

































































































































Common Market for Eastern and Southern Africa and the Economic Community of Central African States), it is time to place this commitment within the context of the World Trade Organization trading rules in order to decipher the legal implications generated.

The Democratic Republic of Congo belongs to three regional economic communities with the potential of violating Article XXIV of the General Agreement on Tariffs and Trade of 1994. Indeed, the Democratic Republic of Congo's commitment to the Common Market for Eastern and Southern Africa which has launched its customs union plan.<sup>165</sup> In addition, the Democratic Republic of Congo is also part of the Southern African Development Community which is implementing its free trade area scheme with the aim of implementing its customs union in 2010.<sup>166</sup> Lastly, the Democratic Republic of Congo is member of the Economic Community of Central African States which has as part of its trade liberalisation plan the es



nion.  
 The above raises a concern a on member can't belong to more  
 than one customs union.<sup>167</sup> It African Development Community  
 had launched its customs uni on of the Democratic Republic of  
 Congo will be a violation o neral Agreement on Tariffs and  
 Trade of 1994. This will be worsened if the Economic Community of Central African  
 States also materialised its trade liberalisation plan which includes the establishment of a  
 customs union. In this situation, the Democratic Republic of Congo will seek to preserve  
 preferential tariffs in each of those regional economic communities with the risk of  
 raising barriers to the import of other members which are not part to each of those  
 regional economic communities. This is a violation of the purpose of Article XXIV: 4  
 according to which the purpose of a customs union is to make trade flowing easily and  
 not to raise barriers to the trade of non member of the customs union.<sup>168</sup> It also infringe  
 paragraph 5 of the same provision which prohibit members to increase duties or make

<sup>165</sup> COMESA treaty Article 45, see also Desmond Kwande - (AFP) loc cit. COMESA loc cit.

<sup>166</sup> Amos Saurombe (2009) loc cit. See also SADC Regional Indicative Strategic Plan approved by the 2003 Summit loc cit.

<sup>167</sup> Lolette Kritzing-van Niekerk and Emmanuel Pinto Moreira (2002) loc cit. See also Amos Saurombe (2009) loc cit. Cord Jakobeit, Trudi Hartzenberg et al (November 2005) loc cit.

<sup>168</sup> General Agreement on Tariffs and Trade of 1994 loc cit. See also Simon Lester and Bryan Mercurio loc cit.

regulations more restrictive than what they used to be prior to the establishment of the customs union.<sup>169</sup>

The other legal implication is the difficulty of implementing different set of rules from different regional economic communities in order words it will result in legal conflict.<sup>170</sup>

#### **4.4 Conclusion**

In conclusion, this part of the research has revealed that the commitment of the Democratic Republic of Congo to three regional economic communities (the Southern African Development Community, the Common Market for Eastern and Southern Africa and the Economic Community of Central African States) has the potential to violate Article XXIV of the General Agreement on Tariffs and Trade of 1994.

In order to reach the above conclusion, the first part of this chapter was devoted to the examination of Article XXIV of the General Agreement on Tariffs and Trade of 1994 which is the legal basis upon which regional trade agreements is dealt with within the context of the World Trade Organization. The overall analysis of this provision was clear, even though it left unresolved the controversy surrounding the internal trade requirement especially the exact meaning of the concept 'substantially all trade'

As a second step, the Democratic Republic of Congo's commitment to three regional economic communities (the Southern African Development Community, the Common Market for Eastern and Southern Africa and the Economic Community of Central African States) was put under the scrutiny of the legal requirement set out in Article XXIV of the General Agreement on Tariffs and Trade of 1994.

After investigating the issue of the legal implication of the Democratic Republic of Congo's commitment to the above-mentioned regional economic communities, the following part will be devoted to the general conclusion of the research as well as some recommendations.

---

<sup>169</sup> General Agreement on Tariffs and Trade of 1994 *ibid*.

<sup>170</sup> UNECA, *Rationalization of Regional Economic Communities: A work in progress* <[www.uneca.org](http://www.uneca.org)> loc cit .See also United Nations Conference on Trade and Development 2009 Economic Development in Africa Report loc cit. Cord Jakobeit, Trudi Hartzenberg et al (November 2005) op cit 49.

## **Chapter 5: CONCLUSION AND RECOMMENDATIONS**

### **5.1 Introduction**

Although the legal implication of multiple memberships of the Democratic Republic of Congo in regional economic community was the main focus of this work, some other facts did retain our attention.

The next point devoted to the conclusion will deal with other subsequent findings.

### **5.2 Conclusion**

As stated above, the main focus of this research paper was the legal implication of the commitment of the Democratic Republic of Congo in regional economic communities. Nonetheless, this topic brought to light other relevant findings.

Regional economic community requires that specific programs to be launched in order to materialized the integration plan of the member states. When progressively the members reduce their tariffs line with a view of eliminating them within their respective territories, they create a free trade area. In addition to the precedent, the decision to establish a common external tariffs vis-à-vis import originating from non members states constitutes the institution of a customs union.

It, also revealed that, as part of most trade liberalization plans, customs union and free trade area are two programs whose formation are strictly regulated by the World Trade Organization (Article XXIV of the General Agreement on Tariffs and Trade of 1994). In fact, the World Trade Organization promotes among its members two key principles. One of these is the Most Favoured Nation principle which obliges its member granting preferential treatment to another specific member to extend it automatically to all other member states.<sup>171</sup> Furthermore, the World Trade Organization allow member states to discriminate on strict and specified conditions (notification and internal and external trade requirements) which constitute an exception to the Most Favoured Nation principle.

---

<sup>171</sup>General Agreement on Tariffs and Trade of 1994 *ibid*.

In addition, politics plays an important role in regional integration in general and in the specific case of the Democratic Republic of Congo. This is true, as the decision to join a specific regional economic community by every country in general and in the specific case of the Democratic Republic of Congo is a political decision, not only because taken by political authorities but also because it takes into consideration the political interest of a specific country in this case the Democratic Republic of Congo was in quest of establishing its hegemony in a specific region.

Furthermore, it also showed how important a clear and proper foreign policy is with regard to trade liberalization for a country, especially with respect to its participation into regional economic community particularly in the case of the Democratic Republic of Congo.

Moreover, it indicated the relevance of political stability as the appropriate environment for the implementation of a trade liberalization plan on a regional as well as on an international level especially given the series of armed conflict that hindered the trade liberalization process in the great lake region and the central African region.

Furthermore, the examination of Article XXIV of the General Agreement on Tariffs and Trade of 1994, which is the legal basis upon which regional trade agreements is dealt with within the context of the World Trade Organization. The analysis provided not only the purpose of regional trade agreements (for a free trade area and a custom union) but also the requirements laid down for the formation of a free trade area and a customs union. However, the uncertainty on the controversial issue of the internal trade requirement particularly on the exact meaning of the concept 'substantially all trade' remains unsolved.

Finally, the membership of the Democratic Republic of Congo to three regional economic communities (the Southern African Development Community, the Common Market for Eastern and Southern Africa and the Economic Community of Central African States), taking into account their respective trade liberalization plan is a matter of legal concern. Indeed, this participation has the potential of not complying with Article XXIV of the General Agreement on Tariffs and Trade of 1994. This may also lead to legal conflict as

it will be difficult for the Democratic Republic of Congo to implement different body of rules from different regional economic communities.

Finally, the next part of this research is discussing the recommendation to the issue of legal implications generated by the multiple memberships of the Democratic Republic of Congo in regional economic communities.

### **5.3 Recommendations**

The first recommendation is to advise the Democratic Republic of Congo to choose one regional economic community and withdraw from others in order to avoid being in violation of Article XXIV of the General Agreement on Tariffs and Trade of 1994 (agreement to which the country committed itself). This is also true as the multiple memberships of the Democratic Republic of Congo in the abovementioned regional economic communities has the potential of raising barriers to the trade of non members. In the same way, taking into consideration the economic and political situation of the Democratic Republic of Congo which is recovering from a complex crisis<sup>172</sup> it is likely for the country to loose foreign direct investment opportunities with the risk of affecting job creation and the transfer of technology. Also, the decision to choose one specific regional economic community and withdraw from the others will allow the country to implement easily one trade liberalization program of the regional economic community to which it will commit itself as no legal conflict will arise and market predictability will be promoted.

Finally, the Democratic Republic of Congo should choose the regional economic community that meet its political and economic interest. This calls the adoption of a clear and proper foreign trade policy by the political authorities of the Democratic Republic of Congo. The foreign trade policy should take into account not only the attractiveness of foreign direct investment but also the transfer of technology from foreign companies to the local manpower. That will be achieved if the political authorities involve the private sector, the civil society, and the consumer and public bodies in the elaboration of that policy.

---

<sup>172</sup> ADB and OECD, *Democratic Republic of Congo*, 252 ff.

## BIBLIOGRAPHY

### Books

Dani Venter and Ernst Neuland (2007) *Regional Integration-Economic Partnership Agreement for Eastern and Southern Africa*, Institute for Business Innovation.

Dirk Hansohm, Willie Breytenbach et al (2003), *Monitoring Regional Integration in Southern Africa*, Namibian Economic Policy Research Unit and the Konrad Adenauer-Stiftung.

Jaime de Melo and Arvind Panagariya (1993) *New dimension in regional integration*, Centre for Economic Policy Research, Cambridge University Press.

Lolette Kritzing-van Niekerk and Emmanuel Pinto Moreira (2002), *Regional integration in Southern Africa: overview or recent developments*, Regional Integration and Cooperation Africa Region, The World Bank.

Miroslav N. Jovanovic (1998), *International economic integration Limits and prospects* (Second edition), ROUTLEDGE, London and New York.

Simon Lester, Bryan Mercurio et al (2008) *World Trade Law: Text, Materials and Commentary*, HART PUBLISHING, OXFORD AND PORTLAND, OREGON.

S Lester and B Mercurio (eds) *Bilateral and Regional Trade Agreements: Commentary, Analysis and Case Studies*.

Sipho Buthelezi (2006) *Regional Integration Prospects & Challenges for the 21<sup>st</sup> Century*, School of Public Management and Development, University of Fort Hare, IKHWEZI AFRIKA PUBLISHING, Volume 1.

Walter Goode *Dictionary of Trade Policy Terms* (2003), Fourth edition.

## **Chapters in books**

A Mitchell and N Lockhart, *Legal requirements for PTAs Under the WTO's* included in S Lester and B Mercurio (eds) *Bilateral and Regional Trade Agreements: Commentary, Analysis and Case Studies*.

GR Winham, *The World Trade Organization: Institution-building in the multilateral trade system* (1998) *World Economy*. Included in Simon Lester, Bryan Mercurio et al (2008) *World Trade Law: Text, Materials and Commentary*.

Trudi Hartzenberg (2003), *The new SADC Agreement: Implication for regional Integration in Southern Africa*. Included in Dirk Hansohm, Willie Breytenbach et al, *Monitoring Regional Integration in Southern Africa*.

## **Journal articles**

Amos Saurombe (2009), 'Regional Integration Agenda for SADC' Caught in the winds of change' Problems and Prospects" in *Journal of International Commercial Law and Technology*.

## **International treaties**

COMESA Treaty.

General Agreement on Tariffs and Trade of 1994.

Protocol on Relations between the African Union and the Regional Economic Communities.

Treaty Establishing the Economic Community of Central African States.

Treaty of the Southern African Development Community.

## **Non-treaty instruments**

Council for Trade in Services-North American Free Trade Agreement-Joint Communication from Canada, Mexico and the United States of America', WTO Doc. S/C/N/4, (1 March 1995).

The SADC Regional Indicative Strategic Plan (2003).

Final Communiqué of the Thirteenth Summit of the COMESA Authority of Heads of State and Government (2009).

United Nations, Security Council, Resolution 1040, SC/6165, 29/01/1996.





The Uruguay Understanding on the Interpretation of Article XXIV.

## **Reports**

ADB and OECD, *Democratic Republic of Congo*.

Awoumo, CDG, *La coexistence CEEAC-CEMAC: une nécessité? Enjeux*.

Chauvin, S & Gaulier, G. (2002) *Regional integration in Southern Africa* Working paper N° 2002–12. October. Paris: CEPII.

*Integrating Trade and Investment Regionally: COMESA Q&A*, Lusaka, August 1999.

The Working Party report on EEC, GATT Doc BISD 6S/100. The European Economic Community, 29 Nov 1957, GATT BISD. (6<sup>th</sup> Supp) at 70, sect D, European Free Trade Association, 4 June 1960, GATT BISD. (9<sup>th</sup> Supp, 1961).

United Nations Conference on Trade and Development, *Economic Development in Africa Report 2009, Strengthening Regional Economic Integration for Africa's Development*, United Nations New York and Geneva 2009.

## **Websites**

*African Economic Community* <en.wikipedia.org>.

Amnesty International, “*Burundi Between hope and fear*” <[www.amnesty.org](http://www.amnesty.org)>.

Arsène Mwaka Bwenge (2006), *D'une CEPGL à une autre : quelles alternatives dans les stratégies actuelles d'intégration et de coopération pour le développement ?* in *repenser le développement en Afrique : au delà des impasses, les alternatives*. Dakar: Codesria. <<http://lodel.ehess.fr/ceaf/document>>.

Ashish K. Vaidya (2005), “*Encyclopaedia of trade, Labor, and Politics*” <books.google.co.za>.

BBC, *UN admits Rwanda genocide failure* <[www.bbc.co.uk](http://www.bbc.co.uk)>.

Barthélemy Cousin and Aude Marie Cartron, *A common legal system providing a reliable legal and judicial environment in Africa for international investors*, <[www.cerclehorizon.com](http://www.cerclehorizon.com)>.

Bureau of African Affairs (2009), “*Background Note: Democratic Republic of the Congo*” <[www.state.gov](http://www.state.gov)>.

COMESA, *Comesa launches its customs union*, <[www.comesa.int](http://www.comesa.int)>.

Cord Jakobeit, Trudi Hartzenberg et al *Overlapping membership in COMESA, EAC, SACU and SADC: Trade policy options for the region and for EPA negotiations* summary of findings <[Tanzania.fes-international.de](http://Tanzania.fes-international.de)>.

Desmond Kwande - (AFP), *Les 19 pays africains du Comesa se dotent d'une union douanière* <[www.mediacongo.net](http://www.mediacongo.net)>.

Economic Community of Central African States <[www.ceeac-eccas.org](http://www.ceeac-eccas.org)>.

Ignatius Ssuuna, “*Rwanda diplomats react to Democratic Republic of Congo, Rwanda naming of envoys*” <[www.allAfrica.com](http://www.allAfrica.com)>.

Jeune Afrique, *Kinshasa et Kigali font la paix* <[www.jeuneafrique.com](http://www.jeuneafrique.com)>.

Kritzinger-Van Niekerk, L. (2005) *Regional integration: concepts, advantages, disadvantages and lessons of experience* <[www.sarpn.org.za](http://www.sarpn.org.za)>.

Mothae Maruping *Challenges for Regional Integration in Sub-Saharan Africa: Macroeconomic Convergence and Monetary Coordination* <[www.fondad.org](http://www.fondad.org)>.

Naison Ngoma (2004), *Hawks, doves or penguins? A critical review of the SADC military intervention in the DRC*, Occasional paper 88.

Radio Okapi, *SADC: zone de libre échange, la RDC n'est pas prête*. <[www.radiookapi.net](http://www.radiookapi.net)>.

UNECA, *Rationalization of Regional Economic Communities: A work in progress*  
<[www.uneca.org](http://www.uneca.org)>.

United Nations, Economic and Social Council, *Special Rapporteur, on his mission to Rwanda from 8 to 17/04/1993* by Mr. B.W Ndiaye, E/CN 4/1994/ Add.1, 11/08/1993  
<[www.un.org](http://www.un.org)>.

United Nations, *Treaty Series*, vol. 1092 <[www.un.org](http://www.un.org)>.

United Nations, Economic and social Council, *Report on the situation of human rights in the Democratic Republic of Congo, submitted by the Special Rapporteur Mr. Roberto Garretón in accordance with Commission on Human Rights resolution 2000/15*  
E/CN.4/2001/40, 1/02/2001 <[www.afrol.com](http://www.afrol.com)>.

University of Pennsylvania (African Studies Center), *Burundi: Recent UN statements 12/28/'95* <[www.upenn.edu](http://www.upenn.edu)>.

USTR, United States and European Communities Reach Agreement on Enlargement: Compensation Package, Press Release, <[www.ustr.gov](http://www.ustr.gov)>.

SARDC, *Regional integration and its link to ICBT*. <[databases.sardc.net](http://databases.sardc.net)>.

Suliman Ali Baldo, *Rampant human rights abuses and occupation of the Democratic Republic of Congo by Foreign Armies* <[www.hrw.org](http://www.hrw.org)>.

Sunday Times, *Kabila, Kagale meet in DRC* <[www.thetimes.co.za](http://www.thetimes.co.za)>.

*The Southern African Development Community* <[www.eia.doe.gov](http://www.eia.doe.gov)>.

Thomas Stevens, Hans Hoebeke and Koen Vlassenroot, *Politics of regional integration in Central Africa* Institute for International Studies <[www.iss.co.za](http://www.iss.co.za)>.

World Trade Organization, *Understanding the WTO: the basics*, <[www.wto.org](http://www.wto.org)>.



UNIVERSITY *of the*  
WESTERN CAPE