was discriminatory because it was not extended to other DCs. In addition, EC/ACP tariff scheme was also brought under spotlight for review, at the UNCTAD conference. These were some of the lacunas of the Lomé Conventions. These gaps led to the criticisms that followed for over ten years.¹⁹³ The banana protocol for example was most prominent and was greatly criticised by the United States and other non ACP DCs which were also banana producers.¹⁹⁴

The European Union [had] set up a Market Organisation permitting preferential access for bananas from ACP countries to the Community market through import quotas (857,000

¹⁹¹ Abass A, (2004). *The Cotonou Trade Regime and WTO Law*. European Law Journal, Vol. 10, No. 4, July 2004, pp. 439–462. Blackwell Publishing Ltd. 2004, UK.

¹⁹² From Lome to Cotonou *Western Africa – SIA Civil Society Consultation Workshop Dakar, 4 & 5 nov 2003* <http://www.sia-acp.org/acp/download/wa_sccw_brief_2_-_from_lome_to_cotonou.pdf> [Accessed on 27 Oct. 2010]

¹⁹³ Abass A, (2004). *op cit*

¹⁹⁴ The EU banana case with Latin American countries was finally settled in December 2009 with Latin American countries going victorious. According to EU Trade Commissioner Pascal Lamy, "This has been one of the most technically complex, politically sensitive and commercially meaningful legal disputes ever brought to the WTO," World Trade Organization director general Pascal Lamy said. "It has also been one of the longest running 'sagas' in the history of the post-World War II multilateral trading system." <<http://www.dw-world.de/dw/article/0,,5017556,00.html>> [Accessed on 27 October 2010]

tons) that [were] not subject to tariffs (the banana protocol). This organisation of the European banana market penalises non-ACP exports. Under pressure from American multinational banana corporations, the United States, Ecuador and Guatemala are among the countries that have lodged a complaint to WTO. The Market Organisation for bananas has been condemned twice, in 1997 and again in 1999. As a result, the banana Protocol [was] abolished in 2006 and replaced by a tariff-only system.¹⁹⁵

With the elimination of non-reciprocity, the ACP states especially the DCs,¹⁹⁶ are expected to reciprocate under the new regime. This new dynamics of the ACP trade has been quite challenging for these countries.

3.1.3 STABEX and SYSMIN

Another important aspect of Lomé Convention that has experienced a paradigm is the elimination of the STABEX (Stabilization of Export Earnings) and SYMIN (System of Stabilization of Export Earnings from Mining Products) trade protocol which ran from 1975 to 2000. This was repealed under the Cotonou trade regime. It was aimed at establishing the export of ACP states with particular reference to agricultural products.¹⁹⁷ The stabilisation of export prices, under the Lomé trade regime was a benevolent initiative granted to ACP states to carter for eventualities resulting from unanticipated shortfalls in commodity prices. The objectives according to Khan S.A, were meant to compensate ACP states in the event of such a fall in prices. Central African Republic and Equatorial Guinea, CEMAC members, benefited from the scheme in 1992- 1993 and 1994-1995 respectively.¹⁹⁸ “Despite [its] shortcomings, all ACP countries [that benefited] from Stabex have gained from the system. Stabex funds [were]

¹⁹⁵ <http://www.dw-world.de/dw/article/0,,5017556,00.html> > [Accessed on 27 October 2010]

¹⁹⁶ LDCs and LLDCs have been brought under EBA scheme as will be seen subsequently in this chapter.

¹⁹⁷ Article 186 of Lome Convention 1975

¹⁹⁸ EU Annual Reports: STABEX (Stabilization of Export Earnings) EU annual and periodic reports [\(837\)](#) ACP/AASM [\(74\)](#) < <http://aei.pitt.edu/view/euannualreports/stabex.html> > [Accessed on 30 October 2010]

unconditional aid [...] used to finance, for example, general or sectoral import programmes, debt relief, reforms to restructure the sector concerned or compensatory payments to farmers and stabilisation of producer prices”¹⁹⁹

However, the scheme was only made available to countries that prove that they have suffered substantially in their export. One of the limitations of the scheme was that it was time consuming to establish causation in order to benefit from it.²⁰⁰ “The EU had to see if the request is justified before any payments [were] made.”²⁰¹ Indeed the system had been criticised for not covering all products from the ACP. Due to the fact that STABEX and SYSMIN were attached to the Lomé Conventions, the end of the Lomé Conventions in 2000 automatically rendered the systems obsolete.²⁰² The two systems have now been replaced by the European FLEX and the International Monetary Fund (IMF) scheme.

3.2.1 The Cotonou Agreement - A New Paradigm

The main objective of the CA is, according to Article 1 of CA, “Reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy.”²⁰³

From the look of things, the CA can be described as development tool to assist ACP countries in developing a sustainable economic, political, social and cultural strategy for integration. Stemming from the fact that the four Lomé Conventions had failed to integrate the ACP economy in general and CEMAC in particular, regionally and internationally albeit preferential treatment through non-reciprocity trade regime, the continuous economic degradation of ACP states especially those in Central African Sub-region is a cause for concern.²⁰⁴

¹⁹⁹ Gabriella Koehler 1997. Issues Paper prepared for the [Summit of ACP Heads of State and Government](#) Libreville, Gabon

²⁰⁰ Khan S. A (2006). *Volatility of Resources Inflows and Economic Growth in CEMAC Countries*, North-South Institute, Ontario

²⁰¹ *Ibid*

²⁰² Gabriella Koehler 1997. Issues Paper prepared for the [Summit of ACP Heads of State and Government](#) Libreville, Gabon

²⁰³ Article 1 of the Cotonou Agreement of 2000.

²⁰⁴ Klilgat P.K.1992, 593

The growing criticism of EU trade regime in the late 1980s prompted a shift in the EU trade policy to DCs especially ACP states.²⁰⁵ The consequence is that, in order to be WTO compatible, the EU was bound to comply with the multilateral framework for trade-non discrimination. The new ACP/EU trade regime has officially erased the non-reciprocity principle and replaced it with reciprocity. This has sparked off a general out cry as to this new paradigm; considering the vulnerability of the economies of the ACP states. The challenge therefore, is too high, due to the fact that ACP states must ensure that their products are of standard to be able to face competition in the EU market from other DCs that are non ACP members. In the Libreville submit of ACP Heads of States, the states men acknowledged the need for compliance with the multilateral framework when they said:

We reaffirm our commitment to discharge our international obligations to adhere to and promote a fair international trading system. Nevertheless, we are deeply disturbed by the prospect of disruption in our fragile and vulnerable economies and disintegration of the social fabric of our countries which would arise from the insensitive application of WTO rules and obligations, as potently demonstrated by the recent ruling of the WTO Appellate Body on the EU Banana regime.²⁰⁶

This was a plea being made to the international community to recognize that non-reciprocity was only going to cause more harm to the economies of these states. It was against this backdrop that the Cotonou Agreement was negotiated to give the ACP states ample time to improve on the competitiveness of their products. The Heads of States acknowledged the gaps that existed between EU and the ACP with respect to WTO compatibility rules.

²⁰⁵ “At the same time, I am very aware that these EPAs have come in for much criticism in the NGO community. Some consider there is nothing for it, but that they should be scrapped” Speech by Peter Mandelson, EU Trade Commissioner.

<<http://www.guardian.co.uk/politics/2005/jan/20/development.internationalaidanddevelopment>>[Accessed on 28 October 2010]

²⁰⁶Libreville Declaration, Adopted by the First [Summit of ACP Heads of State and Government](#) Libreville, Gabon, 7 November 1997

One of the fears raised by the ACP Heads of States had been based on the lack of asymmetry between EU and ACP. According to the current EU Commissioner Peter Mandelson, in an effort to erase the fears raised by ACP Heads of States, said

Let me stress, up front, that our EPA agenda is emphatically not about opening markets to our own export: it is about opening European, as well as crucial regional markets to developing countries and enabling them to take advantage of these opportunities. To comply with our WTO obligations there has to be an element of reciprocity in these agreements, but there will be no equality in these obligations. Our ACP partners will only be expected to open their market progressively over a long period, and only as their capacity to trade allows.²⁰⁷

The speech by Peter Mandelson seem to answer one of the questions of this research: what will be the outcome of the CEMAC trade if placed on the same platform for trade with regards to equality in partnership? Though there is no complete answer that question, Mandelson seems to suggest that the EU shall not compete with CEMAC in trade. On the one hand, CEMAC and other developing countries are made to understand that there shall not be equality looking at the economic, political and social gaps between the EU and the CEMAC states. On the other hand, the introduction of reciprocal trade and the proposal of the EU for a competition law with CEMAC under the Cotonou trade regime, contradicts the statement of the EU trade Commissioner. The rational is that, by imposing or rather erasing the non-reciprocity trade practice, only open the CEMAC market to highly competitive European producers.

In addition, Article 238 of the Treaty of Rome seems to unveil the plan that the EU had had as seen in the current trade agreement with CEMAC. Article 238 provides the legal basis for the EU to trade “with one or more States or international organisations agreement establishing an association involving reciprocal rights and obligations, common actions and special procedures.”

²⁰⁷ EU Trade Commissioner, Peter Mandelson, on 23 May 2005 at the Inter committee of European Parliament.

CEMAC is one of those associations as provided in Article 238 above, implying that that current changes in policy had been, and is only being implemented in full.

A third observation is that, erasing non-reciprocity is a return to unconditional MFN²⁰⁸ which is covered under Article 1 of GATT. MFN was introduced as the backbone of the multilateral trade scheme to avoid preferences that had jeopardised world trade in the 18th Century. Under the MFN principle, a country was precluded from discriminating against other contracting parties. The rule simply states that “...any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”²⁰⁹

However, faced with the option under EPA- the opening up of CEMAC market, involving substantially all trade (which is yet to be defined) will eventually lead to unfavourable competition for an economy that is crawling to take roots, to face very stiff competitor. This may result in the collapse of home industries. The fears of the CEMAC states are legitimate. The EU members had expressed the same fears in opening up markets to the ACP, which prompted the EU to institute the Common Agricultural Policy (CAP) to protect its home industries.

Most CEMAC countries apply MFN to all countries. Consequently, the opening up of markets to include substantially all trade may eventually mean the opening up of markets to other developing countries that are far more advanced than the CEMAC countries. This means that the CEMAC region may not only face competition from EU, but from other developing countries as well.²¹⁰ According to the above Article, the EU is “expected to exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries [CEMAC]”. The EU must recognise the particular need of these countries so as not to place them in a more difficult situation. In 2005,

²⁰⁸ For details on Conditional and Unconditional MFN, see Rubin S. (1980) Most-Favoured Nation Treatment and the Multilateral Trade Negotiations: *A Quiet Revolution*. 6 *Int'l Trade L.J.* 224 (1980-1981).

²⁰⁹ *Ibid*

²¹⁰ Article XII GATT 1947

UNECA statistics show that CEMAC recorded the least in trade creation compared to other regional blocs in the African continent.²¹¹

Furthermore, the erosion of non-reciprocity automatically repeals paragraph 5 and 6 of the enabling clause. Paragraph 5 and 6 reads: 5. The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.

6. Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least-developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems.²¹²

This raises doubts as to the consistency of WTO rules with regards to developing countries. Despite whatever justification that is advanced to this paradigm in the CEMAC trade relationship with EU, it renders the WTO rules inconsistent and ambiguous in its content and practice.

²¹¹ Roza V, 2006), p.26. Adjusting to the effects of the ACP-EU Economic Partnership Agreements

²¹² Paragraphs 5 and 6 of the Enabling Clause.

Addressing the incompatibility issue should not have led to a more uncomfortable situation for the DCs- CEMAC in particular. The WTO rules especially Article 1 (5) (6), needs to be renegotiated or repealed because reciprocity towards some DCs makes it incompatible.

Lomé had also been criticized for being incompatible with WTO rules, non-discrimination. It was necessary to look for an alternative to boost the economies of ACP states, as well as to comply with the WTO rules. Since trading between the EU and ACP was on a decline, there needed to be a way forward. EPA was one of the major developments of the Cotonou Agreement between the ACP states and the EU. After about 18 years of negotiations, the trade regime of most ACP states began to experience a paradigm, from a cooperation trade relationship to that of concession through reciprocity and competition.²¹³ At the onset however, the Cotonou Agreement did not stop the former trade practices under Lomé but sought for a way out to create an alternative that will benefit both the EU and ACP.²¹⁴ For this to take place, the members of the ACP had to form regional groups and negotiate as regional blocs. The aim was to create Regional Free Trade Areas in Africa as per Article XXIV of GATT, in other to ensure compliance with rules on setting up Regional Trade Agreements (RTA), and Free Trade Areas (FTAs).



3.3.1. Economic Partnership Agreement (EPA)

The Cotonou Agreement (CA) was based on three forms of partnerships: Development Cooperation, Political Dialogue and EPA.²¹⁵ These three forms of agreements are not independent of each other but form the complete package of the CA. EPA was the most appropriate and most available trade instrument to the EU and the ACP during the negotiation of the CA to replace the Lomé IV trade and aid agreement. The main reason for EPA was based on the fact that the principle preferential access to the EU market by ACP states came to an end in

²¹³ CEMAC countries that signed the Cotonou agreement are Cameroon, Chad, CAR, Congo Equatorial Guinea and Gabon.

²¹⁴ Article 36(3) of Cotonou Agreement as read together with Annexe V attached to the Agreement. Annexe V restates the majority of the provisions of Articles 167–185 of Lomé

²¹⁵ Article I of CA 2000 “The partnership shall be centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy.”

2007. That is, though CA was negotiated in 2000, it did not erase the former preferences to ACP until 2007. The principle of non-reciprocity which had governed trade between the two parties since 1975 officially came to an end on 31 December 2007. It was on these bases that EPAs are being negotiated.²¹⁶

A second reason why EPAs had to be negotiated, stem from the 1996 dispute between the EU/ACP on the one hand and Latin American countries and the US on the EU banana preference to ACP. The EU/ACP banana protocol worked against the non-ACP banana producers who also wanted better access to the EU market. Furthermore, in 2006 Ecuador challenged the EU's import regime of bananas from the ACP, one of ACP's export covered by Lomé IV.²¹⁷ These additional circumstances necessitated the negotiation of EPAs, so as to comply with the rules of trade under the WTO. It is against this backdrop that the CA was negotiated in 2000. The CA erased the non-reciprocity. It also provided a date of expiry of the trade instrument, while instituting the EPA.²¹⁸

The third reason and most fundamental was base on the fact that the Lomé Agreements were incompatible with GATT/WTO rules on non-discrimination. EPA replaces the non-reciprocity trade instrument under the Lomé Conventions. Thus for EPA to compatible with WTO rules, they must meet the condition of Regional Free Trade Agreements (RFTA) under Article XXIV of the WTO. The first test is that EPA must not discriminate against non-EPA members by raising barrier to the products of non members to the EPAs. Secondly, EPAs must include substantially all trade in the RFRA. The two tests are applied to ensure that EPAs are WTO compatible.²¹⁹ The challenge however, lies in the interpretation of the second test (substantially all trade). According to Chimugwuanya N, it will be difficult to diagnose the intentions of the EU until a clearer definition of the term 'Substantially All Trade' is given under the current EPA regime.²²⁰

²¹⁶ Marsha D. (2007) p. 2. *Getting To Know EPA*. Available at < http://www.crnw.org/rnm_updates.htm >[Accessed on 16 October 2010]

²¹⁷ *Ibid*

²¹⁸ Bartels L. (2007), p.52. *Trade and Development Policy of the European Union* . Oxford University Press . *European Journal of International Law*

²¹⁹ Article XXIV GATT 1994

²²⁰ Chimugwuanya N, (2008). The WTO Compatible ACP-EU Trade Partnership: Interpreting the Reciprocity Requirement to Further Development. *Online Journal 8 Aspec Review.Int'l Bus.Trade L.87*

The Appellate Body's decision in the case of Turkey's textiles, was to the effect that: "neither the GATT Contracting Parties nor the WTO Members have ever reached an agreement on the interpretation of the term 'substantially' in this provision. It is clear, though, that 'substantially all the trade' is not the same as all trade, and also that 'substantially all the trade' is something considerably more than merely some of the trade..."²²¹

Despite the above conditions, EPA will still be discriminatory to other non EPA members. Nevertheless, such discrimination will be compatible with WTO rules because they operate under RFTA. However, the condition of Article XXIV still leaves DCs in a state of stupor because trade between EU and DC in CEMAC cannot be placed on the grounds of equal partnership. The situation that led to the principle of non-reciprocity may emerge again in the future as it did in the 1960s, being one of the events that prompted the formation of UNCTAD. DCs still have little to offer to stand in competition with developed countries.²²² The underlying problem (as was believed then) was that developed countries, demanded for developing countries commodities was less than developing country demand for developed country industrial goods.²²³

With the understanding that there are advantages associated to EPAs, such as the opening up of a wider market for CEMAC products, investment promotion for local industries to compete in the international market, duty free and quota free access to the EU market, improved quality of goods and services through competition etc, these advantages can only become realistic if the CEMAC regional market is effectively liberalized and effective competition and competition law is applied to prevent anti-competitive behavior and the protection of consumers.²²⁴ In the CEMAC context, EPA may likely lead to double opportunities for both consumers and producers. Increase in import will be beneficial to consumers while increase in export will benefit producers. But as mentioned above, the second advantage may not become very visible for CEMAC producers with their relatively low productivity scale compared to the EU.

²²¹ Appellate Body Report, Turkey-Textiles, Paragraph 48, cited in EPAS AND WTO COMPATIBILITY – A DEVELOPMENT PERSPECTIVE. Analytical Note SC/TDP/AN/EPA/27 November 2010 Geneva. Available at <http://www.southcentre.org/> [Accessed 22 December 2010]

²²² Bartels L. (2007), *op cit* 10

²²³ *Ibid*

²²⁴ Marsha Drakes (2007), *op cit* p.5.

Two principal issues need to be addressed with respect EPA. The ACP non-LDCs have to reciprocate to the EU and open up markets, while LDCs which do not join EPA, will have to operate under the Everything-But-Arms (EBA) option, to maintain their preferential access to the EU market. They are not expected to open up their market to the EU. The implications are very glaring when examined within the context of CEMAC's regional integration strategy. An analysis of the impact of EPA on CEMAC is provided below.

3.3.2 EPA and CEMAC Disintegration

Due to the long and short term effects of EPA, some schools of thought have argued that EPAs are no guarantee to economic growth and development, for economies of region such as CEMAC, nor is there any guarantee that it would lead to the integration of CEMAC to foster economic growth and integration.²²⁵ One of the questions that this chapter seeks to answer is the extent to which the signing of EPA would lead to regional integration. It examines certain trade rules, both from the perspective of the EU and CEMAC, which restrict trade rather than liberalizing trade.

It is hoped that EPA will bring benefit to developing countries. These potential benefits are only an expectation on grounds that all things remain the same. The establishment of EPA albeit advantageous from the perspective of the EU and the Cotonou Agreement, will result in the differentiation and may eventually disintegrate the integration process that has been nurtured for decades. EPA has qualified and reclassified ACP countries in terms of their trade potentials and economic viability- DCs and LDCs. Under the EPA arrangement, LDCs are not obliged to negotiate EPA with EU. DCs however, have only the EPA option and are being pressurised to negotiate EPA or lose out from financial assistance granted by the EU under the European Development Fund (EDF),²²⁶ and the continuation of free access to EU market. This classification has affected several trade blocs within the ACP including CEMAC.

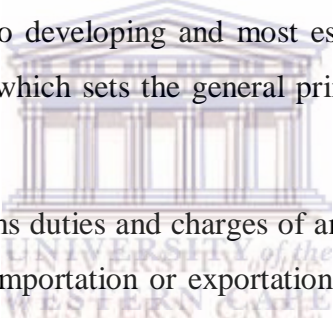
²²⁵ Roza V, (2006) *Supra*

²²⁶ The EDF was created by the 1957 Treaty of Rome to grant Technical and Financial Assistance to ACP Countries http://europa.eu/legislation_summaries/development/overseas_countries_territories/r12102_en.htm.< Accessed on 5 October 2010>

The reclassification of ACP states under EPA is causing disintegration within the ACP and its regional groups. In the CEAMC region the situation is complicated as three of the region's members are classified as LDCs, two among which are LLCs and three are DCs. In this respect, EPA should not be regarded as an instrument for integration. EPA would do well in a region that has all its members classified as DCs; such that the conditions are non-discriminatory and integration may likely emerge on a safe platform. The rationale behind the above assertion on EPA are based on a number of factors associated with EPA. These have been discussed below.

3.4.1 The Generalized System of Preference

Mindful of the economic weakness, in a highly competitive economic world, developed countries in the mid 20th Century opted under the Enabling Clause of GATT 1947, to accord special and differential treatment to developing and most especially least developed countries. According to Article 1 of GATT, which sets the general principle of GATT, it states inter alia that:



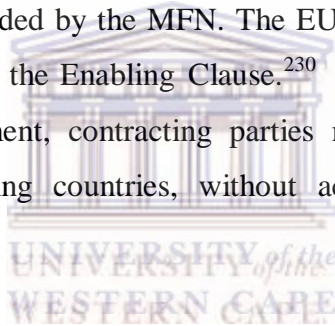
“With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties...”²²⁷

The aim of the provision was to prevent countries from discriminating against other trading partners. The principle was termed the Most Favored Nation principle (MFN). However, looking

²²⁷ GATT Article 1

at the special needs of developing countries, the Enabling Clause was introduced as an exception to MFN. Due to increase in world trade, developed countries have often sought ways to create an economic empire that guarantees the supply of basic raw material and other basic necessities. At the Tokyo round in 1979 the Generalized System of Preference (GSP)²²⁸ was introduced and adopted to allow developed countries to grant preferences to developing and least developing countries which, under normal circumstances would be considered a violation of the MFN. This trade regime which lasted for close to three decades, granted preferences to developing countries in the form of duty free access to developed countries' markets.

It was on these bases that the EU granted trade preferences to ACP countries with the objective of revamping their economy and making it more competitive in the world market. These preferences fell under the category of preferences in Article 1(b).²²⁹ Under the EU GSP to ACP, which was an exception to MFN, the EU could not at the same time grant the same preference to other developed countries as provided by the MFN. The EU was precluded from granting such preferences under the GSP, as per the Enabling Clause.²³⁰ “Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties”²³¹



3.4.2 Effects of European Union GSP Scheme on CEMAC

The EU GSP is a trade preference that replaces the formal non-reciprocal trade regime under the Lomé Convention, giving way to the EPA.²³² This trade preference was granted to ACP group of states. The EU groups these preferences into three categories; GSP, GSP+ and EBA or as represented below;

²²⁸ Decision of 28 November 1979 (L/4903) .This decision by signatories to the General Agreement on Tariffs and Trade (GATT “CONTRACTING PARTIES”) in 1979 allows derogations to the most-favored nation (non-discrimination) treatment in favor of developing countries. In particular, its paragraph 2(c) permits preferential arrangements among developing countries in goods trade. It has continued to apply as part of GATT 1994 under the WTO < http://www.wto.org/English/docs_e/legal_e/enabling1979_e.htm > [Accessed on 19 October 2010]

²²⁹ *Op cit* GATT Article 1

²³⁰ *Ibid*

²³¹ *Ibid*

²³² McQueen M (1999). The Impact Studies on the Effects of REPAs between the ACP and the EU. University of Reading.

- “The standard GSP, which provides preferences to 176 Developing Countries and Territories on over 6200 tariff lines;
- The special incentive arrangement for sustainable development and good governance, known as GSP+, which offers additional tariff reductions to support vulnerable developing countries in their ratification and implementation of international conventions in these areas;
- The Everything-But-Arms (EBA) arrangement, which provides Duty-Free, Quota-Free access for all products for the 49 Least Developed Countries (LDCs).”²³³

The importance of GSP is to enable developing countries access to the EU market, putting them on a better platform against other competitors. It is hoped that such preferential access will result in poverty reduction and create sustainable economic growth for developing countries or least developing countries. However, despite this free access to the EU market and the reduction of tariffs, the duration of the scheme is renewable every three years. The first bloc of GSP to DCs started in 2009 to end in December 31th 2011. To qualify for GSP+ countries had to have ratified certain international conventions such as human rights and good governance policies.²³⁴

“Each developing country wishing to avail itself of the special incentive arrangement had to submit a request to that effect by 31 October 2008, accompanied by comprehensive information concerning ratification of the relevant conventions, the legislation and measures to implement effectively the provisions of the conventions and its commitment to accept and comply fully with the monitoring and review mechanism envisaged in the relevant conventions and related instruments. To be granted the request, the requesting country also has to be considered to be a vulnerable country as defined in Article 8(2) of Regulation (EC) No 732/2008.”²³⁵

²³³ < <http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/> > [Accessed on 20 October 2010]

²³⁴ See Annex 2

²³⁵ COMMISSION DECISION of 9 December 2008

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:334:0090:0091:EN:PDF> > [Accessed on 20th October 2010]

CEMAC non-LDCs also qualify for GSP as they are listed amongst the “vulnerable” countries that were eligible for GSP +.²³⁶ However, CEMAC LDCs like Central African Republic, Chad, and Equatorial Guinea, are already benefiting from EBA.

An advantage exist for CEMAC LDCs in that they have two opportunities open to them with regards to which trade regime they would prefer for their export to the EU. While for the non LDCs of CEMAC, at the time of negotiating an interim EPA, the GSP+ was an alternative to prolong negotiations of EPA without losing out the market. At present, EPA seems to provide a better option for CEMAC non-LDCs.²³⁷ One key limitation to the GSP+ is that its constant review may lead to the disqualification of an eligible DC, thus causing an adverse effect on trade and economic and social development. An example is the recent of Sri Lanka which has been eliminated from the EU GSP scheme. Secondly, though the GSP+ “covers a lot of products but not those of greatest interest to the ACP non-LDCs, like bananas, there have been suggestions that GSP+ could be extended to cover these products. Furthermore, the EU GSP is associated with several obligations that needed compliances.”²³⁸

“In truth, [...] under GSP+, the ACP non-LDCs would still be paying something near to € 750 million of additional customs duties a year. GSP+ covers a lot of products but not those of greatest interest to the [CEMAC] non-LDCs, like bananas. There have been suggestions that GSP+ could be extended to cover these products. This is nonsensical as it is potentially equivalent to opening EU markets for these products simultaneously to major ACP competitors. This would instantaneously kill [CEMAC] exports by removing the tariff advantages they have over more competitive producers”²³⁹

²³⁶ See According to article 8 of the COUNCIL REGULATION (EC) 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011 and amending Regulations (EC) No 552/97, No 1933/2006 and Commission Regulations (EC) No 1100/2006 and No 964/2007:

²³⁷ *Ibid*

²³⁸ See Appendix 2

²³⁹ < http://trade.ec.europa.eu/doclib/docs/2007/september/tradoc_136097.pdf > [Accessed on 20th October 2010]

3.4.3 Everything-but-Arms (EBA)

When the Cotonou Agreement called for preferences to continue, the EU opted to adopt a new paradigm for LDCs through the introduction of the EBA initiative as an incentive to cause LDCs to enter into EPA, through quota-free and tariff free access to the EU market. The CA ended the era of non-reciprocity between EU and ACP and for the whole of CEMAC²⁴⁰ by replacing the unilateral trade preference with an EPA, which is now regarded as the new framework for CEMAC's trade with the EU.

The new initiative provides for a quota free but added a tariff free access to LDCs. The resultant effect has been disintegration caused by the differentiation especially at the beginning of negotiation when CEMAC LDCs had to stay on the fence by taking an observer status, since there was an alternative trade arrangement- EBA that provided better options for LDCs.²⁴¹

Under the CA, one of the aims of EPA is the promotion of regional integration within each regional group in ACP.²⁴² It is argued that such differentiation may affect the Common External (CET) Tariff initiative in CEMAC. Since EPA has erased the non-reciprocity preferences, this is however only related to developing countries that enter into EPA. Thus the implication for regional blocs is to the effect that since there is no reciprocity under EBA, "...it is unlikely that LDCs will provide improved access to imports from the EU unless they receive other benefits for the doing so."²⁴³ This leaves LDCs to a position where there is no incentive for both regional and international competitiveness.

One other lacunae of EBA are that since it is aimed at establishing FTA, its compatibility with the WTO may soon be questioned. Any such arrangement must be WTO compatible, as per Article 24(5). Compatibility would mean that EBA has as objective to standardize trade and development through preferences and aid, to create a competitive economy. Disintegration is likely to exist after EPAs because it is argued that EPAs turn to strengthen bilateral free trade with EU from the perspective of self-determined regional grouping.

²⁴⁰ EU preferences to the ACP/CEMAC, under the Lome Agreement ended in 2007.

²⁴¹ Brenton P and Manchin M (2003), *Making EU Trade Agreements Work: The Role of Rules of Origin*. Blackwell Publisher.

²⁴² Cotonou Agreement Article 29

²⁴³ Hinkle E.L and Schiff M (2004)

This “Divide and Rule policy” was first instituted by the French on their colonies. The formation of two separate trade arrangement within a single region is problematic and only fan the flames of regional disintegration rather than integration. Multiple memberships are also contributing to slow down integration efforts. CEMAC members are also members of ECCAS and AEC²⁴⁴. Overlapping membership and the fight for self-determination and recognition only act as a limitation to regional integration. While the EU is negotiating as a single trade entity, many ACP states are divided into ineffective regional groups instead of as a single trade bloc-ACP.

A key point of note as one tries to pierce the veil of EBA is that it goes a long way to fan-the-flames of the flaws that already exist in CEMAC regional integration process. Deviations from the CET still exist in CEMAC. This is due to the fact that not all CEMAC members are implementing the CET rules.²⁴⁵ According to Waerzeggers C, CEMAC trade is hampered by the fact that each country is expected to enforce CET for the benefit of the member state and not to the community. The Community Levy (Prelevement Communautaire de Solidarite), is still being owed by some members. Such disregard for the CET, which is CEMAC’s main component of its import taxation regime,²⁴⁶ only leads to deviations. Where there is a deviation from the CET, as a result of EBA. This makes EPA a tool for disintegration of existing structures within the sub-region. EPA ought to increase free trade and intra regional trade within the CEMAC region that will eventually exert pressure on the MFN tariff in order to facilitate the mobility of factors of production.²⁴⁷

Thus, with the current EBA initiative LDCs have nothing to lose if their trade is not liberalized. Trade liberalization for regional integration purpose ought to come from LLCs, LDCs, and DCs or any given regional group for there to be an effective integration. It is feared that where liberalization is coming from a few members, the CET and CU structures may be forced to decline with time.²⁴⁸ One proposal to this effect is the inclusion of DCs into the EBA arrangement, so as to ensure that integration, the expected objective of EPA and CA, are not

²⁴⁴ Economic Community of Central African States. (See chapter 2)

²⁴⁵ Martijn, J. K, Charalambos G. T, (2007) *Op cit*

²⁴⁶ Oliva M, (2008)

²⁴⁷ Krever R, (2008)

²⁴⁸ Hinkle E.L and Schiff M (2004)

jeopardized. Furthermore, to ensure compatibility, EBA should be incorporated into FTAs and RTAs.²⁴⁹

The above however, is not totally in disregard to the advantages the EU-EBA sought to bring within LDCs in ACP and non ACPs. One of such was to ensure that EU preferences are compatible to WTO rules.²⁵⁰ It is a unilateral trade preference to LDCs though it is non contractual in nature. It is also not time bound like the Cotonou Agreement or the previous EU GSP under Lomé Agreement. This non contractual nature of EBA only makes it risky and unrealisable for the LDCs that have signed it.

3.4.4 The Rules of Origin (RoO)

“Rules of origin’ are the criteria used to define where a product was originally manufactured. They are an essential part of trade rules because a number of policies discriminate between exporting countries: quotas, preferential tariffs, anti-dumping actions, countervailing duty (charged to counter export subsidies), and more. Rules of origin are also used to compile trade statistics, and for ‘made in ...’ labels that are attached to products. This is complicated by globalization and the way a product can be processed in several countries before it is ready for the market.”²⁵¹

The principle of the application of Rules of Origin (RoO) was to combat distorted trade practices and through restricted quotas, tariff preferences, anti-dumping actions, countervailing measures, that were usually charged on exports. These trade rules have since become another tool to propagate the already restrictive practices amongst states. Under the CA, and the EU GSP system, there seem to be an increase in trade restriction. A comparison of the CA and the African

²⁴⁹ *Ibid*

²⁵⁰ Bhattacharya D, Rahman M, Riahan A, (2004). P. 12-15. *The EU-EBA Initiative: Market Access Implications and Potential Benefits for Bangladesh*. Centre for Policy Dialogue, Bangladesh.

<http://www.cpd.org.bd/pub_attach/OP43.pdf> [Accessed on 2 October 2010]

²⁵¹ <http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm#origin> [Accessed on 1 October 2010]

Growth and Opportunity Act (AGOA)²⁵² showed that the AGOA is less restrictive when applying the AGOA RoO which requires that the rules be applicable only where the product was assembled.²⁵³ AGOA, albeit its expiry date of 2008, was extended to 2015. Under the scheme, small countries have been given the lee way to use foreign fabric to garment export to the United States (US).²⁵⁴

This hurdle that must be overcome in CEMAC is yet to meet another challenge. CEMAC members are also members of ECCAS. These regional economic institutions operate under different RoO. This make application difficult within the CEMAC sub-region thus stifles the effort of integration.

In an effort to harmonize the instruments, ECA in collaboration with CEMAC and ECCAS, organized an expert group meeting in January 2007 in Douala, Cameroon, to elicit concrete proposals for harmonizing trade instruments in the sub region. Experts agreed on the definition of common rules of origins for CEMAC and ECCAS. For a good to be considered as originating from CEMAC and ECCAS, its processing should reflect 40% of local raw material and 35% of value-added transformation. Participants to the Douala ad'hoc experts' group meeting also recommended the adoption of a single CEMAC/ECCAS certificate of origin aligned on the current ECCAS model.²⁵⁵

The practice of this trade rule was applicable within CEMAC until the signing of the CET which eliminated the RoO within the CEMAC region albeit in principle. The restrictiveness of the CEMAC RoO is a contributing factor to the slow economic growth and the lack of

²⁵² The African Growth and Opportunity Act (AGOA) is a trade preference agreement granted by the United States (US) to Sub-Saharan African countries. " AGOA significantly lowers, through 2015, trade barriers to goods exported from African countries, provided that they have established or are making progress toward market-based economies, enhancing the rule of law, representative governance, lowering barriers to U.S. trade and investment, improving human rights, and other goals." This trade agreement is similar to the EU trade preferences to ACP states under the CA of 2000.

²⁵³ Aadeitya M, Devesh R and Suhbramanian A, (2003). *African Growth and Opportunity Act and its Rules of Origin: Generosity Undermined*, Blackwell Publishing, Oxford UK

²⁵⁴ AGOA Acceleration Act of 2004

²⁵⁵ <http://www.uneca.org/integration/numero1/highlights02.asp> <Accessed on 6 October 2010>

competitiveness. Brenton argued that RoO have been used by developed economies as a tool for restriction when it is incorporated into FTA. Though with the aim of reducing tariffs or identify the eligibility of goods for free access into a particular market.²⁵⁶ With such protectionist tendencies, a FTA which is the final objective of the Cotonou Agreement with the EU, on first sight, should not be embraced as a vital instrument for regional integration in CEMAC, unless conditions within the community are favourable for the effectiveness of its enforcement.

Furthermore, the applications of RoO, in terms of preferences to developing countries also mean that CET should not be applied within a FTA. On the other hand, where such diffusion does not exist, CET could be applied. Two types of RoO are generally applicable: preferential RoO and non Preferential RoO. It is important to note that the issue of concern here is to deal with preferential RoO which is related to FTA. However, CEMAC before the signing of the CET applied both RoOs.²⁵⁷ Under the WTO RoO are set to operate under a non preferential basis. There are no general rules with regards to RoO. Indeed since the early 80s, efforts have been made to see the harmonisation of RoO worldwide. However, the complexity of setting up a multilateral RoO is a challenging one.

GATT has no specific rules governing the determination of the country of origin of goods in international commerce. Each contracting party was free to determine its own origin rules, and could even maintain several different rules of origin depending on the purpose of the particular regulation. The draftsmen of the General Agreement stated that the rules of origin should be left: ‘...within the province of each importing country to determine, in accordance with the provisions of its law, for the purpose of applying the most-favoured-nation provisions (and for other GATT purposes), whether goods do in fact originate in a particular country’.²⁵⁸

²⁵⁶ Brenton P, (2003). *Integrating the Least Developed Countries into the World Trading System: The Current Impact of EU Preferences under Everything But Arms*

²⁵⁷ Olivier C, (2006). *The origin of goods: rules of origin in regional trade agreements* Oxford University press

²⁵⁸ http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm#origin <Accessed on 1 October 2010>

Without any solution coming from the WTO, RoO has in time only resulted in a floodgate of disputes emerging from the arrangements of quota as in the Multifibre Arrangement and the “voluntary” steel export restraints. Some of these problems include an increase in preferential trade arrangement, anti-dumping laws, and several disputes base on determining the origin of goods.²⁵⁹

3.4.5 Conclusion

According to the EU agenda for regional integration in CEMAC, integration is expected to take place in the form of partnerships. While CEMAC members have been working hard to ensure the integration of their economies leading to a free movement of persons, (which has been done through the establishment of common market and common monetary policy) the EU proposals seem to suggest an integration involving members of the ECCAS. According to the EU integration strategy for Central Africa, this involves an expanded membership of three DCs and five LDC, two of which are LCs.²⁶⁰ Among the DCs that ought to negotiate EPA, only Cameroon has initialled an interim EPA which was concluded in 2009.²⁶¹ Gabon and Congo currently trade under the Generalised System of Preference. This strategy may lead to a more complex situation for Central Africa and CEMAC in particular. In addition, EPA, as earlier mentioned, despite the has as objective of facilitating regional integration, the current trend in CEMAC, coupled with statistical results from UNECA report for 2005, CEMAC is the least integrated Regional Economic Community in Africa. Thus, the EU suggestion will only worsen the integration efforts of the region. However, looking at the CA, ACP states have a choice to decide the terms of their trading arrangement with the EU which includes competition policy.²⁶²

It is important to note that the CEMAC situation shows that such terms are masterminded by the EU.²⁶³ Thus the current EPA, which not all of the members of the Central Africa have initialled, may only lead to disintegration of the region after 2020. Within the scope of regional integration, the current trade arrangement for CEMAC, if at all the EU is interested in regional integration

²⁵⁹ Ibid

²⁶⁰ The EU is negotiating the integration

²⁶¹ <http://ec.europa.eu/trade/wideragenda/development/economicpartnerships/negotiations-and-agreements/#_central-africa> [Accessed on 1 November 2010]

²⁶² Cotonou Agreement 2000

²⁶³ Paolo V, (2007)

within CEMAC, should take the form of single trade framework. The rationale is that these countries could better function under the EBA, rather than EPA. They are all vulnerable countries of the EPA trade arrangement.

This chapter has provided some of the legal instruments governing CEMAC international trade and how they affect the trade relationship between the EU and CEMAC. Though they are not limited to those mentioned above, the trade in the CEMAC region is, besides the multilateral framework for trade under the WTO, have bilateral trade agreements with other non CEMAC members such as Nigeria, China and the United States of America.



CHAPTER FOUR

COMPETITION LAW AND POLICY IN CEMAC

4.1.1 Introduction

The practice of competition and the enforcement of competition laws were first instituted in the United States shortly after the Second World War (WW II). These laws were enacted to regulate state monopolies in the sugar, rail transport and banking sectors of the economy. It was further emulated by Germany and Japan after WW II, and later by the majority of developed economies across the globe.²⁶⁴ Since then, the concept has been institutionally and politically promoted by governments and international organisations. In the mid twentieth century, several institutions such as the UN and the WTO, have since engaged in facilitating the establishment and enforcement of competition laws in international trade. Through UNCTAD, technical assistance is being given to encourage, train and develop capacity in UN member states, more especially DCs.²⁶⁵

For purposes of this research, the phrases, competition law and competition policy, will be used interchangeably. However, it is necessary to note here that competition policy carries a deeper meaning than competition law. According Marcos F, the scope of competition policy is wider in terms of economic liberalisation, market interventions, industries, investment and trade policies.²⁶⁶ Though competition law and policy may be difficult to separate, one is a subset of the other, that is, competition law is a product of competition policy. It becomes incumbent on CEMAC policymakers to understand the implications of their decisions both in the present and in the future.

It is prima facie evidence that the CEMAC region is largely underdeveloped, with three of its members classified by UNCTAD as LDCs namely: Chad, the Central African Republic and

²⁶⁴ Fox EM, Competition Law

²⁶⁵ UNCTAD, Competition Policy for Development: *A Report on UNCTAD Capacity Building and Technical Assistance Programme in Competition Law and Policy*, New York and Geneva 2004.

²⁶⁶ Marcos. F, (2005) Do developing countries need Competition Law and Policy? *Instituto de Empresa Business School*.

Equatorial Guinea,²⁶⁷ whereas, Cameroon, Gabon and the Republic of Congo are classified as DCs.²⁶⁸ Cognisance needs to be taken of the above so as to lessen the assertion that a competition policy between the EU and the CEMAC region will generate a concomitant benefit for regional integration at an early stage.

The CEMAC region is still very inexperienced in the process of establishing and implementing competition law and policies. Indeed, according to the World Bank Competition Law Databases, Cameroon is the only country in the sub-region with a competition law,²⁶⁹ implying that the practice of competition or the regulation of national business is very underdeveloped or absent. Countries of the CEMAC region are still being initiated into the culture of competitive business practices.²⁷⁰

4.1.2 Defining competition law

There is no standard definition of Competition law. While some countries have made an attempt to give a statutory definition to competition law, others such the EU have left the concept undefined in their legislation.²⁷¹ However, a generic definition of competition law will mean “Legislation enacted by [...] governments to regulate trade and commerce by preventing unlawful restraints, price-fixing, and monopolies; to promote competition; and to encourage the production of quality goods and services at the lowest prices, with the primary goal of safeguarding public welfare by ensuring that consumer demands will be met by the manufacture and sale of goods at reasonable prices.”²⁷²

²⁶⁷ UNCTAD, (2008). Least Developed Countries Report.

http://www.unctad.org/en/docs/ldc2008fas_en.pdf [Accessed on 10 November 2010]

²⁶⁸ Source: World Bank, July (2008). 2009 List of Developing Countries.

²⁶⁹ World Bank Competition Law Databases

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/EXTCOMPLEGALDB/0,,contentMDK:20811004~menuPK:2137514~pagePK:2137398~piPK:64581526~theSitePK:2137348,00.html>

²⁷⁰ Dietmar B (2004) *Competition Law and Perspectives for Harmonisation*. Heinonline 9 Unif L. Ref. n.s. 501.

²⁷¹ UNCTAD Model Law on Competition (2010) – Chapter II. Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

²⁷² The Free Dictionary, available at <<http://legal-dictionary.thefreedictionary.com/Competition+law>> [Accessed on 10 November 2010]

4.1.3 Purpose of competition law

Competition laws are introduced to regulate business transactions and other trade practices that may not be consistent with regular standards both within a particular nation or region and internationally.²⁷³ The main objective of competition law is to fight against the abuse of market power, abuse of dominance, and other trade distortion practices-cartels, price fixing, collusion etc. From a multilateral or regional perspective, competition law considers the promotion of regional integration, consumer protection, development of democratic norms, and creating opportunities for small businesses to thrive.²⁷⁴

Though different countries may apply competition policy for different purposes, in the CEMAC region, it is one of the instruments adopted by the member states, with the objective of facilitating regional integration. The general objective however, is that of regulating and prohibiting certain types of mergers, and acquisitions, which may lead to serious monopolies and an eventual negative impact on consumers.²⁷⁵

A case of interest is Cameroon, whose competition law was enacted by Law No. 98/013 of 14 July, 1998, in response to global economic pressures. It sets out the legal framework for competition within Cameroon. In 2004, a Presidential Decree was signed establishing a commission for regulating competition, known as the Competition Regulatory Council (CRC), which is yet to be activated.²⁷⁶ “Competition law and competition policy have been virtually forced on [CEMAC] countries, fairly brusquely and with no alternative, by today’s global economic realities.”²⁷⁷ This was stated in the last OECD Global Forum on Competition Law in 2004.²⁷⁸

The Cameroon competition law prohibits anti-competitive practice in its Articles 4-6. These include price fixing, bid rigging, collusion, and preventing the entry into or expulsion from the

²⁷³ Roscar du Toit, 1999. Regulation of competition in a global economy, 24 S. Afri. Y.B. Int’l L. 35

²⁷⁴ *Ibid*

²⁷⁵ *Op cit pp 37*

²⁷⁶ Decree No. 2004/266 of 22 September 2004

²⁷⁷ OECD Global Forum on Competition Law, 2004. CCNM/GF/COMP/WD(2004)5

²⁷⁸ *Ibid*

market. Furthermore, Articles 15-20 deal with regulations on mergers, acquisitions and the abuse of dominance. Despite the fact that the law contains some salient issues of competition law, it failed to distinguish between horizontal and vertical agreements.²⁷⁹ This is an indication that the law is porous, and that there will be opportunities for violations.

As noted earlier in this chapter, states may apply competition legislation for different reasons. One of such reason has been found to be the following: “Governments are, in theory, the keepers of public interest, and may some times decide that competition is not in the public interest. Where a government replaces competition within its borders with public or private regulation, it does so presumably because the political community as a whole gains more than it loses.”²⁸⁰

It can only be assumed at this juncture that the lack of commitment from the part of the CEMAC governments by failing to stop trade restriction measures may be aimed at such gains from political interest groups. Trade restriction is a common practice in the region which is blamed for its poor intraregional trade.²⁸¹ Competition law is therefore, a check on both government and the private sector trade behaviours. Where governments are reluctant to enact laws or enforce existing once, restrictive practices may not be absent.

Furthermore, competition law may not be in the best interest of the public and in such a case government will not implement the rules. This view is supported by Article 6 & 7 of the 1998 Act.²⁸² Thus where the government has regulations and a violation of such regulation is in the best interest of the public, the public interest will take precedence.

In addition, according to Gerber’s analysis of the European competition law, the generic aim of competition law is to ensure low price and increase quality for consumers. However, this commonly projected aim of competition law was not adhered to at its inception in Europe. He argues that, competition law has been used as an instrument for European Unification rather its generic objectives.²⁸³ ‘... [The] focus in constructing the competition law system during the

²⁷⁹ *Op cit*

²⁸⁰ Fox EM *op cit* p.446

²⁸¹²⁸¹ See chapter 3 on trade practices in CEMAC.

²⁸² The agreement prohibited may be exempted if notified to the National Competition Commission and if they are contributing to the economic efficiency and only if the efficiency cannot be achieved without the agreement.

²⁸³ Gerber D.J, (1994). P. 4-6. The Transformation of European Competition Law?

1960s was not on protecting competition for the sake of its generic benefits, but creating a unified market'. Article 85 (3) of the Treaty of Rome corroborated the above assertion.²⁸⁴ It prohibited restraint on competition within European borders and at the same time it failed to prohibit internal restraints, imply that where such restraint to competition within the internal market was beneficial to economic growth, there was no reason to prohibit its operation. Thus, one could conclude that the primary objective of the Law was not to achieve its generic meaning, but to archive regional integration in Europe.

More research is therefore needed to examine this trade practice as viewed by each of the CEMAC member states, in order to comprehend some of the challenges and difficulties that these countries are currently facing, with regards to implementing an effective competition policy for the protection and enforcement of competition and competition policy in the region.

4.1.4 The necessity for Competition Law in the CEMAC region

According to Hoekman's evaluation, developing countries will benefit from either regional or multilateral agreement that:

- Bans price fixing and market sharing;
- Includes a ban on export cartels; and
- Initiates a process of replacing anti-dumping actions with enforcement of domestic competition laws.²⁸⁵

The debate as to whether developing countries need competition law has been widely discussed by scholars and policymakers in recent time.²⁸⁶ Through UNCTAD, and the WTO, discussions centred on the necessity of competition law for DCs have frequently been raised.²⁸⁷ Faced with the current trend in globalisation, where competition law and policy is taking a multilateral dimension, it becomes imperative for developing countries to embark on legislations to facilitate

²⁸⁴ *Ibid*

²⁸⁵ Hoekman B, (1997). Competition Policy and the Global Trading System A Developing Country Perspective. The World Bank International Economic Department.

²⁸⁶ Marcos F. 2005 *op cit* p.4

²⁸⁷ Du Toit R, 1999 *op cit* 52-57

the process. It is against this background that UNCTAD has taken the initiative to organise the education and training of experts from developing countries through conferences and training sessions to build capacity. '[A] strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies.'²⁸⁸

The preamble of the constitutive act of CEMAC²⁸⁹ clearly identifies the need for regional integration which goes beyond the confines of political and social ideologies into economic integration, to foster the development of a regional market through the establishment of rules that are pro economic growth and development, with the objective of alleviating poverty, promoting human rights, and the free movement of goods, persons and services within the sub-region. Members of the CEMAC region are being encouraged to enact laws that will facilitate the realisation of these objectives of the organisation. That is, if the region wishes to experience the necessary economic integration that they envisage. Such laws, which include competition law and policy, must ensure the effective transparent implementation and regulation of business practices of both the public and private sectors of member states.

Hence, competition law and policy will enable and support the entry into the regional market of both small and medium size firms to compete on the same bases with large firms without any room for discrimination.²⁹⁰ The effect is that not only do large firms benefit from such regulatory rules, but small firms as well, are given the opportunity to expand regionally and eventually internationally into the world market. Thus, different member states are obliged to their respective firms or companies whether public or private, to ensure their security in terms of monitoring the abuse of liberalisation that may be taken advantage of, by large firms to organise cartels.

In addition, competition law would regulate the entry into the regional market. The liberalisation of the CEMAC regional market needs to be done with caution in order that foreign firms do not

²⁸⁸Striglitz (2000), as cited in Marcos. F, (2005) Do developing countries need Competition Law and Policy? Instituto de Empresa Business School.

²⁸⁹ Decision No. 6/98-UDEAC-CEMAC-CE-33.

²⁹⁰Thanadstillapakul L (2004) Harmonization of ASEAN Competition Laws and Policy of Economic Integration. Unif.L.Rev.(2004-3). Pg.479-500

dominate and cause harm to home industries.²⁹¹ This would mean that those countries, like Cameroon, with a more liberal economic policy (aimed at attracting Foreign Direct Investment (FDI)); need to review their policy with regards to competition law. According to Cameroon's investment charter, adopted in 1999,²⁹² investors are allowed to enter the Cameroon market without prior government approval.²⁹³ The liberalisation of the CEMAC market, especially with the erosion of non-reciprocal trade preference would likely cause more harm to the regional market if firm applicable regulatory rules are not established.

Though it is argued that liberalisation does not necessarily mean complete liberalisation, competition law thus works as a control mechanism to ensure the free flow of businesses while at the same time restricting businesses that seek to harm the blessings of liberalisation. Even developed countries with very large economies do not leave the door wide open for any competitor to enter their market, the same fear expressed by CEMAC members during the EPA negotiations.²⁹⁴ There is therefore need for CEMAC members especially those that are directly affected by the EPA, to institute a framework for regulating the entry of large firms into the regional market and their business practices.²⁹⁵ Marcos F, conceded to the above assertion by arguing that, the anticompetitive business practices by international cartels and multinationals have a detrimental effect on developing countries, and the presence of these international cartels are known to exist in developing countries as well.²⁹⁶ 'Competition law may replace the current restrictive investment laws and regulations, incorporating principles based on non-discrimination in the control of restrictive business practices among firms regardless of their origin or nationality.'²⁹⁷

However, competition policy can only be useful to any region where a market exists.²⁹⁸ Having regards to the fact that the current market situation in CEMAC is code named 'restriction', that is, due to the lack of intraregional trade in CEMAC, competition law and policy may not take

²⁹¹ *Op cit p.480*

²⁹² Regulation No. 17/99/CEMAC/020-cm

²⁹³ Law No. 2002/004 of 19 April 2002

²⁹⁴ See Chapter three.

²⁹⁵ Thanadstillapakul. L (2004). Harmonization of ASEAN Competition Laws and Policy of Economic Integration. Unif.L.Rev.(2004-3). Pg.479

²⁹⁶ Marcos F. (2005) *op cit p.6*

²⁹⁷ *Ibid*

²⁹⁸ *Ibid*

root unless trade between the members is completely free, and a well established legal framework put in place.²⁹⁹

THE LEGAL FRAMEWORK FOR COMPETITION IN CEMAC

4.2.1 Legal framework under the Cotonou Agreement

The current policy on competition was only enacted as members states feared the risk of opening up markets to other regional partners who are advancing in development. The CA signed in 2000 incorporated in its chapter 5, on Trade Related Areas, a provision for competition policy between the ACP and the EU. As per the Agreement, the member states agreed in principle to introduce and gradually implement an effective and efficient competition policy to enhance trade and development within the ACP. Article 45 of CA lay down the framework negotiating competition policy with the EU. According Article 45 (3):

The Parties [...] agree to reinforce cooperation in this area [competition policy] with a view to formulating and supporting effective competition policies with the appropriate national competition agencies that progressively ensure the efficient enforcement of the competition rules by both private and state enterprises. Cooperation in this area shall, in particular, include assistance in the drafting of an appropriate legal framework and its administrative enforcement with particular reference to the special situation of the least developed countries.³⁰⁰

It is trite to note that within the ambit of the CEMAC region, the concept of “competition” in the legal sense, still lies at the periphery of trade practices operational in the sub-region.³⁰¹ While

²⁹⁹ See Chapter 2

³⁰⁰ Cotonou Agreement 2000

³⁰¹ Dietmar B (2004) Competition Law and Perspectives for Harmonisation. *Heinonline 9 Unif L. Ref. n.s. 501.*

negotiations of EPAs are still in process,³⁰² scholars, politicians, and civil society are questioning the authenticity of the new agreement on CEMAC with regards to the condition of incorporating competition law in the CEMAC EPA.

On a general note, DCs, including ACP states have often resisted and vetoed against the EU proposal for a multilateral framework for competition policy within the WTO. Since the EU's strategy through the WTO seemed to have met a deadlock, the EU is now pressing for competition policy as one of the condition for negotiating EPA. While the Caribbean Forum (CARIFORUM), CEMAC and the Common Market for East and Southern Africa (COMESA) are currently negotiating competition policy in their EPAs, regions such as ECOWAS and SADC have completely rejected the EU proposal.³⁰³

The framework for competition policy under the CA, made it optional for CEMAC countries to establish competition policy. This means that the agreement did not make it mandatory for members to negotiate competition policy. Article 45(2) added that where such competition policy is considered, it should be done “with due consideration to the different levels of development and economic needs of each ACP country...”³⁰⁴

Thirdly, in the wordings of Article 45(3) of the CA, the EU is required to cooperate with CEMAC states, “to formulating and [support] effective competition policies with the appropriate national competition agencies that progressively ensure the efficient enforcement of the competition rules by both private and state enterprises [within CEMAC].” Contrary to the above provision, the EU is proposing an EU-like competition policy which according to Paolo V, undermines the development needs of these countries. “Within EPAs, the EU is proposing competition policy provisions that would:

1. Identify and prevent anti-competitive behaviour to the extent that it affects trade between the EU and CEMAC,
2. Provide rules on restrictive agreements and concerted practices between undertakings, abuse of dominant position, mergers and state aid and,

³⁰² There are issues yet to be negotiated upon one of them being competition policy.

³⁰³ Paolo V. B (2007), Development Challenges of Competition Policy in the Economic Partnership Agreements. South Centre Available at

³⁰⁴ Article 45 (2) Cotonou Agreement 2000

3. Address the appropriate legal framework and bodies in charge of implementation of competition rules to guarantee a transparent and an effective enforcement of their respective competition rules”³⁰⁵

Thus, under the current framework, the CEMAC states have a choice either to suspend competition policy with the EU and strengthen regional competition policy to facilitate growth within the CEMAC region before opening up to a more experience EU producers.

4.2.2 Framework under CEMAC

In 2008, the CEMAC Council of Ministers requested the revision of the CEMAC Competition Law of 1999 and 2005. The project was facilitated by experts from member states, the CEMAC Commission, and the Court of Justice. The aim was to revise particularly Law No. 1/99-UEAC-CM-639 of 25 June 1999, regulating anticompetitive practice in CEMAC. This law was established to regulate anticompetitive business practices within the CEMAC region and to prevent undue competition from non members.³⁰⁶ Since CEMAC competition policy cut across national boundaries, they do not discriminate against other firms that are in the region. These principles go a long way to facilitate regional integration, economic liberalisation; thus fulfilling the objectives of CEMAC. One must acknowledge that CEMAC is one of few African regional economic groups that have made substantial efforts at regional integration, albeit more is yet to be done. Below is an analysis of certain legal structure within the CEMAC sub-region, aimed at contextualising the current legal framework for businesses in CEMAC, and to ascertain its contribution to regional integration. One of such moves has been the harmonisation of its business laws, under OHADA.

4.2.2.1 OHADA Laws and the CEMAC Integration Process

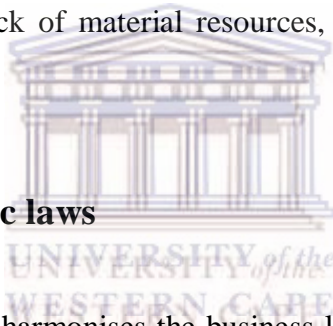
The Organisation for the Harmonisation of Business Law in Africa (known by its French acronym (*Organisation pour l’Harmonisation en Afrique du Droit des Affaires* (OHADA))) was

³⁰⁵ Paolo V, (2007). *Op cit 1*

³⁰⁶ Regulation 1/99-UEAC-CM-639 of 25 June 1999; and Regulation 4/99/UEAC-CM-639 of 18 August 1999.

established on 17 October 1993, in Port Louis, Mauritius, by 16 African countries.³⁰⁷ It is made up of countries of CEMAC, the West African Economic and Monetary Union (WEMU), the Comoros Islands and Guinea. OHADA was constituted with the objective of instituting a single legal framework, enforceable by each member state, to remedy the legal uncertainties and insecurities affecting economic activities between the various states. It laid down rules governing national, regional and international businesses in terms of creation and registration.

The main objective of OHADA was to deal with the problem of judicial insecurity that had affected the region's legal systems. As former French colonies, the members had depended on colonial rules for decades to enhance trade. There was, therefore, need for a change as globalisation and innovation had provoked the necessity for a new legal framework to oversee the security of state businesses, and investor security through a fair judicial system.³⁰⁸ 'The judicial uncertainty arose from the breakdown of how justice is administered, in both law and professional ethics, including a lack of material resources, insufficient training of judges and court officers.'³⁰⁹



4.2.2.2 OHADA and domestic laws

As has been seen above, OHADA harmonises the business laws of the French West Africa and Central African regions. The harmonisation process has brought together the national legislation of member states into a unified system. This, technically speaking, means that domestic laws relating to business have now been replaced by OHADA laws. Member states have had to make provision for the implementation and enforcement of the Uniform Laws. Such a unified legal mechanism is, on the face of it, good, and is hailed as a milestone achievement for the West and Central African states.

However, Dickerson proposed that the revision of domestic institutions rather than regional institutions to attract investors could be more beneficial to the economy of CEMAC, if such

³⁰⁷ Sixteen states are members of the Organization for the Harmonization in Africa of Business Law : Benin , Burkina Faso , Cameroon , Central African , Ivory Coast , Congo , Comoros, Gabon, Guinea, Guinea - Bissau, Equatorial Guinea , Mali, Niger, Senegal, Chad and Togo.< <http://www.ohada.org/lohada.html>> [Accessed on 10 July 2010].

³⁰⁸ .< <http://www.ohada.org/lohada.html>> [Accessed on 10 July 2010].

³⁰⁹ *Ibid*

institutions are structured to encourage domestic economic development.³¹⁰ Once such domestic social institutions have been put in place at local levels and tested, then, political and social institutions can engage in attracting foreign investors in a competitive market situation. Domestic industries would experience competition from stronger economies thus creating a forum for growth and expansion.³¹¹ Dickerson argued that OHADA is poised not to yield the expected result of developing the economies of the CEMAC states. Such assertion was based on the fact that OHADA was derived from the French civil law system which has been criticised for not being pro-development for developing countries, a fact with which the OHADA advocates and experts agreed.³¹²

4.2.2.3 The structure of OHADA

OHADA is structured to give the executive a strong influence on the market which has had a negative impact to the economies of CEMAC and WAEU. At the head of its structure is the Conference of Head of States, Council of Ministers, the Common Court of Arbitration, and the Permanent Secretariat.³¹³ While the OHADA head quarter is based in Yaoundé, the Court of Arbitration is located in Abidjan. This structure is similar to the French legal system known to be against free market economy. Dickerson argues that such anti-free market economic behaviour was a replica of the French civil law system and has had greater negative effect for developing countries than what Common Law system had for common law countries. A comparison of the Common Law and Civil Law systems showed that the former does not protect the state from the judiciary but protects private property from the influence of the state. On the contrary, the later protects the state from the judiciary. The truth of this assertion was mentioned earlier as one of the characteristic of CEMAC countries with their strong adherence to state sovereignty.³¹⁴ Besides, all of these states have presidents that have been in power for at least a decade. Below is a diagrammatic representation of the OHADA structure.

³¹⁰ Dickerson, C. M (2005) Harmonizing Business Laws in Africa: OHADA Calls the Tune 44 Colum. J. Transnat'l L. 29 (2005-2006)

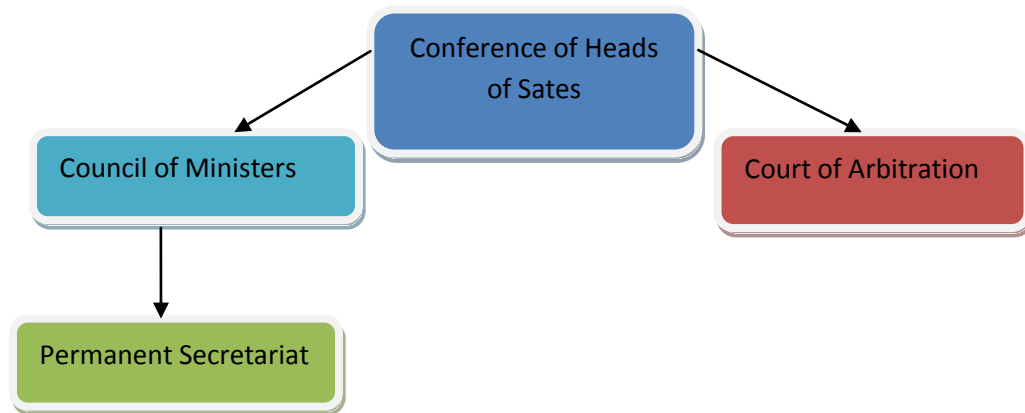
³¹¹ *Ibid*

³¹² *Ibid*

³¹³ Article 3 of the Revised 1993 OHADA Treaty

³¹⁴ Achu N C, (2008). Heterogeneity in the CEMAC Sub-region: Alternative paradigm in Subregional Integration Africa Insight Vol 37(4)

Figure 1 Structure of OHADA



It is submitted that OHADA does not provide a complete legal mechanism for the development of CEMAC countries, especially in the light of the current trend to globalisation, calling for the opening up of markets through the elimination of substantially all barriers to trade. Its competition provisions are by far too limited. Thus, the promotion and protection of competition is not a priority aspect of the law. OHADA, despite the fact that it ensures judicial security to the CEMAC region, does not seem to protect consumers' interest. The national supreme courts of member states are obliged to forward any case to the Court of Arbitration (*Court Commune d' Arbitration* (CCJA)) for final arbitration. These national supreme courts are inclined to be protective of their authority and jurisdiction.³¹⁵

OHADA deals with mergers and demergers of companies.³¹⁶ It does not form a competition policy for the CEMAC region: first because it is not exclusively related to CEMAC; secondly, while it is a good law regulating the procedure for companies to be registered, it is limited in that it does not provide an elaborate competition policy, that is, a system that regulates business practices and the abuse of dominance, cartels, etc.

³¹⁵ Dickerson, Claire Moore Harmonizing Business Laws in Africa: OHADA Calls the Tune 44 *Colum. J. Transnat'l L.* 29 (2005-2006)

³¹⁶ <<http://www.ohada.com/textes.php?categorie=38>> [Accessed on 6 July 2010].

The application of OHADA is limited as various national courts are now threatened in that the referral of cases to CCJA may interfere with national legal security and authority of appellate and supreme courts. Litigants are also faced with the issue of cost. This again makes OHADA difficult to apply by the supranational court based in Abidjan. When the cost of associating with a particular legal regime becomes too high, prospective litigants may be forced to look for an alternative that is a convenient and less costly legal system. OHADA thus involves costs for both plaintiffs and respondents.³¹⁷

The convergence of laws, or rather harmonisation of laws becomes easier if members involved have experienced some level of national autonomy and regulation, that is, some level of competition, regulated by law. This goes a long way to build capacity for the member states involved, a situation which is far from being true in the CEMAC region. Such harmonisation would lead to true convergence of laws.³¹⁸ “Harmonisation would be achieved by encouraging countries to ensure that they have in place ‘an adequate set of competition rules and that are effectively enforced’”³¹⁹

Taking a vivid look at the examples of Europe and the USA, harmonisation of business laws or competition laws could only have been possible because of the economic relationship and interactions between the European states or the US economic relationship with Mexico.³²⁰ Such economic interaction, created an atmosphere for competition that resulted in the harmonisation of their competition laws. The situation in CEMAC reflects a lack of experience in the relevant fields and is likely to face challenges with regards to enforcement.³²¹

³¹⁷ Dietmar B (2004) Competition Law and Perspectives for Harmonisation. *Heinonline 9 Unif L. Ref. n.s. 502.*

³¹⁸ *Ibid*

³¹⁹ *Ibid*

³²⁰ *Ibid*

³²¹ See Appendix 1 and 2

4.3.1 Enforcement of competition law in CEMAC

Without a strong legal framework for enforcing competition law, enforcement can become the most herculean task for most developing countries. The task of enforcing laws whether at national, regional or international levels can be the most cumbersome task to accomplish. This is one most important aspect of lawmaking. While it is proposed that an international approach should be adopted as a means to enforcing competition law through a common multilateral framework,³²² some schools of thoughts are of the opinion that enforcement from a regional or bilateral perspective could yield better results.³²³ The rationale for some of these differences in approach enforcing competition law is based on the assertion that with the advent of globalization, interdependence between states has become common practice, regardless of whether such dependence was (is) political or economically motivated.³²⁴

The level of dependence of states within a certain geographical area cannot be ignored when looking at the enforcement of competition law from an international or regional perspective.³²⁵ Thus, putting the CEMAC situation in context, such dependence is either absent or too limited in terms of trade within the region.³²⁶ With a proliferation of patches of legal provisions within the CEMAC region,³²⁷ the consequence of overlapping regional organisations,³²⁸ that is, at national and regional levels, including a multilateral framework, with its already too much legislation related to competition law, may overburden the already weak and inefficient legal structures.

‘The limitations on the judicial chamber’s enforcement powers are mainly due to the fact that no cases are referred to it, which prevents the chamber from “emerging” as an inevitable control organ in the community institutional machinery at this stage. Furthermore, the absence of a genuine procedure in respect of failure to fulfil an obligation, which is backed by penalties for non-compliance,

³²² The argument is that such an approach should be established under the WTO.

³²³ Du Toit R, (1999) Regulation of competition law in a Global Economy.

³²⁴ *Ibid*

³²⁵ *Ibid*

³²⁶ Tsangarides, C.G. & Martijn, J.K. (2007), p.4-19

³²⁷ National competition laws, CEMAC completion laws, and the OHADA laws are all small bits of laws aimed at regulating free competition within the sub-region.

³²⁸ Nicasius A C, *op cit* p 10

prevents the chamber from meting out punishment where community or national acts fail to comply with community conventions and treaties.’³²⁹

The above quotation shows that the same may repeat itself in other CEMAC regulatory agencies. An example is taken of Cameroon where its 1998 Competition Law, created a National Competition Commission, an “independent” body to carry out the enforcement of competition policy. Since its establishment in 1998, the institution is yet to be operational. Such a delay in implementation of laws is not new, as laws generally in that country and within the CEMAC region delayed in terms of application.³³⁰ When countries of the same region establish common rules and regulations to harness an integration process, it is likely that they will constitute an independent institution, separate from the state parties yet empowered to perform various functions with regards to implementing such laws and regulations hitch-free. Such independent legal framework demands the diminishing of national sovereignty in favour of a regional institution framework for reasons of effectiveness and efficiency.³³¹

Nevertheless, CEMAC community laws are agreed, in principle, to be superior to national laws.³³² The gradual enforcement of these community laws is bringing about a decline of the power of the states vis-à-vis community laws.³³³ However, despite this gradual process of loss of sovereignty to community laws and other regulatory frameworks, CEMAC is yet to achieve its objectives due to the lack of an effective enforcement mechanism which is independent and empowered to ensure the effective implementation of community laws.

‘There are concerns about the capacity to implement the community competition law. Despite political will at the regional level, institutional weaknesses in member States affect implementation capacity. Cameroon is the only Member State with national competition law and authority. There is still much to be done at the national level to address resource constraints for effective application

³²⁹ <http://www.iss.co.za/pgcontent.php?UID=2495> > [Accessed on 21 September 2010]

³³⁰ Article 2 of the CEMAC Treaty established the creation of a Regional Parliament. The law has only become effective in 2010, after over ten years.

³³¹ Moyo G B (2009) *supra*

³³² *Ibid*

³³³ *Ibid*

of community laws. There is clear allocation of responsibilities between community competition authorities and [National Competition Authorities]. However, until the system is put into practice, it is difficult to comment on its effectiveness in dealing with anticompetitive practices.³³⁴

According to Roscar du Toit, though trade across borders has become a common practice, a situation known to be absent or rather limited in CEMAC, enforcement of domestic competition laws would pose no problem to the international market. Thus, Du Toit states that enforcement of competition law from a regional or international perspective will have far-reaching effect on the economy of state parties especially developing countries.³³⁵

Furthermore, though it is argued that globalization has created system of dependence from state to state, such dependence is very limited within the CEMAC regional market.³³⁶ Dependence seems to stem from outside CEMAC rather than from the Sub-region.³³⁷ In such a situation, one could see the lapses that already exist in the enforcement of competition law within the CEMAC region. Inasmuch as there is need to regulate business practices within and between states, such regulatory frameworks are usually born from a long history of trade interactions between the members that necessitates regulations.

“Intra-regional trade is [] hampered by problems of implementation such as national trade practices which are not always consistent with Community regulations. The Executive Secretariat of the CEMAC also cites "misapplication of tax and customs codes and regulations, tariff and non-tariff barriers to intra-regional trade, poor compliance with Community rules of origin and provisions on the regulation of competition".³³⁸ Non-tariff barriers include, in particular, burdensome rules and procedures; the non-viability of certain transport corridors; or

³³⁴ UNCITAD (2008) Geneva Conference on United Nations Conference on Trade and Development 15–18 July 2008, Geneva

³³⁵ Du Toit R, (1999) *Op cit*

³³⁶ Tsangarides, C. G. & Martijn, J. K. (2007), p.4-19. Intra-regional trade is less than 3.3 per cent.

³³⁷ *Ibid*

³³⁸ Executive Secretariat of the CEMAC (2005)

the inadequacies of transport services.³³⁹ One obstacle to the movement of goods is the absence of a single entry point system, which results in the double taxation of certain products.”³⁴⁰

4.3.2 CEMAC Competition Regulatory Framework

The legal framework for regulating competition within the CEMAC region is embedded in its Regulation No. 1/99/UEAC-CM-639 of June 25, 1999. The structure of CEMAC, its political and economic institutions gives a strong signal that integration through competition may not yield the expected result as the system hasn't change for decades and for various reasons one could only but speculate another era of a stagnating economic policy, under development and growth. Certain fundamental structures are needed to be in place to act as a bed rock for any competition policy to be effective. Some of these include governments' commitment to enforce the rule of law in a free market economy.³⁴¹

Its structures consist of a Council of Heads of State which is the supreme organ of the region, the Council of Ministers, Ministerial Committee, Executive Secretariat, Inter State Committee, Bank of Central African State (BEAC), Banking Commission of Central African States (COBAC) and lastly the Institution for Financing Development. These organs were created to govern the affairs of CEMAC through its institutions.³⁴² In 2000, the CEMAC member states established the CEMAC Court of Justice and the Inter-Parliamentary Commission, an institutional strategy to implementing the Article 2 of the CEMAC constitutive Act. The establishment of these institutions as an enforcement mechanism within sub-region was hailed to be a plus to its regional integration efforts. Despite the establishment of the Inter-Parliamentary committee to facilitate the establishment of the Regional Parliament, it only took effect in April 2010. The Executive Secretariat is charged with the enforcement of competition regulations in

³³⁹ International Monetary Fund (2006)

³⁴⁰ Trade and Investment Regime-Cameroon WT/TPR/S/187. Trade Policy Review Page 83

³⁴¹ Wakemen-Linn J, Wagh S, (2008). Regional Financial Integration: Its Potential Contribution to Financial Sector Growth and Development in Sub-Saharan Africa. International Monetary Fund

³⁴² Article 2 of 1994 CEMAC Treaty

CEMAC as defined by the CEMAC treaty.³⁴³ Its prerogatives are limited to making recommendations to the Council of Ministers.

From what transpires in other regional groups or even with the EU, there is a competition commission independent of state control but empowered to enforce competition laws. The reason possibly for an independent regulatory body may be akin to the need to ensure efficiency and effective business practice that benefits the community.

4.3.3 Regulating Competition in CEMAC: National and Regional Interest.

“CEMAC countries are members of OHADA, Inter African Conference for the Insurance Market (CIMA) ... and the African Intellectual Property Organisation. These regulatory frameworks were adopted to provide legal safeguards and create an enabling environment for private sector development to complement the actions of CEMAC.”³⁴⁴ Cameroon has ratified the CEMAC regulation on competition law and has implemented certain provisions but with reservations on other issues.³⁴⁵ This is an indication that regulating competition would eventually face challenges.

However, in order to curb some of the immediate challenges to regulating competition law in CEMAC, Article 6 and 7 of the CEMAC competition law states that three CEMAC institutions are responsible regulating and enforcing competition law in the regional market. These are, the CEMAC Commission and the Court of Justice and the CEMAC Competition Council. The Commission has jurisdiction to decide on all matters relating to competition. It can also adopt the decision of the CEMAC Council relating to offences of anticompetitive behaviours, common rules of competition and can stop the abuse dominance. It also ensures the prevention of states' subsidies.³⁴⁶ In addition, the Article 8 created the Community Competition Council (CCC) with

³⁴³ See Articles 23 and 24 of CAMEC Constitutive Act, 1991

³⁴⁴ CIMA Treaty (Inter-African Conference on Insurance Markets), CIPRES Treaty (Inter-African Conference on Social Welfare), ARSO Treaty (African Regional Organisation for Standardisation), the AFRISTAT Treaty (Economic and Statistical Observatory of Sub-Saharan Africa), <<http://www.iss.co.za/pgcontent.php?UID=2495>> [Accessed on 21 September 2010]

³⁴⁵ Moneyang N. S, (2008) Les Concentration D'entreprises en droit Interne et en Droit Communautaire CEMAC. Afrilex

³⁴⁶ Article 7 CEMAC Competition law 2010 Available at http://patronat-ecam.org/Documents/Projet_de_revision_Dispositif_institutionnel_concurrence_Cemac.pdf

the status of a legal personality. The CCC is open to all members of the public so as to clarify the general public on issues relating to competition in CEMAC. From the above provision, it is clear that the CCC can sue and be sued.

According to Article 72 of the above law, the CEMAC Court of Justice is the final decision making body of any matter relating to anticompetitive behaviour. In this regard, Article 9 provides that national courts dealing with competition issues before them can request for such clarity either from the CCC or the Court of Justice. Thus the region recognizes the need for competitiveness in its economy by the creation of common market bound by a single community rules.³⁴⁷ Despite the efforts at establishing regional competition law and regional competition council, these structures are not fully independent. Therefore, the extent of the effectiveness of the regional competition law will depend on the level of sovereignty granted to the institutions that have been created to ensure that there is free and fair competition within the region. It is against this backdrop that the hypothesis of this research can be said to hold true for the region. Furthermore, it will also depend on the amount of autonomy that such a competition commission could exert within the sub-region both on private and public companies.

4.4 Conclusion

The above analysis has shown that there is a wide gap between developed and developing countries generally and the EU and CEMAC in particular with regards to the concept of competition law. Having seen that the EU is more advanced in this legal practice, the CEMAC countries are barely less than a decade into this new phenomenon. Cameroon being the only state in the region with a competition law is corroborative to the assertion that region is not yet legally prepared to establish competition law with the EU as is being proposed in EPA.

The analysis has also shown that one of CEMAC's key legal instruments for regional and international trade is the OHADA Laws. Yet the OHADA is flawed with various limitations to qualify as providing sufficient competition rules and regulations. Indeed, the OHADA is aimed at ensuring judicial security between two French regions in Africa- CEMAC and French West Africa.

³⁴⁷ *Op cit*

The CEMAC region lacks the enforcement mechanism to deter violators of regional laws or punish them.³⁴⁸ The absence of a supra regional structure for decision making in CEMAC inhibits the integration process.³⁴⁹ This will likely affect the enforcement of its competition policy. In addition, despite the establishment of the various regulatory organs in the region, with the Court of Justice as custodian of the rule of law in the region, this institution is still too young and lacks the experience to embark dealing with highly experience multinational companies from the EU, with their well established legal experience. Thus, looking at the legal capacity of the region, it share honesty to state that the CEMAC regional is not yet ready for a competition law with the EU and that such law should first be well developed within the region and strengthened before it can be made available to non-regional members.



CHAPTER FIVE

CONCLUSION

³⁴⁸ Krever R, (2008) P.219. *VAT in Africa: editor, Richard Krever*

³⁴⁹ *Ibid*

5.1 Introduction

There is no doubt that the CEMAC region has made substantial efforts at regional integration. This can be seen from the institutionalization of the relevant structures to ensure greater integration. The CEMAC region has been able to put in place a common monetary union, with a single currency issued by a BEAC, a common market and a common external tariff system. The CEMAC Court of Justice and the Regional Parliament are fully operational. The CEMAC has launched a CEMAC passport to facilitate the free movement of people within the region. Besides, there are several other projects in process to facilitate integration. However, amongst the many strategies for integration adopted, the region, as mentioned earlier in the above chapters, is still being classified as the least integrated region in Africa. The arguments put forward in this research has shown that despite all that has been done to achieve the objective of regional integration, such as establishing institutions, there is a fundamental problem affecting the full integration of the region. According to the above arguments, incorporating a competition policy in the current EPA negotiations, may only result in deeper economic crises, unemployment, stagnating regional economy and increase regional strive for national interest.

In determining the above, the study dwelled on the analysis of certain trade instruments from a multilateral perspective to bilateral agreements, culminating to the regional trade instruments used to facilitate trade within the region.

First, the Enabling Clause restricts developed countries from negotiating trade with DCs on the bases of reciprocity. The Enabling Clause ruled out the possibility of such trade arrangements. It added that, “The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual

development, financial and trade needs.”³⁵⁰ Based on this provision, the negotiation of competition law between the EU and the CEMAC region under the EPA arrangement ought to be done, with regards to the economic difficulties patterning to the CEMAC countries.

³⁵⁰ Enabling Clause (supra)

Moreover, the EU trade preference to CEMAC is conditioned on several political and social obligations. Those conditions are inconsistent with WTO rules. The conditioning of trade on political and social obligations, despite whatever justifications are given to it, is another form of reciprocity to ensure EU's security in trade. This does not make EPA politically friendly.

The region is made up of three DCs and LDCs with Sao Tome & Principe standing always as an observer, though participating in almost all sessions of the regional meetings. The implication of this state of the region placed them on a most vulnerable position in the current EPA negotiation. Since these countries are offered different option under the EPA (EBA for LDCs and GSP+ for DCs) trade arrangements, the first issue is that EPA may result in increased disintegration of the region as the main focus may now be on the benefits offered by the EU under EPA. This was evident in 2007 when Cameroon decided to initial an interim EPA aside from its regional members. Secondly, it led to a return to national interest taking precedence over regional integration. CEMAC may soon find itself in the situation of the East African Community (EAC) and SADC where a splitting of the two regional groups is already taking place.³⁵¹

In addition, the EU is proposing an amalgamation of CEMAC and ECCAS. Having regard to the history of the two organisations, this may never be possible. CEMAC, though instrumental in the creation of ECCAS, is not ready to jeopardise efforts and achievements for over three decades. The proposal simply means that one organisation should be dissolved or submerged into another. Looking back at the multi-membership in the region, CEMAC states seem to exhibit some level of stability to the CEMAC, unlike CEGL members, who form part of ECCAS, SADC, COMESA, and the Nile Basin initiative. Meanwhile, five of CEMAC' members belong to CEMAC and ECCAS only. With regards to the MFN obligations, CEMAC members may not be ready to open up market to all of the above mentioned regional blocks in order to comply with the MFN obligation of non-discrimination. Moreover, there have been conflicting ideas as to the

³⁵¹ ESA/COMESA has split with the emergence of the EAC EPA, which leaves the region with mainly least developed countries and island states – none of which are likely to champion regional integration; and SADC has lost most of its members during the EPA negotiating process, so that economic integration is now centred on SACU (plus Mozambique). The other SADC countries have either tied their external tariffs to a different framework (Tanzania in EAC and Madagascar, Mauritius, and Zimbabwe in ESA) or are hardly involved in regional economic integration.

harmonisation of the RoO for both CEMAC and ECCAS. While it is proposed that the CEMAC incorporate the ECCAS model, some CEMAC members are yet to agree on the proposal.

The region has established a regional court which is yet to develop its own experience in case-law and in statute. With its two chambers, the regional court has only been able to provide judgement to 17 disputes referred to it, eight years after it was created. This may be due to the fact that national courts do not refer cases to the regional court or that national courts are protecting their jurisdiction and sovereignty.

As was mentioned earlier, regional integration did not emerge from within CEMAC but from the EU. This means that the notion of regional court is a borrowed concept, transported from the EU to CEMAC with its rules and obligations which sometimes may not meet the immediate judicial needs of the region.³⁵² Allan F Tatham stated that the implication of the transfer of legal systems or rules is an indication that there is limited relationship between the law and the community where such laws are transferred.³⁵³ He added that the OHADA law does not provide a preliminary reference procedure from national courts with regards to making request for interpretation of regional laws or questioning their validity. This may probably explain why very few cases are referred to it by national courts.³⁵⁴

The OHADA laws as examined above, does not provide an appropriate legal framework for competition in the CEMAC region. Besides, the OHADA system cuts across various West African communities which may likely increase the cost of operation within that jurisdiction. As earlier mentioned, the OHADA court of Arbitration is based in Abidjan which makes it difficult for local companies to access its facilities. In addition, national courts on their part tend to be protective of their jurisdiction and sovereignty. This could also be one the reasons why few cases are referred to it.

The problem of overlapping membership and the proliferation of patches of legislation may in the long run result in confusion and lack of effectiveness. If faced with a situation where the members of OHADA choose to set up an elaborate competition law, and CEMAC incorporate

³⁵² Allan F. T, & Pázmány P (2010) Exporting the EU Model: A Judicial Dimension for EU International Relations? catholic University, Budapest. EUJA2010 Conference Programme Version 0.2:19 March 2010

³⁵³ *Ibid*

³⁵⁴ *Ibid*

such laws, it may lead to increase in anticompetitive practices as two companies may decide to take their case to two different courts. It may also lead to the issue of superiority of court in the region. In a case of violation, the CEMAC Court of Justice or the OHADA Court of Arbitration, which court would have priority of jurisdiction in a situation of anticompetitive practice involving subsidiaries of a multinational company operating with CEMAC and the West Africa region? This question needs to be addressed either by the OHADA laws or the CEMAC constitution with respect to competition law.

5.2 Recommendations

Having regard to the fact that the CEMAC region is classified by UNECA as the least integrated region in Africa, a more pragmatic approach in its regional policy must be taken to ensure a realistic achievement to regional integration. In this regard, regional policies aimed at facilitating regional integration needs to be enforced with immediate effect. CEMAC members have to ensure that the objectives of regional integration stated in the CEMAC constitution, such as free movement of goods persons and services within the region be accelerated.

Mindful of the fact that intra-CEMAC trade is lowest in Africa, compared to other regional blocs, the region must embark on greater regional liberalisation effort to combat this impediment to regional integration and competition. According to Maria-Angels Oliva, trade between CEMAC states is at 3% compared to trade within the West African Economic and Monetary Union (WAEMU)'s 9.4%.³⁵⁵

With respect to trade within CEMAC, its institutional structures-associated with issues of state sovereignty, coupled with the administrative burden of managing the already existing limited resources by belonging to several regional institutions that entails cost on the members, the effects on observer members in the region, are all hurdles that must be overcome through rigorous policy decisions in the region. Thus, the CEMAC members, rather than spreading risk, should concentrate their resources on building capacity within the region and its institutions for an effective and more realistic regional interaction and development.

³⁵⁵ Oliva M (2008) *supra*

The above having been said, from the arguments of Eleanor M Fox in chapter four of this work, DCs with weak legal instruments and structures, often fall prey to multinational cartels from developed countries.³⁵⁶ This view is supported by Paolo V, who stated that some ACP producers are likely to become victims of EU corporations forming cartels or oligopolies. What this research proposes that since the CA does not oblige any ACP member to negotiate competition policy with the EU, the CEMAC region should consider the implication and rather suspend any form of competition policy until the regions' experience in dealing with competition and anti competition practices have developed to a reasonable standard in terms of law, enforcement of law and building-capacity in that respect.³⁵⁷

As provided by the CA, competition policy between the EU and CEMAC should be based first, on provisions that support regional integration and strengthening the relevant structures already in place. Negotiations should take the form of building-capacity and granting technical assistance to CEMAC competition Commission. The primary focus of such a policy should be based on developing the regional institutions and monitoring its developments rather than setting up a competition policy with the EU. The duration for this to develop should be the same as the duration proposed by CEMAC members under the under current EPA negotiation, that is, 25 year period.³⁵⁸

On the part of CEMAC members, a proactive approach at regional competition, law enforcement, should be carried out by policy makers so as to ensure regional security. CEMAC members should ensure greater liberalisation of the market, harmonise the procedures for enforcing regional laws (see appendix 2) in terms of the cost, documents, time spent in processing documents etc.

Finally, the CEMAC Competition Commission should be made autonomous and independent of the Council of Heads of States of CEMAC. However, it should be answerable to the CEMAC Parliament and where there are issues of interpretation of regional laws, the CEMAC Court of Justice should have jurisdiction in such matters. Where the roles of the various stakeholders are clearly defined, regional integration, becomes an object rather than a subject of policy.

³⁵⁶ Fox E.M (2000) *supra*

³⁵⁷ Paolo V.B (2007) *supra*

³⁵⁸ <http://ictsd.org/i/services/ptas/13064/>



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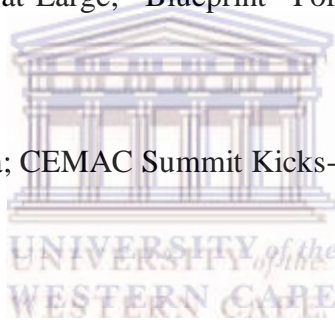
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APPENDICES

Appendix 1: Doing Business in CEMAC, position in world ranking.

	Rank	Starting a Business	Dealing with Construction Permits	Registering Property	Getting Credit	Protecting Investors	Paying Taxes	Trading Across Borders	Enforcing Contracts	Closing a Business
Cameroon	168	131	118	149	138	120	169	155	173	141
CAR	182	161	148	141	138	132	182	182	173	183
Chad	183	183	101	137	152	154	197	171	164	183
Congo	175	146	81	118	168	154	163	172	172	155
Equatorial Guinea	164	179	109	79	138	147	170	137	72	183
Gabon	156	153	67	132	138	154	140	134	148	139

World Bank data base 2010

Appendix 2

Enforcing legal actions for CEMAC countries

	Number of procedures	Average time(days) spent in resolving disputes	The cost in (in %) of debt value in terms of court fees, average attorney fee & enforcement fee
Cameroon	42	800	46.6
CAR	43	660	82
Chad	41	743	45.7
Congo	44	560	53.2
Equat. Guinea	40	553	18.5

World Bank data base 2010

