



**COMMITMENT TO THE EAST AFRICAN COMMUNITY
CUSTOMS UNION PROTOCOL, 2004-2009**

BY

PAUL WAMBI BAGABO

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Thesis Abstract

The thesis analyses commitment to the EAC customs union protocol. In contrast to previous studies, this research compares state preferences at the negotiation stage with their adherence to each provision in the protocol during the transposition, enforcement and application stages of the protocol.

Based on data from fifty semi-structured interviews plus secondary sources, the analysis reveals that partner states are more successful at adhering to the customs related- than trade related provisions in the protocol. Drawing on enforcement, management and constructivist approaches in integration literature, the research identifies three factors that explain inadequate commitment by partner states: the weakness of the EAC secretariat's monitoring and sanctioning system, strategic preferences of partner states to protect domestic business interests, and overlapping membership to multiple regional arrangements with different rules which affects adequate interpretation and compliance with the protocol.

The findings call for more attention to the concept of 'completeness' of transposition and show that a disaggregated level of analysis that takes the preferences of partner states at the negotiation stage into consideration better accounts for the inadequate commitment to regional directives. The findings call for larger multi-sectoral case studies and include assessment of the design of regional arrangements.

DEDICATION

This work is dedicated to my father, Mr. A.K.Kalawo Bagabo (RIP), and Mother, Mrs. Florence W. Bagabo whose sacrifice was not in vain.

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ABBREVIATIONS

AGOA	African Growth and Opportunity Act
ASEAN	Association of South East Asian Nations
CCM	Chama Cha Mapinduzi
CMA	Customs Management Act
CET	Common External Tariff
CTI	Confederation of Tanzania Industries
CIF	Cost, Insurance and Freight
COMESA	Common Market for Eastern and Southern Africa
CU	Customs Union
ECOWAS	Economic Community for West African States
EABC	East African Business Council
EAC	East African Community
EACCJ	East African Community Court of Justice
EADB	East Africa Development Bank
EALA	East African Legislative Assembly
EPAs	Economic Partnership Agreements
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Area
GDP	Gross Domestic Product
GTZ	German Development Cooperation
HLTF	High Level Task Force
IMF	International Monetary Fund
KAM	Kenya Association of Manufacturers
KEBS	Kenya Bureau of Standards
KEPSA	Kenya Private Sector Alliance
KRA	Kenya Revenue Authority
LAC	Latin America and the Caribbean
LVMA	Lake Victoria Management Authority
MEACA	Ministry for East African Affairs
Mercosur	Southern Cone Common Market
MFN	Most Favoured Nation
MoFPED	Ministry of Finance, Planning and Economic Development
MTTI	Ministry of Tourism, Trade and Industry
NTB	Nontariff Barrier
NRM	National Resistance Movement
RTA	Regional Trade Arrangement
PSDG	Private Sector Donor Group
PSFR	Private Sector Foundation of Rwanda
PSFU	Private Sector Foundation in Uganda
PTA	Preferential Trade Area/Agreement
QMV	Qualified Majority Voting
ROO	Rules of Origin
SADC	South African Development community
SRPS	Special Revenue Protection Services
SQMT	Standardisation, Quality assurance, Metrology and Test
TCC	Tanzania Competition Commission
TCCIA	Tanzania Chamber of Commerce, Industry and Agriculture

TBS	Tanzania Bureau of Standards
TFDA	Tanzania Food and Drug Authority
TRA	Tanzania Revenue Authority
TREO	Tax Remission for exports office
UEPB	Uganda Export Promotion Board
UK	United Kingdom
UMA	Uganda Manufacturers Association
UN	United Nations
UNBS	Uganda National Bureau of Standards
UNCTAD	United Nations Conference on Trade and Development
UNIDO	United Nations Industrial Development Organisation
URA	Uganda Revenue Authority
USAID	United States Agency for International Development
VAT	Value-Added Tax
WCO	World Customs Organisation
WTO	World Trade organisation

PART 1

INTRODUCTION AND BACKGROUND

CHAPTER 1

1 INTRODUCTION

"A Minister's signature on a directive should be a firm commitment, not a vague aspiration..... Implementation does not just mean passing laws in Brussels. It means getting those laws onto national statute books on time. It means national, regional and local authorities applying them properly" Charlie McCreevy (2005¹)

1.1 Background to the Research

This thesis seeks to provide insights into commitment² to the EAC customs union protocol by the partner states of Uganda, Kenya and Tanzania during the period 2004-2009. The research arose out of the researcher's motivation to contribute to the debate on why governments inadequately implement policy decisions.

Having worked for the Ministry of Finance, Planning and Economic Development (MoFPED) on a project aimed at improving the business environment in Uganda, the author became concerned about government delay in fulfilling agreed policy decisions. This implied that Uganda risked losing credibility at the national, regional and international level.

Informal discussions on the inadequate implementation of agreed policies with colleagues at the Ministry and experts in policy implementation revealed that indeed government was facing challenges in adhering to policies that impact on economic growth and development. Experts in economic development the researcher interacted with concurred that most developing countries were more interested in signing international treaties than implementing them. However, they did not know why governments do not adhere to agreed policies. This called for more information on why governments find it hard to fulfill their commitments. The interest in analysing implementation of regional policies was borne out of the need to ascertain whether lack of commitment to agreed policies was unique to Uganda or prevalent

¹ http://ec.europa.eu/internal_market/smn/smn36/p30_en.htm

² The term commitment includes transposition, enforcement and application of regional directives (Gomez Mera 2007)

in the other East African countries. The study started with an initial review of existing literature on implementation of regional policies.

Regional integration has become an important tool for economic development in both developed and developing countries. Regionalism dates back to the Cobden treaty of 1860 when a number of European countries that had already established customs unions among themselves sought to establish trading alliances with France based on Most Favoured Nation (MFN) clauses similar to the MFNs agreed between France and Britain (De Rosa 1998).

Regional integration refers to the process by which previously sovereign states establish a mechanism for regular collective decision making among member states. The collective policy making is aimed to set up uniform rule application mechanisms in order to eradicate barriers to mutual exchange of goods, services and the movement of factors of production (Smith 1993; Feng and Gena 2003; Mattli 1999:8). This can be accomplished through an inter-governmental arrangement or a supranational organization (Sverdrup 2004). However, actual execution of regional protocols is generally left to the member states.

Integration entails one or more of the following successive stages: the Preferential Trading Area (PTA), an arrangement under which partner countries impose lower import tariffs on goods from fellow members compared to those from non-members; Free Trade Area (FTA) refers to a PTA under which member states eliminate import tariffs on goods from member states and maintain separate tariffs against non- member countries; Customs Union (CU) is a free trade area in which member countries adopt a common external tariff, quantitative restrictions and other measures to limit imports from outside the bloc; Common Market arrangement involves freedom of movement of goods, services as well as factors of production (labour and capital) within the region; Monetary Union is a common market which collectively agrees to adopt a common currency and a central monetary authority;

Political federation refers to an arrangement with harmonised legislation and political institutions (Maruping 2005:131; De Rosa 1998; De Melo et al. 1992).

Regional integration can be analysed by at least two theoretical approaches; the economic theories and the international relations theories. The economic theories tend to explain regional integration in terms of changes in the extent and structure of markets. The main economic theories of integration are Viner's classic theory of the customs union, the theory of second best and the theory of free trade areas. Economic theories view the welfare implication of integration in terms of trade creation, trade diversion and terms of trade. The international relations approaches on the other hand, explain the lock-in effect of reform policies meant to enhance commitment to regional policies and regulations among member countries (Mera 2008; Mattli 1999).

Empirical studies show that regional integration arrangements among developing countries have not achieved their desired objectives. As a result, economic growth is slow, intra and extra regional trade has not expanded as much as expected and tariff and non-tariff barriers persist (Venables 1999; Ethier 1998; Geda and Kebret 2007; Foroutan 1992). The reasons for the failure of integration in developing countries can be categorised into three factors; the economic structure of most countries in integration arrangements among developing countries (Venables 1999), inappropriate regional policies that inhibit regional growth (Shams 2003) and inadequate commitment to regional policies (Mera 2007; Masternbroek 2005).

Economic factors advanced highlight the inappropriate economic structure of member countries in regional integrations among developing countries (Venables 1999; Krugman 1991; Vamvakidis 1998). Economic analysis of the impact of regional integration based on comparative advantage and agglomeration approaches concludes that regional integration

among developing countries leads to divergence of incomes and economic growth. For example, Krugman (1991) argued that the lack of compensatory mechanism led to the failure of many regional arrangements among low income countries. Similarly Venables (1999) argued that developing countries are better served by a regional agreement involving a more developed partner state. Failure of regional integration arrangements between partner states in a trading arrangement that constitutes developing countries to achieve its objectives may also occur due to lack of complementarity and poor communication infrastructure (Schiff and Winters 1998; Robson 1993).

The structural factors discussed above were criticised for over reliance on the trade-creation-trade diversion dichotomy while neglecting the dynamic impacts of regionalism specifically productivity, factor mobility and imperfect competition (Ethier 1998; Burfisher et al 2003; Mattli 1999). While regional integration entails the creation of uniform rules and obligations, the customs union theory overly relies on market relations among goods and factors of production and neglects the importance of political and supranational institutions in the process of integration (Mattli 1999).

Based on the empirical studies of regional integration arrangements, a second group of scholars argued that inappropriate macroeconomic policies and not the structure of partner states are the main hindrance to success of regional integration arrangements among developing countries (Shams 2003; Alva and Behar 2008; Jones 2002; Devlin and Estevadeordal 2001; Fine and Yeo 1997). For example, Shams (2003) undertook a study on five regional integration arrangements and concluded that the structure of the partner states may not lead to failure of regional arrangements. Shams' research concluded that the Latin American regional arrangement (LAN) included Brazil which was a more developed country that would satisfy the 'North-South' criteria for success (see Venables 1999; Vamvakidis 1998). However, the region designed inappropriate policies that hindered Brazil from

functioning as the engine of growth in the region and affected the progress of the Latin American regional organisation. Similar results were found in studies on ECOWAS and SADC (see Jones 2002; Kuffour 2000) while studies by Berker and Suarez (2001) found no conclusive evidence of trade diversion among countries comprising the 'South-South' regional integration arrangement. In addition, studies on MERCOSUR revealed that favourable policies on regional trade liberalisation led to increased trade in the region (see Devlin and Estevadeordal 2001; Bartholomew 2001). These studies concluded that the economic structure of partner states may be a necessary but not sufficient factor to explain lack of progress in regional integration.

A third group of scholars, mainly composed of political scientists argued that while the design of appropriate macroeconomic policies is important for success of regional integration in developing countries, there is need to analyse the effectiveness with which policies are implemented and complied with by member states (Mattli 1999; Mera 2008:5; Fine and Yeo 1997). For example, Mattli argued that designing appropriate policies does not signify successful integration. The signing only signifies a promise to engage in operations to bring the economies of the partner states together. Real integration is achieved through adequate implementation of common rules, regulations and policies. The commitment to implementing agreed policies translates the aspirations of regional integration into reality. Since regional integration takes place in an institutional setting within a particular region, attempts to analyse the dynamic aspects of regional integration should take the relationship between the economic and institutional factors into consideration. Without better knowledge of the commitment of member states to regional policies, it is difficult to isolate the role of regional integration in economic development (Mattli 1999:3).

1.2 Statement of the problem

Scholars are divided on the extent to which member states are committed to the collectively agreed policies they sign at the regional level. Although studies on commitment to regional directives exist, they differ in the coverage of regional integration arrangements across the world.

Analysis of existing literature reveals that the majority of commitment studies have been based on regional blocs involving developed countries specifically the EU (see Tallberg 2003; Borzel et al 2007; Mera 2007; Treib 2008). This implies that commitment studies on regional arrangements in other parts of the world have received inadequate coverage. The existing studies on commitment to regional directives among developing countries are mainly focused on Latin America and the Caribbean (Mera 2007; Cornejo and Granados, 2006; Feng and Genna 2007). Some studies focused on Asia (Kim 2004; Zeng 2009) while fewer studies on commitment to regional directives focused on Africa (Kuffour 2000; Basil 2002; Shams 2003). Preliminary review of the literature confirmed that studies on commitment to regional directives in East Africa are rare. Although some studies on regional integration in East Africa exist (see Stahl 2005; McIntyre 2005; Booth et al 2006), they do not deal with commitment. Rather, these studies seek to analyse the welfare and trade impacts of the customs union. As yet, there has not been any documented qualitative study on commitment to regional directives covering the stages of transposition, enforcement and application of the East African Community customs union protocol (Mugisa et al 2009:3). This calls for more studies on commitment among regional blocs in other parts of the world specifically among developing countries.

This study therefore contributes to the debate on commitment to regional directives in integration literature by undertaking a qualitative study that investigates the transposition, enforcement and application of detailed provisions in the EAC customs union protocol. The

study will increase the understanding of factors that affect commitment to regional directives among developing countries.

1.3 Aims and objectives of the study

Given the shortcomings of existing literature on commitment to regional directives, the aim of this study is to assess the inadequate commitment to the implementation of the EAC customs union protocol during the years 2004-2009. The specific objectives are:

1. To analyse the transposition of the customs union protocol in the partner states.
2. To analyse the enforcement of the customs union protocol in the three partner states.
3. To analyse the application of the EAC customs union protocol by the regulated agencies.

Main research question and sub questions

To achieve the above objectives and increase our understanding of commitment to the EAC customs union the main research question of the research is: how were the EAC partner states of Uganda, Kenya and Tanzania inadequately committed to the implementation of the EAC customs union protocol?

This research question is answered with regard to the implementation of the provisions outlined in the customs union protocol. The implementation process includes three distinct but inter-related stages namely, the transposition, enforcement and application of the protocol. To help answer the overall research question, three sub-questions that relate to the implementation of the protocol were formulated as follows:

1. How was the customs union protocol transposed into the domestic legal systems in the three partner states?
2. How was the customs union protocol enforced in the three partner states?
3. How were the provisions in the customs union protocol applied?

The above main and sub-questions on commitment to the EAC customs union protocol were formulated in Chapter 3.2 after a thorough review of existing literature on commitment. The

main- and sub- research questions are summarised in this section to demonstrate the flow of the research approach. The sub- questions are answered in the three analysis chapters outlined in this thesis: The first sub- question related to transposition of the protocol is answered in Chapter six. The second sub-question on enforcement of the protocol is dealt with in Chapter seven while the third sub-question on application of the protocol is analysed in Chapter 8.

1.4 Scope and limitations of the research

The study is concerned with how the customs union was implemented in the three EAC partner states of Uganda, Kenya and Tanzania over the period 2004-2009. This study has limitations that are worth mentioning in this section.

First, although there are five countries in the EAC, the study was restricted to three countries. The study findings are derived from perceptions of respondents in the region on the negotiation, transposition, enforcement and application of the customs union protocol. Data from other sources was reviewed in order to validate information provided by the interviewees and is intended to increase the understanding of certain aspects of the commitment process in East Africa.

Second, the study focuses on the context of the East African Community in which the research is undertaken. This implies that the results of the study can only be generalised to the geographical area under study. To overcome this problem, effort has been taken to select an integration regime that is typical of regimes among developing countries. In this way, some inference may be undertaken to adjacent regional integration blocs that have similar contextual characteristics. Specifically this study may be generalised to RTAs in Southern Africa since most of the regional blocs adopted versions of the EU integration model and have similar political and administrative systems.

Third, due to time and resource constraints, the analysis of the application of the protocol was restricted to the application by the executive agencies authorised to apply the provisions of the customs union protocol. The study does not analyse the adherence to the protocol by stakeholders at the micro-level of local governments and individuals. Nevertheless, information was collected from private sector stakeholders in order to enhance our understanding of the application of the protocol by the regulated agencies.

1.5 Justification of the research Study

The research questions laid out in this study underlie the justification for seeking an understanding of commitment issues given that regional integration has become an important tool for economic growth and development in many parts of the world. Commitment to commonly agreed regional directives is critical in the creation of a level playing field for all partner states. This implies that violation of the commitments agreed at the regional level threatens the intended objectives of the East African Community. The task of the researcher is to understand the factors that shape adequate commitment and assess the rationale for promoting regional integration as a vehicle for economic development.

The study will generate empirical evidence on the commitment among partner states in the EAC and what determines it. This will contribute to the debate on commitment to international policies in developing countries. The research may also generate evidence that is vital for the East African Community as it moves into the implementation of the common market protocol signed in 2009 and negotiations for the monetary union and the political federation set for 2013 and 2015 respectively as well as guide on-going negotiations related to the Economic Partnership Agreements with the EU.

1.6 Structure of the thesis

The thesis is structured in three parts over nine chapters. Each of the nine chapters is structured to address a particular aspect of the commitment to the EAC customs union protocol and contribute to answering the overall research question: how were partner states inadequately committed to the implementation of the EAC customs union protocol?

This Chapter presents a brief background on integration studies and identifies the research problem, aims and objectives, research question and limitations and justification of the study. Chapter 2 provides an analysis of existing commitment literature in the field of regional integration. The Chapter identifies the major shortcomings in existing literature on commitment to regional directives. This enables the research to develop a set of research questions and inform the framework of analysis, the methods of collecting, analysing and presentation of data. Chapter 3 serves two functions: first, to propose and explain a framework for analysing partner state commitment that was derived from the literature review. Second, select a methodology suitable to increase the understanding of factors that influence commitment to the customs union protocol in the EAC countries of Uganda, Kenya and Tanzania. Chapter 4 discusses the institutional context of the EAC and respective partner state countries from a political economy perspective. Chapter 5 sets out the negotiations for the East African Community customs union protocol that will constitute the subject of the research study. Chapter 6 analyses the transposition of the customs union protocol in the three partner states. Chapter 7 maps the enforcement of the customs union protocol by comparing the structure and strategies of the respective enforcement systems in the three partner states. Chapter 8 explores the adherence of the regulated agencies to the detailed provisions outlined in the protocol. Chapter 9 summarises the research and draws conclusions, outlines and discusses the research findings. The Chapter identifies the contribution of the

research to the state of knowledge in integration literature and closes with limitations and suggestions for future research.

CHAPTER 2

2 UNDERSTANDING COMMITMENT TO REGIONAL DIRECTIVES

2.1 Introduction

What theoretical and empirical approaches have been adopted in the analysis of commitment to regional policies and how have they enhanced our understanding of commitment in integration literature? Chapter one outlined the statement of the research problem, the aims and the justification for undertaking the study on commitment to regional directives in the East African Community. This Chapter seeks to build on Chapter one by analysing existing literature on implementation of regional policies to enable formulation of detailed research questions, framework for analysis, and design methods of collecting, analysing and presentation of research data.

The Chapter is structured as follows. Section 2.2 analyses the different policy instruments available at regional level. Section 2.3 examines the concepts in integration literature. Section 2.4 reviews existing theories of commitment. Section 2.5 analyses sources of commitment problems among partner states. Section 2.6 reviews the extent to which existing commitment studies have adequately addressed commitment to regional directives. Section 2.7 highlights shortcomings in existing literature on commitment while section 2.8 concludes the Chapter.

2.2 Policy Instruments in regional integration

Policy instruments refer to laws and regulations that regional bodies enact to ensure uniform application of community objectives. Five types of legal instruments are applicable at regional level: regulations, decisions, opinions, recommendations and directives; Regulations are legal Acts that are effective from a particular date, binding and directly applicable to partner states; Decisions are administrative Acts directed at specific individuals, organizations and entities. However, the level at which they are binding is limited; Opinions

and recommendations have no binding effect on member states (Duina, 1997:156); Directives are the most common policy instruments in regional integration (Falkner et al., 2005:453; Masternbroek, 2003). According to Masternbroek (2003:372), directives are community laws that are not binding in their entirety but only to the result to be achieved. Partner states make decisions on how to transpose the community legislation into the domestic legal system before they can be applied. The transposition of directives introduces a process that can enable scholars to identify implementation problems (Versluis, 2007: 52; Mera, 2007; Leiber, 2008).

2.3 What is 'commitment'?

Partner states in regional arrangements collectively negotiate and agree on policies that set out the behaviour, relationship and expectations, (1) between the member states and (2) with countries outside the integration arrangement (Chayes and Chayes, 1993). Scholars often agree on the need for partner states to adhere to collectively agreed protocols but differ on the definition and conceptualisation of the process by which states are required to adhere to these policies. This often leads to confusion in the analysis of regional policy implementation.

2.3.1 Conceptualising commitment to regional directives

The study of regional integration involves a number of concepts that explain commitment among partner states as well as the phases through which adherence to regional directives is achieved by partner states. This section reviews the main concepts employed in analysing adherence to regional directives.

Key concepts employed in the development of commitment literature

The first scholars to analyse how and why partner states adhere to regional directives referred to the process by which partner states abide by the collectively agreed policies as 'implementation' (Haas, 1998; Pridham and Cini, 1994). For example, Haas (1998:18)

defined implementation as the process through which partner states translate international accords into domestic law and policy.

Subsequently, scholars introduced the term 'compliance' (Checkel, 1999:3; Raustiala and Slaughter, 2002; Prechal, 1995:5; Borzel et al., 2003). Raustiala and Slaughter (2002:539) defined 'compliance' as the state of conformity between the behaviour of actors and the specified community rule. According to Chayes and Chayes (1995), Compliance constitutes two aspects: 'first' and 'second' order; 'first order compliance refers to adherence to agreements signed between partners states at a regional level while 'second' order compliance refers to adherence with the accords signed at international level. Other scholars subdivided compliance into two aspects: procedural and substantive. Procedural compliance refers to adherence to reporting requirements while substantive compliance is related to control of productive activity (see Mera 2007; Simmons 1998). Scholars criticised the use of the concept of compliance to depict adherence to regional directives on the grounds that the definitions put forward by these scholars refer to the legal policy making but do not explain how the regulated entities comply with the regional directives (Hill and Huppe, 2002; Tallberg, 2002:623; Jacobson and Weiss, 1995:123).

A third group of scholars viewed adherence to regional directives from an administrative point of view and differentiated between legal and administrative implementation. According to these scholars, legal implementation refers to the steps that partner states take to ensure that regional policy is adopted into the domestic environment while administrative implementation is taken to mean the setting up of structures and monitoring systems to ensure adherence with regional policies (see Duina, 1997; Underdal, 1998; Mathews, 1993).

A fourth group of scholars analysed the entire process of regional policy making and implementation (Steunenberg, 2004; Leiber, 2007). Some of these scholars continued to use

the term ‘compliance’ to refer to adherence to collectively agreed protocols at the regional level while others introduced the concept of ‘commitment’ (Prechal, 2005:5; Mera, 2007:4; Falkner et al., 2005; Leiber, 2007:358; Konig and Leutgert, 2008:169). For example, Mera (2007:4) defined commitment as the degree to which partner states adhere to the requirements of regional directives involving three distinct but interrelated phases namely, transposition, enforcement and application. These phases are analysed in the next section.

Transposition in regional integration

Transposition refers to the process of adoption of regional directives into national laws. The concept of transposition is only relevant in the study of directives as discussed in Chapter 2.2. Transposition is accomplished by means of two main policy instruments namely, primary and secondary legislation. Primary legislation refers to the use of legislative decisions and laws to transpose directives while ‘secondary’ measures refer to administrative regulations passed by the executive but are binding on those being regulated (Masterbroek 2005). Analysis of the literature reveals that the choice of the legal instruments employed in transposition of regional directives depends on legal traditions and administrative practice in the respective countries. However, differences in the type of legal instruments partner states use to transpose regional directives create misunderstandings in comparing transposition performance among partner states (Konig and Leutgert 2008).

Enforcement of regional directives

Enforcement refers to systems developed to ensure that regulated agencies change their behaviour in line with the policies outlined in regional directives (McCubbins and Schwartz, 1984:165; Knill and Lenschow, 1998:595; May and Burby, 1998:160; Versluis, 2007: 52) Enforcement occurs both at the supranational and domestic level; enforcement at the supranational level is aimed to ensure that partner states correctly apply the regional directives. Enforcement at the supranational level involves two main approaches; a

supportive capacity building approach based on transfer of knowledge and resources, and a legalistic system characterised by imposition of fines and sanctions (Sverdrup, 2004:26). At the domestic level, enforcement involves setting up structures and strategies to ensure that regulated agencies change their behaviour in line with the regional directives. The strategies may include both accommodative and legalistic approaches. The legalistic approaches are designed to allow government and stakeholders to take legal action for violation of treaty requirements (Treib, 2008; Versluis 2007:52). Approaches to enforcement typically comprise of regulatory structures and enforcement strategies. These are discussed in the next subsection.

Enforcement structures

Regulatory structures relate to the arrangements put in place to coordinate the overall enforcement of regional directives at the domestic level. Enforcement structures are of two types; vertical and horizontal structures. Vertical systems are characterised by a single agency in control of enforcement and a horizontal structure of enforcement is characterised by several agencies charged with coordination of the enforcement system. Within government, enforcement may be accomplished through a centralised system, or delegated to lower levels of government- the devolved structure of enforcement (Falkner et al., 2005: 38).

State-led enforcement structures involve the direct intervention of the central government into the enforcement system through the establishment of autonomous bodies charged with the duty of organising the enforcement of a particular policy. To facilitate the enforcement agencies, the state develops a comprehensive system containing substantive and procedural regulations that form the basis for administrative intervention to ensure policy compliance. On the other hand, society-led state enforcement structures involve a network of institutions and organizations that have authority for the coordination and enforcing of regional policy (Knill, 1998: 9).

Enforcement strategies

Enforcement strategies refer to initiatives developed to ensure that the regulated agencies comply with directives. The enforcement strategies constitute of two aspects namely, the monitoring and the enforcement practices.

Literature on enforcement of regional directives reveals that regulatory organs generally establish oversight mechanisms to identify application problems. Two main oversight mechanisms are referred to in commitment literature namely, the ‘police patrol’ and ‘fire alarm’ mechanisms. ‘Police patrol’ oversight relies on constant monitoring by regulatory authorities for implementation violations by the regulated agencies through reading documents, studies and field observations. Police patrol is effective in achieving oversight goals but very costly to operate in terms of recruiting inspectors and other resources required to directly monitor the operations of numerous regulated agencies. On the other hand, ‘fire alarm’ mechanisms rely on stakeholders and other indirect sources to provide information about implementation deficits. Fire alarm oversight systems are cheaper to implement compared to police patrol systems since the regulatory authority does not necessarily incur costs related to monitoring but relies on third parties for information. However, fire alarm systems may provide unreliable data and lead to the emergence of powerful veto players with preferences that may affect the effectiveness of the enforcement system (McCubbins and Schwartz, 1984:166; Balla and Deering, 2001; Jensen, 2007:452).

While monitoring practices refer to means of gathering data on application, enforcement practices refer to the relationship between the regulator and the regulated entities on the one hand as well as the relationship between the regulator and the state on the other. The concept of enforcement practices can be viewed from two perspectives; the legalistic and accommodative practices (Kagan, 1989:9; Coslovsky et al., 2010; Hutter, 1989:154).

The legalistic style is characterised by strict adherence to the law and provides little discretion in identifying and punishing violations (Knill and Lenschow, 1998:595). On the other hand, the accommodative or conciliatory enforcement style exhibits flexibility and discretion for the regulators when dealing with the law (Knill, 1989; Masternbroek, 2005; Falkner et al., 2005). This dichotomy has been criticised by a number of scholars (Hutter, 1989:153; Coslovosky et al., 2010; May and Burby, 1998). For example, May and Burby (1998:158) argue that in practice, enforcement styles are not as distinct as portrayed by the enforcement-accommodative dichotomy but include a range of variations in the enforcement styles. The varying perspectives discussed in this Subsection show that the concept of enforcement may mean different things to different scholars leading to confusion and misunderstanding.

Application of regional policies

Application in integration literature refers to the extent to which executive agencies act in accordance with the policies set out in the community legislation (Falkner et al., 2005:29; Mera, 2007). Application of regional directives occurs at the national and subnational level of the domestic partner states. At the national level, application requires the regulated agencies to change their operations in line with the requirements of the regional directives. At the subnational level, application occurs when firms and individuals are required to change their behaviour as a result of the country entering into a regional arrangement. For example, the customs union protocol may be applied directly by the executive agencies but also adhered to by the traders and manufacturers as well as farmers at the local government level specifically where member states have a decentralised or federal system of government. The main challenge to analysing application of regional directives is determining the level at which to assess application of regional directives (Borghetto and Franchino, 2010:760).

Scholars point out that induced changes in the operation and behaviour of firms and agencies in line with the requirements of regional directives involves costs. These costs include changes required in the practices in order to comply with the directive as well as penalties and fines for violations and infringements.

Table 2.1: Key concepts in commitment to regional directives

Regional Level	Domestic Level		
Policy Formulation (<i>Regional Level</i>)	Community Directives		
	Transposition	Enforcement Regulatory agencies	Application Regulated agencies
Directives/ policies/ regulations/ recommendations	Domestic legislation	Legalistic/ accommodative	
	Monitoring and Enforcement at supranational level		

Source: Adapted from Treib 2008:6; Falkner et al 2005:6

The concepts in commitment literature outlined in Subsection 2.3 can be summarised as shown in table 2.1. Table 2.1 shows that regional policy making takes place at the regional level. Policy making involves negotiation between partner states on the nature of policies to regulate activity of the partner states. When directives are formulated, they are transposed into the domestic legal systems of the partner states. Thereafter, the directives are applied by the executive agencies and enforced by the regulatory agencies (see Treib, 2008:5)

2.3.2 Concept of effectiveness of commitment

Literature on commitment to regional directives shows that there has often been confusion and misunderstanding on the definition of the term ‘effectiveness’. The term effectiveness implies different concepts to different scholars. However, at least two concepts of effectiveness have been widely used in integration literature namely, regime effectiveness and commitment effectiveness (Mera, 2007:4; Versluis, 2007).

‘Regime effectiveness’ refers to the extent to which a regional integration arrangement is able to achieve the objectives set out in the charter establishing the bloc. Regime effectiveness can only be measured several years after the establishment of a trading bloc (Simmons 1998). On the other hand, ‘effectiveness of commitment’ can be defined as the degree to which a given rule induces change in behaviour that improves the state of the underlying problem. Effectiveness of commitment relates to how member countries enforce and apply the outputs of the decision making process. Commitment effectiveness can be assessed at any point during the policy implementation process (Raustiala 2000:393; Underdal 1998).

Commitment effectiveness may be closely linked to- but does not mean the same thing as regime effectiveness. For example, a partner state in a regional arrangement may be successful in adhering to the provisions outlined in the directive, however, the treaty may fail to address the problem for which it was formulated (Mera 2008:4). This may arise as a result of the factors pointed out in Chapter 1.1 (see also Venables 1998; Shams 2003). The importance of commitment effectiveness in analysing why regional integration may not attain their objectives was summed up by Treib as follows, “..... if political scientists are interested in the extent to which a particular polity is able to solve the problems with which it is confronted, we need to study not only the way it reaches decisions and the character of the resulting legal output, but also the way the law is executed in practice” (Treib 2008:5).

2.3.3 Degree of commitment

The degree to which partner states are committed to the regional directives has implications for understanding commitment in integration literature. Scholars often treat commitment as a dichotomy between total- and non-commitment. However, in practice, there are levels of commitment (see Young, 1979; Underdal, 1998; Versluis, 2007; Mera, 2007). For example, Underdal (1998:7) noted that a member country may observe commitment to some accords and fail to implement others. On the other hand, a country may transpose a directive in a

timely, correct and complete manner but face challenges in the enforcement and application of the directive (Falkner et al., 2005; Mera, 2007). In addition, existing literature reveals that there is an on-going debate whether all the phases of implementation outlined in table 2.1 are necessary for commitment to occur. This may arise in instances where the regional directive is similar in many respects to domestic legislation and practices existing in a member state (Versluis, 2007:52).

2.3.4 The supranational- intergovernmental dichotomy

Literature on commitment identified two models of policy execution and conflict resolution at the regional level, the supranational and intergovernmental models. These approaches mainly relate to options that are available to regional blocs to address commitment problems (Sverdrup, 2004:25; Versluis, 2007:164; Branch and Ohrgaard, 1999).

The supranational model refers to a governance structure with a separate system of government at the regional level that has control over policy matters in the region. Supranational organisations possess powers of monitoring and sanctioning for violation of treaty provisions. The policy instruments for enforcement available to supranational organisations range from softer methods of ‘naming and shaming’ to harder legalistic sanctions and fines (Sverdrup, 2004:25).

The intergovernmental model is characterised by preferences and powers of the partner states that constitute the regional arrangement. In an intergovernmental arrangement the respective member states are the drivers for the success of the regional arrangement (Moravick, 1998). The decision making process in intergovernmental organisations is based on the relative power held by the individual partner states as well as state preferences that are translated into positions at the negotiation process. In the intergovernmental model, the regional agency is a ‘passive structure’ in the integration process (Stone and Sandholtz, 1997:303)

Relevant literature portrays the two models of regional governance as two extremes of the supranational- intergovernmental dichotomy. This implies that the key actors involved and the institutional context of the regional interactions are either supranational or intergovernmental without any interaction between the actors across the different contexts. In practice, regional organisations are neither strictly intergovernmental nor supranational but possess elements of both forms of governance. The elements that constitute the supranational and intergovernmental governance systems are better conceptualised when regional organisations are analysed at a disaggregated level rather than at the aggregate level of the region as a whole (Stone and Sandholtz, 1997:304; Branch and Ohrgaard, 1999:128).

2.4 Relevant Theories of Commitment

This section analyses the various theories and approaches that seek to identify and provide solutions to commitment problems. The first theories of commitment were developed to explain integration in Europe in the early 1950s and focused on the power of member states to drive the process of integration. More recent theories focus on the capacity of regional influences and actors to determine how nations integrate with one another. The most dominant theories of commitment include; neo-functionalism, inter-governmentalism, and the new institutional theories.

Neo functional theories of integration

Neofunctional theories view regional integration as a process that results from the spill-over effects of existing regional integration arrangements. Neo-functional theorists argue that the main incentives for independent countries to merge into regional entities were the existence of non-state actors in the respective countries. This theory came under criticism from several scholars for its failure to provide a valid explanation for the lull in the integration that occurred in the late 1950s and early 1960s (Rosamond, 2000:60).

Inter-governmental theories of integration

Liberal intergovernmental theories emphasised the role of partner states governments in the drive towards regional integration. This theory combined liberal approaches that explained the importance of national preferences with intergovernmental approaches that explained the bargaining process among partner state governments. The theory argues that regional integration is most successful when the design of regional treaties takes the interests of states into consideration (Moravick, 1998; Bulme and Lequesne, 2002). For example, Bulme and Lequesne (2002:7) argued that partner states were more concerned with protecting their political interests at the expense of national interests during the decision making stage. This implies that integration occurs only when there is compromise among the partner states involved in the integration process. Although the theory explained the driving force for countries to join integration arrangements, it ignored the role of regional institutions in the process of integration. Despite its shortcomings, the liberal- intergovernmental approach was credited with the development of the new institutional theories of integration (Rosamond, 2000:113; Versluis, 2007).

New Institutional theories

New institutional theories came into prominence in the 1980s and 1990s. Institutional theories arose out of the need to develop approaches that went beyond the regional policy making process to analyse how policies were executed at the domestic level. Institutional theories define institutions as formal legal organisations or rules that affect the decisions of regional organisations (Rosamond 2000; Hall 1986). The most common institutional theories are the international relations, international political economy and new regionalism theories. The main approaches in the institutional theories include; rational choice, sociological institutionalism, liberal institutional- and the new regionalism (NRA) theories. Each of these

theories advances different factors to explain in state behaviour in the course of implementing regional directives.

Rational choice theories

Rational choice theories view the decision by partner state decisions to join regional integration blocs as a calculation of the relative costs and benefits (Downs et al 1996; Tallberg 2002). According to rational choice theories, the decision to join a regional body depends on the ability of the community to put forward the interests of national governments in a manner that cannot be achieved by the partner states individually. Rational choice theories are composed of a number of strands that seek to explain the behaviour of nations in integration arrangements. First, some realist theoretical approaches argue that powerful states, self-interested in the progress of their domestic territory do not adhere to agreements signed at the regional level (Borzel et al 2006). Other realist approaches claim that more economically powerful states, capable of dictating the agenda to suit their preferences at the negotiation stage, would be more inclined to abide by the outcomes of the decisions making process. The capacity of economically powerful partner states to influence the outcome of regional negotiations implies that they attain favourable outcomes at the negotiation level. On the other hand, the hegemonic stability approach of the realist theories of commitment argues that powerful nations are capable of enhancing the commitment among partner states by acting as a mechanism to provide increased monitoring and sanctioning system within the regional bloc (Mera, 2007; Mattli, 1999).

Neo-liberal institutional theories

Liberal institutional approaches stress the central role of domestic politics and exiting institutions in explaining commitment among partner states (Raustiala, 2000:399; Smith, 2000; Mera 2007; Pollack, 2001:224). For example, Mera (2007:4) argued that institutions work to provide information and increase transparency that exposes the trends and practices

of partner states. In so doing institutions help to increase the role of monitoring and enforcement in the successful implementation of regional policies. This theory emphasises the role of legalised dispute resolution systems at the regional level as a means of improving commitment to regional directives among partner states. There are several approaches within liberal institutional theory that seek to explain how institutions determine the effectiveness of implementation of directives.

First, democratic legalistic approaches posit a positive relationship between democracy and commitment to regional treaties (Tomz, 2002). Liberal theorists also highlight the importance of powerful interest groups and the capacity of domestic stakeholders to the commitment to regional treaties (Versluis, 2008). Other neo-liberal institutional approaches focus on domestic political regimes and willingness to comply with regional directives (Chase, 2003; Fearon, 1994; Simmons, 2000). For example, Simmons (2000) argues that liberal democratic regimes are more inclined to observe collectively agreed regional policies than dictatorial regimes. This is because voters are a powerful tool that can be employed to ensure that political leaders do not violate the agreements they sign at the regional level.

Sociological institutional theories

Sociological institutional theories do not view commitment to regional directives in terms of preferences or capacity but in normative terms (Versluis, 2007:165; Raustalia and Slaughter 2002). According to sociological institutional approaches, partner states comply with regional directives as a result of internalisation of socially agreed norms that arise through epistemic communities. This internalisation occurs as a result of persuasion. Literature confirms that actors are more open to persuasion and social learning when they have little historical or other cognitive factors hindering the uptake of information (Checkel 1999:562; Borzel 2002:16). However, this approach does not put forward institutionalised short term remedies for commitment shortcomings (Versluis 2007:165).

New regionalism approaches (NRA)

New regionalism approaches were developed as a result of the failure of traditional institutional theories to comprehensively explain commitment problems in regional agreements involving developing countries (Mera, 2007; Hettne and Soderbaum, 2008; Warleigh-lack, 2006: 754). Regional integration arrangements among developing countries involve many state and non-state actors that operate both at the regional level and across different policy areas in the partner states. This results in a large number of theories and approaches that attempt to explain the behaviour of partner states in regional integration arrangements involving developing countries (De-Lombaerde et al., 2009:6; Soderbaum and Shaw, 2003; Laursen, 2005; Archaya, 2001; Hurrell 1994). According to new regionalism scholars, the factors that determine commitment to regional directives among developing countries include endogenous as well as exogenous factors. However, existing approaches to explaining commitment problems only refer to endogenous factors (Hettne, 2002; Mera, 2007). For example, Mera (2007:7) argued that existing approaches ignore the role of exogenous factors such as global economic forces and the proliferation of multiple memberships among partner states which are important in examining commitment problems in regional arrangements among developing countries.

Comparing theories on Europeanization and new regionalism approaches

Literature shows that there is a tendency to treat European integration as the model regional integration arrangement. This implies that other modes of regionalism specifically in Asia and Africa are considered informal and weak. This perception of other regional arrangements impacts on the interpretation and analysis of regional integration arrangements outside the EU (Breslin et al 2002:11; Hurrell 2005:39). Attempts to develop approaches tailored to explain commitment problems in developing countries have been deemed unnecessary because the perspectives put forward by scholars analysing regionalism in developing

countries tend to take European- centred approaches as the starting point of their analysis (Axline 1994; Marianne and Shaw, 1999). Further, new perspectives within regionalism approaches that depart from existing EU perspectives often fail to adequately analyse regional integration due to variance in the levels of development among the partner states (Warleigh- lack and Rosamond 2010). New regionalism scholars conclude that a more balanced approach to understanding regionalism in developing countries is not to reject European integration theories but to highlight aspects of European literature that can be attributed to regional integration in developing countries as De Lombaerde et al note “to neglect Europe is to miss the chance to take advantage of the richness of the EU project....the challenge for comparative regionalism is both to include and transcend European integration theory and practice” (De- Lombaerde et al 2009:14).

2.5 Classification of commitment shortcomings

The analysis of the theories on commitment presented in section 2.4 reveals that problems in the member states that arise in the course of implementing regional directives can be classified into three main approaches namely, enforcement, management and constructivist approaches. The three approaches present divergent causes of commitment problems and put forward dissimilar recommendations to address inadequate commitment to regional directives (Chayes and Chayes, 1995; Downs et al., 1996; Tallberg, 2002:611; Hartlapp, 2007:655; Versluis, 2007:163).

2.5.1 Enforcement Approach

The enforcement approach was put forward by international relations scholars to account for commitment problems that are related to preferences of partner states and actors. Partner states are rational actors that make decisions regarding commitment to regional policies based on incentives that they face (Tallberg, 2002; Downs et al., 1996). For example, Tallberg (2002:611) argued that many states are willing to sign regional agreements but are unwilling

to comply with the policies that are contained in the community directive. This approach suggests that factors within the partner states as well as external conditions influence the nature and type of incentives affecting states as a result of entering into regional arrangements. The changes in the incentive structure may affect how partner states are committed to those collective agreements. Therefore effective monitoring of the changing incentive structures and sanctioning mechanisms are recommended to increase the level of transparency and prevent violation of treaty commitments (Mera, 2007; Treib, 2008).

2.5.2 Management Approach

In contrast to the enforcement approach, proponents of the management approach argue that partner states enter into regional arrangements with the intention of complying with the provisions of the regional directives but are constrained by resource as well as capacity problems (Chayes and Chayes, 1995; Chayes and Mitchell, 1998; Borzel et al., 2010:1368). According to the management approach, inadequate commitment arises as a result of poor interpretation or lack of resources and capacity. Borzel et al (2006) identified two types of capacity constraints; administrative and political. Administrative constraints arise because partner states are constrained by lack of financial, human or technical capacities that affect their capacity to adhere to agreed commitments. Political constraints on the other hand occur because partner states may lack the political will or power to ensure that administrators within government institutions adhere to agreed community directives. This implies that domestic level actors are capable of blocking political decisions that are vital for implementation of the provisions outlined in specific regional treaties leading to violation of treaty provisions. Scholars advocating the management approach to understanding and resolving commitment problems advocate for establishment of supranational organisations that can provide sufficient information of implementation and resources for capacity building

and simplify the wording and interpretation contained in regional treaties (Young, 1992:183; Thomson, 2010).

2.5.3 Constructivist approaches

Although, enforcement and management approaches are often presented as the two main approaches to explain commitment problems, scholars have developed the constructivist approach to explain aspects of commitment problems (Borzel et al., 2010:1370). The theory argues that commitment problems arise because partner states have not fully internalised norms and shared perspectives on the importance of adherence to community directives. Social constructivists argue that persuasion and social learning can lead to changes in the preferences and encourage compliance (Checkel 1999; Versluis, 2007). The capacity for persuasion to act as a deterrent for commitment problems is most effective in regional arrangements in which member states possess similar cultural backgrounds and shared goals (Underdal, 1998) Non-state actors can play an important role in social learning. However, unlike enforcement and management approaches, social constructivism does not present any long-term solutions to eliminate commitment problems (Versluis, 2007:165).

In sum, the three approaches namely, enforcement, management and constructivism are presented as opposing and competing approaches. However, scholars argue that in practice, the approaches to understanding commitment problems are complementary and mutually reinforcing. Literature reveals that the factors that determine commitment problems in regional integration are varied and numerous and none of the three approaches alone can sufficiently explain why partner states violate regional directives. Analysing commitment to regional integration involves drawing explanations from enforcement, management and constructivist approaches of international relations theories (Borzel et al., 2010:1371; Tallberg, 2002; Masternbroek, 2005). Likewise, regional systems that offer solutions to commitment problems that include instruments from both the management and enforcement

approaches based on a ‘management-enforcement ladder’ tend to be more effective in securing conformity while systems that rely on only one approach are not as effective (Tallberg, 2002:632).

2.6 Empirical research on commitment to regional directives

This section reviews previous studies on commitment to regional directives. The analysis of existing literature reveals that much of the research on commitment to regional directives focuses on the European Union, some focus on Latin America and the Caribbean. Fewer studies analyse commitment to regional directives in Africa and Asia (Mera, 2007).

2.6.1 Commitment research in the European Union

From the 1980s, scholars attempted to contribute to the debate on commitment to community directives. The initial studies can be classified into three broad ‘waves’³ of research on compliance with regional directives in the EU.

The three waves of commitment research

The waves of research into commitment to EU directives analysed the causes of commitment problems in regional directives over the past twenty years. The three waves advanced different explanations to account for commitment deficits among member states in the EU. Most of the scholars found that the commitment to regional directives among partner states was uneven in some cases and non-existent in others.

First wave of commitment studies

The first wave of scholars analysed the causes of commitment deficits in the 1980s and viewed regional integration as a top-down process. Combining perspectives from international relations and legal studies, the empirical studies in the first wave viewed implementation of community legislation as a process that did not depend on political

³ This phrase was introduced by Masternbroek 2005 but has gained acceptance within most commitment studies (Falkner et al 2005;Treib 2008)

preferences in the partner states (Treib, 2008:8; Versluis, 2007:53; Ciavarini, 1988:199). The first wave scholars advanced both administrative and legal reasons for the inadequate commitment of partner states to community directives. The legal reasons for commitment deficits included the complexity and poor quality of the regional directives (Krislov et al. 1986:82; Cavarina, 2000:56; Dimitrakopoulos, 2001:466; Kagan, 1989:94). Administrative factors on the other hand, included barriers between the design and implementation, lack of resources, inefficiency of domestic institutions and corporatism in the partner states (From and Stava, 1993; Lampinen and Uusikyla, 1998:239).

At the same time the studies in the first wave adopted some of the findings from the 'bottom-up' approach particularly, the need to incorporate actors from the partner states in the execution of community policies at the domestic level (Siedentopf and Hanchild, 1988; Schwarze, Becker and Pollack 1991). These scholars identified factors that were largely eclectic due to the lack of strong theoretical frameworks on which to base findings (Treib 2008:7).

Critics of the first wave of commitment studies argued that scholars did not draw distinctions between the transposition stage and later stages of execution of community policies. Instead, their main findings revolved round stated policy objectives and partner state operations. Since their arguments were based on the assumption that regulators and the regulated were not involved in the policy making process, the first wave scholars failed to identify rival explanations of commitment deficits (Leiber 2007:350).

In spite of the criticism, the factors identified in the first wave commitment studies are relevant to commitment studies (Treib 2008:7). For example, Masternbroek (2003) found that legal and administrative variables were responsible for transposition deficits in Netherlands while Mbaye (2001) concluded that there is a strong relationship between political power and

compliance to regional directives. Others scholars in this wave attributed compliance with community directives to lack of discretion (Bovens and Zouridis, 2002).

Second wave of commitment studies

The second wave of commitment studies emerged at the end of the 1990s. The arguments in the second wave of commitment studies were centred on the 'fit' between the regional policy requirements and the existing institutions at domestic level (Masternbroek, 2005:1109; Leiber, 2007:350; Borzel and Risse, 2003). Using the institutional approach, scholars argued that when regional directives are signed into law, they generate pressure on domestic partner states to amend domestic policies and adjust institutions. According to the second wave of commitment studies, the extent to which partner states adhere to community directives depends on the degree of fit or misfit between the regional policy and domestic administrative and legal institutions (Risse et al., 2001). The goodness of fit hypothesis is very useful in explaining commitment deficits due to its strong historical institutional character that argues that partner states were unwilling to change (Masternbroek, 2005:1109; Treib, 2008:8). The fit between regional directives and existing domestic policies can also be viewed from a sociological point of view.

Critics found that 'goodness of fit' was neither a necessary nor sufficient factor for commitment success (Kaeding, 2007:8; Knill and Lenschow, 1998; Haverland, 2000; Falkner et al., 2005). For example, Haverland (2000) analysed implementation of the packaging waste directive in Netherlands, Germany and UK and found that the factors did not hold in all cases. In addition, Falkner et al. (2005) analysed six directives related to the EU labour policy and found that countries with good fit between the regional directive and domestic administrative structure experienced higher rates of transposition delays and non-implementation of the labour directive. The static nature of the goodness of fit perspective assumes that national

actors resist change. This raised questions among scholars and led to the birth of the third wave of explanatory factors.

Third wave of commitment studies

The third wave of explanatory factors was intended to create more dynamism in the goodness-of-fit approach (Masternbroek, 2005:1110; Falkner et al., 2005:329). Concepts like the level of domestic support and issue salience were designed to explain commitment problems in regional integration (Borzel, 2003; Versluis, 2007). For example, Borzel (2003) developed a pull and push model based on the assumption that commitment problems were associated with the push from the regional forces and the pull from domestic actors. The approach combined the mis-fit approach with neo-institutional perspectives to analyse commitment deficits based on rational choice and sociological institutional approaches. Similarly, Treib argued that political preferences of partner states affected commitment among partner states (Treib, 2008:10) while Versluis (2007) focused on the saliency of the regional policy as the determinant of commitment problems among partner states. According to Versluis, politically salient issues receive more attention and are implemented without any problems (Versluis, 2007: 61).

Studies on European integration in the third wave also identified other explanatory factors for commitment problems; For example, scholars argued that the capacity of a member state to undertake reforms necessary for regional integration to occur and the existing domestic compliance culture affected commitment effectiveness (Heritier et al., 2001:286; Haverland, 2000; Dimitrova and Steunenberg, 2000). Dimitrova and Steunenberg (2000) concluded that commitment deficits were a result of the capacity of veto players to influence compliance. Other studies which were mainly quantitative in nature argued that commitment success depends on political preferences of national governments (Treib, 2003; Mbaye, 2001). In sum, while qualitative studies in the third wave argue that political factors were crucial for

commitment, quantitative studies found that administrative factors that accounted for commitment problems of partner states in regional integration (Treib, 2008:11; Masternbroek, 2005).

The policy specific model of commitment studies

Analysis of the literature identified policy specific approaches to explaining commitment deficits among partner states. Policy specific factors were based on the argument that the nature of instrument employed during the transposition determined the type of actors involved and the success of the transposition process. Research showed that primary legislation was more likely to lead to transposition success than secondary legislation (Bursens and Deforche, 2007; Steunenbergh, 2007). On the other hand, state based factors rely on the context specific variables as explanatory factors. These factors include administrative efficiency (Ciavarini, 2000; Pridham, 1994), socio-economic interest pressure groups (Lampinen and Uusikyla, 1998) as well as distinct domestic enforcement and application styles (Falkner et al., 2005). The policy specific model was criticised for not providing a theoretical understanding of whether there are country or policy specific patterns of typical mechanisms for transposition of directives and whether this would result in typical patterns of either politically or administratively inclined transposition outcomes (Treib, 2008:12). In addition, scholars argued that in practice, there is no difference between legislative actors and administrative officials since national governments are among the decision makers at the national level and are also responsible for domestic implementation (Thomson, 2010:578).

The ‘Four Worlds’ of compliance

The ‘four worlds’ of compliance typology was put forward to contribute to the debate on whether there are country specific cultures of commitment. The typology was provided by a group of scholars who analysed commitment to six labour directives among old and new EU member states (Falkner et al., 2005:280). These scholars argued that factors in the three waves of commitment studies do not hold across all partner states. Instead their results show that different countries may demonstrate commonalities in the way they abide by community directives. This resulted into a characterisation referred to as the “worlds of compliance”. These country clusters were characterized by the way in which their political and administrative systems comply with regional directives (Treib, 2008:12; Falkner and Treib, 2008). The country clusters include, the World of law observance, the World of neglect, the World of domestic politics and the World of dead letters.

The ‘World of law observance’, attaches great importance to adherence to regional policy and rule of law among the administrative and political systems. Partner states in this category of compliance are characterised by timely transposition and proper implementation of regional policy among the member states. In the ‘World of neglect’, the culture of commitment to regional policy is lacking among the administrative and political structure of the country. This group of countries possess an apolitical implementation system and are characterized by persistent transposition deficits and implementation infringements (Falkner et al., 2005:317; Leiber, 2005). The ‘World of domestic politics’ is characterised by political preferences and powerful domestic level actors that influence the capacity of commitment to regional policies (Treib, 2008). On the other hand, the ‘World of dead letters’, is characterised by countries where commitment is highly dependent on pressure from exogenous factors. The exogenous factors that condition commitment include funding requirements and pressure to join the

regional integration bloc. In these countries, the transposition is timely but subsequent enforcement and applications faces challenges (Falkner et al., 2008; Leiber, 2007).

However, later studies using the four Worlds of compliance typology produced contrasting results. Whereas Sverdrup's (2004) study on the commitment among Nordic countries found the factors that condition commitment to regional directives among Nordic countries correspond to the characterisation in the world of law observance, other studies yielded contradictory results; (Toshkov, 2007; Borzel et al., 2007; Steunenberg and Rhinard, 2008). For example, Toshkov (2007) found that public opinion about the rule of law does not correspond to the four typologies. Similarly, while Versluis (2007) concluded that the issue of salience rather than the typology of the worlds of compliances explained commitment performance of partner states. As a result of these contradictory results, scholars concluded that commitment performance does not depend on country-specific characteristics but to several factors acting together (Borzel et al., 2003:26; Leiber, 2007:351; Treib, 2008:14).

Further criticism was levelled at the research design of the 'worlds of compliance' typology. Scholars argued that the research design for the study on the six labour directives did not differentiate between enforcement and application. This may have led to contradicting results. Studies show that different phases of the integration process produce different commitment outcomes (Versluis 2007:51; Jensen 2007). Jensen (2007) used a top-down approach to analyse infringement of labour and social policy directives and found that partner states may properly transpose a directive but face enforcement and application challenges. These results disprove the typology of worlds of compliance and show that looking only at the transposition while ignoring the enforcement and application phases may lead to inconclusive results.

2.6.2 Regionalism in the rest of the world

Over the last 10 years, attempts to analyse commitment to regional agreements involving developing countries increased (Fawcett and Gandois 2010; Mera 2007; Gibb 2006; Archaya 2004; Soderbaum 2004; Soderbaum and Sbragia 2010; Hettne and Lagenhove, 2005). The studies are characterised by theoretical as well as methodological arguments. The theoretical arguments relate to whether studies on regionalism in the rest of the world could employ the theories of EU integration or develop a new set of theories. The methodological arguments are associated with approaches to explain commitment deficits in regional blocs among developing countries (De- Lombaerde et al., 2009; Rosamond, 2010).

How is regionalism conceptualised in the rest of the world?

Different scholars have defined regionalism in developing countries in different ways (Fawcett and Gandois, 2010; Mera, 2007). Fawcett and Gandois argue that although regionalism and regionalisation are used interchangeably, they are actually separate terms. Regionalisation refers to increased regional activity while regionalism is a top-down political process focused on macro as opposed to sub-national micro regions (Fawcett and Gandois, 2010:619). On the other hand, De-Lombaerde et al (2009:7) argue that the definition of regionalisation depends on the research questions being asked. In order to overcome this dilemma, scholars concluded that research should not focus on the definition of regionalism but rather on the concepts and characteristics of regions as compared to non-regions.

Are developing countries committed to regional directives?

A number of scholars have undertaken empirical studies to examine commitment to regional policies in integration arrangements among developing countries (Shams, 2003; Burfisher et al., 2003; Alva and Behar, 2008; Mera, 2007). However, most studies have been undertaken among the Latin American and Caribbean countries (Shams, 2007; Vamvakidis, 1998; Mera, 2007), with a few studies in Asia and Africa (Shams, 2003; Mistry, 2000). Others studies

focused on the conceptualisation of the terms regionalism and regionalisation (Gibb, 2006; Soderbaum and Sbragia, 2010; Warleigh-Lack and Lagenhove, 2010).

Most of the studies on regionalism in developing countries employed international relations theories that had been used to analyse commitment to regional directives in the EU. The scholars found that lack of strong regional institutions in regional integration arrangements among developing countries leaves room for patron-client relationships, corruption and informal politics (Soderbaum and Sbragia, 2010; Simon, 2003:6). For example, Soderbaum and Sbragia (2010:17) revealed that political leaders enter into regional integration arrangements so they can be perceived as promoters of regionalism. Other studies attempted to formulate new theories to account for commitment deficits in developing countries. Mera (2007) undertook a study on commitment to the customs union in the four member blocs; Mercosur (Southern Cone Common Market), Andean community (CAN), Central American common market (CACM) and the Caribbean Community (CARICOM). She argued that EU literature neglects the importance of exogenous factors in determining commitment outcomes.

2.7 Shortcomings in existing commitment research

Section 2.6 reveals that the field of commitment literature has grown tremendously over the past 30 years. However, a critical review of existing literature shows that aside from the lack of adequate coverage discussed in the statement of the research problem (cf. Chapter 1.2), differences in the conceptualisation, data sources, measurement techniques and focus of existing studies exist imply that the findings are uncertain and results inconclusive (Hartlapp and Falkner, 2009; Treib, 2008; Masternbroek, 2005). This section outlines the shortcomings in commitment literature and highlights direction for future research.

Conceptualising commitment to regional directives

Analysis of commitment literature shows that scholars have employed different concepts to analyse commitment problems in integration literature. The different concepts used to explain the process of implementation of regional directives led to misunderstanding (see From and Stava 1993; Versluis, 2007). For example, misunderstandings could arise as to what exactly is meant by the term ‘implementation’ in commitment literature. Since both the regional secretariat and partner states have roles to play in regional integration, a first misunderstanding is whether scholars refer to implementation at the regional or national level (see Versluis, 2007:52). Second, it is not clear whether the term ‘implementation’ refers to formal, legal, practical or administrative tasks that regional secretariats as well as partner states play (Pridham and Cini, 1994). The research shows that there is no agreement on the explicit definitions and operationalization of the terms that explain member states’ adherence to regional directives.

In addition, the criterion for analysing the transposition of regional directives in the partner states are not always clear or appropriate (Hartlapp and Falkner, 2009). Directives consist of several articles and sub articles. These articles lay out in detail what member states can and cannot do. In addition, they outline both the legal and institutional arrangements required in order to implement the directives (Thomson, 2010:579; Steunenberg and Toshkov, 2009:958). The obligations of regional directives include timely, correct and complete transposition. However, most scholars analyse only timely and correct transposition (Masternbroek, 2003; Kaeding, 2007; Versluis, 2007). Hartlapp and Falkner (2009:284) argued that transposition of a regional directive may be timely and correct but some of the provisions in the directive may be transposed fully while others may not or some may be fulfilled as required in the law and others only partially fulfilled. The main problem with analysing complete transposition lies in the lack of a standard measure of correct, timely and complete transposition because

objective indicators of completeness are not readily available (Konig and Leutgert, 2008: 168). Hence, most studies on transposition rely on data on transposition notifications and infringement at the aggregate level of the directives. This leads to inconclusive results that cannot be compared across partner states. Konig and Leutgert (2008:191) argue that a more detailed analysis of the completeness of transposition has not received much scholarly attention since it requires a detailed analysis of individual provisions that constitute the directives that can only be achieved by a qualitative analysis (Thomson, 2010). In sum, the conceptualisation of adherence to regional directives in existing literature differs and is not clear. Scholars do not seem to analyse the same aspects of the implementation of directives leading to inconsistent understanding.

Scope and focus of existing commitment studies

Commitment to regional directives is the outcome of adequate adherence to all stages of the integration process (cf. Subsection 2.3.2). However, existing commitment studies to regional directives are narrow in focus. Studies often analyse only the transposition phase of a regional directive but use the results to assess the entire implementation process and make conclusions on commitment effectiveness of partner states (Hartlapp and Falkner 2009:283; Treib 2008). Few systematic studies have analysed the post-transposition phases of regional directives (but see Hutter, 1989; Kagan, 1989; Prechal, 1995; Knill, 1998; Perkins and Neumayer, 2007) and fewer empirical studies have covered all the phases of the integration process (Falkner et al., 2005). Versluis (2007:50) concludes that a comprehensive understanding of commitment problems requires analysis of all phases of the implementation process because different phases in the implementation process reveal different results. A directive may be transposed in a timely and correct manner but face enforcement and compliance problems.

In addition, most studies ignored the negotiation process in regional integration research. Analysing the negotiation for- and design of regional protocols reveals whether any implementation problems may be related to the decision making process (Falkner et al 2005: 6; Thomson 2010: 579; Zhelyazkova and Torenvlied 2011). Falkner et al argue that establishing the preferences of partner states during the negotiation process is not an easy task because the qualified majority voting system that studies employ as an indicator of states' preferences is not a good indicator of support or opposition (Falkner et al 2005: 278). Empirical studies that ignore the negotiation process often fail to take the preferences of partner states into consideration in analysing the causes of inadequate commitment to regional directives.

Problems with data employed in empirical studies

An analysis of the literature on commitment reveals that most studies rely on quantitative designs (Mbaye 2001; Kaeding 2007; Mera 2007; Konig and Leutgert 2008; Masternbroek 2003; Borzel 2001). These studies rely on data from three main sources, member states' notifications of violations of treaty provisions, data on infringements initiated by the regional secretariats and data on judgements specifically by regional courts. Although this data allows for generalisations, there are shortcomings in employing quantitative data to analyse inadequate commitment to regional directives.

Most studies rely on data on commitment violations provided by partner states (Masternbroek, 2003; Haverland et al., 2007). However, data from this source is not consistent across all partner states as it does not provide detailed information on what is captured. For example, some partner states notify before finalising the transposition process while other member states do not notify even after finalising the process (Hartlapp and Falkner, 2009:290).

Other studies employ data on violations identified by the regional commission in monitoring application of the protocols (Borzel, 2003; Sverdrup, 2004; Treib, 2006; Thomson et al., 2007; Bursens, 2002). While this data is useful in analysing adherence to regional directives among the partner states, it is not complete and accurate. This arises because the regional commissions respond to different cases of inadequate commitment in different ways. This may be as a result of strategic decisions or inadvertent mistakes (Masternbroek, 2006; Hartlapp and Falkner, 2009:292). For example existing literature does not mention how many cases of violations are ignored by the commission in its monitoring function nor does it control for changes in the monitoring policy of regional commissions.

In sum, the data from quantitative studies constitutes an indirect measure of partner states' commitment behaviour and because it is based on notification of violations by member states that can not be objectively compared (Konig and Luertgert, 2008:168; Treib, 2006 Masternbroek, 2003:374). Treib (2008:18) concludes that “.....unless the problems associated with the quality and form of available data used in quantitative research designs have been solved, scholars are advised to rely on qualitative case studies.

Failure of commitment research to relate to previous theories of integration

The analysis of existing literature reveals that most of the research is focused on cross country comparison (Versluis, 2007; Thomson, 2010; Falkner et al., 2005; Borzel et al., 2010). The research has not adequately analysed cross-sectoral variance in commitment within a member state. For example, commitment may differ to politically highly salient directives than to highly technical policies within a particular state specifically in developing countries where political patronage plays a large part in economic development (Treib, 2008:17). This implies that existing research is not organised in a cumulative manner that catalogues potentially relevant factors and their relative scope of application. For example, studies of regional integration that occurred after the 1970's do not attribute observed

inadequate commitment to theories that existed prior to the advent of international relations and international political economy theories. Neither do they relate inadequate commitment to insights from other fields that include domestic implementation research (Hartlapp and Falkner, 2009:299; Treib, 2008).

Scholars acknowledge that although the literature on commitment to regional directives has grown over the last three decades, the findings remain inconclusive and theoretical insights contrasting. A critical review of existing data reveals that what is known about commitment to regional directives is a 'tip of the iceberg' and there is need for more information (Versluis, 2007; Masternbroek, 2007; Falkner et al., 2005:343).

2.8 Chapter Conclusion

The Chapter reviewed the relevant literature on commitment to regional policies over the last 30 years. The analysis began with a debate on the definition of the concepts that analyse commitment among partner states because in current years, regional integration has become an important tool for economic development and growth especially among developing countries. The research found that definition and conceptualisation of the process through which partner states adhere to collectively agreed protocol have not adequately been addressed. The analysis of the research recommended that a more appropriate approach to understanding commitment would entail analysing all the phases in the process of implementation of regional directives.

The chapter reviewed the theories that underlie commitment to regional directives. The main theories of regional integration are the international relations and international political economy theories of integration. These theories can be summarised into at least three approaches; the enforcement, management and constructivist approaches. These approach help to identify commitment problems and highlight remedies for commitment deficits in

regional integration literature. The research found that current literature is not cumulative as it relies largely on recent theories of international relations and comparative politics. The research does not pay much attention to approaches that existed prior to the international relations theory and to other theories that may explain domestic implementation of regional policies.

A critical review of the literature showed that most scholars were unanimous about inadequate commitment to regional directives among partner states in regional arrangements. However, the debate on the type of data to use and how to analyse non-compliance has not been settled satisfactorily. While quantitative studies have gained prominence due to their capacity to generalise results to other study areas, they are mainly focused on the transposition phase of the implementation process and use indirect measures of commitment leading to contrasting and inconclusive perspectives.

Analysis of the literature reveals that one way out of the present dilemma regarding the conceptualisation of commitment, scope of focus and quality of data is to undertake qualitative studies that take the preferences of partner states into consideration and investigate the commitment to all provisions in the regional directive during the transposition, enforcement and application stages of implementation.

The next Chapter builds on the lessons derived from the shortcomings in existing commitment research to develop a research design that will investigate commitment to the East Africa Community customs union protocol in three countries of Uganda, Kenya and Tanzania. Chapter three will integrate the literature from the commitment studies into an analytical framework for studying how partner states are inadequately committed to agreed regional protocols.

CHAPTER 3:

3 ANALYTIC FRAMEWORK AND RESEARCH METHODOLOGY

3.1 Introduction

Chapter 2 presented literature on commitment to regional directives. The literature review investigated the definitions, theoretical arguments and reviewed empirical studies on commitment in integration literature. Chapter 2 confirmed that there was need for more information on the conceptualisation, coverage and analysis commitment to regional directives as justified in Chapter 1. The aim of Chapter three is twofold; first, to present and explain a framework that was derived from the literature review to analyse state commitment, and second, select a methodology to understand the factors that influence commitment to the customs union protocol in the EAC.

The Chapter is structured as follows; section 3.2 discusses the analytical framework that informs the study. Section 3.3 presents the research methodology employed to gather the data. Section 3.4 outlines the data analysis process. Section 3.5 presents an assessment of the research. Ethical issues are discussed in Chapter 3.6 while section 3.7 concludes the Chapter.

3.2 Framework for analysis

This section outlines the framework to investigate commitment to regional directives, examine the transposition, enforcement and application of the customs union protocol. Adherence to regional directives involves several government and non-governmental actors. The relationship between these actors in regional integration is shaped not only by the contextual factors in the domestic partner states but also by exogenous factors (Mera, 2007; Tallberg, 2010). In order to comprehensively understand the endogenous as well as

exogenous factors that influence commitment, the study adopts a multi-theoretical approach to answer the following overall- and sub-questions;

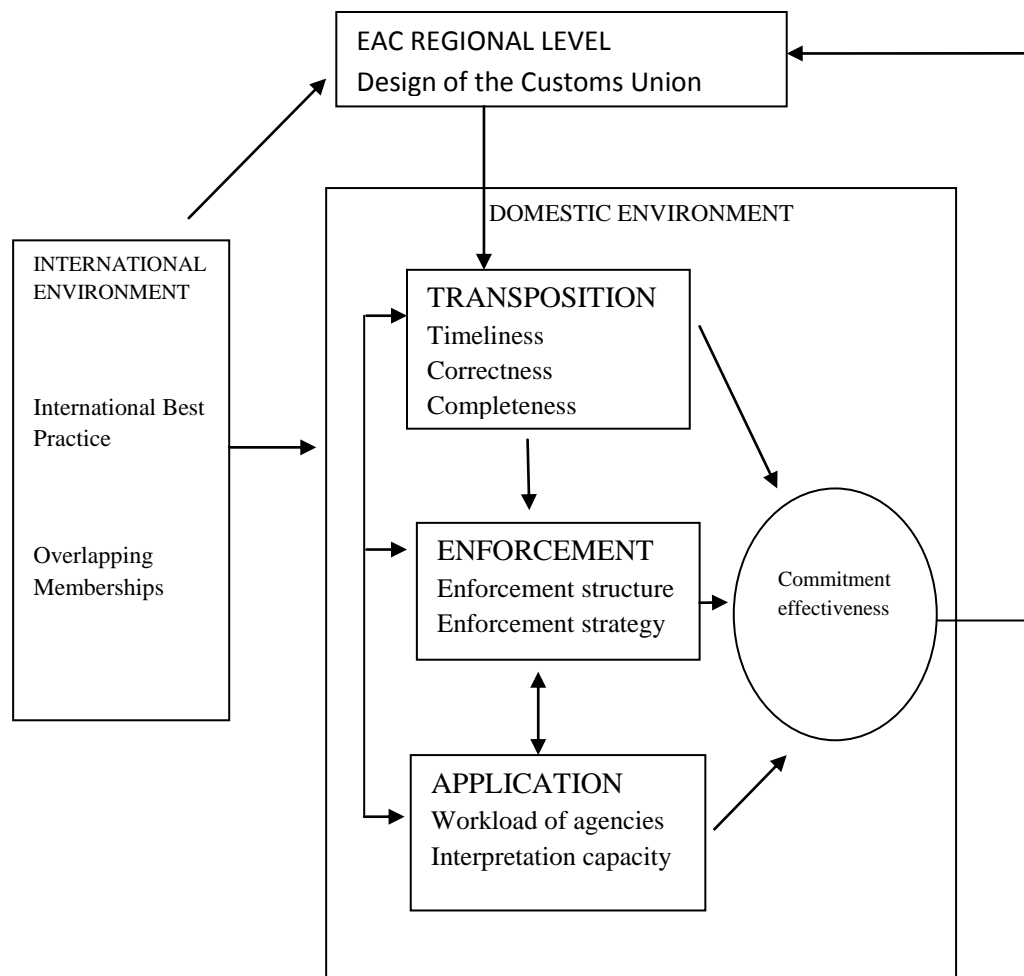
How were the partner states of Uganda, Kenya and Tanzania inadequately committed to the implementation of the EAC customs union protocol?

This research question is answered with regard to the implementation of the provisions outlined in the customs union protocol. The implementation process includes three distinct but inter-related stages namely, the transposition, enforcement and application of the protocol. To help answer the overall research question, three sub-questions that relate to the implementation of the protocol were formulated as follows:

1. How was the EAC CU transposed into the domestic legal systems in the three partner states?
 - What legal instrument was employed in the transposition?
 - Did the transposition take place in a timely, correct and complete manner?
2. How was the customs union protocol enforced in the three partner states?
 - How was the enforcement of the customs union structured in the partner states?
 - What strategies were employed to enforce the protocol?
 - Did the enforcement systems deter violation of the protocol by the partner states?
3. How were the policies in the customs union protocol applied?
 - Who were the regulated firms and agencies in the customs union?
 - Did the partner states encounter challenges in the application of the protocol?

The use of a multi-theoretical approach is important not only for generating the research questions but also in the analysis and interpretation of empirical data (Mera, 2007; Falkner et al., 2005). By drawing on concepts derived from integration literature it is possible to develop a framework to address those outstanding issues identified in the literature and contribute to the current debate on the factors that account for commitment problems in integration arrangements involving developing countries. The framework is presented in figure 3.1:

Figure 3.1: Framework for analysing partner states' commitment to the EAC Customs Union



The analytical framework outlines the policy execution process and sets out the factors that are crucial in explaining commitment to regional policy among member states. In order to investigate the commitment to the customs union directive in the East African Community, a multi-theoretical approach is adopted. This approach combines theories in international relations and international political economy.

3.2.1 Applying the analytical framework

The framework enables analysis of the design of the East African Community customs union protocol and the process of commitment to it. Analysing the design involves focus on the negotiation process while commitment to the protocol is analysed by focusing on its adoption, enforcement and application.

This focus on analysing the process in design and commitment is needed since existing analyses of regional directives have been undertaken at the aggregate level of the directive as a whole (Thomson, 2010: 579). This has led to inconclusive results regarding the causes of inadequate commitment (cf. Chapter 2.7). In this study, the detailed provisions in the protocol will be analysed. The purpose of the analysis is to contribute to greater understanding of the factors that account for commitment problems.

The detailed analysis of the design and implementation is particularly needed in the case of the EAC customs union protocol since it is not directly applicable at the domestic level. When the community law is signed at the regional level, partner states are charged with the responsibility of transposing the community law into their domestic legal systems, before it can be enforced and applied by the regulated agencies.

Regarding negotiation, the literature in Chapter two showed that previous research has been mainly concerned with what happens to directives after they have been signed into law. The process of negotiation has not received much scholarly attention. Analysing the negotiation process is important in the research for three main reasons; first, it allows the researcher to understand the reasoning behind the decision making process. Second, highlights the process and the main actors involved. Third, enables conclusions on whether problems with subsequent adherence to the protocol can be linked to the preferences of the partner states during the negotiations or system employed for achieving outcomes.

The transposition phase involves adopting the regional policy into the national legal system; the analysis of the transposition phase is intended to identify the instruments used in the transposition in the three partner states. This is because previous research revealed that country and policy specific factors may affect transposition outcomes (Kaeding, 2007; Borzel, 2002). In addition the research will analyse the correctness, timeliness and completeness of the process. Previous research shows that while studies analyse timeliness and correctness, the completeness of transposition has not been adequately explored. This could be due to the fact that most studies were mainly quantitative in nature. Konig and Leutgert (2008:191) observed that analysing ‘completeness’ of transposition is a complex process that may be accomplished undertaking a qualitative study.

The enforcement system involves setting up administrative structures, necessary tools and instruments, monitoring and inspection by the regulators. This will involve analysing the tools they used to ensure that the regulated firms change their behaviour in line with the policies outlined in the protocol. Enforcement occurs both at the regional and domestic level; at the regional level, enforcement is concerned with ensuring proper application of regional policy and is undertaken in conjunction with regional courts. At the domestic level, enforcement is concerned with making sure that the regulated entities are complying with the provisions of the directive (Versluis, 2007:52; Kaeding, 2007; Masternbroek, 2005).

The enforcement at the domestic level is concerned with two aspects; the enforcement structure and strategies. Understanding the enforcement structure will involve analysing the regulatory arrangements for coordination of the enforcement system. The investigation relates to assessing the stakeholders involved in the enforcement and their relationship. The research will examine the monitoring system that is in place to detect violation of the protocol in order to understand whether partner states are aware of the size of the application problems in the EAC customs union protocol.

At the same time, the enforcement practices that outline the relationship between the regulators and the regulated agencies in the partner states will be examined (Knill, 1997:4). These practices refer to the relationships that exist between the regulatory enforcement agencies and the political leadership on one hand as well as between the regulator and the regulated agencies on the other.

The research will explore the application of the protocol by the regulated agencies in the partner states. The main aim of investigating the application is to assess whether partner states changed their behaviour in line with the policies outlined in the protocol? Application can be viewed in terms of the costs of adjustment to the new regime and its impact on firms' behaviour as well as the capacity of firms to understand the details of the community directive.

The literature analysed in Chapter 2 shows that commitment effectiveness encompasses the three notions of transposition, enforcement and application. The effectiveness of commitment can be termed the totality of all the measures that domestic governments take to translate community directives into domestic law and policy and the extent to which they adhere to these collectively agreed policies (Underdal, 1998:26). The effectiveness of commitment is related but not similar to regime effectiveness. Regime effectiveness refers to the extent to which a regional bloc is able to achieve its objectives. Commitment effectiveness on the other hand refers to the extent to which the partner states abide by the requirements of the policy. In the long run, commitment effectiveness affects regime effectiveness. This research aims to investigate the factors that affect commitment effectiveness of the EAC customs union protocol and will not focus on regime effectiveness.

Literature shows that there are degrees of commitment. This implies that partner states may adhere correctly to some aspects or phases of the policy process but face challenges in

meeting the requirements of other phases of the same implementation process. For example, it is possible that some states may find it easy to transpose the law into their domestic systems but face challenges in enforcing and applying them. The research will investigate the three phases in further detail to ascertain whether there are differences in the degrees of commitment between the three phases (Mera, 2007:5; Versluis, 2007).

The framework shows that the process of implementation of regional directives at the domestic level is linked back to the supranational body as shown in figure 3.1. Integration literature shows that partner states are in constant dialogue on the implementation of the directive and are constantly lobbying for changes in the policies in order to enhance compliance (Barret, 2004:251). The research will investigate whether any mechanism exists in the East African region for feedback on the implementation process that serves to inform any future changes to the existing community directive and how that mechanism affects commitment to the protocol.

Finally, previous literature shows that the process of commitment to regional directives may exhibit contrasting results; in some partner states, adherence to collectively agreed protocols may be prevalent in all aspects of the political and administrative systems of the respective partner states. In other states, there are challenges in adhering to collectively agreed regional protocols. Given that the capacity and preferences of partner states differ, the level of transposition, enforcement and application of the regional directive may not be uniform across all the partner states in the particular regional arrangement (Mistry, 2003:1200; Soderbaum, 2003:10; Treib, 2007; Falkner et al., 2005). This is further reason for the detailed analysis of the implementation process used in this study.

3.3 Methodology

This section addresses the research methodology that was adopted to study commitment to the customs union directive in three EAC countries. The section proceeds as follows. Section 3.3.1 outlines the research philosophy. Section 3.3.2 discusses the case study design while section 3.3.3 reviews the methods that were employed and the actual data collection exercise.

3.3.1 Research Philosophy

The argument in this study is based on the principle that external reality exists and is independent of the beliefs and understanding that people hold. The external reality can only be understood and internalised into the lives and perceptions of individuals through socially constructed meanings (see Snape and Spencer, 2003:14). The approach in the study on commitment to the EAC customs union protocol was informed by the epistemological principles of human social life. For example, Neumann (1994: 61) revealed that social life exists through the experiences of different actors and it is defined by the meanings they attach to their experiences.

Based on the understanding of external reality and the beliefs of stakeholders that have been gleaned from previous literature on research philosophy, the study on commitment to the EAC customs union protocol highlights the importance of the interpretations of respondents during the research. For example, Neumann (1994) reveals that perceptions lead to differences in understanding of the phenomenon of commitment in integration literature. As such, a full understanding of the factors that determine commitment to regional directives requires internalisation of the different perceptions of what constitutes reality. This research on commitment to the customs union protocol aims to investigate the nature of external reality from the point of view of stakeholders and actors in the EAC. The view adopted for the study contradicts with positivist perspectives that do not take perceptions and perspectives of the regulated agencies and stakeholders into consideration.

From an interpretive perspective, the approach adopted for the study on the EAC customs union protocol is based on the assumption that the social world is understood from the continued engagement of the researcher with the phenomenon that constitutes customs union implementation. The process of data collection has an impact on the investigator as well as the respondents being investigated in the three partner states and at the EAC secretariat will affect both the researcher and the interviewees contrary to positivist approaches that view phenomenon as independent and unaffected by the researcher (De Vaus, 2001; Creswell, 2007). Previous literature has criticised qualitative studies relying on subjective conclusions to explain the perceptions of social phenomenon without scientific analysis. In order to overcome this criticism, this study employs a mixed data collection approach that triangulates data from interviews, documentary review and observation (Yin, 2009; Bryman, 2001; De Vaus, 2001).

In accomplishing the study on commitment to the EAC customs union protocol, the investigator took necessary steps to minimise the bias that would arise as a result of originating and working as an official in one of the partner states. The researcher's previous work with the Ministry of Finance, Planning and Economic Development in Uganda enabled access to sensitive information during the research process. Respondents in Uganda referred to the negotiations and implementation of the protocol in a manner that assumed that the researcher was well versed with Uganda's administrative and legal framework as well as the relationship between the private sector and policy makers. This enhanced the readiness for respondents to provide information to the researcher. However, respondents in the partner states treated the investigator as a foreigner and treated him with suspicion. For example, officials at the Ministry of Trade in Tanzania doubted whether the researcher was actually a student. The researcher took steps to ensure that the outsider perception did not affect the quality of the data. For example, the researcher printed more copies of the introductory letter

from the University of Birmingham for distribution to prospective respondents (Mingers, 2004; Kugonza, 2011:120).

3.3.2 The case study design

The study design in social research is concerned with the entire process of organising a research project (Yin, 2009:17). A research design is a logical sequence that links the empirical data to the study's initial research questions as well as the conclusions from the study. This process starts with the conceptualisation of the research questions, outline the process of data collection and analysis that can be used to answer the research questions and attain the aims of the research (Creswell, 2007:73; Gerring, 2004:346).

The research set out to investigate how the protocol was transposed, enforced and applied in the three partner states? This requires analysis of evidence derived from interviews, secondary documents and observations. The researcher concluded that using an experimental design that required a researcher to divorce the phenomena from its context, or a survey design that would limit the number of variables and predetermine respondents of the study would not effectively analyse contextual issues. Further, since the researcher had no control over the behaviour of stakeholders and actors in the transposition, enforcement and application of the customs union protocol, it was not practical to employ a survey or experimental research method in order to understand the factors that affect commitment to regional directives in the EAC (see Yin 2009:46).

Second, the choice of the most suitable case study design for the study on commitment to East Africa community customs union presented a challenge to the researcher. This dilemma was resolved by a detailed analysis of literature on design of comparative case studies (See Yin 2009; Creswell 2007; De Vaus 2001). For example, Yin (2009) distinguished between a

single- and multiple case studies that can also be further disaggregated into unitary and multiple units of analysis. This is illustrated in table 3.1

Table 3.1: Types of case study designs

	Single case design	Multi-case design
Holistic	Type 1	Type 3
Embedded	Type 2	Type 4

Source: Adapted from Yin (2009)

Table 3.1 illustrates different designs of case studies that can be adopted to undertake social research. The columns indicate the number of cases while the rows show the units of analysis that can exist in the case. The research can be undertaken on either the holistic or embedded units of analysis (Yin 2009:46).

The study on commitment to regional directives is situated within type two of Yin's typology which implies that the study of the EAC customs union protocol will be undertaken based on a single case but with embedded units of analysis. The study will analyse the implementation of the customs union protocol in the three EAC partner states of Uganda, Kenya and Tanzania. The embedded case design will answer the question such as the one that this research strives to address (Yin, 2009; Creswell, 2007) and investigate in more detail the processes that are involved in the commitment to the EAC customs union protocol. George and Timothy (1985:35) argue that embedded case designs are useful in explaining how institutions and stakeholders matter in social research.

In this study, the focus is on factors that condition commitment to the detailed provisions in the customs union protocol among the three partner states of Uganda, Kenya and Tanzania. Adherence to the customs union protocol in the EAC is the principal unit of analysis. The sub units selected are the respective partner states. Within each subunit, the research will analyse the execution of the three phases of the customs union namely, the transposition, enforcement

and application on the detailed provisions of the customs union protocol for the period 2004-2009. This level of analysis will create more opportunities for the researcher to undertake in-depth investigation of the customs union implementation.

The region and countries selected for the study

The study selected the East African Community (EAC) as the principal case for the study on commitment to regional directives. The choice of the EAC was based on economic, theoretical and practical reasons. In theoretical terms, the EAC is involved in the process of regional integration. The region signed the customs union protocol in 2004 and partner states are in the process of implementing the detailed provisions in the protocol. This will enable the investigator to apply the theories that have been identified in the analytical framework on the study. In practical terms, EAC was selected because of the economic as well as convenience reasons. The researcher originates from one of the partner states and is familiar with the region's political and social systems. This may prove cheaper and more convenient to undertake such a large study project.

Second, the EAC is typical of most integration blocs among developing countries. In line with the arguments put forward in Yin (2009:49), the choice of the regional of study was based on the argument that a typical case study would adequately highlight the perspectives that would exist in similar regional integration arrangements. The EAC reflects the characteristics of regional integration blocs in the southern hemisphere. Specifically, the regional integration arrangements in the southern hemisphere are composed of small developing countries but contain at least one more developed partner state (see Chapter 1). This implies that the results of the research study could be related to experiences of regions in the southern hemisphere mainly made up of developing countries.

Third, undertaking the study within the EAC allowed the researcher to access privileged and sensitive information regarding the negotiation, transposition, enforcement and application of the customs union protocol. This information was previously not available in the public domain because information on the negotiations between governments is generally confidential. In addition, senior government officials and executives of large semi-autonomous agencies and firms do not easily divulge details of high level discussions. In this way the case study on the EAC was revealing (see Yin 2009:49).

Although the EAC presently comprises five countries, three countries namely Uganda, Kenya and Tanzania were selected to serve as the sub-units of the study. The choice of countries that constituted part of the study was based on a number of factors. First, the three countries were easier to access than Rwanda and Burundi since the researcher had already established contacts in the three countries. This made it cheaper to conduct the research within the available resources. For example, the researcher was able to rent cheaper accommodation facilities in Tanzania and Kenya from contacts already established while he did not have to pay for accommodation in Uganda since he had family in the country. Second, the three countries took part in the negotiations which allowed the researcher to investigate the impact of the preferences of the states on subsequent implementation performance.

The research design involved data collection at the EAC headquarters in Arusha- Tanzania. The choice of the EAC headquarters as a sub-unit of analysis was necessary in order to deepen the researcher's understanding of the EAC, the customs union protocol and the partner states' initial reaction to the protocol.

The Directive Selected

Scholars argue that small under-developed countries can enhance their capacity to grow by merging through economic and political integration (Olouch 2009; Venables 1999). The EAC was established in 1999 to accelerate economic growth through setting up uniform rules and regulations to provide a level playing ground for all partner states. The three countries envisaged that elimination of tariff and non-tariff barriers to free trade was important for uniform growth and development through free trade in goods and services in the region. The main vehicle for economic integration was the elimination of tariff and non-tariff barriers in the community to enhance economic efficiency and growth in the region.

This study is based on the case of customs and trade liberalisation directive to study uniform rule application in the region. This research aims at investigating the commitment to the EAC customs union protocol during the period 2004-2009. The details of the design and formulation of the customs union protocol are analysed in Chapter 5 and 6 of the thesis but are discussed in this section to enhance the flow of the thesis. Preliminary review of the customs union protocol indicates that the directive contains at least nine policy areas that could be studied in more detail (cf. Chapter 6). This implies that in practical terms, the research will analyse the transposition, enforcement and application of embedded provisions within the customs union protocol.

3.3.3 Data collection and methods

This section reviews the methods used to collect the data in the field. This sub-section starts with a description and justification of the process of gathering the research data then the techniques used to gather the data are described in detail.

3.3.3.1 Data collection process

The data gathering process in the East African region involved at least two activities; a preliminary review of relevant literature, and a field visit. The documentary review was undertaken to acquaint the investigator with the existing literature in the field of commitment to regional directives. These included but were not limited to scholarly material, reports, newspaper articles, statutes, policy documents and Acts of the domestic parliaments in the three partner states as well as information at the EAC Secretariat in Arusha.

The main sources of data during the desk research phase of the study were academic books and journal articles on the theory and practice in regional integration. The books and journal articles were accessed in the library at the University of Birmingham and in the three EAC partner states. The initial review of the literature provided the investigator with a theoretical and empirical rational to undertake the study on commitment to the customs union protocol as well as design the main question for the research study. The main methods of gathering data during the field work exercise were as follows;

- Semi structured interviews with officials at the EAC headquarters in Arusha and in the partner states of Uganda, Kenya and Tanzania
- Observations of the process of adherence to the customs union protocol across the three states of the EAC
- Analysis of documents, national statutes and laws, official reports, minutes of relevant meetings and newspaper articles on implementation of the EAC customs union

The researcher developed an interview guide for the semi-structured interviews in order to review and include topics on the negotiation process that suit the purpose of the research. The

research guide had different sections to address different aspects of the research (see appendix two). Although a comprehensive research guide was developed for the entire research project, variations to the comprehensive guide were undertaken from time to time in order to tailor the guide to suit interviews with various interviewees.

Prior to the interviews, the investigator assured each respondent in writing that the research information was to be restricted to the doctoral study. The researcher took necessary steps to protect the identities of the respondents by using pseudo-names. This was undertaken based on the sensitivity of the information that was sought in order to answer the research question and the seniority of the respondents in the respective governments and organisations. Further, respondents were requested for their consent prior to recording of the interviews and assured that the recording would be discontinued if deemed necessary.

The field work exercise was undertaken between October 2009 and April 2010. The purpose of the fieldwork was twofold; first, to validate the initial findings on causes of commitment problems derived from the review of relevant literature on regional integration. Second, to identify gaps in the data on the customs union already collected in order to make a decision whether more data was necessary.

The research commenced with a month-long stay at the EAC headquarters in Arusha-Tanzania. The purpose of the visit was to understand the working of the EAC as well as recruit respondents for the interviews. During the period of October and November 2009, the researcher gained access to a number of validation meetings for the proposed common market protocol that took place in Arusha. These meetings brought together government officials and other stakeholders involved in the integration process and accorded the researcher an opportunity to make initial contacts and recruit prospective respondents for the research.

After the initial research period that was based at the EAC secretariat in Arusha, the researcher commenced research as follows. Data collection in Tanzania was conducted in November and December 2009. The research in Kenya and Uganda was undertaken between December 2009 and January 2010, and February 2010 and April 2010 respectively.

3.3.3.2 Data collection techniques

The research on commitment to regional directives was undertaken based on qualitative data collection techniques. This was the technique best suited to collect data and answer the research questions that were formulated in section 3.2. The main aim of the data collection exercise was to collect views, preferences, opinions and perceptions of stakeholders on the specific question regarding the commitment of the three partner states to the customs union protocol. The respondents were selected on the basis of their capacity and potential to provide information on what transpired during the negotiations and implementation of the EAC customs union protocol. The purposeful selection of the respondents for the study was based on the fact that a lot of regional and national regulations involve provisions and aspects that are sensitive to national interests and security. This implied that only a few government officials and experts, with information on the process would be qualified to answer the research questions. This justification was also highlighted in a similar study on compliance to six labour directives in the European Union (see Falkner et al 2005:27).

In order to build a complete picture of the commitment process in the EAC, the research employed triangulation of sources of evidence namely; data from in-depth qualitative interviews, observations at the regional and national levels as well as review of documentary evidence from different sources in the East African region. The various data sources accessed during the research study in the EAC are summarised in Table 3.2 while the detailed fieldwork activities are outlined in more detail in the next Subsections.

Table 3.2: Summary of data collected

Category	Region	Activities Undertaken ⁴
Interviews	EAC	October and November 2009.
	Headquarters	4 (four) semi-structured interviews were undertaken at the EAC headquarters in Arusha.
	Tanzania	November and December 2009 In total 11 (Eleven) interviews were conducted
	Uganda	February 2010 - April 2010. Subsequent interviews were held in Late April 2010. Nineteen (19) face to face interviews were conducted. In addition, researcher conducted one (1) telephone interview In total 20 (Twenty) interviews were conducted
	Kenya	The initial interview was conducted in November 2009 Subsequent interviews were conducted between December 2009–January 2010 In total 12 (Twelve) interviews were conducted
	Total	In total 47 (Forty seven) semi-structured interviews were conducted
FGD	EAC	2 (Two) Focus Group Discussions were conducted
	Headquarters	
	Tanzania	1 (One) Focus Group Discussion was conducted
	Total	3 FGDs were conducted
Observation		1 (One) dedicated observation session was undertaken in Arusha during the Month of October 2009. 3 (three) Three observation sessions were undertaken in each of the partner states during the period November 2009-April 2010.
Document review		The review of documents was undertaken prior and during the research process. Information was derived from resource centres at the EAC head office as well as in respective research sites outlined above

Source: researcher's field notes

⁴ Detailed interview and FGDs report is presented in appendix 3

Semi- structured Interviews

There are two main types of interviews; close-ended or structured interviews and open ended or unstructured interviews. Based on these two types of qualitative interview methods, several data gathering techniques can be applied to obtain the information needed to answer the research question namely, audio systems to record interviews, field notes or both audio recording and field notes. Alternatively, interviews may take the form of face-to-face interactions telephone interviews and other forms of exchanges between the investigator and respondents. First, the techniques for data extraction selected by the researcher as the most suited to gather the information that is sufficient to answer the research question were determined by costs, convenience and timing of the data collection exercise (see De Vaus 2001; Creswell 2007; Bryman 2001).

Second, the choice of the method of data collection for the study on commitment to the customs union protocol was also guided by the epistemological approach discussed in Subsection 3.3.1. The main focus of the study was based on the central role played by interviews, observations and field notes by the researcher while in the field in the EAC in order to understand the opinions of respondents about the implementation of the EAC customs union. His approach was guided by the interpretive philosophy to understanding social interactions (see Mason 1996; Kugonza 2011; Yin 2009).

Review of literature on research methods reveals that structured interviews are mainly used in surveys and require the investigator to have a representative sample. Structured interviews assume that the researcher is neutral in the research process and does not need to interpret the information from the respondents in order to reach judgements. On the other hand, unstructured interviews do not use set questions but depend on informal discussions and exchanges between the respondent and the researcher to gather data (De Vaus 2001). Semi-structured interviews are techniques of data collection tools situated between the structured

and unstructured interviews. The semi-structured interview refers to a method of data collection where the investigator prepares a research guide consisting of a set of topics that guide the conversation between the experts and the investigator. The guide highlights the areas that need to be covered during the informal discussions and the main issues that relate to the research and reflect the overall aim of the research. In sum, semi-structured interviews permit the interview to progress in an informal but logical manner that allows for an orderly generation of information (see May 1997; Bryman 2001).

The research on commitment to the EAC customs union protocol employed the semi-structured interview format to undertake the data collection. The semi-structured format was characterised by broad open-ended questions on the main issues of negotiation, transposition, enforcement and application of the customs union protocol. Each research question was broken down into a number of subtopics related to commitment to the customs union protocol to guide the conversation between the researcher and selected experts. The semi-structured guide was useful in allowing the researcher to put forward open-ended questions that would lead to follow-up questions on detailed provisions of the customs union protocol. In this way, the researcher was able to get the full details of the key issues in the commitment to detailed provisions that constitute the EAC customs union protocol.

To collect sufficient data to answer the research question, interviews were conducted with respondents who were engaged in the implementation of the customs union at the regional and domestic level. To overcome the practical problems that such an undertaking may present, the researcher included only respondents closely connected with the three phases of adherence to the protocol as shown in the framework for analysis outlined in figure 3.1.

The first interviews were targeted at respondents considered knowledgeable about the issue of the customs union protocol. These contacts were a result of interactions while in Arusha in

October 2009. The first group of respondents formed the key respondents and helped to identify other prospective interviewees. Consequently additional respondents were selected based the snowball techniques. Based on this technique, respondents were requested to suggest names of persons and documents that were considered vital for the research. This reduced the number of gate-keepers to be overcome in the research.

The interviews started with self- introductions of the investigator and a brief presentation on the aim of the research. As part of the introduction, respondents were given assurance that all responses would be held in confidence and requested for their consent regarding the use of audio devices to record the interview. In short, the introduction reiterated the details of the letters and emails sent to the respondents prior to the field work.

Thereafter the interviews proceeded to general questions that allowed the respondents to relax and discuss the issue of integration with ease. At the same, it allowed the investigator to gain rapport with the respondent and proceed with the rest of the interview. All semi-structured interviews concluded with remarks to thank the respondent and a polite request for other contacts and sources that would be useful in answering the research question.

In sum, 44 interviews were conducted with audio recording devices while two respondents objected to a recorded interview so the discussion was recorded in an interview diary. In addition, the investigator held a telephone interview with an expert in May 2011. The telephone interview was held to clarify and corroborate some of the information provided by other respondents. On average interviews lasted approximately one hour. However, some interviewees would occasionally request for a break in the discussion in order to attend to official matters or take telephone calls. The categories of experts selected as respondents in the study are summarised in table 3.3.

Table 3.3: Semi-structured interviews by region and category

Region	EAC	Tanzania	Uganda	Kenya
Government /EAC officials	3	5	7	6
Government agencies		2	3	1
Private sector apex Bodies	1	2	2	2
Private sector firms		1	4	2
Donor Partners			2	
Press		1	1	1
Consultants and other stakeholders			1	
TOTAL (47)	4	11	20	12

Source: researcher's field notes

Table 3.3 summarises the semi structured interviews conducted in the EAC between October 2009 and April 2010. In total 47 semi-structured interviews were conducted with officials that the investigator felt were involved in the adherence to the CU in three partner states and the EAC head office. EAC officials included directorate of trade, legal officials and the EAC court of justice. The government officials were mainly from the justice department, the ministries of finance, EAC affairs, Trade. Other respondents were based in semi-autonomous bodies charged with application of the protocol. These included the revenue bodies, bureaux of standards, apex bodies and private sector firms. Interviews were also held with officials from the press, consultants and development partners.

The decision to interview officials from the apex bodies of private sector organisations was made because these officials were very knowledgeable on the execution of the customs union protocol in the region. In addition, apex private sector organisations were a source of documentary information and reports on trade performance in the region that were useful in answering the research questions.

Semi-structured interviews, like any other data collection technique has advantages and disadvantages. First, Swahili is the commonly used medium of communication in Tanzania. Prior to undertaking the research in Tanzania, the researcher was concerned about his ability to conduct interviews in Swahili and the distortions in the opinion that would arise as a result in the course of translation of the interviews. This concern proved unfounded since the researcher was able to persuade all respondents to undertake the interview in English.

Second, the busy schedule of most of the high level officials who were most suited to provide the necessary information to adequately answer the research question affected the overall duration of the research process. Most of the interviewees were senior government officials or at the level of directors in the private sector. Given their tight schedule, it was sometimes difficult to fulfil appointments. This implied that the investigator spent eight months in the field, four more than initially planned.

Third, the investigator included topics on the negotiations for the design of the customs union because a number of respondents who were part of the negotiation process were able to express their opinions on the process of negotiation for the customs union protocol. In addition, information on the negotiation proved useful to understanding the preferences of the partner states prior to the negotiation and manner in which discussions were conducted and decisions made.

Fourth, the research took place at a time when partner states were in negotiations for the East African Community common market protocol that was signed into law on 20th November 2009. Respondents were more attuned to the issue of common market than the customs union. This created misunderstanding during the interviews. For example, respondents would occasionally make comments on the common market during the interviews. To overcome the

confusion, the researcher made it a point to emphasise that the discussion was mainly related to the customs union.

Focus Group Discussions

Focus group discussions (FGDs) occur when a group of respondents are selected to participate and express their opinions, views and perceptions on a particular topic (Bryman 2008:474). The FGD can be a useful tool for triangulation of data sources as it can serve to check on the information gathered from other sources of data. The first focus group discussion involved three members of an international organisation supporting the integration process in the region. The second focus group discussion was conducted with two senior economists at the EAC Business Council. The third FGD was conducted with six senior officials at the Central Bank of Tanzania. FGDs became valuable to the research because the interaction and views from the different respondents allowed for a lively debate on what factors determine commitment to the customs union protocol among the three partner states. This resulted in realistic accounts of what experts think about the implementation of the customs union protocol. Figure 3.4 summarises the FGDs undertaken during the period of research.

Table 3.4: Summary of focus group discussions conducted

Region	Respondent	Number of participants	Responsibility	Length of interview
EAC	Development Partners at the EAC	3	The respondents were part of a project supporting the EAC integration process	90 minutes
	Apex private sector organisation	2	The respondents were senior officials at the EABC	100 minutes
Tanzania	Autonomous government agency	6	Respondents were senior officials at the Central Bank of Tanzania	100 minutes

Source: researcher's field notes

Document analysis

The review of documents included analysing secondary data on the region of study. Documents formed an important source of data for the research on commitment to the customs union protocol in the EAC and were reviewed in order to understand the concepts employed in the study and the context in which they were used. This was very useful in triangulation of sources of data.

Most of the documents were collected during the field work that took place from October 2009 to April 2010. The researcher was given access to sensitive documents and reports of high level meetings on condition that the documents were not to be referenced directly. To ensure confidentiality, the documents were included in the research but labelled as 'EAC documents'. Other sources of secondary data included the resource centre at the EAC headquarters in Arusha, government libraries, budget documents and country reports as well as journals on the internet. The documents reviewed included internal reports on implementation of the protocol, consultancy reports and journal articles on EAC regional integration, legal documents on the EAC, newspaper clippings and minutes of the EAC Council of Ministers.

The process of collection of relevant documents and other reports continued after the field work exercise in the East African region. A summary of the documents collected and analysed is set out in table 3.5.

Table 3.5: Summary of documents reviewed

No.	Title of Document	Contents
1	EAC Treaties and protocols	These are the laws of the EAC setting out what needs to be done to adhere to the treaty protocols
2	Minutes of council meeting.	These documents were instrumental in outlining enforcement and application of the protocol
3	Consultancy reports	These were reports of the progress of the EAC and pointed out some of the issues related to implementation of the customs union
4	Journal articles	These articles were mainly on the implementation of the EAC. Although most of the articles were impact studies, they provided useful insights into the customs union
5	Reports from the EAC Court of Justice	These reports were analysed to ascertain sanctions related to violation of treaty protocols
6	Donor reports	Most of these reports were prepared by donor partners on the integration process as a whole
7	Newspaper articles	There were several reports and opinions in the newsprint. These were both opinions from experts in integration matters as well as reports of events related to implementation
8	Country reports	These included budget speeches as well as country reports on implementation of the protocol.
9	Statistical reports	These reports were statistics on trade and customs performance in EAC

Source: researcher's field notes

Direct Observation by the researcher

Observation in case study research is possible because the case study is taking place in the natural settings of the case (Yin, 2009:109). Observation of the implementation of the customs union protocol was employed as a supplementary data collection tool. The aim of direct observation was to triangulate data collected using the other methods. Unlike other data collection techniques, direct observation was undertaken informally and was not informed by any laid down observation protocol (Creswell 2007; De Vaus 2001). The observation was mainly descriptive and primarily focused on activities related to adherence to the customs union protocol in the three partner states as well as at the EAC headquarters in Arusha.

In order to undertake observation of the adherence to the customs union protocol, the researcher used public transport to travel across the three partner states in order to view activities at the customs border stations as well as along the major highways. This allowed the researcher to observe how enforcement and application of the protocol was being put into practice.

Second, the researcher was permitted to attend high level council meetings as an observer. The meetings were useful to the understanding of commitment in the EAC. For example, attending meetings allowed the investigator to understand the workings and coordination among the officials in the three partner states. In addition, the researcher was able to understand how policies are designed and reviewed. Further, attendance to the high level meetings enabled the researcher to recruit respondents for the research project. During the process of observation, the researcher was cautious about the biases that participant observation can create (Yin, 2009:112). For example the researcher made notes on discussions about the detailed provisions in the customs union and took photos of key

activities in order to avoid focusing too much attention on observation at the expense of the issues being discussed.

3.4 Data analysis

Data analysis involves inspecting data for emerging themes, coding the data, developing categories and interpretation of data. This process of data analysis was informed by the research questions developed on commitment to regional directives outlined in section 3.2. Data analysis involves a number of stages namely; data management; generation; interpretation and presentation (Creswell, 2009: 183; Yin, 2009:131). The stages in data analysis are discussed in in the next Subsection.

3.4.1 Data Management

Data management refers to the process of making sense of the raw data collected in the field. Data management facilitates examination of the data for completeness and coherence as well as to commence the interpretation of the research findings and observations. The detailed review of data commenced while the researcher was in the field during the period October 2009 to April 2010. The review of the data continued after the researcher completed the field exercise and returned to United Kingdom after the fieldwork. Data management involved the transcription of the raw data collected in the field and subsequent review of transcripts.

The transcription of the data that had been collected was undertaken verbatim by the investigator. During the transcription exercise, the researcher took into consideration the exclamations and pause in the discussions with the respondents on topical issues. The transcription of the data generated over 300 pages of single spaced A4 paper. The original voice data and field notes were securely stored for further reference during the analysis of the research.

After the transcription, the researcher undertook a detailed review of the data on the commitment to the customs union protocol by reading the transcribed material thoroughly and carefully. The main aim of the detailed review of the results was to identify recurring issues and themes. During this process, the researcher was able to identify key words and statements on the implementation of the protocol that would serve as quotations to reinforce themes and arguments during the presentation of the data.

3.4.2 Generating categories and themes

In order to generate themes and categories, the data was thoroughly coded. The process of coding involved reading through the data on a line by line and word-by-word basis. Reading through the data in this way enabled the researcher to label the data according to the three research questions developed in Chapter 3.2. Labelling the data allowed the investigator to understand the data that was gathered on the commitment to the EAC customs union protocol.

The coding and labelling of the data was undertaken using an open coding system. The data was disaggregated and analysed for similarities and differences. This disaggregation enabled the initial research findings to be explored in greater detail to generate further themes and categories. The process of labelling and sorting of the raw data into themes and categories produced an indexed document.

The indexed document was characterised by general themes that had a page link corresponding to the raw data from which the themes were developed and derived. The resultant indexation resulted in a document with about 60 pages of single spaced A4 paper and linked to the initial transcribed 300 pages to enable retrieval and referencing of the data during the presentation of results.

3.4.3 Interpretation of the data

The interpretation phase is an integral and important phase of data analysis about the design and implementation of the customs union protocol. The data that was indexed (see 3.4.2) was grouped according to the codes developed by the investigator. This led to the development of themes (Creswell 2009:183). Four categories of themes were developed from the indexed data on commitment to the customs union protocol and used to draft the research discussion and analysis. The major categories that were selected were negotiation, transposition, enforcement and application. These were developed after a thorough examination of the transcribed data. To fully understand the data, the researcher compared the categories and themes developed out of the data on commitment to the EAC customs union protocol and the original data collected in the field to ensure that the categories and themes developed in the interpretive phase were suited to answer the three research questions that developed in Chapter 3.2.

3.4.4 Presenting data

The data presentation phase relates to a process by which the data is displayed in a manner that allows the researcher to draw conclusions from the data (De Vaus 2008:244). During the research, the investigator employed a tabular format to enable the data to be displayed in a simple and clear manner. The table that was developed simplified the data by reducing the final output into four categories that would be represented separately but were linked by the overall research theme and initial findings that were gleaned from the interpretive stage.

3.5 Assessment of the research

The concept of validity and reliability of qualitative research has dominated scholarly debate for some time. In general terms, validity is a general term used to refer to the correctness of the research findings. It relates to how well the phenomena being analysed matches with the

constructs that the investigator employed for the study (Robson, 2002; Creswell, 2007; Bryman, 2001).

Reliability of qualitative research

This relates to whether the results can be repeated if another study is undertaken with the same methods of research. Unlike quantitative research that employs instruments that can produce consistent results, the concept of reliability in qualitative research can be achieved through a detailed description of the methods employed by the investigator during the preparation, data collection, transcription analysis and presentation of the research findings. This research on the factors that account for the commitment to the EAC customs union protocol attempted as much as possible to present the process in a transparent and honest manner. This involved outlining the preparation for the field work exercise, the data collection process, the transcribing and coding and the analysis and presentation of the research to enable any reader to imaginatively replicate the study (Ritchie and Lewis, 2003:270). In particular, the investigator undertook the following steps to enhance the reliability of the research study; first the research adopted the principle of triangulation of data sources. Triangulation was undertaken through the use of multiple data sources (in-depth semi structured qualitative interviews, focus groups discussions, document review and observations) in order to increase the understanding. Second, the researcher adopted an iterative approach. This enabled the researcher to utilise the initial analysis of the data as a basis to make any decision of further data collection and analysis.

Validity in qualitative research

Validity in research is related to generalisation of the qualitative data. This aspect seeks to confirm whether the findings of the study can be relevant beyond the case study and the context of the research (De Vaus, 2008; Yin, 2009:42). Generalisation of research findings can be analysed at two broad levels; empirical and theoretical. Empirical generalisation

relates to applying the findings of a study to the wider population from which the original sample was picked referred to as representational generalisation and to other contexts beyond the sample - inferential generalisation. Theoretical generalisation deals with the capacity of theories derived from findings of a study for more general applications. Theoretical generalisation draws views of casual relations of universal application. Theoretical perspectives derived from the data collected are usually based on inferences from theoretical concepts (Miller and Brewer, 2003).

Critics of case study design in particular and qualitative research in general argue that case study method offers limited basis for scientific generalisation. Criticism is particularly directed to the lack of statistical samples that would be the basis for generalisation of the research findings. However proponents of qualitative studies argue that such criticism is based on positivist views that treat generalisation to imply application of data to the wider population- a form of representational generalisation (Yin, 2009; Creswell, 2003). Whereas qualitative research is not designed to be statistically representative, the capacity of the research to generalise the findings to theory is possible through theoretical or interactive sampling (Yin, 2009; De Vaus, 2008). Research should be geared towards enabling the comparison of findings from one context to another that lies beyond the research focus through the use of 'thick description'. Detailed description of the research findings enables scholars reviewing a particular research to assess whether the results depict any shared characteristics that can enable the results to be generalised beyond the particular research (Miller and Brewer, 2003:23). In this research the countries selected are representative of other developing countries particularly in East and Southern Africa because the countries in the region have similar political and economic characteristics. In addition, most of the regional arrangements established among developing countries are characterised by similar practices adopted from the EU.

3.6 Ethical review and consideration

Social research requires that regardless of the design, research should conform to at least four broad ethical principles namely; voluntary participation, informed consent, avoidance of harm to respondents and investigators, and, anonymity and confidentiality (De Vaus 2008:84; Homan 1991). Social research requires investigators to ensure that the benefits of the research would outweigh any potential risks and the research is monitored by an institutional review board (De Vaus 2008 Creswell 2009:87). The research on commitment to the EAC customs union protocol research was sensitive to the principles of good research ethical practice in regard to the norms, expectations and attitudes of the respondents and researcher regarding the data collection exercise on commitment to the EAC customs union protocol.

The researcher took steps to ensure that the research meets ethical standards. First, the investigator applied for and was granted ethical clearance by the University of Birmingham prior to commencement of the research program (see appendix 4). Second, pseudo names were used in reference to statements and views from respondents to ensure that responses are not directly attributed to any individual. Third, the researcher paid special attention to sensitive issues like religion, language and party affiliation. For example, care was taken not to make appointments with Muslim respondents at a time when they would be attending the mosque. Fourth, interviews conducted in Tanzania commenced with a Swahili salutation to enhance openness on the part of the respondent. Fifth, a letter was drafted and sent to all participants. This letter outlined the purpose of the research, basis of selection of respondents, rights to withdraw from the research and requested for their consent to participate in the research.

3.7 Conclusion to the Chapter

The Chapter set out to discuss the analytical framework and the methodology approach adopted for the study on commitment to the customs union protocol. The analytical framework was designed from the review of the literature on commitment to regional directives in developed as well as developing countries. It was used to analyse and interpret the case study selected using a multi-theoretical approach based on international relations and international political economic theories. This enabled the study to set out the information required to answer the overall research question; **How were the partner states inadequately committed to the implementation of the EAC customs union?**

Chapter three analysed and discussed the methodology for collecting data in order to answer the research questions. The case study research was selected based on the capacity of the design to analyse phenomena that is not subject to control and not isolated from the context in which it exists. Semi-structured interviews, documentary review, observation and focus group discussions were selected as techniques to enable gathering of the data required to answer the research question and sub-questions.

The next Chapter outlines the context in which the EAC Customs Union Protocol was designed. It outlines the history of the EAC, discussing how the current regional body has mutated from earlier attempts at integration. Chapter four discusses the context in which the customs union protocol was transposed, enforced and applied. The Chapter will contribute to understanding of the factors that affect the execution of a community directive after it has been signed into law.

CHAPTER 4

4 THE POLITICAL ECONOMY OF THE EAST AFRICAN COMMUNITY

4.1 Introduction

Chapter three revealed that the EAC customs union protocol is not applied in isolation of the context of the partner states. Chapter four builds on the themes that were developed as a result of the field work exercise on the implementation of the customs union protocol and presents the background of the EAC, the economic and political analysis of the three partner states. Based on the research questions outlined in Chapter one and the framework for analysis described in Chapter three, this Chapter discusses the East African Community from a political economic perspective.

The Chapter proceeds as follows; Section 4.2 outlines the historical development of the EAC. Section 4.3 outlines the institutional framework of the EAC. Section 4.4 outlines the structure of the economies of three of the EAC states; namely Uganda, Kenya and Tanzania. Section 4.5 reviews the political structure of the three countries while section 4.6 brings the Chapter together and draws conclusions

4.2 Evolution of the East African community

This section outlines the genesis of the East African Community. The first part lays out the early regional integration in the EAC and discusses the factors that contributed to the collapse of the regional cooperation among the three countries. The second part discusses the revival of the EAC.

4.2.1 Early Integration in East Africa

Over the last one hundred years, the East African region has experienced various attempts at regional integration. The initial attempt at cooperation occurred between 1897 and 1901 during the construction of the Uganda- Kenya railway (Khorana et al 2007). The second attempt at cooperation occurred between 1900 and 1914 and resulted into formation of a taxation collection centre, a currency board, court of appeal and a governor's conference. Further integration attempts occurred during the period 1940- 1966 and included collaboration through an income tax board, an economic council, an East African high commission and common services (Mugisa et al 2009:1).

4.2.2 The 'Old' East Africa Community

The old East African Community (EAC) was formed in 1967. It was effectively an arrangement which continued the institutions of the British colonial administration of East Africa. The EAC established programmes and institutions for the benefit of the three partner states. These institutions included a legislative assembly, court, EA airways, ports and harbours, posts and telecommunications, a common currency and the inter-university council for East Africa. But as independence removed the overarching colonial authority, regional cooperation faced the rising individual political interests in the three partner states. In economic terms, Kenya had been the biggest beneficiary of the community, which resulted in the concentration of regional manufacturing. However, the EAC failed to establish a mechanism to compensate Uganda and Tanzania for the impact of trade diversion as a result of integration. Politically, the failure of the community to achieve balanced growth and development had created political tensions among the citizens of the three partner states. The Community was dissolved in 1977 (see Stahl 2005; Khorana et al 2007).

4.2.3 The 'New' East African Community

After the collapse of the EAC, the three partner states retained four regional agencies, namely; The Soroti flying school, the East African School of librarianship, and the East African Development Bank and the East African inter-university council. This ensured a degree of cooperation among the partner and served as a basis for future collaboration on economic growth (Oluoch 2009). In 1991, the three heads of state announced their intention to enter into formal cooperation by setting up a permanent tripartite commission on the East African cooperation.

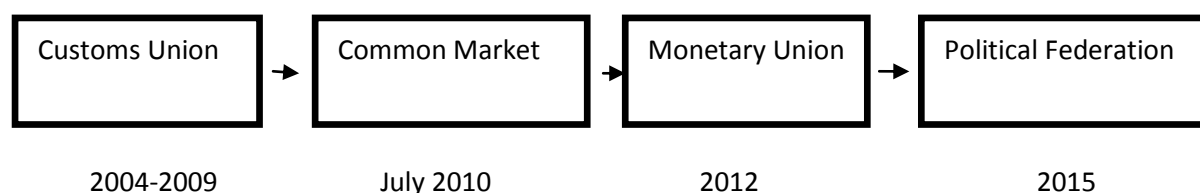
The negotiations for the 'new' EAC were undertaken among the three governments without any representation from civil society and private sector organisations (Nassali, 2006; Olouch 2009:198). In addition, the draft treaty was not circulated to the citizens of the three partner states before it was signed into law. The treaty forming a regional community under article 2(1) was signed between the three heads of state of Uganda, Kenya and Tanzania in 1999 and came into force in July 2000. The integration of EAC was further enlarged with the admission of Rwanda and Burundi in July 2007.

The treaty identified the stages of integration over the period 2004-2015 namely; a Customs Union to be established in 2004 and operational in 2005, the Common Market by 2009, the Monetary Union by 2012 and a Political Federation by 2015 as shown in figure 4.1

Figure 4.1 above shows that the EAC did not follow the conventional stages of regional integration (see Chapter 1.1). Regional integration in the EAC commenced with the customs union which is the third stage of integration. The first two stages namely the preferential trade area and the free trade area were omitted yet they are important to prepare for the more demanding requirements of the subsequent integration phases. Analysis of existing documents reveals that the EAC was developed as a model designed to fast track the integration process and serve as a basis for wider integration in Sub-Saharan Africa. In

addition, the partner states were already members the COMESA FTA. This may explain the decision to skip the first two stages of integration (Mugenyi and Zeija, 2006; Maruping, 2005; Stahl, 2005; Khorana et al., 2007).

Figure 4.1: Proposed integration process and timeframe



Source: adapted from Mugisa et al 2009

The present East African community comprises of five countries; Uganda, Kenya, Tanzania, Rwanda and Burundi (see map in appendix 1). However, to maintain the focus of the study, this Chapter will focus on the background of the three countries of Uganda, Kenya and Tanzania (see Chapter 3.3.2)

4.3 The institutional framework for the EAC

In order to implement the EAC treaty, Chapter 3 (9) provided for the establishment of organs and institutions. The organs were responsible for the implementation and coordination of the treaty while the institutions were established to implement policies laid out in the different protocols of the treaty.

4.3.1 The organs of the community

The main organs of the community are the heads of government summit, council of ministers, committee of permanent secretaries, Court of Justice, legislative assembly and secretariat (Olouch 2009). These organs will be discussed in further detail below.

The Summit

The summit consists of the heads of state or government of the member states and is the supreme policy making organ in the EAC. The chair of the summit is rotated between the partner states on an annual basis. The summit is responsible for providing guidance on governance, economy, peace and security in the community. The summit appoints the judges to the East African court of justice, admits new member states, grant observer status to third parties and assents to Bills and other legislative instruments. The summit of heads of government is not accountable to any organisation for its actions and activities and summit meetings are not open to the public (Olouch 2009).

The summit meets at least once a year. However, an extra-ordinary meeting(s) can be called at any time at the request of the chair. The decisions of the summit on any matter pertaining to the governance of the community are made by consensus. Critics argue that the principle of consensus limits the capacity of the summit as a decision making organ since any member state can block a decision agreed upon by other members (Mugisa et al 2009; Nassali 2006).

The Council of Ministers

The council of government ministers of the partner states is provided for under article 13 of the treaty. The Council of ministers is composed of all the ministers of the key sectors under the customs union and headed by the minister for East African affairs of the partner state holding the revolving chair of the summit. The role of the Council of ministers is to review the implementation of community programmes and ensure the proper development of the community (Olouch 2009:201).

The functions of the Council of ministers are to provide policy direction and guidance to the institutions of the community as well as initiate and submit Bills to the summit of heads of government. In addition, the Council of ministers discusses and passes the budget plans of the

community and deals with administrative and financial matters of the Secretariat. In order to expedite the implementation of summit directives, the Council established 14 sectoral councils namely; agriculture and food security, approximation of municipal laws, bureaux of standards, education and culture, energy, environment, foreign policy, health, immigration, labour and employment (EAC Treaty 14).

The Council makes decisions through meetings held at least twice a year, one of which should be held immediately before the heads of government summit. However, the chairperson of the Council of ministers may request an extra-ordinary meeting. In a practice similar to the principle at the heads of government summit, the decisions of the Council of ministers are based on consensus. However, if consensus is not reached on a matter before the council, the issue is referred to the summit of heads of government (Olouch 2009:202).

The coordination committee of Permanent Secretaries

The coordination committee constitutes permanent secretaries of ministries coordinating EAC activities related to regional integration in the member states. These include the East African affairs, Trade, Finance and such other ministries as the summit may determine. The chairmanship of the coordination committee is held by the Permanent Secretary of the Ministry for East African Affairs of the country that holds the revolving chair of the summit. The committee for coordination of the implementation of the EAC reviews sectoral committee reports and implements the decisions of the Council of ministers.

Sectoral committee of senior officials

Sectoral committee are subordinate organs of the community that help in implementation of Council decisions and directives. The sectoral committees are accountable to the Coordination committees and are composed of senior officials of governments of the respective partner states. Sectoral committees are responsible for the preparation of

implementation programmes that are desired to meet the objectives of the EAC. Article 20 of the treaty provided for the establishment of 19 sectoral committees under the coordination committee, namely; agriculture and food security, capital markets development, EAC statistics, approximation of municipal laws; bureaux of standards, education and culture and sports, energy, environment, foreign policy, health, immigration, labour and employment and refugees, finance and administration, fiscal affairs, gender and community development, inter-parliamentary committee of East Africa, interstate defence, interstate security, lake Victoria development programme, legal and judiciary affairs, trade, industry and investment, tourism and wildlife conservation, and transport, communication and meteorology (Olouch 2009; EAC Secretariat 2006).

The East African Court of Justice

The East African Court of Justice (EAC-CJ) is the legal arm of the community. The Court of Justice was established to ensure that partner states adhere to the collectively agreed treaty provisions. The Court is meant to receive and handle disputes among partner states and provides legal advice to the organs of the community on the implementation of the treaty (EAC 2006).

The Court of Justice is composed of the first instance and the appellant divisions with five judges nominated in each division of the court. The judges of the Court of the East African Community are appointed by the summit from among nominations submitted and seconded by the partner states. The nominees constitute respected legal persons who are serving government officials and hold office for a term of seven years. Critics of the appointment system argue that nominees are not vetted by any independent oversight institution in the region. Lack of vetting implies that it not possible to eliminate the possibility for nominations to result from political patronage. This practice brands the court a government institution (Olouch 2009:206).

The East African Legislative assembly

The East African legislative assembly (EALA) is responsible for debating and passing community legislation in the region before they are assented by the summit of heads of government. The assembly is composed of 32 legislators of which 27 legislators are appointed by the each of the three national assemblies of the member states, five ex-officials; three of whom are regional cooperation ministers from each partner state, the Secretary General and the counsel to the secretariat making up the remaining members of the legislative assembly. Legislators serve a five-year term and are eligible for re-election for a further term (EAC, 2006).

Critics of the structure and composition of the legislative assembly argue that the partner states' representation of nine officials is inadequate given the population and composition of the partner states. Secondly, evidence shows that representatives are not elected by the national assemblies as provided in the treaty. National government allot the nine national representatives along respective political party lines. This raises doubts about the impartiality of the EAC legislators. Third, lack in clarity of the treaty as to which organ of the community is responsible for initiating community legislation causes confusion and conflict between the Council of ministers and the legislative assembly (Olouch, 2009; 209).

The EAC Secretariat

The EAC secretariat is the executive organ of the community provided for under article 66 of the treaty establishing the regional bloc. The Secretariat is composed of a secretary general, deputy secretary generals and the counsel to the secretariat.

The secretariat was established as the coordinating organ of the community, charged with initiating studies and dissemination of information on issues that affect the achievement of the community objectives. The secretariat has the responsibility of coordinating the

enactment of Bills and legislation, custodian for community assets and property as well as for the general administration of the community activities (EAC 2000). The secretariat was supposed to establish three institutions to implement the customs union protocol namely; directorates of customs and trade and the trade remedies committee. However, the committee on trade remedies is yet to be established despite the explicit provisions for the establishment of the committee in the treaty (EAC 2005).

The Directorate of customs

The directorate of customs was established in 2004 to implement regional customs policies across the three partner states. The directorate of customs comprises three units; tariff and valuation, compliance and enforcement, and customs procedures and facilitation. These units are charged with policy formulation and execution in areas of common external tariff, the customs management Act and the rules of origin. In addition, the directorate coordinates meetings of the committees and Council of finance ministers (Mugisa et al., 2009:43). The directorate collaborates with external agencies and donor partners to enhance the capacity of the region to achieve the objectives of the customs union. For example, the directorate partnered with the USAID on the establishment of the one-stop clearance procedures at the ports of Malaba and Katuna. In addition, there is collaboration with German Development Cooperation (GTZ) on harmonisation of domestic tax systems (EAC Secretariat, 2006; Stahl, 2005).

The capacity of the directorate to ensure that partner states do not violate treaty protocols is limited by the design of the customs union systems. Article 27 of the treaty grants legal powers to the directorate to ensure that treaty protocols are not violated. However, the directorate has not exercised its right to refer the matter to the court, relying instead on the goodwill of partner states to comply with the directives. In practice, the powers of the

directorate are limited since the enforcement and application of the customs union is a matter for domestic revenue authorities (Booth et al., 2006).

The limited number of staff at the EAC secretariat hinders effective execution of the responsibilities of the directorate. The directorate has six staff members including the director-general and director leading to a heavy workload. (Mugisa et al 2009). The heavy workload and lack of resources affects the capacity of the directorate to monitor enforcement of the protocol at the domestic level and coordinate the implementation with the sectoral councils at the regional level (USAID 2006; Stahl 2005; Okumu and Nyankori 2010).

The Directorate of trade

The directorate of trade is responsible for promoting trade among the partner states, other trading blocs and multilateral agencies. The directorate is charged with implementing the provisions in the treaty related to trade liberalisation and development. These include;

- Preparing tripartite meetings to harmonise regional trade with other regional and international trading partners like SADC, COMESA, EPAs and AGOA
- Implementation of the provisions of the WTO that affect trade liberalisation and development.
- Coordinating and monitoring donor related initiatives aimed at increasing trade within the region. These include the UNIDO – and WTO funded programs for trade development.
- Enhancing information flow and awareness of trade related issues within the region.

The directorate comprises of three divisions; international trade, internal trade and SQMT with a total of six staff members. The limited number of staff and the partner states' reluctance to implement many of the provisions in the customs union protocol has limited the capacity of the directorate to effectively coordinate trade development in the region (World Bank 2007; Mugisa et al 2009:49)

A number of factors have prevented the EAC secretariat from asserting itself as a powerful supranational organisation with distinct authority. First, the mandate of the secretariat increased over the period 2001-2005. However, this was not been followed by a corresponding increase in the resources available to the secretariat. The lack of increase in capacity of the secretariat has led to work overload which threatens efficiency of the organisation.

The secretariat is funded by contributions from partner states as well as grants from development partners. The contributions cover only about sixty per cent of the budget of the secretariat while the remainder is funded from grants. Contributions from partner states are not submitted on a timely basis. At the same time, grants from development partners are provided for a particular activity. For example, the government of Germany provided a grant for the construction of a modern office block yet existing facilities are underutilized. The combined effects of the delays and the conditional nature of grants affect the capacity of EAC to implement community programs (EAC 2006).

Second, the EAC Secretariat does not have sufficient legal authority to enforce recommendation of the community. The structure of the treaty delegates the implementation of the council decisions to respective governments of the partner states. Although the secretariat has a mandate to monitor and enforce council decisions, it does not have the same capacity to undertake these functions similar to what is at the disposal of supranational organisations including the EU (Booth et al 2006; Olouch 2009:212).

Based on the description of the institutional set up of the EAC and the relationship between the EAC secretariat and the political institutions in the partner states, the secretariat does not meet the criteria of a supranational organisation since it does not have a distinct authority. At the same time, the EAC goes beyond the characterisation of an intergovernmental

arrangement presented in Chapter 2.3.4. This is because it has a separate regional body distinct from the national administrations. This means that the organisation is situated along the supranational-intergovernmental continuum described by Stone and Sandholtz (1997:303).

4.4 Economic structure of the EAC

The EAC countries of Uganda, Kenya and Tanzania have a population of approximately 94 million citizens divided rather evenly across the three partner states. Tanzania has the highest population of about 38.1million followed by Kenya with about 33 million while Uganda's population is 27.5million (Khorana, Kimbugwe and Perkidis 2007; World Bank 2007). In addition, Uganda is land-locked while Kenya and Tanzania have access to the sea. These statistics may have implications for the economic structure of the three partner states.

4.4.1 Macro-economic Structure of selected EAC countries

The total GDP for the three countries is approximately US\$ 38.8 billion. Kenya is the biggest contributor with US\$ 18 billion, Tanzania 12.1 and Uganda 8.7 billion USD (World Bank 2006) as summarised in table 4.1.

Table 4.1: Summary of various EAC Indicators (2006)

Country	GDP	Trade surplus/ deficit	GDP per capita	Growth rate	Imports as % of GDP	Exports as % of GDP
	bn US\$		In US\$		In %	
Kenya	18	-6.2	530	5.1	30.9	27.4
Uganda	8.7	-1.24	340	7.0	26.3	17.1
Tanzania	12.1	-9.2	280	5.6	27.7	14.6

Source: Adapted from World Bank reports, 2006; Khorana et al 2007

Table 4.1 shows a summary of selected economic indicators for three EAC countries. Table 4.1 shows that Kenya is the biggest economy in terms of gross domestic product and GDP per capita in 2005. Although Kenya's share of imports as a percentage of GDP at 27.4 per

cent is higher than the other partner states, exports also constitute a higher percentage of GDP compared to Uganda and Tanzania (Khorana et al 2007:4; McIntyre 2005).

The economic indicators summarised in table 4.2 shows that the GDP and GDP per capita growth narrowed among the three economies over the past decade. This is due to strong economic growth in Uganda and Tanzania compared to Kenya. The real GDP of Kenya grew on average at a rate of 5.7 per cent per annum while Uganda and Tanzania grew at 5.3 and 5.9 per cent per annum respectively. At the same time, the growth of population in the three countries was almost similar at an average of 3.0 percent per annum. (Khorana, Kimbugwe and Perkidis, 2007)

Table 4.2: Selected Economic Indicators (2006)

Economic Indicator	Uganda	Kenya	Tanzania
Population, (Millions)	29.9	35.1	39.5
Population growth (Annual percentage)	3.6	2.6	2.6
GDP (US\$ Billions)	9.3	21.2	13.4
GDP Growth (Annual percentage)	5.3	5.7	5.9
GNI per capita (Current US\$)	300.0	580.0	350.0
Inflation GDP deflator (annual percentage)	6.7	-0.4	6.3
Exports of goods and services, % of GDP	13.8	24.3	24.3
Imports of goods and services, % of GDP	30.7	33.3	30.8

Source: World Bank 2006

Customs duties are a vital source of revenue for the three partner states. Although the contribution of customs revenue to overall revenue was falling over the period 1999-2004, it constituted a big percentage of total revenue. Table 4.3 shows the sources of revenue in the three partner states. The table shows that customs taxes contribute about 11.0, 8.5 and 9.3 per cent of total revenue for Kenya, Tanzania and Uganda respectively for the period 2001-2001. However, considering the VAT on imports constitutes a large share of tax revenue as

well as excise duties, taken together customs tariffs constitute about 53.0, 60.0 and 70 per cent of tax revenue in Kenya, Tanzania and Uganda. Statistics show that the ratio of import tax revenue to total revenue in the EAC is similar to other developing countries (World Bank, 2006).

Table 4.3 Government revenue for selected EAC states: 2001-02 (% of total)

Country	Kenya	Tanzania	Uganda
Tax Revenue	82.0	90.0	92.2
Customs revenue	11.0	8.5	9.3
Excise	16.3	17.0	28.8
Income taxes	28.4	21.9	22.6
VAT	25.9	33.8	31.3
Others	0.4	8.8	0.0
Non-tax	18.0	10.0	7.8

Source: IMF country reports 2003

4.4.2 Trade Regimes in the EAC countries of Uganda, Kenya and Tanzania

The trade regimes of the economies of the three partner states are fairly open. The three partner states are characterized by high import and export to GDP ratios (see Table 4.1). As at 2005, Kenya was the largest exporter of products to both Uganda and Tanzania while the trade between the other two countries is relatively low by international standards. Kenya's exports account for about 25.35% of Uganda's imports while imports from Tanzania to Uganda were a meagre 1.44%. The remaining 74.65% was accounted for by imports from the rest of the world (World Bank 2006; IMF 2007; Olouch 2009).

The details of imports and exports for the three partner states in the EAC for the period 2001 are depicted in Table 4.4. The statistics show that EAC countries export agricultural products to OECD countries and the Middle East. The EU receives about 37.1 per cent and 64.5 of

Uganda and Tanzanian goods respectively. Kenya exports about 31.9% of her products to EU while exports to other African countries and EAC account for 35.9 and 22.6 per cent respectively. Overall, EAC imports from the rest of Africa accounted for about 21 per cent while the EU accounted for about 26 per cent. Uganda and Tanzania received a larger share of imports from the Middle East than Kenya (EAC Secretariat 2006; IMF 2006; McIntyre 2005).

The share of intra-regional trade also grew at the same time. The trade increased from 6 per cent in 1991 to 16 per cent in 2001 while imports rose from 2.7 to 10.5 per cent during the same period. Despite this growth, there are still disparities between the countries in terms of trade. Kenya- the biggest economy exported about 23 per cent while it only imported about 1.4 per cent during the same period. Tanzania exported about 9.9 per cent and received about 7.2 per cent. On the other hand, Uganda imported about 48 per cent while it exported about 2 per cent (McIntyre 2005).

From a trade perspective, trade between the three East African partner states is not significant compared to trade with other integration blocs as well as other countries. The three partner states are neither complementary nor competitive; figure 4.4 shows that of the three partner states, only Kenya has significant trade exports to the rest of the partners (Stahl, 2005:3). In addition, while a population of 90 million mainly low income and peasant people cannot be considered a large market, the bloc is vulnerable to the political upheavals of any particular partner state (Booth et al 2006; McIntyre 2005:13).

Table 4.4: EAC: Exports and Imports for 2001 (US\$ Millions)

	Kenya		Tanzania		Uganda		EAC	
	Exports	Imports	Exports	Imports	Exports	Imports	Exports	Imports
Total	2301	3631	761	1636	334	1009	3400	6276
Developed countries								
Total Share	41	42	53	38	76	28	50	39
EU	32	27	37	25	65	22	39	26
USA	8	8	3	4	5	3	6	6
Japan	1	5	12	4	4	3	4	5
Others		2	1	5	2	0	1.1	2.4
Developing countries								
Total share	58	57	47	62	25	72	49	61
Africa	36	10	19	23	8	57	27	21
EAC	23	1	10	7	2	49	16	11
South Africa	1	7	1	13	1	7	1	9
Asia	12	18	23	25	9	11	14	19
Europe	1	1	2	1	7	1	2	1
Middle East	7	26	3	12	2	3	5	19

Source: Adapted from World Bank, 2005

Cross- border informal trade

Informal cross-border trade refers to unrecorded trade in commodities and services between member states. In the EAC, informal trade is mainly undertaken by small and micro-small enterprises and occurs between Kenya and Uganda. The main commodities exported by Kenyan traders include wheat flour, cooking oil, fats and beer while Ugandan traders mainly export maize, beans, charcoal and fish into Kenya. The total value of informal trade across the two partner states for the period 1994-95 was estimated to be over 150 per cent of formal trade. Literature shows that that informal trade is prevalent due to lack of awareness about the elimination of tariffs as a result of implementation of the customs union protocol (Booth et al 2006; Mugisa et al 2009; Ackello-Ogutu 1997; World Bank 2006).

4.4.3 Tariff Regimes in the EAC countries

In the late 1990s, the three partner states employed a cascading tariff system characterised by lower tariffs for un-processed agricultural products and capital goods, moderate rates for intermediate products and the highest tariff applied to luxury and manufactured goods. This tariff structure was aimed to reduce demand for luxury goods, collect maximum customs taxes and create opportunities for domestic manufacturing and production. In 2001, spurred by IMF funded reforms, the partner states adopted trade liberalisation. This included reduction in the maximum rate of tariffs and the number of tariff bands (McIntyre 2005; Booth et al 2005). Table 4.5 below outlines the trends in the tariff regimes of the three partner states for the period 1997- 2002. Table 4.5 shows although tariffs for all partner states have reduced over time, Uganda has experienced the highest level of tariff liberalisation. In addition, Uganda took steps to reduce the difference between the highest and the lowest rates of tax for imports.

Table 4.5: Changes in tariffs among the partner states 1997-2002

<i>In percentage points</i>			
	1997	1999	2002
Kenya			
Tariff bands	5.0	5.0	5.0
Maximum rate	35.0	35.0	35.0
Simple average	18.4	16.3	16.6
Tanzania			
Tariff Bands	8.10	5.0	4.0
Maximum rate	50.0	25.0	25.0
Simple average	21.8	16.1	14.3
Uganda			
Tariff bands	4.0	3.0	3.0
Maximum rate	20.0	15.0	15.0
Simple average	13.2	8.10	8.10

Source: WTO and UNCTAD 2003

4.4.4 EAC and other regional integration Arrangements

The EAC partner states were characterised by overlapping memberships in several regional integration arrangements. This has been referred to as the ‘spaghetti bowl effect’ (Bhagwati and Panagariya 1996). Prior to 1999, the three partner states belonged to COMESA. However, Tanzania left the COMESA membership and joined SADC. Table 4.6 outlines the existing regional integration memberships of three EAC countries. The table shows that Kenya and Uganda are members of EAC, COMESA, IGADD and the African Union. Tanzania is a member of EAC, AU and SADC but not a member of IGAD. In addition, all the three partner

states have trade arrangements with the US and EU under the African Growth and Opportunity Act⁵ (AGOA) and Cotonou Agreement⁶ (Stahl 2005; Khorana Kimbugwe and Perkidis 2007; Chacha 2008)

Table 4.6: Multiple-trading Arrangement in EAC partner states

Organization	Status of partner states' membership		
	Uganda	Kenya	Tanzania
EAC	Member	Member	Member
COMESA	Member	Member	
SADC			Member
IGADD	Member	Member	
AU	Member	Member	Member
AGOA	Member	Member	Member
Cotonou Agreement	Member	Member	Member

Source: Investigator's own analysis

Multiple memberships are useful to increase access to other markets for producers in the EAC. For example, studies show that manufacturers in Uganda and Kenya have access to an additional 385 million consumers in the COMESA region while Tanzanian Manufacturers can access an extra 215million in the SADC region. However overlapping may also complicate trading arrangements and affect compliance with regional directives (Stahl, 2005; Khorana et al., 2007; EAC, 2006; UNECA, 2004)

⁵ AGOA is a market initiative that permits tariff free treatment on a number of imports from Sub-Saharan African countries. the initiative will expire in September 2015

⁶ This is a non reciprocal preferential tariff arrangement on agricultural imports from 77 ACP countries.

4.5 Political institutions in the EAC

Section 4.2.2 concluded that lack of political support was one of the factors that contributed to the collapse of the old regional integration arrangement between the three partner states. Studies show that the political institutions across the three partner states show similarities and differences which may have implications for partner states' commitment behaviour. This section analyses the political institutions of the three countries.

First, the three partner states were part of the original EAC until 1977. The 'old' EAC provided an opportunity for politicians across the three countries to establish a common bond and a sense of belonging. The EAC identity that still exists among the older politicians may be a driving force for closer cooperation and integration within the region (Chabal and Daloz, 1999; Van de Walle, 2001).

Second, the three partner states are characterised by weak institutions in which the politicians have an interest in the leverage that sovereignty provides. This arises from the character of the political systems in the three partner states. Scholars refer to the political systems in the three countries as 'neo-patrimonial'. In neo-patrimonial systems, the state has a rule governed systems but party-political preferences, patronage and private networks play a significant role (Booth et al., 2006:11).

Thirdly, scholars point out that political leaders in the region promote regional integration in order to enhance their political profiles. Booth et al argue that regional integration within the EAC was used as a platform to portray the political leadership in the region as statesmen with an objection for integration beyond the customs union and they add that ".....for leaders of the three countries, acting on the regional stage helps to make them look like statesmen of a higher order" (ibid, 17).

Scholars have also examined the degree to which the political, economic and private interests are inter-twined in the three countries (Smith et al., 2004; Spooner and Ngunyi, 2006). For example, Nge'the et al., (2004) reveal that Kenya depicts a higher degree of closeness between politicians, government officials and the business organisations compared to the other partner states. The relationship between political actors and government officials in Kenya is patronised rather than issue based; numerous government parastatals still exist in Kenya but they are used as an avenue for political patronage appointments. Similarly, Spooner and Nguyi (2006) argue that the political and business sectors in Kenya have grown increasingly closer since the 1990s with leading political leaders in the country establishing closer links to powerful business interests. Second the civil society in Kenya is more formalised and better organised than in the other partner states in the late 1990s and early 2000s. However, in 2002 several civil society organisations joined the government of President Kibaki. This weakened the power and potential of the trade unions and other civil society organisations to act as a check on the power of government. Others scholars pointed out that Kenya's interest in regional integration derives from the economic benefits that such an arrangement could bring to the private sector (Booth et al., 2006; Kibua et al., 2005; Castro et al., 2004; Rudaheeranwa, 2005).

Tanzania is characterised by the dominance of the ruling CCM party. This according to scholars influences the relationship between the political leadership and business. Tanzania does not have a vibrant private sector because the country practised a socialist system of government until the late 1990s. However, characteristics of neo-patrimonial political systems are prevalent in the newly liberalised economy; policies that maintain discretion within the country are preferred to transparent systems that improve the general conditions of trade and development within the country. Tanzania has trade unions and other civil society organisation. However, most of the existing trade unions were integrated into the ruling CCM

party. The integration of civil society organisations and trade unions into the political system weakened the capacity of the civil society to act as a check on the neo-patrimonial political institution in the country (Lockwood, 2005).

In Uganda, the government is dominated by the ruling National Resistance Movement (NRM) which has been in power since 1986. This implies that political patronage and rent seeking is far less necessary for the government of Uganda to stay in power compared to Kenya and Tanzania. Central government ministries are very powerful as amplified by the Ministry of Finance, Planning and Economic Development (MoFPED). The powerful nature of MoFPED, coupled with the fact that government depends to a large extent on development aid to fund public expenditure means that the role and capacity of the private sector and civil society in political decisions is minimal (Booth et al., 2006:13; Barkan et al., 2004; Moncrieff et al, 2004; Robinson, 2006).

4.6 Chapter conclusion

The EAC established in 1999 is a revival of the old regional integration bloc among the three partner states that was dissolved in 1977. The new EAC regional arrangement is premised on an inclusive private sector approach but the participation of the private sector and civil society is only limited to an observer status. The EAC established a secretariat to coordinate and enforce policy. However, the power for policy making and implementation was retained by the Council of Ministers of the domestic partner states. This institutional arrangement coupled with the resource constraints of the EAC Secretariat affect the capacity of the Secretariat to act as a supranational organisation. This limits the capacity of existing international relations and international political economy theories of commitment to provide solutions to existing commitment problems in the regional bloc.

The chapter revealed that the political institutional context in the three partner states can be described as neo-patrimonial. Neo-patrimonial systems are characterised by interwoven political and economic systems that provide political leaders with the discretion to promote political patronage and generate domestic support while using the regional integration bloc to portray themselves as international statesmen committed to regional. The Chapter shows that the private with vested interests has the capacity to influence decisions on the design and implementation of the customs union protocol. The extent to which the private sector in EAC influenced the design and adherence to the customs union protocol is the focus on the next four chapters.

CHAPTER 5

5 HOW WAS THE CUSTOMS UNION PROTOCOL NEGOTIATED?

5.1 Introduction

Chapter 4 provided a detailed overview of the revived EAC and analysed the structure of the three partner states. This Chapter reviews the negotiations for the design of the customs union protocol. The negotiations provided an opportunity for partner states to make decisions on the provisions to include and exclude from the protocol. The decisions had implications on how the regulated firms would adhere to those regulations. However, the negotiation process in regional integration has not attracted much scholarly attention (see Chapter 2.7).

The Chapter proceeds as follows. Section 5.2 presents the background to the negotiation. Section 5.3 focuses on the negotiation process among the partner states. Section 5.4 examines events prior to the signing of the protocol by the three heads of state of Uganda, Kenya and Tanzania. The Chapter closes with a conclusion.

5.2 Background to the Negotiations

The negotiations for the customs union protocol were undertaken in line with articles two and five of the EAC treaty. The customs union protocol was the first step to further integration in the EAC as discussed in Chapter 4.2.3. In order to facilitate the negotiations, a model framework was developed as discussed in the next section.

5.2.1 Framework for model protocol to guide the negotiation process

The negotiations for the customs union protocol were based on a draft customs union protocol designed by a team comprised of technical officials selected from among officials in the three partner states. The draft protocol was informed by studies undertaken by experts in customs and trade integration as well as international best practices specifically the EU model as well as the World Trade Organisation and the Kyoto convention. The framework that

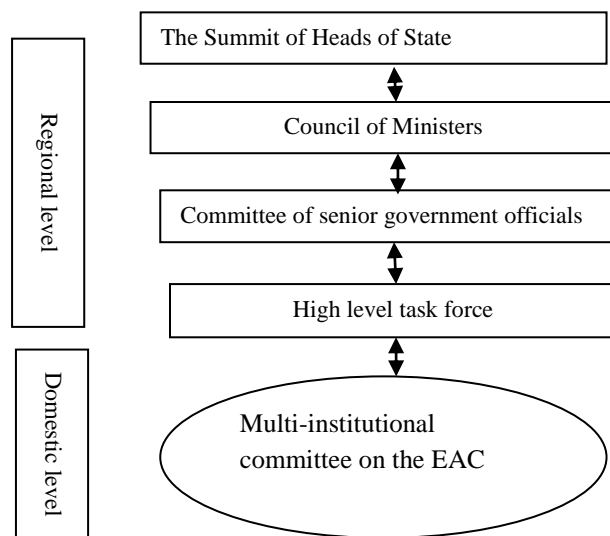
outlined the draft text of the protocol was then presented to the EAC secretariat to be negotiated and agreed by officials and ministers of the three partner states. In short, the role of the EAC secretariat was to coordinate the negotiations on a draft protocol that was designed by experts from among the partner states (Angura URA-Ug; Machaku MEACA-Tz⁷). This model framework designed by a team of officials selected from among officials in the three partner states contrasts with the practice adopted for draft protocols in other regional integration arrangements. For example proposals for legislation in the European Union (EU) are designed by experts at the EU secretariat and presented to the member states for consideration and negotiation (Mitchell 1994; Thomson et al 2007:686). In order to facilitate the negotiations, partner states set up negotiation structures as discussed in the next subsection.

5.2.2 The country level negotiation structures

The negotiations for the customs union protocol were undertaken through an elaborate negotiation structure of technical teams at the domestic and regional level as shown in figure 5.1.

⁷ To ensure confidentiality of interviewees, the research employed pseudo names with a suffix to denote the organization and country of the respondent. The suffix EAC and PSDG were used to denote respondents from the EAC secretariat and development partners respectively.

Figure 5.1: Structure for Negotiation of the EAC customs



Adapted from Mugenyi and Zeija 2006

Figure 5.1 shows that at the domestic level, each partner state developed a negotiation structure composed of a multi- institutional technical team of government officials headed by the Ministry of Foreign Affairs of the respective member state. Inter-institutional committee meetings were organized by the ministries of Foreign Affairs to seek views from the private sector and other civil society organisations in the partner states in order to develop country positions. Research findings revealed that the levels of private sector and civil society participation in the consultation process in Kenya and Tanzania were high compared to Uganda. Private sector organisations in Uganda did not participate actively in the preparatory meetings and only came into the negotiations at the signing of the protocol (Babu CTI-Tz: Mugenyi and Zeija 2006:22).

At the regional level, four committees composed of government officials from the respective member states were established. First a High Level Task Force (HLTF) composed of public servants from ministries and agencies related to customs and trade policy in the partner states was established. The HLTF was composed of sector-specific committees charged with undertaking comparative studies on the provisions in the model protocol in order to inform the negotiations. The HLTF was advised by a Judicial Committee mandated to ensure that

the draft protocol was in agreement with the EAC treaty and national constitutions. The HLTF reported to the Committee of senior officials composed of permanent secretaries of the ministries involved in the implementation of customs union protocol. This Committee was set up in 2002 as a result of dissatisfaction by the heads of state on the pace of the negotiations (Ngasa MEACA-Tz; Nyambura EAC). The role of Committee of senior officials was to analyse decisions of the HLTF and prepare progress reports for the Council of ministers. Similarly, the Council of ministers as the policy making body of the EAC analysed the recommendations of the Committee of officials and prepared position papers to guide the heads of states in making the final decisions on the provisions in the EAC customs union protocol (Namara MoJCA-Ug).

5.2.3 Partner states' negotiation positions

Prior to the negotiations, partner states developed country positions on each of the provisions outlined in the model framework. The country positions were designed to guide the negotiations for the customs union protocol.

Protection of customs revenue earnings

Partner states were concerned about the implications of the customs union protocol on customs tariff which is the main source of domestic government revenue for the three countries (cf. table 4.3). The analysis of revenue performance of the partner states showed that taken together, customs revenue constitute about 53.0, 60.0 and 70 per cent of total revenue in Kenya, Tanzania and Uganda (see Chapter 4.4.1).

The research results revealed that the primary aim of the three governments was to avoid customs revenue loss arising from implementing the protocol. However, the need to protect government revenue created a dilemma for the partner states. The dilemma related to whether to liberalise their economies or continue with high duty tariffs to maintain valuable revenue streams (Muhame MoFPED-Ug; Owour MoFP-Ke; Kweli MoFEA-Tz). For example, a study

by confederation of Tanzania industries confirmed that abolition of tariffs would lead to decline in revenue (CTI, 2004:89). Overall, the research revealed that the partner states were unanimous on the need to protect loss of government revenue that would arise from implementing the proposed customs related provisions in the protocol (Nyambura EAC; Odhiambo EAC).

Protection of the domestic manufacturers from competition

This section analyses how the partner states developed their respective positions on the negotiations for the trade-related provisions in the protocol. The customs union policies were meant to create common rules and practices for all manufacturers in the EAC. This implied that partner states were required to eliminate discriminatory rules and practices established to protect indigenous private sector from competition in the partner states.

Kenya had the largest manufacturing sector of all the partner states but with various tariff and non tariff barriers to protect the manufacturing sector from imports into the country. These barriers ranged from tax exemption schemes to quantitative restrictions (EAC 2006). In addition, leading political leaders in the country, with links to powerful business interests, had an interest in the leverage that sovereignty provided (see Chapter 4.5.1). Research confirmed that political leaders in Kenya developed a strategy that would open up markets of the partner states but continue to protect the domestic manufacturers from competition (Kweli MoFP-Tz; Mutebi EAC). For example, a member of the team of experts that designed the model framework for the customs union protocol revealed that Kenya had initially objected to including harmonisation of trade-related provisions in the model (Sempebwa MoFPED-Ug).

Tanzania liberalized the economy in 1988 following decades of centralised control of the productive sector. The private sector in Tanzania was composed of a large number of small

and medium enterprises with a disproportionately small number of large multinational corporations specialising in resource extraction and processing of tobacco and spirits (World Bank 2006; Hayden 2005; Lockwood 2005). In 2001, the private sector undertook a study on the impact of the customs union whose findings formed part of the negotiation position for Tanzania (Babu CTI-Tz). For example, the study found that the free entry of Kenyan products into Tanzania would out-compete domestic products and lead to the collapse of the infant domestic industries (CTI, 2004:89). Based on this argument, Tanzania's country position focused on maintaining a high level of tariff on imports from outside the region in addition to duties on goods from Kenya in order to protect the domestic private sector (Amani MITM-Tz). For example the research revealed that Tanzania advocated for the rules of origin to be implemented by a private sector organisation sympathetic to the vulnerable position of their indigenous private sector compared to the partner states (Ngasa MEACA-Tz; Babu CTI-Tz; Shindika TCCIA-Tz).

On the other hand, Uganda started the process of liberalisation before the negotiations commenced and applied the lowest tariffs on imports among the three partner states (cf. table 4.5). Uganda was landlocked and depended on imports of raw materials for industrial production. Government developed a position to impose low import tariffs on goods from outside the region in order to encourage imports of raw and intermediate products. In addition, political patronage and rent seeking in Uganda was far less necessary for the government to stay in power compared to Kenya and Tanzania. This implied that the role and capacity of the private sector in administrative policy making was limited (see Chapter 4). Further, analysis of research revealed that since most of the private sector actors in Uganda were importers, they were not very interested in the customs union (Angura URA-Ug; Mugenyi and Zeija 2006). For example, Mugenyi and Zeija state that ".....private sector was invited to the meetings, but they never took the process seriously..." (Mugenyi and Zeija 2006:21). In

sum, the positions developed by Uganda reflected public sector interests compared to the positions of the other partner states. A government official summed up Uganda's position as follows, ".....Uganda's was already on the path to liberalisation since the early 2000s and wanted to liberalize further by reducing rates of customs duties and opening up markets....." (Isiko MTTI-Ug).

5.2.4 Criteria adopted for the negotiations

The EAC adopted a consensus based criteria for the negotiations on the customs union protocol. Based on the principle of consensus, each partner had to convince the other parties on the merits of a preferred country position before any agreement was reached and adopted. Respondents pointed out that an approach based on consensus was essential to build trust and transparency in an attempt to revive the regional bloc that was dissolved in 1977 (Owour MoFP-Ke; Isiko MTTI-Ug). This principle of consensus implied that the power of any particular country to force through any provision on account of economic capacity was limited. However, the consensus based system of negotiation and decision making led to delays and frustration and provided justification for political interference into an otherwise technical negotiation process (Mwasiki FCC-Tz).

The analysis of the negotiation reveals that the principle of consensus adopted in the EAC in the negotiation is similar to the systems adopted for negotiations in other integration arrangements. For example, the EU system adopts a system of unanimity in order to undertake treaty changes in the union. This implies that similarly with the EAC, the EU requires member states to agree on a proposed change in the treaty before it can be adopted by the European Union (Mayoral 2011).

5.3 Negotiations for the EAC customs union protocol

The intergovernmental negotiations for the customs union protocol commenced in 1999 and were spearheaded by the respective ministries of Foreign Affairs (Nyambura EAC). The negotiation for the customs union protocol was implemented in two phases; first the customs fiscal rates and procedures were negotiated and agreed upon, then the trade related aspects were agreed (Wamboi MTI-Ke; Machaku MEACA-Tz; Kawuma MOFA-Ug). The outcomes of the negotiations are discussed in the next Subsection.

5.3.1 Harmonisation of customs-related provisions

The negotiations for harmonisation of customs-related rates and procedures concerned three main provisions of the protocol namely; the customs tariffs and procedures, non-tariff barriers and export promotion schemes.

Harmonisation of customs tariffs and procedures

The tariff structure of a region reflects the depth of manufacturing and takes a number of physical characteristics of the partner states into consideration. The first provision that was negotiated was the rates of duty and classification of imports from outside the region. Each country had a separate CET structure prior to the negotiations. Uganda, with the most liberalized trade regime, had a three band structure with a maximum CET rate of 15 per cent and argued for more liberalisation to encourage economic growth. Tanzania had four tariff bands with a maximum CET rate of 25 per cent. Kenya had seven bands with a maximum rate of 37 percent and was keen to maintain the top rate and tariff structure to protect domestic industries as well as maximize revenue collection from import duties. Tanzania proposed 25 percent as the mid-ground but it was challenged by Uganda. The Uganda negotiation team argued that it would be politically unwise for Uganda to increase the CET yet the country was in the process of further liberalisation (Nyambura EAC; Ngasa MEACA-Tz).

The differences in country positions created a dilemma because the model protocol had recommended a simple tax structure. These conflicting positions implied that there was lack of consensus leading to a deadlock on the negotiations on the rate of CET and tariff bands which threatened to scuttle the negotiation process⁸. The negotiations over the CET rate dragged for over a year but were finally resolved by the heads of state who agreed on a three tariff bands with a maximum CET rate of 25 percent. In reaching this position, the heads of state instructed for a review of the CET after five years of implementation (Ngasa MEACA-Tz; Sempebwa MoFPED-Ug). Most experts interviewed pointed out that the decision of the heads of state was a political decision taken without adequate research. The experts were sceptical about the potential of such political decisions to produce the desired objectives of trade liberalization process (Nyambura EAC; Machaku MEACA-Tz; Kamau MEACA-Ke).

Re-classification of Imports

Having finalised the CET and structure of tariff bands, the negotiations focused on how to “slot in the products” (Machaku MEACA-Tz). There was need to reclassify the different products according to the new three-tariff band structure of 0,10 and 25 percent for raw materials, intermediate goods and final products respectively. This created a challenge because some countries had more than three bands with products classified depending on the level of processing and availability. The debate was resolved with a consensus on a system for reclassification of products that took into consideration the different positions raised during the negotiations on the CET and tariff structure (Owour MoFP-Ke). Generally, raw materials were classified as 0 percent with a range of products in the bands to account for the fact that partner states had different classifications and that the more developed countries had more bands in the intermediate and finished products categories (Angura URA-Ug; Kweli MoFEA-Tz; Nyambura EAC).

⁸ www.newsfromafrica.org/newsfromafrica/articles/art_3773.html, March 2004

Classification of sensitive products

After setting the maximum rate, the tariff bands and reclassification of imports, the negotiation proceeded to identify sensitive products that would attract a CET higher than 25 percent. This was done to protect certain sectors or industries from competitors in the rest of the world. Officials pointed out that the selection of these commodities created heated debate in the negotiations (Machaku MEACA-Tz; Akida TRA-Tz). Asimwe (MoFA-Ug) revealed that Kenya, with a more developed manufacturing sector than the partner states lobbied for more manufactured goods to be classified as sensitive and attract duties higher than the maximum CET. On the other hand, Uganda and Tanzania sought to reduce the CET since most of the products under review qualified as raw materials for industrial production. In addition, Uganda had already reduced CET rates drastically (see Chapter 4) but maintained high customs duties for some of the items imported from Kenya that were classified as sensitive products. Officials in Uganda defended elimination of duties on sensitive products on the grounds that Kenya would become a monopoly in the region and lead to economic decline in the other partner states (Nsereko URA-Ug; Namara MoJCA-Ug; Muhame MoFPED-Ug). For example, during the negotiations, Kenya proposed the imposition of duties on rolled iron sheets since they were classified as intermediate commodities in Kenya. However, Uganda objected to the proposal on the grounds that rolled iron sheets were raw material in the manufacture of galvanised iron sheets and should be exempt from import duties (Muhame MoFPED-Ug).

The classification of food and other essential commodities as sensitive products also created a great amount of debate during the negotiations. These products included rice, wheat, sugar, textiles and maize. Although some of these commodities were locally produced, the region is a net importer of food products especially rice and wheat. Some negotiators argued that the treatment of these products as sensitive was bound to create political tensions given that the

commodities in question were commonly consumed by a majority of East Africans with low incomes (Babu CTI-Tz; Gathoni MTI-Ke; Kamau MEACA-Ke).

Further, the model protocol that formed the basis of negotiations recommended harmonisation of suspended duties and charges of equivalent effect across the region. However, each partner state had different categories and rates of suspended duties. For example, Uganda imposed suspended duties on goods from Kenya (Isiko MTTI-Ug). Officials lobbied for these suspended duties to be abolished to avoid injury to Kenyan competitiveness (Ngasa MEACA-Tz; Muhame MoFPED-Ug). The deadlock on the negotiations of the treatment of sensitive commodities and suspended duties could not be resolved by the HLTF as well as the committee of senior officials and was referred to the Council of ministers (Shindika TCCIA-Tz; Amani MITM-Tz).

Elimination of tariffs on Intra-regional trade

The model framework developed by the technical team of experts recommended liberalisation of intra-regional trade. Prior to the negotiations partner states had concerns regarding the impact of elimination of intra-regional tariffs on domestic economies; Kenya, with a large manufacturing base proposed total liberalisation in order to benefit from the enlarged EAC market (cf. 4.4.2). However, officials in Uganda and Tanzania argued that complete liberalization of trade would not only constitute a huge revenue loss but also expose the local manufacturers to competition from the more developed Kenya. There was need to harmonize these positions and establish a trade regime that would accommodate the different country positions.

The HLTF undertook revenue simulations to ascertain the severity of revenue loss under the various scenarios. The analysis of the simulation enabled the high level task force to reach consensus on at least three issues; first, imports previously exempt from duty would enter

partner states duty-free under the new regime. Second, statistics of exports of various commodities from Kenya to the rest of the region were examined and the revenue impacts of removal of tariffs analysed. Third, an evaluation of the strength of the industrial systems in Uganda and Tanzania was undertaken to ascertain the period required for industries in these partner states to adjust their competitiveness to their Kenyan counterparts (Akida TRA-Tz; Kamau MEACA-Tz; Ngasa MEACA-Tz).

The negotiation based on the simulations undertaken by the High Level Task Force culminated in a position on intra-regional tariff elimination that was informed by the principle of asymmetry. Based on the principle of asymmetry, the following decisions regarding intra-regional tariffs were made; first, imports from partner states that were exempt from duty prior to the negotiations would enjoy duty free access into across the region. Second, exports from Kenya to the partner states would attract duty at a reducing rate over a period of five years. Thereafter, duties on exports from Kenya to the partner states would be eliminated. The five year phase- in period was agreed to allow industries in Uganda and Tanzania adjust their systems to competition from Kenya (Machaku MEACA-Tz; Isiko MTTI-Ug). Third, exports from Uganda and Tanzania to the partner states were exempt from duty. Research analysis revealed that the private sector in Kenya was dissatisfied with the outcomes of negotiations on internal tariff liberalisation and accused government officials of being more concerned with integration rather than protecting their domestic manufacturers (Mutie KAM-Ke; Mbugua KEPSA-Ke; Patel KAM-Ke).

Harmonisation of export promotions regimes

Prior to the customs union, partner states employed customs policies adopted from the defunct EAC customs union. In terms of exemption regimes, Uganda had a duty remission scheme, Tanzania operated an exemption regime and Kenya had a duty draw back system. Some of these practices are more business-friendly than others. For example, employing a

duty remission scheme implied that manufacturing were not required to pay duty on importation of raw materials. The duty would be recovered on export of the finished product. On the other hand, partner states that adopted duty drawbacks imposed duties on importation of raw materials. These duties would be refundable once the goods produced from the raw materials were exported out of the country. The negotiations allowed partner states to continue with export promotion schemes that were in force prior to the protocol but not grant any new exemptions with a view to harmonise exemptions on expiry of the existing arrangements (Sempebwa MoFPED-Ug; Owour MoFP-Ke).

In order to harmonise customs administration, the HLTF developed the Customs Management Act, a common law for administration of customs issues in the region and recommended that customs duties would continue to be collected by respective national revenue authorities (Mugisa et al 2009:7). In addition, the HLTF recommended that partner states eliminate existing non-tariff barriers to trade in their respective markets as proposed in the model framework that informed the negotiation process. However, the negotiators were unable to finalise regulations that would enable the implementation of the customs union protocol. The HLTF selected a committee composed of senior officials in the ministries of finance, tax authorities and justice departments to formulate harmonised regulations (Machaku MEACA-Tz; Kamau MEACA-Ke).

5.3.2 Harmonisation of Trade-related rules and policies

The negotiations for the trade related provisions of the customs union protocol were undertaken at the same time as the negotiations for the customs related policies. However, the negotiations were not as protracted as the customs-related negotiations. According to the research analysis, the trade related negotiations were more concerned with designing institutional frameworks to avoid trade injury and discrimination (Isiko MTTI-Ug; Amani MITM-Tz; Gathoni MTI-Ke).

Application of Rules of Origin

Rules of origin relate to regulations that distinguish goods produced in the region and qualify for preferential treatment from goods produced outside the region that are charged at the CET rates. The main issues during the negotiation related to the classification of the commodities that would qualify for preferential tariff treatment under the protocol. The HLTF adopted regulations regarding the treatment of goods subject to preferential treatment namely; the “wholly produced” and the “value addition criteria” (Machaku MEACA-Tz).

The HLTF agreed on a criteria for goods to qualify for preferential treatment, namely; goods wholly produced or obtained from a partner state; goods produced in the partner states and the CIF value of any foreign material used does not exceed 60 per cent of the total cost of all materials used in their production; goods produced in the partner states whose value addition resulting from the process of production account for at least 35 per cent of the ex-factory cost of the goods; and goods produced in the partner states classified in a tariff heading different from the one in which they were imported (Mukiibi 2010).

This criteria would enable customs differentiate goods produced in the region from products manufactured in the countries that had trade agreements with partner states. In addition, the HLTF provided guidance for the nomination of designated organisations to implement the provisions on rules of origin in the partner states (Mutebi EAC; Owour MoFP-Ke).

Anti- dumping measures

The HLTF recommended the enactment of regulations to prohibit the importation of goods at prices less than the market value of similar products in the countries of origin. This provision was included to avoid injury to domestic manufacturing concerns and wipe out the benefits that were anticipated from removal of import duties (Mugisa et al 2009; Wamboi MoTI-Ke).

It was agreed in the negotiation that partner states would develop and gazette domestic anti-dumping legislation in place before harmonisation of the anti-dumping measures would be undertaken at the regional level. To harmonise the measures, each partner states was required to set up an authority charged with investigating and determining that dumping has actually taken place. The negotiations added that determination of injury would be undertaken after an application and depend on the quantities of goods dumped and the impact on the producers and prices of equivalent domestic goods. The measures to prevent dumping included anti-dumping duties, cessation of importation as well as cash deposits equal to the anti-dumping duty against the importer who violated the anti-dumping provisions in the protocol (Isiko MTTI-Ug; Mumanye MTI-Ke).

Subsidies and countervailing measures

The negotiations on subsidies were meant to deter unfair financial support by partner state governments to enterprises or industries. Governments were required to set up domestic regulations on subsidies that would facilitate the formation of a regional institutional framework to investigate cases of subsidies prior to harmonisation of the legislation in the region. The HLTF outlined subsidies that would be prohibited in the region. Where a state suspected that a partner state was providing subsidies to local industries, a report would be prepared within 90 days of the request for the investigation. This HLTF recommended the establishment of a countervailing levy on imports from outside the region which were suspected to have benefitted from subsidies. This levy was intended to equate to the subsidy on the product that would otherwise distort competition in the domestic markets (Mutebi EAC; Nyambura EAC).

Safeguard measures

The HLTF recommended safeguard measures to protect local industry from a sudden increase in the quantities of a particular commodity from outside the region or where the imposition of import duties on raw materials would result in injury to the industrial production of a given partner states (Gathoni MTI-Ke; Mugisa et al 2009). Similarly with other trade related provisions, the analysis revealed that partner states were required to establish institutional arrangements for the determination of a threat of injury to the domestic industry. The investigations would include public hearings to enable all parties present their arguments. It was recommended that the safeguard measures would be non-discriminatory, imposed as an interim measure and not to reduce the volume of importation below acceptable normal levels (Nyambura EAC; Odhiambo EAC).

Export processing zones

The regulations on export processing zones were intended to establish an institutional framework to regulate areas in the EAC that would act as centres for production of goods intended for export. Partner states were required to set up institutions and legislation to regulate export processing zones before the regulations could be harmonised across the region. Further, The HLTF recommended for the development of a model export processing zone manual as part of the harmonisation process (Namara MoJCA-Ug; Waithaka MoJCA-Ke) The HLTF agreed on the modalities for the appointment and the expected roles of the export processing zone operator and the activities in the export processing zones were restricted to manufacturing, commerce and services. Goods from the export processing zones would be considered as exports from the customs territory of the partner states and charged all applicable duties if sold on the regional market (Karanja-KEBS-Ke; Muleme UNBS-Ug).

Operation of free ports

The HLTF agreed on institutional mechanisms for transparent and accountable systems to establish and administer free ports. The HLTF recommended that each partner states provides a suitable location for the development of an inland free port to warehouse duty-free imports into the country specifically at seaports, airports and like places (Angura URA-Ug; Owour MoFP-Ke). In addition, the partner states had to establish regulations as well as authorities to manage the free ports (Odhiambo EAC).

Regional committee on trade remedies

In accordance with the model EAC customs protocol, the HLTF required Partner states to constitute dispute resolution committee to handle trade disputes at the domestic level. This would enable the establishment of a regional committee on trade remedies. The multi-institutional committee composed of government officials from the three partner states would be charged with settlement of trade-related disputes among the partner states. The trade remedies committee would ensure that necessary legislation is enacted in the partner states to ensure that the regional framework for harmonisation of trade procedures and rules is implemented (Isiko MTTI-Ug; Mugisa et al 2009).

5.4 Signing of the customs union protocol

The draft protocol was finalised and presented to the summit of heads of state of the three partner states by the Council of ministers. However, the signing of the protocol was delayed by a request from the President of Uganda. Research revealed that prior to the signing, disagreement emerged when the President of Uganda produced a list of imports he wanted exempted from duty although this was not part of Uganda's position put forward at the negotiations. The president argued that the imports were raw materials that were necessary for developing the industrial sector in Uganda. By the morning of March 2, 2004, three heads

of state had agreed to reduce the number of goods on the list and reach consensus⁹. The list of goods was reduced to 144 commodities which came to be known as the “*Uganda list*” (Odhiambo EAC).

Senior officials revealed that the events prior to the signing of the protocol demonstrated the difference between the ideology of the administrative officials and the political policy makers in Uganda. Previous literature revealed that Uganda’s position was to reduce tax rates and open up the economy to competition from manufacturers in the partner states with little concern for protecting domestic manufacturers in the country (see Chapter 4.5.1). However, detailed analysis of the information collected during the research showed that the political leaders took steps to protect domestic manufacturers. This was verified by the fact that the president came to the summit accompanied by a group of prominent manufacturers from Uganda (Nyambura EAC; Mutebi EAC; Nyankundi EAC).

Thus, after four years of negotiation, the protocol to establish the EAC customs union was signed on March 2, 2004. This protocol was provided for under article 75 of the EAC Treaty. The articles of the protocol are presented in a similar manner in which they were negotiated as presented in this Chapter. The protocol can be divided into three parts; the first part covers the background and interpretation, the second part covers customs-related provisions while the third part covers trade-related provisions. In sum, the protocol comprises of nine provisions; the first three provisions relate to customs administration and fiscal policies. The remaining six provisions deal with trade-related matters (Muhamu MoFPED-Ug; Machaku MEACA-Tz; Owour MoFP-Ke; Mwebesa, 2005:2).

At the signing, all heads of state committed to the implementation of the protocol. The president of Kenya pledged that “.....four years ago, we committed ourselves to

⁹ www.newsfromafrica.org/newsfromafrica/articles/art_3773.html March 2004

establishing a customs union as an entry point to the EAC. We have put our signatures on the protocol establishing the East African Customs Union today, to affirm our commitment to the establishment of an East African common market”. Similarly, the presidents of Tanzania and Uganda assured stakeholders that the partner states were committed to implementation of the protocol in order to ensure healthy competition¹⁰.

5.5 Chapter Conclusion

The Chapter presented an account of the decision making process for the detailed provisions comprising the East African customs union protocol. The evidence revealed that the decision making process was based on the principle of consensus. This differs with the experience on the policy making in other regional integration arrangements.

The process of decision making was an administrative as well as political process. First, the negotiations of the customs union were conducted between partner states’ government without any representation from other stakeholders. Second, some decisions were taken at the HLTF level, while others were taken at political level comprising the presidents of the three partner states. Third, the Chapter confirmed that all countries including developed similar country positions. The positions were intended to protect government revenue as well as domestic manufacturers from competition.

Previous literature argues that roles and view of officials during the negotiations as well as the manner in which decisions were reached during the negotiations may have implications for the transposition; enforcement and application of the resulting legislation (cf. Chapter 2.7). Chapter six to eight will seek to analyse whether any of the commitment problems in the implementation of the protocol can be attributed to the negotiation process.

¹⁰ www.newsfromafrica.org/newsfromafrica/articles/art_3773.html March 2004

Part II

Analysis of the Research

CHAPTER 6

6 HOW WAS THE PROTOCOL TRANSPOSED?

6.1 *Introduction*

The implementation the customs union protocol did not stop with the design of the protocol at the EAC level. Partner states were required to adopt the directive into the respective legal systems before the community law could be enforced and applied. Transposition is the first stages in the process of domestic execution of the protocol and the manner in which the transposition is conducted may have implications for the enforcement and application among the three partner states.

The Chapter investigates the transposition of the detailed provisions in the protocol and analyses the factors that condition the timeliness, correctness and completeness of the customs union protocol in the three partner states. The analysis of the transposition process in the EAC contributes to answering the first research sub-question namely: How was the customs union protocol transposed?

The Chapter proceeds as follows; section 6.2 revisits the detailed provisions in the protocol. Section 6.3 outlines the transposition process in the three partner states and presents a synthesis of the transposition performance across the three partner states. Section 6.4 analyses the factors that account for the transposition performance. Section 6.5 brings Subsections one to four together and draws conclusions.

6.2 What provisions were adopted in the Customs Union protocol?

The protocol for the establishment of the East African customs union was signed on March 2nd 2004. The protocol specified amendments to existing domestic legislation and institutional arrangements that had to be adopted into the legal systems of the partner states by January 1, 2005 (Mugisa et al 2009). The research revealed that the protocol was disaggregated into nine distinct provisions as summarised in table 6.1.

Table 6.1: EAC- Policies constituting the annex to the Customs Union Protocol

Treaty reference	Categorisation of the provisions
<u>Customs- related Provisions</u>	
1 5-12	Harmonisation of customs tariffs Including: <i>Common External Tariff (CET)</i> <i>Internal Tariff Elimination</i> <i>Simplification of procedures</i>
2. 13	Removal of NTBs
3. 25-30	Export promotion schemes
<u>Trade –related Provisions</u>	
4. 14-15	Rules of origin
5 16	Anti dumping measures
6 17-18	Subsidies and countervailing measures
7 19	Safeguard measures
8 31-32	Free Ports
9 33	Export processing zones

Source: Researcher's own analysis

Table 6.1 highlights nine provisions that correspond to different articles in the EAC customs union protocol (cf. Chapter 5.4). The first three provisions relate to customs rates and procedures while the remaining six categories regulate trade aspects. Articles 5-12 relate to harmonisation of customs systems and tariffs. These provisions include common external tariff, removal of tariff on intra-regional trade and the simplification of customs procedures. Article 13 implied that partner states were to eliminate non-tariff barriers to intra-regional trade. Articles 25- 30 provide for domestic treatment of existing export promotion schemes. The trade-related aspects of the protocol include; articles 14 and 15 which provide guidelines

for applying the rules of origin. Article 16 deals with anti-dumping measures. Articles 17-18 deal with subsidies and countervailing measures. Article 19 relates to safeguard measures. Articles 31-32 relate to harmonisation and management of free ports while article 33 relates to initiatives to promote regionally produced commodities. As discussed in Chapter five, Article 24 relates to setting up overriding domestic and regional structures referred to as the committee for trade remedies.

6.3 Analysis of the transposition of the EAC customs union protocol

Transposition involves both the legal and practical adoption of regional directives. Legal transposition refers to the process of adopting the regional directive into the legal system of the partner states while practical transposition involves setting up the institutional framework as required to execute the regional policy (cf. Chapter 2). The partner states commenced the process of transposition of the customs union protocol after March 2004. This section investigates the transposition of the detailed provisions of the customs union protocol on three criteria namely; timeliness, completeness and correctness (cf. Chapter 2.3.2).

6.3.1 The transposition process in the EAC partner states

After the customs union was signed into law by the three heads of state in March 2004, partner states were required to adopt the protocol into the domestic legal systems by January 1, 2005. This was a short period of time compared to the time provided for transposition of directives in other regional arrangements. For example the deadline for transposition of directives in EU is about two years (Versluis 2007:55; Leiber 2007; Bursens 2002). Other scholars argue that it is not possible to compare the time allowed for transposition between the EU and developing countries because the two blocs employ different systems and instruments during the transposition (Mera 2007).

Research revealed that EAC countries had legal regimes and structures for the implementation of the customs policies prior to the customs union protocol. However, Partner

states had to amend their institutional systems and laws to implement both the customs- and trade-related provisions in the community legislation. These changes are examined in the next section.

6.3.1.1 Transposition of the Customs Union Protocol in Uganda

The transposition of the customs union protocol in Uganda was undertaken using a primary law. The law was intended to amend the existing East African Customs Management Act Cap 77 of 1970 as adopted by Decree No 13 of 1977 with Subsequent Amendments (Angura, URA-Ug; Muhame MoFPED-Ug). The transposition process commenced at the same time as the preparations for the national budget of the financial year 2004/2005. A memorandum to Cabinet was prepared by the Ministry of Finance, Planning and Economic Development with legal input from the Ministry of Justice and Constitutional Affairs and submitted to the Cabinet. Cabinet approved the memo and provided guidance on the draft amendment Bill. This commenced the amendment to the existing customs management Act in the country (Angura URA-Ug; Mugisha, consultant).

Following Cabinet approval, the first parliamentary counsel in the Ministry of Justice and Constitutional Affairs prepared the amendment Bill. A respondent informed the researcher that the proposed amendment was similar in wording to the customs union protocol because the amendment adopted the customs protocol in its entirety (Namara MoJCA-Ug). The Bill was submitted to parliament and passed together with the budget estimates for the financial year 2005/2005 (Muhame MoFPED-Ug). Following parliamentary approval, the amended Bill was submitted to the president to sign the customs Act 2004 into law. The law was gazetted and ratified by the Ministry of Foreign Affairs. The ratification was notified to the EAC secretariat before the deadline set for 1st January 2005 (Kawuma MoFA-Ug; Asimwe MoFA-Ug).

Documents in the Ministry of Foreign Affairs as well as records with the EAC secretariat show that the customs union transposition in Uganda was notified by January 1st 2005 (EAC Secretariat 2006). In addition, experts revealed that since the existing law in Uganda was repealed and the customs union protocol adopted in its entirety, the wording in the domestic legislation that was adopted was similar to the community law that was passed at the regional level (Mutebi EAC; Nyambura EAC; Namara MoJCA-Ug). For example Namara revealed that “.....the first parliamentary counsel adopted the customs union protocol in its entirety as the new customs Act in the country” (Namara MoJCA-Ug). This led to the confirmation that the protocol was transposed in a timely and correct manner.

The Act that was passed and signed into law did not have accompanying regulations. In order to implement the policy, Uganda continued to apply existing regulations under the section 252(5) of the EAC treaty (Sempebwa MoFPED-Ug; Akida TRA-Tz). Respondents were unanimous that the preparation of the ‘Cabinet Memo’ as well as the amendment Bills required technical and legal expertise. This made the transposition a very technical process and explained why there were few stakeholders involved in the process (Mutebi EAC; Nyambura EAC; Namara MoJCA-Ug).

In addition to the technical nature of the protocol and the method of transposition adopted in Uganda, respondents revealed that the ease of transposition may also be attributed to the composition of the national parliament in Uganda. The parliament was dominated by members of the ruling National Resistance Movement (NRM) party (cf. Chapter 4). The majority of lawmakers did not want to oppose policies that had the support of the President. Secondly, since the law was proposed in its entirety, lawmakers did not feel the need to make any amendments since the law had been passed by the regional parliament which had representation from Uganda (Wabwire-Press; Mugisha consultant; Kawuma MoFA-Ug).

Government officials revealed that generally delays in passing Bills usually arise when the process involves creating new institutions and allocating additional budgets to the implementation of the law. The transposition of the customs union protocol in Uganda did not involve creation of any new institutions or allocation of extra funds to executive agencies. To avoid delays in transposition that would have been caused by the creation of a new ministry to coordinate EAC affairs, MoFPED and MoJCA officials did not include the creation of the Ministry for East African Affairs in the Memo to Cabinet. Instead, the Ministry was created under a separate civil service reform process (Namara, MoJCA-Ug; Mugisha Consultant; Sempebwa MoFPED).

In spite of the timely and correct transposition, interviewees expressed doubts about the completeness of transposition of the customs union protocol in Uganda. Transposition did not stop with the passing of the law in parliament and notifying the EAC secretariat. All related domestic laws in conflict with the customs union were to be amended or repealed. Whereas laws related to customs administration were amended and repealed, the legal and institutional framework to implement trade related provisions of the protocol were inadequately transposed. For example, application of the provisions on the rules of origin commenced in 2007, two years after the deadline. Further, the Council of Ministers had recommended the Uganda revenue authority as the responsible organisation to implement the rules of origin. However, Uganda designated the Uganda Export Promotion Board (UEPB) in contravention of the directives of the Council of ministers of 2006 (Nyambura EAC). In addition, the institutional framework for implementing five trade-related provisions were not put in place while the trade remedies committee was not constituted as required by the protocol. This implied that over eighty per cent of the trade-related provisions in the protocol could not be gazetted and applied (Isiko MTTI-Ug; Musoke PSFU-Ug; Okello MEACA-Ug).

6.3.1.2 Transposition of the Customs Union Protocol in Kenya

The transposition of the customs union protocol in Kenya had similarities with the process in Uganda. Just like in Uganda, Kenya employed a primary law to amend the existing customs Act. The Ministry of Finance and Economic Planning drafted a Memorandum for Cabinet approval. The Cabinet approved the amendments and forwarded the Bill to parliament as part of the fiscal policy proposals for the financial year 2004/2005. The Bill was debated and passed by parliament together with the budget proposals. The amended Bill was intended to repeal the existing customs Act and replace it with the customs protocol in its entirety. After parliament approved the proposed Bill, the Act was finalised and forwarded to the president to assent into law. The customs Act was ratified by the Ministry of Foreign Affairs as required for all international treaties and notified to the EAC secretariat before the deadline for transposition set by the EAC (Mutebi EAC; Waithaka MoJCA-Ke).

Some of the existing Acts and laws that were in conflict with the protocol were repealed as part of the transposition process. For example, in 2004, the Ministry of Justice repealed the provision in the Tourism Bill that regulated the Nairobi International Conference Centre. The provision was repealed because the restrictions imposed by the Tourism Bill on the management and use of the Nairobi International Conference Centre were in conflict with the objective of trade liberalization that the protocol sought to achieve (Waithaka MoJCA-Ke). In addition, the government established a fully-fledged Ministry of East African Affairs, a desk for application of rules of origin at the Kenya Revenue Authority office in Nairobi set up an inter-ministerial coordination committee for the customs union implementation. However, since the customs union protocol did not have regulations in place at the time of transposition, Kenya continued to apply existing regulations until 2007 when harmonised regulations were finalised and incorporated into the protocol (Kamau MEACA-Ke).

Analysis of the research revealed that the customs union protocol was ratified and notified to the EAC secretariat by January 1st 2005. A government official confirmed that the legislation on the customs union adopted in Kenya was exactly the same as the customs union protocol signed in 2004 (Gathoni MTI-Ke). Similarly, Officials at the EAC secretariat confirmed that a perusal of the customs Act submitted to the secretariat revealed that the wording in the Act was similar to the customs union protocol (Mutebi EAC; Nyambura EAC). “.....This is evidence that the transposition of the customs union protocol in Kenya was both timely and correct” commented an official in Kenya (Kamau MEACA-Ke).

Respondents attributed the timeliness and correctness of the transposition in Kenya to the eagerness by officials to implement the decisions they reached during the negotiations. Most of the officials involved in the transposition were part of the negotiations for the protocol and were keen to see the law transposed without any challenges (Waithaka MoJCA-Ke; Gathoni MTI-Ke). Other officials argued that the decision to repeal existing law and transpose the customs union protocol in entirety may have accounted for the correct transposition of the protocol (Mumanyi MTI-Ke; Owour MoFP-Ke).

The analysis revealed that the transposition of the protocol in Kenya, though timely and correct was not complete. For example, Kenya has not set up a dispute resolution system and an appeal system. While the EAC agreed on harmonisation of 1100 regional standards, Kenya is yet to gazette the harmonised standards (Waithaka MoJCA-Ke; Owour MoFP-Ke). In addition, although Kenya already had laws in place regarding some trade-related provisions, other partner states did not have existing legislation in those policy areas. For example, Kenya already had laws on counterfeits but Uganda was yet to enact similar legislation. This made harmonisation of most trade-related provisions in the region difficult (Muthoni MTI-Ke).

6.3.1.3 Transposition of the Customs Union Protocol in Tanzania

In order to transpose the customs law, Tanzania applied a primary law (Aliya MoJCA-Tz). The procedure for transposition of the protocol in Tanzania differed from the procedure in the other partner states. Unlike Uganda and Kenya, the memorandum to Cabinet for the amendment of the customs management Act in Tanzania was drafted by the Ministry of Trade, Industry and marketing. In addition, the Cabinet memo included a provision on the treatment of article 'F' of the customs Act of 1997. This article related to the treatment of goods in customs warehouses that was not provided for in the customs union protocol (Akida TRA-Tz; Kweli MoFEA-Tz). The draft Bill that included the amendment on the 'F' series was approved by Cabinet and forwarded to parliament as a separate Bill to amend the customs Act 1997. This was in contrast to the practice in the partner states where the amendment was presented to parliament as part of the budget process. The new legislation signed by the president of Tanzania was ratified and notified to the EAC secretariat before 1st January 2005. The Act repealed most of the provisions of the 1997 customs Act but retained the provisions related to warehousing of goods. In addition, Tanzania continued to apply the regulations that were in place prior to the negotiations because amended regulations to implement the customs union protocol were not in place (Aliya MoJCA-Tz; Kweli MoFEA-Tz).

The correct and timely transposition of the customs union protocol in Tanzania was verified by documents at the legal department of the EAC secretariat. Officials at the secretariat revealed that although the protocol was not transposed in its entirety, the Act adopted by Tanzania included all the requirements outlined in the customs union protocol in Tanzania (Mutebi EAC; Nyambura EAC).

While the transposition of the protocol in Tanzania was timely and correct, it was not complete because the trade-related provisions were not harmonised and gazetted adequately.

For example, Tanzania had a competition commission, the subsidies and countervailing measures were not harmonised because partner states had not gazetted similar laws. Similarly, Tanzania did not set up a trade remedies committee as required by the protocol (Machaku MEACA-Tz; Nyambura EAC; Aliya MoJCA-Tz; Akida TRA-Tz). Similarly, Mugisa et al point out that there was little evidence that the institutional framework to implement the trade-related provisions like safe guard measures, anti-dumping measures, subsidies and countervailing measures were in place (Mugisa et al 2009:22).

6.3.2 Transposition of the EAC Customs Union Protocol: A Synthesis

Previous literature argued that regional directives should be transposed in a timely, correct and complete manner (Konig and Leutgert 2008; Thomson 2010; Hartlapp and Falkner 2009; Jensen 2007). In the EAC, the partner states were required to adjust their legal and institutional framework in line with the provisions of the customs union protocol by 1st January 2005. The time allowed for the transposition of the protocol in the EAC is short compared to the practice in other integration blocs as discussed in section 6.3.1. The transposition of the customs union protocol in the three partner states is summarised in table 6.2.

Table 6.2: Summary of cross-country transposition of the customs union protocol

Country	No. of provision in protocol	Instrument used	Transposing Ministry	Timely transposition	Correct transposition	Evidence of Institutional framework for Trade related provisions	Provisions completely transposed	Provisions not completely transposed
Uganda	9	Primary	MoFPED	Yes	Yes	No	4	5
Kenya	9	Primary	MoFP	Yes	Yes	No	4	5
Tanzania	9	Primary	MITM	Yes	Yes	No	4	5

Source: Researcher's own analysis

Table 6.1 shows that the customs union protocol constituted nine provisions. The summary of the research showed that provisions on customs tariffs and procedures, non-tariff barriers, existing export promotion schemes and rules of origin¹¹ were transposed in a timely, correct and complete manner since the legal as well as institutional requirements in the protocol were fulfilled by the partner states as discussed in Subsection 6.3.1. Interviewees pointed out that the support from the political leaders was instrumental in the timely transposition (Gathoni MTI-Ke; Waithaka MOJCA-Ke; Akida TRA-Tz; Owour MoFP-Ke; Akida TRA-Tz). Owour (MoFPF-Ke) argued that the three heads of states had been actively engaged in the negotiation process. For example, at the signing ceremony, the three heads of state urged policy implementers to expedite the process of transposition to enable implementation of the protocol to commence without any delay (cf. Chapter 5.4).

However, five trade-related provisions in the protocol were inadequately transposed by the partner states. The research analysis revealed that the framework for application of five trade-related provisions namely; anti-dumping measures, subsidies and countervailing measures, safeguard regulations, free ports and regional export processing zones was not put in place in the three partner states (Muhame MoFPED-Ug; Mugisa et al 2009:22). For example, Wamboi (MTI-Ke) pointed out that the failure to establish a trade remedies committee and harmonised quality standards were proof of incomplete transposition of the customs union protocol.

The analysis of the transposition implies that over fifty percent of the provisions outlined in the EAC customs union protocol were not completely transposed. This percentage compares with the evidence in previous studies on transposition of regional directives. Previous studies of transposition to regional directives reveal mixed results regarding the transposition performance of partner states (Konig and Luetgert, 2008; Thomson 2010; Falkner et al 2005). While some studies found high degrees of transposition performance among partner states

¹¹ *The rules of origin were adoption 2007. However, the research treated this as a case of complete transposition.*

(Falkner et al. 2005), others found most partner states transposed regional directives after the deadline (Masternbroek 2003; Borgetto et al 2006). For example Masternbroek (2003) found that the Dutch government transposed over 58 percent of the directives late while Borgetto et al (2006) reported that Italy transposed 75 percent of the directives after the deadline. The differences in the results of empirical studies on transposition can be attributed to the level of analysis of the directive (Thomson 2010; Konig and Leutgert 2008; Zhelyazkova and Torenvlied 2009). According to Thomson (2010: 579) some studies did not find transposition problems because they analysed transposition at the aggregate level of the directives. He argues that analysing transposition at the level of the provisions that make up the directive increase the number of observations. In addition, Konig and Luetgert (2008: 191) argue that most studies do not analyse the completeness of transposition of directives because they are quantitative in nature and do not have an objective measure of completeness of transposition. They conclude that a more detailed qualitative evaluation of transposition taking completeness into consideration is needed in future research.

In sum, the analysis confirmed that the customs union protocol was transposed in a timely and correct manner. However, five trade related aspects of the protocol were not completely transposed by the time of the research study (Sempebwa MoFPED-Ug; Machaku MEACA-Tz). The analysis identified a number of factors that account for the observed transposition performance of the EAC customs union protocol.

6.4 Explaining the Transposition of the Customs union protocol

The performance of the partner states on the transposition of the EAC customs union protocol revealed mixed results; the customs- related provisions in the protocol were transposed in a timely, correct and complete manner while the trade- related provisions experienced delays or were not transposed adequately. The summary of the research identified a number of factors that may account for the uneven transposition performance observed. The first two factors account for the timely transposition of some provisions while the remaining factors explain delays in the transposition of the trade-related provisions.

Domestic pressure for transposition

The research revealed that the negotiations for the customs union protocol were guided by framework protocol designed by a team of domestic experts from the three partner states. Further, the protocol was negotiated by a team of high-level technical experts composed of government officials from the three partner states (cf. Chapter 5). These officials were driven by a desire to continue the process of liberalization that started in the late 1990s (cf. Chapter 4). The liberalisation was geared to align EAC economies to international best practice particularly the EU model of integration, the Kyoto convention and WTO regulations for trade and tariffs (cf. Chapter 5.2.1). Officials in the partner states developed networks among each other based on the conviction that liberalization of the three economies would lead to increased trade and growth in East Africa (Olouch 2009:194). Respondents revealed that previous reform efforts were frequently hampered by legislative obstacles in national parliaments (Owour MoFP-Ke; Kweli MoFEA-Tz; Agura URA-Ug; Sempebwa MoFPED-Ug; Machaku MEACA-Tz).

Therefore, government officials viewed regional integration as an opportunity to carry out reforms that would avoid delays caused by domestic level parliaments. This was summed by a senior official in Uganda:

.....Prior to the negotiations, we had amendments to the law that we wanted to undertake based on the revised Kyoto convention; these were changes were being slowed down by the legislative bureaucracy. So the customs union protocol was a chance for us to put on board the changes we wanted to put in the law, for example provisions on sharing customs information, NTBs, or harmonisation of procedure (Angura URA-Ug).

The network of senior government officials responsible for transposition used their capacity to push through policy recommendations to ensure timely transposition of the protocol. For example, officials in Uganda omitted the provision on establishment of a coordinating Ministry in order to avoid delay in transposing the directive (cf. Chapter 6.3.1), Ministry of Finance officials removed the establishment of a Ministry from the Cabinet memo that applied for the amendment of the Customs Act. The Ministry was subsequently established under a separate Bill (Muhamu MoFPED-Ug). In addition, partner states opted to repeal existing laws and adopt the customs union in its entirety to avoid delays (Waithaka MoJCA-Ke; Nyambura EAC).

The role of the epistemic communities in transposition of regional directives is supported by the sociological institutional approach in international relations theory. Sociological institutionalists suggest that adequate commitment to regional directives may be accounted for by existence of networks of officials with beliefs that are held together by norms. These beliefs are responsible for driving the integration agenda among member states (Bursens and Deforche 2008:5; Masternbroek and Kaeding 2006; Borzel 2005:56). For example, Masternbroek and Kaeding argue that transposition can occur through the effects of epistemic communities. These communities, with common norms and world views disseminate new norms that lead to changes (Masternbroek and Kaeding (2006:344).

The Transposition instrument employed in the transposition

According to some experts in the region, the legal instrument used and the manner of the transposition may have contributed to the timely and correct transposition of the customs union protocol. The transposition in the three countries was undertaken by a primary law that repealed existing legislation and adopted the customs union protocol in entirety (Mutebi EAC; Nyambura EAC; Namara MoJCA-Ug). According to Namara, a legal officer in the Ministry of Justice and Constitutional Affairs in Uganda, adopting the customs union protocol in its entirety avoided the delays and costs involved in drafting a new piece of legislation and accounted for the timely and correct transposition of the protocol in the partner states. The argument that the type of legal instrument employed may contribute to correct and timely transposition was supported by a number of integration scholars (Kaeding 2006; Masternbroek 2003:384; Steunenberg and Voermans 2006). Masternbroek argues that the legal instrument used and the method of submission of the amendment to parliament is crucial in the transposition performance of regional directives (Masternbroek 2003:384).

The political preferences of regional states

The preferences of partner states had implications for transposition of the EAC customs union protocol. Experts informed the researcher that each country had a position which reflected the preferences of the political leaders and the dominant interest groups namely; fear of revenue loss and protection of domestic private sector from competition by partner states (cf. Chapter 5.2.3 and 5.4). for example, Machaku commented “.....The fact that the president of Uganda personally brought the petition for exemption on behalf the private sector confirms that the political leadership is geared to protect the private sector in their respective countries” (Machaku MEACA-Tz).

Analysis of the research revealed that the transposition of customs –related provisions in the protocol was undertaken without any challenges because the high level technical teams were

able to convince their respective governments that the fear of customs revenue loss was unfounded. Officials pointed out that partner states undertook revenue simulations to analyse the impact of the CET and the duties on intra-regional under the customs union protocol on revenue yields (Ngasa MEACA-Tz; Sempebwa MoFPED-Ug). However, the transposition of trade –related provisions experienced challenges.

First, the provision on rules of origin was transposed two years late. Second, other trade –related provisions were not transposed completely (see table 6.2). Experts observed that although the laws were drafted by the respective administrative and judicial officials, they were delayed at the policy-making stage. For example, the counterfeit and the investment amendment Bills in Uganda were delayed due to disagreements in the national Cabinet and parliament (Sempebwa MoFPED-Ug; Namara MoJCA). Other experts argued that pressure from powerful private sector groups have led to incomplete transposition. For example, the delays in harmonisation of regional policies like anti-dumping and free ports and the failure to establish a regional committee on trade remedies was attributed to private sector groups with vested interests in the continuation of the protective trade regimes that existed prior to the customs union partner states (Isiko MTTI-Ug; Kamau-MEACA-Ke). Senior government officials informed the researcher that the three EAC countries are characterised by powerful private sector apex bodies that represent over 80 percent of the private sector and with considerable influence on political leaders in the region (Booth et al 2006; Kweli MoFEA-Tz; Mosi Press). The opinions of key experts were confirmed by documents reviewed during the research project. For example, Olouch argued that delays in the implementation of key provisions by member states evidence a total lack of political will in the transposition and enforcement of the protocol (Olouch 2009:214).

Previous analysis of transposition performance revealed mixed results. While some studies did not find any delays in transposition (Mbaye 2001; Versluis 2007; Falkner et al 2005),

others reveal delays in transposition of regional directives (Zhelyazkova and Trenvlied 2009; Konig and Leutgert 2009; Thomson 2010). Scholars attributed the mixed results on the fact that some studies did not analyse the negotiation process to establish whether governments disagreed with some of the provisions in the protocol (Thomson 2010).

Lack of regional monitoring and sanctioning mechanisms

Regional integration literature emphasises the role of the regional institutions in transposition of regional directives derived from neoliberal institutional approaches to commitment in regional integration literature (cf. Chapter 2). Regional institutions monitor and provide information on the progress of the integration process. Institutions also provide institutionalised dispute resolution mechanisms as well as sanctions to deter violation of treaty provisions (Mera 2007; Thomson 2010; Konig and Leutgert 2008:165). Respondents as well as documents reviewed during the research revealed that the EAC secretariat- the regional institution charged with implementation of the EAC treaties did not have the capacity to monitor progress of the transposition and provide information to partner states. An official at the secretariat commented that “..... Due to the lack of monitoring and information dissemination to the partner states at the EAC secretariat, the political leaders in the partner states are not aware that some of the policies are not completely transposed in the domestic system” (Mutebi EAC).

As discussed in Chapter 4, the secretariat is poorly staffed and under-resourced. This makes it difficult to undertake monitoring in the partner states (Booth et al 2006; Machaku MEACA-Tz). In addition, EAC secretariat is supported by the East African Court of Justice (EAC-CJ). However, an official at the EAC-CJ informed the researcher that by April 2010, the court had not sanctioned any member state for violation of the customs union treaty. This is because the practice in the region only permits partner states to bring cases to the court. He added that because of the principle of consensus is practiced in the region; partner states do not seek

institutionalised dispute resolution mechanisms (Mwaura EAC-CJ). Other officials were doubtful whether the court of justice has the powers to sanction for violation of treaty provisions. They argued that member states did not cede legal powers to the regional institution (Owour MoFP-Ke; Nyambura EAC; Namara MoJCA-Ug).

The view that effective monitoring and sanctioning by supranational organisations results in adequate transposition of regional directives is supported by liberal institutional commitment scholars who observed that the lack of an institutionalised monitoring and sanctioning system may affect transposition performance among partner states (Thomson 2010; Zhelyazkova and Torenvlied 2009; Konig and Luetgert 2008:165). For example, Thomson (2010:580) argues that the power of regional institutions to monitor transposition and sanction incorrect and incomplete transposition may improve transposition outcomes.

6.5 Chapter Conclusion

The Chapter analysed the transposition of the Customs union protocol in the EAC partner states. The protocol required partner states to transpose the protocol in a timely, correct and complete manner. The analysis was undertaken through expert interviews and document reviews of the transposition of the nine provisions that constitute the customs union protocol. This analysis goes beyond previous research that viewed transposition at the aggregate level of directives as a whole.

Empirical evidence showed that three customs related provisions in the protocol were transposed on time, correctly and completely. On the other hand, the trade –related provisions in the protocol either experienced delays or where not transposed as summarised in table 6.2. In sum, over fifty percent of the provisions in the EAC customs union protocol were not transposed completely. The main reason for the incomplete transposition relates to the preferences of the partner states during the negotiation process. The analysis of the impact of

the preferences of partner states on the transposition outcomes has hitherto received limited scholarly attention (Thomson 2010:578). A similar conclusion has also been reached in other studies that analysed transposition of regional directives (Heritier 1996; Borzel 2000; Knill and Lenschow 2000).

The research reveals that the mixed results observed in the transposition of the customs union protocol are caused by a variety of legal, political and administrative factors working together with some factors responsible for the timely and correct transposition while other factors accounting for the delays and incomplete transposition at the domestic level. Similar conclusions about the interrelated nature of the factors that contribute to transposition performance were made as a result of research studies undertaken on transposition in the EU (Masterbroek 2003; Tallberg 2008; Steunenberg and Voermans 2006). This analysis in this Chapter confirmed that rational choice and sociological institutionalism provide explanation for the factors responsible for the transposition performance.

CHAPTER 7

7 HOW WAS THE EAC CUSTOMS UNION ENFORCED?

7.1 Introduction

The previous Chapter analysed the transposition of the customs union protocol into the respective domestic legal systems. Previous studies show that adaptation does not automatically translate into effective application unless properly monitored and enforced (Versluis 2007; Falkner et al 2005). Enforcement of regional directives can be undertaken at two levels namely; the regional level and the domestic level as (see Chapter 2.3.1). This Chapter seeks to explore the cross-country enforcement of the customs union protocol for the period 2005-2009 and answer the second research question namely, how was the Customs union protocol enforced in the three partner states?

The Chapter is structured as follows; section 7.2 compares the enforcement of the EAC customs union protocol in the partner states and presents a synthesis of the enforcement system across the three partner states. Section 7.3 analyse the factors that account for the enforcement performance in regard to the customs union protocol while section 7.4 will bring the sections together and draw conclusions.

7.2 Analysing enforcement systems across the partner states

This section explores the systems in place to enforce the customs union protocol. The system for enforcement relates to two main aspects; the enforcement structures and practices. The enforcement structure outlines the institutional framework for the coordination of the enforcement practices. The enforcement practices on the other hand refer to the strategies adopted to ensure that the regulated firms adhere to the provisions of the customs union protocol (cf. Chapter 2)

7.2.1 Enforcement of the customs union protocol in Uganda

Information derived from the research shows that Uganda already had a structure for enforcement of taxes prior to the customs union. This structure resulted from the public sector reforms of the 1990s and 2000s which devolved policy design from implementation. As a result, a number of semi-autonomous institutions were created and charged with policy implementation. One of the institutions created was the Uganda revenue authority, responsible for tax administration while the Ministry of Finance, Planning and Economic Development retained regulatory oversight. In addition, the government established the Special Revenue Protection Services (SRPS), a body under the president's office to curb revenue evasion, smuggling and corruption (The New vision 2003; AFDB, 2010).

In order to enforce the protocol, the government made changes to the existing enforcement systems in order to take into consideration the enforcement of trade-related provisions. The structure for coordination of the enforcement strategy is discussed in the next sub-section.

7.2.1.1 Uganda's Structure for coordination of the enforcement system

Interview results reveal that a coordination committee composed of a number of central government ministries was established to coordinate the enforcement of the protocol. They include Ministry of Finance, Planning and Economic Development (MoFPED), Tourism, Trade and Industry (MTTI), Works and Housing, Justice and Constitutional Affairs, Agriculture, Animal Industry and Fisheries (MAAIF). These ministries were involved in the enforcement as a result of the oversight they already had over the regulated agencies. Further, a new Ministry for East African Affairs (MEACA) was envisaged as the coordination ministry in line with EAC guidelines (OKello MEACA-Ug; Mugisha, Consultant).

In practice, the coordination structure based on an inter-ministerial committee to harmonise the enforcement practices in the separate ministries did not materialise as envisaged (Nyambura EAC; Angura URA-Ug). First, the Department of East African Affairs set up in

2006 under the office of the President did not have the capacity and resources to coordinate the enforcement strategies. This created a coordination problem (Namara MoJCA-Ug; Okello MEACA-Ug). Second, other ministries perceived the enforcement of the protocol as a matter for the Tax Policy Department and viewed their involvement in the enforcement process as extra workload. Thirdly, there was poor communication between the ministries in the inter-ministerial committee; coordination meetings were not held regularly and when held, they were poorly attended. This affected the coordination of the enforcement process (Asiimwe MoFA-Ug; Musoke, PSFU-Ug). In sum, the horizontal coordination system setup to coordinate the protocol was not implemented (Isiko MTTI-Ug; Muleme UNBS-Ug). A senior official revealed that eventually the enforcement of the protocol was left to the Tax Policy Department in the Ministry of Finance, Planning and Economic Development (Isiko MTTI-Ug).

Uganda's capacity for coordination of the enforcement strategy

The Tax Policy Department in the Ministry of Finance, Planning and Economic Development was headed by a commissioner and composed of about ten high calibre staff. In addition to enforcement of the customs union protocol, the department had other policy functions namely, tax policy formulation, representing the country at negotiations for double taxation agreements and preparation national budgets. At the same time, the department was involved in the negotiation for the common market protocol, and the Economic Partnership Agreement (EPAs) with the European Union (Ballard PSDG; Masaba PSDG). This imposed a heavy workload on the officials in the department and affected their capacity to directly monitor and enforce the protocol (Mugisha consultant; Musinguzi UMA-Ug). Due to the lack of sufficient capacity to effectively monitor the application of the protocol, the Ministry of Finance, Planning and Economic Development devised a strategy that relied on other stakeholders to

gather information and enforce the protocol (Sempebwa MoFPED-Ug). The strategy for coordination of the enforcement system is discussed in the next subsection.

7.2.1.2 The customs union enforcement strategy in Uganda

The enforcement strategy deals with the way in which violations were identified and steps taken to deter non-compliance with the policies in the protocol. This section is presented in two parts. First, the monitoring strategy is presented. Then the enforcement practices in existence are explored in detail.

Strategy for monitoring the application of the customs union protocol

The effectiveness of the strategy for monitoring the adherence to the protocol was contingent upon the capacity of the Tax Policy Department. Respondents revealed that the Tax Policy Department did not have sufficient capacity to undertake a direct ‘police patrol’ system for identification of application problems and devised an informal system for monitoring the protocol. The system relied on information from stakeholders (Muhame MoFPED-Ug; Sempebwa MoFPED-Ug).

The system for monitoring adopted by the Ministry involved at least three indirect sources of information; First, private sector firms trading within the region were encouraged to make reports on the application of the protocol across the region (Angura MoFPED-Ug; Nyakundi EABC). This was verified by reports on the application prepared by private sector apex body and forwarded to the ministry on the application of the protocol. For example, the East African Business Council (EABC) drafted a report on non-tariff barriers in the region (EABC 2006). Similarly, a respondent recounted several meetings held with the Minister of Finance on the problems encountered in exporting poultry products to Kenya (Mugume PSFU-Ug).

Second, newspaper articles and press reports provided the Tax Policy Department with information on the application of the protocol. For example, the East African newspaper

initiated a weekly column to track progress and highlight problems in the implementation of the customs union protocol (Omondi, press).

Third, a number of private consultants have initiated studies that have informed the Ministry on the application problems in the country. For example, the government of Rwanda initiated a study on the NTBs on the northern corridor which revealed enforcement shortcomings in the implementation of the protocol (Sempebwa MoFPED-Ug; Angura URA-Ug).

This three-pronged monitoring system provided the Tax Policy Department with useful information on the compliance of the customs union protocol by the regulated agencies. It enabled the department to devise practices to ensure that provisions in the protocol were complied with. These practices are discussed below.

The customs union enforcement practices in Uganda

The research results showed that the regulatory practice employed in Uganda to deter violation of protocol provisions was based on the accommodative enforcement approach developed by the EAC. The main objective was to encourage compliance and gradually help the partner states to increase their commitment to the customs union protocol so the use of legal sanctions was discouraged (Namara MoJCA-Ug; Machaku MEACA-Tz). The accommodative enforcement system had three principles; training and mentoring of regulated agencies, strategies to mitigate the adverse effects of the protocol on the economy and deterrent measures to prevent applications problems. These are discussed in turn below.

Training and mentoring practices

Interviewees reported that in 2005, the Tax Policy Department commenced training and awareness programs on the customs union protocol. In addition, copies of the protocol and guidance materials were printed and distributed to staff in key enforcement ministries. This was verified by officials at the EAC Secretariat who confirmed that the implementation of the

customs union was delayed for two months to enable partner states print sufficient copies of the protocol and accompanying documents. The training conducted by the Ministry of Finance, Planning and Economic Development included explanation of the implications of the articles the protocol and obligations of the different stakeholders (Mutebi EAC; Nyambura EAC). Officials in URA acknowledged the impact of the training programme on their capacity to understand and interpret the Customs Management Act and other provisions of the protocol (Angura URA; Nsereko URA). However, Critics argued that the training was restricted to the Uganda revenue authority and other stakeholders did not benefit (Musinguzi PSFU; Namara MoJCA).

Practices to mitigate the adverse effects of the protocol

Article 12(3) of the customs union protocol allowed partner states to apply for changes to mitigate the adverse effects of the protocol on partner states. Article 12(3) specifically provides that;

“ the council may review the common external tariff structure and approve measures designed to remedy any adverse effects which any of the partner states may experience by reason of the implementation of this part of the protocol or, in exceptional circumstances, to safeguard community interests” (EAC Secretariat 2004).

This study revealed that Uganda used the discretion provided by article 12(3) of the protocol to request the EAC Council of ministers to reduce the CET rates for cement and heavy duty commercial vehicles under HS codes 2523.28.100 and 8704.23.90 respectively (EAC Gazette 2010). Interviewees argued that reduction on CET for heavy commercial vehicles was necessary to reduce the cost of transport since Uganda was landlocked and was more dependent on road transport compared to other forms of transport. It was argued that a reduction in the CET on heavy commercial vehicles would lead to increased numbers of vehicles imported and reduce the cost of transport. However, critics revealed that the reduction in CET on heavy commercial vehicles did not benefit many Ugandans as the

majority of the transporters in the region were from Kenya (Musinguzi UMA-Ug; Musoke PSFU-Ug). On changes in the duty on cement, officials argued the high CET on cement was slowing growth of the construction industry hence the request for reduction in the CET (Sempebwa MoFPED). However, respondents revealed that the decision to reduce the CET on cement was made despite sufficient supply of cement within the region (Musoke PSFU-Ug). Similarly, the new vision newspaper of 15th June 2010 in an article entitled “*regional cement dealers cry foul*” reported that cement manufacturers in the region urged partner states to reverse the decision to reduce the CET on imported cement. In sum, the research confirmed that the choice of commodities on which to apply for reduction on the CET was made without adequate consultation with stakeholders (Wabwire press; Lubanga UMA-Ug; Musoke PSFU-Ug). The lack of adequate consultation on whether the CET on heavy commercial vehicles and cement led to adverse effects was corroborated by the Global Trade Alert (2010) that concluded that there was no evidence to show that the high rates of CET on trucks would lead to any adverse effects¹².

Practices to deter violations of the protocol

Discussions with government officials on the enforcement of the customs union protocol revealed that in addition to the training and request for changes in the CET on specific imports, Uganda employed deterrence measures to ensure that the regulated firms adhered to the provisions of the protocol. Whereas the EAC adopted an accommodative approach to enforcement based on persuasion, Uganda’s regulatory enforcement system included aspects of deterrent practices (see Chapter 2.3.1). For example, the Tax Policy Department made regular ministerial pronouncements and drafted memos to the heads of regulated agencies to

¹² Global Trade Alert: www.globaltradealert.org/measure/east-african-community-changes-customs-management-Act

emphasise their obligations to implement government decisions and other international agreements (Muhamu MoFPED-Ug; Okello MEACA-Ug). As a result, applications for new duty exemptions were rejected on the grounds that the power for granting exemptions was transferred to the regional secretariat in Arusha. Similarly, after the presentation of the 2007/2008 budget, the President of Uganda urged regulated agencies to eliminate most of the non-tariff barriers in the country. These two examples reveal the deterrence practices employed by the country (Nyambura EAC; Asiimwe MoFA-Ug). Other studies on enforcement of the customs union protocol agree with the view that Uganda employed deterrent measures with some degree of success (EABC 2006; CUTS 2010:3). For example the study on NTBs by the EABC (2006) concluded that the strict adherence to the protocol provisions enabled Uganda to eliminate more NTBs than Kenya and Tanzania.

In addition, the Tax Policy Department relied on the existence of the Special Revenue Protection Services (SRPS) as a deterrent measure to ensure that the regulated firms adhered to the protocol as discussed in Chapter 7.2.1. Interviewees observed that although overt enforcement practices were not undertaken by the SRPS, the perception that the SRPS was monitoring application and had powers to sanction violations may have contributed to greater adherence with the provisions in the protocol. In sum, previous examples of prosecution of corrupt officials by the SRPS acted as a deterrent against violation of the protocol (see new vision newspaper 18th August 2003). The view that organisations adhere to policy requirements if they believe that there is an organisation at the national or regional level monitoring their activities is supported by existing literature on enforcement of regional directives. For example, Thomson (2010:580) argued that states who perceive that supranational organisations are monitoring their compliance may comply with directives even when they had incentives to deviate.

An analysis of the approaches adopted by Uganda reveals that they were adequate in ensuring that the regulated agencies adhered to some provisions but were inadequate in eliminating all applications problems. For example, although the strategies led to the elimination of most NTBs in the country, respondents were doubtful whether the government had provided sufficient oversight to ensure that goods produced from products that benefitted from tax exemptions paid the requisite duties when exported to the partner states as required under Part F of the protocol (Mutie KAM-Ke; Patel KAM-Ke; Booth et al 2006:24). Specifically, Patel (KAM-Ke) noted that goods produced using raw materials on the “Uganda list” (cf. Chapter 5.4) were not attracting CET rates when exported to other partner states contrary to the provisions in the protocol.

In addition, interviewees from Kenya reported that Uganda failed to enforce liberalisation of the trade in dairy products. Officials argued that Uganda imposed restrictions on importation of fresh milk and meat products (Ongeri KEPSA; Mbugua, KEPSA-Ke; Gathoni MTI-Ke). However, officials in Uganda defended the restrictions on importation of poultry and animal products on the need to control of diseases (Muleme UNBS-Ug; Nsereko URA-Ug). For example, Muleme (UNBS-Ug) revealed that restrictions were not intended to deter free movement of poultry and animal products but were imposed to control the spread of mad cow disease and bird flu.

7.2.2 Enforcement of the Customs Union protocol in Kenya

The system for enforcement of customs duties in Kenya prior to the customs union protocol was similar to the system that existed in Uganda. The system was developed as a result of the fiscal reforms of the 1990s and early 2000s which devolved implementation from policy making in major policy areas. These reforms created semi-autonomous bodies to implement tax policy while the central government ministries retained regulatory oversight. However, to comply with the customs union protocol requirements, Kenya made changes to the system of

enforcement to include institutional structures for the coordination and enforcement of trade related provisions. This system for enforcement of the customs union in Kenya is discussed in the next Subsection.

7.2.2.1 Kenya's Structure for coordination of the enforcement system

Summary of the research reveals that Kenya established a horizontal structure for coordination of the customs union protocol composed of central government ministries namely, Finance and Planning, Trade and Industrialisation, Agriculture, Works and president's office in a horizontal coordination system. In addition, the Ministry for East Africa Affairs was established to coordinate the enforcement of the protocol was set up (Owour MoFP-Ke; Wamboi MTI-Ke).

Respondents concurred that unlike Uganda, the Office of the President and Ministry of Works in Kenya were actively involved in the enforcement of the customs union to ensure security protect the infrastructure on the northern corridor respectively (Mumanye, MEACA-Ke; Gathoni MTI-Ke). This was explained by the crucial role that the central corridor plays in transit trade within the region. The Northern corridor is the main infrastructure network connecting the Kenyan port of Mombasa with the landlocked hinterland of Uganda, Rwanda Burundi and parts of DRC Congo and Sudan (see appendix 1). According to respondents, the high level of organisational coherence required to coordinate the enforcement process in Kenya explained the need to develop a comprehensive monitoring framework as part of the MEACA strategic plan (Owour MoFP-K; Kamau MEACA-K).

Administrative capacity for enforcement of the protocol

Interview responses showed that in contrast to Uganda, the Ministry of East Africa Affairs in Kenya was well resourced and sufficiently staffed. When MEACA was established, the Ministry of Public Service seconded technical staff from other ministries as well as recruited new staff to fill vacancies (Mumanye MTI-Ke; Nyambura EAC). However, an official in the Ministry observed that although 114 employees were recruited between 2005 and 2006, only five of these officers were technical staff. This implies that MEACA had to rely on staff from other coordinating ministries to enforce technical aspects of the protocol. In sum, while the country has a well-established coordination system for the enforcement of the customs union protocol, the main coordination and enforcement ministry did not have sufficient technical staff to monitor and enforce compliance of the protocol adequately (Karanja KEBS-Ke; Mbugua KEPSA-ke).

7.2.2.2 The Customs union enforcement strategy in Kenya

This section presents the strategy for the enforcement of the customs union protocol in Kenya. The enforcement strategy deals with the way in which violations were identified and steps taken to deter noncompliance with the provisions in the protocol. The section is presented in two parts. First, the monitoring strategy is presented. Then the enforcement practices in existence are explored in detail.

Monitoring the application of the customs union protocol

Interviewees in Kenya were unanimous that the strategy for monitoring the application of the protocol was similar to the system in Uganda. Due to limited number of staff with technical capacity, the government set up a multi stakeholder committee to receive reports on the progress of the customs union application. The information was derived from three sources. First, private sector organisations trading across the region provided information on the application of the protocol in the partner states (Mbugua KEPSA-Ke; Omondi press). For

example, an official recounted an incident where Tanzania customs officials refused to grant his firm an authorisation to export raw milk from Tanzania for further processing in Kenya (Ongeri KEPSA-Ke). While another interviewee revealed that his organization made a report to the inter-ministerial committee for the coordination of the protocol to the effect that Tanzania issued new exemptions to domestic edible oil manufacturers contrary to the provisions in the protocol (Patel KAM-Ke). Second, information on the progress of the customs union protocol in the EAC was received from newspaper reports. Most of the reports by the press were directed at application problems encountered in Kenya. This helped the government to identify application problems among the regulated firms in the country (Omondi press; EPRC 2009). Third, reports on application problems were provided by other governments and consultants (Owour MoFP-Ke; Kamau MEACA-Ke). For example, a report by the World Bank (2006) revealed the Kenya had more NTBs than other partner states in the region.

Interviews reports revealed that the MEACA and other enforcement ministries in Kenya met regularly to review the reports of the monitoring committee and find consensus on the course of action. In sum, although the Ministry did not have a street level enforcement system to gather information from the regulated agencies, the indirect sources of information were useful to inform the government on the application of the customs union (Mumanye MTI-Ke).

The customs union enforcement Practices in Kenya

The enforcement practice in Kenya was based on the accommodative enforcement system adopted by the EAC which discouraged the use of sanctions in the partner states. The regulatory agency in Kenya adopted enforcement practices similar to that employed in Uganda namely; training and awareness for the regulated agencies, changes to the CET on selected imports to mitigate the adverse effects of the protocol on the economy, and state

intervention to correct compliance problems (Owour MoFP-K). The next Subsection analyses the enforcement practices in Kenya in detail.

Training and Mentoring practices

First, Kenya conducted training and mentoring programs to educate regulated agencies and explain the details of the substantive and procedural requirements of the protocol. The training and mentoring programs were undertaken jointly by officials from the key government ministries charged with regulatory oversight of the customs union protocol (Owour MoFP-Ke). Respondents noted that the training was important but was restricted to government agencies involved in the application of the protocol. Although the training was not extended to the private sector, officials were in agreement that the training and mentoring was crucial to build trust and emphasise the importance of implementing government policy (Karanja KEBS-Ke; Gathoni MTI-Ke; Mbugua KEPSA-Ke).

Practices to mitigate the adverse effects of the protocol

In addition to training programs to enlighten stakeholders on the protocol, Kenya applied to the Council of ministers to revise the CET on rice from Pakistan and wheat in order to mitigate the adverse impact of the implementation on the country as provided in article 12(3). The reduction of CET on rice from Pakistan was on grounds that it was consumed by the majority of the Kenyan population and the high CET was affecting the capacity of ordinary citizens to buy rice (Muhame MoFPED-Ug; Kweli MoFEA-Tz; Nyambura EAC). However, information from respondents in Uganda and Tanzania revealed that the reason for the request to reduce CET on rice was related to the importance of Pakistan as a major importer of Tea from Kenya. Pakistan – the largest importer of Kenyan tea had threatened retaliation for the high CET on rice (Ngasa MEACA-Tz; Shindika TCCIA-Tz; Musoke PSFU-Ug). Respondents revealed that Uganda initially resisted the change in the CET on rice on the grounds that the region had sufficient local supply. However, Kenya was able to convince the

Council of Ministers that EAC does not have sufficient rice supplies and the protestations were driven by the desire to protect a major rice producer in Uganda (Owour MoFP-Ke; Kamau MEACA-Ke; Gathoni MTI-Ke).

Further, critics argued that Kenya applied for increase of CET on wheat to protect local producers yet EAC is a net importer of wheat (Nsereko URA-Ug). However, just like in the case of Uganda, documents reviewed raised doubts whether the Ministry of Finance and Planning in Kenya consulted widely with the coordinating ministries and other stakeholders on the CET in the EAC changes during the period 2005-2009 (Global trade alert 2010).

Practices to deter application violations

In order to enforce adherence to the protocol, Kenya attempted to implement a strict enforcement practise similar to that undertaken in Uganda (cf. Chapter 2.3.1). Officials in Kenya informed the researcher that on several occasions, the President of Kenya frequently called on executive agencies to adhere to the provisions in the customs union protocol during official speeches. For example, the EAC report (2007) revealed that during the 9th extraordinary heads of summit meeting in Dar-es Salaam, President Kibaki warned Kenya government officials against laxity in enforcement of agreed protocols.

Although effort was made by government officials to deter non-compliance with the protocol, interviewees in Uganda and Tanzania argued that the deterrence measures did not eliminate application problems. Exporters cited the existence of non-tariff barriers (NTBs), long procedural delays, weigh bridges and road blocks on the northern corridor as evidence of lack of political will by Kenya to enforce the customs union protocol (Musinguzi UMA; Shindika TCCIA; Machaku MEACA Tz; EABC 2006; Kimathi EAC). Specifically, an exporter of poultry products informed the researcher that continued existence of road blocks and delays in processing documentation reflected lack of willingness by political leaders to punish non-

compliant regulated agencies (Mugume PSFU-Ug). Other documents reviewed during the research highlighted the lack of measures to deter non-adherence to the protocol (Okumu and Nyakori 2010; EABC 2007; Stahl 2009). The EABC report of 2007 identifies over 47 road blocks between the port of Mombasa and the Uganda border of Malaba while Stahl (2009) observed that Kenya had the greatest number of non-tariff barriers of all the partner states.

Further, analysis of the research revealed inadequate enforcement of the policies related to export of goods manufactured using raw materials that benefitted from duty exemptions. Annex Vii 15(1) to the protocol restricted domestic sale of goods from the export processing zone to twenty per centum (EAC Secretariat 2005: 11). However, interviewees were sceptical whether the enforcement system had sufficient capacity to ensure that regulated agencies imposed duties on exports to partner states manufactured from raw materials that benefitted from duty exemptions since the three partner states in principle were considered a domestic market (Musinguzi PSFU; Kweli MoFP-Tz). This scepticism among respondents was summed by a senior official in the government of Uganda who stated that;

“.....Kenya kept a successful EPZ framework that exempted raw materials for goods produced in EPZs from import duty as well as duties on finished exports for the last five years. Kenya has been exporting to partner states notwithstanding the fact that the EAC is considered a single territory and exports to domestic markets from EPZ need to be restricted to 20%. Kenyan firms have been exporting to Uganda and Tanzania as if these are third countries. In effect they should have charged these companies the duties due on import of raw materials.....” (Musoke MoFPED-Ug)

Third, a review of the exemption regimes existing in the region shows that Kenya was lax in enforcing policies related to article 33 of the protocol. For example, interviewees pointed out that in 2008, the Ministry of Finance and Planning issued new exemptions through the Tax Remission for Export Office (TREO) in contravention of the article 33. Similarly, another respondent doubted whether the government of Kenya was committed to enforcement of the provisions of the protocol. Categorically, he stated that:

“.....when EAC commenced implementing the CU protocol, the CMA Act 2004 and other annexes that regulate ROO, it is obvious that partner states’ laws and policies which affect the CET including the discretion of ministers and revenue authorities to grant exemptions were supposed to have ceased. However, this was not the case in Kenya” (Mueller PSDP).

From the analysis of the research, it can be concluded that the enforcement of the customs union protocol in Kenya was inadequate. This is verified by evidence that reveals that the enforcement system adopted was not able to deter violation of the provisions in the protocol. This is verified by the prevalence of non-tariff barriers and other implementation violations discussed in this section.

7.2.3 Enforcement of the customs union protocol in Tanzania

The system for enforcement of the customs union protocol in Tanzania was similar to the other partner states. Prior to the customs union, the country had a customs enforcement system. The Ministry of Finance and Economic Affairs was responsible for tax policy formulation and had oversight over the tax implementation agency- the Tanzania revenue authority. Since the customs union protocol included provisions related to both customs and trade policy, the existing enforcement structure could not adequately enforce all provisions in the protocol. To overcome the problem, Tanzania established a system to enforce all provisions in the protocol. This section analyses the enforcement system established by Tanzania during the period 2005-2009.

7.2.3.1 Tanzania’s Structure for coordination of the enforcement system

The research findings reveal that the structure of coordination of the CU in Tanzania is similar in many respects to the enforcement structure in Kenya. Enforcement of the customs union protocol is characterised by a horizontal coordination structure with enforcement responsibilities divided among government ministries namely, Ministry of Finance and Economic Planning, Ministry of Trade, Industry and Marketing, Ministry of Agriculture,

Ministry of Works and Transport, and the President's office. The overall coordination was undertaken by the Ministry for East African Affairs (Ngasa MEACA-Tz; Kweli MoFP-Tz).

Administrative capacity for enforcement of the protocol

Interview respondents noted that the Ministry charged with overall coordination of the enforcement system in Tanzania is well facilitated with sufficient staff of the right qualifications. This enables the Ministry to undertake monitoring and enforcement in the key implementing agencies (Akida TRA-Tz; Machaku MEACA-Tz). When the Ministry for East Africa affairs was created, officials from relevant ministries and government departments were seconded to fill the vacancies in the Ministry. A senior official revealed that the government set up EAC desks in different ministries to monitor implementation of the protocol. The enforcement structure was set up to coordinate the entire EAC integration process and was not restricted to the customs union (Aliya MoJCA-Tz).

7.2.3.2 The customs union enforcement strategy in Tanzania

The enforcement strategy deals with the way in which violations were identified and steps taken to deter noncompliance with the protocol. This section is presented in two parts. First, the monitoring strategy is presented. Then the enforcement practices in existence are explored in detail.

Monitoring the application of the customs union protocol

Research results show that the monitoring system in Tanzania relied on three main sources of information. First, information on the application of the protocol was received from the EAC desks in the respective government ministries and departments. The MEACA set up a committee with membership from each ministry to coordinate the overall management of information from the respective ministries. The EAC desk officers in each coordinating ministry were part of the enforcement structure and submitted periodic reports to MEACA (Machaku MEACA-Tz).

Second, private sector stakeholders provided information on the implementation process. Categorically, interviewees identified the apex bodies as the major source of information on implementation problems in the region. The private sector held regular meetings with the Head of State in Tanzania on the implementation of the customs union. During these meetings, stakeholders submitted reports on the enforcement of the protocol in Tanzania as well as in the partner states (Babu CTI-Tz; Shindika TCCIA-Tz). For example, Babu (CTI-Tz) revealed that the private sector conducted a survey on NTBs in the region. During the survey, truck drivers were requested to fill questionnaires on the existence of trade barriers in the region. The results of the survey were submitted to the President as part of the stakeholder consultation process.

Thirdly, the press and other research bodies also contributed information towards monitoring of the enforcement process. For example, The East African newspaper was instrumental in providing reports on the implementation of the customs union protocol in the three partner states. Similarly the EABC undertook studies on the implementation of the customs union protocol and identified major bottlenecks (EABC Report 2007).

The three sources of information on the implementation of the customs union protocol were useful in designing practices to eliminate application problems in the country. These practices are discussed next.

Enforcement practices in Tanzania

Based on the enforcement practices designed by the EAC, Tanzania adopted accommodative enforcement practices similar to the practices in the partner states to ensure that the regulated firms adhered to the provisions in the protocol. The methods employed were similar to other partner states; Training and mentoring practices, practices to mitigate the adverse effects of

the protocol on the economy and deterrence measures to eliminate compliance problems as discussed in the next subsection.

Training and mentoring of the regulated agencies

Research results show that Tanzania initiated training programs for all stakeholders to create awareness about the application of the customs protocol. Unlike the other partner states, the training and awareness programs in Tanzania involved government and non-government officials. According to respondents, the decision to train all stakeholders was justified on the grounds that one of the agencies involved in the application of the protocol- the Tanzania Chamber for Commerce, Industry and Agriculture was not a government agency. In addition, there was need to create awareness among a range of stakeholders including customs agents, transporters, traders and local authorities (Kweli MoFEA-Tz). Most respondents agreed that the training was useful to avert instances where the operations of a government organisation or local authority violated the provisions of the protocol. For example, local governments collect cess on agricultural produce while the Ministry of Agriculture frequently sets up quarantines to prevent spread of disease. Whereas these actions are necessary to increase economic growth and protect the citizens from epidemics, they violate trade-related provisions of the protocol (Akida TRA-Tz; Kweli MoPEA-Tz).

Practices to mitigate the adverse effects of the protocol on the economy

In addition, to training, the government initiated steps to mitigate adverse effects on the economy that arise as a result of application of the protocol as provided under article 12 (3) of the protocol. The government applied to the Council of Ministers to reduce the CET on rice and heavy commercial vehicles. The government argued that rice is consumed by a majority of poor Tanzanians specifically among the population in the coastal areas. This implied that the high CET affected the capacity of the majority citizens to purchase rice. Second, Tanzania is a vast country with remote areas that could only be reached by road

hence the decision to reduce CET on heavy commercial vehicles to reduce the cost of road transport and increase availability of goods (Nyakundi EABC; Mosi Press). Critics argued that the reduction in CET on heavy commercial vehicles led to influx of trucks from China and India which affected the budding vehicle body-building industry in Tanzania (Babu CTI-Tz). Similarly, respondents in Kenya were critical of the decision by Uganda and Tanzania to reduce the CET on heavy duty motor vehicles when Kenya had a vehicle assembly plant (Mutie- KAM-ke; Mbugua KEPSA-Ke; Patel KAM-Ke).

Practices to deter application violations

Third, government adopted deterrent accommodative practices to eliminate application problems in the country. Results of the research revealed that senior government officials continuously stressed the need to adhere to the protocol at different occasions, especially during official functions and conferences. For example, during a speech to the 9th extraordinary summit of heads of governments, the president reaffirmed his government's commitment to implement the provisions of the customs union protocol and warned agencies against violating the provisions in the protocol (Ngasa MEACA-Tz). Second, the government took steps to reverse some of the decisions that were not in line with the requirements of the protocol. For example Olouch (2009:215) pointed out that the Tanzania revenue authority issued an exemption to NDA, an industry involved in export of textiles, contrary to the protocol. This exemption was overturned by the Minister of Finance and Economic Affairs (see the East African newspaper 1st /05/ 2006)¹³. In a related case, a certificate of origin issued for a consignment of toothpaste that did not meet the criteria for 'wholly and exclusively produced' in EAC was cancelled by the Ministry of Finance and Economic Affairs (Shindika TCCIA-Tz; Nsereko URA-Ug).

¹³ www.theeast.african.co.ke/news/-/2558/248984/-/view

On the other hand, continued existence of application problems pointed to inadequate enforcement of the protocol. For example, respondents revealed that reliable information on the existence of NTBs was provided by two newspaper reports (see the New Vision Newspaper of 11/02/2007; The East African Newspaper of 16/07/2007) however, government did not take any action to eliminate the application shortcomings (Nyakundi EABC; Ongeru KEPSA). The reports of the newspapers on the existence of NTBs and the inadequacy of deterrence measures in Tanzania were corroborated by a study of non-tariff barriers on the central corridor¹⁴.

Similarly, the protocol prohibited partner states from issuing new export schemes. However, Tanzania continued to issue exemptions to domestic industries. For example, a senior official working of a company exporting edible oil products informed the researcher that his company had to cease operations in Tanzania because government officials continued to issue exemptions to local edible oil producers contrary to the provisions in the protocol. This affected the capacity of foreign companies to compete uniformly with domestic industries in edible oil production (Lubanga UMA-Ug).

In sum, the research analysis concludes that the deterrent practice in Tanzania exhibited mixed standards. On one hand, the case of NDA textiles discussed in this section leads to the conclusions that the deterrent system was strict and Tanzanian officials were eager to abide by the protocol. On the other hand, the inability to reverse exemptions granted to domestic edible oil producers shows that the system was inadequate in other instances (Machaku MEACA-Tz; Owour MoFP-Ke; Sempebwa MoFPED-Ug).

¹⁴ *The central corridor is the route from Kigali to Dar es Salaam serving Rwanda, Burundi, DR Congo and South Western Uganda. the study was conducted by the Rwanda private sector foundation in 2007*

7.2.4 Comparison of the enforcement systems across the partner states

The customs union protocol required Partner states to establish systems for the enforcement of the protocol. The systems adopted by partner states were characterised by enforcement structures and strategies as discussed in Section 7.2.3. This section compares the cross country enforcement of the customs union protocol for the years 2005-2009. The cross country comparison of enforcement systems in the EAC proceeds as follows. Subsection 7.2.4.1 presents the cross country enforcement structures. Subsection 7.2.4.2 compares the enforcement strategies across the three states while Subsection 7.2.4.3 assesses the enforcement system across the EAC.

7.2.4.1 Cross country comparison of the enforcement structures in the EAC

The research analysis identified similarities and differences in the enforcement structures across the three partner states of Uganda, Kenya and Tanzania. These similarities and differences are summarised below.

The research revealed that all the three partner states had structures for tax enforcement in place prior to the customs union protocol. However, partner states had to adopt a new system of enforcement in order to take into consideration the enforcement of trade related matters (cf. Section 7.2.1).

The three partner states developed centralised regulatory structures composed of central government ministries for enforcement of the protocol. An analysis of the centralised government structures in the three partner states is summarised in table 7.1.

Table 7.1 Coordination of the customs union protocol in the EAC

Country	Lead ministry	Technical staff levels	Workload	Political involvement	Overall level of coordination
Uganda	MoFPED	low	high	low	inadequate
Kenya	MEACA	high	low	high	adequate
Tanzania	MEACA	high	low	high	adequate

Source: Researcher's own analysis

Table 7.1 summarises the opinions of respondents on the enforcement structures in the three partner states. The analysis shows that the horizontal coordination structure in Uganda did not function as envisaged due to the challenges detailed in Subsection 7.2.1. In order to overcome the challenges encountered in establishing a horizontal coordination system, The Ministry of Finance, Planning and Economic Affairs in Uganda took over the enforcement responsibility. Contrary to the practice in Uganda, Kenya and Tanzania were successful in establishing a horizontal structure composed of central government ministries with coordination assigned to the ministries in charge of East African affairs which were fully operational in the respective states (see Sections 7.2.2 and 7.2.3).

Table 7.1 also compares the levels of technical staff in coordinating agencies. Respondents revealed that the Ministry of Finance, Planning and Economic Development in Uganda had only ten staff members which created a heavy workload as discussed in 7.2.1. In Kenya, the Ministry for East African Affairs had only five technical staff. However, unlike in the case of Uganda, the inadequate number of technical staff available in the Ministry for East Africa Affairs did not create a heavy workload because the horizontal coordination structure utilised staff from other ministries as discussed in Subsection 7.2.2. On the other hand, the enforcement structure in Tanzania was adequately staffed and the workload for the staff was low as illustrated in sub section 7.2.3.

Research confirmed that the office of the President in Kenya and Tanzania had a more prominent role compared to Uganda. The main reasons provided by the research were of a security nature given that Tanzania and Kenya were situated along highways that connected the landlocked hinterland to the coast at Mombasa and Dar-es-salaam (see appendix 4). There were to fears of insecurity in Kenya and Tanzania due to increased transit traffic along the central and northern corridors that may have accounted for the increased security road blocks along those routes (Gathoni MTI-Ke). In sum, the overall coordination in Tanzania and Kenya was high compared to Uganda with the key enforcement ministries working together and the MEACA acting as the coordinating authority.

7.2.4.2 Cross country comparison of the Enforcement strategies in the EAC

This section compares the cross-country strategies to monitor the application of the protocol and measures taken by partner states to ensure that the regulated agencies adhere to the provisions in the protocol.

Strategies for monitoring of the EAC customs union protocol

Research results show that Uganda and Kenya employed an indirect – third party system to collect data on the application of the protocol while Tanzania applied both a direct ‘police patrol’ and an indirect fire alarm system as summarised in table 7.2. Table 7.2 summarises the research analysis on the strategies adopted by the partner states for the enforcement of the protocol. Due to lack of capacity to undertake direct monitoring of the application of the protocol, Uganda and Kenya relied on three informal sources of information; first reports from private sector officials trading across the region provided information on the application of the protocol within the state as well as in the partner states. Secondly information was received from the press and other media on the application of the protocol specifically newspapers were a valuable source of information on compliance problems in the region (cf. Subsection 7.2.3.2). Third, information was received from consultants and other independent

studies on the application of the protocol as discussed in Subsections 7.2.1.2 and 7.2.2.2. On the other hand, Tanzania employed both direct police patrol and indirect fire alarm systems of collecting information on the application of the protocol. The summary of the analysis shows that Tanzania undertook surveys to collect the views on stakeholders on the existence of application problems. The combination between the informal and formal monitoring practices in Tanzania provided fairly reliable information than the informal sources employed in the partner states (cf. Subsection 7.2.3.2).

Table 7.2 Summary of enforcement strategies among the EAC Partners states

	Uganda	Kenya	Tanzania
Monitoring systems			
Strategy for monitoring violation	fire alarm	fire alarm	police patrol /Fire alarm
Quality of Information gathered	inconclusive	inconclusive	fairly reliable but inconclusive
Enforcement Practices			
Target of Training and Mentoring programs	Revenue authority	public agencies	public and private firms
Level of consultation on changes to CET	inadequate	fairly adequate	fairly adequate
Deterrence style adopted	strict	lax	flexible

Source: Researcher's own analysis

Analysis of the data concludes that the information gathered through the informal mechanisms in Uganda and Kenya was inconclusive but fairly reliable in Tanzania as summarised in table 7.2. For example, it was common for traders in one partner state to accuse the authorities in the other states of laxity in enforcement without any justification and proof. This arose because Tanzania complemented the indirect methods of monitoring with a system that gathered information directly from the implementing agencies (Muhambe MoFPED-Ug; Mutebi EAC; Kimathi EAC). Further, Kimathi (EAC) observed that most of the information from the press and traders could not be used in the courts of law because it

not properly documented and structured. In addition, senior officials in Kenya labelled the surveys by Rwanda and Tanzania as misinformation gathered by illiterate truck drivers who could not fill the questionnaires properly (Owour MoFP-Ke; Gathoni MTI-Ke). Officials at the EAC headquarters concluded that the poor quality of the data collected made it difficult for the EAC to prove to the partner states that enforcement problems existed (Nyambura EAC; Mutebi EAC). This leads to the conclusion that the data collected from the monitoring systems employed by the Uganda and Kenya was inconclusive and did not cover the application of all provisions in the protocol. As such, it could not meaningfully be utilised to develop strategies to deter noncompliance with the protocol.

Comparison of enforcement practices in the partner states

Table 7.2 also summarised the enforcement practices employed to enforce the Customs Union protocol between 2005 and 2009. Respondents pointed out that the partner states adopted an accommodative enforcement system. This system was aimed at achieving compliance of the customs union protocol on a voluntary basis as summed up by a government official “..... these three countries are just coming into partnership afresh having been apart for a long period time, they should be given time to gel.....” (Angura URA-Ug). Based on the accommodative enforcement strategy, partner states employed three informal techniques to ensure that the regulated agencies adhered to the policies in the protocol; mentoring and training of stakeholders; practices to mitigate the adverse effects of the protocol on the economies of the partner states and deterrence practices.

Training and mentoring practices

The training and mentoring of key stakeholders was undertaken by all the three partner states. However, the research revealed that there were differences in the coverage of the training programs across the partner states (cf. Table 7.2). Uganda limited the training to the tax organisation while Kenya extended the training and mentoring to government agencies that

were involved in the application of the protocol and Tanzania included all firms involved with the implementation of the protocol in the training program. Officials interviewed explained that in Uganda, most officials considered the customs union as a tax matter. As such, respondents argued that it was only the URA that needed to understand and implement the protocol. A senior official summed the rationale to train only URA staff in Uganda by stating that “..... I’m sure all who needed to know about the customs union were informed, the rest of the public did not need to know the details” (Angura URA-Ug). In Kenya training was provided for government agencies because the regulated were all government agencies (cf. Chapter 7.2.2.2). On the other hand, respondents pointed out that the training and awareness programs covered all stakeholders in Tanzania as discussed in Subsection 7.2.3.2 specifically, respondents revealed that the main reason for training all stakeholders to accommodate the TCCIA -charged with applying the provisions related to rules of origin was a private sector apex organisation (Ngasa MEACA-Tz; Babu CTI-Tz).

Mitigating the adverse effects of the protocol on partner states

Research results revealed that partner states took steps to mitigate the adverse effects of the protocol on the economies of the partner states. The discretion was provided by article 13(2) of the protocol. Interview reports revealed that Kenya and Tanzania amended the CET on rice and wheat. On the other hand Tanzania and Uganda used the discretion to amend CET on heavy duty motor vehicles and cement. Partner states provided varying reasons for the decision to amend the CET on the respective commodities. However, critics argued that the changes in the rates of CET on trucks were mainly due to pressure from powerful vehicle importers of Indian and Chinese origin in Uganda and Tanzania (Mutie KAM-Ke) as discussed in Subsections 7.2.1.2, 7.2.2.2 and 7.2.3.2.

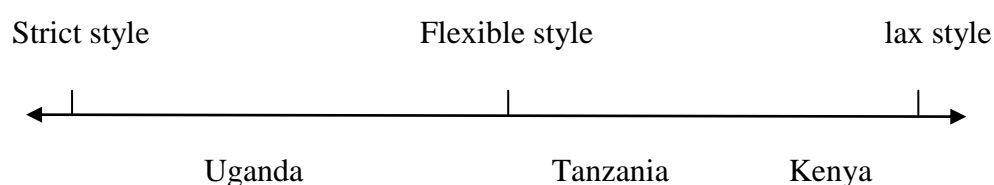
Second, the analysis of the research revealed differences in the level of consultation in the partner states on the type of commodities and changes in the CET on import of key

commodities. The summary of the analysis on the level of consultation shows that there was inadequate consultation in Uganda compared to the consultation in Kenya and Tanzania (cf. Table 7.2). For example, a government official in Uganda remarked that “..... amendments to the CET rates were fiscal policy decisions made by MoFPED. The Ministry of Finance, Planning and Economic Development seems not to have considered consultation among stakeholders an important aspect of the implementation process” (Isiko MTTI-Ug). Despite the differences in the level of consultation highlighted in the interviews, an international report on the monitoring of decisions on changes to the CET concluded that it was questionable whether adequate consultations had been made prior to the decisions on changes to the CET by the partner states (The global Trade Alert 2010).

Measures to deter violation of the protocol

Analysis of the enforcement practices employed showed that the region adopted an accommodative enforcement style. Nevertheless, there were differences in the accommodative enforcement practices employed by partner states. This is in line with predictions made by enforcement scholars in integration literature (cf. Chapter 2) Figure 7.1 summarises the opinions of interviewees on the enforcement styles employed in the three partner states.

Figure 7.1 Customs union regulatory enforcement styles in the EAC (2005-2009)



Source: adapted from Hutter 1989

Figure 7.1 shows Uganda’s enforcement style was leaning towards a strict enforcement practice as explained in section 7.2.1.2. The figure shows that the practice in Uganda was very keen to follow the policies in the protocol. Interviewees revealed that Uganda employed

strict informal measures. For example noncompliance was discouraged through the use of ministerial pronouncements and telephone calls. In addition, the Tax Policy Department relied on the existence and capacity of the Special Revenue Protection Services (SRPS) - a specialised unit in the office of the president charged with curbing smuggling and tax avoidance as a threat to deter violation of the protocol. This was emphasised by respondents who commented that the capacity of the SRPS to prosecute smugglers and corrupt URA officials was a powerful deterrent to violation of the treaty (Mugisha consultant; Mugume PSFU-Ug; Mutie KAM-Ke).

Kenya's enforcement style can be termed as lax (cf. Chapter 7.2.2.2). Respondents revealed that there was no indication of any deterrent measures initiated in Kenya to deter or discourage most of the identified compliance problems. Officials were reluctant to compel the regulated to comply with the protocol even when some of the actions did not require large scale changes. Most respondents in Uganda and Tanzania pointed to the existence of compliance violations as a lack of willingness by the government to enforce the protocol (Musoke PFSU-Ug; Muleme UNBS-Ug). A newspaper article concluded that the ineffectiveness of the Kenyan enforcement systems arises from the country's desire to protect domestic industries and restrict intra-regional trade (new vision newspaper 9th September 2009)¹⁵ while another report revealed that Kenya seemed reluctant to change from a national to a regional orientation as manifested in the lack of enforcement of the regional law (Francis Ayieko)¹⁶.

The enforcement style employed by Tanzania can be termed as flexible as summarised in figure 7.1 below. The style can be situated between the strict practice in Uganda and the lax practice in Kenya. Section 7.2.3.2 shows that Tanzania employed measures to deter and stop

¹⁵ <http://www.newvision.co.ug>

¹⁶ The East African Newspaper dated 22/06/2009.

compliance violations in some cases while other violations of the protocol were ignored. In other cases the enforcement agencies in Tanzania showed reluctance to enforce the law citing adverse effects to the population (cf. Chapter 7.2.3.2). For example, Tanzania blocked a move by a Kenyan processor to transport fresh milk for processing in Kenya on the grounds that it would lead to loss of employment for the citizens (Olouch 2009; East African newspaper 1st /05/ 2006; Jensen and Keyser 2010).

7.2.4.3 Summary of effectiveness of enforcement system in the EAC

This section attempts to summarise the overall enforcement effectiveness of the three partner states based on an aggregation of the enforcement systems of the partner states on the different aspects as summarised in table 7.1.

Table 7.3 Summary of enforcement among the partner state in the EAC

	Uganda	Kenya	Tanzania
Overall coordination of enforcement	inadequate	adequate	adequate
Monitoring systems	informal	informal	informal/formal
Quality of information gathered on application of protocol	inconclusive	inconclusive	Fairly reliable but inconclusive
Target of Training programs	customs organisation	public agencies	all stakeholders
Level of Consultation on changes to CET	inadequate	fairly adequate	fairly adequate
Deterrence of violations	adequate	inadequate	inadequate
Overall Enforcement effectiveness	inadequate	inadequate	inadequate

Source: Researcher's own analysis

First, Table 7.3 shows that the overall coordination of the enforcement in Tanzania and Kenya was high compared to the low level of coordination in Uganda. Respondents observed that Kenya and Tanzania had horizontal coordination systems with MEACA acting as the coordinating authority with the structures characterised by medium and low workload respectively as summarised in section 7.2.1.4 (see table 7.1). However, the structure for

coordination of the enforcement in Uganda was inadequate with high levels of workload for enforcement officials as discussed in Subsection 7.2.1.1.

The difference in the coordination capacity among the partner states raises the question whether the level of coordination has implications for the effectiveness of the overall enforcement system. However, the debate on the impact of statutory coordination on enforcement effectiveness is inconclusive. Some scholars argue that the structure of coordination of the enforcement system and the workload of the regulators has implications for enforcement effectiveness (Versluis 2007) while others reveal that a high degree of statutory coherence is not a necessary condition for strong implementation. For example May (1993:634) pointed out that a high degree of coordination is not a necessary condition. Rather, the extent to which the mandates given to the regulatory agencies can facilitate adherence of the regulated agencies to the provisions in the protocol determines enforcement effectiveness (May 1993:634).

Second, the research analysis in section 7.2.4.2 concludes that the partner states principally relied on indirect sources of information from third party stakeholders namely; private sector actors trading across the region, the press and reports from consultants although Tanzania also relied on direct police patrol mechanisms to collect data (cf. Chapter 7.2.3.2). Respondents were unanimous that the data collected from these sources was informal, unstructured and could not be compared adequately across the partner states. In addition respondents revealed that the data collected was unreliable and could not be presented to the courts of law as binding (cf. Subsection 7.2.4.2). In addition, documents reviewed as part of the research confirmed that partner states frequently disputed the information (Jensen and Keyser 2010). In summary, the quality information collected to inform the regulatory agencies on the application of the protocol was inconclusive and could not be used effectively.

Third, Table 7.3 summarises the strategies adopted to enforce provisions in the protocol. The research revealed that training and awareness programs were undertaken by the respective partner states in January 2005. Officials at the EAC head office confirmed that partner states requested for some time prior to commencement of the enforcement to undertake training and print copies of the protocol (Mutebi EAC). The results show that the training programs to increase awareness and enlist compliance in Uganda were restricted to the customs department while in Kenya the programs targeted all public agencies. On the other hand, Tanzania extended the awareness programs to all stakeholders involved in the implementation of the protocol.

Fourth, the research analysis compared the level of consultation by partner states on the category of commodities and nature of changes to the CET they intended to undertake in order to remedy the adverse effects experienced by partner states as provided under article 12(3) of the customs union protocol (cf. Subsection 7.2.4.2). The research revealed that the level of consultation on the proposed changes to the CET was inadequate in Uganda while it was fairly adequate in Kenya and Tanzania. Respondents pointed out that the Ministry of Finance in Uganda made decisions on the changes to the CET unilaterally (cf. Subsection 7.2.1.2). On the other hand, respondents were unanimous that the type of commodities on which the changes were made and the nature of the changes made in Kenya and Tanzania implied that there was some level of consultation as analysed in Subsections 7.2.2.2 and 7.2.3.2. However, a separate study concluded that the level of consultation in the three partner states was low. The study further doubted whether research had been undertaken on the impact of the high CET on trucks on the economy (The Global Trade Alert, 2010).

Fifth, the deterrent practices employed by partner states to deter noncompliance were discussed in Subsection 7.2.4.2 and summarised in figure 7.1. The results of the study showed that Uganda employed strict informal deterrence measures to discourage violations as

discussed in Subsection 7.2.1.2. The deterrent practices in Kenya could be termed as lax. Experts opinions analysed in Chapter 7.2.2.2 revealed that Kenya was lax in employing practices to deter the violations of the protocol. On the other hand, the research revealed that the enforcement performance in Tanzania was mixed. Documents reviewed as part of the research show that Tanzanian officials would strictly enforce the protocol in some cases while exhibiting lax enforcement practices in other cases as discussed in Chapter 7.2.3.2. Despite the differences in the enforcement style, the analysis of the research revealed that the deterrence practices deterred some application problems in the three partner states but were inadequate to eliminate all the application problems. NTBs existed in all partner states (cf Subsection 7.2.4.2) because partner states did not adequately enforce the transposition and application of trade-related provisions compared to the customs related provisions in the customs union protocol (cf. Chapter 6.3.2). This was summed up by a respondent who remarked that officials were more concerned with customs matters at the expense of trade related matters. The customs union protocol is a combination of customs and trade related matters and the enforcement effort had to take the two aspects into consideration (Isiko MTTI-Ug).

In sum, the enforcement of the customs union in the three partner states was inadequate as depicted in table 7.3 above. This conclusion is based on the argument put forward by Falkner et al (2005). Falkner et al argue that assessing the efficiency of regulatory agencies is cumbersome. However, every enforcement system should have minimum standards to guarantee that enforcement is at least possible. For the study on commitment to the EAC customs union, the standards selected by the researcher based on previous literature were as follows: (i) strong coordination structure, (ii) institutionalised monitoring framework, (iii) training and awareness, (iv) an adequate level of consultation on changes to the CET (v)

strict deterrent measures. As Falkner et al argue, if there are weaknesses in some of these standards, effective enforcement is compromised (Falkner et al 2005:35).

7.3 Explaining the enforcement performance in the EAC CU

The research results analysed in the previous section reveal variation in the enforcement effectiveness of the partner states; all the three partner states exhibited adequate enforcement in some provisions and inadequate enforcement in other aspects. This section seeks to explore the factors that account for the inadequate enforcement effectiveness across the three partner states over the period 2005-2009. The factors gleaned from the research can be presented in three categories; weakness of the EAC institutional mechanism for enforcement, capacity constraints in partner states to monitor and sanction application and preferences of partner states.

Weaknesses of the EAC monitoring and enforcement mechanisms

The research analysis revealed that the customs union enforcement is based on an accommodative enforcement system which obliges partner states to seek accommodative means of ensuring that partner states adhere to the provisions in the protocol (Olouch, 2009; Ruhangisa, 2010; Machaku MEACA-Tz). Ruhangisa (2010:12) argues that the court was established to play a leading role in the harmonisation of policies. However the EAC set up quasi-judicial bodies with the same mandate as the court. For example, although the court exists, the protocol provided for a remedies committee as the dispute resolution mechanism under annex IX of the customs union protocol with binding decision making powers. Partner states prefer to settle their differences amicably through such committees which renders the court redundant (Machaku MEACA-Tz; Mwaura EAC). This was further verified by an official at the EAC court of Justice who revealed that the court has not handled any customs union related case since its inception (Mwaura EAC). In sum, the accommodative enforcement system which discouraged the use of legalistic sanctioning mechanisms was

inadequate in deterring application problems as discussed in Chapter 7.2.4 (cf. table 7.3). Mutebi concluded that “..... Unless partner states realise that they can be sued at the EAC CJ and made to pay fines, enforcement of the customs union will continue to be ineffective” (Mutebi EAC).

Previous research shows that an enforcement system is most effective when the accommodative enforcement styles are combined with a legalistic sanction-based system. Tallberg (2002:632) argued that enforcement systems that combine the accommodative system with a legalised sanctioning system in a ‘management-enforcement ladder’ are more effective in ensuring conformity with the regional directive (cf. Chapter 2.). May (1993) adds that it is easier to foster a legalised sanctioning style than an accommodative consensus based enforcement style (May 1993:634).

Domestic capacity to enforce the protocol

The analysis shows that factors within the environment in which the enforcement took place contributed to the inadequate performance observed in the research. Uganda and Kenya did not have sufficient staff. The Tax Policy Department of the Ministry of Finance, Planning and Economic Development- the enforcement agency had a staff of 10 officials with a heavy workload as discussed in Chapter 7.2.1.1. Likewise, Kenya had 117 staff members in the MEACA but only five of them were technical and this limited the effectiveness of the ministry (cf. Chapter 7.2.2.1). The limited staff numbers implied that Uganda and Kenya had to depend on informal sources of information on the application of the protocol. This information was sometimes inconclusive and unreliable (cf. Chapter 7.2.4.2). Jensen argues that reliance on informal fire alarm oversight mechanisms hinders member state governments’ capacity to resolve violations of treaty provisions (Jensen 2007:453).

Beyond the lack of capacity to set up reliable monitoring systems at the domestic level, respondents revealed that all the partner states did not have sufficient manpower of the right technical expertise to adequately enforce the protocol (Owour MoFP-Ke; Sempebwa MoFPED-Ug). For example partner states could not effectively monitor the application of provisions that ensure that goods produced using raw materials that benefitted from duty waivers paid the applicable duties when exported to partner states.

Strategic preferences of partner states

The research shows that customs and trade policies are important tools for the political leaders in the three partner states (see Chapter 5). First, customs duties are important sources of government revenue while export promotion schemes and trade policies are generally employed as political tools to reward powerful private sector actors in return for government support. For example, Goldstein and Martin commented on the relationship between politics and trade as follows, “.....domestic politics cannot be treated as accidental effect on the trade liberalisation process. Instead politics operates in systematic ways and is the mechanism through which liberalisation exerts its effects (Goldstein and Martin: 2000:3).

Partner states were reluctant to enforce policies that would open domestic markets to competition from other partner states. A senior official revealed that when tariffs are eliminated, non-tariff barriers remain the only tool that partner states employ to protect their domestic manufacturers (Mwasiki FCC-Tz). Most respondents concluded that the inadequate enforcement was due to pressure from powerful private sector actors with vested interests in the continuation of protectionist policies. For example, respondents in Kenya pointed out that the reason why Uganda and Tanzania applied for reduction in the CET on trucks was due to pressure on the political leadership from powerful vehicle importers from India and China that operated in the two partner states (Mutie KAM-Ke). Similarly a prominent poultry exporter in Uganda informed the researcher that he failed to export chicken to Kenya

because government officials were under pressure to prevent any competition against companies with connections to powerful government politicians” (Mugume PSFU-Ug). This opinion was corroborated by documentary evidence on the enforcement of the customs union protocol (Booth et al 2006; Mugisa et al 2009; Olouch 2009). Booth et al (2006) observed that the three countries are characterised by the interest of politicians in the discretion that imperfect regulation offers (Booth et al 2006:12). Similarly, Olouch argued that inadequate enforcement is evidence of the lack of political will in the enforcement of the protocol by the partner state (Olouch 2009:214). The arguments presented in this section lead to the conclusion that strategic preferences of partner states to protect domestic firms from competition may be one of the factors that explains the inadequate enforcement of the customs union protocol.

7.4 Summary of Chapter

The main objective of this Chapter was to explore the factors that account for the inadequate enforcement of the customs union protocol from 2005-2009. This contributes to the overall research question that seeks to analyse the inadequate commitment to the customs union protocol in the EAC.

The research observed that EAC possess characteristics of both intergovernmental as well as supranational systems. The integration bloc is led by governmental bodies but includes supranational decision making and judicial organs. This means that enforcement of the protocol can be analysed at the domestic as well as regional level (cf. Chapter 4).

The research results show that the EAC operated an accommodative enforcement system under which legalistic sanctions were discouraged. Within this enforcement system, the research identified three main strategies to ensure that the regulated adhered to the provisions

in the protocol namely, training and awareness about the protocol, practices to mitigate the adverse effects of the protocol and deterrence of noncompliance.

Although the region operated an accommodative enforcement system, the results of the research show that the Uganda exhibited a strict enforcement style, Tanzania exhibited a flexible enforcement style while Kenya exhibited a lax enforcement style. This observation is supported by arguments put forward in existing enforcement literature. Scholars observed that consensus enforcement styles are not homogenous but involves a variety of practices that partner states can adopt to enhance compliance (Hutter 1989; May and Burby 1998).

The evidence in the research revealed that the enforcement of the customs union protocol was inadequate in the three partner states. The conclusions were based on the perception of respondents regarding the existence of application problems in all the partner states. The research suggests that inadequate enforcement can be explained by three factors namely; weakness of the institutionalised sanctioning mechanism, capacity of partner states to monitor and sanction non compliance with the provisions in the protocol and the strategic preferences of partner states. These findings accord with the findings from other studies conducted on enforcement of regional policies in other parts of the world. For example Kagan (1998:105) concluded that regulatory enforcement is a political process while Mera (2007) argued that government enforcement systems cannot ignore the demands of interest groups that exist in the domestic partner state in the course of implementation of the respective regional directive (Mera 2007:24).

Previous research shows that there is a strong link between the enforcement effectiveness and the resulting application of the protocol by the regulated agencies. However, given that there has not been much research conducted on the enforcement and application of the customs union protocol in EAC, the research cannot reach that same conclusion. This requires

analysis of the practical application of the protocol in the three EAC partner states. This is the focus of the next Chapter.

CHAPTER 8

8 APPLICATION OF THE EAC CUSTOMS UNION PROTOCOL

8.1 Introduction

Chapter 7 analysed the enforcement of the customs union protocol and concluded that shortcomings existed in the enforcement of the customs union protocol. Although enforcement is related to application, it is misleading to assume that inadequate enforcement will necessarily lead to application problems. This calls for empirical studies in order to reach conclusions on the application of the directive by the regulated agencies. This Chapter investigates the application of the provisions that constitute the customs union protocol for the period 2005-2009. It seeks to assess the extent to which the regulated agencies adjusted their practices to the requirements of the customs union protocol.

The Chapter proceeds as follows; after this introduction, section 8.2 outlines the application of the customs union protocol in the partner states for the period 2005-2009 and concludes with a cross country comparison of the application. Section 8.3 explores the factors that account for the application performance while section 8.4 concludes the Chapter.

8.2 Application of the protocol in the partner states

The section analyses the application of customs union policies by the regulated in the partner states over the period 2005-2009. The analysis disaggregates the application of the protocol into the nine distinct but related provisions that constitute the customs union protocol (see Chapter 6.2).

To ensure that the research incorporated the opinions of most of the regulated stakeholders, interviews were conducted with most of the key implementation agencies at the national level as well as apex bodies representing the private sector in the three countries; these included

the Private Sector Foundation, and Manufacturer's association in Uganda; the Kenya Manufacturer's Association and Private Sector Alliance in Kenya; the Confederation of Tanzania Industries and Chamber of Commerce, Industry and Agriculture in Tanzania. In addition, interviews were also held with senior officials in manufacturing concerns that trade across the region.

8.2.1 Application of the customs union protocol in Uganda

This section explores the application of the policies of the customs union protocol in Uganda. The aim of this analysis is to ascertain the extent to which agencies changed their practices to adhere with the provisions of the protocol.

8.2.1.1 Harmonisation of the customs tariffs and systems

These policies on the harmonisation of customs tariff are provided for under articles 5-12 of the protocol. The customs union protocol required Uganda to set up new structures or undertake changes to existing customs administration systems in three aspects; the common external tariff (CET), intra-regional tariffs on trade and simplification of customs procedures.

The analysis revealed that Uganda did not have to set up new structures for customs administration. Customs policy in the country prior to the customs union protocol was administered by the Uganda Revenue Authority (URA) - a semi-autonomous established in 1992 and charged with customs tax administration. In 2005, the URA undertook changes to the customs practices in line with the policies outlined in the protocol (Angura URA-Ug; Nsereko URA-Ug). The changes made to the application of the CET, intra-regional tariff and the customs procedures are explored in further detail below.

Application of the common external tariff (CET)

The CET is duty charged on goods imported from outside the EAC customs union as set out in article 12 of the protocol. The analysis of the research revealed that URA made the following changes to the system for administration of customs taxes;

First, the organisation printed several copies of the new regulations as well as pamphlets explaining the changes to the CET as a result of the integration. These pamphlets, distributed to staff and stakeholders were meant to create awareness among the stakeholders on changes to the tax system (cf. Chapter 7.2.4.2). For example, some pamphlets were printed to explain the changes in the cost base for computation of taxable value. Other pamphlets explained the changes in the categorisation of imports (Isiko MTTI-Ug; Asiimwe MoFA-Ug; Nsereko URA-Ug; Masaba PSDP). Second, the customs department reconfigured the Ascyudda ++ computer program to capture the new rates of CET and changes in the cost base used in the calculation of tariffs for the different categories of goods prescribed in the customs management act 2004 (Nsereko URA; Stahl 2005; EAC secretariat).

Previous research on the impact of the customs union on revenue yield and economic development revealed that the average CET rate in Uganda would increase as a result of implementing the customs union protocol and concluded that Uganda would face challenges in applying the new CET rates (Stahl 2005:7; McIntyre 2005; Venables 2003; Mugisa et al 2009:15). For example, McIntyre argues that the duties on about 3,066 tariff line would increase compared to the rates prior to the customs union (McIntyre 2005:11) while Booth et al (2006:27) argues that there were fears that the increase in the CET would lead to private sector protests and civil unrest similar to what occurred in August 2005. However, interviewees revealed that changes in the base on which the tax was calculated compensated for the increase in CET leading to a lower CET rate of tax as a result of adopting the customs union protocol. This was summed up by a senior official as follows;

“.....On the face of it, the protocol introduced higher CET rates but changed the base for tax computation from CIF Kampala to CIF Mombasa/Dar-es-salaam, abolished the 2% import commission, and the 10% discriminatory excise tax on consumer goods. Given that the freight component constituted a large percentage of the previous CIF, the removal of the freight element together with other reforms reduced the CET to an average of about 9.9% compared to a minimum rate of 10%. Taken together, all these changes reduced the customs duty that importers pay under the EAC compared to the regime that existed before 2005 (Angura URA-Ug).

This implies that previous research on the impact of the customs union may have ignored the offsetting aspects that are imbedded into the customs union protocol (see Booth et al 2006:28).

Interviewees concluded that the CET in Uganda was applied satisfactorily. Some noted that there seemed to be a clear understanding among customs officials on the CET to be applied to the different categories of goods originating from outside the country as prescribed in the protocol (Masaba PSDG; Mugisha PFSU-Ug; Musinguzi PSFU-Ug). Others pointed out that the CET rates were integrated into the computerised customs systems which may have enabled the application (Nyambura EAC; Wabwire PSFU-Ug). In addition, elimination of the discriminatory excise duties and import commission helped the liberalisation of the customs system and had the effect of reducing the average CET (Muhame MoFPED-Ug MoFPED; Angura URA-Ug).

Application of tariffs on intra-regional trade

Articles 10 and 11 of the customs union protocol provided for imposition of a transitional tariff regime on goods originating from partner states. The intra-regional tariff structure was designed on the principle of asymmetry outlined in Chapter 5.

In order to adhere to the provisions of article 10 and 11 of the protocol, Uganda undertook changes to the existing system of taxation of goods imported from the partner states. First, the organisation created a division of trade within the customs department to coordinate the application of the customs union matters but with focus on the internal tariff elimination

(Mugisha PSFU-Ug; Sempebwa MoFPED-Ug). Second, the organisation amended the import duties on goods from partner states as follows, goods from Tanzania benefitted from immediate duty free status. On the other hand, goods from Kenya were divided into two categories as illustrated in table 8.1.

Table 8.1 Uganda tariff structure for intra-regional trade 2005-2009/10

Year of application	Kenya	Tanzania	
	Category 'A' Goods	Category 'B' Goods	All imports
		416 Tariff lines	
2005	0%	10%	0%
2006	0%	8%	0%
2007	0%	6%	0%
2008	0%	4%	0%
2009	0%	2%	0%
2010	0%	0%	0%

Source: Adapted from the EAC Secretariat (2006)

Table 8.1 highlights Uganda's transitional intra-regional tax arrangement on imports from Kenya. Goods classified as category 'A' benefitted from immediate duty free status while 426 tariff lines listed as category 'B' goods were charged import duty on a reducing basis. The rates started at 10% in 2005, down to 8% in 2006, 6% in 2007, 4% in 2008, 2% in 2009 and 0% in the year 2010 (EAC secretariat 2006; Mugisa et al 2009).

Respondents revealed that the duties on goods imported from the partner states were applied adequately. Some attributed this to the computerised program that ensured that the rates of tax were automatically generated once the goods were correctly verified (Musinguzi UMA-Ug; Mugisha PSFU-Ug). Other respondents observed that officials at URA correctly applied the specified rates out of support for the regional integration process and trade liberalisation in general (Muhame MoFPED-Ug; Wabwire Press). Muhame (MoFPED-Ug) summed the

opinions of the experts as follows “...Uganda was already on the path to liberalisation and wanted to liberalise further..... the maximum rate of 10% was favourable to Uganda as it was lower than the rates existing prior to the integration” (Muhammed MoFPED-Ug).

Simplification and harmonisation of customs processes to facilitate trade

Article 6 and 7 of the protocol required partner states to simplify cumbersome customs procedures and harmonise documentation processes to facilitate increased trade within the East African Community.

Over the period 2005-2009, URA initiated a number of practices to simplify procedures and harmonise data handling procedure to enhance the flow of goods in the region for example, a ‘one-stop centre’ was established at the railway terminal of the Uganda – Kenya border. Under this initiative, goods arriving by rail from Kenya were by Kenya and Uganda customs officials at a single point. This was intended to save time taken to process the customs documentation for the same goods separately (Musoke PSFU-Ug; Musinguzi UMA-Ug). However, officials were critical that the one-stop centre only operated at the railway terminal yet over 80% of the goods crossing from Kenya into Uganda were transported by trucks along the road network. Hence the initiative did not eliminate delays over the period 2005-2009 as was anticipated (Ramesh UMA-Ug; Ballard PSDG). Other programs to simplify the system included the exemption of tax on goods whose value did not exceed USD500. This allowed small traders to avoid the costs and delays associated with customs clearance procedures (Isiko MTTI-Ug; Muleme UNBS-Ug).

Further, respondents revealed that Uganda revenue authority developed a monitoring system for vehicles in transit. This system was coordinated by the URA and the Special Revenue Protection Services (SRPS). The SRPS was charged with preventing smuggling in the country and had the powers to stop and search all transit vehicles (cf. Chapter 7). However to

ensure that operations of the SRPS did not interfere with the movement of trade across the country, details of all transit vehicles were communicated to the revenue protection services in advance. This ensured that the customs check points did not stop and check transit vehicles already cleared at the border (Masaba PSDG).

Despite initiatives to simplify the customs systems and enhance trade, challenges in simplification of procedures persisted. Officials in URA informed the researcher that the computer programs employed to capture data on transit trade across the three partner states were not compatible; Uganda operated the ‘Asycudda +++’ program. Kenya employed ‘Simba’ and Tanzania operated ‘Asycudda +’- an inferior version Uganda’s program. This implied that data on imports and transit cargo generated by the partner states could not be automatically captured by the computer systems operated by the customs department in Uganda. Capturing this data afresh led to delays in clearing of goods contrary to the objective of article seven (Kimera PSFU-Ug; Angura URA-Ug).

Second, the partner states in the customs union were members of other regional integrations arrangements. Kenya and Uganda are members of COMESA while Tanzania is a member of SADC (cf. Chapter 4). This implies that some imports into the EAC from regional arrangements in which the three countries are partner states are granted preferential treatment while similar imports from other parts of the world were not granted any preferential treatment. In order to adequately ascertain the origin of imports into the EAC, customs officials had to peruse through multiple regulations arising out of overlapping memberships of the EAC partner states. In addition, customs officials had to undertake more rigorous verification of goods entering the country to ascertain the appropriate tariff to apply. This led to problems in interpretation of the different regulations and caused confusion in processing of customs documentation (Nsereko URA-Ug; Angura URA-Ug; Ballard PSDG).

Third, delays in the implementation of reforms to improve simplification and document handling were delayed by infighting and vested interests in the region. For example, plans to extend the one-stop clearing facility at Malaba customs post to include joint clearing for goods imported by road were delayed by resistance from vested interests (Kawuma MoFA-Ug; Nsereko URA-Ug; Kimera PSFU-Ug). Nsereko pointed out that the original plan was for the long-room to be situated on the Uganda side which led to protests by clearing agents from Kenya feared loss of business when clearing of goods moved to the Uganda side of the border (Nsereko URA). At the time of undertaking the field work, the researcher witnessed a strike by Kenyan clearing agents at the Malaba border protesting the location of the long room on the Uganda side which paralysed customs business for three days (cf. Chapter 3). This incident shows that sometimes, vested interests impact on efforts to harmonise customs systems in the region.

8.2.1.2 Elimination of non-tariff barriers to intra-regional trade

Non-tariff barriers (NTBs) can be defined as quantitative restrictions that take the form of regulations and act as obstacles to free trade (Jensen et al 2010). Many countries use non-tariff barriers to protect their domestic companies and firms. Studies undertaken by the EAC and other organisations prior to the customs union protocol recognised the existence of NTBs as a hindrance to liberalisation of trade in the region. The NTBs were attributed to bureaucratic and administrative procedures related to standards and technical requirements. (Okumu and Nyankori 2010:8; Stahl 2005). However, the changing nature of NTBs made it difficult for these studies to identify all the NTBs that existed in the region.

Due to time and resource constraints, the researcher selected three NTBs with a higher potential to impede intra-regional trade, however, selection of the NTBs with the highest impact presented a challenge. Initial discussions with stakeholders at the start of the research project identified three prominent NTBs that existed within the region; road blocks,

weighbridges and restrictive quality and standards requirements. Further, review of exiting literature revealed that the three NTBs had not been analysed in great detail by previous research (UNCTAD 2005; Okumu and Nyankori 2010). For example the UNCTAD (2005) report did not mention these three NTBs that existed in most parts of the world. On the other hand, Thangavelu (2010) identifies port efficiency and service sector infrastructure as the key NTBs in ASEAN. This provided the researcher with justification that roads blocks, weighbridges and standards were unique to EAC and merited further analysis.

Article 13 of the protocol required all partner states to identify and remove existing non-tariff barriers to the importation into their respective territories of goods originating from the other partner states and thereafter not to impose any new non-tariff barriers.¹⁷ The next section explores the steps taken to eliminate the three NTBs namely; road blocks, weighbridges and restrictive quality standards.

Elimination of road blocks on major highways in Uganda

The research revealed that road blocks are temporary stops established along the main highways and manned by army officers, the police or customs officials. The existence of road blocks and revenue check points was confirmed by the researcher when he travelled along the northern corridor to the Kenyan capital of Nairobi to commence the research. Respondents pointed out that the road blocks lead to unnecessary delays in transit trade. For example, transit vehicles would be stopped at road blocks and thorough checks undertaken including transit vehicles with customs security seals that signify that they have been checked and are in transit to another country. According to respondents, this was unnecessary and a disruption to the free movement of goods (Musoke PSFU-Ug; Babu CTI-Tz; Mutie KAM).

¹⁷ EAC Customs union Protocol (2004)

Government officials defended the existence of road blocks on the grounds of security and safety. For example, officials argued that road blocks manned by army officers were setup for security reasons given the insecurity experienced in the country over the past 20 years while road blocks manned by police were set up specifically to check for vehicle road worthiness and ensure that requisite permits and fees were paid. On the other hand, customs road blocks were manned by SRPS personnel (cf. Chapter 7.2.1) and were intended to ensure that goods moving across the country fulfilled their tax obligations (Angura URA-Ug; Nsereko URA-Ug; Isiko MTTI-Ug).

The analysis of the research confirmed that efforts to eliminate road blocks were undertaken in Uganda. Respondents concurred that the number of road blocks in the country drastically reduced over the period 2005-2009. However, some roadblocks remained along the main Kenya-Uganda highway at Busitema, Iganga, Kakira, Jinja, Mabira and Mukono. Additional road blocks existed on the Kampala-Sudan as well as Kampala-Katuna highways (Okello MEACA-Ug; Wabwire Press).

Removal of unnecessary weighbridges

Previous research indicated that during the years 2000-2004, the volume of road transit-trade through Uganda to Rwanda, Burundi, Eastern Congo and South Sudan increased (EAC secretariat 2007; World Bank 2006). The increased demand for goods across the region led to overloading of trucks as transporters struggled to cope with the increased demand for goods. Ultimately, overloading of goods trucks resulted in deterioration of the highway connecting the border towns of Malaba with the neighbouring countries. According to the World Bank (2006:54), damage to the road by heavy goods vehicles depends on the weight of each axle rather than the total weight of the truck (World Bank 2006:54). In a bid to reduce this deterioration, the Ministry of Works and Transport established weighbridges to enforce axle load restrictions. The research analysis identified temporary and permanent weighbridges in

existence in the EAC. Permanent weighbridges were set up in Busia, Malaba, Jinja, Mukono, Kampala, Mbarara and Katuna while temporary weighbridges were established along the Uganda-Kenya and the Uganda-Rwanda borders. The weighbridges operations involved subjecting all heavy commercial to axle load checks which implied numerous stoppages and delays for trucks especially those that were in transit through the specific partner state that had already been weighed at the customs port. This created a non-tariff barrier to the free movement of goods in the region (Government of Uganda 2005; Musinguzi UMA-Ug).

To implement the provisions of the protocol that called for elimination of NTBs, the Council of Ministers in the EAC recognised that there was need to protect road infrastructure as well as uphold the objective of the customs union protocol to avoid disruptions to the flow of road transit traffic caused by weighbridges. To resolve the dilemma partner states to protect infrastructure and the objectives of the protocol, the Council of Ministers required partner states to eliminate unnecessary weigh bridges and harmonise axle load restrictions across the region (Nyakundi EAC).

Interviewees revealed that Uganda took steps to eliminate the majority of weighbridges before 2004 as part of the reforms initiated to align the trade system with international best practice (see Chapter 4). This process of elimination of unnecessary weigh bridges continued after the customs union protocol came into force (Isiko MTTI-Ug; Musinguzi UMA-Ug). Secondly, in order to avoid any delays, weigh bridges at the border were integrated into the customs verification system. This ensured that the process of verification of goods imported into the country was undertaken concurrently with the axle load inspection on transit vehicles. Third, detailed information on the verification of goods and axle weights of transit vehicles derived at the border stations was shared with Ministry of Works to ensure that transit vehicles are not stopped at subsequent weighbridges (Nsereko URA-Ug; Kimera PSFU-Ug).

The research analysis revealed that three steps discussed in the preceding section did not adequately eliminate all the unnecessary weigh bridges in Uganda. First, Respondents and documents analysed revealed that axle load restrictions varied across the East African region as shown in table 8.2 (World Bank 2005; EAC Secretariat). Table 8.2 shows that tandem axle restrictions in Uganda were lower than Tanzania. This implied that trucks from Tanzania with a load of 56 tonnes would not be allowed in Uganda.

Table 8.2 Vehicle load limits in EAC, SADC and COMESA

Country	Single steering axle	Single drive axle	Tandem axle	Gross vehicle mass
Kenya	8	8	16	47
Uganda	8	8	16	54
Tanzania	7	10	18	56
SADC	8	10	18	56
COMESA	8	8	16	53

Source: Adapted from EAC Secretariat 2006

Second, interviewees from Kenya and Tanzania concurred that the authorities continued to stop transit vehicles at the weighbridges despite the efforts of the customs department to improve information sharing among the stakeholders implementing the protocol (Mutie KAM-Ke; Patel KAM-Ke; Omondi Press). The operation of weighbridges and differences in axle load regulations among the three partner states often led to delays in transit traffic as vehicles were required to offload excess load. In this way, weighbridges became an obstacle to free trade in the country.

Harmonisation of quality standards

Prior to the customs union protocol, the responsibility inspection for quality of goods was undertaken by the Uganda National Bureau of Standards (UNBS), a semi-autonomous agency under the Ministry of Tourism, Trade and Industry. The UNBS is charged with ensuring that goods manufactured in the country as well as imports meet the quality standards established in the country. To implement the standards policy, manufactured and imported goods were issued with a quality mark and certificate of inspection to confirm that they satisfy the safety standards set by the country.

To implement the customs union protocol, the EAC passed the SQMT Act of 2006 in addition to numerous directives from the Council of Ministers on the harmonisation of quality standards. These regulations and directives required partner states to take measures to ensure that countries recognise and accept the quality standard marks of partner states in the short term with a view to harmonisation of standards in the long run. This directive would allow goods from the partner with the certification mark to access partner states' domestic markets without being subjected to further testing (Mulema UNBS-Ug).

Analysis of the research shows that the directives of the Council of ministers and the regulations on application of the SQMT Act 2006 were not adequately implemented in Uganda. First, Uganda agreed to harmonise about 1100 standards. However, the harmonisation did not materialise because the 1100 standards could not be gazetted into the domestic legal system at the time of the research given that the government failed to abolish existing laws on standards. At the same time, legislation that was required for the SQMT Act 2006 to be effective specifically, the counterfeit and standards policies were awaiting parliamentary approval (Namara MoJCA-Ug; Isiko MTTI-Ug).

Secondly, some of the imports into the country from partner states were subjected to further testing contrary to the directives of the Council of ministers. Officials at the Kenyan manufacturers association pointed out that extra testing of Kenyan products was targeted at goods that competed with similar products manufactured in Uganda (Mbugua KEPSA-Ke; Karanja KEBS-Ke). For example, Ongeru (KAM-Ke) revealed that Uganda continued to subject fresh milk from Kenya to further testing. However, interviewees in Uganda revealed that milk processed in Kenya was subjected to further testing due to the suspicion that the milk consisted of higher levels of micro- bios than was recommended caused by excessive use of chemicals by the dairy industry in Kenya (Ramesh UMA-Ug; Muleme UNBS-Ug). Specifically, Mulema (UNBS-Ug) argued that the extra testing was intended to safeguard public safety particularly after the outbreak of the mad cow and the bird flu epidemics. Other respondents revealed that the UNBS laboratory for testing was located in Kampala yet most goods into the country are imported through the border towns of Malaba and Busia leading to interruption in movement of goods caused by delays in testing and clearance of imports (Nyakundi EAC).

8.2.1.3 Application of policies on export promotion schemes

Articles 25-30 of the protocol acknowledged that export promotion schemes existed in the respective partner states prior to the protocol. These schemes relate to tariff exemption on raw and semi-finished goods imported into the country for use in the manufacturing processes. Prior to the commencement of the customs union, Uganda had a duty draw back scheme for manufacturers (CUTS 2005). In addition, further exemptions were granted on 144 commodities that constituted raw materials for the manufacturing sector during the negotiation for the customs union protocol (cf. Chapter 5.4).

The EAC customs union protocol allowed partner states to continue with the exemption regimes that existed prior to the customs union but restricted the sale goods produced with

raw materials that benefitted from exemptions on the domestic market was restricted to 20 per cent of total output and attract applicable duties and other charges of equivalent effect (Mutebi EAC; Amani MTI-Tz).

The research analysis revealed that it was questionable whether URA had sufficient capacity and mechanisms in place to ensure that the applicable duties were paid on the sale of goods produced with raw materials that benefitted from duty exemptions (Namara MoJCA-Ug; Waithaka MoJCA-Ke). Likewise, officials conceded that URA does not adequately scrutinise exports because they are generally exempt from duty. Instead, the organisation focuses attention and resources on areas of revenue potential (Nsereko URA-Ug). Documentary evidence supported the opinions that policies related to control of sale of goods manufactured from raw materials that benefitted from duty exemptions on the domestic market was not applied adequately in Uganda (see Stahl 2005; Booth et al 2006; Mugisa et al 2009).

8.2.1.4 Application of the Rules of Origin (ROO)

Rules of origin were established under article 14 of the protocol. Rules of origin are procedures meant to distinguish goods produced within the EAC region and eligible to the preferential EAC tariff rates from those produced outside the EAC territory that attract CET rates¹⁸. In addition to the main regulations, the protocol also provided simplified ROO which allowed exporters of goods whose value did not exceed USD500 to process simplified certificates of origin at the border posts in the respective countries (Mueller PSDG).

The protocol outlined characteristics of goods that would qualify for preferential treatment under the EAC internal tariff regime namely, goods wholly produced or obtained from a partner state; goods produced in the partner states and the CIF value of any foreign material used does not exceed 60 per cent of the total cost of all materials used in their production;

¹⁸ EAC Secretariat (2006)- Manual on application of rules of origin:4

goods produced in the partner states whose value addition resulting from the process of production account for at least 35 per cent of the ex-factory cost of the goods; and goods produced in the partner states classified in a tariff heading different from the one in which they were imported (Mukiibi 2010).

The research revealed that the implementation of the provisions on rules of origin was delayed due to the lack of institutional frameworks for implementation in Uganda. In order to implement the rules of origin, the Council of Ministers convened in 2006 and designated the Uganda revenue authority to implement the rules of origin in the protocol (Sempebwa MoFPED). Subsequently, the implementation of the ROO commenced in 2007, albeit two years late. In addition, Uganda assigned the responsibility for implementing the rules of origin in Uganda was assigned to the Uganda Export promotion Board (UEPB) - a semi-autonomous body under the Ministry of Tourism, Trade and Industry contrary to the Council of Ministers' directive (Okello MEACA-Ug; Kawuma MoFA-Ug). To implement the rules of origin, the UEPB developed a system for verification of exports and issuance of certificates of origin. The system required exporters to apply for certificates of origin and pay a prescribed fee. Thereafter UEPB officials verified the goods and recommended whether the goods met the criteria set out in the protocol (Muleme UNBS-Ug; Isiko MTTI-Ug).

The results of the research suggest that the application of the rules of origin in Uganda was inadequate. First, Due to lack of resources, the UEPB was not able to hire sufficient staff with the appropriate skills in input-output analysis. Records revealed that there were only two officials processing applications for certificates of origin leading to heavy work load and delays in processing documents (Isiko MTTI-Ug). Second, while verification of agricultural products were easy, since they involved more stages of value addition and numerous inputs which required a higher level of verification than was possible at the UEPB. This raised doubts whether some of the goods destined to the partner states met the strict criteria set out

in the protocol (Musoke PSFU-Ug; Angura URA-Ug; Mugume PFSU-Ug). Third, officials revealed that applications for certificates of origin were processed at the agency's head office in Kampala. This implied that manufacturers based outside Kampala were forced to travel long distances in order to lodge applications leading to delays in the export of commodities (Musoke PSFU-Ug).

Fourth, lack of effective communication between the UEPB and Uganda revenue authority (URA) led to delays in processing documentation. Specifically, the resolution of queries on the certificates of origin of goods destined for export was hampered. For example, queries on exports raised in the partner states were addressed to the URA. However, URA was unable to provide timely responses since matters related to certificates of origin are handled by UEPB. This procedure led to delays in processing of export products (Nsereko URA-Ug; Angura URA-Ug).

8.2.1.5 Application of other trade-related policies in the protocol

Analysis of the research revealed that although the protocol contained nine provisions, only four of the provisions were completely transposed and applied by the regulated agencies. These included; harmonisation of customs tariffs and systems, regulating export promotion schemes and elimination of non- tariff barriers. The first three relate to customs administration while the fourth is a trade related policy. Five provisions were not transposed completely and could not be applied in the partner states. These included anti-dumping measures, subsidies and countervailing measures, safeguard regulations, free ports, and regulations on export processing zones (cf. Chapter 6).

Respondents attributed the failure to implement the five provisions in the protocol to delays in setting up the institutional framework for harmonisation of the provisions at the domestic level. For example, Uganda had not enacted a Competition Bill as well as counterfeits and

investment amendment legislation as required by the protocol (cf. Chapter 6). This hindered the harmonisation of the regional policies on free ports, export processing zones and safeguard measures. Interviewees revealed that other Bills to facilitate harmonisation of trade related provisions had been drafted but experienced delays parliament because law makers were concerned about the impact of the trade-related provisions on businesses in Uganda (Namara MoJCA-Ug; Odhiambo EAC). The opinions of the respondents on the causes of delays to harmonise trade-related provisions in the protocol were corroborated by documentary evidence that confirmed that harmonisation of trade-related policies was delayed due to preferences of partner states (Mugisa et al 2009; the new vision newspaper). For example, Mugisa et al (2009:22) argued that the delay in passing commercial Bills revealed the reluctance by partner to harmonise trade policy.

In sum, the application of the customs union protocol in Uganda is summarised in table 8.3. Table 8.3 shows that the CET and internal tariff elimination policies were applied adequately. The URA changed the maximum rate of tax was increased to 25% with three tariff bands. The research confirmed that concerns that increase in CET would lead to public outcry did not materialise (see 8.2.1.1). The elimination the internal tariffs on imports from Kenya as and Tanzania was implemented adequately. However, the harmonisation and simplification of customs procedures, removal of critical NTBs, application of the ROOs and policies on exemptions and remissions regimes were not adequately implemented. On the other hand, five of the trade-related policies were not applied during the period under review. Respondents attributed the inadequate application of five trade-related provisions in the protocol to delays in harmonising and gazetting national legislation (Namara MoJCA-Ug; Sempebwa MoFPED-Ug).

Table 8.3 Uganda- Summary of application of the customs union protocol

	Policy area	Reforms undertaken	Challenges encountered	Application performance
<u>CUSTOMS –RELATED POLICIES</u>				
1.	Harmonisation of customs Systems			
	Common External Tariff (CET)	2005	None	Adequate
	Internal Tariff Elimination	2005	none	Adequate
	Simplification of customs procedures	2005	Some	Inadequate
2	Removal of NTBs	2005	Challenges existed	Inadequate
3	Export promotion schemes	2005	Challenges existed	Inadequate
<u>TRADE-RELATED POLICIES</u>				
4	Application of ROO	2007	Challenges existed	Inadequate
5	Other trade-related policies	None	NA	Not Applied

Source: Researcher's own analysis

8.2.2 Application of the customs union in Kenya

The customs union protocol set up similar obligations for all partner states; this implied that similarly, Kenya was required to establish agencies to apply the detailed provisions outlined in the customs union protocol. This section deals with the application of the customs union protocol in Kenya during the period 2005-2009.

8.2.2.1 Harmonisation of customs tariffs and systems

Research results reveal that the Kenya revenue authority (KRA) was charged with the application of the provisions related to customs administration in the country. In 2005, the KRA undertook initiatives to comply with the provisions of articles five to twelve of the protocol. These initiatives are analysed in this section.

Application of the Common External Tariff (CET)

Prior to 2005, Kenya maintained rates of duties for goods tariff regimes for goods originating from outside the country with the highest rate of 37% and five tariff bands (cf. Chapter 5). However, the customs union required Kenya to impose a three band CET tariff structure on goods imported from outside the community with a maximum rate of 25% similar to the other partner states. To implement the protocol, Kenya revenue authority (KRA) adjusted the CET rates, re-classified imports into a three-band categorisation and circulated materials on the protocol to public organisations involved in the application of the customs union in line with the requirements of the protocol (Stahl 2005; McIntyre 2005:10; Ngan'ga 2006).

Interview results revealed that the application of the CET was adequately applied in Kenya. The adequate application may be attributed to two factors. First, the existence of a computerised information management system ensured that rates of duty in the protocol were applied without any discretion (Omondi KEPSA-Ke; Gathoni MTI-Ke). Second, the provision under article 12 (3) of the protocol that provided for changes to the CET to mitigate the adverse effects of applying cumbersome tariff rates eliminated the possibility of public unrest that would affect the implementation of the protocol (Owour MoFP-Ke; Kamau MEACA-Ke). For example, changes to the CET rates on rice from Pakistan averted potential unrest among the majority of tea producers in the country as discussed in Chapter seven. Despite the adequate application performance, the enactment of an institutionalised customs appeal mechanism in the Kenya revenue authority as required by the protocol was not undertaken by the time of the research (Odhiambo EAC; Mugisa et al 2009:13).

Application of tariff on intra-regional trade

Article 11 of the protocol provided for the application of provisions related to the elimination of the intra-regional tariffs among the partner states based on the principle of asymmetry (see Chapter 5). In line with the protocol, Kenya abolished all tariffs on imports originating from Uganda and Tanzania as required by the protocol. Respondents revealed that the elimination of intra-regional tariffs on imports from Uganda and Tanzania was adequately applied (Owour MoFP-Ke; Mumanye MTI-Ke; McIntyre 2005:10; Stahl 2005).

Simplification of customs documentation and processing

One of the objectives of the customs union was to increase intra-regional trade through simplification and harmonisation of trade information and documentation. Partner states were required to simplify customs processes to eliminate delays in the clearing of goods at the border posts. To comply with this provision in the protocol, Kenya initiated reforms to simplify documentation processes. First, separate clearing desks to cater for imports from EAC partner states were established at the KRA border posts of Busia, Malaba and Namanga. Second, Kenya assented to the USAID funded initiatives to set up a one-stop clearing centres at the Uganda-Kenya border rail terminal of Malaba to facilitate quicker processing of customs documentation and movement of goods across the partner states (Mumanye MTI-Ke; Mutie KAM-Ke). Third, attempts were made to set up a joint clearing centre at the vehicle terminal at the same border post (see Chapter 8.2.1.1).

In spite of the initiatives undertaken by Kenya, research revealed that provisions related to the simplification of documentation and processes were not complied with adequately as evidenced by increased delay in clearing goods at the Namanga, Malaba and Busia customs stations. Interviewees argued that it took longer to process exports to Kenya under the customs union regime compared to the period when states were independent (Shindika TCCIA-Tz; Musinguzi UMA-Ug). The delays were attributed to a number of factors. First,

delays in clearing of goods were attributed to increased volume of goods from the partner states due to the removal of customs import taxes. For example, Gathoni (MTI-Ke) argued that Kenya did not anticipate huge volumes of goods from the neighbouring countries given previous trends in intra-regional trade between 2000 and 2004 (cf. Chapter 4). The sudden increase in imports as a result of elimination of inter-regional tariffs on imports from partner states overwhelmed customs staff and led to heavy work-load and delays in clearing goods. This was complicated by delays in recruitment of additional customs officials caused by the bureaucratic recruitment process of the public service in Kenya.

Second, delays were attributed to the failure to harmonise information management systems and regulations to guide application of the Customs management Act 2004. This meant that the region had a common law with different regulations. For example, KRA officials claimed that imports of fresh milk experienced delays because existing computerised data capturing systems based on the customs union protocol did not have the provision related to imports of milk from partner states (Owour MoFP-Ke; Kimathi EAC).

Third, interviewees revealed that simplification of customs documents and processes was complicated by overlapping memberships of the partner states' to different integration arrangements (cf. Chapter 4). Membership to different integration arrangements implied that there were multiple regulations that applied to treatment of imports into the region. Customs officials had to apply different rules and regulations leading to heavy work load and confusion in customs clearing (Gathoni MTI-Ke; Chacha 2008).

8.2.2.2 Elimination of non- tariff obstacles to intra-regional trade

Article 13 of the protocol required partner states to remove existing non-tariff barriers to the importation of goods from partner states and not to impose any new non-tariff barriers. Sub-section 8.2.1.2 outlined the criteria for selection of the three NTBs that are analysed in this section. The criterion was based on NTBs that were unique and had the potential to impact on trade liberalisation in the region. This section discusses the application of article 13 of the protocol with reference to elimination of road blocks, unnecessary weighbridges and testing of imports for quality standards.

Removal of road blocks on major highways in Kenya

The research revealed that Kenya and Tanzania are important routes for exports and imports to the landlocked partner state of Uganda (see appendix 1). About 80% of the goods imported into Uganda through the port of Mombasa are transported along the northern corridor connecting Mombasa to the border towns of Malaba and Busia (World Bank 2008). Documentary evidence acknowledged the existence of road blocks in Kenya. For example, a survey by Rwanda private sector foundation reported that about 52 road blocks existed between Malaba and Mombasa in Kenya (EABC 2007). Similarly, the researcher observed two types of road blocks while travelling on the northern corridor to Nairobi in Kenya namely, police manned- and army-manned road blocks. In addition, respondents revealed that officials manning the road blocks more frequently stopped foreign registered vehicles than Kenyan registered trucks leading to delays in the movement of transit cargo (Mugume PSFU-Ug; Ramesh UMA-Ug; Lubanga UMA-Ug).

However, Kenyan argued that although the road blocks interfere with the free movement of goods, this was inevitable since road blocks were set up to achieve certain objectives. First, officials argued that police road blocks were set up to ensure that foreign registered vehicles carried only transit goods and had paid the requisite entry and transit fees as set out in the

regulations governing customs management. Second, military road blocks were established to maintain security on the northern corridor (Kamau MEACA-Ke; Waithaka MoJCA-Ke; Gathoni MTI-Ke). For example, Kamau (MEACA-Ke) revealed that fears that increased transit traffic to the hinterland of Rwanda, Burundi, South Sudan and Uganda would lead to highway robberies forced the Kenya government to set up military roadblocks on the northern corridor.

Elimination of unnecessary weigh bridges

Preliminary research revealed that weighbridges are vital to reduce the damage that goods trucks inflict on the road networks although they lead to barriers to free movement of goods when vehicles stop at every weighbridge (see Chapter 8.2.1.2). Documentary evidence revealed that prior to the protocol, Kenya had five permanent weigh bridges located at Mariakani, Athi river, Gilgil, Webuye and Isebania along the ‘northern corridor’ and nine mobile bridges located at Mombasa port, Mtwapa, Namanga, Nairobi, Maai Mahiu, Kisumu, Busia and Malaba (World Bank 2005; Musinguzi UMA-Ug). In recognition of the difficulty that the application of the protocol directives on elimination of weighbridges in the region would cause, the Council of Ministers directed that partner states eliminate unnecessary weigh bridges to minimise disruption to the free movement of goods (EAC Secretariat 2006; Mutebi EAC; Mwaura EAC; Carbaugh 2004).

The analysis revealed a number of issues related to the operation of weighbridges in Kenya. First, The EABC (2008) reported that the Kenya did not eliminate the majority of weigh bridges as directed by the Council of Ministers. Second, respondents observed that foreign registered trucks were more often subjected transit trucks to additional axle checks at the weighbridges compared to Kenyan registered trucks. This was unnecessary since the trucks had been weighed at the port in Mombasa, sealed and did not pick up any load any extra

cargo along the highway (Lubanga UMA-Ug; Kimera KEPSA-Ke; Babu CTI-Tz). This was verified by Kimera's revelation that:

“.....Our firm owns Uganda, Kenya and Tanzanian registered trucks. When I drive a Ugandan registered vehicle, the Kenya officers always subject me to axle load checks do not stop me when I drive our Kenyan registered vehicles....” (Kimera KEPSA-Ke).

Third, the majority of the weigh bridges were poorly maintained resulting in differences in axle load readings. For example, Musinguzi (UMA-Ug) reported that his truck was cleared at the weigh bridge at Mariakani but was denied clearance at Gilgil due to excess weight. This confirmed that the weighbridges in the country were not providing uniform axle load readings. Fourth, differences in axle regulations across the region complicated application of this policy; whereas the axle load regulations in some countries were based on axle group allocations of the entire vehicle, the axle load regulations in other partner states were based on individual axles. This created differences in procedures across the region (Musoke PSFU-Ug; Mugume UMA-Ug). For example, Musoke (PSFU-Ug) observed that Kenya had an axle load limit of 47 metric tonnes while the limit in Uganda and Tanzania was 54 and 52 metric tonnes respectively (see table 8.2). This implied that trucks with more than 47 metric tonnes travelling from the partner states of Uganda and Tanzania would not be permitted to enter Kenya. This led to delays and damages in offloading excess load.

Harmonisation of quality Standards

Prior to the implementation of the customs union protocol, all goods imported in the country from partner states were subjected to further quality testing by the Kenya bureau of standards (KEBS). The duty of applying the directives of the Council of ministers related to harmonisation of quality standards was assigned to KEBS.

In order to apply the provisions of the customs union protocol, the EAC enacted the Standardisation, Quality Assurance, Metrology and Testing (SQMT) Act 2006 to regulate

standards in the region. The Act required KEBS to allow goods with certification marks from the partner states to enter Kenya without further testing and to harmonise quality standards for goods across the region. The decision to harmonise standards in the EAC was intended to enable goods to move freely and in so doing, boost trade across the region (EAC secretariat 2006; Muleme UNBS-Ug; Mugume PSFU-Ug).

Research analysis confirmed that the directives of the Council of Ministers to eliminate quality tests for EAC products and harmonise standards were not adequately complied with. First, the 1100 standards that were harmonised were not gazetted in the Kenya legal system (see Chapter 8.2.1.2). The failure to gazette the common standards was attributed to delay in repealing domestic legislation related to quality standards and testing (Waithaka MoJCA-Ke).

Second, some imports from partner states were allowed to enter Kenya while others were subjected to further testing (Ramesh UMA; Wambi 2009; Jensen 2010). For example, Wambi (2009) stated that KEBs restricted imports of powdered milk into Kenya that did not meet the 34% protein level standards yet such levels of protein content were impossible to achieve given the farming practices that existed in the region. His analysis revealed that the protein levels for cow milk produced in the EAC region ranged between 25-26 per cent. According to Wambi, the restriction on the protein level of milk imported for partner states was geared towards protecting Kenyan milk farmers and dairy plants from competition. Respondents revealed that the Kenya dairy industry is a strong lobby group that has close links to senior government officials and vested interests may have influenced some of the NTBs observed in regard to importation of milk and dairy products into the country (Ongeri KEPSA). Jensen (2010) added that “.....vested interests sometimes try to manipulate standards and conformity assessment procedures in order to advance the sales of their own products and block market access to their competitors..... during border crossing procedures and the imposition of standards may be used as non-tariff barriers to trade” (Jensen 2010:2).

Third, inspection facilities for the Kenya Bureau of standards were located far from the border posts. The lack of inspection facilities at the border points contributed to further delays in clearing perishable exports. For example, a respondent revealed that the inspection laboratories for KEBS were located in Kisumu about 40 kilometres away from the customs border station of Busia. This led to delays in inspection since samples had to be taken to the testing centres (Mugume UMA-Ug).

8.2.2.3 Application of provisions on export promotion schemes

Prior to the customs union protocol, Kenya implemented three main export promotion schemes, the duty remission scheme, manufacturing under bond and the export promotion zones (Muhame MoFPED-Ug; Owour MoFP-Ke; Cuts 2009). The schemes were established to attract foreign direct investment to manufacture products for export primarily to the neighbouring countries of Tanzania and Uganda (Kamau MEACA-Ke). In 2004, the three countries signed the customs union protocol which implied that Uganda and Tanzania became part of the domestic market. This restricted the countries to which the goods produced under the export schemes could be exported (Muhame MoFPED-Ug).

In recognition of the existing conditions in the partner states, article 25 of the protocol granted policy space to partner states to continue operating export promotion schemes in force prior to the customs union. However, the protocol restricted the sale of goods produced from raw materials that benefitted from export promotion schemes on the local market to 20 per cent and directed that applicable taxes would be imposed on goods sold on the domestic market (see 8.2.1.4). Respondents revealed that when the customs union protocol became effective, most of the companies located in the EPZs lost the Uganda and Tanzania market since the protocol implied that the two countries were part of the domestic market. As a result of these changes, companies located in the EPZs appealed to the government to intervene. At the same time, the government was concerned that the application of provisions of the

protocol that restricted export of goods produced from the EPZs would affect the capacity to attract FDI into the country (Kweli MoFEA-Tz; Sempebwa MoFPED-Ug).

Given the large number of export promotion schemes in existence in Kenya and the importance of the sector to foreign revenue earnings, respondents noted that it was questionable whether the KRA took steps to ensure that goods produced under these schemes were not sold on the domestic market in the EAC (Kweli MoFP-Tz). Similarly, the research revealed that the Kenya revenue authority did not have sufficient capacity to ensure that goods sold on the domestic market are charged the full CET given that most of the raw materials in question are subjected to further processing that changes their characteristics (Shindika TCCIA-Tz; Akanga CTI-Tz; Babu CTI-Tz).

8.2.2.4 Application of the rules of origin

Article 14 of the protocol required partner states to set up structures to regulate and apply the policies related to rules of origin. Similarly to Uganda, Kenya was required under article 14 to issue goods originating from the country with a certificate of origin. The Council of ministers meeting of 2006 (EAC Secretariat) designated the Kenya revenue authority (KRA) with the duty of implementing the provisions on rules of origin (Mugisa et al 2009).

Research analysis revealed that in order to comply with the provisions of article 14 of the protocol, KRA established a liaison office at the Nairobi KRA office to coordinate all matters related to rules of origin in Kenya. Second, all staff at the ROO office were provided with necessary training and skills to ensure that all applications for certificates of origin were verified adequately (Ongeri KAM-Ke; Gathoni MTI-Ke).

The analysis revealed that the provisions on the rules of origin were adequately applied in Kenya. This is evidenced by fewer queries raised by the customs authorities in the partner states regarding the authenticity of exports of goods issued with certificates of origin from

Kenya compared to those from other partner states. This may be attributed to the fact that KRA had capacity to analyse the composition of the products and ascertain whether they meet the criteria of ‘wholly and exclusive’ criteria in the protocol (Mutie KAM-Ke). In addition, respondents revealed that it was easier for the KRA to address any queries raised on certificates of origin since they were the issuing agency. This was not the case in other partner states where the COOs were issued by other organisations but queries were directed to the customs authority. This was in contrast to the experience in Uganda as shown in 8.2.1.3 where queried would not be promptly addressed by the UEPB (Nyambura EAC; Wamboi MTI-Ke; Mumanye MTI-Ke).

Although respondents concurred that Kenya adequately implemented the provisions of the protocol on rules of origin, some critics argued that Kenya, like Uganda experienced difficulty in accurately ascertaining the origin of all inputs into the production of manufactured goods. This occurred in cases where products were manufactured from several commodities. For example, car assembly firms in Kenya imported complete vehicles but tried to re-classify them as ‘assembled in Kenya’ for export purposes (Angura URA-Ug; Akida TRA-Tz; EAC secretariat¹⁹).

8.2.2.5 Application of other trade–related policies in the protocol

Similarly to Uganda, the research revealed that five of the nine provisions that constituted the customs union protocol, were not applied in Kenya. Specifically, the trade-related provisions in the protocol were not applied in Kenya (see Subsection 8.2.1.5).

As discussed in 8.2.1.5, respondents attributed the failure to apply these policies to delays in setting up the institutional framework to enable harmonisation application of regional policies. For example, partner states including Kenya failed to nominate representatives to the regional

¹⁹ *Report was a verification report signed on 9th October 2009 and undertaken between 30th September and 9th October 2009)*

trade remedies committee (Nyambura EAC; Waithaka, MoJCA-Ke). Documentary evidence confirmed that countervailing, free ports, safeguard regulation and regional exemption programs were not gazetted and applied in Kenya (Mugisa et al 2009).

Table 8.4 Kenya- Summary of application of the customs union protocol

Policy area	Date of Commencement	Challenges encountered	Application performance
<u>CUSTOMS –RELATED POLICIES</u>			
1. Harmonisation of customs Systems			
Common External Tariff (CET)	2005	Minor	good
Internal Tariff Elimination	2005	none	good
Simplification of customs procedures	2005	Challenges existed	Inadequate
2. Removal of NTBs	2005	Challenges existed	Inadequate
3. Export promotion schemes	2005	Challenges existed	Inadequate
<u>TRADE-RELATED POLICIES</u>			
4. Application of ROO	2007	Minor	Fairly adequate
5. Other trade-related policies	Not yet	NA	Not applied

Source: Researcher's own analysis

In sum, the application of the customs union protocol in Kenya is summarised in table 8.4. Table 8.4 shows that the application of the rates on CET and the elimination of the internal tariffs were undertaken adequately in Kenya. Although Kenya delayed the establishment of an appeal system, respondents were confident that the absence of an appeal system did not prevent effective application (see Subsection 8.2.2.1). However, harmonisation of procedures, elimination of non- tariff barriers and policies on exemptions and remissions were not adequately applied as evidenced by delays in clearance of goods and non-tariff barriers persisted while the government continued to issue some new exemptions contrary to the requirements of the protocol. Similarly, only one of the trade-related provisions in the

protocol was adequately applied during the period covered by the research study. Table 8.4 shows that contrary to the application performance in Uganda, the policy on rules of origin in Kenya was applied fairly well. This was because the KRA was the implementing agency and had adequate capacity. The other five trade-related policies were not applied during the period covered by the research as explained in Subsection 8.2.2.5.

8.2.3 Application of the customs union protocol in Tanzania

The section analyses the application of the customs- and trade –related provisions in the customs union protocol. As discussed in section 8.2.1. The analysis investigates the application of the detailed provisions of the protocol in Tanzania.

8.2.3.1 Harmonisation of the Customs tariffs and systems

Prior to the protocol, the Tanzania revenue authority (TRA) was charged with customs tax application in the country. However, the EAC customs union protocol required Tanzania to undertake changes to the system of administration of customs administration to accommodate trade-related provisions outlined in the customs union protocol. The changes are explored below.

Application of the common external tariff (CET)

Respondents revealed that unlike other partner states, Tanzania did not have to make drastic changes to the rates of CET applicable on goods from the rest of the world (Akida TRA-Tz; Kweli MoFP-Tz). For example, Akida (TRA-Tz) noted that prior to 2005; Tanzania already applied rates similar to the CET in the customs union protocol (see Chapter 5). However, the TRA made changes from a four-band to a three-tariff band. Other changes were made to the list of sensitive products on which the import tariffs were higher than the CET (Nyambura EAC; Stahl 2005). For example, Stahl noted that the region agreed a list of 58 sensitive products. Sensitive products referred to imports that were charged at a CET rate higher than the maximum CET of 25 per cent (Stahl 2005).

The research revealed that Tanzania applied the CET rates adequately during the period 2005-2009. The adequate performance was attributed to a number of factors; first, as noted above, the rate of CET was similar to the rates applicable in Tanzania prior to the protocol which facilitated adequate application. Second, the CET rates were applied through a computerised information management system. This meant that imports were automatically taxed at a specific rate that could not be altered even when the country was faced with pressure to violate the provisions on CET (Machaku MEACA-Tz; Ngasa MEACA –Tz; Amani MITM-Tz).

Application of tariffs on intra-regional trade

Articles 10 and 11 of the protocol provided for the elimination of duties on intra-regional trade on imports from Uganda and phase out arrangement of tariffs on imports from Kenya over a period of five years. According to the protocol, tariffs on goods originating from Uganda were abolished with effect from January 2005. Goods originating from Kenya were divided into two categories. Duties on Imports from Kenya classified as category ‘A’ goods were exempted from duty in January 2005 while duty on category ‘B’ goods were phased out over a period of 5 years (EAC secretariat 2008; Mugisa et al 2009:14; Machaku MEACA-Tz). Machaku (MEACA-Tz) revealed that unlike Uganda, Tanzania adopted a variable phase-out plan (see also Table 8.1). Some goods were charged at the maximum CET rate of 25% in the first year of the application of the phase-out period while other products were charged as low as 2%. The details of the rates of tax and the tariff lines are summarised in table 8.5.

The table shows that Tanzania eliminated tariff on goods from Kenya listed in category ‘A’. Variable tariffs were imposed on imports from Kenya listed in category ‘B’. McIntyre (2005) argues that Tanzania had a more complicated arrangement than Uganda for reducing intra-regional tariff with each tariff line having a separate schedule (McIntyre 2005:10).

Table 8.5 Tanzania: Phase out of tariffs on category ‘B’ goods from Kenya

Category B							Category A
Tariff line/	146	15	20	516	112	54	
2005	25	15	10	5	3	2	0
2006	20	12	8	4	2	1	0
2007	15	9	6	3	1	0	0
2008	10	6	4	2	0	0	0
2009	5	3	2	1	0	0	0
2010	0	0	0	0	0	0	0

Source: EAC Secretariat (2006)

The research revealed that the application of duties on category ‘B’ goods from Kenya may have created complications at customs posts where the ascyudda + computer system was not been installed implying that customs officials had to assess duties manually. However, the lack of a computerised information management system did not drastically affect the implementation of the protocol because the customs posts in question were in remote border posts handling low volumes of imports (Akida TRA-Tz). Generally, respondents concurred that goods imported into the country from the partner states were subjected to the appropriate customs duties as prescribed in the protocol (Amani MTI-Tz; Babu CTI-Tz).

Simplification and harmonisation of Customs procedures

Analysis of the research revealed that Tanzania took initiatives to simplify and eliminate cumbersome customs procedures; In line with the provisions in the protocol, Tanzania simplified the procedure for clearing imports whose value did not exceed USD 500 in value. In addition, the TRA extended the hours of operation of customs offices at the border posts (Shindika TCCIA-Tz; Mwasiki FCC-Tz). Despite the efforts to simplify the customs processes, challenges persisted. First, respondents observed that the customs union protocol was signed without regulations. This implied that partner states continued to apply the

regulations in place prior to the signing of the protocol. This created confusion and differences in processes in application across the three partner states (Nyambura EAC; Ngasa MEACA-Tz; Akanga CTI-Tz). For example, Tanzania continued to charge road toll at border entry posts while toll fees had been abolished in partner states (Kimera KEPSA-Ke). Similarly, since the protocol did not provide for goods deposited in customs warehouses, the TRA continued to apply 'F 88' baggage assessment laws under section 252(5) of the treaty. This created differences in the application of the community law across partner states (Akida TRA-Tz).

Second, the TRA did not have sufficient staff to adequately implement the protocol leading to delays in the verification and clearance of goods at some of the border posts (Patel KAM; Aliya MoJCA-Tz). Third, delays in the processing of customs documents may be attributed to differences in the computer programs employed by partner states (cf. Subsection 8.2.1.1). The differences in the computerised programs among the partner states implied that partner states were unable to share information on customs documentation (Odhiambo EAC; Machaku MEACA-Tz). Fourth, interviewees noted that Tanzania traditionally used Swahili as the official language yet most import documents are written in English (cf. Subsection 3.3.3.2). This may have created difficulty in communication between the officials and the importers on issues related to processing the customs documents (Mosi Press).

Fifth, trade experts in the region argued that officials in the customs department in Tanzania just like in the other partner states were faced with the challenge of interpreting multiple rules and regulations given that partner states belonged to overlapping integration blocs. This created interpretation problems and delays in customs documentation (Ngasa MEACA-Tz; Munira CBT-Tz; Isiko MTTI-Ug; Akida TRA-Tz).

8.2.3.2 Removal of Non-Tariff obstacles to intra-regional trade

This section analyses the application of article 13(2) that relate to the elimination of non-tariff barriers. This section analyses the application of this section to three NTBs that were selected based on a criterion outlined in Subsection 8.2.1.2. These NTBs include, elimination of road block, removal of unnecessary weigh bridges and cumbersome standards and quality inspections.

Elimination of Road blocks on major highways

Road blocks constitute non- tariff barriers because they impede the free flow of transit trade in the country and may discriminate against traffic from other partner states (cf. 8.2.1.2). Article 13(2) of the customs union protocol called for elimination of known non-tariff barriers that are contrary to the spirit of trade liberalization across the region (Aliya MoJCA-Tz). Research identified about 30 road blocks along the central corridor Connecting Dar es salaam to the border town of Rusumo as follows, between Rusomo and Isaka- 10 roadblocks, between Isaka and Singida - 7 roadblocks; between Singida and Dodoma – 9 road blocks and; between Dodoma and Dar es Salaam – 4 roadblocks²⁰. These road blocks mainly targeted foreign registered vehicles plying the central corridor resulting in delays. As a result, traders from partner states were unable to effectively take advantage of the central corridor as an alternative route to the Indian Ocean Sea (Lubanga UMA-Ug; Kimera PSFU-Ug).

Elimination of un-necessary weighbridges

In Tanzania, weighbridges were operated by TANZROADS²¹. Research revealed that there were about five weighbridges on the central corridor in the following locations; Kibaha, Muikese, Mkundi, Mwenda Kulima and Nyahahura. Within the EAC, Tanzania had the

²⁰ Report by the republic of Rwanda on *Non-Tariff Barriers facing users of the Central Corridor towards Kigali (from Dar es Salaam – Rusumo Border)*:

²¹ *EAC sub-region transportation management and Harmonization policy statement: USAID,2001*

highest axle load limit (see table 8.2). This implied that truck drivers did not have to incur any extra charges and damages to off load any extra weight when they travelled from any of the partner states into Tanzania. As discussed in Chapter 8.2.1.2 and 8.2.2.2, the protocol required partner states to eliminate unnecessary weighbridges in the partner states. However, Tanzania maintained most of the weighbridges contrary to the directives in the protocol. In addition, officials manning the weighbridges mainly targeted at foreign registered trucks leading to delays in transit trade (Musinguzi UMA-Ug; Musoke PSFU-Ug; Patel KAM-Ke; Government of Rwanda).

Harmonisation of quality standards

In addition to elimination of unnecessary road blocks and weighbridges, the research investigated the steps taken in Tanzania to implement the SQMT Act as well as the directives of the Council of Ministers on harmonisation of standards in the region. The analysis of the research revealed that the duty of applying the provisions on standards in Tanzania was assigned to the Tanzania Bureau of Standards (TBS). The application of this policy in Tanzania is discussed in detail below.

First, Interviewees revealed that during the period 2005-2009, the three partner states agreed to harmonise 1100 standards. However, at the time of the research, Tanzania had not gazetted the standards in the domestic legal system. In effect, they were not applying the regional standards at the domestic level (Aliya MoJCA-Tz; Ngasa MEACA-Tz).

Second, some of the imports from the partner states continued to be subjected to additional quality tests while other products were allowed to enter the domestic territory without further testing. For example, Mumanye (MTI-Ke) revealed that dairy and poultry exports to Tanzania were frequently subjected to additional quality tests compared to other imports. This arose because intra-regional trade in these categories of products is sensitive and partner

states took steps to protect the dairy and poultry sectors from competitors in the partner states. However, government officials noted that testing for quality is not only restricted to poultry and dairy products. The mandate of the KBS is to protect citizens against harmful products. Quality tests are undertaken on all products entering the country irrespective of the type and source. Specifically, rigorous tests for dairy and poultry products were undertaken as a result of the mad cow and bird flu epidemics (Amani MITM-Tz; Kweli MoFEA-Tz). In addition, the TBS testing centres were situated far from the border. As a result, goods were delayed at the border while tests were undertaken and this resulted in loss of quality and damage to perishable goods (Ongeri KEPSA-Ke; Omondi KEPSA-Ke; Patel KAM-Ke).

Third, the research revealed that there were two main organisations dealing with standards and quality testing of imports in Tanzania; the Tanzania Bureau of standards and the Tanzania Food and Drug Authority (TFDA). The operations of the two organisations resulted in duplication of services and confusion in the implementation of the protocol. This led to delays in testing and verification of imports into the country (Mutie KAM-Ke; Patel KAM-Ke; Mugisa et al 2009). For example, Mutie (KAM-Ke) noted that on several occasions, exports to Tanzania were tested and cleared by the TBS only to be detained by the TFDA for further testing. This resulted in delays and deterioration in the quality of imported products.

8.2.3.3 Application of policies on export promotion schemes

The customs union protocol allowed Tanzania to retain export promotion schemes that were in effect prior to the commencement of the protocol. However, the protocol imposed restrictions on the application of export promotion schemes by partner states as discussed in 8.2.1.3 and 8.2.2.3.

The analysis revealed that provisions in the protocol on regulating export promotion schemes were not adequately applied in Tanzania (Lubanga UMA-Ug; Nyambura EAC). First,

respondents were doubtful whether TRA had sufficient capacity to ensure that goods produced from raw materials that benefitted from duty exemptions were charged the applicable duties when exported to the partner states. For example, Sempebwa (MoFPED-Ug) revealed that duties on newsprint that were deferred when the newsprint is imported into Tanzania are not imposed when the newspaper are sold in the partner states (Sempebwa MoFPED-Ug). Similarly, exemptions were granted to domestic edible oil manufacturers in Tanzania for the importation of raw materials. However, respondents were sceptical whether the import duties waived at importation were collected when the edible oil was exported to partner states (Lubanga UMA-Ug; Nyambura EAC; Nyakundi EAC).

8.2.3.4 Application of the Rules of origin (ROO)

According to the protocol, all goods originating from Tanzania destined to the partner states of Kenya and Uganda were supposed to be issued with a certificate of origin. This would enable goods produced in the region to benefit from the preferential treatment provided in article 10 of the protocol. The annex to the protocol outlined criteria for goods to benefit from preferential treatment accorded to goods produced within the EAC (see Subsection 8.2.1.3).

Unlike the other partner states, the Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA) – a non-public sector organisation composed of a number of private sector organisations was selected by the Council of Ministers to implement the policies related to rules of origin in Tanzania. The application of the rules of origin commenced in 2007 (Mosi Press; Nyambura EAC; EAC secretariat 2008). Analysis of the research confirmed that the procedure for regulating rules of origin in Tanzania was similar to the practice in the partner states (cf. Chapter 8.2.1.4 and 8.2.2.4).

The summary of the analysis revealed that the provisions in the protocol related to rules of origin were not adequately applied. First, respondents revealed that the TCCIA did not have

inspectors with the sufficient levels of technical skills to ascertain that goods met the criteria for wholly and exclusively manufactured in EAC set out in the protocol. This was evidenced by numerous cases of incorrect verification reports and queries by partner states on erroneous certificates of origin that originated from Tanzania (Akanga CTI-Tz; Kweli MoFEA-Tz; Odhiambo EAC; Akida TRA-Tz). For example, a certificate of origin issued for a consignment of bicycles was rejected by the Uganda revenue authority on the grounds that the goods did not meet the criteria set out in annex III to the protocol (Akida TRA-Tz).

Secondly, The TCCIA was not a government organisation and did not receive funding from government. Most of the income for the organisation was derived from fees paid on application for certificates of origin. This implied that the TCCIA was more concerned collecting revenue from the permits than ensuring that exports satisfy the conditions set out in the protocol. This may have compromised their performance and the need to ensure that goods that are issued with certificates of origin meet the strict criteria set out in the protocol (Kweli MoFEA-Tz; Akida TRA-Tz).

Third, the TCCIA is an apex for private sector organisations in Tanzania. Respondents revealed that there was a tendency for TCCIA to help members to export and compete with other companies in the region. This led to cases where the TCCIA compromised the duty of ensuring that exports met the criteria set in the protocol in preference for assistance to member organisations (Mwasiki FCC-Tz; Babu CTI-Tz).

8.2.3.5 Application of other trade-related policies in the protocol

Similarly to the other partner states, the research revealed that five trade related provisions in the customs union protocol were not applied in Tanzania (see Subsection 8.2.2.5). These included anti-dumping measures, subsidies and countervailing measures, safeguard regulations, free ports and regional exemption regimes (Amani MIMT-Tz; Aliya MoJCA-Tz).

As discussed in 8.2.1.5, respondents attributed the failure to apply these policies to delays in setting up the institutional framework to enable harmonisation application of regional policies. Research revealed that while Tanzania had set up institutional framework of most of the trade related policies, harmonisation was not possible because the other partner states did not have institutions in place. For example, Tanzania already had a competition commission prior to the protocol. However, harmonisation did not occur because the partner states did not have legal frameworks to regulate competition in place (see sub section 8.2.1.5). The application of all provisions contained in the customs union protocol in Tanzania over the period 2005-2009 is summarised in table 8.6.

Table 8.6 reveals that customs related provisions were adequately applied. These included the rates of CET on goods from the rest of the world and elimination of tariffs on intra-regional trade (cf. Chapter 2.3.1). Respondents attributed the adequate application of the CET on the fact that the new rates of CET in the EAC were similar to the rates applied in the country prior to the customs union. This meant that the TRA did not have to make drastic reforms to the existing system (see 8.2.3.1). However, the application of the internal tariff elimination was hampered by lack of computerised tax systems in the smaller remote. However, the lack of computerisation at some border stations and the challenges of applying variable internal tariff rates on category 'B' imports from Kenya did not affect the application of CET and internal tariff application (Akida TRA-Tz). On the other hand, Table 8.5 shows that provisions on the simplification of customs procedures, elimination of NTBs, export

promotion schemes and rules of origin were inadequately applied by the regulated agencies. This was evidenced by the prevalence of NTBs, queries on certificates of origin issued by the TCCIA, doubts over payment of duties on goods produced from raw materials that benefitted from exemptions and conflict of interest between the TFDA and the TBS

In addition, five trade-related policies were not applied during the period under review as summarised in table 8.6. The research showed that Tanzania had established legal frameworks for competition and trade remedies. However, these policies could not be harmonised because partner states did not have those institutions in place (see Chapter 8.2.1.5 and 8.2.2.5).

Table 8.6 Tanzania- Summary of application of the customs union protocol

	Policy area	Date of Commencement	Challenges encountered	Application performance
<u>CUSTOMS –RELATED POLICIES</u>				
1.	Harmonisation of customs Systems			
	Common External Tariff (CET)	2005	none	adequate
	Internal Tariff Elimination	2005	some	adequate
	Simplification of customs procedures	2005	Challenges existed	Inadequate
2	Removal of NTBs	2005	Challenges existed	Inadequate
3	Export promotion schemes	2005	Challenges existed	Inadequate
<u>TRADE-RELATED POLICIES</u>				
4	Application of ROO	2007	Challenges existed	Inadequate
5	Other trade-related policies	Not yet	NA	Not applied

Source: Researcher's own analysis

8.2.4 Comparison of the application of the protocol across the partner states

The customs union protocol set up uniform rules and obligations for partner states. The obligations required partner states to set up executive agencies and make changes to existing agencies in order to apply the provisions in the customs union protocol. The protocol contained nine provisions namely, three customs-related and six trade-related provisions. This sub-section compares the application of the customs union protocol across the three partner states for the years 2005-2009.

Harmonisation of customs systems across the partner states

The harmonisation of customs systems in the three partner states involved the application of three provisions; the common external tariff, internal tariff elimination and simplification of procedures. Research showed that partner states made changes to existing practices of the regulated agencies to adopt the provisions in the protocol. The research on the cross-country application of these policies is summarised in table 8.7.

Table 8.7 Cross-country application of customs liberalisation policies

Country	Executing agency	Application of CET	Elimination of intra-regional tariffs	Simplification of customs procedures
Uganda	URA	Adequate	Adequate	Inadequate
Kenya	KRA	Adequate	Adequate	Inadequate
Tanzania	TRA	Adequate	Adequate	Inadequate

Source: Researcher's own analysis

Table 8.7 shows that partner states applied the CET rates adequately. Section 8.2.1.1 analysed the application of the CET and intra-regional tariff elimination in Uganda (see table 8.3). The analysis argued that the increase in average CET would have adverse effects on the economy and lead to unrest in Uganda (Stahl 2005; McIntyre 2005). However, the research showed that when offsetting factors were taken into consideration, the average CET in

Uganda was lower than the rates in force before the protocol. This may have accounted for the adequate application of the provisions on CET since the offsetting factors in effect lowered the rate of duty on imports from the rest of the world (cf. Chapter 8.2.1.1). The CET application in Kenya also applied adequately. Unlike the partner states, the Kenya Revenue Authority had not established an institutionalised appeal system. However, respondents were unanimous that the lack of an appeal system is compensated by the provisions in article 12 (3) as explained in Subsection 8.2.2.1. Similarly the CET was applied adequately in Tanzania. The good application performance in Tanzania could be attributed to the fact that the CET rates were very similar to the customs duties in force prior to the protocol.

The provisions on the elimination of tariffs on intra-regional trade were adequately applied in the three partner states. Uganda abolished tariffs on imports from Tanzania and applied the asymmetry agreed upon during the negotiations on goods from Kenya (cf. Chapter 5). Some respondents argued that the Uganda revenue authority did not receive many complaints on the import duties because they were lower than the rates applied prior to the protocol (Angura URA-Ug; Nsereko URA-Ug). Other interviewees revealed that Kenya's manufacturing sector viewed the five year phase-in period as a short period since Kenyan products would enter the partner states markets duty-free after 2010 (Mutie-KAM-Ke; Mumanye MTI-Ke). The application of the provisions on elimination of tariffs on intra-regional trade were adequately applied in Kenya because all tariffs on imports from the partner states were abolished as discussed in Chapter 8.2.2.1. For example, McIntyre concluded that the elimination of tariffs on imports from partner states improved the application of article 10 in Kenya (McIntyre 2005). Similarly, the provisions on elimination of tariffs on intra-regional trade were adequately applied in Tanzania. However, respondents pointed out that customs officials frequently encountered challenges in adequately interpreting tariffs on goods from Kenya

classified under category 'B' in the asymmetry adopted by Tanzania for elimination of tariffs on intra-regional trade (cf. Chapter 8.2.3.1).

Table 8.7 reveals that the simplification and harmonisation of customs procedures were inadequately applied across the three partner states (see tables 8.3, 8.4 and 8.6). The research analysis revealed that all the three partner states experienced delays in clearance of goods at border posts contrary to the objectives of the protocol. The capacity to share information regarding imports and exports in the region was constrained by lack of harmonised information management systems. This affected the capacity to share information on imports and exports across the partner states (see Subsection 8.2.1.1).

Second, the EAC customs union protocol did not provide partner states with uniform regulations when the protocol was signed. In section 8.2.3.1, respondents observed that after the signing of the protocol, partner states continued to apply existing regulations. This led to differences in domestic application of the community law. For example, the absence of regulations meant that the treatment of transit vehicles, goods in warehousing and domestic taxation varied between the partner states. For example, whereas transit vehicles could carry goods out of Uganda, this is not the case in Kenya. In addition, Tanzania charged toll fees on trucks entering the country while the partner states did not charge toll fees (Musinguzi UMA-Ug; Kamau MEACA-Ke).

Third, customs departments were confronted with different and often conflicting regulations related to the fact that partner states were also members of other integration bodies (section 8.2.2.1). This led to delays in ascertaining the origin of goods and confusion on the duties charged on imports. The opinions of respondents on the impact of overlapping memberships on the commitment to the customs union protocol were verified by documentary evidence on regional integration which confirmed that overlapping membership to multiple integration

arrangements affects the capacity of partner states to interpret customs documents effectively (Bhagwati and Panagariya 1996; Chacha 2008).

Removal of non-tariff barriers to intra-regional trade

Article 13 of the protocol required all partner states to eliminate non-tariff barriers to intra-regional trade and thereafter not to impose any new non-tariff barriers. In section 8.2.1.2 the criteria for selection of the three NTBs reviewed in this Chapter was presented. The analysis reviews the application of article 13 on three non- tariff barriers namely; road blocks, weigh bridges and quality standards. The analysis pointed out that these NTBs are unique to EAC and hence worth analysing in greater detail (Mutebi EAC; UNCTAD 2005; Okumu and Nyankori 2010:10). The summary of the cross-country performance of the elimination on non-tariff barriers is detailed in table 8.8.

Table 8.8 Cross-country application of elimination of Non-tariff Barriers

Country	Actions to eliminate Road blocks	Actions to eliminate unnecessary weighbridges	Recognition of partner states quality certification marks	Gazetting of the 1,100 harmonised regional standards	Duplication of quality assurance activities	Overall performance on elimination of NTBs
Uganda	Some	Some	Some	No	No	Fair adequate
Kenya	None	None	Some	No	No	Inadequate
Tanzania	None	None	Some	No	Yes	Inadequate

Source: Researcher's own analysis

The research revealed that although all the partner states maintained road blocks on the main highways, there were fewer road blocks in Uganda compared to Tanzania and Kenya. Existing literature showed that there were over 47 road blocks on the northern corridor between Malaba and Mombasa in Kenya and over 30 on the central corridor in Tanzania (see Subsection 8.2.2.2 and 8.2.3.2). The existence of fewer road blocks in Uganda compared to the partner states was attributed to on-going reforms to liberalize the economy that

commenced in late 1990s and early 2000s. The reforms included actions to eliminate road blocks and road tolls. However, the research revealed that roadblocks were not eliminated completely²². Interviewees argued that the existence of road blocks in Kenya and Tanzania was inevitable despite the desire to eliminate them due to security concerns. For example, Kamau (MEACA-Ke) defended the existence of roadblocks as follows, “.....Security is one of the incentives to attract foreign direct investment and partner states are keen to assure investors that the region is safe to invest”. Other respondents pointed out that road blocks were set up to ensure that domestic transit transport regulations were observed by trucks plying the main highways in the three partner states (cf. Subsection 8.2.2.2).

The research revealed that actions to eliminate un-necessary weigh bridges were inadequate across the partner states. This opinion was verified by the number of weighbridges that existed in the three partner states and confirmed by the researcher during the field work (see tables 8.3, 8.4 and 8.6). The analysis confirmed that although weighbridges were necessary to control deterioration of the road networks, weighbridges disrupt the free movement of intra-regional trade. In addition, axle loads were not harmonised across the region (see Table 8.2). This led to confusion in the application of the policy among the three partner states (Musinguzi UMA-Ug). At the time of the research, weighbridges existed in all partner states; Uganda had four weigh bridges, Tanzania has five permanent bridges and four temporary weighbridges while Kenya had five permanent and 9 temporary weighbridges (Kimera PSFU-Ug). The fewer number of weighbridges in Uganda was attributed to the actions initiated to eliminate the majority of weighbridges and merge the operation of the remaining ones with customs checks and borders controls to reduce delays (see 8.2.1.2).

Similarly, the research revealed that the harmonisation of quality standards was inadequately implemented across the three partner states as summarised in table 8.8. Member states failed

²² *New vision newspaper 7th September 2009*

to recognise the standards quality marks of other partner states and continued to subject imports with quality marks from partner states to further testing. In addition, attempts to harmonise quality standards among the partner states did not prove successful. Although about 1,100 standards had been earmarked for harmonisation, the standards were not gazetted in the domestic legal systems. This meant that the harmonised standards could not be applied and enforced across the three partner states (see 8.2.2.2).

In summary, NTBs continued to exist in the customs union despite directives of the Council of Ministers and the existence provisions in the protocol to eliminate known non-tariff barriers to trade in the EAC (see 8.2.1.2). The research identified Kenya as the worst offender with the highest number of NTBs (Ngasa MEACA-Tz; EABC 2008; Xinhua 2005; Tralac 2009). Whereas officials attributed the need for further quality testing to the desire to safeguard consumers in domestic countries from dangerous goods and items, critics argued that there were vested interests and pressure from the private sector to protect domestic industries from competition (Jensen 2010:2).

Cross-country application of policies on export promotion regimes

Articles 25-30 of the protocol recognised the existence of export promotion regimes in the partner states. The main purpose of the exemptions was to encourage exports and attract foreign direct investment. Application of provisions on export promotion schemes was analysed in Subsections 8.2.1.3, 8.2.2.3 and 8.2.3.3. The protocol allowed partner states to maintain exemptions that were in place prior to the protocol. However, revenue authorities in the partner states were required to ensure that the sale on the domestic market, of goods produced from raw materials that were exempt of duty was restricted to twenty per centum. In the event that such goods are sold on the domestic market should attract full CET duties (Stahl 2005). The cross-country performance of application of the policies on export promotion schemes is summarised in table 8.9.

Table 8.9 Cross-country application of policies on export promotion schemes

Country	Export promotion schemes	Capacity to monitor goods produced from exempted raw materials	Restriction on sale of goods made from exempted raw materials
Uganda	Exist	Inadequate	Inadequate
Kenya	Exist	Inadequate	Inadequate
Tanzania	Exist	Inadequate	Inadequate

Source: Researcher's own analysis

The analysis shows that provisions in the protocol on existing export promotion schemes were inadequately applied in all partner states. Table 8.9 reveals that regulated agencies in the partner states did not have adequate staff with the required technical skills to monitor the sale of products produced from raw materials that had benefited from exemptions (see sections 8.2.1.4, 8.2.2.4 and 8.3.2.4). For example, Stahl argued that the lack of staff and capacity to monitor goods imported into the country raises doubts whether the executive agencies of the respective partner states had the capacity to monitor and ensure that goods produced from raw materials that benefitted from exemptions were charged the applicable duties when sold on the regional market (Stahl 2005).

Comparison of application of policies on rules of origin

Rules of origin were established under article 14 of the protocol. This policy was to enable customs officers to distinguish goods produced in the EAC- subject to intra-regional tariffs from those produced outside the region which would attract rates under the CET. The Summary of opinions and documentary evidence on the application of the policies on rules of origin are highlighted in table 8.10.

Table 8.10 Cross-country application of the Rules-of-origin policies

Country	Executing agency	Evidence of reforms undertaken to apply the policy	Commencement of application of the protocol	Availability of resources for effective execution	Capacity of officials to ascertain origin of commodities
Uganda	UEPB	Yes	Late	No	Poor
Kenya	KRA	Yes	Late	Yes	Fair
Tanzania	TCCIA	Yes	Late	No	Poor

Source: Researcher's own analysis

Interviewees revealed that the partner states did not have any existing structures for application of the rules of origin. The Council of Ministers meeting of 2006 designated organisations in the partner states with the responsibility of implementing the provisions on rules of origin namely, Uganda Revenue Authority, Kenya Revenue Authority and the TCCIA for Uganda Kenya and Tanzania (Mugisa et al 2009; Musinguzi UMA). The analysis identified a number of problems in the application of the provisions related to rules of origin in the protocol. First, respondents reported that three partner states commenced application of the provisions in the protocol related to rules of origin in 2007, two years later than the due date for application set by the EAC. Second, some of the decisions taken by partner states on the implementation of the rules of origin were contrary to council resolutions. For example, the application of the provisions on rules of origin in Uganda was undertaken by the UEPB contrary to the resolution of the Council of ministers meeting in 2006 (cf. Chapter 8.2.1.4).

In sum, the analysis revealed variation in the application of the rules of origin across the partner states. For example, whereas the rules of origin were adequately applied in Kenya, they were inadequately applied in Uganda and Tanzania as summarised in table 8.10. The adequate application of the rules of origin in Kenya could be attributed to the competence of the Kenya revenue authority (KRA). The KRA had the technical capacity to adequately verify exports on the criteria provided by the secretariat (see Subsection 8.2.1.4). In addition,

the KRA was capable of resolving queries related to certificates of origin in a shorter time compared to the practice in the partner states (cf. Subsection 8.2.2.3). Generally, respondents pointed out that the complex nature of the production processes for some manufactured goods coupled with the lack of sufficient skills implied that partner states were unable to adequately ascertain whether manufactured products strictly adhered to the criteria set out in the protocol.

Cross-country application of other trade-related provisions

Chapter 6 discussed the transposition of the customs union protocol into domestic legal systems in 2004. Partner states were required to adopt the law in the domestic legal systems as well as set up institutional arrangement to apply the law. However, the EAC secretariat did not have the capacity to monitor complete transposition of the protocol (see Chapter 6.4).

The analysis revealed that of the nine provisions set out in the protocol (see table 6.1); four provisions in the protocol were gazetted and applied. However, five provisions were not gazetted or applied during the period 2005-2009 (see Subsections 8.2.1.5, 8.2.2.5 and 8.2.3.5). For example, article 24 provides for a regional trade remedies committee composed of nine members to handle trade disputes within the region. However, partner state had not nominated members to the committee by the time of the research (Waithaka, MoJCA-Ke; Aliya, MoJCA-Tz; Kawuma, MoFA-Ug). Initiatives to enact a competition policy in the region commenced with conferences held in Arusha and Kampala in 2009 and 2010 respectively. However, enacting a regional competition policy was delayed because Uganda did not have a domestic competition Act while other domestic laws like counterfeit and anti-dumping have held up in at the policy making stage (Nyakundi EAC; Mwasiki FCC-Tz). Similarly, efforts to set up free ports in the region were affected by delays and disagreements. For example, plans to set up a free port in Uganda have delayed by more than four years as a

result of controversy that arose when the Uganda revenue authority questioned the rationale of creating a monopoly in the country²³.

8.2.5 Overall application of customs union policies

The overall application of the customs union policies relates to the application of the nine policies set out in the protocol. This section covers the application of all provisions in the customs union protocol. The analysis reveals that the overall application of all customs union provisions in the three partner states over the period 2005-2009 can be summed up as inadequate as summarised in table 8.11.

Table 8.11 EAC- Application performance of Customs union policies 2005-2009

Policy area	Status as at April 2010	Application performance
<u>CUSTOMS –RELATED PROVISIONS</u>		
1 Harmonisation of customs tariffs	Gazetted	Adequate
Of which:		
<i>Common External Tariff (CET)</i>	<i>gazetted</i>	<i>Adequate</i>
<i>Internal Tariff Elimination</i>	<i>gazetted</i>	<i>Adequate</i>
<i>Simplification of procedures</i>	<i>gazetted</i>	<i>Inadequate</i>
2. Removal of NTBs	Gazetted	Inadequate
3. Export promotion schemes	Gazetted	Inadequate
<u>TRADE RELATED PROVISIONS</u>		
4. Application of ROO	Gazetted	Inadequate
5 Anti-dumping measures	Not Gazetted	NA
6 Subsidies and countervailing measures	Not Gazetted	NA
7 Safeguard measures	Not Gazetted	NA
8 Free Ports	Not Gazetted	NA
9 Regional export processing zones	Not Gazetted	NA

Source: Researcher's own analysis

²³ <http://allafrica.com/stories/201008030840.html>

Table 8.11 shows the protocol was composed of nine provisions; three customs-related and six trade related provisions (Owour MoFP-Ke; Angura URA-Ug; Sempebwa MoFPED-Ug; Kweli MoFEA-Tz). The summary of expert opinions shows that only the harmonisation of customs tariffs and procedures of the three customs related provisions was applied adequately. The rules of origin as well as provisions on export promotion schemes were inadequately applied. On the other hand, the trade-related provisions in the protocol were inadequately applied. While the provisions on rules of origin were applied two years after the due date and inadequately, the remaining five provisions; anti-dumping measures, subsidies and countervailing measures, safeguard measures, free ports and export processing zones were not gazetted and applied at the time of the research (cf. Chapter 6.3.2).

8.3 Explaining the partner states' application of the protocol

The research results analysed in section 8.2 reviewed the application of the customs union protocol in the partner states. Although the analysis reveals overall inadequate application of the customs union protocol (see table 8.11), the results shows different degrees of adherence in the application of the provisions in the protocol. For example, table 8.11 shows that provisions CET and internal tariff elimination were adequately applied while the simplification of procedures was inadequately applied by the partner states. This agrees with previous on the existence of degrees of commitment (cf. Chapter 2.3.3). The research analysis identified three factors to account for the application performance exhibited in Subsection 8.2.4 namely; use of ICT in application of tariffs, political preferences of partner states and overlapping membership to other regional arrangements.

The use of ICT in application of tariff rates

The research revealed that the adequate application of the provisions on the CET and tariffs on intra-regional trade could be attributed to the nature of systems for application. The computer systems of the respective customs departments of the partner states were programmed to automatically generate entries and calculate the CET and duties on intra-regional trade based on the rates prescribed in the customs union protocol (cf. Chapter 8.2.1.1). Respondents revealed that the use of ICT systems in customs tax administration ensured that no variation from the import tariffs set by the customs union protocol could be made even when the partner states had incentives to do so (Owour MoFP-Ke; Angura URA-Ug; Akida TRA-Tz; Gathoni MTI-Ke). Gathoni asserted that “.....once the rates were agreed in Arusha and inserted into the computerised customs data management system, our hands were tied..... it became difficult to fiddle the rates” (Gathoni MTI-ke).

The importance of computerised systems in enhancing adequate application of the CET and internal tariff systems in the EAC customs union protocol is in line with neo-liberal institutional arguments about the importance of institutions in improving implementation (Bovens and Zouridis 2002; Versluis 2007). Bovens and Zouridis (2002:178) undertook research on the implementation of student grants and traffic regulations. Their study found that computerised systems limited the powers of Dutch administrators to deviate from programmes designed to implement student grants and sanction for traffic offences.

Preferences of partner states

The research results revealed that the provisions on elimination of non-tariff barriers were inadequately applied while the majority of the trade-related policies were not applied during the period 2005-2009 as discussed in Subsection 8.2.4 and summarised in table 8.11. The research concluded that although all partner states did not eliminate non-tariff barriers over the period of the research, Kenya was singled out as the worst offender with the highest

number of NTBs (cf. Subsection 8.2.2.2). For example BH Oluka argued that Kenya continues to close its market to Uganda exporters although Kenchick is allowed to export day old chicks to Uganda²⁴. The analysis revealed that preferences of partner states were evidenced in a number of ways. First, interviewees revealed that prevalence of NTBs were a result of pressure from interests of the private sector to protect their local industry. This is in line with the country position that was adopted by the partner states prior to the commencement of the negotiations (cf. Chapter 5. 2). For example, Machaku (MEACA-Ke) argued that the elimination of tariffs on imports from partner states into Kenya may have led to increases in non-tariff barriers. This conclusion is supported by several scholars who have analysed NTBs (Okumu and Nyankori 2010; Thangavelu 2010). Okumu and Nyankori concluded that globally, tariffs have been falling as a result of regional trade liberalisation. As a result, many partner states resorted to alternative protectionist mechanisms commonly known as non-tariff barriers (Okumu and Nyankori 2010:1).

Second, research shows that the Kenya dairy industry is a strong lobby group that has close links to senior government officials and vested interests may have influenced some of the NTBs observed in regard to importation of milk and dairy products into the country. Mugume asserted that chicken and milk exports to Kenya faced severe NTBs because the dairy and poultry industry in Kenya is owned by firms that have close ties to powerful government officials who have interests in the protection of the domestic markets (Mugume PFSU-Ug). In addition, Jensen et al (2010) conducted research on NTBs in the dairy industry in the EAC. The findings in their research concluded that: “.....vested interests sometimes try to manipulate standards and conformity assessment procedures in order to advance the sales of their own products and block market access to their competitors..... during border crossing,

²⁴ BH Oluka: *Protectionism, The East African Newspaper* 18-24 February 2008

procedures and the imposition of standards may be used as non-tariff barriers to trade” (Jensen et al 2010:2).

Third, the reluctance of partner states to set up the institutional frameworks to implement the five trade-related provisions analysed in 8.2.1.5, 8.2.2.5 and 8.2.3.5 could be attributed to the preferences of partner states to protect domestic industries from competition. Most of the trade related provisions relate to anti-competition measures against dumping and industries threatened by a surge in imports (Stahl 2005:33). The delay by partner states to constitute the EAC trade remedies committee and an EAC competition authority to address trade imbalance was related to delays in the respective domestic legislations to facilitate harmonisation of trade-related policies (Booth et al 2006; Chabal and Daloz 1999). Booth et al argue policy harmonisation is weak across the EAC because politicians and policy makers have an enduring interest in the discretion that incomplete liberalisation and imperfect regulation offers (Booth et al 2006:11). Similarly, Chabal and Daloz (1999) conclude that the interest in incomplete liberalisation is prevalent in Africa because trade protection is exchanged for political party funding implying that business flourishes in protected niches. The argument that inadequate application of regional directives is a result of the preferences of partner states to protect domestic markets from competition is situated in the rational institutional approaches of international relations theory (Tallberg 2002; Borzel et al 2010).

Overlapping memberships to multiple integration arrangements

The research revealed that provisions on simplification of customs processes and implementation of rules of origin in the EAC customs union in order to enhance movement of goods were inadequately undertaken (see 8.2.4). Previous literature argues that implementing rules of origin from a single integration arrangement does not lead to complications. However, overlapping membership in other integration arrangements implies that various regulations have to be applied. The application of different rules of origin is cumbersome and leads to

delays in the movement of goods within a regional integration bloc (Chacha 2008:11; Krueger 1997; Razeen 2006).

The EAC is characterised by overlapping memberships to different integration arrangements among the partner states (cf. Chapter 4.4.4). The research attributed delays in processing customs documents and adequately applying rules of origin to the confusion in interpretation of multiple regulations from different integration arrangements (Mugisa et al 2009; Stahl 2005; Gibb 2006). Gibb concluded that the present structure of overlapping memberships among regional blocs is unworkable and will not work in the future (Gibb 2006: 2). In addition, respondents revealed that newsprint was imported from South Africa into Tanzania duty free. The newsprint is then processed into newspapers that are exported across duty-free yet newsprint from countries outside the region was subject to CET. Such cases create confusion in tax administration and mean that officials spend more time and resources scrutinising regulations from different trading arrangements to ascertain the tax treatment of imports into the region (Sempebwa MoFPED-Ug; Mumanye MTI-Ke; Kweli MoFEA-Tz). The confusion and delays in application of the protocol as a result of overlapping memberships was summed up as follows “.... Overlapping membership to multiple integration arrangements is disruptive and divisionary” (Sempebwa MoFPED-Ug).

The results regarding the impact of overlapping membership that reveal that the proliferation of multiple memberships creates capacity problems that hamper commitment to regional directives is in contrast to the findings in a similar study undertaken on commitment to regional directives in Latin America and the Caribbean (Mera 2007). Mera concludes that signing agreements with multiple regional blocs increases the country's commitment to the original bloc (Mera 2007:15). A detailed analysis of the study undertaken by Mera (2007) shows that there are methodological and empirical differences between her

study and the study on the application of the customs union in the EAC that could account for the contrasting results.

First, Mera employed implementation as a proxy for commitment; this meant that she did not differentiate between enforcement and application. This is questionable since previous research shows that there are levels of commitment (cf. 2.3.3). Second, she assumes that the more a state is dependent on the region as an export destination, the more committed to the region the state will be. Although that is the theoretical expectation, in practice, the study on the EAC showed that Kenya being the biggest exporter is also the worst offender in terms of commitment violations as discussed in Chapter 8.2.4. This argument is also supported by traditional international relations power preponderance views that argue that powerful nations are less likely to comply with regional directives (Mattli 1999). Third, the study by Mera compared commitment based on the regional level as the unit of analysis (Mera 2008:2). By comparing regions with other regions, her study assumed that the levels of commitment in each of the regions uniform. However, the study on the EAC showed that there are differences in commitment among partner states and within the detailed provisions in the protocol. This argument is reinforced by other studies that show that there are indeed differences within partner states in a particular bloc (Leiber 2007; Thomson 2007). These differences in the impact of multiple memberships on the commitment of a member state to a particular integration arrangement shows that different level of analysis of directives leads to different outcomes (Thomson 2010:579).

The administrative constraints that affect the capacity of the regulated agencies to adequately implement the provisions of the protocol can be situated in the management approaches to commitment deficits in existing literature on regional integration discussed in Chapter two. Management theorists argue that partner states are willing to adhere to regional directives but are constrained by resources (Jensen 2007; Sverdrup 2004; Chayes and Chayes 2003;

Tallberg 2002; Mera 2007). Jensen concludes that member states violate treaty provisions because they do not have the capacity to implement policies smoothly (Jensen 2007:452) Mera also argues that states are willing to comply with regional directives but are unable to do so due to lack of clarity of the provisions or lack of resources to effectively implement the directives (Mera 2007:6).

8.4 Conclusion

The main objective of this Chapter was to explore the factors that account for the application of the customs union protocol from 2005-2009. The Chapter shows that there are nine provisions that constitute the customs union protocol which executive agencies in the partner states were required to apply.

The research showed that four provisions were applied by the executive agencies during the period 2005-2009 while the remaining five provisions were not applied. The research revealed that the overall application of the customs union protocol as inadequate as summarised in tables 8.11.

Three broad factors account for the application of the EAC customs union protocol namely, the use of ICT, preferences of partner states and overlapping memberships to different regional integration arrangements. These factors are interrelated in nature. For example the proliferation of multiple memberships affects the capacity of officials to interpret several legislations and adhere to the provisions in the protocol. The interrelationships between the factors leads to the conclusion that for the research to analyse the factors that account for the application performance, there was need to draw from both the enforcement as well as management approaches that explain applications problems in commitment literature (cf. Chapter 2.5). This assertion is supported by existing research on integration (Borzel et al 2010; Tallberg 2008; Falkner et al 2005:26). For example, Borzel et al (2010:1371) argue that

no single factor is sufficient to explain why some states violate regional directives more often than others. Therefore, different factors need to be combined in order to account for the empirical patterns observed in integration research.

PART 111

SUMMARY AND CONCLUSION

CHAPTER 9

9 CONCLUSIONS: SUMMARY AND RESEARCH FINDINGS

9.1 Introduction

The main aim of the thesis was to analyse how the three partner states of Uganda, Kenya and Tanzania were inadequately committed to the implementation of the EAC customs union protocol during the period 2004-2009. The customs union protocol was selected since it was the only community legislation in the EAC at the time of the research. To achieve this aim, the research reviewed the relevant literature on commitment to regional directives and proposed three sub questions; first, how was the customs union protocol transposed? Second, how was the customs union protocol enforced? Third, how was the customs union protocol applied?

The Chapter is structured as follows: section 9.2 revisits the research problem and restates the main – and sub research questions. Section 9.3 summarises the thesis by reviewing the state of the art, research approach and methods used in the research. In addition, it details the context of the study and the negotiation process of the customs union protocol. Section 9.4 presents and discusses the findings in the study. Section 9.5 highlights the contribution of the thesis to commitment debates in integration literature. Section 9.6 presents the methodological implications while the Chapter concludes with limitations of the study and areas for further research inquiry.

9.2 The research problem and questions revisited

The late 1980s and early 1990s were characterised by increase in integration mainly among developing countries. The main objective of regional integration was to create a level playing ground for economic actors across the region. However, existing literature did not adequately analyse how partner states were committed to the collectively agreed regional protocols (see Chapter 1.1)

Analysis of integration literature concluded that studies on commitment to regional directives are narrow in focus (Thomson 2010; Borzel et al 2010; Zhelyazkova and Torenlvied 2011). Most studies focused on the implementation phase neglecting the negotiation process (Masternbroek, 2005; Treib 2008; Versluis 2007). Other studies focus on analysis of commitment to the transposition of regional directives and neglect the enforcement and application phases (Kaeding, 2007; Steunenbergh, 2007). Commitment studies were also characterised by the methodological approaches they adopted. For example, most studies employed quantitative research methods based on infringements of regional directives reported by partner states. However, the infringement reports omitted important aspects of the policy process (Mbaye 2001; Mera 2007; Toshkov 2008). These studies principally employed aggregate measures of analysis. There was little emphasis on the detailed provisions that constitute regional directives (Thomson 2010; Konig and Leutgert 2008).

Further, other commitment studies focus on regional integration arrangements among developed countries. Although some studies analyse commitment problems in regional blocs among developing countries, the studies mainly focus on Latin America, the Caribbean and Asia (Cornejo and Granados, 2006; Feng and Genna 2006; Mera, 2007). Few commitment studies within integration literature have focused on Africa (see Chapter 1.1). Specifically, Mugisa et al (2009:3) point out that there is currently no documented qualitative study that has comprehensively analysed commitment to regional directives in the East African

Community. In sum, existing shortcomings in the literature on commitment reveal that what is currently known about commitment to regional directives may be a ‘tip of the iceberg’ and research is in need of more information (see Falkner et al 2005; Masternbroek 2005; Versluis 2007). Based on the limitations in the existing integration literature, this study proposed the following overall research question:

How were the EAC partner states of Uganda, Kenya and Tanzania inadequately committed to the implementation of the EAC customs union protocol?

To answer the overall question, three sub-questions were formulated:

Sub questions

- How was the EAC CU transposed into the domestic legal systems in the three partner states?
- How was the customs union protocol enforced in the three partner states?
- How were the policies in the customs union protocol applied?

The main- and sub research questions were developed in Chapter 3.2 and answered in Chapter six to eight. Chapter 6 answered the first research sub- question, how the protocol was transposed in the partner states. Chapter 7 answered the second research sub-question, how the protocol was enforced and Chapter eight answered the third research sub-question, how the protocol was applied in the member states. The three sub- questions helped the research to answer the main research question.

9.3 Summary of the Thesis

The first Chapter of the thesis presented the background to the study and the research problem, objectives of the study, justification and scope and limitations. The chapter summarised the main- and sub- research questions that had been developed in chapter three. The chapter closed with a structure of the research thesis.

Chapter two reviewed the literature on commitment to regional directives. The Chapter analysed the concept of commitment in regional integration among developed as well as

developing countries. Drawing on different approaches to commitment, the Chapter explained how different concepts affected the understanding of policy implementation at the domestic level. The Chapter concluded that so far, commitment studies lack sufficiently clear conceptualisations of the different forms and phases of execution of regional directives. This implies that there are still ‘black holes’ in the understanding of commitment (Falkner et al 2005:21). It was also evident from the Chapter that qualitative studies covering all aspects of regional directives among developing countries were required.

Chapter three presented the framework of analysis and methodology employed for this research study. First the framework was presented and analysed in detail. In Chapter 3.2.1, Commitment effectiveness was considered as the degree to which transposition, enforcement and application of community legislation at the domestic level corresponded with the objectives set out in the community law (Mera 2007; Knill 1997:3). In order to emphasise the concept of commitment, the first Chapter started with a quote from McCreevy (2005). The quote stated that commitment does not simply refer to passing laws. It means getting those laws to national statute books on time and national authorities applying them properly. This quotation implies that the effectiveness of commitment is achieved when all the phases in the execution of a directive, transposition, enforcement and application are adhered to adequately.

Chapter 3.2 presented and analysed the approaches used in the research study. The International Relations (IR) and the International Political Economy approaches were presented and their application for this particular study analysed and justified. The philosophical ideas underpinning the theories informed the formulation of the research questions, the data collection techniques and analysis of the data within the context of the EAC. The section introduced the main research question and the three sub- questions. To answer the research questions, the thesis employed a qualitative research design to gather the data. The design was characterised by semi-structured interviews complemented with

secondary sources. The researcher chose the EAC to study the commitment to regional directives as he was accustomed to this region and the partner states.

In total 50 respondents in the region were interviewed. Attention to the completeness and detail of the data was taken by cross checking any key issues that were not clear during the interview process with the respondents. All interviews were personally transcribed by the researcher. Data was analysed based on four themes in line with the different phases of implementation of the protocol.

Chapter four presented the background to the study. First an overview of the EAC was presented, then a political economy of the partner states relevant to the study was analysed. The background of the EAC and the partner states was presented to enhance the understanding of the context in which the customs union protocol was executed. The Chapter revealed the following characteristics that may have a bearing on the commitment performance of the EAC of the partner states:

Kenya is the biggest economy of the three partner states with per capita income of USD 530 compared to USD340 and 280 for Uganda and Tanzania respectively as shown in table 4.1. Table 4.4 reveals that Kenya is the biggest beneficiary of intra-regional trade accounting for about 23% of total exports to the region compared to 2% and 10% for Uganda and Tanzania respectively. Table 4.3 summarises revenue contributions in the EAC. The table shows that customs tax revenue was an important source of government revenue in all the three partner states. This dependence on customs revenue is consistent with literature on government revenue in developing countries (Shams 2003; Venables 1999) while table 4.6 reveals the different integration arrangements to which the three EAC countries belong.

The Chapter reveals that the political systems in the partner states can be described as neo-patrimonial. Patrimonial political systems are characterised by weak institutions and

politicians have an interest in the leverage that the sovereignty provides (Booth et al 2006:11). Second, partner states possess a rule governed systems but party-political preferences, patronage and private networks play a significant role (Chabal and Daloz 1999). Third, regional integration was used as a platform to portray the political leadership in the region as statesmen with an interest in regional and multilateral integration beyond the customs union as Booth et al (2006) state “.....for leaders of the three countries, acting on the regional stage helps to make them look like statesmen of a higher order” (Booth et al 2006:17). Fourth, although the EAC Secretariat was established to coordinate and enforce policy, the power for policy making was retained by the Council of Ministers in the partner states. This institutional arrangement, coupled with resource constraints at the EAC Secretariat affects the capacity of the secretariat to act as a supranational organisation. This implies that the solutions put forward by existing international relations and international political economy theories to eliminate existing commitment problems cannot be adequately applied in the case of the EAC.

Chapter five presented the negotiations for the design of the EAC customs union protocol. The purpose of this Chapter is not only to know how the directive was agreed but also investigate whether any of the problems related to subsequent implementation of the law were related to the negotiation process. This is in line with observations made by other scholars on regional integration (Falkner et al 2002; Thomson 2010). Chapter 5.2 points out that agreement at the negotiations were reached through a process of consensus. This differs from the policy design process in other regional integration arrangements. Section 5.2.1 shows that other regional bodies employ both the consensus and the ‘Qualified Majority Voting’ mechanisms for policy design (Hix 2010:20; Falkner et al 2005:342).

The negotiation process analysed in Chapter 5.3 revealed that the process of decision making was a political process. First, the negotiations of the customs union were conducted between

partner states' government without any representation from other stakeholders. Second, while positions on provisions in the protocol were to be agreed at the HLTF level, crucial decisions on the rates of duties and tariff bands were taken at the more political level of the heads of government comprising the presidents of the three partner states. This reinforced the perception that customs and trade matters are important for economic policy and attract political attention. Partner states were not sure how the customs will affect customs revenue as well as existing mechanisms intended to protect domestic manufacturers. Other scholars also attribute commitment of partner states to political 'salience' (Versluis 2007:61; Knill 1997:11). Chapter 5.4 revealed that the customs union protocol constituted more than one policy area; although most of the negotiations were centred on the customs-related provisions, the protocol also included trade-related policies as well.

In sum, the objective of the EAC customs union protocol was to design uniform policies that promote economic growth through liberalisation of trade in goods based on mutually beneficial trade arrangements among the partner states (EAC secretariat, 2004). This research contributes to the discourse on whether the region can attain its objective by investigating the transposition, enforcement and application of the customs union protocol over the period 2004-2009. This is in line with the observations made by Treib (2008) that "..... if we are interested in the extent to which a polity is able to solve the problems with which it is confronted, we need to study not only the way it reaches decisions and the character of the resulting legal output, but also the way in which the law is executed in practice (Treib 2008:5).

9.4 Summary of research findings

The objective of the thesis was to assess the commitment of the three EAC partner partners to the customs union protocol. While detailed arguments are found in Chapter six to eight, this section highlights some of the research findings. The section concludes by answering the overall research question.

9.4.1 How was the EAC customs union protocol transposed ?

This specific question was analysed in Chapter six of the thesis. This question was analysed by answering two sub-questions.

- What legal instrument was employed in the transposition?
- Did the transposition take place in a timely, correct and complete manner and why?

Transposition in commitment literature refers to the process through which collectively agreed community directives are adopted into the domestic legal systems of partner states (Masternbroek 2005; Prechal 1995; Versluis 2007). The main stakeholders in the transposition process in Uganda and Kenya were the Ministries of Finance and Justice while the transposition in Tanzania involved the Ministries of Finance and Economic Affairs (MFEA), Trade, Industry and Marketing (TIM) and Justice and Constitutional affairs (see Chapter 6.3.2).

Research findings revealed that the primary law was employed to transpose the customs union protocol in the three partner states (Aliya MoJCA-Tz; Namara MoJCA-Ug; Waithaka MoJCA-Ke). Using the primary law, proposed amendments to existing legislation were submitted to the parliaments of the respective partner states. The proposed amendments were designed to repeal existing laws in favour of the customs union protocol in its entirety as discussed in Chapter 6.3. The literature reviewed in Chapter 2.3.1 supported the argument that the system of transposition employed in the EAC is similar to transposition of regional

directives in other parts of the world. For example, literature shows that Germany transposed labour directives using primary legislation (Versluis 2007; Knill 1998).

The research investigated the transposition performance based on three criteria namely, timeliness, correctness and completeness of transposition of the EAC customs union protocol. The research findings in Chapter 6.3.3 and summarised in tables 6.1 and 8.11 show that the partner states were more successful at transposing the customs related- compared to the trade related provisions of the protocol. Whereas the protocol was transposed in a ‘timely’ and ‘correct’ manner, the legal framework for five trade-related provisions was not incorporated in the domestic legislation of the partner states.

The partner states notified the regional body that the process of transposition was finalised by 1st January 2005, the deadline for transposition of the protocol. Government documents in the three partner states as well discussions with legal officers at the EAC secretariat confirmed that the protocol was transposed in a timely manner (See Chapter 6.3.2). Similarly, the analysis revealed that the protocol was transposed correctly in the three partner states. The language in the domestic law of the three partner states was similar to the language in the EAC protocol (Asiimwe MoFA-Ug; Waithaka, MoJCA-Ke). The correctness of transposition may be verified by noting that all partner states repealed their existing laws and adopted the EAC customs union protocol in entirety (Machaku MEACA-Tz; Angura URA; Owour MoFP-Ke). The approach to analysing correctness of transposition based on comparison between the wording of the community law and the resultant domestic legislation has been employed in the analysis of transposition in other regional agreements. For example, Versluis (2007) based the analysis of the correctness of transposition of labour legislation on the wording of the resultant legislation in four EU partner states.

The timeliness and correctness of transposition of the customs union protocol could be attributed to the fact that most officials involved in the transposition were part of the high level technical force in the negotiations and were eager to adopt the protocol. This is in line with the sociological institutional approaches of international relations that argue that epistemic communities may have a positive influence on compliance. In addition, the decision by the partner states to repeal existing legislation and adopt the protocol in entirety also contributed to the timely and correct transposition as discussed in detail in Chapter 6.4.

On the contrary, the research found that the notification by partner states to the EAC secretariat that the transposition had been undertaken masked the incompleteness of transposition of some of the provisions in the protocol. Respondents pointed out that while the customs-related provisions were transposed completely, five trade-related provisions experienced delays in transposition (cf. table 6.2). Partner states failed to incorporate all the requirements of the protocol into the domestic legal system (Olouch 2009:214). For example, respondents argued that although Kenya and Tanzania had some trade-related legislation in place, harmonisation of the trade-related provisions in the protocol did not occur because Uganda did not have the necessary laws in place. In addition, the trade remedies committee at the regional level was not established despite the existence of relevant provisions in the protocol (cf. Chapter 6.3.2).

The analysis of the research concluded that a combination of the preferences of partner states to protect the respective domestic producers and lack of a regional monitoring and sanctioning mechanism may have accounted for the incomplete transposition of the trade-related provisions in the protocol (cf. Chapter 6.4).

9.4.2 How was the EAC customs union enforced?

The second specific question analysed in Chapter seven of the thesis was as follows: How was the customs union protocol enforced? To answer the second sub-question, the following sub-questions questions were addressed:

- How was the enforcement of the customs union structured in the partner states?
- What strategies were employed to enforce the protocol?
- Did the enforcement systems deter violation of the protocol in the partner states?

Enforcement entails the wide array of measures by regulatory authorities to ensure that the regulated entities and firms adhere to the policies set out in the specified community directive. Literature on enforcement revealed that an enforcement system constitutes two components; the structure and the strategy. Structures for enforcement relate to the mode of state intervention while enforcement strategies are concerned with the patterns of interaction between the regulatory authorities and regulated firms (cf. Chapter 2).

The research results showed that Partner states operated a centralised enforcement structure with the central government ministries as the regulatory authorities. In Uganda, the Tax Policy Department of the Ministry of Finance, Planning and Economic Development was the regulatory authority whereas regulatory oversight in Kenya and Tanzania was undertaken by the respective ministries for East African Affairs. The coordination systems in Tanzania and Kenya revealed a horizontal coordination system with a number of central government ministries coordinating the enforcement process. In addition, the regulatory organisation in Uganda was poorly staffed with a heavy workload while the MEACA in Kenya and Tanzania had adequate and high levels of staff respectively as detailed in Chapter 7.2.4.1 and summarised in table 7.1.

The interview results presented in Chapter 7.2.4.2 and summarised in table 7.2 show that Kenya and Uganda did not have sufficient capacity to gather information on the adherence to the customs union protocol and relied on informal ‘fire alarm’ techniques (McCubbins and

Schwartz, 1984). These sources include consultancy reports, the press and private sector. On the other hand, Tanzania depended on both the central government ministries- ‘the police patrol’ as well as the indirect ‘fire alarm’ sources similar to those employed by the other partner states (Akida, TRA; Mosi, Press-Tz).

Partner states employed an accommodative enforcement system as discussed in Chapter 7.2.4. The consensus- based system did not rely on sanctions and penalties as compared to the more legalistic enforcement practices employed in other parts of the world (Hutter, 1989; Kagan, 1989; Knill 1998; Versluis 2007). Within this consensus system, partner states relied on three techniques to ensure that the regulated agencies adhered to the policies outlined in the protocol namely; mentoring and training of regulated agencies, practices to mitigate the adverse effects of the protocol on domestic economies and informal deterrence measures as discussed in Chapter 7.2 and summarised in table 7.2. Uganda undertook training programs for customs officials while Kenya extended the training to all regulated firms concerned with customs union application and Tanzania provided training on the customs union to all stakeholders (Ngasa MEACA-Tz; Babu CTI).

The research results summarised in section 7.2.4.2 show that partner states made requests for changes in the Common External Tariff (CET) rates and tax treatment of selected goods in order to mitigate the adverse effects of application of the protocol as provided by section 13 (2) of the customs union protocol (cf. Chapter 7.2.4.2). Respondents revealed that there were variations in the level of consultation in the partner states prior to requests for changes in CET rates as summarised in table 7.2. Whereas Kenya and Tanzania undertook sufficient consultation on the changes, respondents in Uganda revealed that there was hardly any consultation on the proposed changes to the CET. The lack of consultation by officials in Uganda was summed up by an official as follows, “..... The decision on changing the CET rates were budgetary decisions made by the Ministry of Finance, Planning and Economic

Development without consulting stakeholders” (Isiko MTTI-Ug). On the other hand, documentary evidence concluded that it is questionable whether adequate consultations had been made by all partner states prior to changes in the CET rates (Global Alert, 2010).

In addition to the training and mitigation practices, partner states also employed informal deterrent measures to ensure that the regulated adhered to the protocol. Research results discussed in section 7.2 and summarised in figure 7.1 shows that Uganda was strict in ensuring that the regulated adhered to the protocol. Kenya was lax and did not take any action to deter or discourage most of the identified application problems. The informal deterrent enforcement practice employed by Tanzania can be termed as flexible, situated in between the strict practice in Uganda and the lax practice in Kenya. In sum, the research revealed that there are variations within the accommodative enforcement practice. The variations in the enforcement styles revealed in the research are supported by existing literature on enforcement in integration literature. Scholars conclude that although enforcement is frequently viewed as two extremes between the legalistic and accommodative styles, in practice, distinct variations can be identified within the accommodative enforcement style (cf. Chapter 2.3.1).

The analysis of Chapter seven summarised in section 7.2.4.3 concluded that the enforcement performance of the three partner states was inadequate in the three partner states as shown in table 7.3. Respondents based their opinions on the prevalence of NTBs, road blocks, violations of the rules of origin and challenges related to monitoring of the re-export of goods produced from materials that benefitted from exemptions as indicators to the lack of enforcement in the region. The factors that account for the poor enforcement performance among the partner states can be summarised into three factors namely, factors related to design of the protocol, administrative factors and preferences of partner states.

The system of enforcement in the EAC was based on persuasion and the use of legalised sanctioning mechanisms was discouraged. The lack of an institutionalised sanctioning system in the design of the protocol may have affected enforcement. Respondents in the regulatory ministries argued that it was very hard to enforce the law when there were no sanctions or penalties (Nyambura EAC; Machaku MEACA –Tz; Isiko MTTI-Ug).

Second, section 7.3.2 argues that the lack of capacity hindered effective regulatory enforcement. Research results confirmed that the Tax Policy Department in Uganda had only ten staff while the MEACA in Kenya had only 5 technical staff. These departments were charged with other policy making functions on top of oversight over the application of the customs union protocol (cf. Chapter 7.2.1.1 and 7.2.2.1).

Third, respondents observed that political preferences of the partner states coupled with pressure from powerful private sector actors may have affected enforcement. They pointed out that the prevalence of NTBs may have been a result of pressure from powerful private interests on regulators to protect domestic private sectors (Isiko MTTI-Ug; Lubanga UMA; Mugume PSFU-Ug).

9.4.3 How were the customs union provisions applied?

The third specific research question was as follows: How was the customs union protocol applied? This specific question was answered in Chapter eight of the thesis. In order to answer the specific question, the research raised two sub-questions;

- Who were the regulated firms and agencies in the customs union?
- Did the partner states encounter challenges in the application of the protocol?

The term ‘application’ in regional integration literature refers to the extent to which executive agencies act in accordance with the policies set out in the community legislation (Falkner et al 2005:29; Mera 2007). Other scholars have referred to this concept as ‘compliance’ (Treib 2008:4; Raustiala and Slaughter 2002:539; Checkel 1990). As discussed in Chapter two, this

has created confusion in the conceptualization of the process by which partner states adhere to the community directives.

Section 8.2.4 summarises the application of the protocol in the three partner states. The research showed that partner states already had agencies applying some of the provisions in the protocol. Tax authorities in partner states were implementing customs related provisions prior to the protocol. However, there was need to setup institutional frameworks and repeal existing laws in order to apply most of the trade-related provisions in the protocol. For example, the EAC Council of ministers meeting in 2006 designated the URA, KRA and TCCIA with the responsibility of applying the rules of origin in Uganda, Kenya and Tanzania respectively. However identifying all the regulated agencies in respect of the customs union protocol proved problematic as discussed in Chapter 8.2.4. Respondents argued that while executive agencies are charged with applying the policies, private sector organisations can also be defined as the regulated. This created a problem in identifying all the regulated agencies. To collect sufficient data to answer the third research question, interviews were conducted with most of the key agencies as well as key apex private sector organisations and exporters in different manufacturing sectors (cf. Chapter 3).

The third sub-question related to how the protocol was applied by the regulated agencies. Analysis of the application of the policies in the customs union was presented in two parts; first, the application performance of partner states on the policies that were gazetted was presented in section 8.2.4.1. The analysis of the policies that were not gazetted was undertaken in section 8.2.4.2. The overall performance for the customs union protocol was presented in section 8.2.4.3. This section highlights findings.

The summary of research in Chapter 8 showed that the EAC customs union protocol contained nine provisions. Four provisions were applied by the respective agencies during the

period 2005-2009. The remaining five policies were not gazetted into the respective domestic legal systems and were not applied over the period of the research. The status of application of the policies in the protocol is summarised in table 8.11.

Section 8.2.4 shows that the provisions related to duties on imports of goods from partner states and the rest of the world were applied as provided in the protocol (cf. table 8.6). This was verified with traders in the region and cross checked with documents in the various tax bodies. Respondents attributed the ease of application of the CET and tariffs on intra-regional trade to the fact that the customs union protocol did not provide any discretion on varying the rates. This is in agreement with empirical evidence in other regional integration arrangements (Bovens and Zouridis 2002; Versluis 2007). Bovens and Zouridis undertook research on the application of environmental policies in the EU. They found that computerised systems limited the powers of Dutch administrators forcing them to follow strict programmes as set out in the community directive (Bovens and Zouridis, 2002: 17).

On the other hand, the research showed that the application of provisions on simplification of tax procedures, elimination of non-tariff barriers, rules of origin and exemptions was inadequate (cf. Chapter 8.2.5). Olouch summarised the application deficits as follows, “.....since it came to force in 2005, the implementation of the protocol has been beset with difficulty with various omissions by member states concerning the protocol” (Olouch 2009:214). Other documents reviewed as part of the research also identified inadequate application of the protocol as verified by the presence of NTBs, delays in clearance of goods, prohibitive standards requirements and tax exemptions to promote exports in the partner states (Mugisa et al 2009; The East African newspaper 2008; UNCTAD 2005; Okumu and Nyankori 2010; Stahl 2005). For example, the East African newspaper reported that Kenya continued to close her market to Uganda poultry exporters although Kenya firms were

allowed to export day-old chicks to Uganda.²⁵ In addition, Stahl (2005) concluded that the respective partner states did not possess the capacity to ensure that goods produced from raw materials that benefitted from exemptions were charged the applicable duties when sold on the regional market.

Research findings summarised in table 8.7 revealed that while all partner states failed to eliminate the selected NTBs, Kenya, despite being the biggest economy in the region (cf. Chapter 4) was the worst offender (Musinguzi UMA-Ug; Akanga CTI-Ke). The observation that the biggest economy in the region was the worst offender agrees with results from similar research undertaken on commitment to the customs union in the Americas (Mera 2006; Cason 2000). For example, Mera (2007:6) concluded that Brazil- the regional hegemon pursued her own self-interested strategies, defecting on regional commitments when convenient. This argument is in line with power preponderance approaches of rational choice theories of integration that argue that powerful nations are less likely to comply with regional directives.

The research identified three factors that may be responsible for the application performance exhibited by the partner states. On one hand, the use of ICT to capture information and assess the duty on imports ensured adequate application of the provisions related to the CET and elimination of tariffs on intra-regional trade.

On the other hand, the preferences of partner states to protect domestic producers from competition led to inadequate application characterised by NTBs and delays in clearance of goods. Further, overlapping membership to multiple integration arrangements with different rules and regulations affected the capacity of agencies to adequately interpret and comply with the provisions in the protocol. The findings in this study agree with literature on the

²⁵ *The East African Newspaper*, 18-24 February 2008

impact of multiple memberships on commitment to regional directives (Chacha 2009; Gibb 2006; Mugisa et al 2009; East African 2005). However, a similar study undertaken by Mera (2007) on commitment to the customs union in the Americas revealed different results as discussed in Chapter 8.3.

Having reviewed the answers provided by the research to the three specific questions, how do these help us answer the overall research question: **How were partner states inadequately committed to the implementation of the customs union protocol over the period 2004-2009?**

The analytical framework that formed the blue print for the research showed that commitment involves the three aspects of transposition, enforcement and application. To answer the overall research question, the research developed three specific questions (cf. Chapter 3.2). Drawing together the factors that account for the transposition, enforcement and application performance enabled the research to answer the overall research question. Detailed review of the overall commitment to the customs union protocol shows that the different stages of the customs union protocol produced different results; Chapter 6.3.2 concludes that whereas the transposition was correct and timely in the three partner states, it was incomplete in some of its provisions. For example, documents reviewed confirmed that there was there was little evidence that the institutional framework to implement the trade - related provisions like safeguard measures, anti-dumping measures, subsidies and countervailing measures were in place despite the existence of relevant provisions in the protocol (Mugisa et al 2009:22). Second, a review of the enforcement performance in the three partner states presented in Chapter 7.2.4.3 and summarised in table 7.3 shows that the enforcement of the customs union protocol in the partner states was uneven. Third, Chapter 8.2.4.3 concluded that the application of the EAC customs union protocol was characterised by application problems; Non-tariff barriers existed in the partner states, the rules of origin

experienced challenges, and there was doubt whether goods produced from raw materials that benefited from exemptions paid the requisite taxes when exported to the partner states. As well, partner states continued to subject partner states goods to extra quality checks against the requirement of the protocol. Overall, the research revealed inadequate commitment by partner states in the three phases of the implementation of the customs union protocol.

To account for the inadequate commitment, the research identified at least three main factors, limited capacity and power of the regional secretariat, strategic preferences of partner states, and overlapping membership to multiple integration arrangements. These factors are summarised in this section;

Limited capacity and power of the EAC secretariat

The research analysis revealed that commitment problems are prevalent due to the limited capacity and power of the EAC secretariat to enforce treaty provisions. For example problems in the transposition and enforcement of the protocol were attributed to lack of a monitoring and enforcement mechanism (cf. Chapters 6.4 and 7.3). The EAC treaty provided for dispute resolution mechanisms at the regional level. These included committees on trade remedies and non-tariff barriers as well as a court of justice (cf. Chapter 4.3). The aim of setting up the dispute resolution mechanism was to have a combination of accommodative and legalistic enforcement systems to deter violation of treaty provisions intentionally or inadvertently (Tallberg 2002:609). The research findings showed that despite the existence of relevant provisions and structures at the regional level, the regional commission had weaknesses.

Respondents observed that the EAC secretariat did not have enough staff and resources to establish a monitoring system that would provide information on the enforcement of the protocol by the partner and promote transparency. The lack of an effective monitoring system

at the regional level implied that the notification by partner states on the transposition of the protocol could not be adequately verified (Okello MEACA-Ug; Wabwire press). The presence of a centralised Information generation system is important for effective enforcement. Availability of information reduces uncertainty about the behaviour of the partner states in the integration bloc and improves adherence (Mera 2009).

Further, partner states ignored the use of the institutionalised legal system at the EAC level (Machaku MEACA-Tz; Waithaka MoJCA-Ke; Namara MoJCA-Ug; Ruhangisa 2010). Ruhangisa argued that the Court of Justice was meant to play a leading role in the harmonisation of policies but the EAC set up quasi-judicial bodies with the same mandate as the Court. One of the bodies is the dispute resolution mechanism established under annex IX of the customs union protocol with binding decision making powers. As a result, the secretariat failed to discourage lax implementation practices that led to application problems (Ruhangisa 2010:12). Similarly, Machaku (MEACA-Tz) observed that sanctioning systems beyond persuasion of partner states existed but were underutilised. Partner states preferred to settle violation of the protocol amicably through diplomatic means. In addition, Olouch argued that the legal systems in the EAC partner states do not provide for legalised enforcement of the protocol (Olouch 2009:214). The lack of an institutionalised sanctioning system within the EAC may have contributed to the ineffective enforcement of the policies in the protocol. This was evidenced by incomplete transposition, non-tariff barriers and violation of provisions on export promotions schemes.

The importance of institutionalised dispute resolution mechanisms has been highlighted by previous neo-liberal scholars of integration. Enforcement systems are most effective when the accommodative enforcement styles are combined with a legalistic sanction-based system (Smith 2000; May 1993; Tallberg 2002; Mera 2008:7). For example, Tallberg (2002:632) argued that enforcement systems that combine the accommodative system with a legalised

sanctioning system in a 'management-enforcement ladder' are more effective in ensuring conformity with the regional directive (cf. Chapter 2.). Similarly, May (1993:634) added that it is easier to foster a legalised sanctioning style than an accommodative consensus based enforcement style.

Strategic Preferences of national governments

Prior to the negotiations, partner states were concerned that the customs union would lead to revenue loss and open their domestic markets to competition from manufacturers in other partner states. The role of the negotiating teams was to uphold these two positions (cf. Chapter 5.2.3). Statistical simulations on the revenue impacts of the customs union conducted as part of the negotiation process confirmed that the protocol would not lead to loss revenue as discussed in Chapter 5.3.1. However, partner states remained sceptical about the impact of liberalisation on their capacity to protect domestic manufacturers against competition from partner states. For example, Uganda and Tanzania were worried that manufacturers from Kenya would affect the capacity of domestic producers. At the same time, respondents pointed out that Kenya was eager to protect her dairy and poultry industry against competition from partner states (Jensen 2010:2; Xinhua 2005). Respondents revealed that this may have explained why partner states were more successful at observing the customs-related provisions than the trade-related provisions of the protocol. For example, Governments delayed to establish institutional frameworks to implement the trade-related provisions due to pressure from powerful groups with interest in protecting domestic markets from competition (Babu CTI-Tz; Musoke PSFU-Ug; Owour MoFP-Ke; Muhame MoFPED-Ug; Akida TRA-Tz).

These opinions from the research were verified by documentary evidence on application of the EAC customs union (Booth et al 2006; Mugisa et al 2009; Olouch 2009). For example, Booth et al (2006) observed that imperfect regulation in the three countries enables neo-

patrimonial systems that are driven by the dispensing of patronage (Booth et al 2006:12). These observations are in line with rational choice institutional theories of international relations (cf. section 2.5.1). Rational choice theories argue that the preferences of domestic partner states affect the commitment to community directives. States are rational actors whose compliance decisions depend on the calculation of material incentives they face (Mera 2007:5)

Overlapping memberships to multiple regional arrangements

Overlapping memberships to multiple agreements can be viewed as exogenous factors that may affect commitment of partner states. The EAC partner states are also members of other regional blocs. While Kenya and Uganda are members of COMESA, Tanzania belongs to SADC (cf. Chapter 4.4.4). The different regional blocs have different rules and regulations. This leads to confusion in the application of the customs union protocol (Mugisha Consultant; Mumanye MTI-Ke; Nyambura EAC; Sempebwa MoFPED-Ug). Respondents pointed to differences in the classification of sensitive products and axle load restrictions between the different regional blocs as evidence of confusion that can be caused by different regulations arising from membership in multiple integration arrangements (cf. Chapter 8).

The impact of overlapping memberships on commitment to the EAC customs union protocol can be further analysed with reference to the application of the rules of origin (cf. Chapter 8.2.4). Rules of origin ensure that goods originating from the EAC are accorded preferential treatment as set out in the asymmetry outlined in Chapter 8. At the same time, the rules of origin outline the common external tariffs for goods originating from outside the EAC. Given that partner states are also members in other regional arrangements, various rules of origin are in force in the region since products from countries outside the EAC may qualify for preferential treatment. The application of various rules of origin in the verification of imports led to cumbersome application of the EAC provisions and extra workload on customs

officials. As a result of the confusion created by overlapping memberships, government officials concluded that multiple memberships are a waste of time, diversionary and distracting (Sempebwa MoFPED-Ug; Machaku MEACA-Tz). These opinions from the research are reinforced by documentary evidence on the impact of overlapping memberships on commitment to the customs union protocol (Mugisa et al 2009; Stahl 2005; Gibb 2006; East African Newspaper 2005; Yang and Gupta 2005). Gibb (2006:2) concluded that the present structure of overlapping memberships among regional blocs is unworkable and will not work in the future. Similarly, newspaper reports pointed out that multiple memberships to different integration blocs interfere with the smooth application of the customs union protocol due to conflicting rules and regulations (East African Newspaper June 2005). The conclusions that overlapping memberships to different integration arrangements may have contributed to inadequate commitment to the protocol are in contrast to results observed on the impact of overlapping memberships in other integration blocs as discussed in section 8.2.4.

In sum, this study shows that there are various factors that explain inadequate commitment among the EAC partner states to the customs union protocol. The research could not arrive at a single overriding factor to account for the commitment performance in all the phases of execution during the period 2004-2009. The empirical evidence revealed that there are numerous inter-linked factors that are responsible for the observed commitment to the EAC customs union protocol. For example, the incomplete transposition arose out of the preferences of partner states to protect domestic manufacturers as well as the lack of an effective system at the regional level to monitor and sanction non-compliance with provisions in the protocol. While the overlapping memberships to multiple integration arrangements lead to confusion and extra workload of already constrained administrative officials in the partner states leading to delays in movement of goods across the region. Tanzania, with

adequate administrative capacity to monitor application of the protocol (cf. Chapter 7.2.3) exhibited inadequate enforcement and application of the protocol as a result of partner state strategic preferences to protect domestic manufacturers against competition from producers in Uganda and Kenya as discussed in Subsection 8.2.3.

The conclusion that there is no single overriding factor responsible for the commitment problems observed in the EAC customs union protocol is supported by evidence from integration literature on commitment deficits (Borzel et al 2010; Falkner et al 2005:317; Leiber 2007:351; Masternbroek 2005; Sverdrup 2004; Treib 2008). For example, Sverdrup (2004:28) concluded that the factors impacting on commitment are numerous and complex making empirical investigation very complex.

9.5 Re-visiting the state of the art on commitment to regional directives

The study set out to answer the question: How are partner states inadequately committed to the implementation of the EAC customs union protocol? The aim of answering the research question is to enable better understanding of inadequate commitment in integration literature. The research confirmed that there were commitment problems in the three phases of the implementation process; whereas the transposition was timely and correct, some of the provisions in the protocol were not completely transposed. In addition, the enforcement was uneven and application unsatisfactory (cf. Chapters 6.3.2, 7.2.4.3 and 8.2.5).

In contrast to previous studies, this research takes the preferences of partner states at the negotiations for the customs union protocol into consideration, investigates the transposition of the protocol on the basis of three criteria and focuses on the enforcement and application of the detailed provisions in the customs union protocol. While section 9.4 presents the main arguments and findings in the study, this section summarises the main empirical contributions

to the on-going debates gleaned from the findings outlined in section 9.4. The methodological contributions of this study are discussed in section 9.6.

First, the study shows that an understanding of the preferences of partner states at the negotiation process is important not only to know how the directive was agreed but also investigate whether any of the problems related to subsequent implementation of the law were related to the negotiation process (cf. Chapter 5). The research analysis reveals that the partner states were more successful at adhering to the customs- related provisions in the protocol compared to the trade-related protocol yet the customs-related provisions did not provide much discretion to partner states compared to the trade-related provisions. The customs union provisions set strict rates of duties and standards to be met by partner states. For example, the customs related policies set out the rates of duties for CET as well as intra-regional trade. On the other hand, the protocol provided discretion on the institutional framework to implement trade- related provisions (cf. Chapter 8.3).

The findings in this study on commitment to the EAC customs union protocol contradict previous research on the impact of discretion on compliance. Previous research shows that partner states are more likely to adhere to directives that allow discretion in the implementation (Thomson 2007). The contrasting conclusions may be attributed to the fact that existing studies are interested in the implementation phase of the integration and do not consider the negotiation process (but see Thomson 2010; Steunenberg and Toshkov 2009; Treib 2008:4). This research argues that discretion when combined with preferences of partner states at the decision making stage leads to different results. Analysis of the negotiation stage showed that partner states were inclined to protect the private sector against competition (cf. Chapter 5). Therefore national policy makers took advantage of the discretion to delay the transposition of trade-related provisions in line with their preferences. In this way, the research shows that discretion when combined with preferences of partner

states may lead to negative results. This argument is supported by findings from other scholars (Thomson 2010; Steunenberg and Toshkov 2009:955; Versluis 2007) Thomson (2010) reports a negative relationship between discretion and compliance while Versluis (2007) reveals that lower levels of discretion may lead to higher levels of compliance.

Second, previous literature analysed transposition of regional directives on the criteria of timeliness and correctness and did not touch on the issue of completeness (Kaeding 2007; Prechal 2006:20; Versluis 2007; Mbaye 2001; Perkins and Neumayer 2007). Scholars attribute the lack of attention on the completeness of transposition to the quantitative nature of most integration studies (Thomson 2010; Konig and Leutgert 2008; Zhelyazkova and Torenvlied 2011). Quantitative studies employ infringement proceedings and notifications as indicators of compliance. However, these measures may be biased and there is no guarantee that the national laws reported transpose the directives completely (Zhelyazkova and Torenvlied 2011:691). Konig and Luetgert argue that a more accurate evaluation of transposition should take the aspect of completeness of transposition into consideration (Konig and Luetgert 2008:191). This research contributes to this debate by undertaking a qualitative analysis based on three criteria namely timeliness, correctness and completeness (cf. Chapter 3.2). Based on the three criteria, the analysis revealed that the notification to the EAC by member states masked actual incompleteness of the transposition in the trade-related provisions (cf. Chapter 6.3.2). The research shows that if only two concepts of timeliness and correctness are considered, the transposition performance was adequate. However, taking completeness into consideration changed the results that were observed in this research.

Third, previous research analysed commitment to regional directives at the aggregate level of the directives-. However an appropriate level of analysis of the commitment of partner states to regional directives is the implementation of the partner states on each provision of the directive (Thomson 2010:578; Steunenberg and Toshkov 2009:954). Based on analysis of

detailed provisions in the protocol, the study results were contrary to results reached in earlier studies. For example, previous studies revealed the CET on 3,066 tariff lines in Uganda would increase as a result of implementation of the customs union leading to fears of private sector protests and civil unrest similar to what occurred in August 2005 (McIntyre 2005:11; Stahl 2005). However, analysis of the detailed provisions of the CET undertaken by the research revealed that changes in the base on which the tax was calculated compensated for the increase in CET leaving tax payers in Uganda better off under the new system as discussed in Chapter 8.2.1.1.

Similarly, the research on commitment to EAC customs union found that multiple memberships to overlapping regional arrangements had a negative effect on commitment effectiveness (cf. Chapter 8.3 and 9.4.3). The findings in this research are in contrast to findings in other integration arrangements as discussed in detail in Chapter 8.3. The difference in the results between this study and previous studies may be due to the fact that earlier studies analysed commitment problems at the aggregate level of directives.

9.6 Methodological implications of the study

The previous section highlighted the empirical contributions of this study to commitment in integration literature. The methodological contribution of this study is presented in this section.

The study on commitment to the customs union protocol employed a qualitative approach in response to calls for more qualitative studies in order to contribute to the debates on factors that affect commitment to regional directives as discussed in the statement of the problem in Chapter 1.2. Most empirical studies in this area employ quantitative studies (Masternbroek 2005; Mera 2007; Treib 2008). Masternbroek (2005) argued that quantitative studies depend on data on infringements. This statistical method aims at defining causal relationships in

terms of expected values of changes in outcomes when in effect only one independent variable changes. This leads to explanations of the extent of variation in commitment but does little to explain why.

While a qualitative study adds depth, a single case study design with embedded units of analysis using process tracing as employed in this study on commitment to the customs union protocol has been regarded as particularly needed by commitment literature (Yin 2009). The embedded case study design provides a richness of detail for tracing the implementation process.

9.7 Limitations of the study

The aim of the thesis was to answer the research question and sub-questions set out in Chapter 3.2 and repeated in Chapter 1.4. As much as possible, the research has addressed the questions that were set out in Chapter 3.2. However, the research encountered three limitations that should be noted.

First, the researcher was limited by financial resources. The lack of resources confined the research to three member countries omitting two EAC partner states, Rwanda and Burundi. (cf. Chapter 3.3.2).

Second, the research analysed the cross country commitment to the customs union protocol for the period 2004- 2009. The research results were intended to investigate the factors that explain inadequate commitment to regional directives among partner states. This raises the question whether similar commitment problems would hold beyond the customs union protocol (cf. Chapter 2.7). For example, the research could not prove whether similar factors would account for commitment problems in the implementation of labour, environment or transport policies in the respective countries. In short, the research did not seek to ascertain

whether variations in commitment within the partner states exist with regard to different sectors.

Third, the analysis of the factors that accounted for inadequate commitment among the partner states paid much attention to the negotiations, transposition, and enforcement and application stages of the customs union protocol. In doing so, the analysis did not explore possible effects of alternative enforcement structures at the regional level to ensure adequate compliance with regional directives.

9.8 Areas for further research

The section presents theoretical as well as policy suggestions into ways in which future research into commitment to regional directives especially among developing countries could address the three limitations to this study identified in Chapter 9.7.

First, larger comparative case studies that cover more countries and compare more community directives would be necessary to ascertain whether the results can be extended to other policy areas. Such studies that compare commitment in more than one policy area and cover more countries may reveal more insights into determinants of variation in commitment to the community directives in developing countries.

Second, the research findings revealed that the factors that account for inadequate commitment to the EAC customs union protocol can be situated in both the enforcement and management perspectives of integration theories. In addition, different factors were responsible for inadequate commitment at the different phases of the integration process and hence different instruments are suited to adequately deal with the different cases of inadequate commitment. Future research should analyse how the instruments recommended by the enforcement and management approaches to ensure better compliance with regional

directives can be incorporated into the design of regional directives given the economic and political context of the partner states.

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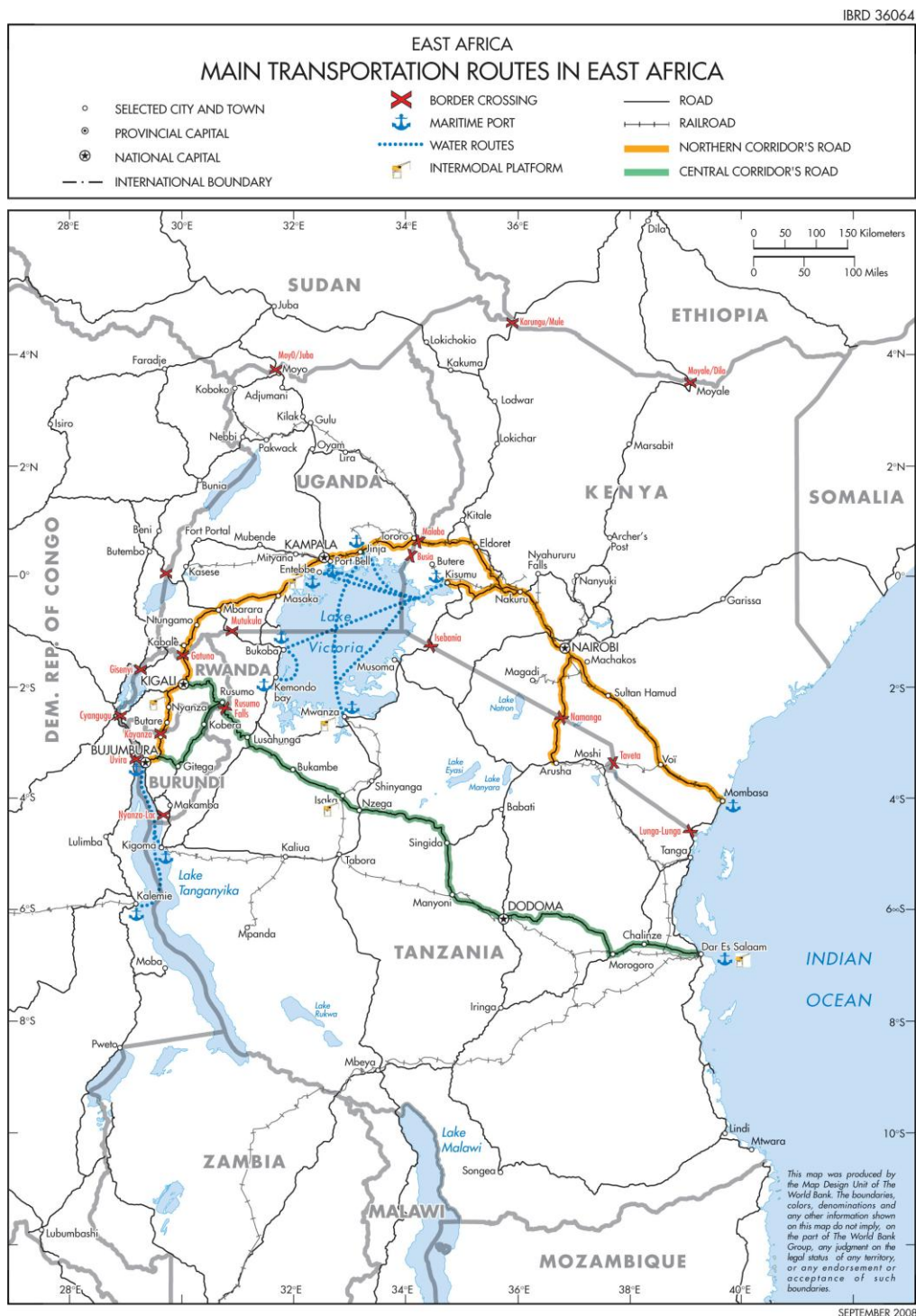
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APPENDIX

Appendix 1: Map of East Africa



Source: World Bank 2008

Appendix II: Interview Guide

The interview guide outlined in the appendix was used to collect opinions and views of respondents on the commitment to the customs union protocol. The study employed a semi-structured interview format. Prior to the commencement of the detailed interview, respondents were requested to provide background information.

Interview guide for the semi-structured interviews

A: Introduction and background information

1. What is your role in the government/ organisation?
2. Which stages of the implementation process are (were) you involved?
3. What are your responsibilities in the implementation of the EAC customs union protocol?

B. Guide for semi-structured interviews at the EAC Secretariat

1. Please comment on the failure of the old EAC and lessons learnt.
2. Outline the background to the formation of the new EAC
3. What is the membership and structure of the EAC
4. How are the EAC activities funded and how does this affect the role of the EAC Secretariat
5. How the EAC is related to other integration arrangements in the world.
6. What strategies are adopted to ensure that partner states abide by the commitment they sign at regional level?
7. What is the impact of globalisation on the implementation of the customs union protocol?
8. Is the EAC involved in negotiations integration with other trading arrangements? If so, how will the outcomes affect commitment to the customs union protocol?

C. Guide for semi-structured interviews on the negotiation of the customs union protocol

1. When did the negotiation commence and who were the main stakeholders?
2. Did the different countries have their own positions prior to the negotiations?
3. What issues were discussed at the negotiations?
4. How did the negotiations proceed and how were the final provisions agreed?
5. Were the partner states satisfied with the outcome of the negotiation process?

D. Guide for semi-structured interviews on the transposition of the customs union protocol

1. How similar is the customs union protocol to existing legislation and institutional arrangements.
2. When did the transposition take place and who were the stakeholders involved?
3. What time limits were set for the transposition?
4. Which instruments were used for the transposition?
5. Comment on your country's capacity to adequately transpose the protocol?
6. Was the protocol transposed correctly?
7. Do you think your country adopted all the provisions in the protocol and why?

E. Guide for semi-structured interviews on the enforcement of the customs union protocol by regulatory authorities

1. Which organizations are responsible for enforcement of directives in the country? Were they in existence or created as a result of the implementation of the protocol?
2. Describe the capacity of the regulated agencies to monitor and ensure adequate application of the protocol.
3. What systems are adopted for the coordination, monitoring and enforcement of the protocol?
4. Describe the relationship between the regulators and the regulated agencies.
5. How do you assess the enforcement performance of your country?
6. What factors are responsible for the enforcement performance of your country?

F. Guide for semi-structured interviews on the application of the customs union protocol by executive agencies

1. How was the customs union protocol adhered to by your organisation?
2. What changes were involved in adapting your operations to ensure that the provisions of the protocol were applied adequately?
3. Comment on the capacity of your organisation to adequately implement the provisions in the protocol.
4. Did the implementation of the protocol lead to adverse effects on the economies of the partner states? Are there any mechanisms to compensate for any losses?
5. Comment on the economic position and role of Kenya in ensuring that partner states adhere to the provisions in the protocol.
6. How is the implementation of the protocol affected by globalisation and other external factors?
7. Comment on the pace of the integration process and how it affects the implementation of the customs union protocol?

8. How did the implementation of the protocol affect existing traditions and state-society relations?