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Economic Integration in East Africa: Distribution of Gains

ROBERT L. BIRMINGHAM*

I. THE NEED FOR CONTROLS

A. BENEFITS OF UNIFICATION

Although both integration proposals and attempts to implement them have been frequent throughout the last decade, there are few if any successfully functioning economic unions among developing states. The manifest disparity between effort and consequence does not appear to be adequately explained by disillusionment on the part

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1. The two traditional forms of economic integration, the customs union and the free-trade area, have been defined in the General Agreement on Tariffs and Trade:

(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are supplied by each of the members of the union to the trade of territories not included in the union;

(b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

General Agreement on Tariffs and Trade, Oct. 30, 1947, art. XXIV, para. 8, 62 Stat. 2013, T.I.A.S. No. 1765, 62 U.N.T.S. 56. The term "common market" normally denotes a customs union within which "not only trade restrictions but also restrictions on factor movements are abolished." B. BALASSA, THE THEORY OF ECONOMIC INTEGRATION 2 (1961). "An economic union . . . combines the suppression of restrictions on commodity and factor movements with some degree of harmonization of economic policies." Id. Although more limited economic cooperation among states has been called "integration," this word is generally employed only to designate groupings of at least the free trade level. These terms, together with such non-technical labels as "amalgamation," "consolidation," and "combination," are frequently used indiscriminately where precise delimitation of the characteristics of the arrangement is not required.
of national leaders concerning the magnitude of potential gain to participants as a group.

Conventional customs union theory, best characterized as an expansion of the static neo-classical international trade framework to embrace discriminatory restraints, indeed offers little justification for combination: "If we apply [traditional] analysis to underdeveloped countries, it looks as though we should have to conclude that these countries should avoid economic unions like the plague." But classical arguments are largely irrelevant in a dynamic context:

As regards underdeveloped countries . . . the conventional theory simply misses the basic point. Being designed to explore the problem of optimal allocation of given resources, under given conditions of production, within a competitive framework, it cannot illuminate situations, such as those which arise in underdeveloped countries, in which neither resources nor conditions of production can be taken as given, and in which immobility of factors of production obstructs the operation of market forces. For any underdeveloped country contemplating closer economic ties with its neighbours the primary question is not—will this enable us to use our present resources more efficiently? . . . The primary question for any potential grouping of underdeveloped countries is whether discriminatory encouragement of trade with one another would tend to accelerate the rate of growth or not.

Proponents have asserted: "A customs union of underdeveloped countries . . . has a greater number of strictly economic arguments in its favor than does its counterpart among industrial countries." Prospective gain is primarily attributable to the possibility of exploiting economies of scale in manufacturing. The problem of inadequate internal markets currently confronts almost all developing states: among them, gross national product exceeds seven billion dollars only in India, Brazil, Mexico and Pakistan. Over ninety of the underdeveloped nations have populations below fifteen million;

more than sixty have fewer than five million people. Efficient industrialization, rightly or wrongly the objective of most national leaders, can generally be achieved only through economic consolidation. Autarkic policies normally either preclude substantial manufacturing activity or require sacrifice of income through reliance on expensive low-volume production techniques.

B. INTRAMARKET IMBALANCE

Although economic union may facilitate development of the integrated region as an entity, an individual state must still weigh the advisability of joining a prospective combination or of continuing participation in a functioning amalgamation. Union will most likely be viewed by 211 member nations as profitable only if gains are so distributed that the position of each is superior to that probable in isolation. Institutional structures promoting relative distributional equality, politically undesirable because they may restrict national autonomy or add a burden of continuing negotiation, are necessary to the extent that unimpeded market forces fail adequately to allocate the rewards of combination.

The possibility of exploitation of the less industrialized, inherent in economic integration among nations at different stages of development, may be simply demonstrated. Sheltered from competition from excluded countries by tariff barriers, a state previously capable of exporting only raw materials may find intraunion markets for its high-cost finished goods. Partners may be forced to surrender both customs revenue derived from duties on manufactures and exclusive control over import policies with little possibility of gain: elimination of impediments to trade with other member nations will prove valueless if newly opened markets experience a continuing surplus of primary products. Disadvantaged states will find foreign exchange earned by extrounion sales expended on association output; favored partners will supplement income from traditional sources with earnings from protected export of manufactured goods. As a result, "the less favored regions can be said to be financing the industrial development of their more advanced counterparts by paying higher than world-market prices for industrial products in intra-area trade." 

6. S. DELL, supra note 2, at v.
7. "What alchemy was to the Middle Ages, industrialization is to the underdeveloped world of this century—the magic elixir that can transform feudal societies." P. NEHEMKIS, LATIN AMERICA: MYTH AND REALITY 185 (1964).
9. B. BALASSA, ECONOMIC DEVELOPMENT AND INTEGRATION 124 (1965). If we assume that the non-industrial territories pay prices for manufactures of their partners which are equal to the prices of competing imports, including import duty, then by being in the union they lose revenue equal to the duty on the manufactures which they buy from their union partners instead of from the outside world. Probably this
Frequently characteristics of a common market area will permit accurate prediction of regional growth patterns in the absence of government intervention. Nevertheless the development process itself can contribute additional pressures toward imbalance. Consider a uniformly undeveloped plain. By hypothesis industrial enterprise may locate at any point with equal advantage. Its very establishment, however, differentiates its site from the remaining territory: erection of other manufacturing facilities requires choice by the decision maker between contiguous and relatively distant plots. Such possible benefits as "the availability of economic overhead facilities (transportation, gas, electricity, water supply, waste disposal, etc.), the availability of a skilled labor force, ease of exchange of technical information, and the existence of linked processes (vertical and horizontal specialization, auxiliary services, etc.)" weight selection probabilities heavily in favor of the agglomerative alternative. In addition, in backward areas payments to workers by previously established enterprises may provide a spatial demand differential allowing freight expense minimization through juxtaposition. In industrializing areas, therefore, "a relatively small amount of development can create economies for an area which may not only stimulate further development there, but may permanently retard development elsewhere." Wionczek concludes: "To leave the allocation of production factors exclusively to the free interplay of market forces would be equivalent to concentrating development in the more advanced countries among the union membership."
Even after integration, internal demand generated within protected market areas will normally prove insufficient to permit competition among manufacturing facilities of optimum size over the entire spectrum of manufacturing activity. Given a tendency toward plant agglomeration, it is likely that unregulated development will be characterized by heavy concentration of monopolistic enterprise within one or a small group of member states. The ability of uncontrolled new firms to exploit consumers throughout the union will be limited only by the elasticity of demand curves and the height of tariffs providing shelter from external supply sources: lagging partner nations may be forced to import high cost manufactures at prices further inflated by producer gains made possible by noncompetitive markets. Thus “regional problems are prominent among the reasons why a simple customs union is unlikely to be enough to satisfy even the simplest aims of establishing it.”

C. EAST AFRICA

Economic association has been maintained among Kenya, Tanzania, and Uganda for almost half a century. These three contiguous former British dependencies, roughly comparable in economic magnitude, are thus our most important source of information concerning...
the impact of integration upon the development process. Since intensive efforts to establish machinery which will redress interterritorial inequalities have succeeded early laissez-faire attitudes, the East African experience not only provides evidence of the need for intervention but also illustrates use of a wide range of regulatory devices.

II. CONSEQUENCES OF COMBINATION

A. UNION ESTABLISHMENT AND STRUCTURE

In 1900 the first formal tariff arrangement of the landlocked British Protectorate of Uganda was instituted in the form of a five per cent ad valorem duty on all imports. Although goods destined for this territory were permitted free passage through German East Africa, later Tanganyika, an identical levy on products shipped via the port of Mombasa in the British East Africa Protectorate, now Kenya, was collected and retained by Kenyan authorities. Although Uganda permitted these latter commodities untaxed entry into its territory, consequent loss of customs revenue was at first of little significance: most traffic traveled the German route, and Kenyan and Ugandan receipts were both ultimately destined for British coffers.

Improving rail connections with the Kenyan port city of Mombasa combined with doubling of the duty in 1904 to magnify the impact of continuing revenue diversion. In 1909, when Kenya at last agreed to transfer of transhipment taxes, annual Ugandan income from import levies rose from 3285 to 23,875 pounds. Although Kenya's contribution was initially determined at the commencement of each fiscal year, a payment of 25 per cent of receipts at Mombasa was soon negotiated; in 1919 this proportion was increased to 33 per cent. Kenyan and Ugandan customs authorities were amalgamated in 1917, when annual collections by the latter had fallen to only a few hundred pounds. The immediate effects of this de facto economic consolidation were negligible: trade in locally produced commodities was virtually nonexistent, and the external tariff served only to provide government income. In 1921, however, Kenya gained complete control of customs administration; at its insistence import burdens were again doubled.18

Although Tanganyika retained administrative authority over her customs system until 1949, British control of Tanganyika under a League of Nations mandate following German expulsion at the con-

than a quarter the size of Tanzania, large portions of these latter states are desert:

<table>
<thead>
<tr>
<th></th>
<th>Kenya</th>
<th>Tanganyika</th>
<th>Uganda</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area (thousands of square miles)</td>
<td>225</td>
<td>362</td>
<td>93</td>
</tr>
<tr>
<td>Population (1965) (millions)</td>
<td>9.4</td>
<td>10.1</td>
<td>7.6</td>
</tr>
<tr>
<td>Gross Domestic Product (1964)</td>
<td>778</td>
<td>684</td>
<td>482</td>
</tr>
</tbody>
</table>


clusion of the First World War permitted harmonization of East African external tariffs and elimination of internal impediments to trade in locally produced commodities. Although even apart from balancing mechanisms minor deviations from the common market ideal persist today, a customs union among Kenya, Tanganyika, and Uganda was largely achieved by January 1, 1923. In 1927 agreement was reached permitting free circulation of imported goods and credit of impost receipts to the territory of ultimate consumption.

On the recommendation of a Kenya government committee, protective imposts designed to stimulate local production were levied:

Prior to 1922 import duties in Kenya, as in all three territories, were designed for revenue and without protective intent. Certain export duties were levied for revenue without regard to their restrictive effect on production. Development of land was largely left to individual endeavor. In September 1922, on recommendation of the Bowring Committee, Kenya definitely discarded the laissez-faire principle and deliberately adopted the policy of fostering suitable industries as the foundation of her economic policy. Import duties were readjusted with the avowed intention of inspiring and consolidating industries. Export duties were abolished and additional attention was paid to the policy of adjusting railway rates from time to time so as to stimulate production for export and widen the market for local produce. The proposal to introduce a development policy assisted by customs tariffs originated in Kenya.

Specific duties on commodities which subsequently suffered price declines led to implicit ad valorem burdens as high as 70 per cent. Kennedy asserts: "There can be no doubt that these duties did prove to be highly successful in encouraging a number of Kenya's industries in a period when world economic conditions were far from conducive to agricultural development." Uganda's protests were vociferous but largely unavailing.

24. Frequent protests have been made by public bodies since the present duties were first introduced . . . and a definite move to bring about the removal of the protective duties was made in 1927 by a resolution passed in the Legislative council to the effect that such duties ought to be abolished. Notice was eventually given to the Kenya Government that unless early steps for their removal were taken by all three territories this Government would introduce legislation for their removal as far as Uganda was concerned. It is obvious that the majority of the members of the Kenya Tariff Committee are not prepared to agree to the removal of the protective duties. Uganda . . . is not prepared to agree to their continuance.

Excerpt from a 1929 Report of the Customs Tariff and Railway Rate Committee of the Government of Uganda, quoted in id. at 28.
Continuing economic association and the necessity of policy harmonization during World War II led to close political ties. After the war the British Colonial Office recommended creation of a Central Legislative Assembly and a High Commission served by an elaborate administrative network.25 As finally authorized, the High Commission was composed of the three territorial Governors and could act only after unanimous agreement. The principal executive officers of the new organization were an Administrator, a Commissioner for Transport, a Postmaster General, a Legal Secretary, a Financial Secretary, a Commissioner of Customs, and a Chief Administrative Secretary. The Central Legislative Assembly, little more than an advisory body, consisted of these seven officials, a Speaker and two Arab members appointed by the Commission, five members appointed by each of the Governors, and three members elected by each of the regional legislatures. Commission authority was essentially restricted to the administration of stated interterritorial undertakings, primarily involving transportation, communication, and revenue collection.26 Subordinate bodies employed 21,000 persons and supplied about eight per cent of the union's gross domestic product; 27 in 1960 the expenditures of these bodies totaled 125 million dollars. Approximately 90 per cent

26. Jurisdiction was granted in the following areas:
   (a) Transport and communications services, comprising:—
       1. Railways, inland waterways and harbours together with associated road services and coastwise shipping;
       2. Posts and telecommunications;
       3. Air transport; and
       4. Civil aviation and meteorological services.
   (b) Revenue collection, i.e.:—
       5. Customs and excise collection; and
   (c) Economic and statistical services, comprising:—
       7. Department of Economic Co-ordination, and East African representative overseas; and
       8. Statistical services.
   (d) Research services, comprising:—
       9. Agricultural and fisheries research services;
       10. Medical research services;
       11. Industrial research services; and
       12. Research by the Meteorological Department.
   (e) Other specific services, comprising:—
       13. East African Literature Bureau;
       14. East African Hides and Leather Bureau;
       15. Desert Locust Survey (including Control); and
   (f) General administration, including the East African Office in London and the Central Legislative Assembly.
of the total outlay was internally supplied by revenues of the large, self-contained transportation and communication units; funds for other operations were derived from territorial appropriations and British grants.28

B. DISPARITIES IN DEVELOPMENT

The fact that the union has existed for more than forty years makes it difficult to compare conditions in Kenya, Tanganyika, and Uganda with those which would have prevailed in the absence of combination.29 Although conclusive demonstration of loss to individual participants is thus impossible, patterns of trade and growth in East Africa are those predicted by the imbalance hypothesis. Kenya has attracted the bulk of area industry: 404 of the 474 companies operating in East Africa in 1958 were located in this state.30 In 1964 manufacturing activity accounted for 9.6 per cent of Kenyan gross domestic product; the industrial sector in each of the partner units contributed less than four per cent to smaller total outputs. Manufacturing wages and salaries in Kenya in this year amounted to more than 34 million dollars, over three times those in either of the other states.31

Protected by tariff barriers from external competition, Kenya is able to sell manufactures to her neighbors at prices above world market levels. Tanganyika and Uganda pay for their purchases through export of raw materials to unassociated states; Kenyan imports are primarily more sophisticated products supplied by advanced nations. Kenya exports over 60 per cent and imports under 30 per cent of all goods traded in East Africa.32 Between 1956 and 1962, Kenyan, Ugandan, and Tanganyikan interterritorial exports increased 90, 60, and 10 per cent respectively.33 The value of manufac-

29. In order to deduce statistically the beneficial effects of the common market it is necessary to show that, in its absence, the levels of interterritorial output, etc. would have been lower than, in fact, they have been. This, of course, is an impossible task when a common market has been in existence as long as that of East Africa. Once therefore, the inherent unity of the market has been demonstrated the case for its retention must rest solely on the advantages deduced by economic theory.

31. W. HANCE, supra note 17, at 200.
32. P. NDEGWA, THE COMMON MARKET AND DEVELOPMENT IN EAST AFRICA 53, Table IV.7 (1965). Trade patterns are illustrated by 1965 data:

<table>
<thead>
<tr>
<th>Value (millions of dollars)</th>
<th>Kenya</th>
<th>Tanzania</th>
<th>Uganda</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance (external trade)</td>
<td>-103.6</td>
<td>+39.2</td>
<td>+64.7</td>
</tr>
<tr>
<td>Balance (interterritorial trade)</td>
<td>+ 49.6</td>
<td>-30.2</td>
<td>-19.6</td>
</tr>
<tr>
<td>Net Balance</td>
<td>- 54.0</td>
<td>+ 9.0</td>
<td>+45.1</td>
</tr>
</tbody>
</table>

33. Due & Robson, Tax Harmonization in the East African Common Market, in
tured products exported by Kenya to her neighbors more than doubled between 1959 and 1963, increasing from 43.5 per cent to 57.9 per cent of her total intramarket trade. \(^{34}\) Nearly three fourths of all manufactures traded in 1963 were exported from Kenya. Tanganyika, by contrast, exported 7.6 per cent and imported 44.6 per cent of such goods. \(^{35}\)

In 1962 over 46 per cent of intraunion exports of Tanganyika could be imported from unassociated states without duty; yet 86.7 per cent of sales by her partners, four times as extensive, enjoyed external tariff protection. Acquisition from extratrade sources of goods purchased by Tanganyika from Kenya and Uganda would have required payment of duties averaging almost 50 per cent of product value, a tax rate nearly twice that safeguarding Tanganyikan interterritorial exports. \(^{36}\) Nominal levels of protection of course do not precisely measure loss from association through purchase of the protected goods. Hazlewood has recently argued that "[a]n analysis of the territorial impact of the tariff which takes account of the distinction between 'necessary' and 'excessive' protection leads to the conclusion that there is relatively little difference in the degree of protection afforded to the interterritorial trade of the three countries." \(^{37}\)

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34. P. Ndegwa, supra note 32, at 65, Table IV.12.

35. Country shares of trade in manufactured goods in 1963 have been computed by Ndegwa:

<table>
<thead>
<tr>
<th></th>
<th>Exports</th>
<th></th>
<th>Imports</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Value</td>
<td>Percentage</td>
<td>Value</td>
</tr>
<tr>
<td>Kenya</td>
<td>32.1</td>
<td>74.8</td>
<td>7.2</td>
</tr>
<tr>
<td>Uganda</td>
<td>7.6</td>
<td>17.6</td>
<td>16.5</td>
</tr>
<tr>
<td>Tanganyika</td>
<td>3.2</td>
<td>7.6</td>
<td>19.1</td>
</tr>
</tbody>
</table>

Adapted from id. at 72, Table IV.14.


37. Hazlewood, Economic Integration in East Africa, in African Integration and Disintegration—Case Studies in Economic and Political Union 69, 79 (A. Hazlewood ed. 1967). The author supports his contention by replacing nominal tariff rates with "effective" rates derived by eliminating from calculations "milk, beer, cigarettes, and manufactures which are exported outside East Africa at average values higher than those in interterritorial trade":

Average Degree of Protection of Exports (per cent)

<table>
<thead>
<tr>
<th></th>
<th>Nominal</th>
<th>Effective</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenya to Uganda</td>
<td>35</td>
<td>19</td>
</tr>
<tr>
<td>Uganda to Kenya</td>
<td>41</td>
<td>9</td>
</tr>
<tr>
<td>Kenya to Tanganyika</td>
<td>46</td>
<td>12</td>
</tr>
<tr>
<td>Tanganyika to Kenya</td>
<td>16</td>
<td>11</td>
</tr>
<tr>
<td>Uganda to Tanganyika</td>
<td>68</td>
<td>19</td>
</tr>
<tr>
<td>Tanganyika to Uganda</td>
<td>13</td>
<td>10</td>
</tr>
</tbody>
</table>

Id. at 80 n.19.
Nevertheless Ghai states: "A cursory comparison of the prices (excluding customs duty) of a few imported agricultural and manufactured products with the prices of similar domestic products shows that import duties are a reasonably good measure of the actual protection received by local products. This does not necessarily mean that East African producers are inefficient; the price differential could equally well be due to monopoly profits made by domestic producers." 38 Ndewga concurs: "Domestic producers . . . can raise their prices to the level of import prices. If there were sufficient competition among domestic producers, domestic prices might be forced down to f.o.b. export prices; but there is not sufficient competition in East Africa as yet, and it is therefore likely that domestic prices are higher than need be. This means that all East African consumers are 'exploited.'" 39

Evidence concerning income levels in the partner states is conflicting. Franck asserts that while in the interval between 1952 and 1954 per capita incomes were approximately equal in Kenya and Uganda and about one third lower in Tanganyika, in 1959 Ugandan and Tanganyikan incomes lagged behind the Kenya average by 45 and 90 per cent respectively.40 Inequality may be less striking: 1961 Kenyan, Tanganyikan, and Ugandan per capita incomes of 72, 55, and 62 dollars have been derived from data provided by the East African Statistical Department.41 Hance uses estimates of gross domestic product per capita in Kenya, Tanganyika, and Uganda in 1964 of 85, 68, and 65 dollars respectively.42

Observers have typically concluded:

The benefits accruing from the common market have not been equally shared — Kenya has gained substantially, Uganda has certainly gained although not by as much as Kenya, while Tanganyika has probably lost and certainly has gained the least. These unequal benefits derive from unequal growth rates in the manufacturing sectors of the three countries, with the result that tensions and strains have developed in the operation of the common market. It is important to notice, however, that in the present conflict among the three countries it is generally agreed that the common market is effective in promoting development and industrialisation; the conflict arises from unequal distribution of the benefits accruing from it.43

40. T. Franck, supra note 19, at 67.
42. W. Hance, supra note 17, at 200. See J. Nye, Pan-Africanism and East African Integration 72 (1965); Due & Robson, supra note 33, at 555.
43. P. Ndewga, supra note 32, at 136.

Just as virtually all studies have agreed that the common market
As early as 1932 Armitage-Smith argued that Tanganyika “should cease to deplete her revenue and impoverish her citizens by protecting the products of her neighbors.” Allegations that Tanganyika had been reduced “to nothing more than the consuming market for Kenyan industry” were frequent:

“If this thing is manufactured in Kenya, we in Uganda or we in Tanganyika do not have to import it from London or France or Germany: we can get it from Kenya and we shall therefore lose money because the import tax we would have gained when it was imported from outside countries will not now be charged.” This is the sort of argument that goes around when you have discussions about the economic relationships of the territories. Instead of being glad that in one part of East Africa you have a new industry manufacturing items that were being imported before, somebody stands up and says: “No, if we keep on importing we get a little more money for our government; we get a little more revenue in terms of customs duty. When it is manufactured in East Africa we do not get anything, and when we buy

has benefited East Africa as a whole, likewise they have agreed that a disproportionate share of the benefits has accrued to Kenya, with some doubt that Tanganyika has gained at all. Uganda has apparently gained, but much less than Kenya. . . . With much of the new industry concentrated in Kenya, persons in the other two countries have been forced to pay higher prices for protected goods, while they have benefited much less from industrial growth. From a fiscal standpoint, the other two countries lose revenue from customs as protection becomes effective, yet they do not benefit to nearly the same extent as Kenya from additional income tax revenue from greater economic activity. Were the other two countries not a part of the common market, it is argued, they could provide protection for their own industries, and while their consumers would pay higher prices, the countries would enjoy the benefits of the industrial development. From a strictly short-run standpoint, it is very likely that Tanganyika, in the past, would have been better off outside of the common market.


44. ARMITAGE-SMITH, REPORT ON A FINANCIAL MISSION TO TANGANYIKA, CMD. No. 4182, at 25 (1932).

45. Tanganyika Standard, April 14, 1947, at 3, quoted in T. FRANCK, supra note 19, at 50.
from Kenya it is the Kenya Government that gets the income tax on those profits." 46

IV. EARLY ADJUSTMENTS

A. PROMOTING IMBALANCE

Viner asserts:

The Tanganyika-Kenya Customs Union provides a striking instance where a territory was brought into a customs union by external authority in order to provide an expanded field for the tariff protection of industries of another territory. ... The customs union operated to create a protected market in Tanganyika for the produce of the small colony of British planters in Kenya, for whose welfare the British Government has shown a constant and marked solicitude. 47

The institutions of East African unification were thus not created for purposes of adjustment. 48 Due and Robson state:

The other countries have long complained that Kenya receives a disproportionate amount of the total tax revenue. ... In large measure the complaint is based on the fact that the other two countries sacrifice customs revenue when the duties become protective, while Kenya gains the additional income tax from the industrial development. Secondly, the formula for allocation of profits of companies on the basis of origin does not take into consideration sales made by manufacturers in Kenya, having no separate establishment outside Kenya, directly to purchasers in the other


48. "[A factor] which set the East African problem apart from comparable problems in other federations was the absence of any system of equalization to aid the less developed territories and compensate those which seem to be deriving the least benefits from the association. In most federal systems the benefits of the association are shared not only according to the direct contribution made but also according to need." T. FRANCK, supra note 19, at 67-68. Franck's implicit application of the term "federation" to the East African union would appear inadvertent or at least devoid of intended significance. A "federated state" has been described as "an independent central organism, having its own machinery absorbing, in view of international law, all the individual states associated together." BLACK'S LAW DICTIONARY 740 (4th ed. 1951). This source further defines "federal" as "a term commonly used to express a league or compact between two or more states, to become united under one central government." Id. Since any major act of the East African central authority required approval by the chief executive of each of the constituent territories, its independent powers appear to have been minimal.
two countries. The other countries have a legitimate claim to a portion of the revenue, which they would get under the Massachusetts formula widely used in the United States for the allocation of income for state income tax purposes. . . . Thirdly, since most of EACSO headquarters operations are carried on in Kenya, it is argued that Kenya receives a disproportionate share of the income tax of EACSO employees.49

Ugandan and Tanganyikan leaders have claimed that "Kenya dominated the common services and bent them to her own purposes."50 Nairobi, the capital of Kenya, was designated organization headquarters, and the governor of this territory, appointed permanent chairman, was authorized to act on behalf of the High Commission when this body was not in session. A preponderance of the staff remain Kenyan. It has been argued that "the cross-subsidization in the self-contained services must be a powerful counterweight to the unequal distribution of the gains from the common market."51 Nevertheless, because the railroad system is best developed in Kenya, this region receives a disproportionate share of total benefits. Until recently East African Airways overseas flights terminated only in Nairobi. In 1955 Kenyan communications accounted for almost 75 per cent of intraunion mail.

The vast majority of imports enter East Africa through the Kenyan port of Mombasa. Although customs revenues are attributable to the territory where the burdened goods are finally consumed, inadequate recording of intraunion commodity movements has worked to the disadvantage of Tanganyika and Uganda. The requirement that funds raised by income taxation be paid to the territory in which the income originated was construed by the Commission to allow excessive transfer to Kenya of receipts generated by trade in internally produced goods. During the fiscal year 1959-1960 this region received 40 per cent of total union customs revenue and almost 60 per cent of income and company tax proceeds.52 Unilateral actions by Kenya have reinforced the disequilibrating pressures: inequality has been intensified by the practice of the Marketing Boards of this region of selling domestically supplied beef, bacon and ham, butter, cheese, and ghee in Tanganyika and Uganda at prices above those charged to unassociated countries.53

49. Due & Robson, supra note 33, at 596-97.
50. T. Franck, supra note 19, at 63.
51. Hazlewood, Economic Integration in East Africa, in AFRICAN INTEGRATION AND DISINTEGRATION—CASE STUDIES IN ECONOMIC AND POLITICAL UNION 69, 85 (A. Hazlewood ed. 1967). The author estimates that in 1963 rail, air, and postal and telegraph operations yielded a joint surplus of 7 million dollars in Kenya and Uganda and a loss of 6.7 million dollars in Tangan-
yika. Id. at 84.
53. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, supra note 43, at 87-88.
B. INDUSTRIAL LICENSING

During the Second World War the governors of the three regions agreed to establish an interterritorial administrative body "to decide questions of policy relating to future industrial development . . . with particular reference to the siting, financing, and selection of types of industry required." 54 In 1948 the High Commission promulgated the East African Industrial Council Order, 55 creating a successor institution in anticipation of the introduction of a system offering guarantees of temporarily sheltered markets to new enterprises for the purpose of increasing investment. Organization membership was set at 12: the Administrator and the Economic Secretary of the High Commission were designated Chairman and Deputy Chairman respectively, the High Commission was given the right to choose one further individual, and the governors of the territories were each authorized to select three persons. Officials were to serve two-year terms and could be reappointed. Council meetings were to be convened by the Chairman at times and places of his choosing. Sessions once a year were made mandatory; in addition, assembly was required within one month of written request by at least six members. Seven sufficed to establish a quorum; decision was uniformly through concurrence of a majority of those present and voting. The Order, designed merely to establish an organizational framework, left the scope of the agency's activities essentially to the discretion of other bodies. Article 3, the sole provision delineating competence, authorized unguided Council deliberation only in the exercise of its capacity "to advise the High Commission on questions of policy relating to industrial development." On the other hand, the new organ was directed to consider and make recommendations concerning matters submitted by the High Commission or the territorial executives and to undertake duties assigned by the High Commission or the territorial legislatures. Although firms producing cotton yarn, cotton and woolen blankets, and cotton and woolen piece goods other than knitwear were brought under Council control in 1948, the body remained largely inactive during the succeeding five years.

In 1953 Kenya, Tanganyika, and Uganda adopted the East African Industrial Licensing Ordinance, 56 granting to the Council broad powers of regulation over production of specific commodities scheduled by the territorial governors on Council recommendation and with the consent of local legislative bodies. The manufacture of included items without a license is prohibited. Although firms producing goods at the date their supply is brought under administrative control receive

56. 10 LAWS OF KENYA c. 496 (rev. ed. 1962); TANGANYIKA TERRITORY LAWS & STAT. c. 324 (1956); UGANDA PROTECTORATE ORDERS & SUBSIDIARY LEG. 45 (1953).
licenses almost automatically, entrepreneurs entering the field must obtain Council approval of their proposed plants.

Provision is made for thorough investigation by the Council of each application; publication requirements and hearing procedures afford third parties ample opportunity to raise objections. Section 3 directs that Council discretion to grant or deny licenses be exercised in the light of:

(a) the capital, technical skill, and the raw materials available to the applicant;

(b) the siting, or proposed siting, of any factory in relation to the availability of power, fuel, labour, transport, raw materials, land, and water;

(c) the potential production of, and the potential demand for, both within and without the East African Territories, the scheduled articles in respect of which the application is made in so far as, in the opinion of the Council, such production and demand is likely to affect the undertaking in respect of which the application is made;

(d) the interests and conditions of service of the labour employed or to be employed by the applicant;

(e) the interests of the potential consumers of the scheduled articles in respect of which the application is being made;

(f) the general promotion and development of industries and the avoidance of uneconomic competition.

Lack of concern for developing interterritorial industrialization disparities is manifest: the criteria appear designed rather to encourage agglomeration. Rejections of applications must state the rationale for the action; licenses conferred may include restrictions on the activities of the recipient. Failure to comply with the conditions imposed or to maintain a minimum level of production of licensed articles permits revocation of Council approval. Any applicant or licensee aggrieved by a Council decision may contest it before the Industrial Licensing Appeal Tribunal. The rulings of this body, composed of a legally trained Chairman and six other persons, all appointed by and holding office at the pleasure of the East African executive, are specifically declared not subject to court scrutiny. The permissible scope of Tribunal review is not defined.

Incentive to participate in the program is provided by section 17:

(1) Any applicant for a license or any licensee may apply to the Council for a declaration that . . . no other license to manufacture for sale any scheduled article, or to erect, establish, and operate a factory for the the license of the applicant shall be granted during manufacture for sale of any such article, covered by
such period not exceeding five years from the date of such declaration as the Council may determine and the Council may make such a declaration. . . .

(2) Any declaration . . . may, on the application of the licensee made either before or after the expiry of the declaration or any renewal of it, be renewed by the Council for a further period not exceeding five years from the date of the expiry of the declaration or any period for which it has been renewed.

The Council may issue licenses in disregard of its declaration only with the written consent of the entrepreneur to whom it was made.

Section 23 provides criminal sanctions for knowingly making false statements in applications or at inquiries or for illicit manufacture of scheduled products: fines imposed for a continuing offense may exceed 500 dollars, and violators defaulting in payment are subject to imprisonment for as long as one year. Where a corporation is convicted, every director is deemed individually guilty of a like transgression unless lack of knowledge or absence of consent is affirmatively proved.

Initial enthusiasm for the program led to inclusion before the end of 1955 of fabric made from materials other than cotton, wool, or flax; steel drums; sheet glass and glass-ware; metal doors and metal window and door frames; and enamel-coated metal hollow-ware. No further extension of Council regulatory powers occurred until 1964. In mid-1963 only 32 licenses were in force; the majority of these covered textile production, for the most part brought under administrative control in 1948. Program development was blocked by the refusal of Tanganyika and Uganda to consent to incorporation of new categories; the absence of constraints on plant location designed to insure equitable interterritorial distribution of new industry had fostered agglomeration in Kenya, and continued participation by the lagging union members could only result in restriction of opportunities to attract competing units. Dell states: "[T]he industrial licensing system rapidly became a means for preventing competition with plants already established in Kenya. In other words, licensing became a means of arresting development in Tanganyika and Uganda rather than promoting it." 57

C. REFORM AND RETREAT

As the member regions of the common market approached independence, 58 leaders realized that at least some movement toward

closer political combination and interterritorial equalization of amalgamation benefits was essential if economic union, expected ultimately to induce federation, was to continue. In 1961 the Raisman Commission, constituted by the British Secretary of State for the Colonies in the preceding year, reported that joint institutions should be strengthened and a portion of revenue receipts should be used partially to redress spatial imbalance. Most of its recommendations were incorporated into law by the East African Common Services Organization Agreement between the new nation of Tanganyika and Great Britain, acting on behalf of Kenya and Uganda, concluded on December 9, 1961, and taking effect two days later.

Through this compact, prior union institutions were replaced by the East African Common Services Organization (EACSO), a similar but politically somewhat more consequential native-controlled interterritorial structure. Power was centered in an Authority consisting of the elected head of each of the partner states and acting only by unanimous resolution. This body was assisted by satellite Communications, Finance, Industrial Coordination, and Social and Research Committees and appointed the Secretary-General, the administrative head of the Organization. The strengthened and reconstituted Central Legislative Assembly comprised a Speaker appointed by the Authority, the Secretary-General and the Legal Secretary of the Organization, four members appointed by each of the regional executives, and nine members elected by each of the regional legislatures. Organization responsibilities were not significantly expanded beyond those entrusted to its predecessor.

The accord created a revenue pool composed of 40 per cent of receipts from the income tax on manufacturing and finance profits and six per cent of proceeds from customs and excise levies after deduction of total joint tax collection costs: one half of the funds thus acquired were spent by the Organization on non-self-contained services; the remainder were distributed equally among the three regions.

59. The task, then, was to devise an interim legal structure which would see the territories through the transitional period between the time the first and the last of them reached independence and a federation could be negotiated. Such a structure would have to: harness the new political consensus; make at least a respectable start toward remedying the growing problem of the aggregation of wealth by some equitable, if token, system of redistribution; bridge the constitutional gap between independent and colonial territories; avoid the appearance of colonially-inspired commitment to political integration; yet nudge the territories toward that very objective.

T. Franck, supra note 19, at 72-73. "Economic union can operate effectively only if it is supported by political union." Statement by Tanganyikan Vice-President Kawawa, quoted in Nye, The Extent and Viability of East African Co-operation, in Federation in East Africa—Opportunities and Problems 41, 43 (C. Leys & P. Robson eds. 1965).

60. GR. BRIT. E. AFR. ECONOMIC & FISCAL COMM’N, supra note 25, at 2.

resulting transfers from Kenya to Tanganyika, Uganda, and the 
common institutions during the 1962-1963 fiscal year were approxi-
mately 900,000 dollars, 800,000 dollars, and 400,000 dollars respec-
tively. 62 Ghai nevertheless argues: "The operation of the distributable 
pool has the effect of redistributing revenue from Kenya to Uganda 
and Tanganyika. However, the increase in Tanganyika’s revenue 
brought about by the operation of the distributable pool does not ap-
pear to be an adequate compensation." 63 

On June 5, 1963, the regime issued a joint declaration of intent to 
seek political union:

We, the leaders of the people and Governments of East 
Africa . . . pledge ourselves to the political federation of 
East Africa. Our meeting today is motivated by the spirit of 
Pan-Africanism and not by mere selfish regional inter-
est. . . . We are convinced that the time has now come to 
create . . . a central political authority. A working party is 
being established which will prepare a framework of a draft 
constitution for the Federation of East Africa. . . . In the 
third week of August a full scale conference will be con-
vened to consider the proposals of the working party. The 
three Governments have agreed to the establishment of a 
Federation this year.64

The working party, which met four days later, was announced to 
have "fully examined all points relating to the constitution and . . . 
reached agreement on every issue." 65 A draft constitution was or-
dered prepared for presentation at the end of the month. Debate 
concerning the document, however, revealed differences among the 
negotiating parties which have thus far prevented closer association. 
Nye maintains: "The subjects of disagreement read almost like the 
framework for the constitution that was supposed to have been agreed 
upon: the number and powers of legislative chambers; citizenship; 
division of power over foreign affairs; the civil service; the site of 
the capital; mineral rights; agriculture; and residual powers." 66 In

62. P. Ndeegwa, supra note 32, at 105.
63. Ghai, Territorial Distribution of the Benefits and Costs of the East Afri-
can Common Market, in Federation in East Africa—Opportunities and 
Problems 72, 81 (C. Leys & P. Robson eds. 1965). "It may be concluded 
that, although there is no unambiguous measure of the size of the redis-
tribution achieved by the Raisman arrangements, it cannot be thought that 
they bring a large enough distribution to satisfy the benefiting countries, 
even though they deprive the losing country of more revenue than it can 
afford." Hazlewood, Economic Integration in East Africa, in African In-
tegration and Disintegration—Case Studies in Economic and Political 
Union 69, 98 (A. Hazlewood ed. 1967).
64. Tanganyika Standard, June 7, 1963, at 3, quoted in T. Franck, supra note 
19, at 156-58.
65. Tanganyika Standard, June 11, 1963, at 1, quoted in T. Franck, supra note 
19, at 158.
August the Ugandan Minister of Broadcasting and Tourism stated that his nation could not accept partial surrender of state powers without "certain guarantees" and further time to consider "where she is going." 67 The working party was dissolved following a final fruitless session on May 30, 1964. 68

In 1960 Dr. Nyerere, now President of Tanzania, asserted: "You must rule out the question of federation after we take our seats as sovereign states in the United Nations." 69 Repudiation of a portion of the prerogatives of independence, newly achieved after decades of colonial subordination, would appear unlikely. 70 Unsettled economic issues nevertheless could alone have prevented federation.

V. THE KAMPALA AGREEMENT

A. SCOPE

Recognition that continued economic association required more equal distribution of benefits led to conclusion of the Kampala Agreement, 71 signed on April 21, 1964, by representatives of Kenya, Tanganyika, and Uganda, who met in Kampala, Uganda, as an Emergency Committee authorized by the heads of their governments earlier in the month in response to a Tanganyikan ultimatum. 72 On January 14, 1965, the leaders of the three nations approved minor modifications in compact provisions and decided to embody their understanding in a formal legal convention. 73 Tanganyika had become Tanzania as a consequence of union with Zanzibar, and this new designation was employed in the revised Agreement. 74

The partner states hoped to supplement the fiscal redistribution measures introduced by the East African Common Services Organization Agreement of December 9, 1961, 75 with direct controls over industrial location and interterritorial trade. In article 1 of the amended document, five measures designed to alleviate imbalance within the union were enumerated in order of diminishing feasibility of rapid implementation:

(a) Immediate action with certain interterritorially connected firms to increase production in a deficit country and thereby reduce imports from a surplus country.

68. T. FRANCK, supra note 19, at 163.
69. Quoted in id. at 173.
70. See Leys, Recent Relations Between the States of East Africa, 20 INT'L J. 510 (1965).
72. Leys, supra note 70, at 521.
74. See note 16 supra.
75. See § IV (C) supra.
(b) Agreement as to the immediate allocation of certain major industries.

(c) The application of a system of quotas and suspended quotas whereby exports from surplus countries would be progressively reduced, and local production increased in the deficit countries according to the building up of the productive capacity of the deficit country.

(d) Increased sales from a country in deficit to a country in surplus.

(e) Early agreement within the East African Common Market on a system of inducements and allocations of industry in order to secure the equitable distribution of industrial development as between the three countries.

B. INTRAFIRM LOCATIONAL CHANGES

Application of section (a) of article 1 was discussed in article 2. Its initial section listed the East African Tobacco Company, the Bata Shoe Company, East African Breweries, and British Portland Cement (Bamburi) as firms with plants operating or under construction in both Kenya and Tanzania. Succeeding portions dealt individually with the prospects for output redistribution of each of these producers. The Ministers for Commerce and Industry of the territories of factory location had interviewed officials of the first three firms; a meeting with executives of the fourth was planned.

The tobacco concern had already sent some machinery to its establishment in Dar es Salaam, the capital of Tanzania. Officers estimated that production from this plant would by July 1964 be sufficient to satisfy approximately 90 per cent of regional demand, the remaining 10 per cent being for brands with union consumption insufficient to warrant multiplant manufacture. Firm leaders agreed that serious consideration would be given to the possibility of locating in Tanzania new facilities for the production of additional low volume brands. The probably uneconomic alternative of transferring a portion of current specialized output to the deficit nation was ignored.

The Bata Company supplied about 70 per cent of the East African footwear market through plants manufacturing narrow lines for interterritorial distribution. Although Kenya purchased a considerable quantity of Tanzania output, the latter territory incurred an annual net trade deficit in the products of this industry of almost one million dollars. Firm officials had indicated that output at Dar was being expanded: a new line with anticipated sales approaching 240,000 dollars per year was expected to be established by the end of 1964.

East African Breweries and its affiliates produced 81,000 cases of beer per month, nearly 85 per cent of union output; the remaining
production was divided among two Kenyan and two Tanzanian competitors. At a cost approaching two million dollars, the corporation had undertaken a program designed to render Tanzania almost self-sufficient with respect to this commodity by late 1965. And although Tanzania was without cement capacity, commencement of initial trials of a plant under construction at Dar was expected by early 1966; the EACSO Agreement expressed hope that officials would be persuaded to advance the completion date into 1965.

In section (f) of article 2 the parties estimated that these changes would "improve the balance in respect of tobacco by £700,000; for footwear by £100,000, for beer by £500,000, and for cement by £500,000, making a total of £1,800,000, or a net reduction of 24% of the 1963 net trade imbalance" between Kenya and Tanzania. Doubt concerning reliability of these figures is raised by the near impossibility of improving the yearly footwear balance by 280,000 dollars through increasing annual production in Tanzania by less than 240,000 dollars.

A similar program designed to benefit Uganda at the expense of Kenya was more briefly described. A reduction in the Uganda cigarette trade deficit, in excess of 900,000 dollars annually, was planned. A proposed Bata Company plant at Kampala was expected to satisfy 60 per cent of the regional shoe demand, reducing purchases from Kenya by more than 800,000 dollars per year. Application of the quota systems described in article 4 and Appendix 1 to beer and cement imports was calculated to yield gains of 250,000 and 420,000 dollars. Section (h) of article 2 concluded: "The total effect in reducing imbalances between Uganda and Kenya of these changes might be of the order of £650,000, which is equal to approximately 23% of the overall imbalance."

Problems of trade between Tanzania and Uganda were dealt with in section (i): "As regards the favorable Uganda balance with Tanzania, the action taken with regard to cigarettes may have a reducing effect of the order of £200,000. The total in respect of beer could be reduced by £50,000, making an overall reduction for these two items of £250,000, or 17% of the 1963 imbalance." No transfers between Uganda and Tanzania were contemplated with respect to the cement and footwear industries.

C. ALLOCATION OF INDUSTRY

Article 3 embodied a first attempt to use the long established industrial licensing mechanism to apportion new enterprises in a manner promoting balanced interterritorial development. This article provided that certain goods not yet widely manufactured in East Africa be scheduled for production regulation under the Ordinance of 1953.76 Temporarily exclusive supply rights with respect to each of the items

76. See § IV (B) supra.
thus listed were to be allocated to an enterprise intending to establish a plant within a specified member nation.

Production of tires and tubes would have been restricted to Tanzania under the Agreement. The radio industry was likewise to be centered there, although the interests of existing firms in other regions were to be protected if they purchased Tanzanian parts. Sole authorization to assemble and manufacture Landrovers, and a measure of advantage and vaguely defined market protection with respect to truck construction, initially assigned to Tanzania, were replaced in the amended understanding by the exclusive right to produce plain aluminum sheets, circles, and foil. Priority in the nitrogenous fertilizer and bicycle industries was allocated to Uganda; firms assembling the latter product in Kenya or Tanzania at the time of the Agreement were to be required to purchase parts other than tires and tubes from sources within the preferred nation. Kenya acquired a monopoly in the manufacture of incandescent light bulbs which could be expanded to embrace neon and fluorescent tubes.

A justified word of caution concerning the uncertainty of gains anticipated from the understandings enumerated was contained in section (b) of article 3:

Although the effect of these allocations is expected to contribute towards a substantial improvement of the trading pattern, it is impossible at this stage to estimate exactly the size of this effect, because it is not possible to say when any of these units will come into production, nor what will be the trading pattern when they do come into production.

D. THE QUOTA SYSTEM

Article 4 and Appendix 1 provided further relief to retarded regions by authorizing temporary imposition of quotas upon specific intraterritorial imports with regard to which the recipient deficit country has productive capacity. Restrictions, effected through import or export license systems, could as a rule be instituted by a state whenever it experienced a negative total interterritorial trade balance of at least 20 per cent of exports to other members. Where, as in the cement industry, excess capacity was anticipated in two or all three of the regions, however, import limitations imposed by a disadvantaged partner could be countered by defensive introduction of like measures by others. Paragraph 3 of Appendix 1 directed that total trade prohibited by a country in a given year should not exceed in value its intraterritorial deficit during the preceding year “modified to take into account the envisaged effect of the output of allocated industries, quotas and suspended quotas already granted, and of any

77. A proposal by a group of investors to establish an automobile assembly plant in Kenya apparently caused this alteration. See Wionczek, Economic Integration and Regional Distribution of Industrial Activities: A Comparative Study (Part II: East Africa), 4 E. Afr. Econ. Rev. 31, 34 (1967).
increase in net exports from the country in surplus to the country in deficit in the previous year.” The last of the adjustment criteria would appear merely to have cautioned that trade trends and the temporary nature of some balance disturbances should not be disregarded through mechanical application of the other standards of computation. Quota application was explicitly limited to deficit product categories; trade in output of industries allocated under article 3, however, could not be restricted. Suggested quota duration was five years.

Paragraph 6 of Appendix 1 asserted:

The size of the quota (allowed imports from the surplus country in a particular product line) shall be calculated by taking the amount of exports from the country in surplus to the country in deficit, minus the exports from the country in deficit, to the country in surplus. As productive capacity in the country in deficit rises from its existing level the quota will be reduced proportionately until the quota equals zero.

This rule accentuated the need for retaliatory restriction by surplus states: applied by a deficit country in the limiting case where exports and imports of a given good are equal, for example, it would absolutely prohibit merchandise inflow while leaving the affected industry of the trading partner completely unprotected from foreign competition. It would perhaps be better to set an initial quota at the current import level less domestic excess capacity and then through time reduce permitted inflow by amounts equal to the difference between capacity increases and demand expansions. The formula of paragraph 6 anticipated immediate substitution of domestic goods for imported goods in each country. Reciprocal trade in a given product category, however, implies national specialization within that category or a pattern of transportation costs such that supply of some areas of each country by foreign firms is most efficient. In either case the advantages of exchange would seem worth preserving. Hazlewood comments: “This was a formula for bringing interterritorial trade to an end. . . . If rigidly applied it would prevent territorial specialization and would compel the uneconomic production of all varieties of a broad product line in each territory. . . . It would have been odd to tackle the problem of imbalance in trade by the elimination of trade.”

78. Hazlewood, Economic Integration in East Africa, in African Integration and Disintegration—Case Studies in Economic and Political Union 69, 97 (A. Hazlewood ed. 1967). There is evidence that the inadequacies of this system were recognized in at least some drafts of the revised Agreement: “The existence of the anomaly . . . in the original formulation of the quota system was recognized and corrected in the revised Agreement of Mbale at the beginning of 1965. It was agreed that the minimum quota should allow the surplus country to export to the deficit country as much as she imported from the deficit country.” Id. at 98.
The system of restrictions was to be controlled by a Committee of the Ministers of Commerce and Industry of Kenya, Tanzania, and Uganda. This body was to be aided in its deliberations by recommendations of a subordinate Quota Committee, composed of the union Commissioner for Customs and Excise; two officials representing the Secretariat and the Economic Advisory Unit of the East African Common Services Organization; and four officials from each country representing national departments of Commerce, Industry, Finance, and Planning. A state desiring consideration of trade limitation proposals could in absence of objection convene the latter Committee on at least two weeks notice; either partner, however, might defer assembly by an additional two weeks. Ministerial unanimity was presumably required for quota imposition.

Article 10 of the original Agreement manifested realization on the part of the negotiators that the quota system might actually have discriminated against goods produced within the union with respect to merchandise purchased from third countries:

In certain cases . . . there may be no opportunity for an East African country in surplus to compete against imports from outside East Africa in a particular product line where a zero quota is imposed. The deficit country is therefore permitted to substitute first for imports from other East African countries before reducing its imports of the same product from outside East Africa.

Means of correction were not suggested. On revision this language was replaced by an expression of willingness “to take external trade factors into account when calculating the size of quotas so long as this does not cause delays.”

E. OTHER PROVISIONS

The desire expressed in section (e) of article 1 was reasserted without significant elaboration of implementation procedures in articles 5 and 12. The former provision contained little more than a statement that “deficit countries would increase their sales and surplus countries would increase their imports from deficit countries as quickly as possible.” The latter blandly reiterated: “As regards the possibility of surplus countries making greater purchases from deficit countries, it was agreed that this should be pursued.” An import promotion drive by Kenya appears anticipated.

Article 6 and Appendix 2 evidenced a desire to expand the already important controls over plant location established in article 2 as rapidly as studies permitting rational regulation could be completed. A Committee of Industrial Experts was to be created and charged with:

(a) developing and evaluating lists of “East African Industries” in accordance with the following definitions:—
(i) An "East African Industry" is one which is economically feasible only if it has access to the entire market of East Africa.

(ii) An "East African Industry" is one which is economically feasible only if it has access to a market larger than that of any one country in East Africa.

(b) examining the basis for distribution of these industries, giving particular regard:—

(i) to economic feasibility;

(ii) to the need for an equitable distribution of industry;

(iii) to advising on measures for achieving rapidly an equitable pattern of industrial location.

The standard of (a) (i) would appear to add little to the test set forth in (a) (ii).

Much of the Agreement consisted of emergency measures calculated to preserve at least a framework of economic union while dramatically deviating from common market principles in an attempt to confer on the disadvantaged member states short-term benefits sufficient to assure their continued participation. Appendix 3 evidenced the conditional nature of assent to sacrifice obtained from Kenyan negotiators:

The Kenya delegation, in agreeing to the recommendations of this Report, has assumed that:—

(a) the East African Common Market will continue;

(b) the common services will continue;

(c) in particular there will continue to be a common currency;

(d) all parties recognize the value of association in a common market in fostering the economic development of the whole area;

(e) all parties agreed that the Common Market can only survive if the benefits of this economic development are shared between them. 79

VI. THE TREATY FOR EAST AFRICAN CO-OPERATION

A. FORMULATION

Conclusion of the Kampala Agreement spurred hope of increasing unity in spite of its distorting restrictions: "With the unfolding of more . . . such cooperative efforts, it may be that the answer to the perplexing question of which comes first—political union or economic cooperation—will be found. It appears at the moment that an economic hen may yet hatch a political egg, the Federation." 80 Nevertheless,


although some early progress in implementing the provisions for industry allocation was reported, the arrangement was not ratified by the partner states.

In the spring of 1965 Tanzania unilaterally decided to establish a national currency and a central bank system, forcing similar actions by Kenya and Uganda. Tanzania also imposed quotas limiting import from partner states of a wide range of products, apparently hoping to compel exporting Kenyan firms to establish local factories.

Although domination by Kenya of trade in manufactures was less striking than in earlier years, disintegration continued: "[T]he signatories of the Kampala Agreement succeeded in achieving the worst of possible worlds—interterritorial trade imbalances being corrected by curtailment of trade and a diminished rate of regional industrialization." The Kenyan Minister of Finance voiced fear that "if things go the way they are going now, it only means we are going to break up everything—the Common Services, the railways, telecommunications, everything."

82. Entry was restricted with respect to soap and detergents, insecticides, knitwear, underwear, beer, galvanized iron, nails, paint, exercise books, wheat flour, biscuits, sugar, and confectionary. Id.; Hazlewood, Economic Integration in East Africa, in African Integration and Disintegration—Case Studies in Economic and Political Union 69, 109 (A. Hazlewood ed. 1967).
83. As the months went by without ratification Tanzania felt she had no option but to take action on her own, though in accordance with the principles agreed in Kampala. It therefore decided to impose temporary quotas on certain Kenya imports with the sole object of promoting their production in Tanzania. This was an indication that Tanzania was taking only the very minimum action and then only when it became imperative for her own development. President Nyerere said that it was important to realize that even if the quotas cut imports from Kenya as much as 2 million pounds sterling annually, which was unlikely, Tanzania would still be the largest national importer of Kenya goods.

84. An index may be derived by dividing intramarket exports of manufactures by each state by its imports of the manufactures of its partners:

<table>
<thead>
<tr>
<th>Year</th>
<th>Kenya</th>
<th>Tanzania</th>
<th>Uganda</th>
</tr>
</thead>
<tbody>
<tr>
<td>1959</td>
<td>6.37</td>
<td>0.08</td>
<td>0.39</td>
</tr>
<tr>
<td>1961</td>
<td>5.81</td>
<td>0.06</td>
<td>0.50</td>
</tr>
<tr>
<td>1963</td>
<td>4.41</td>
<td>0.17</td>
<td>0.46</td>
</tr>
<tr>
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<td>3.49</td>
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<td>0.49</td>
</tr>
<tr>
<td>1966</td>
<td>2.91</td>
<td>0.23</td>
<td>0.67</td>
</tr>
</tbody>
</table>

85. Wionczek, Economic Integration and Regional Distribution of Industrial Activities: A Comparative Study (Part II: East Africa), 4 E. Afr. Econ. Rev. 31, 37 (1967).
Threat of dissolution led to the formation of the Commission on East African Co-operation, composed of three ministers from each partner state and an independent chairman, Kjeld Philip of Denmark. The report of this Commission, submitted in mid-1966, formed the basis of the Treaty for East African Co-operation. This agreement, signed at Kampala on June 6, 1967, entered into force the following December 1.  

B. ORGANIZATION

The Treaty unites Kenya, Tanzania, and Uganda, termed the Partner States, to form an East African Community. Article 2 declares the purpose of the Community to be “to strengthen and regulate the industrial, commercial and other relations of the Partner States to the end that there shall be accelerated, harmonious and balanced development and sustained expansion of economic activities the benefits whereof shall be equitably shared.” The Treaty provides an elaborate framework for cooperation without sacrifice of sovereignty.

The principal executive powers of the Community are vested in the East African Authority, comprising the Presidents of the three constituent states. Substantial responsibilities are entrusted to three East African Ministers, each an officer of cabinet rank nominated by one of the contracting parties. Action by either body can be vetoed by any of its members. The East African Ministers form the nuclei of Common Market, Communications, Economic Consultation and Planning, Finance, and Research and Social Councils. The Common Market Council and a Common Market Tribunal consisting of a Chairman, and four other members appointed by the Authority are charged with

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87. See id. at 114. The Treaty has been printed on behalf of the East African Common Services Organization by the Government Printer, Nairobi, Kenya.
88. The same article enumerates more detailed goals:
   (a) the establishment and maintenance, subject to certain exceptions, of a common customs tariff and a common excise tariff;
   (b) the abolition generally of restrictions on trade between Partner States;
   (c) the inauguration, in the long term, of a common agricultural policy;
   (d) the establishment of an East African Development Bank . . . ;
   (e) the retention of freedom of current account payments between the Partner States, and freedom of capital account payments necessary to further the aims of the Community;
   (f) the harmonization, required for the proper functioning of the Common Market, of the monetary policies of the Partner States and in particular consultation in case of any disequilibrium in the balances of payments of the Partner States;
   (g) the operation of services common to the Partner States;
   (h) the co-ordination of economic planning;
   (i) the co-ordination of transport policy;
   (j) the approximation of the commercial laws of the Partner States; and
   (k) such other activities, calculated to further the aims of the Community, as the Partner States may from time to time decide to undertake in common.
policing the integration program and resolving disputes concerning its operation among the Partner States. The large self-contained communications and transportation services are reorganized as Corporations within the Community, controlled by the Authority and subject to general supervision by the Communications Council. The Community is also to administer the other joint services. Functions of the other Councils are essentially advisory. Three Deputy East African Ministers may also be appointed. The permanent staff of the Community is headed by a Secretary General selected by the Authority; the Counsel to the Community, similarly chosen, is second in command.

The Treaty directs establishment of an East African Legislative Assembly, composed of a Chairman appointed by the Authority, the two ranking officials of the Community staff, the East African Ministers and Deputy Ministers, and nine additional members appointed by each Partner State. Enactment of Community measures requires approval by a majority of the members of the Assembly present and voting and assent by the Presidents of the three countries. Neither the Chairman of the Assembly nor the staff representatives are entitled to vote. Annex X gives the Tribunal legislative competence with respect to enumerated aspects of the institutions of the Community and the joint services which they administer. It may in addition take action concerning "[a]ny matter . . . which is incidental to the execution, performance or enforcement of any function conferred by this Treaty or by an Act of the Community upon any institution or authority, or officer in the service, of the Community. or upon any authority or servant of a Corporation." Community headquarters is established at Arusha, Tanzania; administrative centers within the Community, such as those of the Corporations, are distributed among the participating states.

C. TRANSFER TAXES

Articles 11 and 12 of the Treaty generally prohibit either tariffs or quantitative restrictions on trade among the Partner States. Harmonization of industrial development incentive plans is anticipated by article 19. Article 67 directs that the revenue pool established by the East African Common Services Organization Agreement of December 9, 1961, to compensate Tanzania and Uganda for deficits in their trade with Kenya be halved shortly after entry into force of the Treaty and liquidated perhaps as early as the middle of 1969.

Relief is given by an exception to article 11, introduced in section 1 of article 20 as "a measure to promote new industrial development in those Partner States which are less developed industrially . . . ." Section 3 provides: "[A] Partner State which is in deficit in its total trade in manufactured goods with the other two Partner

89. See note 26 supra.
90. See § IV(C) supra.
States may impose transfer taxes upon manufactured goods which are transferred to that State and originate from either of the other Partner States.” Those categories of products considered “manufactured goods” are set forth in Annex IV. The list may be amended by the Authority.

Under section 4 the tax may be imposed only on “goods of a value not exceeding the amount of the deficit in trade in manufactured goods between the State which is imposing the transfer tax and the State of origin of the goods upon which the tax is to be imposed.” In addition section 7 provides:

A Partner State may impose a transfer tax upon a particular kind of manufactured goods only if at the time the tax is imposed, or within three months thereafter if the tax is imposed in the reasonable expectation that the manufacture of such goods will commence within three months, the industry within the tax imposing State has the capacity to produce in the ensuing year:

(a) a quantity of goods equivalent to not less than 15 per cent of the domestic consumption within that Partner State of goods of that particular kind in the period of twelve months immediately preceding the imposition of the tax; or

(b) goods of that particular kind having an ex-factory value of not less than 2,000,000 shillings.

The magnitude of the tax is controlled by section 8:

The rate of transfer tax shall be determined by the Partner State which imposes it, but the rate for a particular item shall not exceed:

(a) where the duty is chargeable ad valorem or ad valorem as an alternative to the specific duty, 50 per cent of the rate of duty prescribed by the customs tariff of the tax imposing State in respect of the import of the same kind of item; or

(b) where the duty is a specific duty with no alternative ad valorem, 50 per cent of the ad valorem equivalent of the specific duty;

but if the same kind of item is not chargeable with any duty on import no transfer tax may be imposed.

Computation of the value of goods subject to the tax is controlled by Annex V.

Sections 14 and 15 provide for expiration of a transfer tax eight years after its imposition and revocation of all such taxes 15 years after entry into force of the Treaty. A means of adjustment for changed conditions is established in section 20:

If a transfer tax is imposed by a Partner State upon a par-
A particular kind of manufactured goods originating in the other Partner States, or one of them, and subsequently not less than 30 per cent of the total ex-factory value of sales, in any period of twelve months, of manufactured goods of that kind originating in the tax imposing State is sold for transfer to the other Partner States or to a foreign country, a Partner State may, if it considers that in the circumstances the tax ought not to continue in force, having regard to all relevant matters and to this Treaty, raise the matter within the Common Market Council and the Council may direct that the Partner State which imposed the tax shall revoke it.

Section 22 authorized the Council in exceptional circumstances to prohibit imposition of transfer taxes on goods the manufacture of which is regulated under the program introduced by the East African Industrial Licensing Ordinance of 1953. Section 23 extends the present licensing system until 1973. New licenses may be granted, although no additional articles are to be scheduled. Early revision of the system through action by the East African Legislative Assembly is anticipated.

Adjustment through transfer taxes not only allows immediate payment of at least partial compensation to states suffering deficits in intramarket trade, but also encourages balanced industrialization by permitting protection of entrepreneurs locating in less advanced member states from external competition. Although it places less reliance on market forces, the program has much in common with a plan for an "area of balanced free trade" recently introduced by Elkan. He suggests grouping of exchangeable goods in several categories, arguing: "Between most countries an increase in 'complementary' trade specialisation appears *prima facie* undesirable. On the other hand . . . an increase in 'competitive' trade specialisation, that is, in the international exchange of goods belonging to the same broad class, is

91. See § IV(B) supra.
93. Those established by Kojima are used for purposes of illustration:
   I. Staple foods (rice, wheat and other grains).
   II. Other foodstuffs, including manufactured foods.
   III. Agricultural raw materials.
   IV. Minerals, metals and fuels.
   V. Labour-intensive goods of light industry, both intermediate and final products.
   VI. Labour-intensive final goods of heavy and chemical industry origin (cameras, sewing machines, etc.).
   VII. Capital-intensive intermediate goods of heavy and chemical industry origin (pig-iron, steel, chemical fibre, fertilizer, etc.).
   VIII. Capital-intensive heavy machines and equipment.
practically always highly desirable." 94 He therefore urges pairs of integrating states to permit unimpeded entry of commodities in each classification to the extent that potential group import duties from the exchange partner are balanced by potential group export duties to it; normal tariff rates would be applied to imports unbalanced by reciprocal exports.

Under the plan, two documents would be issued to an importer of goods from a partner state. One of these, termed an "assessment for deferred duty of intra-area imports," would represent an obligation on the part of the importer to pay within 90 days to the state into which the goods were imported a duty equal to its face value. The other, a "certificate of intra-area imports" with a face value of 110 per cent of the duty, could be freely exchanged by the importer. An importer could cancel his obligation to pay duty by presenting to the customs office before the expiration of the 90-day period his assessment certificate together with another state's intra-area imports certificate of matching face value and relating to the same product category. Uncompensated trade flows would thus be restricted to a maximum of 10 per cent of exports of the disadvantaged state in any product category. 95 After initial agreement unification would proceed largely without additional government intervention, although progress would perhaps be less rapid than would be possible under other programs. 96 The East African plan sacrifices automatic adjust-

95. To assure smooth functioning of the system Elkan would impose the following conditions:
(1) Certificates would be valid for 120 days, one month longer than Assessments.
(2) Certificates would be negotiable and would be expected to pass from the importers to whom they had been issued into the hands of importers in the other member countries who would then use them to cancel their Assessments. This transfer could take place privately, either through direct contact or through intermediaries, and at any price agreed on by the parties.
(3) Any Certificates not utilized within 90 days from their date of issue would have to be offered for sale to the highest bidder through an officially authorized broker.
Elkan, Blueprint for an Area of Quantitatively and Structurally Balanced Free Trade, 5 J. COMMON MARKET STUDIES 1, 4 (1966).
96. Elkan concludes:
The principle underlying an area of balanced free trade ... could provide a measure of common ground to freetraders and protectionists. It ... would secure approximate quantitative and structural balance in the mutual duty-free trade of its members by means of a nondiscriminatory legal and institutional framework, within which actual decisions about the use of resources in production and trade would be taken by autonomous firms; the idea could therefore also become the basis of constructive agreement between those advocates of economic integration who emphasize the allocative role of markets and the beneficial effects of competition, and those who stress balance of payments considerations, the importance of the economies of scale
ment to achieve more direct control over the development process by the states involved.

D. THE EAST AFRICAN DEVELOPMENT BANK

Article 21 of the Treaty provides for establishment of an East African Development Bank. The charter of this new institution comprises Annex VI. Article 1 of this Annex sets forth the objectives of the Bank:

(a) to provide financial and technical assistance to promote the industrial development of the Partner States;
(b) to give priority . . . to industrial development in the relatively less industrially developed Partner States, thereby endeavouring to reduce the substantial industrial imbalances between them;
(c) to further the aims of the East African Community by financing, wherever possible, projects designed to make the economies of the Partner States increasingly complementary in the industrial field;
(d) to supplement the activities of the national development agencies of the Partner States by joint financing operations and by the use of such agencies as channels for financing specific projects;
(e) to co-operate . . . with other institutions and organizations, public or private, national or international, which are interested in the industrial development of the Partner States; and
(f) to undertake such other activities and provide such other services as may advance the objectives of the Bank.

The second of these aims indicates an intention to use the institution as an equilibrating mechanism.

Membership in the Bank is open not only to the sponsoring states but also to "bodies corporate, enterprises or institutions" approved by the Authority. Authorized capital is approximately 60 million dollars; the initial subscription of each Partner State is set at about 12 million dollars, scheduled to be paid in four installments over a period of 18 months after the Treaty enters into force. Payments other than the first may be deferred if the funds are not needed immediately. Contributions of other members, to be fixed by the Bank, may not exceed 49 per cent of total capital. Additional Special Funds may be accepted.

and the responsibility of governments for shaping the industrial structure of their countries. Finally, the proposal takes into account the important observation that without firm commitment to some kind of automatic procedure progress towards integration is likely to be very slow, uneven and uncertain.

Id. at 10.
All powers of the Bank are vested in a Board of Directors composed of one member appointed by each Partner State and up to two members elected by other participants. The Bank staff is headed by a Director-General, appointed by the Authority, who presides at meetings of the Board of Directors but may not vote. Action requires approval by a majority of the total voting power, which is distributed among the Board members in proportion to the capital contributed by the interests they represent. The Bank is to possess full juridical personality: it may contract, acquire and dispose of real and personal property, and institute legal proceedings. Charter amendments require support of 85 per cent of the total voting power and approval by the Authority.

Article 10 provides:

[T]he Bank may provide finances or facilitate financing in any of the following ways to any agency, entity or enterprise operating in the territories of the Partner States—
(a) by making or participating in direct loans with its [own funds];
(b) by making or participating in direct loans with funds raised by the Bank in capital markets or borrowed or otherwise acquired by the Bank for inclusion in its ordinary capital resources;
(c) by investment of funds referred to in paragraphs (a) and (b) of this Article in the equity capital of an institution or enterprise; or
(d) by guaranteeing, in whole or in part, loans made by others for industrial development.

Financial assistance may thus be granted both to public and to private enterprise. Under article 11, however, "[t]he total amount outstanding of loans, equity investments and guarantees made by the Bank in its ordinary operations shall not at any time exceed one and a half times the total amount of its unimpaired subscribed capital, reserves and surplus . . . available for ordinary operations." Moreover neither equity investment nor guarantees may exceed 10 per cent of its own available funds.

The objective of balanced development is given concrete content in article 13:

[T]he Bank shall ensure that, taken over consecutive periods of five years, the first of which shall begin upon the commencement of the operations of the Bank, it shall so conduct its operations that it shall have loaned, guaranteed or otherwise invested, as nearly as is possible, in the United Republic of Tanzania 383 1 per cent of the total sum which it has loaned, guaranteed or otherwise invested of its ordinary capital resources and the Special Funds, in the Sovereign State of Uganda 383 1 per cent thereof and in the Republic of
Kenya 22½ per cent thereof. . . . [A]fter a period of ten years from the commencement of operations of the Bank, the Partner States shall review the percentages specified in this paragraph and thereafter the Authority, after consultation with the Board of Directors, may by order published in the Gazette of the Community alter the percentages specified. . . .

Activity will thus be concentrated in the less advanced member states during the first decade of Bank life.

VII. CONCLUSION

Kenya, Tanzania, and Uganda have been united economically for more than four decades. Partnership has greatly benefited Kenya. While Uganda has also profited, Tanzania could perhaps have developed more swiftly without association. Imbalance within the union is striking: industry has concentrated in Kenya, the state with the highest per capita income level and the most rapid rate of growth. Tanzania and Uganda have purchased protected Kenyan manufactures at prices above world market levels but have had little demand for their own exports in the markets of their partner. Early efforts to redress this imbalance through transfer payments under the East African Common Services Organization Agreement of 1961 proved insufficient. The 1964 Kampala Agreement, an attempt to promote balance through allocation of industry and introduction of quotas, could not be implemented. The Treaty for East African Co-operation, which entered into force on December 1, 1967, replaces these controls with a system of transfer taxes and an East African Development Bank charged with promoting balanced growth. The prospect of economic gain has motivated continuing association in spite of the difficulty of assuring equitable distribution of this gain among the participating states.
The Managing Board is pleased to announce the election of the following members to the Managing Board for the forthcoming Academic Year, 1969-70: DENIS J. BRION, Editor-in-Chief; WILLIAM D. COTTER, Executive Editor; MYRON T. STEELE, Articles Editor; BRADLEY B. BROOKS, Notes & Comments Editor; MARSHALL V. MILLER, Research Editor; THOMAS P. LEGGETT, Recent Decisions & Book Reviews Editor.