

COMESA-EAC-SADC TRIPARTITE

**THIRD MEETING OF THE TECHNICAL WORKING GROUP ON TRIPARTITE
TRADE IN SERVICES NEGOTIATIONS**

HILTON, KENYA

16-21 SEPTEMBER 2019

REPORT

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INTRODUCTION

1. The third Technical Working Group (TWG) on Tripartite Trade in Services was held from 16-21 September 2019 at Hilton Hotel, Nairobi. The main objective of the meeting was to finalize the draft Modalities for Tripartite Free Trade Area (TFTA) Trade in Services Negotiations and consider the initial draft Protocol on Trade in Services as envisaged under Article 45 of the Agreement establishing the COMESA-EAC-SADC TFTA.

2. The meeting was attended by delegates from; Botswana, Eswatini, Kenya, Malawi, Mauritius, Namibia, Rwanda, South Africa, Sudan, Uganda, United Republic of Tanzania and Zambia. Staff from the COMESA, EAC, SACU and SADC Secretariats also attended the meeting. The list of participants is attached as **Annex 1**.

3. The meeting was chaired by Mr. Okot Okello Richard, Assistant Commissioner External Trade, Ministry of Trade, Industry and Cooperatives, Republic of Uganda, representing COMESA. The vice chair was Mrs Laurence Mukarugwiza, External Trade Policy Specialist, Ministry of Trade and Industry, Republic of Rwanda representing EAC and the Rapporteur was Sakeus Kapenda, Chief Trade Analyst at Ministry of Industrialisation, Trade and SME Development, Namibia, representing SADC.

CONSTITUTION OF THE BUREAU (*Agenda Item 1*)

4. The meeting elected the following Bureau to preside over the affairs of the meeting:

Chairperson:	Republic of Uganda, representing COMESA
Vice Chairperson:	Republic of Rwanda, representing EAC
Rapporteur:	Republic of Namibia, representing SADC

WELCOME AND OPENING REMARKS (*Agenda Item 2*)

5. The meeting was officially opened by Mrs Hellen Kenani, Assistant Director, Ministry of Industry, Trade and Cooperatives, Kenya as the host. She welcomed the delegates to the Nairobi. In her speech, Mrs Kenani noted that the 7th and 8th meeting of the Council gave the mandate to finalize outstanding issues in phase I in order to operationalize the TFTA and to commence negotiations on phase II issues. She called on the meeting to finalize the different issues where possible, this would enable Tripartite Member/Partner States to push a common agenda for the African Continental Free Trade Area (AfCFTA) negotiations.

6. The Chairperson, Mr Okot Okello Richard, welcomed the delegates to the meeting and thanked them for making time to attend the meeting. He further thanked the Government of Kenya for hosting the meeting.

7. He explained that the meeting needed to finalize the Modalities and consider the draft Protocol on Trade in Services. He urged the delegates to have constructive deliberations and allow flexibility in order to ensure the conclusion of Tripartite Trade in Services negotiations.



ADOPTION OF THE DRAFT AGENDA AND ORGANIZATION OF WORK (*Agenda item 3*)

8. The meeting considered the draft Agenda and adopted it as follows:
 1. Constitution of the Bureau (*Agenda item 1*)
 2. Welcome and Opening Remarks (*Agenda item 2*)
 3. Adoption of the Agenda (*Agenda item 3*)
 4. Regional Economic Communities Consultations (*Agenda Item 4*)
 5. Training session on development of regulatory frameworks (*Agenda item 5*)
 6. Matters arising from the Second Meeting of the TWG on Tripartite Trade in Services (*Agenda item 6*)
 7. Consideration of the draft Modalities for the Tripartite Trade in Services Negotiations (*Agenda item 7*)
 8. Consideration of Initial Draft Tripartite Protocol on Trade in Services Text (*Agenda item 8*)
 9. Consideration of Priority Sectors and Sub-sectors for Tripartite Trade in Services Negotiations (*Agenda item 9*)
 - 9.1. Consideration of Member States' Ranking of the Sectors and Subsectors
 - 9.2. Selection of Priority Sectors and Sub-sectors for Tripartite Trade in Services Negotiations
 10. Review of the Draft Roadmap for the TWG on Tripartite Trade in Services (*Agenda item 10*)
 11. Any Other Business (*Agenda item 11*)
 12. Date and venue of Next Meeting (*Agenda item 12*)
 13. Adoption of Report and closure of the Meeting (*Agenda item 13*)

REGIONAL ECONOMIC COMMUNITIES CONSULTATIONS (*Agenda Item 4*)

9. Member/Partner States and RECs were given time to undertake consultations.

TRAINING SESSION ON DEVELOPMENT OF REGULATORY FRAMEWORKS (*Agenda item 5*)

10. The TTF conducted a training session on regulatory frameworks. The training covered the following: the need for regulation; quality of regulation; services regulation and trade in services; regulatory institutions; and approaches to regulatory framework.

Discussion

11. The meeting raised the following issues:
 - a) How to separate policy and regulatory functions;
 - b) The difference between reference paper, protocols and annexes;
 - c) The need to develop sectoral or cross cutting regulatory frameworks to facilitate trade in services where appropriate;
 - d) There is need to consider the different existing regulatory frameworks in the Tripartite RECs and elsewhere;

Recommendation

12. The meeting recommended the following:
 - i. That TTF prepare a matrix on the existing regulatory frameworks in the Tripartite RECs; and
 - ii. The Protocol to provide for the development of sectoral and/or cross cutting regulatory frameworks to facilitate trade in services where appropriate.

MATTERS ARISING FROM THE SECOND MEETING OF THE TWG ON TRIPARTITE TRADE IN SERVICES *(Agenda item 6)*

13. The meeting recalled the issues that arose from the 2nd TWG on Tripartite Trade in Services as follows:
 - a) Training on regulatory frameworks- As requested by Member/Partner States, the TTF organized the training session on 17 September 2019. This was to assist the meeting in the finalization of the Modalities;
 - b) Selection of priority sectors-The TTF sent letters to Member/Partner States requesting for submission of the ranking of nine highly ranked sectors that would assist the selection of priority sectors. Only three Member/Partner States had submitted their ranking by 16 September 2019 namely; Egypt, Kenya and Mauritius; and
 - c) Draft Tripartite Protocol on Trade in Services-the TTF drafted and circulated the initial draft Protocol to Member/Partner States for their consideration.

CONSIDERATION OF THE DRAFT MODALITIES FOR THE TRIPARTITE TRADE IN SERVICES NEGOTIATIONS *(Agenda item 7)*

14. The meeting considered the draft Modalities for Tripartite Trade in Services Negotiations.

Discussion

15. The meeting noted the following:
 - a. The proposed criterion for selecting the priority sectors are all important and should not be weighted;
 - b. The criteria to promote regional infrastructural development and linkages, value chains, trade logistics and facilitation should include industrialization aspect; and

Recommendation:



16. The meeting agreed that the Modalities for the Tripartite Trade in Service Negotiations attached as Annex 2: TP/TWG-TIS/9/2019/- Modalities be submitted to the Tripartite Trade Negotiating Forum (TTNF) for consideration.

CONSIDERATION OF INITIAL DRAFT TRIPARTITE PROTOCOL ON TRADE IN SERVICES TEXT (Agenda item 8)

17. The meeting considered the initial draft Tripartite Protocol on Trade in Services text. The meeting proposed amendments to the draft protocol as contained in **Annex 3: TP/TWG-TIS/09/2019/-Draft Protocol on Tripartite Trade in Services.**

Discussion

18. During the meeting Member/Partner States raised, amongst others, the following issues:

- a) The preamble of the Protocol should borrow some text from the TFTA Agreement;
- b) The objective could include the free movement of service suppliers;
- c) Creating a single market and enhancing the welfare of the people are important;
- d) The liberalization of trade in services should be substantial, therefore there might be need to define the term "substantial liberalization";
- e) Substantial liberalization was covered in the Modalities under the scope and coverage and defined in Annex 1 to the Modalities on definition of guiding principles;
- f) The MFN as provided in the TFTA Agreement relates to granting of preferences offered by Member/Partner States to third countries. This does not cover how preferences will be granted among the Tripartite Member/Partner States;
- g) There is need to provide for how Tripartite Member/Partner States will grant preferences among themselves as in the context of GATS;
- h) Articles on monopolies and exclusive service suppliers, Anticompetitive business practices and subsidies should take into account what is being done under Tripartite TWG on competition;
- i) Under the article dealing with denial of benefits, there may be need to provide for notification and consultation prior to denial of benefits, and this should also apply to natural persons;
- j) There is need for TFTA Agreement to differentiate between a Tripartite Member/Partner State and State party as this may have implication on the article on denial of benefits. Lack of the definition of a State Party in the agreement creates a legal lacuna which may allow a Member/Partner State who has signed but not ratified the Protocol to benefit;
- k) Paragraph 4 of the Article on modification of schedules of specific commitments to be revisited after conclusion of the article on MFN; and
- l) Mutual Recognition Agreements (MRAs) be included in the definitions.

19. The meeting agreed that Member/Partner States need to conduct national consultations on the draft Protocol taking into account proposals submitted during the meeting.

Recommendations:

20. The meeting recommended that:

- i. Member/Partner States to conduct national and regional consultations on the draft Protocol as contained in Annex 3: TP/TWG-TIS/9/2019-Draft Protocol on Trade in Services
- ii. A meeting of the TWG be scheduled before the draft Protocol is submitted to TTNF; and
- iii. There is need to seek guidance on the difference between Member/Partner States that have signed, ratified and deposited the instrument of ratification and those that have not ratified and deposited their instruments of ratification of the TFTA Agreement.

CONSIDERATION OF PRIORITY SECTORS AND SUB-SECTORS FOR TRIPARTITE TRADE IN SERVICES NEGOTIATIONS (*Agenda item 9*)

21. The meeting noted that only three Member/Partner States had submitted their ranking namely; Egypt, Kenya and Mauritius as follows:

- Egypt- financial, communication, tourism, construction and transport;
- Kenya-education, health, construction, distribution, transport, communication, financial, tourism and business services; and
- Mauritius- business, financial, construction, distribution, transport, health, education, communication and environmental.

Discussion

22. The meeting raised the following issues:

- a) The selection of priority sectors for Tripartite negotiations should be guided by what has been prioritized in COMESA, EAC and SADC instead of the previously highly ranked sectors agreed upon during the 2nd TWG;
- b) The priority sectors in the Tripartite RECs are; business, communication, construction, distribution, education, energy-related, financial, tourism and transport services as shown in Table 1;

Table 1: Tripartite RECs' priority sectors

S/N	EAC	COMESA	SADC	Tripartite RECS
1.	Financial	Transport	Business Services	✓ Communication
2.	Communication	Communication	Financial services	✓ Transport
3.	Tourism	Construction	Construction	✓ Tourism
4.	Construction	Financial	Energy-related	✓ Financial
5.	Transport	Business	Transport	Construction
6.	Distribution	Tourism	Communication	Education
7.	Education	Energy-related		Business
8.				Distribution

- c) In the RECs, most Member/Partner States have made commitments in communication, financial, tourism and transport sectors;
- d) Member/Partner States consult on the nine prioritized sectors in the Tripartite RECs and choose seven sectors for prioritization in the Tripartite negotiations.

Recommendation

23. The meeting recommended that Member/Partner States consult on the nine prioritized sectors in the Tripartite RECs and choose seven sectors for submission to the TTNF for their consideration and selection of priority sectors.

REVIEW OF THE DRAFT ROADMAP FOR THE TWG ON TRIPARTITE TRADE IN SERVICES *(Agenda item 10)*

24. The meeting considered the draft Roadmap for the Tripartite Trade in Services Negotiations as adopted during the 2nd TWG meeting.

Discussion

25. The meeting raised the following issues:

- a) There is a need to have a workshop/conference on tripartite trade in services that will involve the private sector and the relevant development partners; and
- b) Member/Partner States or RECs to undertake consultations on the 1st draft Tripartite Protocol on Trade in Services and submit their comments by 1 November 2019.

26. The meeting considered and amended the Roadmap for the Tripartite Trade in Services Negotiations as attached in **Annex 4 - TP/TWG-TIS/9/2019 - Roadmap**.

Any Other Business *(Agenda item 11)*


27. The meeting did not raise any item for discussion under this agenda item.

Date and Venue of Next Meeting *(Agenda item 12)*

28. Member/Partner States will be advised on the date and venue of the next meeting.

Adoption of Report and Closing of the Meeting *(Agenda item 13)*

29. The Report was adopted and signed by the Chairperson, Vice Chairperson and Rapporteur on 21 September 2019 as reflected below.



Chairperson
Okot Okello Richard
(Republic of Uganda)
COMESA



Vice Chairperson
Mrs Laurence Mukarugwiza
(Republic of Rwanda)
EAC



Rapporteur
Sakeus Kapenda
(Republic of Namibia)
SADC

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3RD TWG ON TRADE IN SERVICES
16-21 SEPTEMBER, 2019, NAIROBI, KENYA

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