

AID-FOR-TRADE CASE STORY

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Negotiating the COMESA-EAC-SADC Tripartite FTA

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Table of Contents

Executive Summary

1. Issues Addressed and Objectives Pursued
 2. Factors for Success/Failure
 3. Results Achieved
 4. Lessons Learned and Conclusion
-

Executive Summary

The Common Market for Eastern and Southern Africa, the East African Community and the Southern African Development Community (COMESA-EAC-SADC) Tripartite brings together 26 southern and eastern African countries, which are members of these three Regional Economic Communities¹ (RECs). These countries have committed themselves to implement various programmes aimed at deepening integration of their economies in a joint effort to improve the standards of living of their nationals by addressing poverty through achieving increased levels of trade-led economic growth and development.

In October 2008 the COMESA-EAC-SADC Tripartite Summit, held in Kampala, Uganda, agreed on the need to harmonise trading arrangements amongst the three RECs and on the need for free movement of business persons, joint implementation of inter-regional infrastructure programmes and institutional arrangements.

Since the Heads of State took their decision on the Tripartite FTA the Tripartite Task Force (TTF), led by the Trade Sub-Committee, has prepared a Draft FTA Roadmap and a Draft Agreement establishing the Tripartite FTA, including annexes on non-tariff barriers, rules of origin, customs co-operation, transit trade and transit facilities, trade remedies, competition policy and law, standards, SPS measures, movement of business persons, Intellectual Property Rights, services negotiations, dispute settlement and institutional arrangements.

The FTA roadmap presupposes that the 26 countries will need to engage in negotiations but also recognises that there are already in place PTA and FTA trading arrangements among the 26 countries. This means that not all 26 countries will need to negotiate with each other.

Negotiations for the Tripartite FTA should be guided by the principles of duty-free, quota-free market access with no a priori exclusions or exceptions; standstill provisions and incremental liberalisation; Most Favoured National Treatment; and National Treatment.

Significant progress has been made in implementing the Tripartite FTA. A number of country missions to explain the Tripartite FTA and to present the draft agreement have been made. The group of experts appointed by the TTF have met to review and make improvements to the Tripartite FTA draft Agreement and its Annexes and the Draft FTA Roadmap. These documents are being cleaned up, including putting the agreements into legal language, and were sent to the Tripartite Member/Partner States at the end of 2010.

¹ These are Angola, Botswana, Burundi, Comoros, DRC, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Lesotho, Libya, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

Negotiations on tariff liberalisation, as proposed in the FTA draft Agreement, should be done on the basis of the following:

- *Tripartite countries shall lock in the Tripartite FTA the level of tariff liberalisation achieved in each REC by January 2012;*
- *The automatic extension of the highest attained level of tariff liberalisation achieved in each REC by January 2012 to countries of other REC FTA members; and*
- *Negotiations by those countries not implementing an FTA, or are not a member of a customs union with other Tripartite members.*

This approach is designed to entail limited negotiations for countries already implementing a regional FTA or CU and so lock in their existing preferential status into a new FTA.

1. Issues Addressed and Objectives Pursued

A total of 26 countries make up the COMESA-EAC-SADC Tripartite. Some of these belong to more than one REC:

- *COMESA*: has a total membership of 19, 8 of which are also members of SADC and 4 of EAC;
- *EAC*: has a total membership of 5, 4 of which are also members of COMESA and 1 of SADC; and
- *SADC*: has a total membership of 15, 8 of which are also members of COMESA and 1 EAC

The multiple membership illustrated above has made it difficult for countries belonging to more than one REC to fully implement the trading arrangements which they have committed to under the different RECs, often resulting in selection of some options available to them but not all. The establishment of the proposed COMESA-EAC-SADC Tripartite FTA is intended to address the contradictions and challenges arising from this overlapping in membership. This will be achieved through rationalising and harmonising the existing trading arrangements in the process of establishing the Tripartite FTA. Therefore, the Tripartite FTA is being designed in such a manner that it takes into account the levels of integration already attained in the 3 RECs, as shown below.

The three RECs are individually implementing comprehensive trading arrangements as follows:

- *COMESA*: 14 of its 19 Member States are trading under the terms of the COMESA FTA, while 4 are still implementing its Preferential Trade Area. COMESA has made significant progress towards establishing its customs union which was launched during 2010 but is yet to be implemented.
- *EAC*: all 5 Member States are implementing the EAC customs union and are already working toward the establishment of a common market.
- *SADC*: The SADC FTA was launched in 2008 with at least 85% of trade being liberalised and the remaining 15% is expected to be fully liberalised by January 2012. 12 of its 15 Member States are currently trading on FTA terms.

Initially, it is anticipated that these REC trading arrangements will co-exist with the Tripartite FTA but the expectation is that the latter will offer better trading terms and hence will become the main instrument for accelerating trade liberalisation and deepening economic integration throughout southern and eastern Africa.

The other positive outcomes of rationalising and harmonising regional trading arrangements through the establishment of the Tripartite FTA include:

- creation of a larger market, which will in turn act as a catalyst for increasing:
 - investment flows into the whole region both from within and outside the region;

- the need to upgrade existing infrastructure and to develop new infrastructure to meet the demands of growing trade;
- opportunities for trading in services, particularly financial, business related, communications, and other services necessary for the promotion and growth of business activities; and
- opportunities for employment creation and welfare gains;
- enhanced competitiveness of the region as trade facilitation improves, leading to increased and more efficient production and job creation; and
- agreement on less restrictive rules of origin which are business friendly, allow for greater cumulation, and enhanced value addition and competitiveness.

The Tripartite FTA is comprehensive, ambitious and covers a wide spectrum of pertinent trade policy and trade related areas necessary for effective implementation of a watertight preferential trading arrangement. The main elements of the Agreement include:

- eliminations of tariffs and non-tariff barriers on goods;
- harmonisation of rules of origin, which should also be less restrictive;
- enhancement of trade in services;
- harmonisation of customs procedures, practices and administrative arrangements and of transit procedures and facilities;
- harmonisation of trade remedy measures;
- development of an effective dispute settlement mechanism;
- development and cooperation in implementing effective competition policy and consumer protection;
- harmonisation of technical barriers to trade - standardisation, metrology, accreditation, conformity and assessment, and sanitary and phytosanitary measures; and
- harmonised intellectual property rights.

Negotiations on tariff liberalisation, as proposed in the FTA draft Agreement, should be done on the basis of the following:

- Tripartite countries shall lock in the Tripartite FTA the level of tariff liberalisation achieved in each REC by January 2012;
- The automatic extension of the highest attained level of tariff liberalisation achieved in each REC by January 2012 to countries of other REC FTA members; and
- Negotiations by those countries not implementing an FTA, or are not a member of a customs union with other Tripartite members.

This approach is designed to entail limited negotiations for countries already implementing a regional FTA or CU and so lock in their existing preferential status into a new FTA. The intention would be to first of all implement the FTA and then to add other FTA-plus issues, such as movement of business persons and services after the FTA itself was finalised.

The preparation of the FTA road map and documentation is supported by the DFID-financed TradeMark Southern Africa Programme working through the COMESA-EAC-SADC Secretariats. This support is in the form of technical and financial assistance.

2. Factors for Success/Failure

Tripartite Member States took ownership of the Tripartite programme and processes to implement it right from inception. The Tripartite agenda, in particular the FTA, enjoys wide recognition and acceptance throughout southern and eastern Africa. There is a high level of commitment at the political level and a lot of support in the business sector. There is, however, a need to raise the level of awareness on the specific benefits, challenges and

implications of the FTA among the business sector. It is critical that the negotiating countries afford their business sectors an opportunity to be actively engaged during the negotiation and implementation phases by providing information and contributing to the development of negotiating positions and provision of technical back-up support to their negotiators whenever the need arises.

The biggest challenges to negotiating a successful Tripartite FTA, and expeditiously implementing it as directed by the First Tripartite Summit, emanate from the heterogeneous nature of the 26 countries constituting the Tripartite. The group consists of roughly an equal number of developing and least developed countries, with the former including a few dominant and larger economies. Because of this diversity the interests, capacities and development priorities of the 26 countries do not always match, with some countries wishing to move much faster than others in implementing certain aspects of the Tripartite agenda, which has a very wide scope.

The multiplicity of trading arrangements in southern and eastern Africa, ranging from bilateral agreements between individual countries to PTA, FTA and customs unions, poses a huge implementation challenge to the business sector, customs administrations and other private and government agencies involved in managing or facilitating trade. Some detractors of the Tripartite FTA often portray it as adding to this maze. However, the philosophy behind the Tripartite FTA is to build on existing trading regimes while also simplifying and harmonising regulatory frameworks and policy measures and instruments in an effort to improve and make implementation much easier and less costly. The achievement of these will help improve the trading environment immensely.

Inadequate resources at the disposal of member states, in terms of negotiation skills and shortage of manpower and funding required to undertake the necessary research and analyses to enable them to effectively prepare for and conduct negotiations are potential difficulties that can slow down progress. The Tripartite Task Force² has been proactive and put in place mitigating measures which include:

- provision of short-term technical assistance, where required;
- building analytical capabilities for trade policy formulation and implementation; and
- imparting trade negotiation skills.

In addition, the Tripartite Task Force will also coordinate and manage the negotiation process, ensuring: proper conduct of negotiation sessions; proper sequencing and prioritisation of negotiating topics; that all pertinent areas necessary for the effective implementation of the FTA are covered; and that negotiations are kept on-track and take place timely as provided for in the Tripartite's Roadmap for negotiating the Agreement.

On completion of the negotiations the Tripartite Task Force will also coordinate and manage the implementation of the agreement and shall ensure that an effective monitoring and evaluation mechanism is in place.

3. Results Achieved

Following the pronouncement by the First Tripartite Summit of its intention to establish an FTA a lot of work has been done by the Tripartite Task Force to prepare for this. To date significant progress has been achieved and the status of the pre-negotiation preparations is as follows:

² The Tripartite Task Force comprises a committee of CEOs of COMESA, EAC and SADC Secretariats. It is assisted in discharging its responsibilities and mandate by two subcommittees which provided technical expertise in the key areas of customs, trade and infrastructure development making up the Tripartite agenda.

- Institutional structures for negotiating the Tripartite FTA have been established and are ready to discharge their responsibilities;
- A draft Tripartite FTA Agreement and its Annexes have been developed and these will form the basis upon which negotiations will be conducted;
- A draft Roadmap outlining the timelines for negotiating the Agreement has been developed; and
- The preparation of negotiation modalities and rules is at an advanced stage.

The documents cited above are currently being considered by Member States as they prepare their negotiating positions.

The negotiations will be launched during the first half of 2011, with actual negotiations expected to commence during the middle of the year.

4. Lessons Learned and Conclusion

The COMESA-EAC-SADC Tripartite has developed a sound vision and strategy which is the radar guiding the journey towards achieving deeper economic integration of the southern and eastern Africa region. The journey of the Tripartite has so far not been easy but it has persevered and performed extremely well, despite challenges faced, mainly the adverse effects of the global financial crisis and the usual struggles third world countries have to contend with. The Tripartite has been pragmatic in its approach and has focused its efforts and limited resources on achieving a few key complementary strategic priority areas aimed at deepening economic integration, the Tripartite FTA being one of them.

The experience of the Tripartite so far has demonstrated that with a good vision and commitment it is possible to turn around challenges in a relatively short period of time into opportunities. Additionally, through harmonisation the region will be able to ameliorate the adverse effects of diversity and rationalise trading arrangements.