BRIEF ON THE COMESA-EAC–SADC TRIPARTITE FREE TRADE AREA

20TH OCTOBER 2023
1.0 BACKGROUND

The Heads of State and Governments in the three Regional Economic Communities of COMESA, EAC and SADC (T-RECs) agreed to establish the Tripartite Free Trade Area (TFTA) at their First Summit held in Kampala, Uganda in 2008. The Tripartite Free Trade Area Agreement seeks to integrate the economies of the Member/Partner states of the three RECs into a larger Free Trade Area (FTA). The aim is to reduce the existing obstacles to trade in the RECs that hinder the movement of goods, services, and people, as well as growth in industrial production. The TFTA is based on three pillars: market integration, infrastructure development, and industrial development.

The negotiations cover two phases: Phase 1 of the negotiations covered trade tariff liberalisation, rules of origin and trade remedies. Save for a few areas on the rules of origin covering a few products of the textiles and automotive sectors, which are still outstanding, the first phase of negotiations was largely concluded including the Tripartite Agreement on Movement of Businesspeople which was negotiated under a separate track.

The phase two covers negotiations on liberalisation of trade in services and other trade related issues such as intellectual property rights, competition policy and cross border investments

The TFTA Agreement will come into force when the 14th instrument of ratification has been deposited.

2.0: STATUS OF RATIFICATION OF THE TRIPARTITE FTA AGREEMENT

To date 11 countries, namely Egypt, Uganda, Kenya, Rwanda, Burundi, Eswatini, Botswana, Namibia, South Africa Zambia, and Zimbabwe have ratified TFTA and deposited their instruments of ratification to the Tripartite Task Force (TTF).

Three more ratifications are required for the Agreement to enter into force. Some of the Tripartite Member/Partner states that have not ratified have advanced conditionalities relating to market access to ratify.

The REC CEOs continue their engagements efforts with Member States to follow up on the ratifications. They undertook ratification consultations and missions to selected countries that had reported significant progress on the ratification process. Subsequently, the Kingdom of Lesotho communicated to the TTF chair their readiness to sign the TFTA Agreement on 27th October 2023 with a view to process ratification in the near future.
3.0: STATUS OF NEGOTIATIONS ON PHASE I AND PHASE II ISSUES

The Tripartite received funding from the AfDB and European Union which supported negotiations and development of instruments under the Market integration and Infrastructure pillars. Specifically, the African Development Bank (AfDB) through the Tripartite Capacity Building Programme – Phase I supported the phase one of the TFTA Negotiations on outstanding issues which include Rules of Origin for textiles and automotive products among others. These activities are being continued under TCBP II, a successor programme to TCBP I. Building on the success in supporting Phase I of the negotiations on the TFTA, AfDB is funding the TCBP-II to the tune of USD1.17 million to conclude negotiations on the outstanding phase I negotiation issues, commencing phase II negotiations and supporting the sensitization and awareness among REC Member/Partner States on the benefits of the TFTA in order to expedite the ratification of the Agreement for it to enter into force. The TCBP – II ended in June 2023.

Significant progress and achievements were made from the various meetings of the Technical working groups, the Trade Negotiating forum, Committee of senior officials and the Tripartite Sectoral Ministerial Council (TSMC) culminating into the 5th Council of ministers. Progress under the Industrial Development pillar was subdued because of limited funding available to support Industrial development programme. Progress under each pillar is outlined below.

a) Market Integration Pillar

Since April 2021 at least ten meetings of the relevant Tripartite Technical Working Groups (TWGs), three meetings of the Tripartite Trade Negotiations Forum (TTNF) and two Meetings of the Tripartite Committee of Senior Officials (TCSO) were organised culminating into the 9th meeting of the Tripartite Sectoral Ministerial Council of Ministers TSMC held in March 2023

The results and achievements from the negotiations include:

a) Several Tripartite Member/Partner states have exchanged tariff offers although some countries are yet to do so;
b) Two customs Unions – the EAC and SACU have concluded negotiations on tariff offers and are finalising few outstanding issues;
c) Negotiations between Egypt and SACU and EAC have been initiated but not yet concluded;

d) 90% of the TFTA list of Rules of Origin have been agreed and they are contained in Annex 1V of TFTA Agreement. Annex 1V contains a provision on transitional arrangements on Rules of Origin that would be applied to
commence TFTA. It should be noted that the 8th Meeting of TSMC allowed Member/partner states that had concluded the tariff negotiations and ratified the TFTA Agreement to begin trading on the Variable Geometry; and

e) Full implementation of the harmonized NTBs eliminating programmes has been achieved. All Tripartite countries adopted the Online and Short messaging (SMS) reporting tools. Twenty (22) countries (79%) that are engaged in active trade among themselves under their respective REC’s, are fully utilizing the online reporting system while uptake for the recently upgraded SMS tool is gaining momentum. The online and SMS tools have been adopted for use at the continental level.

f) The online system was successfully upgraded and now in the process of handover to the Tripartite task Force from the Website developer for complete ownership by the RECS. Effective arrangements for the management of the system are in place. However, there is need for extensive capacity building for the Member States and continuous improvements to the reporting tools to keep abreast with developments in the ICT.

g) Development of non-tariff measures databases to create transparency in the trading environment and increase intra Tripartite Trade is at various stages of completion for 22 countries. The individual RECs are expected to complete the programme for all their Member States.

The following instruments were adopted by the 9th TSMC and will be subjected to legal scrubbing for adoption by the 6th TCM

i) Updated Draft Annex IV on Rules of Origin;
ii) Draft Regulations to implement Annex IV on Rules of Origin;
iii) Draft Tripartite Protocol on Competition Policy;

v) Draft Rules of Procedure for the Tripartite Sub-Committee on Non-Tariff Barriers;
vi) Draft Rules of Procedure for the Tripartite Sub-Committee on Sanitary and Phytosanitary Measures;

vii) Draft Rules of Procedure for the Tripartite Sub-Committee on Technical Barriers to Trade;

viii) Draft Tripartite Working Procedures for implementation of Annex III on NTBs;
ix) Draft Time-bound Matrix for the elimination of NTBs;

x) Draft Manual on the application of the Tripartite FTA Rules of Origin;
xii) Draft Tripartite General Guidelines on Customs Cooperation;
xiii) Draft Tripartite General Guidelines on Transit Facilitation; and


Other instruments to implement the Annexes of the TFTA are at various stages of development in the relevant TWGs. Negotiations on two issues regarding the rules of origin of some products of the textiles and automobiles sectors are still in progress.
**On Phase II negotiations**, the 7th Meeting of the Tripartite Sectoral Ministerial Committee of Trade, Customs, Finance, Economic Matters and Home/Internal Affairs (TSMC) held in June 2018 in Cape Town, South Africa, and the 8th Meeting of the TSMC held in June 2019, had decided to proceed with negotiations on Phase II issues under the TFTA, agreed that priority be accorded to Trade in Services and Competition Policy.

The TTF commissioned a consultancy to undertake the study that would bring clarity on the interfaces between the AfCFTA and TFTA services negotiations and, specifically, to inform on how to position the Tripartite Member/Partner States to take advantage of the AfCFTA processes so that the trade in services’ negotiations could be built on that basis.

The draft study is ready for validation by the Tripartite Member/Partner States

**b) Implementation of the Infrastructure Pillar**

**i. Road Infrastructure: Adoption of the Tripartite Transport and Trade Facilitation Programme (TTTFP) Instruments**

Following adoption by the Tripartite Sectoral Committee of Ministers on Infrastructure (TSCMI) in October 2019 in Lusaka, Zambia, and legal scrubbing by the Tripartite Sectoral Ministerial Committee on Legal Affairs (TMCLA) of 18th September 2020, the following instruments were adopted by the Tripartite Council of Ministers on 28th March 2023.

- Draft COMESA-EAC-SADC Vehicle Load Management Agreement.
- Draft COMESA-EAC-SADC Multilateral Cross Border Road Transport Agreement.
- Draft COMESA-EAC-SADC Cross Border Road Transport Model Law.
- Draft COMESA-EAC-SADC Road Traffic Model Law.
- Draft COMESA-EAC-SADC Road Traffic and Transport Transgressions Model Law; and
- Draft COMESA-EAC-SADC Transportation of Dangerous Goods by Road Model Law.

The African Union Commission is considering adopting the TTTFP programme and extending it to other continental Regional Economic Communities based on the success of the programme.


Project jointly formulated to Support the operationalization of the Single African Air Transport Market (SAATM); strengthening the regulatory and institutional capacity of
civil aviation institutions; and improving air navigation efficiency in the EA-SA-IO region. The COMESA Secretariat, as lead REC on the programme, signed a Grant Contribution Agreement on behalf of the other participating RECs in December 2020 for €8 million to support implementation of the programme whose implementation is already under way.


Jointly formulated for effective review and/or development of various regional policy and regulatory framework in a harmonized manner that will contribute to enhancing competition, improved access to cost effective and secure ICT services. COMESA Secretariat as lead REC on the programme signed a Grant Contribution Agreement on behalf of the other RECs in December 2020 for €8 million to support implementation of the programme. Programme implementation is already under way.

c) Implementation of the Industrial Pillar

The Industrial Development Pillar aims to enhance industrial productivity and competitiveness by addressing the supply side constraints and promoting linkages among industries and other sectors within the Tripartite and further noted that the Pillar is guided by a Framework for Cooperation in Industrial Development among the Common Market for Eastern and Southern Africa-East African Community-Southern African Development Community.

The following studies have been undertaken to guide the future work programme on the Industrial Pillar:

i) Study to map and analyse six (6) value chains with the greatest potential for creating cross-border industrial synergies and linkages within the Tripartite. These value chains include maize; cassava; fish and aquaculture; hides, skins and leather; cotton, textile and apparel; and sugar. The study also identified six (6) potential projects in the selected value chains.

ii) Study to survey and assess industrial statistics and industrial information management systems in the Tripartite Area with the view to formulate a programme to address the gaps identified. The study identified the gaps and proposed capacity building activities at the regional and country level.

Some of the immediate areas of implementation of the pillar include:

i) Establishment of Tripartite Industrial Development Coordination Unit (TIDCU) in each REC and how it is to be funded;

ii) Import Replacement and export development strategy to harness opportunities arising from the negative trade balances in agro-industrial sector and ACFTA;
iii) Identification of existing institutions to serve as Centers of Excellence, for Tripartite Agro-processing; SADC and EAC already have some Centers of excellence that can be extended to the tripartite; and

iv) Investment in Tripartite Agro-processing and Trade Logistics Hubs to address the challenge of post-harvest losses and availability of agro raw materials.

There is need to develop/ finalise the Roadmap, Work plan and Modalities of Cooperation to guide activities of the Pillar.

4.0 TRIPARTITE RESOURCE MOBILISATION STRATEGY

A draft Paper on the Operationalisation of RECs’ Contributions to the Tripartite activities has been developed in line with the financing mechanisms outlined in the Tripartite Resource Mobilisation Strategy, which identifies Partner/Member States’ contributions to RECs as part of the potential sources of funding that can sustainably finance Tripartite activities. Other identified sources of funding include support from International Cooperating Partners, including Emerging Partners, Private Sector Financing and Public-Private Partnerships (PPPs).

There are on-going consultations with the African Development Bank for a broader support of the Tripartite FTA in order to enhance continental integration and sustainable development.

5.0 CHALLENGES IN OPERATIONALISATION OF THE TFTA

There are some challenges and constraints hindering operationalization of the TFTA. These include among others:

a. Absence of a dedicated secretariat and institutional structure to run the affairs and activities of the TFTA. Presently, the coordination of Tripartite activities is carried out on a rotational basis among the RECs.

b. Inadequate financing is another hindrance to the effective implementation of the Tripartite activities. This is partly attributed to delays in the establishment of the Tripartite Secretariat. It has also resulted in slowed down implementation of the Infrastructure and Industrialization pillars of the Tripartite.

c. Implementation of the Tripartite work programme also suffers from acute human and technical capacity constraints. This is a challenge at the REC Secretariats and at Member States levels.

6.0 RECOMMENDATIONS AND WAY FORWARD

i) Redoubling efforts to complete the ratification process for the Agreement to enter into force.

ii) Enhancing the Tripartite Resources Mobilisation Strategy;

iii) Establishment of a multi-donor consolidated fund; and
iv) Establishment of a temporary and thin structure to coordinate implementation of Tripartite activities