

PROGRESS REPORT ON THE EAC COMESA EAC- SADC TRIPARTITE (TFTA) NEGOTIATIONS



EABC - The Voice of the Private Sector
in East-Africa

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BACKGROUND

At their first Summit in Uganda in 2008, the Heads of State and/or Government of the three Regional Economic Communities (RECs), namely the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC), decided and directed that the three RECs should expeditiously establish a Free Trade Area (Tripartite FTA). They further agreed that the Tripartite FTA should build on the acquis and consolidate tariff liberalization in each REC FTA.

The Second Tripartite Summit was held in June 2011 in Johannesburg, South Africa. At this second meeting, Summit launched negotiations for the establishment of the Tripartite FTA: adopted *Negotiating Principles and Structures*; and a *Roadmap for the establishment of the Tripartite FTA*. Countries that committed to negotiate and later establish the Tripartite FTA signed a *Declaration Launching Negotiations for the establishment of the Tripartite FTA*. Out of the 26 countries which make up the combined membership of COMESA, EAC and SADC, 23 countries^[1] signed the *Declaration*. Madagascar, Eritrea and Ethiopia are yet to sign the *Declaration*. Madagascar and Ethiopia have intimated that they are ready to sign the *Declaration*. With respect to Ethiopia, the declaration has been submitted to authorities for signature, while Madagascar will sign after the elections.

Negotiations for the establishment of the Tripartite FTA were launched with the establishment of the Tripartite Trade Negotiation Forum (TTNF) as a body responsible for technical negotiations, guided by the Roadmap.

For efficiency and economic reasons and to ensure expeditious implementation, the Tripartite Summit decided that the negotiations would be conducted in two Phases which would be preceded by a *Preparatory Phase*.

The *Preparatory Phase* was intended to enhance transparency among all countries through the exchange of trade and tariff data, trade regulations and other trade measures and instruments as well as to enhance the understanding and appreciation of all countries in the various RECs of the trade regimes prevailing in each of the three RECs. During the preparatory phase, Member/Partner States were also expected to prepare national negotiating positions for core FTA items.

It was agreed that *Phase I* of negotiations would focus on *Trade in Goods*. It was further agreed that *Movement of Business Persons* would be negotiated during the first phase through a separate track in a committee to be established by the Tripartite Sectoral Ministerial Committee.

Phase II of negotiations will cover the built-in agenda in services and trade-related areas, and will commence after the conclusion of *Phase I*.

STATUS OF NEGOTIATIONS

Since the launching of the TFTA negotiations by the Second Tripartite Summit, the TTNF has met six (6) times.

(i) The TTNF adopted its rules of procedure, terms of reference, and schedule of negotiating sessions at its first meeting in December 2011 in Nairobi, Kenya.

(ii) At the second meeting in Lusaka, Zambia in March 2012, the TTNF agreed on the interpretation of the negotiating principles adopted by the Second Tripartite Summit. It also agreed to establish three (3) Technical Working Groups (TWGs) to provide technical input and undertake analytical work on specific negotiating themes and issues related to the negotiations. The TWGs would deal with the following thematic issues: customs cooperation, documentation, procedures and transit instruments; technical barriers to trade (TBT), including standards and metrology, sanitary and phyto-sanitary measures (SPS); non-tariff barriers (NTBs); and rules of origin. It was further agreed that negotiations on tariffs would be undertaken in plenary by the TTNF.

(iii) At the third meeting held in Grand Baie, Mauritius, in June 2012, the TTNF reviewed and adopted the terms of reference (TORs) for the TWGs. At this meeting, Madagascar indicated its readiness to sign the *Declaration* launching negotiations for the Tripartite FTA. Senior Officials met subsequent to the meeting of the TTNF and agreed that the preparatory phase would be concluded once the data exchanged were confirmed as constituting a reasonable basis for negotiations and negotiation modalities on tariff liberalization have been adopted.

(iv) At the fourth meeting held in Arusha, Tanzania, in September 2012, the TTNF confirmed that trade data and information submitted was adequate and formed a reasonable basis for commencement of the negotiations and that updates and additional information should continue to be exchanged throughout the negotiation process. The trade data and information includes:

- MFN Tariff Rates based on HS 2007 version;
- Applicable Preferential Tariff Rates as at Jan 2012;
- Trade Statistics for the period 2006 to 2010;
- Rules of Origin for all preferential trading arrangements; and

- Completed tariff offer/request templates with tariff and trade data.
- (v) The TTNF considered the draft modalities for tariff negotiations and agreed to undertake further national / regional consultations on modalities for tariff negotiations, including the determination of the application of the ‘substantial liberalization’ principle.
- (vi) At the Fifth Meeting in Cairo, Egypt in December 2012, the TTNF adopted its revised Rules of Procedure, revised to align them to the Rules of Procedure of the Committee of Senior Officials and to include provision for observers; finalised the mechanism for monitoring and evaluation of the negotiations which provides for monitoring progress through quarterly reports prepared by the Chairperson of the TTNF to the TCSO and six monthly reports to the Chairperson of the Tripartite Ministerial Committee on Trade; discussed further the modalities for tariff liberalisation and referred to the TCSO the critical issues of thresholds, timeframes and treatment of sensitive and exclusion lists on which there was no consensus; received reports of the second meetings of the Technical Working Groups; and reviewed progress made so far in the negotiations.
- (vii) At the Sixth Meeting in Livingstone, Zambia in February 2013, the TTNF considered the “Guidelines on selection of observers, their attendance and participation in the meetings of the TTNF and the TTNF Chairperson’s Progress Report on the TFTA negotiations.

KEY OUTSTANDING ISSUES ON MODALITIES FOR TARIFF NEGOTIATIONS

The TTNF identified thresholds for substantial liberalization, time frames for tariff liberalization and treatment of sensitive and exclusion lists as critical issues that should be addressed.

With respect to thresholds on substantial liberalization, the following differing positions have been raised:-

- (i) Some Member / Partner States recognized the importance of raising the level of ambition such that the ultimate destination for tariff liberalization in the TFTA should be about 100%, while recognizing that few sensitive products and other specificities that apply to some Member / Partner States may be considered;
- (ii) A distinction should be made between TFTA related tariff liberalization and the outstanding tariff phase down commitments under the REC FTAs. The threshold under discussion should only apply to the TFTA commitments.
- (iii) Minimum threshold levels of substantial liberalization suggested by Member / Partner States were; at least 90%, 95% or about 100% of tariff lines.
- (iv) Some Member / Partner States suggested an initial minimum threshold of 85% of tariff lines for those countries that do not have FTA arrangements with any Tripartite Member / Partner States on a reciprocal basis.

With respect to time frame for tariff liberalization, views of Member / Partner States varied from 3 years, 5 years, or up to 8 years. Consensus was also not reached on whether to have sensitive or exclusion lists. Divergent views were expressed regarding the extent of exclusions that could be allowed beyond the general exceptions or restrictions permitted under the REC trading arrangements and the WTO provisions.

EAC PRIVATE SECTOR POSITION ON COMESA-EAC-SADC TRIPARTITE FREE TRADE AREA

Aiming at providing constructive input into the negotiating process, East African Business Council (EABC) the private sector umbrella body in EAC region commissioned a study on the Implications of COMESA-EAC-SADC FTA to EAC Private Sector. Informed by the study the EABC prepared the position paper on private sector views. The paper was presented to the EAC Preparatory Meeting for 6th COMESA-EAC-SADC Tripartite Trade Negotiation Forum (TTNF) in Livingstone Zambia on 24th February 2013. The EAC Negotiating Team resolved that the information from the study would be taken into account in the course of the the EAC Tripartite negotiation.

In summary the recommendations from EABC Position Paper are as follow:

- 1. The Tripartite FTA should adopt simplified and harmonised Rules of Origin (RoO)**
- 2. Tariff liberalisation should taken into account the industrial development levels of the member countries. A sensitive list should be provided for but the real value of trade covered by sensitive products in a TFTA should be bound at its current level. This would mean that the natural growth of production and trade would lead to the proportion being conducted under a sensitive list declining over time.**
- 3. A supranational body for dispute resolution, including enforcement of non compliance should be established**
- 4. The TFTA should adopt harmonised road transport regulations and charges under the transit regime**
- 5. The TFTA should adopt a legally binding rules with sanctions in order to enforce the removal of NTBs**
- 6. While Comesa and SADC are more focused on market integration, the EAC should also put in addition, emphasis on the other two pillars of the TFTA, mainly in infrastructural and industrial development**
- 7. A scheme to facilitate the entry of business visitors should be established similar to the Asia Pacific Economic Cooperation –APEC business travel card.**

END

[\[1\]](#)The 23 countries are Angola, Botswana, Burundi, Comoros, Congo DR, Djibouti, Egypt, Kenya, Lesotho, Libya, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

