

ECONOMIC INTEGRATION—FORMATION OF THE ECONOMIC ORGANIZATION OF WEST AFRICAN STATES, A CUSTOMS UNION AND FREE TRADE AREA FOR REGIONAL DEVELOPMENT

On May 28, 1975, in Lagos, Nigeria, leaders of fifteen African nations signed a treaty creating the largest single economic grouping in all of Africa, the Economic Community of West African States, (ECOWAS).¹ The preamble of the treaty reflects the concern of the West African leaders with the increased pace of development which they feel is necessary to improve the living standards of their peoples.² Convinced that a program of effective economic cooperation to be achieved through regional self-reliance is essential to economic and social development, they recognize that the success of such a program depends upon a careful assessment of the economic potential and interests of each state. The objective of their union is the creation of a homogeneous society ultimately leading to the unity of the countries of West Africa by the elimination of all types of obstacles to the free movement of goods, capital and persons. *Treaty of the Economic Community of West African States, done May 28, 1975, reprinted in, 14 INT'L LEGAL MAT'LS 1200 (1975).*

The treaty provides for common development through economic integration.³ Regional economic integration provides a method by which small and economically weak states living in a world dominated by more powerful nations and multinational corporations can strengthen their bargaining position. The formation of regional groups provides developing nations with a way in which to overcome political, economic and cultural fragmentation often imposed upon them by their colonial past. If developing countries do not group themselves to strengthen their bargaining position, they will remain heavily dependent on the economic policies of the more developed nations. In the ECOWAS Treaty, economic integration is proposed through the use of a customs union.⁴

¹ Treaty of the Economic Community of West African States (ECOWAS), done May 28, 1975, reprinted in 14 INT'L LEGAL MAT'LS 1200 (1975) [hereinafter cited as ECOWAS Treaty]. The agreement was signed by the presidents and leaders of Dahomey, Gambia, Guinea-Bissau, the Ivory Coast, Liberia, Mauritania, Niger, Nigeria, Sierra Leone, Togo, Upper Volta, Mali, Guinea, Senegal, and Ghana.

² *Id.* preamble. The Lagos treaty linked nine French speaking, one Portuguese speaking and five English speaking countries into a new customs union.

³ Economic integration represents "the creation of the most desirable structure of the international economy, removing artificial hindrances to its optimum operation and deliberately introducing all the desirable elements of coordination or unification." J. TINBERGEN, INTERNATIONAL ECONOMIC INTEGRATION 57 (2d rev. ed. 1965).

⁴ A major element of the customs union theory is the concept of removal of custom barriers between nations. This results in a shifting of the patterns of production, consumption and trade. A union is said to be beneficial if it is trade creating and detrimental if it is trade diverting. A removal of tariffs on trade between union members will tend to increase trade within the union. The nature of this trade increase must be studied to discover if it is of a beneficial nature. If the union causes a member state to replace its own high-cost production

It must be noted, however, that cooperation between underdeveloped nations does not invariably result in creation of a customs union. Limited measures such as cooperation in the marketing of major products can lead to the formation of a sound economic policy. But such cooperation falls short of the marked goal of integration which presents a more advanced level of development.⁵

Article 2 of the treaty sets forth the aims of the community in the promotion of cooperation and development in all fields of industry, transport, telecommunications, energy, agriculture, natural resources, commerce, and social and cultural affairs.⁶

of particular commodities with imports from other members of the union which have lower costs, this produces the desired trade creating result. Trade creation is likely to occur when there is the formation of a union between countries which produce many products of the same nature but differ in their comparative advantage of producing the products. In most cases, before the formation of such a union, the countries were competitive. However, with the gradual reduction of tariffs between the member nations, the former competition will yield to specialization in which each country produces and supplies other union members the products it has an advantage in producing. The high-cost industries in each country will tend to be displaced by their low-cost union competitors. Intraunion trade will result with each member's needs being supplied from the lowest cost source in the union and wasteful industrial duplication will be avoided. Within the customs union, there will be protection for the local industries through a common tariff against imports from nonmember nations. A. HAZLEWOOD, *AFRICAN INTEGRATION AND DISINTEGRATION* 6 (1967) [hereinafter cited as Hazlewood]. The reduction or elimination of barriers to intra-African trade has long been recognized by the U.N. Economic Commission for Africa as a necessary precondition for the accelerated economic development of African countries. U.N. Econ. Comm. for Africa, *Approaches to African Economic Integration: Towards Cooperation in Economic Planning and on African Common Market*, May 7, 1963.

⁵ Integration is evident in the formation of joint projects providing economic cooperation and services such as transportation and communication. Even before the formation of ECOWAS, West Africa had seen the development of such international projects as the Organization of Senegal River States, River Niger Commission, the Lake Chad Basin Commission, the Mano River Organization and a number of joint railway projects. Onwuka, *Merits of Functionalism*, *AFRICA: AN INT'L BUS. ECON. & POL. MONTHLY* May 1975, at 26 [hereinafter cited as Onwuka]. The West African Rice Development Association, having the same membership as ECOWAS was able to increase production significantly. *N.Y. Times*, June 12, 1975, at 55, col. 1. However, such effective joint planning in the area of industrial development may be more difficult unless the association countries integrate economically at least to the stage of formation of a comprehensive customs union. Hazlewood, *supra* note 3. ECOWAS is such a comprehensive customs union.

⁶ These goals are to be reached over a period of years as the Community strives to do the following: (1) eliminate customs duties and other charges of equivalent effect in respect to the importation and exportation of goods between member states; (2) abolish the quantitative and administrative restrictions on trade among the member states; (3) establish a common tariff and a common commercial policy towards third countries; (4) abolish obstacles to the free movement of persons, services and capital among the member states; (5) harmonize agricultural policies and promote common projects, notably in the fields of marketing, research and agro-industrial enterprises; (6) implement schemes for the joint development of transport, communication, energy and other infrastructural facilities; (7) bring about the harmonization of monetary policies; (8) establish a Fund for Cooperation, Compensation and

Article 3 urges members to attempt to deliberately reorganize their policies in order to create a favorable environment for the achievement of the goals of the community. In part, this will result from action by the member states to secure the legislation needed to give effect to ECOWAS.⁷

The treaty also provides for the governing structure of the Community. The controlling body is made up of the heads of state and government of the member nations and is called the Authority of the Community.⁸ Decisions of the Authority are binding on all institutions of the Community.⁹ The Council of Ministers, which is composed of two representatives from each of the member states, has the responsibility of reviewing the functions of the Community and fostering its development in accordance with the treaty. The Council of Ministers makes policy recommendations to the Authority and gives directives to all subordinate commissions of the Community in order to foster harmonious functioning.¹⁰ The Executive Secretariat of the Community is to be headed by an Executive Secretary appointed by the Authority to serve a four year term. The Secretary may be removed from office by the Authority on the recommendation of the Council of Ministers.¹¹ The Tribunal of the Community, whose composition, competence and statutes are to be prescribed by the Authority, will function to ensure that fundamental fairness is observed in the interpretation of treaty provisions.¹² In addition, the Tribunal has the responsibility of settling any disputes that are referred to it.

The ECOWAS Treaty provides for the progressive establishment of a customs union. The liberalization of trade among the member states is to take place over a fifteen year period.¹³ In the first two years of the treaty, a member state may not be required to reduce or eliminate import duties, but may not impose any new duties and taxes or increase existing ones. At the end of this two year period, the member states are expected to progressively reduce import duties over a period of eight years, resulting ultimately in the complete elimination of import duties among the member states. This will be done in accordance with a schedule to be recommended to the Council of Ministers by the Trade, Customs, Immigration, Monetary and Payments Commission.¹⁴ However, the Authority would re-

Development and such other activities as needed to further the aims of the Community. ECOWAS Treaty, *supra* note 1, art. 2.

⁷ *Id.* art. 3.

⁸ *Id.* art. 4. Subordinate to this group is the Executive Secretariat, the Tribunal of the Community, and the technical and specialized commissions of Trade, Customs, Immigration, Monetary and Payments; Industry, Agriculture, and Natural Resources; Transport, Telecommunications and Energy; and Social and Cultural Affairs.

⁹ *Id.* art. 5, para. 3.

¹⁰ *Id.* art. 6.

¹¹ *Id.* art. 8, para. 3.

¹² *Id.* art. 9, para. 1.

¹³ *Id.* art. 12.

¹⁴ *Id.* art. 13, para. 3. This schedule "shall take into account the effects of the reduction

tain the power, on the recommendation of the Council of Ministers, to order import duties reduced more rapidly or eliminated earlier than recommended by the Commission.

Article 14 provides for the gradual establishment of a common customs tariff with respect to all goods imported into the member states from third countries. At the end of the eight year period mentioned in Article 13 and during the next five years, the member states shall gradually abolish the existing differences in their external customs tariffs.¹⁵ The ECOWAS Treaty also provides "community tariff treatment" for goods produced in one member state and imported into another through a third member. Such goods will be acceptable as eligible for community tariff treatment if they have been consigned to the territory of the importing member state from the territory of another member state and originate in the member states.¹⁶

To further the concept of economic integration, the treaty in addition deals with such matters as deflection of trade,¹⁷ dumping of products,¹⁸ and re-exportation of goods.¹⁹ It also provides for the unified development of the West African nations through the formation of a common agricultural policy,²⁰ joint railway²¹ and road construction,²² and exchange of technology between members.²³ Article 38 provides for the establishment of a Committee of West African Banks composed of the governors of the Central Banks of member states.²⁴ Article 59 allows the members of ECOWAS to partici-

and elimination of import duties on the revenue of member states, and the need to avoid the disruption of the income they derive from import duties."

¹⁵ *Id.* art. 14, para. 2.

¹⁶ *Id.* art. 15, para. 1.

¹⁷ *Id.* art. 16.

¹⁸ *Id.* art. 19.

¹⁹ *Id.* art. 22.

²⁰ *Id.* art. 35.

²¹ *Id.* art. 42.

²² *Id.* art. 41.

²³ *Id.* art. 19.

²⁴ The Committee of West African Banks will play a major role in the functioning of the Union. The lack of payment arrangements among the various monetary zones in the region has long been considered by many as a major constraint on inter-regional trade. An example of this would be a hypothetical sale of livestock between a seller in Upper Volta and a buyer in Ghana. The Ghanaian purchaser would deposit his currency (Ghanaian cedis) in the Ghanaian banking system to purchase a letter of credit denominated in U.S. dollars. The buyer then delivers the letter of credit to the Upper Voltan seller against delivery of the cattle. The seller deposits the letter in his bank which transmits it to the Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO). BCEAO sends the letter to its headquarters in Paris which transmits it to the Bank of France. The Bank of France transmits it to the designated New York correspondent of the Bank of Ghana for payment. Notification of credit then must go back through the system in order to have the Upper Voltan paid in Communauté Financière Africaine francs. This process can take anywhere from several weeks to eleven months. During this time, the capital of both the importer and exporter is completely tied up. The Committee of West African Banks is to provide a clearing arrangement between those countries dealing exclusively in French francs and the other nations which do not. Smith, *West African Eco-*

pate in other regional or subregional associations as long as membership in other organizations does not derogate from the requirements of the ECOWAS Treaty. Furthermore, treaties entered into with nonmember nations before the ratification of the ECOWAS Treaty are allowed to stand, but if such agreements are not compatible with ECOWAS, the member states will take steps to aid each other in eliminating these incompatibilities. It is interesting to note that there appears to be no discord between the provisions of ECOWAS and the recently formulated Lomé agreement²⁵ or the General Agreement on Tariffs and Trade.²⁶ Where the treaty does not specify detailed provisions regarding any aspect of economic cooperation, special protocols are to be formulated as needed.

It is through ECOWAS that West African nations hope to escape continuing economic dependence on the export of primary commodities and move toward viable industrial enterprises, increased intraregional trade, diversified economies, increased investment and higher per capita incomes. The provisions of the treaty are designed to prevent the development of new problems which might arise as a result of the customs union as well as provide a cure for those which already plague the region.²⁷

ECOWAS, however, is faced with many problems that cannot be overcome by the inherently limited provisions of a treaty. The partition of West Africa between anglophilic and francophilic countries constitutes a major constraint on regional cooperation.²⁸ Additionally, the French speaking

nomic Cooperation: Problems and Prospects, FOR. SERV. J., April 1974, at 11, 12 [hereinafter cited as Smith].

²⁵ European Economic Community—African, Caribbean, and Pacific Countries Convention of Land, *done*, Feb. 28, 1975, *reprinted in* 14 INT'L LEGAL MAT'LS 595 (1975), (entered into force April 1, 1976).

²⁶ General Agreement on Tariffs and Trade, January 1, 1948, 61 Stat. (5)(6), T.I.A.S. No. 1700, 55-61 U.N.T.S. Article XXIV provides for the formation of customs and trade unions within certain restrictions, *e.g.*, "[w]ith respect to a customs union or an interim agreement leading to the formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be."

²⁷ The establishment of a common tariff for a region can be a source of discord among nations if not handled properly. Often, there is great variation in the demands made upon a tariff by such obviously diversified countries. The markets of a customs union sometimes tend to operate in a disequalizing manner. Benefits are often unequally distributed between the associated states and some countries may even lose from the economic integration although the area as a whole is benefited. It is critical that the benefits of the union be distributed equally if the organization is to survive for any length of time. Uneven development in the different regions of the union may result in the loss of members as the deprived nations realize that the gain of other states is being accomplished at their expense. ECOWAS has anticipated such possibly unequal distribution and in Article 25 provides for the compensation of any national economy that has suffered as the result of the treaty. Hazlewood, *supra* note 3, at 14.

²⁸ Prolonged colonial influence has produced culturally and educationally diversified areas

countries have always appeared reluctant to join ECOWAS, which makes their own *Communauté Economique de l'Afrique de l'Ouest* (CEAO) superfluous.²⁹ Regardless of the past, the cooperation and support of the French speaking nations is now essential to the future of the new economic organization.

Another problem is the fear among Black nations that Nigeria is beginning to dominate the region.³⁰ Nigeria was the principal force behind the formation of ECOWAS and through her advocacy of African unity has set the political pace for Black Africa.³¹ As the world's seventh largest oil producer, Nigeria's great wealth may overwhelm smaller countries. Already many of Nigeria's poor francophilic neighbors view Lagos as a "counterweight to Paris."³² Fear of Nigerian domination is partially grounded in the predominate role that nationalism and sovereignty have always played in West African political events. Some African observers have even gone so far as to say that the "West African economic community is premature because a majority of the leaders are interested only in sitting in political power, in keeping and consolidating their petty sovereignties in the personalization of office."³³ The desire for economic cooperation must overcome these egocentric feelings if ECOWAS is to endure.

The immediate effect of ECOWAS on the world economic scene is questionable. The treaty has been ratified by all of its members and is now operative.³⁴ Due to the very structure of the treaty, at least fifteen years must be allowed before the formation of a unified economic policy is possible. It must also be noted that the industrial demands of the region are small, thus preventing the rapid development of an industrialized society. It is estimated that the typical West African country with about four

whose previous economic relations have been characterized by discriminatory tariff barriers. The Ivory Coast, a francophilic nation, levied tariffs on goods from its anglophilic neighbors which were from 30 to 50 percent higher than those upon goods coming from within the franc zone. Tariffs such as these made the cost too prohibitive for Ghana and Nigeria to export legally to the francophilic countries, resulting in a tremendous amount of clandestine trade. This illegal trade has made recorded trade statistics between the West African countries all but meaningless. According to recorded statistics West African countries receive only five percent or less of their imports from neighboring states. Actually, it is estimated that Nigeria absorbs 75 percent of Niger's total exports and provides 20 percent of Niger's imports. Smith, *supra* note 23, at 12, 13.

²⁹ Duodu, *West African Economic Community*, AFRICA: AN INT'L BUS. ECON. & POL. MONTHLY July 1975, at 12 [hereinafter cited as Duodu].

³⁰ Johnson, *Nigeria Says She Won't Dominate Area*, N.Y. Times, May 18, 1975, at 12, col. 4.

³¹ Nigeria was also responsible for influencing the forty-six African, Caribbean and Pacific nations to negotiate as a bloc with the European Economic Community during the recent Lomé Convention. *Id.*

³² Smith, *supra* note 23, at 11.

³³ Igbozurike, *West African Economic Community*, AFRICA: AN INT'L BUS. ECON. & POL. MONTHLY Nov. 1974, at 35.

³⁴ Duodu, *ECOWAS: Progress on Protocols*, AFRICA: AN INT'L BUS. ECON. & POL. MONTHLY, Sept. 1976, at 14.

million inhabitants has a demand for industrial products equivalent to that of a medium sized European provincial town.³⁵

Although the benefits may be slow in coming and the new economic order is faced with numerous problems, there is room for optimism if the West Africans sincerely follow the provisions of the ECOWAS Treaty. As one West African economist stated in regard to the progressive treaty, "Amalgamations work if everyone can be convinced to give up something for the common good. It is like we all know the words to a song, but the question is, are we willing to sing along in harmony?"³⁶

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³⁵ Smith, *supra* note 23, at 11.

³⁶ N.Y. Times, June 12, 1973, at 55, col. 1.