

# Customs union progress

By **KENNETH BAGAMUHUNDA**

DIRECTOR OF CUSTOMS, EAST AFRICAN COMMUNITY



**KENNETH BAGAMUHUNDA** holds a BA (Econ), and an MBA from Makerere University and several postgraduate qualifications in taxation, management, customs and finance. Prior to becoming a Director of Customs at EAC, he worked for the Uganda Revenue Authority as an Assistant Commissioner of Customs and a Senior Finance Officer with the Ministry of Finance of Uganda. He has also done several project assignments on taxation, customs and management at national, regional and international level.

**T**he customs union is the start point of EAC integration and it was envisaged in the protocol that the threshold of a full customs union will be attained after five years of a transition.

The EAC has leaped to a point of the integration path for a full thrust of the customs union and that provides a spring-board for the common market. The establishment of the customs union is intended to deliver mutual benefits to the region in the form of enhanced trade, production efficiency, investment and competitiveness. This paper reflects on the progress of the EAC customs union which has been characterised by the following milestones:

## Trade liberalisation

One of the pillars of the customs union is to attain trade liberalisation with a duty free and quota free trade regime based on principles of the WTO. The intra-EAC tariff elimination process over a period of five years was carefully designed in order not to cause disruption and unfair competitiveness in the manufacturing sector. A five year progressive phase programme was adopted on trade of some products from Kenya exported to Uganda and Tanzania, while the rest of the trade was fully liberalised from the outset. This asymmetrical tariff programme was intended to cushion the manufacturing sector in Uganda and Tanzania which was still nascent and therefore would be vulnerable to competition from established Kenya manufacturers. A free tariff regime was attained on 1st January 2010.

## The Common External Tariff (CET)

Another pillar of the customs union was the establishment of a common external tariff which was adopted and replaced the differing partner states tariffs. The EAC common external tariff has a 3-band structure based on the harmonised commodity description and coding system. The structure of the tariff accords a 0 per cent rate to raw materials and capital goods, 10 per cent to intermediate goods and 25 per cent to finished goods. The preferential and free tariff regime accorded under SADC and COMESA have been preserved under the EAC Customs Management Act in order not to erode the benefits accruing to partner states that are members of these blocs.

## Sensitive products

A minimal list of sensitive goods that require protection is maintained at rates above the maximum rate of 25 per cent. The list mainly consists of goods where the region has a comparative advantage and such goods are considered to be of economic potential, particularly in the agriculture sector. The items include among others sugar, rice, maize, milk and dairy products, wheat, and cotton textiles.

## Customs union legal framework

The legal framework of the customs union is packaged with a number of instruments that have been jointly negotiated and agreed upon by all partner states. The customs law includes the relevant articles of the Treaty establishing the EAC, the Customs Union Protocol, the directives and regulations made by the Council of Ministers, the acts enacted by the East African Legislative Assembly, the rulings of the East African Court of Justice and international laws. The EAC has made strides by enacting the EAC Customs Management Act.

The EAC Customs Management Act is the most active instrument which is uniformly applied since 2005. The application of a common customs legal regime across the EAC is a major break through as it ensures harmony and similar treatment in the clearance of goods by customs. This provides the bedrock for the establishment of a single customs territory.

## Trade facilitation

One of the tenets of the customs union is to facilitate trade through elimination of non tariff barriers and harmonisation and simplification of trade formalities and customs procedures.

Programmes on interventions to address non tariff barriers have been initiated although it remains a challenge. A mechanism for identification, monitoring and addressing non tariff barriers has been developed and national and regional monitoring committees have been established to address this challenge to trade. A time bound programme cataloguing the non tariff barriers and specifying tailored interventions has been developed.

In addition, harmonisation and simplification of customs procedures is being undertaken and this is premised on a common customs laws and regulations that apply uniformly in all partner states.

### Harmonisation of quality standards

Harmonisation of quality standards is underway and so far 1,200 EAC standards have been harmonised and gazetted. An EAC Standards, Quality Assurance, Metrology and Testing Act (SQMT) was enacted by the East African Legislative Assembly and the process of its implementation has started.

### Multilateral and international trade negotiations

The EAC has gradually evolved a harmonised framework as a bloc in multilateral trade negotiations particularly with the EU, COMESA, SADC and the USA. Negotiations on an Economic Partnership Agreement (EPA) with the EU are at an advanced stage and it is envisaged that the Framework Economic Partnership Agreement will be concluded soon. The EAC is at an advanced stage of establishing a tripartite free trade area with COMESA and SADC. The EAC has also signed a trade and investment framework agreement with the USA.

### Benefits of the EAC Customs Union

Tangible benefits realised so far include:

- a) Intra-EAC trade has grown substantially since the commencement of the customs union. In 2008, total intra-EAC trade increased by 37.6 per cent reaching US\$2.7 billion. The increase in total intra-EAC trade has grown exponentially from US\$1,847 billion in 2005, an increase of 49 per cent. The exports of Tanzania and Uganda to the EAC have increased 119 per cent and 125 per cent respectively since 2005. Kenya's exports also rose by 25 per cent during the same period. EAC total exports to the rest of the world also grew by 26.2 per cent during 2008. This is an indication of the positive trends in trade the EAC is realising.
- b) Increase in cross border and foreign direct investment as evidenced by firms in the region gaining an East African character by opening branches in the region. Since 2005 the investment flow into the region has tripled. Foreign direct investment (FDI) continues to be one of the cornerstones of economic development in the EAC. During the period 2002-07, inflows of FDI almost tripled from US\$692 million in 2002 to US\$1.7 billion in 2007 with Uganda and Tanzania receiving the largest proportion. In 2008 a modest FDI inflows was also registered in the region. In fact the two countries ranked among the 10 top destinations for FDI inflows among African LDCs in 2007.
- c) Average revenue growth of 30 per cent per annum has been attained since 2005 contrary to earlier fears that the customs union would lead to revenue losses. This is attributed to increases in trade volumes, increases in investment flows and production, and improved efficiency in revenue administration of the partner states.
- d) The EAC common external tariff and tariff elimination programme has led to a stable tariff regime which ensures businesses predictability and facilitates

long-term planning.

- e) The uniform customs law with harmonised tax incentive and exemption schemes enhances transparency with no discretionary treatment in according such benefits to eligible taxpayers.
- f) Joint decision making through pre-budget and post-budget consultations of ministers of finance which have resulted in harmonisation of customs union related aspects of budget speeches released on the same day.

### Challenges

Progress and benefits notwithstanding there are still some challenges in implementation:

1. Multiple membership to different RECs impacts on the customs union in varying degrees. In the first instance it distorts the common external tariff given that the partner states apply different tariff regimes to third parties which may cause trade deflection of goods accorded preferential rates in one partner state which may end up in another state that does not accord such preferences.
2. Free circulation of goods is yet to be attained because internal border controls still exist. This arises from the fact that customs clearance and tax collections are still destination based. Furthermore, the imposition of domestic taxation on trade goods complicates the relaxation of border controls.
3. There is limited regional institutional authority to ensure compliance with the customs union instruments and policy framework. In this regard national policy interventions that are inconsistent with regional laws may be prompted by some exigencies without referral for regional approval. In such circumstances it becomes difficult to monitor implementation of the customs union.
4. Although the regional laws take precedence over similar national laws, partner states have not aligned some of the national laws to the regional laws. In this case, contradictions exist in some areas, particularly on incentives and exemptions accorded under the East African Community Customs Management Act and national laws such as some investment laws.
5. In spite of the programme interventions developed, non tariff barriers still exist due to national jurisdictions which institute administrative measures that deter trade.
6. Varying domestic tax regimes is a disincentive to investment and free flow of goods in the region. It impacts on trade and investment flows.

### Conclusion

The customs union as the starting point for EAC integration is a critical milestone which will shape the subsequent levels. Its consolidation into a functioning single customs territory is fundamental for the crystallisation of a single market. Indicators show that there are positive outcomes of the customs union despite the challenges which should be addressed on a continuous basis.

**Intra-EAC trade has grown substantially since the commencement of the customs union**