

## **ECOWAS CET: The Imperatives of Nigeria's Fifth Band**

The ECOWAS Common External Tariff (CET) has remained an issue of strong discourse and controversy in West Africa for a long time, especially since the inception of the EPA negotiations. The ECOWAS CET is an instrument for tariff setting and liberalization which ought to take care of a common market access within the ambits of regional trade and economic integration in the West African region.

It would be recalled that the decision of ECOWAS Heads of State at their 2001 summit required member states to harmonize their import tariffs with the UEMOA Common External Tariff (CET) adopted by 8 mainly francophone member states in 1998. Faced with the challenges and pressure of concluding the Economic Partnership Agreement (EPA) with the European Union (EU), close to five years after the 2001 summit, the Authority of Heads of State and Government of ECOWAS during their 30<sup>th</sup> session held in Niamey (January 2006) observed that close to nothing had been done with regard to the subject matter and consequently, further adopted a fast tracking of the CET harmonization in line with the UEMOA rate.

Essentially, the UEMOA CET features four tariff categories with rates at 0% for essential social goods, 5% for essential/basic raw materials, capital goods and specific inputs, 10% for intermediary products, and a peak tariff rate of 20% for final consumer goods. The unweighted average Tariff Rate (ATR) is 12.1%.

Apart from the above highlighted rates, the January 2006 decision of ECOWAS Heads of State provided for specific protection instruments additional to the customs duties, such as the regressive protection tax, the special import tax and safeguard measures to make up for the inadequate taxation of some products. The decision further made provision for a two-year transition period (1<sup>st</sup> January 2006 to 31<sup>st</sup> December 2007) to enable non-UEMOA countries to adapt to the new tariff policy (Type A exceptions) and to pursue the negotiations with a view to reaching agreement on the re-classification of some products as requested by the non-UEMOA countries (Type B exceptions). Entry into force was targeted at 1<sup>st</sup> January 2008.

It would also be recalled that in giving effect to the ECOWAS Authority, the Federal Government of Nigeria (FGN) had as far back as February 2004 announced her intention to comply with an ECOWAS CET but made provision for a 30% special tax to offer temporary protection to selected products of domestic industry. The special tax as announced was to be phased out in 3 or 4 years. In addition, the Government of Nigeria prohibited imports of some products. But more importantly, it would further be recalled that Nigeria demanded for the creation of a fifth tariff band of 50% as an addition to the existing UEMOA rate. This request was made when Nigeria which made a political commitment to align with the UEMOA CET realized that such commitment was made without due recourse to technical analysis in terms of research, or prior consultations with stakeholders including relevant sectors of the economy such as the manufacturers, farmers, traders and other private sector organizations. The political statement for commitment was later to be observed to have been made by the then President even without consultations with relevant Ministries and Parastatals such as the Federal Ministry of Finance, Commerce, Industry, Agriculture, Nigeria Export Promotion Council (NEPC), Customs, and other trade related agencies.

It was upon the realization of the fact that the UEMOA tariff rate is not protective of a young and aspiring economy like Nigeria with her prospects and plans for industrialization; and, coupled with the loud cries from the Nigerian stakeholders, the Nigerian government officially applied for the creation of the fifth band. This call for a fifth band has gained the support of prominent

private sector and civil society organizations in West Africa. Unfortunately, while discussions are ongoing, this request made in good faith by Nigeria suddenly appears to have gradually snowballed into controversies of some sort as some countries in West Africa have continued to express silent rejection of this appeal while West Africa is left without a common tariff (even beyond the 1<sup>st</sup> January 2008 deadline) with which especially third party trade relations and agreements such as the EPAs could be mirrored and executed.

### ***The Nouakchott MMC and the CET***

In deed, to some observers, with many deadlines past, the search for a suitable ECOWAS CET keeps rolling back and forth and unveiling an unwitting battle ground with some member states appearing poised to dement relationships. This current battle-ready attitude could be deduced from the tones and events of the just concluded ECOWAS Ministerial Monitoring Committee (MMC) held in Nouakchott, Mauritania.

Prior to the Mauritania MMC, the Authority of the West African Heads of State met in Ouagadougou (18<sup>th</sup> January 2008) during their 33<sup>rd</sup> session and directed the Joint ECOWAS-UEMOA Committee on the CET to task themselves with “the possibility and modalities for the creation of the fifth tariff band”. The Joint Committee on its meeting held in Abuja from the 25 – 29 June 2007 resolved among other things that “on the creation of the fifth tariff band, a study be commissioned by the ECOWAS Commission.”

Surprisingly, after directing that ECOWAS Commission undertakes a study on the 5<sup>th</sup> band, the Memorandum sent in for the consideration of the MMC Experts implicated the same Management Committee on CET of turning around to state that the question of the 5<sup>th</sup> band “falls outside the mandate given to it by the Heads of States of government” but pushing it back to fall “within the remit of the political authorities,” and further stating that “a solution thereupon can only be found by appropriate statutory authorities of both Commissions”.

This is tantamount to a ‘hide and seek’. In fact, this is a direct introduction of confusion and a build-up to the game that induced the long debate over the CET subject matter during the Nouakchott, Ministerial. Was it not in the wisdom of the Heads of State to refer the matter to the Joint Committee essentially given the technicality involved, one would ask? Is the Committee trying to indict the Heads of State of making a mistake over this decision? For the Committee to have turned around to tactfully evade this responsibility calls for further interrogation. In any case, if the Committee found herself incompetent to decide on the matter, the question is; why did it ab-initio direct ECOWAS to commission a study thereon? The whole arrangement smacks of some colourful way of circumventing the matter or dancing around it to buy time. But why buying time on an issue that must surely come to be; an issue that has been delayed enough since the inception of ETLs?

Of a truth, the fifth band request from Nigeria is quite an obvious and glaring matter. It is not of any potential interest only to Nigeria but to all industrially aspiring countries of West Africa. If I may say, it is for the interest of the people of West Africa. For anybody to reject or even argue against the protection of West African producers is tantamount to an economic crime against the citizens of the region. Why must we continue to import everything we need without the plan for possible self reliance? Where is our tomorrow? And, who says we shouldn’t be planning for tomorrow? Shall we remain forever under the illusion of donating raw materials to already developed countries while we import finished and sometimes, ‘decorated’ goods from the same raw materials we sent out? A level of protection is very necessary to ensure diversification of our resources in our region. It is also important towards ensuring that our God-given resources can be

translated into finished products that could create more employment opportunities for our teeming youth, thereby reducing restiveness, poverty and insecurity.

Unfortunately, in a further clear betrayal of commitment and responsibility to the people of West Africa, the Memo presented to the West African Experts at the Nouakchott meeting tended to highlight and emphasize more of the assumed negative implications (disadvantages) or in their own words “Constraints” in the creation of a fifth band. Never did it occur to our colleagues to see if any advantage was worthy of mention concerning the 5<sup>th</sup> band. To this end therefore, any decision that may have resulted from this lopsided presentation is to the extent of its lopsidedness bias and not objective.

### ***An appraisal of Constraints to the 5<sup>th</sup> Band***

For academic purposes however, it is important to x-ray the three constraints highlighted in the Memo.

*One: Legal constraint; that “Article 5 of the Decision A/DEC.17/01/06 adopting the ECOWAS CET provides for 4 categories. Consequently, the adoption of a fifth band requires a revision of this decision taken by the Authorities of Heads of State and Government of ECOWAS”.*

The Memo’s concern with the above legal constraint forgot to note that it is the same Authority of Heads of State that legally made the earlier decision of hanging the CET at 4 categories that took the later decision (still legal) that informed the Joint Committee to explore not only the possibility but also the modalities for the creation of a fifth band. In any case, there is no standing rule or procedural law or statute that prohibits the said Authority from revising their earlier decisions, especially based on superior reasoning; and the Heads of State must have discussed the issue before arriving at that resolve. The only thing it takes is a simple amendment of the previous decision, and in this case, the present decision to hand the matter over to the Joint Committee automatically vitiates or sets aside the previous resolution.

*Two: Constraints to the observance of the provisions of Article 24 of GATT:- that “Article 24 of GATT stipulates that parties establishing a free trade area or a customs union, as is currently the case under the EPA, shall ensure that customs duties are not higher or that trade regulations are not more restrictive than they were prior to the formation of the trade area or customs union.*

True as the above comment on GATT Article 24 provisions is, however, such comment should not have started without the prima-facia issue of the consideration of the enabling clause. Secondly, there ought to have been the understanding that the article in question is a subject of controversy with regard to the interpretation thereof, with both parties formulating and laying claim to different interpretations, and therefore making virtually every matter arising therefrom a further subject of controversy. Thirdly, there is no provision whatsoever in that Article prohibiting the protection of the local economy, which, of course, the 5<sup>th</sup> band seeks to achieve. Did it in any way outline specific duties that a customs union must adhere to? And even if it did, it must be recognized that Nigeria’s duties among the regional enclave have remained high and there is therefore no offence at using Nigeria’s duty as a measure or parameter for establishing a free trade area if so desired by the region.

*Three: Consolidated duties-related constraints:- Most ECOWAS member states have consolidated their import duties at the WTO. Consequently, the proposed adoption of a fifth band at the level of the ECOWAS CET should be examined with this constraint in view.*

The consolidated duties-related constraint should not be presented as an excuse to sell away the economy of the poor region. It is obvious even before the WTO that the region is presently undergoing negotiations that seek to usher in a new free trade area. What this implies is that a formal application or information could be sent to the WTO. In fact, this is a minor issue which could only take some level understanding through some internal and external dialogue. It must not be forgotten that Nigeria (seeking for the fifth band) and about four other countries in the bloc were not part of this duties consolidation deal. The bitter truth therefore is that it is not compulsory they go through the stress, neither should they be made to 'throw away their babies with the bath water' for seeking to protect their economies which should naturally be a plus to the entire region. Be that as it may, however, Nigeria shall be willing in her leadership position to take part in any dialogue that provides solution to the perceived constraint.

In general terms, economic observers and trade analysts have always concluded that with exception of Nigeria's rate, the rates in the region do not provide the best conditions for such tariffs to be used as a trade policy instrument. Similarly, stakeholders in the productive sector have always cried out on the importance of tariff protection in the implementation of sectoral policies. In fact, professional producer organizations hold the strong view that trade policies, fiscal challenges and sectoral policies should be harmonized; and that an important step in this direction consists of creating a fifth band (above 20%) level of the ECOWAS CET to facilitate the adoption of a new policy instrument as a way of facilitating some community strategic programmes.

Now, one important question is; why must the CET be very hot and essential for West Africa at this stage? At this point, the decision of ECOWAS to negotiate the EPA with the EU as a single customs union must be recalled. With the scheduled timeline (June 2008) for the negotiation of market access in goods fast approaching, the adoption of a Common External Tariff becomes more imperative because it is on this basis that offers could be made.

### ***Global Tariff levels***

While time is very important in the pursuit of a regional CET, it is also very important to look at evidential realities to aid appropriate decisions. In very clear terms, import tariff levels maintain an inverse relationship with levels of economic development. For instance, global average Tariff rates (ATR) indicate that EU which is a high income region has an ATR of 3.5%, the Mercosur which is a middle income region has 11%, SACU, another middle income region has 11.4%, while CEMAC which is a low income bloc has 18.4% ATR.

Following from the above, the UEMOA Common External Tariff with an ATR of 12.1% is, from a global perspective, out of the line with the low-income status of countries in West Africa and therefore abnormal and out of realities. The UEMOA Tariff structure and rates are in fact similar to CETs adopted by the middle-income countries of South America.

In 2004, most low-income countries in Africa and south Asia still imposed higher tariff rates than the UEMOA rates. These include countries in Central, East, and Southern Africa. Bangladesh and Sri Lanka, and the East African community members of Kenya Uganda and Tanzania have from 2004 settled for three tariff categories of 0, 10 & 25%. India still had a tariff peak of 30% in 2003, while Pakistan and Nepal had 25% tariff peaks. The UEMOA CET with a 20% tariff peak appears as the exception among the low-income economies of groupings of Africa and South Asia. By most indices of economic development, the member-states of UEMOA as a group are not better developed than the other low income economies highlighted above; in fact, the reverse is the case for several of the UEMOA countries.

The foregoing facts raise two fundamental questions: (i) why must other ECOWAS countries and Nigeria in particular commit themselves to harmonization with the low CET? Some commentators have suggested that most ECOWAS countries are resource poor, with low populations and unviable markets that cannot support competitive production bases and therefore have no need for protective tariffs. Is the above description true of Nigeria? Absolutely No! Having regards to the fact that tariffs set too low in developing economy will encourage imports and become a disincentive to domestic production and investments, should Nigeria accept wholesale adoption of the UEMOA CET or seek to modify it? Should any country in the shoes of Nigeria (with about 150 million people, and many unemployed) seek to toe the same line of request that Nigeria has? Shouldn't well meaning sister countries in West Africa therefore seek to align themselves with the position of Nigeria?

### ***The African Perspective***

Africa currently has three major Regional Economic Groups with Common External Tariffs as follows: UEMOA (8 West African Countries) 0, 5, 10, 20%; CEMAC (6 Central Africa countries) 5, 10, 20, 30%; COMESA (20 East & Southern African countries) 0, 5, 15, 30%.

In clear terms again, the forgoing portrays that the CET structure adopted by the UEMOA countries is the least protective of domestic enterprises as it offers less nominal protection to the intermediate and finished consumer's goods in the sub-region. In the first place, agricultural and manufacturing activity in the West African sub-region is neither more concentrated nor more efficient than in the other African sub-regions as to justify this lower protection.

Secondly, it can be shown that the proposed COMESA CET with 0, 5, 15 and 30% tariff categories is a little close to an improved structure of production and imports and therefore a bit close to what West Africa should be seeking for. West Africa's interest will be better served by her adopting a structure with an import tariff peak of about 50%. This structure is better fit for the high cost production regime as is evident in Nigeria and other ECOWAS countries. The structure should, as compared to the UEMOA CET which has tariff peak of 20% result in fewer imports, earn more revenue from import duties, have less adverse impact on the region's balance of trade position, and put less pressure on the value of the currency.

It will also better position the West Africa sub region for tariff harmonization within the African union later; and it leaves West Africa with more room to manoeuvre in bilateral and multilateral negotiations. It is worth noting that adoption of this structure does not preclude the imposition of special taxes for additional temporary protection during the transition period.

The addition of 5% nominal protection offered to intermediate processors by the COMESA-type structure may be critical for the survival of existing, and viability of potential grain-mills, vegetable-oil mills, fruits and nuts processors, wood processors, textile spinning mills, intermediate chemicals, and metallic and non-metallic mineral ore processors among others. Similarly, the additional 10% nominal protection for finished goods between the UEMOA and COMESA CET structures may determine the survival /viability of manufactures of paints & varnishes, soaps, detergents and other toilet preparations, tyres and articles of fabrication, textile weaving mills metal fabrication and transport equipment industries.

### ***The Political Will***

There is indeed no cogent reason why every country in West Africa that means well for the 'give us this day our daily bread' of her citizens should not lend support to the fifth tariff band. The

common industrial policy as well as the agricultural policy (ECOWAP) of ECOWAS cannot survive without a befitting tariff line that brings good respiration to the community's private sector. The political class must re-assess her commitments to the people with a view to ensuring that our integration works not only on paper but in reality, and this could only be achieved through the re-assurance of adequate protection. While working on the CET and looking towards Europe, we must also not lose sight of the fact that Asian Tigers are already dominating our market and they want more even with aggression. While such dominance is seen by some as a healthy development for our economy, our overall development should also be of paramount interest to the political class – to wit; the protection of our heritage.

It is rather unfortunate to hear reports credited to the fact that the UEMOA Commission that should facilitate the move to protective regime appears rather to be at the forefront of the battle against the 5<sup>th</sup> band. This quickly brings to mind that UEMOA Commission has once been pointed at producing a report that emphatically indicted their CET of not protective of their economies. Going by some apparent actions, it appears what the Commission is after is securing the image or jobs of the employees rather than overall interest of the citizens.

In the light of recent developments, some our agitations that UEMOA should be subsumed into ECOWAS so that the region could have only one Commission is therefore justified. How long would West Africa continue with two drivers in one car, struggling for one steering? The on going hiccups in the adoption of a CET for West Africa is attributable to the problematic political economy of West Africa which shows expression in the creation of factions in the West African camp. And this would continue until the political class assumes her responsibility and acquires the political will to do what is right and just. The right and indeed the just thing, is to take a bold step to convert UEMOA to a Department of ECOWAS Commission, perhaps as the Economic Department of ECOWAS. There is no justification for having UEMOA which houses eight West African countries which are also members of the regional body – ECOWAS.

For the ECOWAS CET, Nigeria appears to have had a lot of understanding. Considering that a country which has been operating a tariff height of 150% is tasking herself to descend to 50% only, all for the sake of maintaining the brotherliness and good neighborhood; considering also that this is a country that has publicly documented announced her development agenda (NEEDS) and vision of becoming one of the 20 biggest economies of the World by 2020 (an aspiration that requires the support of her brothers in the region even for their potential good); considering further that this same country has been and has continued to sacrifice for the peace, security and development of the sub-region; then, there should be a greater understanding from the Authorities of the region in this matter.

Therefore, unless the Technical and Political class of West Africa have a hidden agenda or are interested in the fall of Nigeria, then such a nosedive from 150% to 20% which is reminiscent to a crash should not be allowed. The time to act is NOW!

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