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INTERNATIONAL ECONOMIC LAW: THE ROLE OF EUROPEAN FREE TRADE ASSOCIATION (EFTA) ON SOCIAL AND ECONOMIC TRANSFORMATION IN EUROPE

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Abstract

The European Free Trade Association (EFTA) as an economic association formed by Australia, Denmark, Norway, Portugal, Sweden, Switzerland and United Kingdom like any other of its kind has contributed immensely to economic libration of Europe. The paper examines the history, membership and operation of EFTA. Study also examines the impact of EFTA on the economy of Europe and the world. The paper analyzes the role of EFTA on monetary integration in Africa. The study relies on primary and secondary sources of information. The primary sources include constitutional documents, the Constitution, statutes and subsidiary legislation, judicial precedents, international conventions and treaties. The secondary sources of information include books, journals and internet materials. The information obtained was subjected to content analysis. The paper found that increasing transparency and interaction with the public is a major challenge to EFTA. The study concluded that EFTA has transformed Europe in adjusting to the ceaseless and political changes in the continent. The study recommended a more robust EFTA that would reunite other competing organization to promote world economy.

Key words: Economy, Economic libration, Monetary integration, Association

1. Introduction

The European Free Trade Association was founded in 1960 by what was called the Outer Seven (in opposition to the term "Inner Six", the founding members of the EEC)¹. In the context of the post-war period, economic and political integration in Western Europe was a sprawling concept embraced by numerous Europeans. The fear of facing again insecurity and instability impelled politicians to foster cooperation and to create common solutions in order to avoid future conflicts and

1. DARIUS RAO "Past Achievements and challenges Of the European Free Trade Relations and beyond (1991-2011)" www.wti.org/fileadmin/user-uplord/wti.org/master_programme/pdfs/masterthesisi-darius accessedn28 April 2014

consolidate a weakened Europe². The Schuman Declaration of 1950 embodied this idea of federating European countries into a strong community through an economic and political union. Following the formation of the European Coal and Steel Community (ECSC) in 1951, the powerhouses of Europe started to become interested in deepening partnership amongst themselves and their neighbors to forge new and stronger economic alliances. Alongside the General Agreement on Tariffs and Trade (GATT), this on one hand focused nearly exclusively on lowering tariff levels, and the Organization for European Economic Cooperation, which on the other hand concentrated on the gradual removal of quantitative restrictions on trade, the ECSC countries pressed for the idea of creating a customs union that would soon become the EEC. The EEC quickly became the main driver behind European integration.

The United Kingdom and other European nations, especially the ones with neutrality traditions, were not so keen on giving up some of their autonomy. London therefore proposed to create a wider free trade area, encompassing the whole range of West European countries. This proposal advocated for a looser commercial association, which would not entail any limitation of national sovereignty through a common external tariff or decision-making power by supranational institutions. With the countries of the Nordic Council considering the establishment of a Nordic Customs Union, the United Kingdom hastened to propose EFTA as an alternative.

A free – trade area is a trade bloc whose member countries have signed a **free** – trade agreement (FTA), which eliminates tariffs, imports quotas, and preferences on most (if not all) goods and services traded between them. If people are also free to move between the countries, in addition to FTA, it would also be considered an open border. It can be considered the second stage of economic integration. Countries choose this kind of economic integration if their economic structures are complementary³. If their economic structures are competitive, it is likely there will be no incentive for a FTA, or only selected areas of goods and services will be covered to fulfill the economic interests between the two signatories of FTA. So European Free Trade Association is one of those associations some other free trade association are North American Free Trade Area (NAFTA), ASEAN Free Trade Area (AFTA) and others. It should also be noted that these free trade association is part of regional integration that exist now better still says that the trade association were Bourne out of the Regional integration. Hence, the general concept of Regional integration will be considered in this work as a foundation to the discuss itself which is European Free Trade Association (EFTA) as it relates to the Monetary integration in Africa.⁴ The European Free Trade Association (EFTA) is a free trade organization between four European countries that operates in parallel with – and is linked to – the

² Garder, R., "The Bretton Wood-GATT System after Sixty-Five Years: A Balance Sheet of Success and Failure in Columbia, (2008) 47(1) Journal of Transnational Law

³ www.wikipedia.org/wiki/European-Free-Trade-Association, accessed 23 April 2014

⁴ *ibid*

European Union (EU). The EFTA was established on 3 May 1960 as a trade bloc alternative for European states who were either unable or unwilling to join the then-European Economic Community (EEC) which has now become the EU. The Stockholm Convention, establishing the EFTA, was signed on 4 January 1960 in the Swedish capital by seven countries (known as the "outer seven")⁵. Today's EFTA members are Liechtenstein, Iceland, Norway and Switzerland, of which the latter two were founding members. The initial Stockholm Convention was superseded by the Vaduz Convention, which enabled greater liberalization of trade among the member states.⁵

EFTA states have jointly concluded free trade agreements with a number of other countries. Three of the EFTA countries are part of the European Union Internal market through the Agreement on a European Economic Area (EEA), which took effect in 1994, the fourth, Switzerland, opted to conclude bilateral agreements with the EU. In 1999, Switzerland concluded a set of bilateral agreements with the European Union covering a wide range of areas, including movement of people, transport, and technical barriers to trade. This development prompted the EFTA state to modernize their conversion to ensure that it will continue to provide a successful framework for the expansion and liberalization of trade among themselves and with the rest of the world.

The paper will focus on the European free trade association (EFTA) in particular reference to the general structure of the association such as the history, membership structure, operation and its impact on Europe generally. This work will also analyse the association in or in relation to monetary integration in Africa before offering suggestions, summary and concluding the work.

2.0 History of European Free Trade Association (EFTA)

British reaction to the creation of the European Economic Council EEC was mixed and complex⁶. Britain was also preoccupied with the Commonwealth, which, at the time of EFTA's formation, was in transition. Britain therefore brought together several countries, including some bordering the EEC, to form the European Free Trade Association soon after the establishment of the six-nation EEC which are France, West Germany, Italy, Belgium, Luxembourg, and the Netherlands.

On 4 January 1960, the treaty on European Free Trade Association was initially in the Golden Hall of the Prince's Palace of Stockholm. This established the progressive elimination of customs duties on industrial products, but did not affect agricultural

⁵ EFTA founding members were Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom. In 2011, only Norway and Switzerland remain with the addition of Iceland and Liechtenstein.

⁶ The signatories to the Treaty of Rome establishing the European Economic Community were Belgium, France, Italy, Luxembourg, the Netherlands and West Germany.

products or maritime trade. The main difference between the early EEC and the EFTA was the absence of a common external customs tariff, and therefore each EFTA member was free to establish individual customs duties against trade with non EFTA countries.⁷

Despite the modest initiative, the financial results were excellent, as it stimulated an increase of foreign trade volume among its member from 3.5 to 8.2 billion US dollars between 1959 and 1967. This was rather less than the increase enjoyed by countries inside the EEC. After the accession of Denmark and the UK to the EEC, EFTA began to falter. For this reason most countries eased or eliminated their trade tariffs in preparation to join the EEC, but experienced declining revenue which reduced the importance of EFTA. Four members remain: Switzerland, Norway, Liechtenstein and Iceland. Iceland applied for EU membership in 2009 due to the 2008 – 2012 Icelandic financial crisis. For a clearer understanding let look at the man events in the history of EFTA from 1960 until today.

3. Objectives of European Free Trade Association (EFTA)

The European Free Trade Association is an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four Member States: Iceland, Liechtenstein, Norway and Switzerland. The Association is responsible for the management of:

- ❖ The EFTA Convention, which forms the legal basis of the organization and governs free trade relations between the EFTA States⁸
- ❖ EFTA's worldwide network of free trade and partnership agreements; and
- ❖ The Agreement on the European Economic Area (EEA), which enables three of the four EFTA Member States (Iceland, Liechtenstein and Norway) to participate in the Internal Market of the European Union. However the major objectives of EFTA are as follows;⁹
 1. To promote sustained economic growth, full employment, increased productivity and the rational use of resources within the member states, financial stability and continuous improvement in living standards.
 2. To promote free trade among member states.
 3. To avoid significant disparity between member states in the condition of supply of raw materials produced within the area of the Association, and
 4. To seek a border economic union with western European countries and therefore contributes to the expansion of trade to the world.

⁷ www.efta.int/about-efta/european-free-association accessed 23 April 2014

⁸ www.efta.int/legal-texts/public-access-archives Accessed 28 April, 2014.

⁹ Ibid

3.1 Membership of EFTA

A member state of the European Union is a state that is party to treaties of the European Union (EU) and thereby subject to the privileges and obligations of EU membership. Unlike the membership of an international organization, EU membership places each member under binding laws in exchange for representation in the EU's legislative and judicial institutions.¹⁰ On the other hand, EU states retain considerable autonomy compared to the constituent states of a federation (such as a U.S. state), maintaining their national military and foreign policy (where they have not agreed to European action in these areas). The union currently consists of 28 member states. In 1957 six core states founded the EU's predecessor, the European Economic Community.¹¹ The remaining states have acceded in subsequent enlargements. On 1 July 2013 Croatia became the newest member state of the EU. In order to accede, a state must fulfill the economic and political requirements known as the Copenhagen criteria, which require a candidate to have a democratic, free market government together with the corresponding freedoms and institutions, and respect for the rule of law. Enlargement of the Union is also contingent upon the consent of all existing members and the candidate's adoption of the existing body of EU law, known as the *acquis communautaire*.

There is disparity in the size, wealth and political system of member states, but all have equal rights. While in some areas majority voting takes place where larger states have more votes than smaller ones, smaller states have disproportional representation compared to their population. No member state has withdrawn or been suspended from the EU, though some dependent territories or semi-autonomous areas have left

The founding members of EFTA were Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom¹⁰. During the 1960s these countries were often referred to as the **Outer Seven**, as opposed to the Inner Six of the then – European Economic (EEC). Finland became an associate member in 1961 (becoming a full member in 1986) and Iceland joined in 1970. The United Kingdom and Denmark joined the EEC in 1973, and hence ceased to be EFTA members. Portugal also left EFTA for the European Community in 1986. Liechtenstein joined in 1991 (previously its interests in EFTA had been presented by Switzerland). Austria, Sweden and Finland joined the EU in 1995 and thus ceased to be EFTA members.

Twice, in 1973 and 1995, Norway has tried to join the EU (still the EEC in 1973) and by doing so, leave the EFTA. Both times, membership of the EU was rejected in national referenda, keeping Norway in the EFTA. Iceland currently is in negotiations

10 European Free Trade Association, Icelandic Chamber of Commerce, (*EFTA Bulletin, EFTA Free Trade Relations*, July-August 2006) 42-44

11 www.european-fair-trade-association.org/efra.geneva.mfa.gov.ua/en/ukraine-jo/efra, accessed 23 April 2014

as a candidate for EU membership. If they were to complete negotiations and all countries ratified the accession treaty, they would leave the EFTA and join the EU¹²

3.2 EFTA Free Trade Agreements

EFTA's trade strategy has evolved progressively to reach beyond the confines of Europe. Since the late 1990s, the EFTA States have "gone global" with the objective of maintaining and strengthening their competitive position worldwide. Through EFTA, its Member States have created one of the world's largest networks of preferential trade relations, which they continue to extend and upgrade. EFTA's current free trade agreement (FTA) network secures economic operators preferential access to markets of around 680 million consumers outside the European Union.¹³ The main reason why Iceland, Liechtenstein, Norway and Switzerland use EFTA as their common platform for preferential trade relations is that, as a group, they carry more economic and political weight, thus being more attractive to trade partners.

At the time of writing, EFTA has FTAs with a total of partners outside the EU:²⁴ Albania, Bosnia and Herzegovina, Canada, the Central American States of Costa Rica and Panama, Chile, Colombia, Egypt, the Gulf Cooperation Council (GCC; comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates), Hong Kong China, Israel, Jordan, the Republic of Korea, Lebanon, Macedonia, Mexico, Montenegro, Morocco, the Palestinian Authority, Peru, Serbia, Singapore, the Southern African Customs Union (SACU; comprising Botswana, Lesotho, Namibia, South Africa and Swaziland), Tunisia, Turkey and Ukraine. Negotiations are in progress with Guatemala, India, Indonesia, Malaysia and Vietnam, as well as with the Customs Union of Russia, Belarus and Kazakhstan. Negotiations with Algeria, Honduras and Thailand are on hold.

In addition, the EFTA States have joint declarations on cooperation (JDCs) with Georgia, Mauritius, MERCOSUR (comprising Argentina, Brazil, Paraguay and Uruguay), Mongolia, Myanmar and Pakistan. These instruments provide for a framework of dialogue and cooperation towards closer trade and investment relations.

While the EFTA States are pursuing a policy of strengthening and expanding preferential trade relations worldwide, they continue to attach the highest priority to a well-functioning multilateral trade system under the auspices of the World Trade Organization (WTO). In EFTA's view, the multilateral and bilateral approaches are mutually supportive. EFTA FTAs have various and wide-ranging scopes.¹⁴ They set out free trade areas by firstly providing rules for tariff dismantling on goods, trade remedies (anti-dumping measures, countervailing duties and safeguard measures),

¹² www.efta.int/site/default/files/publication/this-is-efat/this-is-efat-2013.pdf accessed 28 April 2014

¹³ The full legal texts of EFTA FTAs are found in EFTA's website, see European Free Trade Association, *Free Trade Agreements - EFTA*, available: <http://www.efta.int/free-trade/free-tradeagreements.aspx> accessed 2nd May 2014.

¹⁴ *ibid*

trade disciplines on TBT and SPS, protection of intellectual property rights, competition, payments and transfer of capital, state trading enterprises and dispute settlement. Let look at what some of the free trade agreement cover;

1. Trade Facilitation: In recent years, EFTA has started to include disciplines on trade facilitation in its free trade agreements. These provisions aim at simplifying and accelerating the import and export of goods, thereby enhancing Predictability and reducing costs for the business community.
2. Intellectual Property Rights: The effective protection of intellectual property rights (IPR) is essential for innovation and international trade. EFTA FTAs provide for high standards of IPR protection and contain measures to enforce such rights against infringement, including through counterfeiting and piracy. The provisions build on the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), as well as other international treaties in the area of IPR.
3. Dispute Settlement: EFTA FTAs provide for consultations as the principal means of settling any differences that may arise with a partner country. In the unlikely event that an amicable solution cannot be found, arbitration mechanisms included in all recent agreements allow for a judicial review of the matter²⁶
4. Different Levels of Economic Development: EFTA FTAs take into account the partner country's level of economic development. For instance, the EFTA States normally abolish all tariffs and other restrictions on industrial products upon entry into force of an FTA, while a less economically developed country may benefit from transitional periods to adapt to free trade conditions.
5. Sustainable Development: Since 2010, EFTA has been seeking to include provisions on trade and sustainable www.efta.int/ee/eea-agreement development in all free trade agreements. EFTA's model chapter on sustainable development does not aim to introduce new environmental or labour standards but to give recognition to existing instruments in the context of the FTA. EFTA's first agreements containing such provisions were concluded with Hong Kong China and Montenegro.
6. Services and Investment: EFTA FTAs that are concluded with European and Mediterranean countries normally contain evolutionary clauses in the area of services and investment. Other agreements liberalise trade in services, based on the WTO General Agreement on Trade in Services (GATS), and contain enhanced provisions in areas of mutual interest to the parties. The services chapter is accompanied by annexes covering specific services sectors, such as financial, telecommunications and maritime transport services. With respect to investment, FTAs concluded by the partners. Substantive provisions have notably been included in the FTAs with Chile, Colombia, Hong Kong China, Peru, Singapore and Ukraine. These agreements liberalise the

establishment of businesses and may extend to other aspects such as the promotion of capital movements and investments

7. Technical Cooperation: Technical cooperation is foreseen under some of EFTA's free trade agreements, with the objectives of assisting partner countries in their implementation of the FTA and strengthening their capacity to benefit from preferential access to the EFTA markets.

To make the best use of the resources available, EFTA's technical cooperation focuses on areas where expertise may be provided, such as technical standards, rules of origin and general customs procedures, fisheries, trade in services and IPR.

4.0 Assessment of the Impact of EFTA on Free Trade Agreements

Assessing whether EFTA FTAs have impacted negatively or positively international trade flows, and whether such fact has occurred on a global, plurilateral or bilateral level is an extremely complex question. In fact, a whole research could be dedicated to study that theme alone. Whilst this paper does not intend to dig deep into this important issue, it is necessary to visualise its contours and understand if EFTA FTAs has had a positive impact overall. Such analysis should not only be carried out from a purely economic perspective, but also a political perspective.

(i) Positive impacts

For EFTA countries, the fact that EFTA FTAs have positively contributed to enhance the Growth potential of their economies is an indubitable fact. Switzerland has conducted few Researches, which found out in statistical terms that EFTA FTAs beget positive outcomes on trade and investment flows between the parties. For the period from 1988 to 2008,¹⁵ Swiss total trade in goods grew by an annual average of 5.7 per cent while total trade with FTA partners grew on an annual average by more than 10 per cent.¹⁶ This is also reflected in the increase of FDI stock abroad, which grew by respectively 12.6 per cent and 18 per cent on average per annum in the world and FTA partner countries. For Liechtenstein and its pocket-sized market, acquiring new market opportunities outside of the EEA zone has allowed to increasing substantially employment levels and to keeping Liechtenstein's competitiveness afloat. Iceland and Norway share the same views and conceive EFTA as a vehicle spawning trade rather than diverting it. Unearthing trade diversion effects is a difficult exercise but EFTA's pragmatism have pushed the Member States to not worry too much about gravity models¹⁸³ and Viner's theories, as their small market may not have a strong impact on international trade. Ultimately, it is unclear if FTA partners have enjoyed the same benefits but a preliminary answer may hint towards a

15 DARIUS RAO; "Past Achievements and Challenges Of the European Free Trade Relations and beyond (1991-2011)"; available at www.wti.org/fileadmin/user-upload/wti.org/-master.programme/pdfs/masterthesis-darius accessed 28 April 2014.

16 www.efta.int/site/default/files/publication/this-is-efla/this-is-efla-2012.pdf accessed 28 April 2014

yes, merely because FTA partners obtain extra preferences their neighbours may not possess (except in the European continent which is nearly fully covered by EFTA PTAs). Again, because of the small size of EFTA markets, FTAs may not distort enough trade patterns to worry the neighbours. Other notable positive impacts – that are difficult to verify so far – relate to the diffusion of democratic values through FTAs. Any rule-based approach that parties intend to comply with may strengthen the rule of law and may help to embed.

In the same vein, FTAs foster good entente, constructive partnership and rise of common interests between the parties. It would be naïve to say that EFTA FTAs have had such a tremendous influence in partner countries where democratic regimes are not well established, but they are nonetheless indispensable instruments that may have a negligible although positive impact in terms of results. Such results may flourish more often if EFTA decides to thoroughly follow the EU path of including social and human rights clauses in FTAs.

(ii) Negative impacts

Negative impacts of EFTA FTAs seem to be so far mostly absent for EFTA countries.

Sensitive sector where unemployment may be a risk are usually not affected by trade negotiations (e.g. in the agricultural sector). Potential negative effects fall rather on the side of the FTA partners, specifically those from developing countries. Indeed, concessions granted to developing countries such as Chile, Peru, Colombia, Mexico or SACU States only marginally improve market access. Developing countries tend to rely more on the primary sector than EFTA States do and are thereby more exposed than EFTA. For agricultural goods, tariff preferences in FTAs do not vary greatly compared to the level of protection granted through the GSP scheme. For instance, the average Swiss tariff for agricultural products is 27.2 per cent under the GSP and only 0.5 per cent lower in EFTA FTAs.¹⁷ Lesotho is the only FTA partner, which enjoys almost complete duty-free treatment due its least-developed country status. Furthermore, tighter intellectual property rules prevent developing countries from commercializing cheap generic drugs that poverty-stricken populations could thereof benefit. The requirement to ratify the International Convention for the Protection of New Varieties of Plants (UPOV Convention) is also an issue as it removes the possibility for developing countries to elaborate a tailored varieties protection system with an equitable share of benefits. In terms of investment, EFTA countries manage to create a safer investment environment for their economic operators. This is however done without creating better protective conditions for the recipient country. In other words, investment clauses do not provide for distributive qualities of investment and protection of consumers in the host country, which may

¹⁷ *ibid*

lead to abuse by EFTA investors. Finally, EFTA FTAs may have a negative impact on intra-regional trade outside of the EU. If a country like Peru shifts some of its export flows towards EFTA countries because of higher barriers in Ecuador or Bolivia, this would have repercussions for those countries, especially if they do not benefit from any comparative advantage in the sectors concerned. Buying those Peruvian goods from more expensive markets may reduce consumers' welfare and regional integration dynamics would be affected adversely. The only winner would be Peru and EFTA countries, which for the latter would be unfair in terms of development policy and distributive equity. This is a typical illustration of trade diversion. In such case why would FTA partners decide to sidestep the multilateral trading system in order to engage themselves in preferential trade negotiations if it was not advantageous? States have a tendency to behave rationally, i.e. protecting their national interests at all costs, even though it may be at the expense of others. This may be a simplistic question but in terms of solely domestic interests, EFTA FTAs are perceived as creating trade (and they generally do)

5.0 Conclusion and Recommendations

In conclusion, it can be rightfully argued that over the past years, EFTA has done a Remarkable job in adjusting to the ceaseless economic and political changes in Europe and around the world. EFTA's future does not necessarily look shiny but it certainly does not look dull.

The participation of parliamentarians, trade unions, employer's organisation and other social partners from the advisory bodies of the Association has improved transparency, visibility and legitimacy before citizens of the Member States. EFTA remains a quite low profile and underrated organization in the domestic and international spheres but it certainly stands out in terms of quantity and quality of its Free Trade Agreements. Support from the EFTA countries' civil society is in majority affirmative but efforts should be made in order to increase the dialogue between FTA partners and their respective nationals. It is difficult to assess whether public opinion has been taken into account when a FTA partner concludes an agreement and whether all options have been considered in order to avoid discriminatory situations. It is the opinion of the writer that increasing transparency and interaction with the public may have a very positive impact on EFTA.