Common Market for
Eastern and Southern Africa

Why the COMESA-EAC-SADC Tripartite Free Trade Area is Ideal for Strengthening African Continental Integration

Special Report

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Background

The COMESA[1] - EAC[2] - SADC[3] Tripartite Free Trade Area (TFTA), which was signed in 2015 comprises 29 countries representing 53 percent of the African Union Membership, more than 60 percent of continental GDP ($1.88 Trillion; 2019) and a combined population of 800 million. The Tripartite remains a building block towards Africa's continental integration and this has never been in doubt. Indeed, one of the general objectives of the Tripartite FTA is to "enhance the regional and continental integration processes" (Tripartite Agreement -article 4 (c)).

The historic 18th Ordinary Session of the Assembly of Heads of State and Government on 20 – 30 Jan 2012 in Addis Ababa, Ethiopia endorsed the initiative and invited other Regional Economic Communities (RECs) to draw inspiration from the Tripartite and create a second pole to speed up the establishment of the African Economic Community. More specifically, the same Assembly, which also endorsed the framework for Action Plan for Boosting of Intra-African trade and fast-tracking of the African Continental Free Trade Agreement (AfCFTA) also called for finalization of the Tripartite FTA and its subsequent consolidation with other regional FTAs into the AfCFTA.

However, progress in market integration among RECs has since been uneven. Whereas some have completed their FTAs and advanced to higher levels of integration such as customs unions and common markets, others, including the Tripartite are yet to operationalize their FTAs. To date, the Tripartite has been signed and ratified by 22 and 11 Member States, respectively. Thus, operationalization of the Tripartite falls short by merely three Member States.

Unlike the Tripartite, the signature and ratification of the AfCFTA took a very rapid course, thanks to political goodwill of the AU Member States. To date 54 AU members have signed the Agreement while 43 ratified and deposited their instruments. In terms of modalities of negotiations, the AfCFTA has adopted a hybrid model in which State Parties and Non-State Parties both drive the negotiation process. This is contrary to initial expectations that RECs would accelerate the process. The AfCFTA Negotiation Forum gave the Member States the mandate to spearhead negotiations as opposed to RECs on behalf of their members. The rules however, indicate that the RECs can participate in the negotiations and provide guidance on behalf of their members. Perhaps, this was necessitated by the fact that the RECs experienced varied degrees of progress in consolidating their FTAs.

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1 The Common Market for Eastern and Southern Africa
2 East African Community
3 Southern Africa Development Community

What makes the Tripartite ideal for strengthening continental integration?

Despite the slow Tripartite ratification process, a lot of progress has been achieved when it came to setting of modalities of negotiations, and structures, rules and guidelines. It was therefore not a coincidence when the AfCFTA drew several lessons from the Tripartite in terms of its modalities and instruments to guide the negotiations in trade in goods, including the principles, texts, annexes, and architecture.

> **"The Tripartite has a more ambitious tariff liberalization schedule compared to the AfCFTA".**

Under the market integration pillar, the Tripartite has a more ambitious tariff liberalization schedule compared to the AfCFTA. Whereas the latter's level of tariff liberalization ambition is 90 percent for non-sensitive products, 7 percent for sensitive products and 3 percent exclusion list, the Tripartite level of ambition is 100 percent tariff liberation (except for general and specific security exemptions) of which 60 percent to 85 percent tariff lines are to be liberalized upon entry into force of the agreement and 15 - 40 percent of the remaining tariff lines are to be negotiated within a period of 5-8 years.

It is important to note that Southern Africa Customs Union (SACU) and EAC both of which are Customs Unions, have exchanged tariff offers that average 90 percent of their tariff books to be liberalized immediately on commencement of implementation of the Tripartite Agreement. Several other Tripartite Member/Partner States have based their tariff offers on the acqui,[4] indicating that they have carried over the level of tariff liberalization they have attained under the various FTAs in the specific RECs to which they belong. For example, those in COMESA and SADC such as Madagascar, Mauritius, Malawi, Seychelles, Zimbabwe, Zambia that have attained highest level of tariff liberalization would extend similar level of ambition in the Tripartite FTA.

In terms of advancing negotiations, substantial progress has been made so far. For instance, several Tripartite Member/Partner States have exchanged tariff offers while two Customs Unions – the EAC and SACU have concluded first phase of negotiations on tariff offers. The tariff negotiations between Egypt and SACU and EAC have been initiated and are at advanced stages. Notably, 90 percent of the TFTA list of Rules of Origin have been agreed and already contained in Annex IV of the TFTA Agreement. So far, only two issues regarding the rules of origin of some products of the textiles and automobiles sectors remain outstanding. In addition, a manual and regulations on rules of origin have been developed to facilitate implementation of Annex IV of the TFTA Agreement.

On marine fishery products, the TFTA rules of origin allow coastal Member/Partner States to exploit such resources

4 Member States in existing FTAs in the regional blocs to build on existing commitments already made without reopening negotiations

from within their Exclusive Economic Zones (EEZ) and such products can be traded under preference. However, for products taken from the sea outside the EEZ, origin is conferred based on certain qualifying criteria for the vessels/factory ships used. Besides flying the flag of a Tripartite Member/Partner State, the vessels/factory ships are required to meet any of the following conditions: have at least 50 percent of the officers or 50 percent of the crew to be nationals of Tripartite Member/Partner States or at least 50 percent of the equity holding to be held by nationals or institutions of the Member/Partner States. In this regard, Tripartite Member/Partner States agreed to extend special and differential treatment to Island Tripartite Member/Partner States (Comoros, Madagascar, Mauritius and Seychelles) where they are exempted from applying the above vessel/factory ship qualifying criteria for a period of ten years from entry into force of the Agreement, with the exemption applying to Tuna and Tuna products only.

Aside from negotiations, several programmes have been developed to build capacity, facilitate trade, and prepare readiness for the TFTA implementation. Notable among these include development of the Tripartite e-Certificate of Origin, Customs declaration documents, Sanitary and Phyto-Sanitary (SPS) instruments for streamlining border inspection, non-tariff barriers (NTBs) reporting, monitoring, and reporting mechanism with a fully operational online database system, implementation of the WTO Trade Facilitation Agreement, One-Stop Border Posts, Integrated Border Management Systems, the Regional Customs Bond, the WCO Harmonized System (HS), the WTO Agreement on Customs Valuation, Single window, Approved Economic Operator programmes and electronic customs management systems

Market integration cannot be complete without well-functioning inter-connectivity infrastructure. Significant progress has been realized in negotiating transport and trade facilitation instruments under the Tripartite infrastructure development pillar. So far, several transit and transport facilitation instruments have been developed and operational within the Tripartite region. Indeed, during the climax of the COVID-19 pandemic, the Member States developed the Tripartite Guidelines for Safe Cross Border Movement of Persons and Personal Goods during the COVID-19 Pandemic. These were consolidated from the respective RECs guidelines, to facilitate continued flow of essential goods, services, and persons, including truck drivers and medical personnel in the wake of lockdowns and physical restriction of movements by governments. Besides, up to seven legal instruments covering vehicle load, traffic and cross-border transport have been concluded.

> **“Market integration cannot be complete without well-functioning inter-connectivity infrastructure”.**

Likewise, under the industrial pillar, negotiations are underway to establish a Tripartite Industrial Development

Coordination Unit (TIDCU) in each REC, as well as development of Tripartite Agro-processing value chain and establishment of Trade Logistics Hubs. Thus, the TFTA aspires to remove fragmentation by promoting regionally integrated industries and supply chains.

Under Phase II negotiations, the draft Protocol on Competition Policy has been agreed upon by the relevant Technical Working Group and is due for negotiation by Member States. Overall, fostering fair and competitive practices are central to supporting trade, industrialization, innovation, and sustainable development. Besides, the modalities for conducting negotiations on trade in services are being developed and necessary preparatory work is being done to pave way for actual negotiations. It should however be remembered that trade in services negotiations will be bilateral in nature and therefore makes it much easier for neighboring countries to enter into such areas as business services, transport, financial services, education, among others.

Nevertheless, the Tripartite should be seen as complementary to the wider continental integration initiatives and not a duplication. It offers a forum for harmonizing positions of the TFTA RECs and Member/Partner States prior to participation in AfCFTA negotiations. It is a forerunner in the design and negotiation of rules and regulations, policies and guidelines, negotiation modalities, and harmonized structures, systems, institutions and procedures. In a significant way, it addresses the problem associated with membership in multiple RECs.

Key challenges facing operationalization of the TFTA

Among the key challenges hindering operationalization of the TFTA is the absence of a dedicated secretariat and institutional structure to coordinate and implement its programmes and activities. Presently, coordination is being conducted on a rotational basis among the three RECs.

The other challenge has been acute financial constraints. Inadequate financing seriously slowed down negotiations of the various pillars as the RECs rely on their respective staff to facilitate these negotiations. At the moment, only the market integration pillar is being supported by the African Development Bank. This also explains why progress in negotiations in the infrastructure and industrial development pillars are slower, yet they are key in fostering sustainable trade and development.

Conclusions and Recommendations

Despite delays in operationalization of the Tripartite FTA, it offers one of the best practices the AfCFTA can learn from, particularly on the principle of the reservation of the acquis, full liberalization of tariff lines and elimination of non-tariff barriers to trade. The Tripartite configuration also presents best practices in fostering transport and trade facilitation instruments and value chain development at regional levels which are key to boosting intra-African trade.

The Tripartite needs just a little push to play its rightful role in the AfCFTA integration process and a key cornerstone for continental integration. In that regard, the AU Member States that have already signed and ratified the AfCFTA should not find it difficult to do the same for the Tripartite to make it operational. Doing so will not only cure the challenges associated with multiplicity of memberships but also strengthen realization of the aspirations of the continental market integration.

Finally, the African Union Commission and development partners should channel resources towards strengthening the Tripartite pillars of market integration, infrastructure, and industrial development. For instance, resources under the EU's Regional Multi-annual Indicative Programme for Sub-Saharan Africa can fit well in fostering Tripartite programmes under the infrastructure and industrial development pillars. Besides, specific support in the form of Technical Assistance should be directed to Tripartite RECs Secretariats for effective coordination. Strengthening the Tripartite will ultimately improve prospects for the AfCFTA's take off and its smooth and effective implementation.

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