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**IMPLEMENTATION OF THE ABUJA TREATY ESTABLISHING
THE AFRICAN ECONOMIC COMMUNITY:**

PROGRESS MADE AND PROSPECTS*

* This document deals with: (a) a report on the activities of the joint secretariat, (b) proposals for the rationalization and harmonization of subregional integration groupings and technical support institutions, (c) proposals for the establishment of self-financing mechanisms.

I. INTRODUCTION

1. The Treaty establishing the African Economic Community entered into force on 12 May 1994. Proposals for its effective implementation were submitted to the nineteenth meeting (1993) of the ECA Conference of Ministers for consideration; during the twentieth meeting of the Conference (1994), the Ministers discussed the harmonization of monetary and economic policies within the context of the Abuja Treaty.

2. This document is a summary focusing on:

- (a) A review of activities relating to the implementation of the Abuja Treaty;
- (b) Proposals for the harmonization and rationalization of economic integration groupings and technical institutions supporting the economic integration process (ECA-sponsored institutions); and
- (c) Proposals for promoting self-financing mechanisms likely to provide proper financial autonomy to the subregional economic communities and the African Economic Community.

II. REPORT ON THE ACTIVITIES OF THE JOINT OAU/ECA/ADB SECRETARIAT RELATING TO THE IMPLEMENTATION OF THE ABUJA TREATY

A. Ratification of the Treaty

3. The secretariat conducted a campaign for the ratification and entry into force of the Treaty by 12 May 1994. This had led to the depositing of the ratification instruments of 35 countries. Since that date, however, only one country has deposited its ratification instruments. So far, 36 countries have ratified the Treaty. Vigorous action is needed to speed the other African countries¹ on their way to ratifying the Treaty so that it can be effectively implemented in all the subregions.

B. Preparation and adoption of protocols

4. On the whole, seven draft protocols have been prepared by the secretariat. The consideration and adoption of these protocols is under way. Progress made² in this area can be summarized as follows:

¹ Algeria, Benin, Botswana, Cameroon, Congo, Djibouti, Equatorial Guinea, Eritrea, Gabon, Lesotho, Madagascar, Mauritania, Somalia, Swaziland and Togo.

² OAU CM/1867 (LXI), Progress report.

(a) Draft protocols under consideration by the OAU Permanent Steering Committee:

- (i) Draft protocol relating to the free movement of persons, rights of residence and establishment;
- (ii) Draft protocol on transport and communications;
- (iii) Draft protocol on the rules of origin;
- (iv) Draft protocol on customs cooperation within the Community;
- (v) Draft protocol on industry; and
- (vi) Draft protocol on relations between the African Economic Community and subregional economic communities.

(b) Preliminary draft protocols to be submitted to the Permanent Steering Committee for consideration

- (i) Draft protocol on the elimination of customs duties;
- (ii) Draft protocol on the elimination of non-tariff obstacles;
- (iii) Draft protocol on the re-exportation of goods;
- (iv) Draft protocol on intra-community transit facilities;
- (v) Draft protocol on the simplification and harmonization of trade formalities and documents;
- (vi) Draft protocol on trade promotion;
- (vii) Draft protocol on the solidarity, development and compensation fund;
- (viii) Draft protocol on food and agriculture;
- (ix) Draft protocol on science and technology;
- (x) Draft protocol on the Pan-African Parliament; and
- (xi) Draft protocol on the human resources development.

C. Sectoral studies

5. The secretariats of ECA and the subregional economic communities [the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC)] have undertaken three types of sectoral studies on the development of infrastructure, production and trade liberalization described in detail, subregion by subregion, in document E/ECA/CM.19/7 relating to Proposals for the Implementation of the Abuja Treaty establishing the African Economic Community. These studies were started under the United Nations Development Programme (UNDP) fourth Programming Cycle and were conducted in close collaboration with the United Nations specialized agencies and the United Nations Conference on Trade and Development (UNCTAD). Efforts made to mobilize the resources necessary for the consideration of the said studies and their implementation have all been in vain. Member States should endeavour to ensure the effective implementation of all these studies by providing the economic communities and the Joint Secretariat with the necessary resources. Regional funds established under the Lome Convention as well as other bilateral and multilateral technical assistance funds should be mobilized for these programmes. These studies and programmes could form a useful basis for the harmonization of programme activities of the various economic groupings operating within the same subregion and accordingly speed up (when the sectoral development and liberalization programmes overlap) the rationalization of such groupings within a subregional community to which technical support institutions could be attached. Other studies were conducted, particularly by the African Development Bank (ADB) on the principles and rationale of the economic integration process in Southern Africa. African member States and Africa's development partners are highly aware of the urgent need to rationalize the ECA-sponsored institutions. Such rationalization, however, must be carried out gradually by means of a positive-sum scheme ECA has endeavoured to prepare and whose essential features are described in this report.

III. **HARMONIZATION AND RATIONALIZATION OF SUBREGIONAL ECONOMIC INTEGRATION INSTITUTIONS: A GRADUATED APPROACH**

A. Current state of affairs

6. The problem of rationalizing African intergovernmental organizations (IGOs) was raised as far back as the early 1980s, at the same time as the continent's overall integration strategy was being defined. The problem, however, was more acute in the West African subregion where there already existed in 1975, three economic communities and some other 40 IGOs charged with more specific missions. In their turn, other subregions of the continent encountered this same problem. The signing, in 1983, of the Treaty establishing ECCAS, the recent transformation of the Southern African Development Coordination Conference (SADCC) into an economic community, the Preferential Trade Area for Eastern and Southern African States (PTA) into a common market (COMESA) and the development prospects of the Intergovernmental Authority on Drought and Development (IGADD), presuppose at least

a dual institutional framework of subregional integration in each Central African State, and most of the States signatory to the COMESA Treaty.

7. The first feature of these initiatives taken to rationalize African economic integration institutions,³ is that they all aim at unifying the institutional frameworks for subregional cooperation designed both, as a means to and an end of the rationalization of IGOs. To date, few results have been achieved in spite of the efforts made here and there.

8. All these data, combine with the pattern of debates on the issue and the plight of previous studies to raise the problem of the relevance of an institutional rationalization process or at least that of the commitment of the States concerned to proceed along this path.

9. The second feature of actions taken so far is that, they have been conducted under an overall approach that covers all IGOs operating in the subregional space, irrespective of their scopes and mandates. And yet, while the number of IGOs, their budgetary costs and the monitoring of their programmes are common concerns to most African States, their duplication of efforts or overlapping of activities have yet to be verified, or to be felt to the same degree. It would be appropriate to classify integration organizations into economic groupings and integration-support institutions.

10. Admittedly, the search for the unification of all institutional frameworks, no matter how ideal this may appear, might not be deemed absolutely urgent, and could be fraught with major obstacles likely to delay the process:

(a) Such an approach necessarily leads to complex solutions that are difficult or time-consuming to implement, given the number of IGOs concerned [see the recent study conducted by the African Institute for Economic Development and Planning (IDEP) for ECOWAS];

(b) The comprehensive approach does not focus on determining the degree of acuity of problems raised and the corresponding degree of priority to be set;

(c) By according top priority to the absorption of all IGOs by the institution designated as the subregional community, any conceptual faults in its integration scheme could be concealed, thus depriving an entire subregion from enjoying the advantages of more efficient and already operational instruments;

³ Proposals for strengthening economic integration in West Africa; proposals for the rationalization of integration efforts in West Africa; rationalization of intergovernmental organizations in West Africa; management audit of the secretariat of ECCAS; Joint PTA/SADC Study on Harmonization, Rationalization and Coordination of Activities of the Preferential Trade Area for Eastern and Southern African States and the Southern African Development Community (SADC).

(d) It highlights, and more acutely so, the problem of the professional future of men and women who have led and managed various IGOs, and this human dimension of the rationalization exercise is responsible for the fairly intractable psychological resistance encountered; and

(e) The building of a single institutional framework for subregional integration and cooperation should be seen as an objective to be attained, over time, within the framework of a gradual and realistic process.

B. The need to rethink the rationalization exercise

11. For the above-mentioned reasons, and pending the time when States would decide to actually translate into action their expressed wish to reduce the number of IGOs, it appears appropriate to rethink rationalization in terms of the areas where there is obvious overlapping or where several IGOs cannot exist in the same subregional space. This is mainly the case of economic communities and unions where the market systems, whenever they are not completely identical, automatically exclude each other.

12. For instance industrial products are traded between Côte d'Ivoire and Burkina Faso under CEAO's West African Economic and Monetary Union (UEMOA) or under that of ECOWAS but not under both, given the existing differences. Choosing to operate under one of the systems automatically excludes the application of the others:

- (a) Rules of origin;
- (b) Certificates of origin;
- (c) Tariff preferences;
- (d) Level (rate) of compensation;
- (e) Compensation fund; and
- (f) Customs and statistical nomenclature.

13. This fact can be verified, to various degrees, in all subregional spaces where several communities having different trade liberalization schemes exist. Generally, such a situation is reflected by the **fragmentation of the subregional market or by a gradual marginalization of treaties of the big entities**. The examples of CEAO/ECOWAS and UDEAC/ECCAS have been quite edifying in this regard and the same scenarios could emerge, in the near future, in UEAMO/ECOWAS, the economic and monetary community of Central Africa EMCCA/ECCAS, and SADC/COMESA relations.

14. It therefore appears rational to start the rationalization process from the trade cooperation aspect.

15. To unify, as a matter of priority, African subregional markets through the harmonization of trade mechanisms and instruments, would eliminate incompatibility and mutual exclusion.

16. Refocusing the debate on rationalization, first, on the economic communities, and within them, on their trade cooperation instruments, does not exclude other integration areas or other IGOs. Simply, it is justified by the lack of tangible progress in the comprehensive approach pursued to date, and by the need to address the most urgent problems. Moreover, a reading of regional treaties and their annexed protocols, reveals that as concerns sectoral development policies in such areas as agriculture, industry and transport, the risks of duplication or incompatibility are very minimal (if not non-existent) in a continent where all sectors are of a priority nature and where virtually everything remains to be done. In these integration areas, the main problem remains the mobilization of necessary and sufficient resources for the execution of pro-programmes and projects already designed and prepared.

17. With regard to other cooperation bodies having specific objectives, **their involvement in an institutional rationalization process such as mergers and absorptions, would be justified only when sub-regional communities have proved their ability to lead and manage an integration process of multi-sectoral dimension.** Concerning institutions whose resources hardly cover their operating budgets and others that have yet to begin dismantling their tariff systems, such a level of credibility is far from having been attained.

18. To eliminate the main obstacles created by institutional overlapping, the market rules in each integration space must be regionalized as a matter of priority. For this to pay off, it should be accompanied by a judicious selection of effective instruments and mechanisms for the implementation of trade policies, since the multiplicity of institutional frameworks alone does not account for all the problems and difficulties into which trade liberalization schemes have run.

C. General parameters of subregional markets

19. Subregional treaties and their annexed protocols contain all provisions that govern community policy in matters of trade and determine the trade cooperation rules, instruments and mechanisms. These are the provisions to be unified in each subregional space, after a comparative analysis has been conducted on their doctrinal content, their applicability to the African context, their successes and their failures.

1. Trade liberalization schemes

20. In almost all the integration-oriented IGOs, the development of trade has been pursued through customs union projects based on the principle of the elimination of non-tariff barriers, customs dismantling and the gradual establishment of a common external tariff.

21. The conventional customs union has chances of succeeding when the economies of member countries are fully competitive during the establishment of the Union. Anything short of that would be less likely to promote balanced development among developing countries having fairly varied levels of industrialization.

22. In developing countries, the integration process must aim simultaneously, at achieving economic growth and the judicious distribution of the fruits of such growth among the various partners. The conventional customs union does not make for the achievement of both objectives simultaneously, since the mere lowering of tariff barriers, without compensation, encourages the sale of products from the more developed countries and consequently, far from redressing the existing imbalances, rather worsened the situation.

23. While most African subregional treaties provide for total exemption from import duties and taxes on local and traditional handicraft products, **the system governing industrial products is generally more specific in purpose, scope or time-frame for implementation.** Thus, graduated tax-relief measures (PTA), negotiated preference regimes (CEAO-UEMOA) or time-sequenced dismantling of tariffs, modulated to suit the types of products or state classification (ECOWAS), are designed and adopted in places to take into account the disparate development levels of the various partners and national concerns regarding the promotion of domestic industry and budget constraints.

24. Various trade liberalization schemes and several time-frames for their implementation can thus be found in the same subregional space, creating in effect as many small markets only one of which, in the best of cases, will become operational.

25. In such circumstances, the rationalization objective should be to pursue for each subregion, a single scheme. Indeed, the best possible, such scheme would be that combining in essence the trade liberalization criteria, the industrial and budgetary constraints of member States and the imperative need for immediate take-off.

2. Rules of origin

26. Three criteria are used invariably to determine the origin of industrial products and consequently, their eligibility for preferential treatment. These criteria are:

- (a) Quantities and/or the value of raw materials used;
- (b) Percentage of value added relative to the ex-factory selling price of the product; and
- (c) Distribution of the capital between nationals and foreigners.

27. The first two criteria are found in the treaties of all subregional and regional communities. The "raw materials" criterion reflects the pursued objective of developing the ground and underground resources of member States while that of "value added" is supposed to reflect the degree to which a product is integrated in the community's industrial fabric.

28. It is important to note, in passing, that the value added concept, as can be seen from the various sub-regional treaties and protocols, does not correspond to the academic definition of the term. Theoretically, value added equals the selling price of a product minus the cost of intermediate consumer products.

29. In the legal texts governing African institutions, value added, considered as a frame of reference, comprises all elements of the selling price obtained over the customs territory of the community, including raw material consumer products from any of the member States. In other words, such value added corresponds to the difference between the duty-free ex-factory selling price of the product and the cost of articles imported from third countries which, moreover, facilitates the acquisition of the community origin status.

30. In contrast, **equity participation by nationals in the capital of eligible enterprises, which in certain communities (ECOWAS, ECCAS, PTA) is added cumulatively to the first two criteria**, is not taken into account in other subregional institutions (CEAO/UEMOA, UDEAC), thereby causing considerable disparities among market systems designed for one and the same subregion.

31. A priori, the requirement for nationals to hold shares in the capital of licensed enterprises, appears very legitimate. **In principle, it seeks to favour, by the interplay of tariff preferences, domestic enterprises or those set up by nationals, in order to forestall or minimize the transfer abroad of profits generated or maintained by the existence of a subregional market.** However, legitimate and well-intended as a principle, this cumulative eligibility criterion appears to be at variance with the current economic realities of States and their national development policies.

32. The main thing about national economies is that they have little, if any, real autonomy in the internal accumulation process. Moreover, one of the difficulties encountered by some States in their privatization programmes is the insufficient number or total absence of nationals to take over. **Under such conditions, to require all industrial enterprises to have nationals holding 30 to 51 per cent of the share capital (ECOWAS, ECCAS, PTA)** shows a failure to appreciate national socio-economic environments and may lead, in the best of cases, to the abusive use of figureheads and other foils, without addressing, for all that, the issue of capital flight. The difficulty in applying such a criterion to an entire subregional entity is well illustrated by annex III - article 15 - Rule 2.1 and 2.2 of the PTA Treaty which provides for a "normal" rate of 5 per cent and six waiver rates for seven member States.

33. Then again, national economic policies, more particularly in these times of structural adjustment and State divestiture are geared towards liberalization, the promotion of private initiative and the attraction of foreign capital.

34. Proof of these are national privatization programmes, the opening of stock exchanges, the drafting of investment codes provided multiple incentives, the establishment of industrial free-zones or commercial areas, and more recently, the adoption of a harmonized business law designed, principally, to "protect" foreign capital invested in French-speaking countries.

35. It is not possible to want to attract massive foreign investment and, at the same time, establish a subregional market virtually closed to foreign investors. Obviously, on this issue, most of the sub-regional communities have not adapted to the neo-liberal economic spaces emerging in African States.

36. To summarize, a new approach to rationalization must have, in the matter of rules of origin, two precise objectives:

(a) To unify, in each subregional space, the proportion of raw materials and value added used in determining the community origin of industrial products; and

(b) To reconsider, the relevance of a cumulative criterion for national equity participation in share capital, considering the new economic policies pursued in member States.

3. Certificates of origin

37. These are documents that authenticate the community origin of products traded among member States. Generally, they are published by the communities and issued to economic operators through external trade services or chambers of commerce. They provide some information to the administrative authorities of importing countries. Mainly, these are:

(a) The identities of the shipper and consignee;

(b) The member country of origin;

(c) The sub-position of the tariff nomenclature;

(d) The nature, make and numbers of parcels;

(e) The quantity and value of the goods;

(f) The criterion used to determine product origin; and

(g) The approval stamp of the administrative authorities of exporting countries, such as the customs, external trade and industry.

38. Verification requirements and related information can be included in the same document or form the subject of a specific document (PTA).

39. Among communities of the same subregional space, the major differences should be at the level of the rules of origin, the tariff position (nomenclature) and the export declaration form; the other information is generally found in any import-export file.

40. Unification of rules of origin and nomenclatures should facilitate the harmonization of all accompanying documents:

- (a) Export declaration;
- (b) Certificate of origin;
- (c) VAT exemption; and
- (d) Invoicing model.

4. Compensation mechanisms

- (a) The principle

41. Initial attempts to establish a customs union, particularly, in West Africa, revealed quite early, how precarious it was to liberalize trade without providing for compensation, since customs revenue was vital to most countries of the continent, and the disparity in development level of the various partners did not make for balanced trade, especially trade in industrial products. To ensure that States were not confined to the passive role of net importers, thereby increasing the imbalances inherited from the colonial period, most second-generation integration institutions - first CEAO and then ECOWAS, ECCAS, COMESA and the Arab Maghreb Union (AMU) - introduced in their policy instruments, the principle of partial or total compensation for fiscal revenue losses caused by the application of preferential systems. Compensation funds have thus been established but their poor and irregular replenishment is one of the factors holding back the implementation of the trade liberalization schemes.

42. It might be worth recalling that in the European Union (EU), cited today as a success story in matters of integration, only Germany is a regular net contributor. The fact is that only through compensatory payments and other subsidies to regions known as "the least privileged" (Southern Europe, Ireland) has the common market been able to function harmoniously, and the prospect of dismantling them, even partly, under pressure from the United States, surely tested European cohesion during the Uruguay Round negotiations.

43. The principle of compensation in a given integration space is therefore not peculiar to the African continent. It fills justification as a means of regulating the manner in which profits and other benefits accruing from the regional market are shared. The purpose of any preferential system applied within the framework of an economic community is to develop trade in goods of origin which would otherwise be less competitive if at all. Gradually, it replaces products imported from third countries with similar goods manufactured locally at a generally much higher selling price. The immediate effects are improved terms and balance of trade for the net exporting countries and, by the same token, the worsening of the same aggregates for the others.

44. Compensatory payments, accounted for as unrequited transfers help to redress the balance-of-payments position of net importing countries by adjusting balance of trade disequilibria created or worsened by the development of intra-community trade. Since this principle has been generally accepted, the aim now is to harmonize, in each subregional space, the fund replenishment modes, criteria for determining scales of assessment and the levels (rates) of compensation for loss of fiscal revenue. These data vary widely particularly in West and Central Africa.

45. With regard to replenishment, the communities use either the system of contributions to annual budgets or a mechanism of capital endowments, depending on whether the fund is meant exclusively for compensation or whether it is also to finance development. In the first case, the scales of assessments are generally based on the participation of each State in intra-community trade. In the second hypothesis, the contributions of States are indexed to some macroeconomic aggregates, particularly the GDP.

(b) The rates

46. With respect to compensation levels, the harmonization process must equally be accompanied by a reduction in current rates to levels affordable by member States - for instance, from 100 to 60 per cent.

47. Any compensation system is reflected by an actual transfer of resources from net exporting countries to net importers. Thus, it works like a multilateral mechanism for subsidizing exports and granting tax rebates on imports of products eligible for preferential treatment. In all cases where such transfers assume great proportions, the net contributing countries would be tempted to limit their intra-community trade by blocking the licenses or by reducing preferences - measures which run counter to integration objectives. At CEAO, a session for the review of licenses led, in 1984, to 58 unilateral withdrawals and to a general increase in the rate of the regional cooperation tax (TCR). This increase was requested by the main export-ing countries (Côte d'Ivoire and Senegal) so as to reduce their contributions to the community development fund (FCD). It required a political decision (1/84/CM) to freeze the outcome of that negotiation and to avert regression.

48. As concerns importing countries, the major risk lies in their relative dependence on such budgetary transfers. If they become an important source of fiscal revenue, their regular payment can hamper national industrialization since this can become more expensive than importing with compensation for the same products. In the case of irregular payments, these States will be greatly tempted to manipulate their internal taxation systems in order to reduce the impact of budgetary revenue losses or block the trade liberalization scheme by resorting to protectionist measures and other administrative obstacles.

49. There virtually exists a conflict between the objectives of tariff dismantling schemes and compensation mechanisms; and during these times of structural adjustment and budget stringency, most States will favour the financial functions of taxes, to the detriment of their economic function.

50. A fairly high compensation rate of 80 to 100 per cent can be instituted, at the beginning of an integration process, with relatively low tariff preferences. Failing this, comprehensive dismantling, coupled with a high compensation rate, will inevitably result in massive and permanent budgetary efforts by the net-exporting countries, or by the bogging down of the whole system due to non-payment or irregular payments of compensation.

51. On page 89 of the recent study conducted by IDEP on the rationalization issue, it is stated that "In ECOWAS, the burden on national budgets deriving from the necessity to contribute to the Compensation Fund acts as a disincentive to exports. The more a country succeeds in exporting, the greater the contribution to the Compensation Fund. The relatively small number of individual products submitted for admission under the scheme has been attributed to this problem."

52. It is therefore necessary to strike a balance between these divergent requirements in order to ensure the harmonious development of market systems. A reasonable low compensation rate appears possible and achievable today as a result of the combination of the following two factors:

(a) Considerable reduction in the common import tax levied in all States pursuing structural adjustment programmes (SAPs); and

(b) Increase in the volume of intra-community imports resulting from the application of preferential systems.

53. The first factor should reduce, in absolute value, the amount of revenue losses and the second should increase fiscal revenue as a result of the correlative broadening of the indirect tax base, particularly VAT.

54. A compensation rate of 60 per cent should make it possible to reconcile the trade development objective, the compensation principle and the budgetary constraints of States.

(c) Compensation modes

55. In the same vein, the unification of regional compensation mechanisms could also be accompanied by a reform of compensation modes. So far, the drafters of subregional treaties have favoured the budgetary aspect, since all transfers operate in favour of the operating budgets of member States. The legal basis of such transfers is found in the very nature of the compensatory payments which make up for the loss of import duties and taxes. However, it would appear perfectly expedient to consider transferring part or all of the compensation amount to the capital investment budgets of recipient countries in order to strengthen their production apparatus so that they can expand their participation in intra-community trade. Thus, compensatory payments could replenish, as a matter of priority, national investment and/or capital development funds which would provide sustainable support to small- and medium-size enterprises, infrastructural development and employment. Such a change in compensation modes would add a new dimension to sub-regional markets with liberalized

trade, generating additionally resources which would be directly transferred to the development plans of least industrialized States.

5. Customs and statistical nomenclature

56. This is one of the main instruments for the management of import/export taxation and external trade. On a regional scale, it allows for the joint designation and codification of goods, a unified basis of intra-community trade accounting, the comparability of external trade statistics and the calculation and verification of fiscal revenue losses. The principle of adopting and using the same nomenclature is enshrined in all treaties establishing economic communities in Africa. The unification of this instrument in each subregional space and even at the level of the African region, should not pose any major difficulties, since most of the States have signed or acceded to the Convention on the Harmonized Commodity Description and Coding System (HS). The Harmonized System, as its name indicates, is a summary of the Nomenclature of the Customs Cooperation Council (NCCC), the Standard International Trade Classification (SITC - Review 2), the customs nomenclature of the Latin American Free Trade Association and customs tariffs of Japan, Canada and the United States of America.

57. For all States and institutions that have already applied the Harmonized System or are about to do so, the unification exercise should be limited to national or subregional specifications (seventh and eighth sub-headings). It should be noted, in passing, that such an exercise has already been initiated between CEAO and ECOWAS with funding by the European Development Fund (EDF).

58. The unification of nomenclatures within each subregional space should also lead to the use of harmonized customs declaration forms so as to facilitate the work of economic operators and national administrative authorities.

59. These are the main instruments which should be unified initially for the institutions operating in each of the subregions defined by OAU. The unification exercise should not, however, become a mere levelling on the basis of the lowest common denominator or a pure and simple alignment with the rules of any specific institution (rationalization by elimination). It must result from a comparative analysis of existing instruments and mechanisms, their applicability and the degree to which they have been efficient, effective or otherwise. The harmonization or rationalization of subregional markets would thus come with an improvement in the efficacy of their practicability and basic rules.

E. Accompanying measures for the strengthening of subregional markets

60. The dismantling of custom tariffs and other preferences granted within the framework of integration bodies are designed as instruments for promoting trade among member States of a given space. The efficacy and viability of such an exercise, however, depends either way on community law, import/export taxes levied on products from third countries, the indirect domestic taxation system and the pricing policies of member States.

1. External protection

61. In the context of new economic policies being pursued by member States, it has been proposed, among other things, that:

(a) Subregional preferences which might divert external trade with less expensive sources of supply should be avoided;

(b) Relatively low tariff barriers should be used when dealing with third parties; and

(c) Tariff preferences should be used as a temporary measure pursued within the context of a general and significant reduction of external protection.

62. Certain international institutions, particularly the World Bank, and some developed countries have gone this far in advocating and commending such all-out multilateralism, based on the theory of comparative advantages. The logical conclusion of this in Africa has been the massive reduction of tariffs, "imposed" within the framework of SAPs, and more recently, by the Cross-Border Initiative (CBI) which, in several aspects, boils down to challenging the rationale for having subregional integration spaces.

63. Paradoxically, this vision of Africa without customs barriers and tariff preferences goes along with a return, in full force, to the concept of regionalism as a possible solution to major development problems, including among the major players in the world economy. The United States, so far a staunch defender of the multilateral approach, has, in order to meet the challenge posed by the European Union and Japan, established a free trade area with Canada and Mexico. Europe is coming together to establish an economic and monetary union and the ASEAN countries have transformed their Association into a free-trade area. The developed world is thus breaking up into trading blocs, with tariff abolition and preferential treatment among their respective partners. Furthermore, it is commonly known that the South and East Asian countries, particularly, Japan and South Korea, have fully used and are still using the protectionist weapon in their trade relations with Europe and the United States. Similarly, the recent European elections were marked, among other things, by the swirl of political posturing around the issue of protectionism in speeches that openly called for the strengthening of customs barriers to keep out Asian products and to keep industries from relocating.

64. In this general context, to require Africa to throw open its borders and dismantle its subregional arrangements, appears both irrational and inexpedient to say the least. Africa can only avoid marginalization if it succeeds in its own economic integration process. Then again, an integration space only makes sense if it offers to its economic operators substantial advantages to withstand external competition. The concepts of external protection and preferential treatment among States of the same zone are inherent in any integration process because they limit the confines of the customs territory and economic space.

65. Unlimited protection can lead to surplus profits for industrialists and to the wasting and misallocation of available resources. Sometimes, it is seen to encourage laxity or poor management and is responsible, in every case, for the loss of actual revenue in the producing country. At the other extreme, comprehensive tariff dismantling is the surest way to stifle nascent national or subregional industries. A balance must therefore be struck if subregional markets are to have any meaning. In most cases, the treaties provide for the adoption and institution of common external tariffs (CET). With the exception of UDEAC (EMCCA), no African institution has gone over the first stage which is to consolidate duties, mainly because of the fiscal instability caused by national SAPs. Pending the institution of the CET, subregional communities should negotiate on behalf of their member States, with the Bretton Woods institutions, the critical minimum of protection indispensable to any integration space. With this principle acquired, the negotiations would first deal with the main products traded or available in each community, with the possibility of aligning import/export taxation of the State charging the highest rates.

66. Such an action would have several advantages, particularly:

(a) Giving greater meaning to the preferential systems defined in subregional treaties;

(b) Reducing fiscal disparities which are the source of smuggling and other forms of trafficking. In West Africa, the Gambia and Benin have become countries which re-export through the informal sector, at the expense of some of their neighbours;

(c) Introducing a subregional dimension in fiscal and tariff reforms initiated within the frame-work of national SAPs; and

(d) Serving as a launching pad for the establishment of common external tariffs.

2. Indirect internal taxation system

67. This concerns all special and general expenditure taxes levied on the production, marketing and consumption of goods and services within a State. They are therefore found on either side of the preferential tariff systems instituted.

68. In the pre-taxation context, exporting countries and regional institutions should ensure the proper treatment of value added in terms of physical and financial deductions. Such deductions make it possible to avoid the cumulative taxation of investments and finished products, and render taxation neutral irrespective of the length of production and distribution channels.

69. The risk of over-taxation weighs mainly on investments which create value added and which are used to produce other goods and services which are taxed in turn and whose selling price already makes due allowance for the depreciation of machines and other fixed assets. The ideal would be for all States to have a common deduction system which would eliminate all inflationary effects linked to the tax on commercial transactions and reduce the cost of

industrial production. The VAT system established should also guarantee export tax exemption, a corollary of expenditure tax, which is levied only at the place of consumption or utilization of the goods or services concerned. Respect for this principle of territoriality supposes that all prior taxes should be fully refundable either directly or by way of tax credits extended to producers and exporters alike. The product must arrive at the border tax free. This will better ensure its competitiveness on external markets.

70. Without a VAT system that fairly widely extends tax deductions and export duty exemptions, the tariff preferences granted within the framework of subregional communities will have little impact on the competitiveness of licensed products. This is because their substitutes from third countries already enjoy both benefits not to mention the possibilities of export subsidization or dumping practices (European dairy products, South-East Asia, textiles and articles).

71. In the post-taxation context, that is, in the importing countries, community preferences are supposed to be protected by the national preferential treatment clause (general principles of GATT), stipulated in all subregional treaties. This provision, which prohibits any discriminatory tax treatment between domestic products and their imported substitutes, requires greater vigilance at the community level, in all cases where the importing country does not produce the goods concerned.

72. At this stage, the second risk lies in the hiking up of turn-over and consumption taxes. Indirect taxes are invariably passed on to prices, and any increase in fiscal levies reduces by the same margin the latitude of the consumer to decide. In such matters, the role of regional institutions is to prepare for adoption a harmonized indirect tax system similar to the external tariff system. Before the attainment of such an objective, it will be necessary to maintain reasonable VAT rates and limit special expenditure taxes. Furthermore, the States and communities should jointly look for ways and means to stop the proliferation of "arbitrary taxes", real "bribes", unduly received by civil servants, particularly at border and road check points. A study conducted in West Africa in 1992, with assistance from the International Trade Center (ITC) revealed, among other things, that in certain cases, such levies affecting cattle on the hoof could be as much as 50 per cent of inter-State transport-transit fees.

3. Pricing policy

73. The "pricing" aspect of SAPs is reflected in nearly all African countries by the institution of an almost generalized free trading system. Without calling in question this option which falls within the ambit of the current neo-liberal economic spaces emerging in the States, it might be suggested that products enjoying considerable tariff preferences should be subsequently monitored. A simplified monitoring system would make it possible to avoid the exclusive enjoyment of such preferences by importers and intermediaries. The efficiency of regional market mechanisms also depends on the repercussion of tariff preferences on consumer price. In this respect, consultations between the executive secretariats of subregional communities and representatives of chambers of commerce should make for the consensual and harmonious pricing of products enjoying considerable preferences, in the legitimate interest of economic operators and consumers.

F. Prospects

74. The various issues discussed above can constitute the undergirding of a new approach to the problem of rationalizing and strengthening regional communities, which should be gradual and based, as a matter of priority, on the unification of market rules.

75. For the following reasons this measure does not exclude other sectoral integration policies nor the grouping of institutional frameworks as the purpose of the rationalization policy:

(a) First, in terms of the objectives, the demarcation line between the market and the production system is not obvious. Notwithstanding the very many academic debates carried out and doctrinal works devoted to theories known as integration "alternatives", a market is always perceived as the place where goods and services from a given space are sold, and its expansion goes along with the development of the production activities of the said space;

(b) Secondly, there are no major contradictions between the sectoral policies and strategies defined in subregional and regional treaties and there are fewer risks of duplication and overlapping in such areas as transport, industry and agriculture, where almost everything remains to be done on the continent. In these sectoral areas, the main challenge is to mobilize regular and sufficient resources for the implementation of the defined policies and strategies. In any case, such mobilization of resources can only be envisaged when the States are sincerely committed.

76. The major contradictions or divergences lie in the market systems envisaged in the treaties establishing economic communities in the same subregion, and also in a domain where any difference is synonymous with mutual exclusion. The unification of market rules in the same subregional space would resolve the main operational problems caused by the sheer number of integration-oriented IGOs.

77. Furthermore, the many initiatives taken since the early 1980s, particularly in West Africa, have yet to yield any dividends relative to the rationalization objective. No merger or absorption has taken place; on the contrary, each institution has, at a given moment or another, been reaffirmed in its expediency, mission and objectives by the same political decision makers, and those dissolved have been immediately replaced by new ones. All these require a new approach to resolving the current impasse.

78. The approach recommended in this document would, at least, seek to provide an urgent solution to operational problems posed by the co-existence of various integration schemes. Furthermore, it would be the first step of an institutional rationalization process.

79. Just as integration can only be done with and by the States, rationalization will succeed only when it takes into consideration the current realities and only when it involves all the communities and economic unions without ruling any of them out beforehand.

80. The formulation and eventual implementation of the approach thus defined, in terms of a programme or subprogramme, will require that a mission be undertaken to visit all the executive secretariats of integration-oriented institutions. The objective will be to:

- (a) Present the recommended approach to officials and experts of institutions concerned and request their reactions;
- (b) Identify communities prepared to embark on this programme;
- (c) Carry out a comparative analysis of the market instruments and mechanisms envisaged by each treaty;
- (d) Collect information on experiences and lessons drawn from the management of each of the trade policies: application, successes, difficulties and prospects;
- (e) Appreciate the degree to which officials of institutions are desposed to any examination in part or in full of policy instruments governing their integration schemes relative to the unification of the regional market;
- (f) Determine the amount and nature of work required in each subregional regarding studies, negotiations and the modification of mandates;
- (g) Assess the cost of such a subprogramme: missions, consultations, meetings, seminars; and
- (h) Define an implementation strategy and time-table.

81. However, what remains to be done is that the rationalization of IGOs and the harmonization of their programmes must go hand-in-hand with that of the ECA-sponsored technical support institutions. A report was presented, in this respect, to the nineteenth and twentieth meetings of the Conference of Ministers. It is advisable that the Ministers should take a clear stand on the report and on the opinions that had been collected in conformity with the terms of reference of the secretariat.

82. The rationalization of the IGOs and ECA-sponsored institutions does not relieve member States of their obligation to provide these institutions with the adequate resources for the fulfilment of their mandates. Annual contributions have become uncertain and it would therefore be necessary to put in place indigenous resource mechanisms that would give these institutions a degree of financial autonomy. The following proposals are intended to address this issue.

IV. THE QUESTION OF FINANCING INTEGRATION IN AFRICA

A. Development and application of indigenous resource mechanisms within the subregional communities

83. Obstacles and problems in the way of the integration process include mainly the lack, paucity and/or irregularity of financial resources required to pursue the set objectives. In Africa, like elsewhere, there is a price to pay for integration; otherwise, it should be abandoned.

84. The implementation of subregional treaties and subsequent African Economic Community Treaty depends, to a large extent, on the efficiency of the arrangements made to finance integration.

1. Possible solutions: The indigenous resource option

85. The principle of using indigenous resources to finance integration has now gained wide currency both in policy statements and in the positive law of African integration institutions.

86. Thus in Article 72 of the revised ECOWAS Treaty, article 168 of the Treaty establishing the Eastern and Southern African Common Market, article 82;2 of the African Economic Community Treaty and more recently article 54 and 55 of the UEMOA Treaty provision is made for the establishment of indigenous resource mechanisms that will guarantee full or partial funding of community projects and pro-programmes.

87. In practice, however, only CEAO (which is replaced by UEMOA) with its Community Solidarity Levy (PCS), has gone beyond the conception, drafting, adoption and even begun to implement such a system on the continent (in five out of seven countries). Officials of UDEAC and ECCAS are taking a cue from this experiment.

88. Article 72 of the revised ECOWAS Treaty refers extensively to some of the provisions of the CEAO "R" Protocol and articles 54 and 55 of the UEMOA Treaty also provide for a tax base similar to the PLS.

89. Furthermore, the two-year experience gained by the member States which fully implemented this instrument (Benin, Mali and the Niger) has produced highly satisfactory results. In Benin, for instance, revenues from July 1990 to June 1991 (a period of major crisis in that country), totalling about CFA 700 million, covered the country's contributions to the CEAO budgets and funds and the balance was used to pay up its arrears to the ECOWAS operating budget and to the ECOWAS Compensation Fund in Lomé (see pages 11 and 12 of the PCS evaluation report for the financial year 1990 by CEAO Secretariat).

90. Judging from the foregoing, a radical and lasting solution to the problem of financing integration can be found and instituted initially at the subregional level and subsequently at the regional level.

91. Designing, preparing and implementing such an arrangement will call for:

- (a) A clear definition of set objectives;
- (b) A comprehensive study and an appropriate mix of legal, fiscal and technical frameworks suited to the specific situation of each subregional community;
- (c) A methodology and a work programme to be worked out with each institution; and above all;
- (d) An unmistakable political resolve to pursue specific mandates.

2. The concept of indigenous resources

(a) Objectives

92. As mentioned earlier, the primary objective of such a mechanism is to provide adequate and regular funds for integration. The idea is to mobilize resources for meeting:

- (a) The operating expenses of the institutions;
- (b) Compensatory fund requirements, where they exist; and
- (c) Implementation costs of community projects and programmes.

93. The second objective - not less important than the first - is to disconnect, as much as possible, from national budgets and treasuries. Economic integration cannot be achieved if the subregional communities do not enjoy genuine financial autonomy. The European Community, now the EU, cited as an example in this regard, has had to use various autonomous financing instruments (custom duties, agricultural levies, extra taxes on VAT) regardless of the fact that its countries are developed.

(b) The main characteristics of an autonomous financing system

94. In order to achieve the above-mentioned objectives, a resource mechanism having the following characteristics should be designed, developed and implemented: (a) indigenous; (b) permanent; (c) readily available; (d) constantly increasing; (e) needing no inputs from State budgets; (f) equitable; and (g) pursuing solidarity as one of the basic principles of the African Economic Community.

(c) The choice of financing mode

95. Initial studies conducted in this area in CEAO in 1982 came up with several alternative recommendations of tax bases for community financing, including:

- (a) Agricultural exports;

- (b) Mineral exports;
- (c) The tonnage of imported and exported goods;
- (d) National energy consumption, etc.

96. None of these was of interest to the national experts. The first two were unique in the sense that they were very strategic for member States (e.g. cocoa and coffee for Cote d'Ivoire, uranium for the Niger) and were subject to wide fluctuations in prices, generally dictated by the international market.

97. A basket of rates would have to be applied in the case of the tonnage of imported and exported goods as wide gaps may exist between product prices. The same tax could not be applied to a ton of cotton and a ton of uranium or to a ton of grains and a ton of spare parts.

98. The energy consumption revenue base has the major disadvantage of putting all the burden of integration on the consumption of a single type of product (petroleum), which would result in the application of higher rates in order to meet the requirements.

99. The tax levy option: The objectives and criteria for establishing indigenous resource mechanisms at regional or continental level favour the choice of a tax levy, i.e.:

- (a) Over a very wide and easily quantifiable tax base;
- (b) With substantial yield at a single and reasonable rate.

100. Import revenue base: Member State product imports from third countries currently provide the best means to meet these requirements.

101. Furthermore, experience within CEAO and the prospects expressed in the UEMOA Treaty and the revised ECOWAS Treaty are all based on this macroeconomic aggregate.

102. Under this arrangement, revenues will accrue from expenditure tax, based on a certain percentage of national consumption, payable by importers and passed on to the product end-users along the same line as indirect taxes.

103. Advantages and disadvantages: Expenditure tax, general or specific, offers the following advantages:

- (a) A fairly wide revenue base (imports in this case) which guarantees a substantial yield even when small rates are applied;
- (b) Large elasticity between the rate/base ratio and yield; the changing of one of the parameters generally has an immediate effect on revenues, at least up to the tolerance threshold;

(c) Painlessness (fiscal anaesthesia) makes it more psychologically bearable than a direct tax based on income or property;

(d) A convenient application mechanism: there is a base price and the product itself guarantees tax revenue.

104. End-users in particular face some constraints.

105. Thus, beyond a certain rate, expenditure tax may trigger an inflationary spiral which will adversely affect household purchasing power and the economy at large. Similarly, it has the disadvantage of putting the entire population, rich and poor alike, on an equal (arithmetic) footing in terms of tax, hence the need to apply a reasonable rate, which seeks a balance between the levy objectives and constraints.

106. It should be noted finally that under the expenditure tax system, community levy would be an allocated tax rather than a para-fiscal tax. They have both gained currency in African countries in principle as well as in application. Consequently, community levy should fit perfectly into national tax systems, without calling for new structures or further training courses for the staff managing it. The only peculiarity is the extraneous nature of levies, a corollary of its subregional, and in the long run, regional dimension.

B. The legal, fiscal and technical parameters of a community levy

107. These are a set of factors which come to play in the application of a community tax. These parameters will be examined in detail in each subregional community so as to prepare texts likely to be applied, having taken cognisance of data specific to each economic space. For - and this must be underscored -, regardless of the similarity between these crucial objectives and criteria, a purely literal transcription or transposition of the CEAO "R" Protocol will not solve any other institution's problems. The parameters set forth (base, exemption, rate, recovery plan, transitional provisions, etc.) are the product of a careful analysis of economic, fiscal and customs specificities of this economic space.

108. The following few paragraphs highlight the terms of reference of the study to be conducted in each subregional community, the harmonization and standardization efforts at the regional level for the fourth stage of the implementation process of the African Economic Community Treaty.

1. Levy base

109. All taxable products, applicable basic rates and a list of tax-free products will be determined.

110. Thus, products originating from third countries within the region will be extensively and accurately documented for such purposes as import statistics; in this regard, the most reliable data remains customs statistics because it reflects the value of goods actually covered by the administration whose responsibility it will be to determine tax rates, excluding tax fraud, evasion and avoidance.

111. Concerning the taxable items, the goal will be to determine a customs value which best incorporates all components of the price of a product. Market prices, where they exist, should be assessed in terms of revenue loss or gain so as to make the levy parameters reflect equity between the governments and the community citizens.

112. Equity will also call for the standardization of the list of tax-free products, as the application of the national tax system alone will give rise to discrepancies in tax base from one country to another.

2. Rate

113. The rate will be determined on the basis of the relationship between the short- and medium-term financial requirements of each community on the one hand and the overall revenue base (products imported from third countries) on the other.

114. All financial requirements should therefore be clearly determined, i.e., operating budgets, compensatory fund, project and programme financing - in order to avoid yearly and delicate renegotiations to increase rates or widen the tax base.

115. Where requirements are underestimated and the levy parameters remain unchanged, the only solution will be to call for extra funding from government budgets or to postpone or simply abandon identified projects. This should not happen systematically if meaningful integration is to grow.

116. Once the rate is fixed, the study should reflect revenue projections over five years at least with the assessed contributions of each member State. This second element is particularly relevant since each State should know at all times what share of its own resources goes to the community in comparison to other partners and what benefits it derives from the integration process.

3. Recovery

117. This is the centre-piece of the system. The main objective is to put in place a recovery plan not involving the treasury. The ideal arrangement will be a direct revenue circuit: customs offices - central bank, whereby the community is free from the constraints inherent in the principle of single national treasuries. Such an approach is feasible as it has already been applied in Benin under the CFAO/PCS with great success and satisfaction shared by the Government of Benin and the CEAO secretariat.

118. A recovery plan involving the treasury may produce appreciable results where there is a clear political will (e.g., Mali, 1990 and Niger, 1991). This detracts, however, from the "automaticity" and financial autonomy of the regional institution.

4. Verification and processing of disputes

119. The proper application of the system will also depend on the climate of trust among member States regarding compliance with the rules of the game. An internal verification device will therefore be suggested, probably along the same line as government taxes but the community secretariat will reserve the right to monitor all operations concerning tax base, liquidation, recovery and all customs and tax documents on the levy, including custom declarations, liquidation documents, payment receipts, accounting books summary, statements of revenues, etc.

120. An annual evaluation report should be submitted to the high authorities of the community, identifying shortcomings while sanctions remain the exclusive reserve of the Conference of Heads of State or the Court of Justice.

121. With cases of litigation, the study should specify the mode of due process for infringement of the texts prescribing the levies, the limits of national jurisdiction and the scope of national and community jurisdiction.

5. Management of the system

122. In addition to purely fiscal issues, a complete and coherent vision of the system calls for a closer look at other issues within this mechanism which, above all, has an inter-State vocation. This chapter will further address more specifically:

(a) The accounting aspects of the levy: bookkeeping, financial statements, documents;

(b) Financial institutions to which funds are contributed: it will be necessary to define clearly the modes of keeping and running the accounts in the central banks;

(c) Whether the funds accruing from revenue should all be held by the community or whether this should apply to member State contributions alone. It will probably be necessary to initiate a transitional arrangement for two to three years during which there will be limited disbursement of revenue funds pending improvement of parameters and verification of each member State's compliance with the rules;

(d) Transfer of resources; the study and the application texts should establish an order of priority within the various budgets and funds of the same community; this will be indispensable especially for the management of deficits (where revenues fall short of the projected amounts);