

EAC Common Market

By **DAVID MWIDDU SAJJABI AND MAGAGA ALOT**

PRINCIPAL PLANNING AND RESEARCH OFFICER, EAC, AND CORPORATE COMMUNICATIONS EXPERT, EAC, RESPECTIVELY



DAVID SAJJABI holds an MA from Columbia University, New York. After working in the Ugandan Ministry of Planning and Economic Development he joined the EAC as an economist specialising in the fiscal and monetary aspects of integration.



MAGAGA ALOT holds an MSc from the United States International University, Nairobi. In 1997, he was the first Information and Public Relations Officer of the re-launched East African Community rising to Head of Corporate Communications and Public Affairs before his retirement in 2009.

The protocol on the establishment of the EAC common market was signed in Arusha, Tanzania on 20th November 2009 by the Presidents of the five EAC partner states: Jakaya Mrisho Kikwete of Tanzania; Pierre Nkurunziza of Burundi; Mwai Kibaki of Kenya; Paul Kagame of Rwanda; and Yoweri Kaguta Museveni of Uganda. The protocol was thereafter ratified by all the five EAC partner states and entered into force on 1st July 2010.

The Common Market Protocol (CMP) underlines the determination of the partner states to create a single market and investment area buttressed by the customs union already in place since 2005, along with monetary union in 2012 and eventually the creation of a political federation. The Secretary General of the East African Community, Juma V. Mwapachu, has described the launching of the common market as “a milestone that epitomises the strong political will and firm commitment by all EAC stakeholders to build a solid regional economic bloc”.

The EAC has a combined population of 130 million with a combined GDP of US\$75 billion. The EAC partner states are endowed with abundant natural resources they can maximise through joint development. The objectives of the common market are to accelerate economic growth and development through widening and deepening cooperation in the economic and social fields.

The scope of co-operation under the common market applies to any activity undertaken in cooperation by the partner states to realise free movement of goods, services, capital, and persons, along with the right of establishment and residence.

These rights shall also apply to companies and firms. The partner states shall remove the administrative procedures and practices resulting from national laws or from agreements previously concluded between the partner states that form an obstacle to the right of establishment; at the same time progressively removing any administrative procedures and practices resulting from national laws that restrict the right of establishment in respect of the conditions for setting up agencies, branches or subsidiaries of companies or firms in their territories; and the entry of personnel of the companies or firms registered in another partner state into managerial

or supervisory positions in agencies, branches or subsidiaries in that partner state.

Under the CMP, the partner states guarantee the free movement of services and the free movement of service suppliers who are nationals of the partner states within the community. The partner states undertake to take such measures to ensure the observance of the measures by local governments and local authorities and non-governmental bodies within the partner states. The measures include any laws and administrative actions taken by: national governments, local governments or local authorities; and non-governmental bodies in the exercise of powers delegated by national governments, local governments or local authorities. The partner states shall progressively remove existing restrictions on the provision of services in the partner states, by nationals of other partner states. Partner states shall accord unconditionally, to services and service suppliers of the other partner states, treatment no less favourable than that it accords to like services and service suppliers of other partner states or any third party or a customs territory (National Treatment and Most Favoured National Treatment).

The CMP also imposes general exceptions to trade in services, which include those related to enforcement of measures necessary to protect public morals, maintain public order, protection of the environment, protection of the privacy of individuals, etc. There will also be ‘security exceptions’ on trade in services, such that trade in services shall not require any partner state to furnish any information, the disclosure of which it considers contrary to its essential security interests; and to prevent any partner state from taking any action which it considers necessary for the protection of its essential security interests. The implementation of Article 16 of the protocol granting free movement of services shall be progressive and in accordance with the schedule on the progressive liberalisation of services.

Free movement of capital

The partner states commit themselves to removing restrictions between the partner states, as well as on the movement of capital belonging to persons resident in the community; to remove any discrimination based on the nationality or on the place of residence of the persons or on the place where the capital is invested; to

remove any existing restrictions on the movement of capital and payments connected with such movement and on current payments and transfers; and, on the whole, work towards the creation of an integrated financial system for East Africa.

There will be general exceptions and restrictions relating to free movement of capital for reasons related to prudential supervision, public policy considerations, money laundering, and financial sanctions agreed to by the partner states. Also, where the movement of capital leads to disturbances in the functioning of the financial markets in a partner state, the partner state concerned may take safeguard measures subject to the conditions indicated in the protocol. Capital and related payments and transfers are permitted, including direct investment, equity and portfolio investments, bank and credit transactions, payment of interest on loans and amortisation, dividends and other income on investments, repatriation of proceeds from the sale of assets, and other transfers and payments relating to investment flows.

Protection of cross-border investments

The partner states undertake to ensure protection and security of cross border investments of investors of other partner states; non-discrimination of investors from other partner states, by according these investors treatment no less favourable than that accorded in like circumstances to the nationals of that partner state or to third parties. In case of expropriation, any measures taken will be for a public purpose, non-discriminatory, and in accordance with due process of law, accompanied by prompt payment of reasonable and effective compensation. The protocol affirms that the partner states shall within two years after coming into force of the protocol take measures to secure the protection of cross border investments within the Community.

Economic, monetary and fiscal policy co-ordination

The CMP reaffirms the continuation of the economic and monetary co-ordination that the EAC has pursued since its inception. The CMP declares that co-operation in economic and monetary policy is desirable for the proper functioning of the Common Market and provides that the partner states shall co-ordinate and harmonise their economic and monetary policies to ensure macro-economic stability, sustainable economic growth and balanced development.

Related to this area of economic and monetary co-ordination, which also includes fiscal policy interventions and co-ordination, the CMP provides that the partner states shall co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the

payment systems; ensure and maintain convertibility of their national currencies and promote the use of national currencies in the settlement of payments for all transactions within the Community. The CMP provides that the partner states shall progressively harmonise their tax policies and laws to remove tax distortions in order to facilitate the free movement of goods, services and capital and to promote investment within the Community.

Fair competition, prohibited business practices and consumer protection

Bearing in mind the issues that sparked the disputes under the Common Market of the former East African Community that led to its collapse in 1977, the CMP addresses the issue of prohibition of any practices that (may) adversely affect free trade (and Common Market operations). Specifically, the CMP prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between partner states and which have as their objective or effect the prevention, restriction or distortion of competition within the community. The prohibition extends also to concentrations which create or strengthen a dominant position and as a result of which effective competition would be significantly impeded within the community or in a substantial part of the community; and any abuse by one or more undertakings of a dominant position within the community or in a substantial part of the community.

However, the CMP leaves room for competition by encouraging competitive business practices that improve production or distribution of goods, promote technical or economic development, or which has the effect of promoting consumer welfare and does not impose restrictions inconsistent with the attainment of the objectives of the common market or has the effect of eliminating competition in respect of a substantial part of a product. The CMP also prohibits the partner states from granting subsidy through resources which distorts or threatens to distort effective competition by favouring an undertaking that affects trade between the partner states, but providing also that this prohibition shall not apply where a subsidy granted is authorised by the treaty or by acts or policies of the community or decisions of the Council of Ministers.

Indeed, the CMP supports fair competition by providing that the partner states shall not discriminate against suppliers, products or services originating from other partner states, for purposes of achieving the benefits of free competition in the field of public procurement; and providing that the partner states shall promote the interests of the consumers in the community by appropriate measures that ensure the

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protection of life, health and safety of consumers; and encourage fair and effective competition in order to provide consumers with greater choice among goods and services at the lowest cost.

Co-ordination of trade relations

The CMP reaffirms the continuation and intensification of collaboration and co-ordination of trade relations that the EAC has pursued since its inception. The CMP declares that co-ordination of trade relations is desirable for promotion of international trade and trade relations between the community and third parties. The CMP provides that the partner states shall adopt common principles in particular in relation to harmonisation of their investments incentives and co-ordination of their (joint) export and investments promotion. To this extent, the Council of Ministers shall establish a mechanism for the co-ordination of trade relations with third parties and shall: adopt common negotiating positions in the development of mutually beneficial trade agreements with third parties; and promote participation and joint representation in international trade negotiations.

Co-ordination of transport policies

The CMP reaffirms the continuation and intensification of collaboration and co-ordination in the Transport sector. The protocol declares that the co-ordination of transport policies is desirable for the development and consolidation of the common market. To this extent, the partner states shall evolve coordinated and harmonised transport policies to provide for adequate, reliable, safe and internationally competitive transport infrastructure modes and services. These will include logistics and transport by road, rail, inland waterways, maritime, pipeline and air and facilities such as ports, airports and inland dry ports. The protocol provides further that the Council of Ministers shall within three years upon entry into force of the protocol, make regulations applicable to: railway transport; maritime transport and port operations; pipeline transport; air transport; non – motorised transport; and multi-modal transport and logistics.

Harmonisation of social policies

The protocol also provides that the partner states undertake to coordinate and harmonise their social policies to promote and protect decent work and improve the living conditions of the citizens of the partner states for the development of the common market. The partner states shall coordinate and harmonise their social policies relating to: good governance, the rule of law and social justice; promotion and protection of human and peoples' rights; promotion of equal opportunities and gender

equality; promotion and protection of the rights of marginalised and vulnerable groups; promotion of African moral values, social values and ethics; and promotion of unity and cohesion among the people in the community.

They will undertake programmes to promote employment creation, strengthen labour laws and improve working conditions, eliminate compulsory and forced labour, promote occupational safety and health in the work place, abolish child labour, promote formal education to advance social development, promote vocational and technical training, expand and improve social protection, promote social dialogue between social partners and other stakeholders, promote the right of persons with disabilities, promote sports, prevent and manage HIV and AIDS, malaria and tuberculosis, prevent and manage the outbreak of epidemics and other diseases in order to improve the general hygiene and health of the people; prevent social vices such as alcoholism, drug abuse or substance abuse and perverse behaviour; eliminate human smuggling and trafficking; and promote education to combat disease and poverty; as well as promoting, preserving mainstream cultural activities and heritage through development initiatives; while adopting measures and programmes aimed at promoting the welfare of vulnerable groups in society.

Environmental management

The partner states undertake to ensure sound environmental and natural resources management principles for the proper functioning of the common market, through prevention of activities that are detrimental to the environment. The partner states shall manage the environment in accordance with: the East African Community Protocol on Environment and Natural Resources Management; the East African Community Protocol for Sustainable Development of Lake Victoria Basin; the Lake Victoria Transport Act, 2008; the protocol on the Establishment of the East African Community Customs Union; the East African Community Customs Management Act, 2004; the relevant provisions of the CMP ; and any other relevant laws of the Community. The partner states shall respect the principles of international environmental law and honour their commitments in respect of international agreements which relate to environmental management; and also develop common policies in responding to emerging issues on the environment.

Cooperation in statistics

Under Article 41, the protocol provides that the partner states shall cooperate to ensure the availability of relevant, timely and reliable statistical data for:

describing, monitoring and evaluating all aspects of the common market; and sound decision making and effective service delivery in the common market. The partner states undertake to develop and adopt harmonised statistical methods, concepts, definitions and classifications for organising statistical work while duly observing internationally accepted best practices. The partner states shall collect, compile, store and disseminate relevant, reliable, timely, consistent and comparable statistical information.

Research, technological development and protection of intellectual property rights

The partner states undertake to promote research and technological development through market-led research, technological development and the adaptation of technologies in the community, to support the sustainable production of goods and services and enhance international competitiveness; and undertake measures. The responsibilities of the partner states shall include encourage researchers and participation of the private sector and international organisations in the promotion of research, dissemination and development; promotion of research, science and technology institutions and the East African Science and Technology Commission and other institutions on research, science and technology. Intellectual property rights will be protected, including development, protection and commercialising indigenous knowledge.

The community will also promote and facilitate technology transfer, using its acquisition and dissemination to achieve increased production and productivity and, on the whole, establish and develop a technology innovation system for the productive sector of the economy of the community. The partner states also undertake to establish a Research and Technological Development Fund to manage the relevant provisions of the CMP. This also provides for cooperation in the field of intellectual property rights in the promotion and protection of creativity and innovation for economic, technological, social and cultural development in the community; and enhancement of the protection of intellectual property rights in a variety of fields.

Co-operation in industrial development

The partner states undertake to cooperate in the area of industrial development in the activities related to the production of goods and services in the common market, for the attainment of sustainable growth and development in the community. To this extent, the partner states shall adopt common principles and implement strategies, among others, to promote linkages among industries and other economic sectors


within the community, promote value addition and product diversification to improve resource utilisation, promote industrial research and development, transfer, acquisitions, adaptation and development of modern technology, promote sustainable and balanced industrialisation in the community to cater for the least industrialised partner states; promote industrial productivity and competitiveness of industries at national, community and international levels, and on the whole the promotion of an East African Industrial Development Strategy with involvement of regional public-private partnerships and civil society dialogue and contribution.

Co-operation in agriculture and food security

The partner states undertake to develop and promote agriculture through promotion of investments in agriculture and food security; develop effective agricultural markets and marketing systems in the community; promote agro-processing and value addition to agricultural products; cooperate in agricultural research and development; and, in particular, establishing an East African Agricultural Development Fund for this purpose.

The protocol enshrines general provisions that apply to general principles and crosscutting issues in the implementation of the protocol, including the institutional framework; approximation and harmonisation of partner states' policies, laws and systems; safeguard measures; measures to address imbalances that may arise from the implementation of the protocol; and monitoring and evaluation of implementation of the common market. The CMP also gives the Council of Ministers the power to issue directives and make decisions for the effective implementation of the provisions of the CMP.

Conclusions

The CMP clearly sets out the rights, freedoms, duties and obligations of the citizens of East Africa to carry the common market forward and reap its benefits. The protocol also provides clear schedules for its implementation. Foremost, as provided in the schedules, is the prompt domestication of the protocol's provisions by the partner states within their national laws. The protocol's trade and development dimension places the onus on the EAC to intensify co-operation in infrastructure development, agricultural development, and food security; along with regional industrialisation and harmonisation of educational curricula, among other key projects and programmes. The realisation of these programmes will lead to a strong EAC Common Market and a truly regionally integrated and internationally competitive economy and cohesive society in East Africa. 

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