



Annex 2

**MODALITIES FOR THE TRIPARTITE
TRADE IN SERVICES NEGOTIATIONS**

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MODALITIES FOR TRIPARTITE FREE TRADE AREA (TFTA) TRADE IN SERVICES NEGOTIATIONS

A. Background

1. The negotiations for the establishment of Tripartite Free Trade Area (TFTA) started with the Tripartite Summit of Heads of state and government of the Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC) and Southern Africa Development Community (SADC) in October 2008 in Kampala, Uganda under the umbrella of Cape to Cairo initiative. The summit identified modalities on how the three Regional Economic Communities (RECs) could move towards deeper cooperation in their efforts towards trade and economic liberalization, including implementing joint programmes to facilitate, among other things, intra - regional trade, free movement of persons, and infrastructure development. The Summit agreed on the establishment of the TFTA within a 5-year period, the adoption of a roadmap for its achievement, and design a coordination mechanism between the three RECs.

2. The second Summit held in 2011 adopted a three-pillar development approach comprising: market integration, infrastructure development, and industrial development. Three key steps were achieved at this summit: i) a declaration launching the negotiations for the establishment of COMESA-EAC-SADC Tripartite FTA, ii) adoption of the post signature implementation roadmap for the establishment of the TFTA and iii) the adoption of the negotiating principles, processes, and institutional framework. The negotiations are being conducted in two phases. The first phase focused on trade in goods, covering issues such as tariff cuts, rules of origin, dispute resolution, customs procedures and simplification of customs documentation, non-tariff barriers, and other trade related issues. The negotiations on agreement on movement of business persons were conducted parallel to those on trade in goods. The second phase covers trade in services, cooperation in trade and development, competition policy, intellectual property rights and cross border investment.

3. The 3rd Tripartite Summit held on 10 June 2015 in Sharm-El-Sheikh, signed the Tripartite Free Trade Agreement, launched the Tripartite Free Trade Area and adopted the Tripartite FTA post signature implementation roadmap. Among others, second phase negotiations are envisaged to be completed within twenty-four (24) months of the start of the negotiations.

4. The modalities outline the objectives, existing regimes for trade in services by Tripartite Member/Partner States, principles of negotiation, negotiating parties, scope and coverage, approaches and methods of negotiation, basis of negotiation, process of liberalization, role of the Tripartite Secretariat/Task Force, technical assistance and capacity building.



B. Objectives of the Modalities

5. The objective of these modalities is to assist Member/Partner States and RECs involved in the TFTA negotiations in preparing for the negotiations on trade in services, as well as to guide these negotiations.

C. Existing Regimes for Trade in Services by Tripartite Member States

6. The majority of Tripartite Member/Partner States are members of the World Trade Organization (WTO) and have undertaken specific commitments under the General Agreement on Trade in Services (GATS).

7. Tripartite Member/Partner States are currently trading under various arrangements in each REC. RECs are in different stages of liberalization of trade in services.

8. The sectoral coverage of the RECs and AfCFTA is shown in the table below:

SERVICES SECTORS (W/120 LIST)	COMESA	EAC	SADC	AfCFTA
BUSINESS SERVICES	2nd round	1st round	2nd round	1st round
- Including professional, ICT	(On-going)	(Finalized)	(On-going)	(On-going)
COMMUNICATION	1st round	1st round	1st round	1st round
- Including postal, courier, telecom, audio-visual	(Finalized)	(Finalized)	(Finalized)	(On-going)
CONSTRUCTION AND RELATED ENGINEERING	2nd round	2nd round	1st round	2nd round
	(On-going)		(Finalized)	
DISTRIBUTION		1st round	2nd round	2nd round
		(Finalized)		
EDUCATIONAL		1st round		2nd round
		(Finalized)		
ENVIRONMENTAL		2nd round		
FINANCIAL	1st round	1st round	1st round	1st round
- Including banking, insurance, other FS	(Finalized)	(Finalized)	(Finalized)	(Finalized)
HEALTH AND SOCIAL		2nd round		2nd round
TOURISM AND TRAVEL	1st round	1st round	1st round	1st round
	(Finalized)	(Finalized)	(Finalized)	(Finalized)
RECREATIONAL, CULTURAL, SPORTING		2nd round		2nd round

TRANSPORT	1st round (Finalized)	1st round (Finalized)	1st round (Finalized)	1st round (Finalized)
OTHER		2nd round		2nd round
ENERGY-RELATED	2nd round		1st round (Finalized)	
Database references	http://comst at. comesa.int	TBC	TBC	TBC

9. Many TFTA Member/Partner States/RECs have undertaken autonomous liberalization in certain services sectors.

D. Principles

10. The following negotiating principles, adapted from Article 6 of the Agreement establishing the TFTA, shall apply to the Tripartite Trade in Services Negotiations:

- i) The TFTA negotiations shall be Member/Partner States/RECs/Common Market driven with support of the Tripartite Secretariat/Task Force and its structures
- ii) RECs FTAs as building blocs for the TFTA
- iii) Preservation of 'acquis'
- iv) Variable geometry
- v) Flexibility and special and differential treatment
- vi) Transparency and disclosure of information
- vii) Substantial liberalization
- viii) Most-Favoured Nation (MFN) treatment
- ix) National treatment
- x) Reciprocity
- xi) Decisions shall be taken by consensus

11. The definition of the above guiding principles is attached herewith as Annex I.

12. Negotiating Parties

13. As provided for in the TFTA Agreement, Member/Partner States/RECs shall undertake services liberalization negotiations.

14. Member/Partner States of RECs are encouraged to coordinate their positions at the level of the RECs and may negotiate with other Member/Partner States as a bloc.

E. Scope and Coverage

15. There shall be no *a priori* exclusion of any service sector or mode of supply of services in the negotiations. Thus, the scope of the trade in services negotiations will cover all service sectors as well as all modes of supply as defined under GATS. The negotiations shall take place in phases with the initial phase covering the agreed priority services sectors and the remaining sectors to be covered in the subsequent negotiation phases.

16. The TFTA Protocol on Trade in Services will be a comprehensive agreement and shall aim at substantial and progressive liberalization of trade in services between the participating Tripartite Member/Partner States.

17. In identifying the priority sectors, TFTA negotiations shall be guided by the following criteria:

- a. promote regional infrastructural development and linkages, industrialization, value chains and trade logistics and facilitation
- b. reduce the cost of doing business and enhance competitiveness;
- c. emerging high growth sectors and employment creation;
- d. services that address human resource capacity development;

F. Approaches and Methods of Negotiations

18. These modalities for TFTA Trade in Services negotiations draw lessons from best practices including the COMESA, EAC, SADC, GATS, AfCFTA, regional and bilateral agreements as well as autonomous liberalization by Member/Partner States.

19. Negotiations for trade in services shall proceed on the basis of progressive liberalization that combines GATS-type scheduling of specific commitments, on the one hand, with regulatory frameworks, on the other hand, in a mixed approach. The methodology of negotiations shall be based on a positive list with liberalization on the platform of request and offer by Member/Partner States.



20. Regulatory frameworks shall facilitate trade in services amongst TFTA members, by establishing principles and guidelines for regulation of trade in services and for regulatory cooperation.

21. The right to regulate and introduce new regulations shall remain the exclusive competence of each Member/Partner State.

22. In this mixed approach, there shall be three main components to the Protocol on Trade in Services which are:

- A Framework Services Agreement,
- Schedules of Specific Commitments, and
- An annex on Regulatory Frameworks.

23. As a basis for the negotiations on the schedules of specific commitments, Member States shall submit their offers, clearly identifying limitations in market access and national treatment in accordance with GATS schedules format.

G. Process of Liberalization

24. The liberalization process shall focus on the progressive elimination of restrictive measures that affect trade in services in Member/Partner States.

25. In negotiating specific commitments, Member/Partner States shall take into account the level of development of other Member/Partner States.

26. Drawing lessons from the experience of RECs, as appropriate, the timeframe for the progressive liberalization in all services sectors and all modes of supply under TFTA shall be through successive rounds of negotiations.

H. Role of the Tripartite Secretariat/Task Force

27. The Tripartite Secretariat/Task Force shall be the coordinating body for the TTNF and focal point for the depository of all negotiation documents, and is responsible for preparing technical papers, draft working documents as well as circulation of relevant documents.

I. Technical Assistance and Capacity Building

28. Member/Partner States may request the TTF, in collaboration with its technical partners such as UNCTAD and UNECA, for technical assistance and capacity building to facilitate the process of negotiations.

Annex I:

DEFINITIONS OF THE GUIDING PRINCIPLES FOR THE TRIPARTITE FREE TRADE AREA (TFTA) TRADE IN SERVICES NEGOTIATIONS

1. Negotiating Parties

The TFTA negotiations on Trade in Services shall be Member States/RECs driven, with support of the Tripartite Secretariat/Task Force and its structures. Where applicable, RECs can negotiate as a bloc.

2. REC FTAs as Building Blocks of the TFTA

The TFTA shall build on and where possible improve upon the progress that has been made in the trade liberalization and integration programs of the Tripartite RECs namely: COMESA, EAC and SADC.

3. Preservation of the Acquis

The TFTA shall build on and where possible improve upon the acquis of the existing REC FTAs.

4. Variable Geometry

Variable geometry allows progression in cooperation and implementation among TFTA negotiating Member/Partner States in a variety of areas at different speeds.

5. Flexibility and Special and Differential Treatment

Flexibility shall be accorded to Member/Partner States that have special trade needs, specificities and circumstances, during the negotiations and the implementation of the TFTA agreement.

Special and Differential Treatment shall apply to flexibilities in transitional periods for liberalization, exemptions as well as other measures within the scope of the TFTA negotiations applicable to Member/Partner States at different levels of socio-economic development.

6. Transparency and Disclosure of Information



The TFTA negotiations shall be conducted in a transparent manner including sharing information on trade in services statistics, trade policy instruments and measures/regulations affecting trade in services and investment in their countries.

Member/Partner States shall not be required to disclose confidential information to the extent that such information is not already published, generally available to third parties or otherwise in the public domain.

7. Substantial Liberalization

Substantial liberalization means that the TFTA should cover substantially all the trade among Tripartite Member/Partner States. In addition, the liberalization undertaken by Member/Partner States should be ambitious and commercially meaningful.

8. MFN Treatment

MFN Treatment means that advantages that any Tripartite Member/Partner State offers to third countries would be offered to other Tripartite Member/Partner States. The purpose is to ensure that Tripartite Member/Partner State trade amongst each other on terms as good as or better than that offered to non-FTA partners. These advantages would be extended on reciprocity.

9. National Treatment

National Treatment means that a Member/Partner State shall accord to services and service providers of other Member/Partner States, treatment that is no less favourable than it accords to like domestic services and service providers.

10. Reciprocity

Reciprocity means that Members of the TFTA shall accord each other mutually agreed trade in services concessions.

11. Decisions shall be taken by consensus

A matter submitted for consideration to a meeting shall be deemed to have been taken by consensus if no Member/Partner State, present at the meeting where the decision is taken, formally objects to the proposed decision.

