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From Cape to Cairo: Exploring the COMESA-EAC-SADC Tripartite FTA

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Cover pictures, from top left: Zimbabwean women cross the street as they head towards the Beitbridge Border Post in Musina. Trucks heavily laden with goods head north from South Africa. (AP Photo/Themba Hadebe/PictureNET); the City Deep Container Terminal, in Johannesburg (Henner Frankenfeld / PictureNET Africa); in this photo released by the Kenya Presidential Press Services, Kenyan President Mwai Kibaki makes his address during the Common Market for Eastern and Southern Africa, East African Community and Southern African Development Community summit, in Kampala, Uganda, Wednesday, Oct. 22, 2008. (AP Photo/Kenya Presidential Press Services, HO)

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Acronyms and abbreviations

ABF	Asian Bond Fund
ABMI	Asian Bond Markets Initiative
ACP	African, Caribbean and Pacific
ACU	Asian Currency Unit
ADB	Asian Development Bank
AEC	African Economic Community
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
AU	African Union
BIT	Bilateral Investment Treaty
CBE	Central Bank of Egypt
CECA	Comprehensive Economic Cooperation Agreement
CES	COMESA-EAC-SADC
CET	common external tariff
CGE	computable general equilibrium
CGIM	Credit Guarantee and Investment
CMI	Chiang Mai Initiative
CMIM	CMI multilateralisation
COMESA	Common Market for Eastern and Southern Africa
CTH	change of tariff heading
DDA	Doha Development Agenda
DFID	Department for International Development
DRC	Democratic Republic of the Congo
EAC	East African Community
EC	European Commission
EMEAP	Executives' Meeting of East Asia and Pacific Central Banks
EMS	European Monetary System
EPA	Economic Partnership Agreement
ERPD	economic review and policy dialogue
ESA	Eastern and Southern Africa

EU	European Union
FAL	Final Act of Lagos
FDI	foreign direct investment
FTA	free trade area
FTA	free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GTAP	Global Trade Analysis Project
GVM	gross vehicle mass
HS	Harmonised System
ICT	information communication technology
IEPAs	Interim Economic Partnership Agreements
IGAD	Inter-Governmental Authority for Development
IMF	International Monetary Fund
IOC	Indian Ocean Commission
ISIC	International Standard Industrial Classification
IT	information technology
JICA	Japan International Cooperation Agency
JVB	Joint-Venture Bank
LDC	least developed country
LPA	Lagos Plan of Action
MFN	Most-Favoured Nation
MMTZ	Malawi, Mozambique, Tanzania and Zambia
MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
NAFTA	North American Free Trade Agreement
NEPAD	New Partnership for Africa's Development
NIE	newly industrialising economy
NSC	North–South Corridor
NTB	non-tariff barrier
OAU	Organisation of African Unity
OECD	Organisation for Economic Cooperation and Development
PTA	preferential trade area

REC	regional economic community
RIA	Regional Investment Agency
RISDP	Regional Indicative Strategic Development Plan
RoO	rules of origin
RTA	regional trade agreement
RTFP	Regional Trade Facilitation Programme
SAARC	South Asian Association for Regional Cooperation
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAFT	Southern African on Trade Forum
SAFTA	South Asian Free Trade Area
SAPTA	South Asian Preferential Trading Arrangement
SASEC	South Asia Subregional Economic Cooperation
SATCC	Southern Africa Transport and Communications Commission
SP	specific process
SPS	Sanitary and phytosanitary
SSATP	sub-Saharan Africa Transport Program
TDCA	Trade Development and Cooperation Agreement
TNF	Trade Negotiating Forum
TRC	Tanzania Railways Corporation
UAE	United Arab Emirates
US	United States
US-CAFTA	US Central American Free Trade Agreement
VA	value added
WTO	World Trade Organisation

Preface

In October 2008 three regional economic communities (RECs) – COMESA, EAC and SADC – agreed on a road map to launch an integration process aimed at forging the three blocs into a single unit. It is the first step towards the African Economic Community (AEC) beyond the level of sub-regional integration, encompassing more than 50 per cent of population and production of the continent. Hence, this single step already goes a long way towards accomplishing the goals of the Abuja Treaty.

There are a number of undeniable immediate advantages attached to the establishment of a tripartite free trade area (FTA) – and even customs union. In the area of economic and infrastructural cooperation a lot has already been achieved, providing sound conditions of deeper integration (e.g. the North–South Corridor and related projects). At the same time, problems and challenges within the three RECs involved are also visible. For some of those, the tripartite integration may provide a reasonable solution. However, other problems will be inherited by the enlarged FTA, and may even turn out to be more intractable at that level.

Nevertheless, the move towards a tripartite FTA as envisaged in the joint communiqué of COMESA, EAC and SADC is an historical event that needs to be accompanied by reflections and observations by independent commentators like the Southern African Trade Forum (SAFT). SAFT is geared to enhance the dialogue on regional economic issues, involving government and non-government representatives and in particular academia. It is aimed at evaluating the progress towards regional integration and development in the past and charting joint strategies for closer cooperation, deeper integration and new prospects of growth and social welfare in the SADC area. The Forum was created and raised in a joint effort of FES and IGD, and has organised meetings and conferences as well as published documents on issues concerning regional development. It strives to provide region-wide fora, facilitating exchange of views and taking aboard voices from all sides across the SADC area.

The SAFT conference of August 2009, convening sympathising analysts, observers and decision-makers, addressed the prospects and challenges of the huge undertaking of creating the AEC in the same sympathetic, positive and critical manner it used to apply to Southern African issues. The debate repeatedly emphasised the need to learn from existing RECs' experiences. The approach of the trilateral scheme has to be informed by an analysis of strengths and weaknesses of sub-regional integration processes, in order to avoid teething troubles besetting many RECs and to help keep the process on track. Based on this understanding, valuable contributions to the discussion on how best to further the process of tripartite integration were presented.

This volume contains the papers presented at the conference. They deserve to be made available to a broader public as they provide profound information and useful thoughts on how to realise the dream of Africa united from Cape to Cairo. We are sincerely grateful to our partner, the Institute for Global Dialogue, and the presenters and panellists of the conference for their valuable contributions.

Peter Oesterdiekhoff
Friedrich-Ebert-Stiftung
Angola Office

Keynote address from the Sixth Southern African Forum on Trade

Xavier Carim

From the outset, let me thank the Institute for Global Dialogue and Friedrich-Ebert-Stiftung for inviting me to share the South African Government's views on regional integration. Indeed, there is growing interest in the future of regional integration in Southern Africa, particularly with regards to the Southern African Customs Union (SACU), the Southern African Development Community (SADC) and the new initiative for a Tripartite Free Trade Area (FTA) between COMESA-EAC-SADC (CES). Some of these discussions have come about in light of the regional negotiations with the European Union (EU) for an Economic Partnership Agreement (EPA).

We are therefore very pleased to have this opportunity to share our perspectives, particularly the perspective of the Department of Trade and Industry. I will also share some thoughts on the global economic crisis. This perhaps helps to situate the discussion on regional integration within the current broader challenges. I will start with general comments on some of the issues, debates and perspectives with respect to the global economic crisis and then move on to focus on the regional integration issues, challenges and possible responses.

The global crisis

Much has been spoken and written about the global crisis. We know that the global economic crisis originated in the financial sectors of the advanced developed economies and that it has now spread across the globe. Its impact is now felt in the real economies of all countries.

Developing countries were clearly not the source of the crisis, but they are now facing the fallout. Its impact will reverse many gains made in recent years, and certainly set back progress towards the Millennium Development Goals, particularly in Africa. We have seen a dramatic contraction of export demand, an unprecedented decline in global trade, and a steep reduction in the volume and price of commodity trade. Financing pressures are more acute and access to private trade finance has virtually dried up. The prospects for foreign direct investment are also bleak for the foreseeable future.

In South Africa the effects have been severe in terms of the fall of equity and property prices, but also in terms of a steep decline in our exports, lower income, higher unemployment and reduced consumption. In the first quarter of this year, we technically entered into a recession. It appears we are not over the worst effects of the economic decline.

In the SADC region, the mining sector is the hardest hit, with commodity prices of diamonds, copper, nickel, uranium and oil falling to and below their 2006 levels in April 2009. This has resulted in loss of revenue by governments, growing unemployment, and a reduction in investments. After falling in 2009, the prices of some agricultural commodities are beginning to increase although they are still lower than the average prices recorded in recent years. Tourism receipts have also declined. All this has resulted in pressures on the current account and fiscal balances of SADC member states. Clearly there are variations among the SADC member states, but in aggregate the region is facing a decline. With falling incomes as a result of deteriorating terms of trade and declining real economic growth, borrowers will be less able to service their debts, and their financial sectors will be increasingly vulnerable. There is also greater reliance on multilateral institutions and banks for finance and it will be important to leverage this support.

Regional stock markets declined by an average of 16 per cent in December 2008 compared to December 2007. The SADC region is expected to record a marginal 0.1 per cent growth in real GDP in 2009; this is down from an average of 5.9 per cent in 2008. Growth in per capita income is expected to decline by an average of 1.6 per cent in 2009 compared to an average growth of 3.7 per cent in 2008.

Global economic growth is projected to re-emerge in 2010, but at just 1.9 per cent. At the regional level, economic growth is projected to rebound to 4.7 per cent, still below the 2008 level. The fiscal and current account deficits are expected to widen further to 5.1 per cent and 11.0 per cent in 2010, respectively.

Responses to the global crisis have been seen at national and international levels. At national levels, there have been a series of bailouts and stimulus packages being put in place. At the international level, mainly through the G20 Summit processes, there have been attempts to improve the coordination of national counter-cyclical efforts and monetary policy, to develop agreed approaches for financial (re-)regulation, and some tentative steps to reform global financial institutions.

The G20 Summit Declarations have also called for countries to avoid resorting to protectionism and for an early conclusion of the Doha Round. With regard to the protectionist measures, South Africa has posited several arguments. We have argued that it is necessary to define protection broadly; it should not only include a traditional trade and investment barriers, but also all national-specific measures that countries can take, within World Trade Organisation (WTO) disciplines and beyond, that impose costs on others and that distort international trade and investment flows.

As the global crisis unfolds, there appears to be intensified competition between countries to retain production and employment in their home countries. Indeed, economic nationalism is already evident and on the rise. Bailouts and stimulus packages, though necessary to restart economic growth, will have an impact on trade and investment flows when they change incentives and shift the competitive environment to favour national industries and firms. Current support programmes go beyond neo-Keynesian policies of deficit funding of infrastructure and public work programmes to include targeted support to national industries. In a sense, elements of these bailout and stimulus packages have constituted a defensive industrial policy. It thus appears that competition is underway to determine which firms are supported and retained, and in which locations.

Against this background, calls to resist protectionist measures are sounding increasingly hollow. South Africa is one of only two members of the G20 that has not introduced any protectionist measures in the context of the current crisis.

In this engagement, it is necessary to consider the scope of measures available to all countries, the quantum of support available for each country to support their economic structures, and the scale of the impact of various national support measures on the global economy. On all counts, it is clear that developing countries have recourse to fewer measures and, due to their weaker fiscal bases, the quantum of financial support they are able to deploy is considerably less than that available to industrial countries. Industrial countries must therefore provide leadership in resisting protectionist measures. Developing countries have a legitimate case in being able to use all WTO-compatible measures to provide support to their industries in the context of the crisis. Moreover, developing country measures are likely to have less systemic impact and will pale in significance when compared to the measures currently being taken by industrial countries.

On the Doha Round, South Africa agrees on the importance of restarting the negotiations and reaching an early conclusion. However, setting an unrealistic timetable without consideration of the content of the round could lead to another failed attempt, and be even more damaging to the credibility of the global trading system. For the majority of developing countries, the current package has meant a lowering of the development ambition in the round and it being skewed in favour of developed countries. The difficulties lie in the fact that we are seeing on the one hand a steady erosion in the ambition of industrial countries to reform their agricultural sectors and reduce farm subsidies, and on the other hand growing pressure on developing countries, particularly emerging economies, to open up their industrial and services markets. We have thus seen a growing imbalance in the negotiating trajectory. The Doha Round outcomes must retain their developmental objectives and ensure policy space for industrial development in order to protect employment in vulnerable sectors. These are more important than an early conclusion of the Doha Round.

The global crisis and regional integration

While all regions have suffered from the collapse of global trade, the evidence is that regional markets in Africa, and those of key developing countries, continue to grow, albeit at lower levels. The global economic crisis has given additional impetus to a strategic re-alignment in the global economy. The steady and relative rise of new poles of economic growth in Brazil, Russia, India and China, to mention a few, appears to continue, and interest in Africa and Africa's resources continues unabated. Africa will remain an important investment and trade frontier in this changing global economy.

It is also apparent that in responding to the global economic crisis, developing economies are generally giving greater focus to building their domestic economies, advancing their regional integration efforts and promoting South–South cooperation as these markets become relatively more significant. In short, the dynamics of the global economy suggest that we need to give greater focus to South–South trade and regional integration, while not ignoring our traditional and established trading partners.

Southern African regional integration

South Africa has considered regional economic relations in Southern Africa as an essential component of our wider international economic relations. Since 1994, the government has repeatedly committed itself to promote regional cooperation along new lines that will correct imbalances in current relationships.

Our commitment to regional integration was founded on two precepts. First, South Africa's democratic transformation, stability, security and economic development could not be assured if our neighbours continue to not confront underdevelopment, instability, poverty and marginalisation. In other words, South Africa's economic destiny and prospects are inextricably intertwined with that of the region and broader continent. Second, a more integrated regional market provides industries and firms located across the region the opportunity to overcome the limits imposed by small national markets, to achieve economies of scale, and thus enhance their competitiveness. Regional integration thus serves as a platform for more effective participation in the global economy.

These considerations informed South Africa's engagement in two important regional processes during the immediate post-apartheid period: the re-negotiation of the SACU agreement and the free trade negotiations under the SADC Trade Protocol.

With respect to both processes, important progress has been made. In SACU, the new agreement came into force five years ago (even if SACU is the oldest customs union in the world). It establishes democratic decision-making, new supra-national institutions, a Secretariat and lays the basis for a deeper integration agenda. In

SADC, the achievement of the FTA (technically and formally) in 2008 is also a significant milestone that we should celebrate. Nevertheless, a series of challenges still confronts these integration projects.

The Southern African Customs Union

From South Africa's perspective, SACU has the potential to move beyond an arrangement based on a common external tariff and held together by a revenue sharing arrangement. SACU's main value to South Africa is no longer as a 'captive market' for our exports, as it was under the apartheid regime. For South Africa, in the context of the current global dynamics, SACU's value will lie in its ability to be transformed into a vehicle for advancing and deepening developmental integration at the sub-regional level, as an anchor in the SADC regional project, and as a platform for harmonised engagement in wider global trade relations. We have the elements that would allow us to advance to a common market and even eventually a monetary union.

However, achieving this will require building common policy in the areas of trade and industrial policies. We need a work programme that overcomes the policy gridlock that we currently face and the zero-sum approach by building production value-chains across all member states in agriculture and industry. We will also need to intensify the programmes of work around regional infrastructure development, and in particular those based on the spatial development corridors.

A common policy vision is a prerequisite for strengthening SACU institutions, including the proposed SACU Tariff Board, the SACU Tribunal as well as an effective and well-resourced Secretariat. Progressive harmonisation of various institutional arrangements will also need to be complemented by harmonising policies in the areas of competition policy and standards over time.

SACU can also play an anchor role or be a nucleus for deeper integration in SADC through the concept of 'variable geometry'. SACU as a unit can help shape the process of regional integration if SACU member states can forge a common view on how to go about integration. SACU also needs to be willing to open up to new members by developing terms for accession and should begin to align its work programmes with those unfolding at the broader SADC level.

For SACU to realise its potential, we also need a common understanding on how to position ourselves in a rapidly changing global economy. Shifting patterns of global trade have seen the rise of new economies to the centre of global trade relations. This requires a forward–looking response beyond immediate and short-term trade relations to develop mutually beneficial trade and investment relations with these new sources of global economic growth. SACU will therefore need to forge a common approach in terms of the direction of future trade relations (including the identification

of partners) and on the content of future agreements, and move beyond over-reliance on traditional trading partners when new centres of economic growth are emerging. We also need to develop a common trade negotiation agenda based on agreed positions in multilateral trade negotiations, notably in the WTO Doha Round. Thus far our coordination in the Doha Round has been lacking.

Strategic discussions among members of SACU along these lines are urgent and necessary. An initial discussion along these lines started in August 2008 at a meeting in Botswana and SACU Ministers have agreed that the next SACU Council meeting will begin to take the issues forward. If we are able to reach a common understanding on these points, we can take SACU forward. If not, SACU runs the risk of being trapped in policy gridlock, remaining what it has always been – a customs union structured around a revenue sharing arrangement – that will be steadily rendered ineffectual by global developments beyond its control.

The Southern African Development Community

The free trade negotiations – the SADC Trade Protocol – were concluded in 2000, and implementation of the tariff reduction obligations began at that time. By 2008, 85 per cent of goods were traded duty free and SADC met the WTO-defined threshold for a FTA. By 2012, 99 per cent of intra-SADC trade is expected to be duty free. Despite this notable achievement, considerable work remains to consolidate the FTA and to finish unfinished business.

Several SADC members have yet to fully join the trade agreement. Furthermore, several members have experienced difficulties in meeting the tariff liberalisation obligations as set out in the SADC Trade Protocol. These issues will require ongoing efforts. The mid-term review of the Trade Protocol sets out an extensive work programme that is necessary to consolidate the FTA. This work programme includes continued negotiations on outstanding rules of origin, the development of region-wide standard setting capacity and an extensive work programme on trade facilitation. Progress in each of the complex areas could do much to encourage intra-SADC trade, where the greatest gains could be achieved.

The key policy issue that arises is that despite a more open regional market, the pattern of regional trade has not changed in any significant manner. South African imports from the region are increasing, but low value commodities drive most of the growth. Intra-regional trade is diversifying very slowly. Major increases in trade have occurred in the textile, clothing and sugar sectors, where special trade arrangements exist. Trade appears to be influenced more by the region's comparative advantages rather than improved market access. The most serious constraint to balanced regional trade remains undeveloped production structures in SADC countries. This is the challenge for the region's agricultural and industrial policies: to expand the range of products that can be exported and to increase the value added to those exports.

Against this background, South Africa has argued that the focus of work should be the consolidation of the FTA, addressing the issues raised in the mid-term review, and developing a work programme to overcome real economy supply capacity constraints particularly through the development of a regional industrial policy. The SAFT Communiqué of 2008 makes the same points: focus on trade facilitation; address rules of origin, non-tariff barriers and standards; and harmonise policies, rules and regulations.

SADC Ministerial Task Force on Regional Integration

In September 2009 the SADC Ministerial Task Force on Regional Integration met in Johannesburg to look at work being done on the customs union and the FTA and at future work on the proposed Tripartite COMESA-EAC-SADC FTA.

Given the complexity and delays in the work to lay the basis for a customs union (i.e. a common external tariff (CET); legal and institutional arrangements; systems for revenue collection and distribution; common policies), the 2010 deadline is clearly not achievable. There was also some discussion on whether moving to a customs union was the best option for deepening regional integration. There was a strong view that priority should be given to work that strengthens the SADC FTA (bringing all on board; rules of origin and standards; trade facilitation; work to diversify economies) and that builds REC-to-REC FTAs by intensifying work under the tripartite proposal. This is a much more manageable and practical agenda, and is more achievable.

Impact of the EPA on regional integration

It is no longer possible to discuss regional integration in Southern Africa without reference to the EPA. South Africa entered the EPA negotiations in an effort to build a harmonised set of trade relations between countries in Southern Africa and the region's single most important trading partner, the EU. South Africa had hoped that the objectives of regional integration could be advanced at the same time as building a single trade regime with the EU. We also took note that the European Commission (EC) had said that one of its key objectives in negotiating EPAs was to enhance regional integration.

The emerging Interim EPA (IEPA) outcome is very different to our expectations. SADC members have found themselves in no less than 5 separate EPA negotiating configurations. Each has negotiated market access arrangements for EU goods that vary considerably from one another. This will complicate – and could even foreclose – efforts to foster regional integration. The separate arrangements also create the basis for new trade policy divisions in the region as they provide market opening

obligations and commitments to the EU before the region has had time to build its own regional markets and rules in new areas such as services, investment, competition, and procurement.

The EPA also threatens to weaken SACU. A series of incompatibilities in the legal provisions under the SACU Agreement, the Trade Development and Cooperation Agreement (TDCA) and the IEPA could, unless addressed, steadily erode the basis for building policy coherence in SACU. Moreover, unless addressed urgently, some of the EPA legal requirements could undermine SACU's ability to function even as it has until now. These include differences in tariff regimes and the rules of origin under the TDCA and EPA. The EPA contains provisions that limit policy space to promote agricultural and industrial development, and to diversify trade relations with other important economies around the world.

South Africa will not sign an EPA until it is convinced that the concerns we have raised are substantially addressed. The EC has agreed to continue to engage on these outstanding issues. While we are firmly committed to addressing these issues, it is evident that South Africa cannot achieve these objectives on its own. We need a common vision among SACU member states and a continued willingness from the EC to prioritise its professed concern to promote regional integration not just in broad declaratory statements, but in the detailed outcomes of negotiating processes.

Economic integration in Asia: Trends and policies[1]

Pradumna B. Rana

While the dynamism of East Asia and the emergence of China and India as major players in the global economy are frequently discussed and debated in academic literature and the popular press, much less attention has been placed on Asian economic integration and the rapid increase in Pan-Asian[2] trade and investment[3]. Unlike in Europe, this process is being led mainly by market forces (which enhance efficiency in production and augment dynamic gains through trade) with government-related cooperation policies also starting to play a role more recently. The rapid increase in Pan-Asian trade has made growth and development in Asia more dynamic and self-sustained. As the experience with the on-going global economic crisis has shown, Asia has not yet 'de-coupled' completely from the Organisation for Economic Cooperation and Development (OECD). Asian countries are, however, becoming more symmetric and business cycles are becoming more synchronised.

Unlike in the other regions of the world, for example Africa and Latin America, regionalism is a relatively new phenomenon in Asia[4]. Aside from the establishment of the Association of Southeast Asian Nations (ASEAN) in 1967 and the South Asian Association for Regional Cooperation (SAARC) in 1985, few policy actions were taken by the Asian countries to promote regional integration until the mid-1990s. During much of the colonial period in the 19th and the 20th centuries, South Asia was relatively isolated from East Asia (defined as ASEAN+3). South Asian countries also isolated themselves from each other behind high tariff barriers and non-tariff barriers (NTBs), and during the mid-1960s, the level of intra-regional trade among them was only about 2 per cent of their total trade.

The Asian financial crisis of 1997–1998 was a watershed as it focused the region's attention on growing interdependence and shared interests. At this time Asia policymakers became keen on supporting market-led integration with various regional cooperation efforts. This sentiment was the strongest in East Asia where the adverse impacts of the crisis and the contagion were the most significant.

South Asia has also joined the bandwagon and started to implement its 'Look East' policies more vigorously and to negotiate free trade agreements (FTAs) with various East Asian countries. The major factor that ignited the interest of East Asian countries to regional monetary and financial integration was the virulent contagion of the East Asian financial crisis and the policy mistakes made by the International Monetary Fund (IMF) in managing it[5]. It was also felt that the resources of the IMF were

limited and that it might not have adequate resources to handle a capital-account crisis associated with large surges and outflows of short-term private capital. Slow progress in the Doha Round under the auspices of the World Trade Organisation (WTO) and the popularity of regionalism elsewhere, for example the European Union (EU) and the North American Free Trade Agreement (NAFTA), also encouraged East Asian countries to promote regionalism in trade. Additional factors were the desire to internalise the benefits of growing interdependence and the realisation that regionalism could help maximise the benefits of globalisation and minimise the costs. In the post-crisis period, East Asia realised that it needed to be more self-reliant and gain fuller control of its destiny (MAS 2007).

The on-going global economic crisis has further enhanced the case for Asian regionalism for a number of reasons. First, the crisis has strengthened the case for rebalancing growth not only at the national level but also by finding economies of scale at the regional level. Second, the global crisis and the high level of economic interdependence among Asian countries have increased the need for policy coordination at the regional level to take into account the spillover effects. Third, the global economic crisis has highlighted the need for joint policy statements and a show of force to reverse the flight to quality and loss of investor confidence in the region. Fourth, the global crisis has once again revived interest in the reform of the international financial architecture and it appears that the G20 will be given the lead role in spearheading discussions on these issues. Asian countries should, therefore, coordinate their views and positions to ensure effective representation and make their voice heard at the G20.

Reflecting market policies and government efforts, Pan-Asian trade – comprising intra-regional trade between East Asian countries, intra-regional trade between the South Asian countries, and inter-regional trade between South Asia and East Asia – has been surging rapidly, albeit from a low base, especially after 2000. It tripled during the period 1990 to 2000 and has since nearly tripled again to US$2.2 trillion. Intra-regional trade among the East Asian countries has grown the fastest and presently accounts for about 94 per cent of total Pan-Asian trade, with East Asia–South Asia trade accounting for 5 per cent and intra-South Asian trade a mere 1 per cent.

The objectives of this paper are to:

- review steps taken and progress made in Asian economic integration at the various sub-regional levels, and to
- recommend actions to promote Asian economic integration including South Asian integration which has been stuck at a low level.

The next section of this paper focuses on East Asian integration, while the following section focuses on growing economic linkages between South Asia and East Asia, and the last section covers South Asian integration.

Trade and financial integration and macroeconomic policy coordination in East Asia

On trade integration, East Asia has made encouraging progress with intra-regional trade reaching 57 per cent of total trade (up from 43 per cent in 1990), which is higher than the level for NAFTA (46 per cent) but lower than that for the EU (67 per cent). Much of this expansion has been driven by market forces, especially the establishment of production networks in East Asia. The traditional production networks were triangular where Japan and the newly industrialising economies (NIEs) exported parts for electrical appliances, office and telecom equipment as well as textiles and garments to China and the third generation countries (Indonesia, Malaysia, Philippines, and Thailand) which in turn completed the processing and exported the final product to markets in the United States (US) and Europe. Since the mid-1990s, more sophisticated and complex production networks have emerged which involve the transhipment of components, which is the back and forth trade in parts and components across Asian countries (Gill and Kharas 2007). With the rapid emergence of China, these networks are being increasingly centred in China.

Given the uncertainties and risks in the multilateral trading system, the momentum for FTAs has also increased in East Asia with some 166 such agreements in existence or under negotiation compared with just a handful a decade ago[6]. FTAs will no doubt proliferate further if the Doha Round continues to falter. If they are designed properly, FTAs can help countries reap the benefits of their comparative advantage. That is why FTAs are allowed as exceptions to the anti-discrimination rules of the General Agreement on Tariffs and Trade (GATT) and the WTO. But there is a risk that the proliferation of FTAs could come at the expense of trade with non-members, known as trade diversion. It could also create an 'Asian noodle bowl' effect and raise administrative costs of trade. FTAs should, therefore, be consistent with the WTO. They should also be compatible with other FTAs in the region. Broadening the membership of FTAs and deepening their coverage beyond tariffs into services, investments, technological cooperation, etc. (called FTA Pluses) is one way of making FTAs stepping stones rather than stumbling blocks to multilateralism.

Lack of data makes it difficult to measure the level of financial integration in East Asia, but those that are available suggest that it is now starting to increase, albeit from low levels (MAS 2007, Rana 2007). East Asian countries have taken collective actions to develop local currency bond markets as these markets will reduce the 'double mismatch' problem, which was at the heart of the crisis, and overcome the so-called 'original sin' problem[7]. The basic idea is to mobilise the region's vast pool of savings to be intermediated directly to the region's long-term investment, without going through financial intermediaries outside of the region. Regional financial intermediation through bond markets would diversify the modes of financing in the region and reduce the double mismatch. The initiatives include the Asia-Pacific Economic Cooperation (APEC) Bond Initiative, the Executives' Meeting of East Asia and Pacific Central Banks (EMEAP) Asian Bond Fund (ABF) Initiative and the ASEAN+3 Asian Bond Markets Initiative (ABMI).

EMEAP introduced the ABF in June 2003 in order to help expand bond markets through demand-side stimulus by means of central bank purchases of sovereign and quasi-sovereign bonds issued by eight EMEAP emerging members (including China, Hong Kong, Indonesia, Korea, Malaysia, Philippines, Singapore, and Thailand) using all eleven members' foreign exchange reserves. The initial attempt was to purchase US$1 billion of US dollar-denominated bonds (ABF-1). Given the recognition that local-currency denominated bonds need to be promoted in order to address the 'double mismatch' problem, the central bankers introduced ABF-2 in December 2004, involving purchases of US$2 billion equivalent of sovereign and quasi-sovereign local currency-denominated bonds.

In May 2009, the ASEAN+3 Ministers endorsed the establishment of the Credit Guarantee and Investment (CGIM) as a trust fund of the Asian Development Bank (ADB) with an initial capital of US$500 million. Issues relating to the establishment of the CGIM are to be discussed at the working level and the decision taken in May 2010.

Macroeconomic policy coordination is essentially a post-crisis phenomenon in East Asia. There is an ascending order of intensity of these efforts in the sense that they involve progressively increasing constraints on the amount of discretion that individual countries can exercise in the design of macroeconomic policies. By level of intensity, these efforts have ranged from economic review and policy dialogue to establishing regional financing arrangements and eventually toward coordinating exchange rate policies. East Asian governments have:

- started to engage each other in policy dialogues (the two recent initiatives are the ASEAN Surveillance Process and the ASEAN+3 Economic Review and Policy Dialogue)[8];
- established a regional financing mechanism, the Chiang Mai Initiative (CMI), under which 16 bilateral swaps amounting to US$83 billion have been established and efforts to multilateralise the bilateral swaps are ongoing; and
- initiated discussions on how exchange policies could be coordinated possibly through the use of an Asian Currency Unit (ACU), which would be a basket of currencies. An ASEAN+3 Research Group, comprising about 30 think tanks from across the region, has been set up to support the groups.

On CMI multilateralisation (CMIM), at their meeting in Hyderabad in 2006, the ASEAN+3 Finance Ministers decided that "all swap providing countries can simultaneously and promptly provide liquidity support to any parties involved in bilateral swap arrangements at times of emergency". At their Kyoto meeting in 2007, the Ministers decided to establish a "self-managed reserve pooling arrangement". At their May 2008 meeting in Madrid, the Ministers "agreed that the total size of the multilateralised CMI would be at least US$80 billion". In response to the global economic crisis, at the Special ASEAN+3 Finance Ministers meeting in Phuket in February 2009, the amount was subsequently increased to US$120 billion. At their May 2009 meeting, the Ministers announced that they had agreed to implement CMIM before the end of

this year. They also announced an agreement to establish an independent surveillance unit to monitor and analyse regional economies and support CMIM decision-making. As a start, they agreed to establish an advisory panel of experts to work closely with the ADB and the ASEAN Secretariat to enhance the current surveillance mechanism. The Ministers also welcomed Hong Kong to participate in the CMIM.

In East Asia, most of the poor live in remote or isolated areas, especially in regions close to national borders. They need to be linked to commercial and industrial centres, not only in their own countries but to those in other countries in the region and beyond, via highways, railways, ports, telecommunications, and other hard infrastructure. The 'software' aspects of infrastructure development, including trade facilitation, are also important to reduce transportation costs. Greater connectivity enhances trade and investment integration by facilitating the movement of goods. The most advanced program in East Asia is the Greater Mekong Subregion; comprising Cambodia, Lao People's Democratic Republic, Myanmar, Thailand, Vietnam, and the Yunnan Province of China. Other initiatives include the Brunei Darussalam-Indonesia-Malaysia-Philippines East ASEAN Growth Area and the Indonesia-Malaysia-Thailand Growth Triangle.

East Asia's market-led integration, which now is also being driven by various policy actions, is expected to deepen further. One reason for optimism is that the increasing level of trade integration has led to a greater synchronisation of output and business cycles in the region. This means that symmetric shocks are expected to prevail enhancing the case for cooperation and coordination of policies (Rana 2008).

Going forward, Asian economic integration is expected to follow what Senior Minister Goh Chok Tong (2006) once referred to as the "variable geometry, flexible borders" approach. The process will be multi-track with trade (including infrastructure), finance, and macroeconomic policy tracks and with new members coming on board when they feel that they are ready. New institutions to support Asian integration are also expected to emerge.

On the trade track, efforts should be made to (a) make the FTAs compatible with each other (by having similar rules of origin as in Europe) and (b) consolidate the proliferation of FTAs into a deeper and wider FTA such as the East Asian FTA (including India). Kawai and Wignaraja (2007) have shown that an ASEAN+6 FTA would provide more gains than an ASEAN+3 FTA. Connectivity issues including infrastructure development and trade facilitation are also being addressed.

On the finance track, Asian bond markets should be developed further. Regional institutions to deepen local-currency bond markets, such as a regional settlement agency, need to be established. With the progress in reforming market infrastructure at the national levels, a regional regulatory agency that promotes coordination of capital market rules and regulations may be developed in the future.

On the macroeconomic policy track many of the decisions of the Ministers in relation to the CMIM must be implemented as scheduled by the end of this year. It is understood that the details on contributions, voting rights, decision-making rules, and other operational aspects have already been reached. The economic review and policy dialogue (ERPD) should also be strengthened beyond 'information sharing' to 'peer review' and ultimately to 'due diligence'.

The deepening regional and financial integration in the region together with the synchronisation of business cycles suggests that East Asia should initiate actions to coordinate exchange rate policies using a step-by-step approach. The first step could be to promote greater exchange rate flexibility while maintaining a certain amount of intra-regional stability by monitoring deviations from an ACU basket (Kawai and Rana 2008).

Some commentators see recent trends in the region as heralding the eventual adoption of a single currency or the establishment of an East Asian monetary union. Europe's experience shows that a monetary union imposes stringent demands on policy coordination and institution building that need a strong political will and a strong sense of common purpose which East Asia lacks at present (MAS 2007).

In addition to being multi-track, East Asian regionalism is also expected to be multi-speed, with the pace of progress for different aspects of regional cooperation and integration varying and with members, from other Asian regions as well, joining as and when they feel that they are ready to do so. It will also be a bottom-up approach as compared to the European institution-led approach.

Regionalism in East Asia is expected to:

- improve the medium and long-term economic outlook for the region and enhance the region's resilience to external shocks through the expansion of trade and investment based on comparative advantages of member countries
- lead to greater monetary and financial stability and prevent financial crises
- provide cross-border connectivity which is essential for the movement of goods, services, labour, and information across countries
- increase competitiveness, industrial production, and productivity within and between East Asian countries.

Economic relations between South Asia and East Asia[9]

Prior to 1990, South Asian and East Asian countries were relatively isolated from one another. The only trade agreement that covered the two sub-regions was the Bangkok Agreement signed in 1975 (now called the Asia-Pacific Trade Agreement). The adoption of the 'Look East Policy' in India in 1991 and similar policies in other

South Asian countries together with the economic dynamism of India and China, has now heightened the interest in the evolving economic relationships between the two subregions.

South Asia's total merchandise trade with East Asia has grown significantly in absolute terms albeit from a low base. It increased twelve-fold during 1990–2007, from US$12.4 billion to US$148.2 billion. The annual growth rate was relatively moderate until 2000, but it surged after that, growing by over 25 per cent per annum. As expected, a large part of the increase in South Asia–East Asia trade is due to the bilateral trade between the two giant economies of India and China.

In relative terms, however, the level of South Asia–East Asia trade accounted for 18.9 per cent of South Asia's total trade in 1990 and is now about 25 per cent. On the other hand, South Asia accounted for a mere 1.3 per cent of East Asia's trade and a slightly higher 2.0 per cent in 2007. Hence, East Asia is a more important trading partner for South Asia than vice versa.

The absence of comparable data on foreign direct investment (FDI) by source limits an analysis of investment relationships between South Asia and East Asia. The data that are available from national sources and the ASEAN Secretariat show that investment relations between the two regions, although starting to increase in recent years, are still limited.

A calculation of revealed comparative advantage indices shows that there is potential for enhancing trade between the two regions. South Asia has the comparative advantage mainly in primary goods and labour-intensive manufactures and information technology (IT) services, while East Asia has the comparative advantage across a much wider range of products. These include primary goods such as crude rubber and fish, labour-intensive manufacturers of various products, such as textiles, travel goods and footwear, and more capital- and knowledge-intensive items such as office machines and telecommunications equipments.

More recently, as in other parts of the world, there has been a proliferation of FTAs between South Asia and East Asia. Seven FTAs are already in effect and eight more are under negotiation. The most significant of these so far is the signing of the India-Singapore Comprehensive Economic Cooperation Agreement (CECA) in June 2005. The CECA became effective in August 2005 and covers not only trade in goods but also services, investments and cooperation in technology, education, air services, and human resources. The Asia Pacific Trade Agreement went into effect in 1976, the Group of 8 FTA in 2006, the China-Pakistan FTA in 2007 and the Malaysia-Pakistan FTA in 2008. Earlier this year the India-ASEAN and the India-Korea FTAs became effective. The former, however, allows India to protect its agriculture and services sector. The India-FTA has the potential of attracting Korean investment into India for export to third country markets.

A number of policy actions could be taken to increase the level of South Asia–East Asia integration. First, the levels of tariffs and NTBs are already low in many East Asian countries and since the 1990s South Asia has made encouraging progress in the same direction. However, there is room for further reductions in tariffs and NTBs in both regions (especially NTBs in East Asia because tariffs are already low). Second, in addition to reducing tariffs and NTBs, South Asian countries and several East Asian countries also need to make progress in implementing the remaining reform agenda, namely developing the social infrastructure (e.g. schools, hospitals, rural medical centres) and physical infrastructure (e.g. power, water, roads, railways) and implementing the so-called second generation reforms to enhance transparency, good governance, and the quality of fiscal adjustment. These include, among other things, reforms of civil service and of delivery of public goods, creating an environment that is conducive to private sector opportunities (e.g. greater competition, better regulations, and stronger property rights), and reforms of institutions that create human capital (e.g. health and education). Third, South and East Asian countries need to consolidate their FTAs. Quantitative estimates using the computable general equilibrium (CGE) model and the Global Trade Analysis Project (GTAP) database suggest that a broader regional approach will have a larger beneficial impact. The estimated impact on the national income of an ASEAN+3 and South Asia FTA is much higher than that of an ASEAN+3 and India FTA, which in turn is higher than that of an ASEAN FTA. While India benefits from an ASEAN+3 and India FTA, other South Asian countries lose. However, a broader ASEAN+3 and South Asian FTA is a win-win for all. Countries should also deepen FTAs by extending coverage beyond trade in goods to services, investment, technology, etc.

The fourth measure that could impact significantly on the level of trade between South Asia and East Asia is the reduction of trading costs. This could be brought about through investment in trade-related infrastructure and streamlining of cross-border procedures (including customs procedures and logistics costs). Most cargo between South Asia and East Asia moves by water and air as there are no land transport services that are operational at the present time. In particular, land transit through Myanmar is currently not possible. Additional corridors between India and China through Bhutan and Nepal will have to be developed. China has plans to extend the recently-opened Qinghai-Tibet railway to Nepal and India. Regional shipping lines have also to be developed.

Fifth, countries should make efforts to reduce transport and logistics constraints to facilitate the movement of goods between the two regions. These include delays in customs inspections, cargo handling and transfers, and processing of documents. Customs procedures could be modernised by:

- aligning the customs code to international standards
- simplifying and harmonising procedures
- making tariff structures consistent with the international harmonised tariff classification
- adopting and implementing the WTO Customs Valuation Agreement.

Finally, trade promotion efforts through skilful economic diplomacy, regular exchange of business delegations and civil society could be encouraged a lot more. People-to-people contacts can go a long way in enhancing the level of trade and investment across countries.

Economic integration in South Asia

The World Bank (2004) has estimated that the volume of trade among South Asian countries before the partition of India and Pakistan in 1947 was around 20 per cent of their total trade. This fell to about 4 per cent by the 1950s and to 2 per cent in 1967 mainly because of mutual mistrusts and political conflicts in the region. Also, for four decades after independence, South Asian countries had adopted inward-looking development strategies with high barriers to trade and investment. The two landlocked countries, Nepal and Bhutan, had maintained close trade links with India but not with other South Asian countries and the rest of the world.

This trend of declining intra-regional trade in South Asia started to reverse only in the late 1980s and the1990s when South Asia started to abandon import-substituting policies and began to adopt market-oriented reforms including trade liberalisation. Nevertheless, the level of intra-regional trade presently stands at a dismal 5 per cent of total trade. The comparative figures for East Asia are about 25 per cent in the case of ASEAN and 55 per cent in the case of ASEAN+3.

The lacklustre performance of South Asian integration can be explained by several factors. First, the deep mistrusts and political conflicts of the past continue. Second, the presence of India as a large country arouses fear of hegemony and economic dominance among the smaller neighbouring countries. Third, complementarities that existed in the 1940s may have lessened considerably as countries have developed similar types of industries.

With the view of promoting intra-regional trade, the SAARC initiated the South Asian Preferential Trading Arrangement (SAPTA) in 1995. But SAPTA's progress was painstakingly slow because of the product-by-product approach to tariff concessions, low product coverage, and stringent rules of origin. One study found that many trade restrictions maintained by South Asian countries were designed not to restrict imports from outside the region but to keep out exports from neighbouring countries, particularly from India (Weerakoon 2008).

In a sense, the South Asian Free Trade Area (SAFTA) of 2004 was a leap forward. It was formally launched on 1 July 2006, six months late because of Pakistan's failure to ratify it on time. Unfortunately, the SAFTA also had its own weaknesses. Among others, services trade, which is emerging as a major export item from South Asia especially India, was excluded. So was the issue of non-tariff barriers.

On money and finance, the SAARCFINANCE network, which is a network of central bank governors and finance secretaries set up following the 1998 Colombo SAARC Summit, has achieved some success in forging closer cooperation on macroeconomic policies. SAARC has also decided to hold regular meetings of the South Asian Finance Ministers modelled after the ASEAN and ASEAN+3 Finance Ministers meetings. The more recently announced goal of attaining a South Asian Economic Union and the expressed desire of a common currency will, however, have to wait for some time in the future as they can be feasible only in the longer term as economic convergence is achieved in the region.

In the area of cross-border infrastructure development, the South Asia Subregional Economic Cooperation (SASEC) programme initiated by four members of the SAARC (Bangladesh, Bhutan, India, and Nepal), has made notable progress in identifying projects in the six priority sectors (transport, energy and power, tourism, environment, trade and investment, private sector cooperation). But then again the implementation of the SASEC initiatives has been modest.

More recently, there have been signs which suggest that the region's mindset on the regional integration agenda is perhaps starting to change a bit. The recent elections in Bangladesh, Pakistan, and India and the decision by Sri Lanka and Pakistan to deal with insurgencies may have created an environment which is more favourable to inter-country cooperation. India, in particular, appears to have adopted a more positive stance on South Asia befitting its rapid emergence in the global economy. The Asian Development Bank's India 2039 study notes that India has the potential of achieving an average of 9.5 per cent growth per annum over the next 30 years provided it continues its economic reform programs[10]. By that time, India could be the second largest economy in the world, second only to China surpassing the United States. A prosperous South Asia would be beneficial for all. Last year, India announced that it would provide free market access to imports from its least developed neighbours and signed a FTA with Sri Lanka. It also made commitments to reduce its negative list and to promote regional connectivity. More recently, India has also proposed a Dhaka-Delhi-Lahore railway line to connect to the proposed Islamabad-Tehran-Istanbul service.

Positive signs are not confined to India alone. Despite the terrorist attacks, India–Pakistan relations appear to have thawed a bit. Pakistan has also increased the list of items in its positive list resulting in rapid growth of its imports from India. The new regime in Nepal has made progress in advancing discussions on a number of hydroelectric projects.

In this changing context and based on East Asia's successful experience with regional integration, South Asia needs to learn lessons from East Asia's successful experience with economic integration. The need for further cooperation in South Asia is clear. Burki (2009) argues "South Asia has two options – it could pursue national interests

or it could work as a region with the countries in the area prepared to step back a little from including only national interests in their economic strategies (in addressing regional and global issues). South Asia could do so much better by adopting a regional approach". Three lessons are particularly relevant for South Asia.

The first is for South Asia to take advantage of the recent positive signs and promote integration within itself by giving primacy to economic issues and not allowing political differences to stand in the way of regional integration efforts. The East Asian countries have not been immune to political conflicts. They have had their fair share. Despite these problems, however, the East Asian leaders have pressed ahead and agreed to keep their political differences aside on the regional cooperation agenda. It is now time for South Asian leaders to follow suit and implement on-going integration schemes effectively and deepen them further.

The second is for the South Asian leaders to adopt the East Asian concept of 'open regionalism' rather than the failed concept of 'closed regionalism'. This means extending any preferences granted by a country to neighbours to the rest of the world as well or 'multilateralising regionalism'. Successful implementation of 'open regionalism' in East Asia has contributed to the establishment of regional production networks and increased intra-regional trade without trade being diverted from the rest of the world. In fact, East Asia's trade with its three main partner groups (the EU, the US, and the rest of the world) has increased. This, in turn, has had favourable spillover effects on East Asian intra-regional trade and investment. South Asia could also 'multilateralise regionalism' by promoting trade with the rest of the world, including East Asia.

The third is for South Asia to adopt the East Asian approach to sequencing integration and not the European one. When the Europeans initiated the integration process in the post-World War II period there was a strong political will to cooperate and promote peace in order to avoid wars in the future. That is the reason why they went for a customs union and an economic union. Efforts to promote monetary integration began only later, the European Monetary System (EMS) was only established in 1979. The East Asian sequence was different. Given the weakness in the global financial architecture, East Asia initiated cooperation by establishing the ASEAN and the ASEAN+3 Finance Ministers Process. Efforts to promote trade integration after 2000 when countries started to promote FTAs. For South Asia, given the lack of political focus, it might be advisable to build on the various activities of SAARC-FINANCE, and maybe even establish an EMS-type system of fixed but adjustable exchange rates before trade integration. The increased level of intra-regional trade brought by such an exchange rate regime could play a catalytic role in encouraging cooperation on trade.

Endnotes

1 An earlier draft of the paper was presented at the Sixth South African Forum on Trade – From Cape to Cairo: Exploring the COMESA-EAC-SADC Trilateral FTA, Pretoria, Johannesburg, South Africa, 3–4 August, 2009.

2 The paper defines Pan-Asia as the South Asian and East Asian sub-regions of Asia. Other sub-regions of Asia are not considered.

3 The recent emergence and integration of Asia are not without historical precedence. During much of the first eighteen centuries of human history, Asia not only dominated the world economy but was a well-connected and well-integrated region of the world (Rana 2009).

4 Regionalism refers to official activities that encourage regional integration and/or help to shape coordinated action and responses to developments that affect the region. Regional integration is a process that leads to greater interdependence within a region. Regional integration may be market-driven or policy-led.

5 Given that the Asian financial crisis was a capital account crisis, the IMF should not have required Asian countries to tighten fiscal policy and raise interest rates. It should also not have gone overboard in requiring these countries to meet many structural conditions that were imposed in its programme. Its approach to financial and corporate reforms was also inappropriate, at least in Indonesia (Isard 2005). Subsequently, the IMF accepted many of these criticisms (IMF 2003).

6 ADB's database at www.aric.adb.org

7 The 'double mismatch' problem refers to borrowing unhedged foreign funds to lend long-term in domestic currency and borrowing short-term to lend long-term. The 'original sin' is a situation where emerging economy residents cannot borrow abroad in domestic currency nor borrow long term, even domestically. Hence domestic banks and corporations tend to face a currency or maturity mismatch or both, thus facing balance-sheet vulnerabilities to sharp changes in exchange rates and/or interest rates.

8 The earlier initiatives under the auspices of the central banks in the region are EMEAP, SEACEN, and SEANZA. The ASEAN+3 group has also taken steps to monitor short-term capital flows and to develop early warning systems of currency and banking crises.

9 This section draws on Rana and Dowling (2009) Chapter 4.

10 This requires a formidable set of reforms to (a) tackle disparities among various social groups, (b) improve the environment, (c) eliminate pervasive infrastructure bottlenecks (d) renew education, technological development and innovation, (e) transform the delivery of public services especially in cities, (f) revolutionise energy production and consumption and (g) foster a prosperous South Asia and become a responsible global power.

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Overview of the trade policy and non-tariff barriers in the COMESA-EAC-SADC regional economic communities

Evengelista Mudzonga

At their first Tripartite Summit in October 2008 in Uganda, the COMESA-EAC-SADC (CES) Heads of State and Government committed to form a unified free trade area (FTA) amongst the three regional economic communities (RECs). The overarching common objective of the individual RECs has been to expand trade, reduce poverty and improve the quality of lives of people in the RECs. However this has been met with challenges. The RECs believe in coming together and forming a unified FTA in order to meet this objective. The idea is also in line with the Abuja Treaty of 1991 and hence a step towards the formation of the African Economic Community.

The three RECs involving 26 countries comprise a combined population of 527 million people and a combined Gross Domestic Product (GDP) of US$ 624 billion (World Bank statistics). This is half the membership of the African Union (AU) and just over 58 per cent in terms of the contribution to AU GDP and 57 per cent of the total population of the AU (CES first Tripartite Summit Report 2008).

The grand, unified FTA will deal with the challenge of expansion of trade and as well as the longstanding challenge of multiple membership given that 17 (about two thirds) of the 26 countries involved in this deal are either in a customs union or involved in negotiations aimed at establishing alternative customs unions to the ones they currently belong to. Five members in SADC, for example, belong to the Southern African Customs Union (SACU); four members of EAC (a customs union already) also belong to COMESA with the fifth member, Tanzania, also belonging to SADC. As if this were not enough, COMESA and SADC share eight members. Efforts towards the harmonisation of the three RECs' programmes started in 2005 mainly in the area of trade, customs, free movement of people as well as infrastructure development.

Synopsis of the RECs

The RECs are implementing regional integration programmes in trade and economic development covering the establishment of FTAs, customs unions, monetary unions and common markets. They are also implementing regional infrastructure development programmes in transport, information and communications technology (ICT) and

energy as a first step towards the realisation of continental integration and the establishment of the African Economic Community (CES first Tripartite Summit Report 2008).

COMESA

The Common Market for Eastern and Southern Africa (COMESA), which started as a preferential trade area in 1982, formed a FTA in October 2000 and launched a customs union in June 2009. The grouping has a membership of 19 countries namely Burundi, Comoros, Democratic Republic of Congo (DCR), Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. However only 14 of these states are participating in the COMESA FTA with the remaining five (i.e. DRC, Eritrea, Ethiopia, Swaziland and Uganda) working towards becoming members of the unified FTA.

EAC

The East African Community (EAC) is a customs union that was revived in 2005. Burundi, Kenya, Rwanda, Uganda and Tanzania are members of this REC. The region is gradually reducing its internal tariffs and this exercise will be over in 2010. This will coincide with the establishment of the REC's common market. The grouping has also scheduled to establish a monetary union in 2012.

SADC

The Southern African Development Community (SADC) is comprised of 15 member states namely Angola, Botswana, DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The region launched a FTA in August 2008 but only 12 countries are participating in the FTA.

Overview of the RECs' trade and tariff policies

The RECs' trade policies are governed by the member states' commitments to autonomous liberalisation which most undertook a decade ago. The policies are also informed by their regional initiatives as well as the multilateral arrangements. For the past 5 years all three RECs have been locked in substantive negotiations with the European Union (EU) to form Economic Partnership Agreements (EPAs) that are schemes to create a FTA between EU and ACP countries.

COMESA trade and tariff policies

Below is an outline of the COMESA Customs Union Roadmap as stipulated in its 2007-11 Strategic Plan as well as the progress made so far in accomplishing the requirements for the establishment of this customs union.

Table 1: The COMESA Customs Union Road Map[1]

Common External Tariff	1. Agree on a common external tariff (CET) structure that minimises conflict with other regional trading arrangements 2. Implement a programme to have member state tariff rates aligned with CET target rates 3. Develop budgetary assistance measures to minimise revenue gaps arising from implementation of CET rates 4. Develop measures to assist industries to successfully compete under a CET/CU environment 5. Complete work on the Common Tariff Nomenclature with agreed categorisation of goods 6. Improve Rules of Origin
Customs Procedures and Legislation	1. Develop programmes to simplify and harmonise customs procedures and legislation 2. Develop anti-dumping, countervailing duty regulations and other trade remedy measures for the customs union
Legal and Administrative Structure	1. Develop a legal and administrative framework for the CET/CU 2. Constitute the Common Tariff Nomenclature Committee 3. Establish Customs Union Liaison Offices in member states

Now in terms of the implementation of this roadmap, the COMESA Report of the Authority on Priority Issues (2009) highlights that the key requirements for the launch of the customs union are now in place and these are:

1. The council regulations on the customs union, setting out the overall architecture of the customs union.
2. The customs management regulations on the customs operations.
3. The CET tariff bands of:
   - 0 per cent for raw materials
   - 0 per cent for capital goods
   - 10 per cent for intermediate goods, and
   - 25 per cent for finished products.
4. The COMESA Tariff Nomenclature.
5. The schedules of products so far aligned to the CET.
6. Lists of sensitive products produced by most of the member states.
7. The member states should be allowed a period of three years, to align their national tariffs with the COMESA CET, provided that after eighteen months from the date of launch, the period of three years may be reviewed by Council for a period not exceeding five years from the date of the launch.
8. Council decisions setting up the COMESA Task Force on the customs union, have the function of finalising any outstanding work, monitoring the implementation and operation of the customs union and annually providing reports to relevant organs of COMESA for any required modifications and improvements
9. Member states with the 5 per cent tariff band may continue to apply it after the launch of the customs union during the transitional period.

Regional sensitive products

The region adopted what is called a COMESA rate which is used to allot different rates on Chapters 1–97. The allotment was guided by the need to promote industrial development that will come through value addition, diversification and innovation. The COMESA Summit Daily Bulletin 5 (2009) stresses that this allocation will ensure that producers in the region as far as possible obtain raw materials and intermediate goods competitively, obtain environmental protection and the creation of employment and wealth.

The bulletin also states that the refined COMESA tariff is being used for the production of national sensitive products and tariff alignment schedules indicating over what period and how the national tariffs would be aligned to the CET agreed rates, while taking into account flexibility and policy space due to national specifications and levels of development. COMESA member states will set up national task teams to steer the national and regional process leading to the finalisation and submission of the national sensitive products lists and tariff alignment schedules. In an effort to guide member states to align their tariffs to the COMESA CET, each COMESA country should produce three schedules, namely:

- Schedule I: consisting of tariff lines with rates aligned to the CET
- Schedule II: consisting of tariff lines with rates NOT aligned to the CET but alignable within a specified time frame (short to medium term)
- Schedule III: consisting of tariff lines with rates NOT aligned to the CET and alignment only possible in the long term or deferred indefinitely.

The national task teams, as reported in COMESA Daily Bulletin 5 (2009), are therefore expected to:

- ensure national tariff structures are based on the COMESA CTN
- validate Schedule I and extend it to include all tariffs at the 8 digit level
- generate Schedule II including proposed measures for eliminating sensitivity in the short to medium term
- generate Schedule III and, wherever possible, propose measures that will contribute to making the tariff lines on the schedule align to the CET
- propose measures and means of domesticating the provisions of COMESA's Regional Trade Policy and those of the relevant legislation related to the customs union.

Member states were compelled to submit their lists of sensitive products and tariff alignment schedules by 20 May 2009 for attachment as Schedule II. The region also planned to establish a standing Committee on Regional Trade Policy, which will carry tasks necessary for the effective establishment and operation of the customs union.

EAC trade and tariff policies

The main elements of the EAC protocol are: removal of internal tariffs and all non-tariff barriers (NTBs) on intra-EAC trade; introduction of common external tariffs (CETs); and agreement on a list of products classified as sensitive and therefore requiring additional protection (EAC 2008).

Under the customs union agreement effective from 2005, Kenya was to immediately eliminate all tariffs on goods originating from partner states while Uganda and Tanzania were to eliminate tariffs on goods falling under Category A and gradually phase out tariffs on goods falling within Category B (EAC 2008). Category A includes goods which are zero rated while Category B includes a few goods which are exported from Kenya to Uganda and Tanzania that attract tariffs between 2 per cent and 10 per cent respectively in 2006 and would be reduced to zero by January 2010 when the customs union is fully operationalised.

The EAC has the following common external tariff structured: 0 per cent for raw materials and plant and machinery; 10 per cent for intermediate goods; and 25 per cent for finished goods. All the partners were to adhere to this schedule. In fact COMESA and EAC adopted the same common external tariffs. According to the COMESA Secretary General, this makes the two regions effectively one customs union and there is hence no need for member states to choose between the two (COMESA Summit Daily Bulletin 1 2009). Also, intra- trade within the EAC increased by 42 per cent in 2007 from 2004.

In terms of implementation, Kenya aligned its tariffs to the agreed three tariff band structure in 2007 except for the sensitive products.

The grouping prioritised customs revenue as a critical source of income for the member states. This is evidenced by the share of customs revenue to total revenue for Burundi which accounted for 55.5 percent and 54.6 percent in 2006 and 2007 (EAC 2008). The member states charge varying excise duties because of different reasons.

Sensitive products

The EAC drew a list of products they felt required more protection from competition generated by imported goods. This was premised on the fact that the region had the needed capacity to produce these products. On the list were products such as sugar, milk, wheat flour, maize, rice, palm oil and worn clothing.

SADC trade and tariff policies

SADC is guided by the Regional Indicative Strategic Development Plan (RISDP) and the SADC Trade Protocol, among other documents, with regards to its regional integration agenda. The SADC Trade Protocol has the following provisions: elimination of barriers to intra-SADC trade; harmonisation of customs procedures; trade laws and principles; trade defence instruments; trade related issues; intellectual property rights; competition policy and dispute settlement provisions.

Current trade policies envisage transforming economies of the SADC countries into more competitive economies with export lead growth. They aim to harmonise their trade policies in line with the trade protocol and other regional and international trade agreements (ESRF 2003).

Member states began implementing the SADC Trade Protocol in 2001 with the aim of gradually liberalising 85 per cent of their intra-regional trade by 2008. This proportion of their trade was deemed free on 1 January 2008 and in August of that year the region launched a FTA. Only 12 of the 15 member states are so far participating while the rest asked for more time. The remaining 15 per cent of SADC intra-trade will be gradually reduced to zero in 2012 beginning in 2009. The 15 per cent constitutes sensitive products.

The SADC region applied the principle of asymmetry taking into account the different levels of economic development amongst them as well as the varying economic interests and degrees of sensitivities. South Africa, which was considered developed and hence *de facto* part of the SACU grouping, agreed to reduce their sensitive products by 2009. The grouping also front loaded their tariff phase downs on the 85 per cent of their trade with the rest of the SADC member states. This principle was applied in order to minimise the impact of tariff phase downs.

Zimbabwe, Mozambique and Mauritius and SACU's sensitive products represent less than 10 per cent of the tariff lines covered by the SADC protocol on trade while the rest are about 10 per cent or more (Southern African Trade Hub 2008). Even though SACU has excluded a few items from their sensitive lists, the region agreed to establish special arrangements for dealing with trade in sugar, textiles and clothing.

Beyond the FTA, SADC's overall regional integration road map also includes the completion of negotiations for a customs union by 2010; the completion of negotiations for a common market by 2015; and the establishment of a monetary union by 2016 and a regional Central Bank with a common currency by 2018 (ECA 2008).

However, among the three regions, rules of origin applied in the SADC region are alleged to be more stringent that those used in COMESA and EAC, and hence restrict trade.

Bilateral and multilateral trade arrangements

Trade relations between the ACP and the EU can be traced back to 1975. However, because of violation of the then relations, a new trade arrangement had to be drawn up. The Cotonou Partnership agreement was signed in 2000 which provided for the negotiation of the EPAs. Article XXIV of the General Agreement on Tariffs and Trade (GATT) allows for the formation of a FTA and a customs union if notified by the World Trade Organisation (WTO).

The Eastern and Southern Africa (ESA) region, under which most of the COMESA countries have regrouped for EPA purposes, is negotiating market access, fisheries, development cooperation, trade related issues, services and agriculture. This region has scheduled 29 August 2009 for the signing of the interim EPAs as the parties could not reach an agreement for full EPAs.

The interim EPA initially allows for 100 per cent liberalisation by value by the EU as of 1 January 2008, with transition periods for rice and sugar. On the trade provisions, the European Commission (EC) will grant duty-free, quota-free market access to all goods exported by ESA states except for sugar and rice, which are subject to short transition arrangements. In addition to the current sugar quotas, the ESA signatory states have secured an additional quota of 75 000 tons which will be available from the 2008 marketing season. On textile and clothing the EC agreed to provide the single transformation rule of origin.

The ESA region secured an automatic derogation on tuna and tuna loin exports of 10 000 tons. This means they can supply up to 10 000 tons of tuna and tuna loins to the EU without having to satisfy the rules of origin for fisheries.

On their part, the ESA states as an economic block have agreed to gradually liberalise 80 per cent of their trade for imports from the EU covering mainly capital, raw material and intermediate products over a period of 15 years with an initial 5-year preparatory period. Exceptionally few products, mainly final products, will be liberalised over 25 years. After this period, 20 per cent of the trade, which will be mainly agricultural and final products, will remain completely excluded from any liberalisation (Chigwada 2008).

Table 2: Liberalisation schedules agreed in initialled Interim Agreements[2]
(Cumulative value of imports from the EU to be liberalised by the specified year)

	2008	2010	2012	2013	2017	2018	2022	2023	2033	Total
Comoros				21.5%			80.6%			80.6%
Madagascar				37%			80.7%			90.7%
Mauritius	24.5%				53.6%		95.6%			95.7%
Seychelles				62%	77%		97.5%			97.5%
Zimbabwe			45%				80%			80%

Several products from different sectors have been excluded from liberalisation, mainly due to the need to protect sensitive products or infant industries in the countries.

The EAC is negotiating market access, fisheries, development cooperation, trade related issues, services and agriculture. In fact this grouping was negotiating under ESA and only broke away at the end of 2007 to initial EPAs as a separate grouping. The interim goods - only agreement allows for 100 per cent liberalisation by value by the EU as of 1 January 2008 (with transition periods for rice and sugar) and 82 per cent liberalisation by value by the EAC in 25 years.

Table 3: Liberalisation schedules agreed in initialed Interim Agreements[3]
(Cumulative value of imports from the EU to be liberalised by the specified year)

	2008	2010	2012	2013	2017	2018	2022	2023	2033	Total
EAC		64%						80%	82%	82%

The EAC exclusion list covered agricultural products, wines and spirits, chemicals, plastics, wood-based paper, textiles and clothing, footwear and glassware. The main reason for excluding these goods is the need to protect infant industry.

The SADC region is negotiating market access, development cooperation, competition and government procurement.

Prevalence of the NTBs in the three RECs

The WTO classifies NTBs as measures that impede international trade other than tariffs (Hove 2008). NTBs have a considerable potential of decreasing or even nullifying market access benefits achieved through tariff liberalisation. The three RECs therefore see NTBs as a significant threat to the realisation of the region's trade growth and have therefore attached importance to the effort to eliminate them through online and offline monitoring and reporting mechanisms.

In accordance with the provisions of Articles 49 and 50 of the COMESA Treaty, many NTBs may exist for legitimate reasons such as consumer protection, public safety and environmental protection. These measures only become genuine NTBs when they are implemented in a manner that unnecessarily add to costs or inhibits trade, is discriminatory or is applied in an illegitimate manner (COMESA NTB Workshop Nairobi 2007).

The Imani Development Trust carried out an inventory of the prevalence of NTBs in the three RECs in 2007. Its report highlighted that NTBs within the region have become considerably less identifiable as trade liberalisation and tariff reform processes have been implemented over the last decade. Trade reforms carried out by the countries in the region removed state intervention such as price controls, foreign

currency controls, import licensing and state marketing. However, the report underscores that today the prevailing NTBs tend to be more arbitrary, qualitative and non-transparent. Nevertheless they still exist in one form or another in all of the countries under review and depending on the product and the transaction, they can be effective in reducing intra-regional trade.

The report by Imani (2007) classified the most prevalent NTBs in the region as arbitrary, agricultural, customs administration and infrastructure NTBs.

Examples of arbitrary NTBs are shown in the table below. These are product specific and sometimes seasonal.

Table 4: Arbitrary NTBs in the RECs[4]

NTB	Primary Reason
Non-acceptance of SADC/COMESA certificates of origin	Non-notification of change of verifying signatures, suspicion of authenticity of declaration
Changes in road and border tolls	Short-term revenue generation
Temporary bans on selected products	Local industry protection, vested interests, health protection
Non-acceptance of certificates and trade documentation	If the documents are in order then often due to corrupt practices at border posts
Visa requirements	Lack of harmonisation and revenue seeking
Non-acceptance of national standards	Inability for verification at national level, lack of regional accreditation processes, Mutual Recognition Agreements (MRA) not in place
Pre-shipment inspection	Prevent transfer pricing and under-invoicing
Restrictions on transport mode	Protection of local transporters, revenue collection
Incorrect tariff classification	Corruption, revenue collection, lack of suitable training
Poor collection and dissemination of trade data	Inadequate human resources, lack of computerisation

The report highlights that regional traders face the biggest barriers in agricultural products. This stands in contrast to these countries' push for agriculture market access at the international level. Market access for the same is difficult in the region, which needs these products the most. Non-conformity in the efficiency and effectiveness of customs administration in the three RECs is also noted by the report as significant. Significant improvements in this area were however acknowledged in a number of countries. Poor roads, rail, air, and port facilities were also noted as barriers to regional trade. Landlocked countries however, seem to bear a massive burden on time, transport costs and other transit fees. COMESA is making strides in the region through the adoption of COMESA harmonised documentation and regulations.

Prevalence of NTBs is also accentuated by Kalenga (2004) who argues that the scope of NTBs in the SADC region remains extensive and forms a substantial hindrance to intra-SADC trade. According to the Regional Trade Facilitation Programme (RTFP), the following are seen by COMESA as potential sources of NTBs: customs clearance procedures; import regulations; sanitary and phytosanitary (SPS) measures; non-tariff charges; technical regulations and transit fees.

The three RECs are making frantic efforts to eliminate the NTBs. Policy commitment to eliminate NTBs is underscored in the RECs' treaty provisions, council decisions and protocols.

In 2001, as the RTFP reports on its website, COMESA adopted a road map for the elimination of NTBs, but following a period of relative inaction, it was decided in May 2006 to put in place a permanent mechanism for the resolution of disputes arising from NTBs; that advance notification of NTBs should be made by member states; that a regional policy should be developed and that all should adhere to common standards. The region also developed a time-bound action plan for the elimination of NTBs. A reporting mechanism was also agreed and a full-time NTB officer, financed by RTFP, is now based at the COMESA Secretariat and manages a web-based data base.

The RTFP further says that under the Tripartite Task Force, COMESA, EAC and SADC have agreed to develop a common mechanism for categorising NTBs. They will also exchange information and the NTB website (which is currently managed by COMESA) will eventually incorporate information for the other two RECs as well.
The first joint COMESA-EAC-SADC meeting on NTBs was held in South Africa in March 2009. At this meeting, the most common sources of regional NTBs were identified as customs clearance procedures (administrative); non-tariff fees/transit fees (administrative); SPS standards (health safety and environment); technical regulations (health safety and environment); and import regulations, including licensing and quotas (trade policy).

The above scenario attests to the fact that although the region is making efforts to remove barriers to trade, these barriers are still incessant even though arbitrary and qualitative. The three regions therefore need to harmonise their current regional policies, institutional arrangements and mechanisms, modalities and their monitoring and evaluation tools to eliminate NTBs and to expand their economic and trade cooperation and integration.

The integration process will also be hampered if the three blocs do not invest heavily to improve the poor infrastructure in most of the member countries. The current road, railway and port networks used by these African countries were built by the colonialists and they do not link with each other. After their independence, the African countries have lacked necessary resources to repair, update, expand and connect the transport systems. The rich foreign countries have been reluctant to invest in the infrastructure sector in Africa due to the quite unstable situation in the continent.

Possible opportunities and challenges for trade integration among SADC, COMESA and EAC

Opportunities

The merging of the three RECs into one will come as a solution to the challenges the groupings have been facing in their inter-regional trade. Multiple membership to different trade regimes risked trade deflection. Further dealings with many trade regimes and instruments posed legal administrative challenges to member states. Thus, the harmonisation of trade facilitation instruments through the FTA will stimulate inter-regional business activities. Prevalence of tariffs and NTBS has a negative impact on trade expansion by the countries in the region. However, the endorsement of a common strategy on dealing with the prevalent NTBs by the three RECs and the ongoing efforts directed towards a common reporting format and an online reporting system come in as a solution to these trade barriers. These will deal with free movement of persons, and infrastructure to facilitate trade in the three RECs.

The COMESA FTA has witnessed greater competition among companies, new markets, greater choice for consumers, reduction of transaction costs, an increase of cross-border trade and harmonisation of customs systems and procedures. The same can also be envisaged with the bigger unified market of the COMESA, EAC and SADC FTA.

Some of the economic benefits of regional integration in the SADC region include welfare gains through lower prices and wider choice and improved quality as goods move freely in the region. The market becomes larger and wider. This means that producers can produce more goods. This encourages mass production of both goods and services thereby lowering the costs of production through advantages of economies of scale. There will be increased efficiency in production, increased trade and investment across the region and the promotion of cross-border movement of financial and capital assets.

The COMESA FTA has also created opportunities for cross-border investment, franchise and agency arrangements and joint venture operations (CES first Tripartite Report Summit 2008). Moreover its intra-regional trade increased from an average of 20 per cent between 2000 and 2006 to 30 per cent in 2007. The EAC also recorded increased cross-border trade both from regional and foreign investors. Local investment was mainly from Kenya into other member states. These again are some of the opportunities open to the region given the bigger Tripartite FTA.

The grand FTA of COMESA, EAC and SADC can be achieved. This gives an opportunity to assess how to calculate the rules of origin. As they stand, the rules of origin of the three RECs are based on the EC rules which were developed in the 1970s. However, with globalisation, many manufactured products now contain components from all over the world which makes it complex to calculate and meet the rules (COMESA Summit Daily Bulletin 3 2009).

On infrastructure development, the COMESA Fund and the Tripartite Trust Fund can be leveraged to mobilise adequate resources. However, the challenge is to facilitate the participation of the private sector in infrastructure development in the same way that it is participating in road and air transport (COMESA Summit Daily Bulletin 3 2009)

Due to the challenges of reduced access to finance posed by the global recession, regional and inter-regional trade will be key to Africa's economic growth. Thus the bigger FTA comes in as a home grown option to deal with the impact of international shocks in the region. The increased numbers and harmonisation of positions with external trading partners will strengthen the region's negotiating and bargaining position.

The grand FTA can take advantage of structures that have already been put in place in the region. These are the COMESA Infrastructure Development Fund, the COMESA Regional Investment Agency (RIA) and many others.

Challenges

The challenges that have been met by the regional groupings separately may be magnified in the bigger FTA if not dealt with effectively. These may relate to weak enforcement mechanisms, lack of institutional capacities, human resources, technical capacity and the inadequate finance to implement the bigger FTA. The COMESA FTA has been in existence for seven years, but faces the danger of structural rigidities restricting the growth of intra-regional trade. The low levels of product complementarities, low levels of innovation and poorly developed technological and human resource capacities are a major impediment to growth in trade within COMESA (UNECA 2008).

Economically dominant member states will likely benefit more than the others. For example, Kenya in the case of EAC and South Africa in the case of SADC, whose exports constituted 70 per cent of intra-SADC trade. Low levels of industrial development will also slow the ability of the region to expand trade. Coupled with this is the lack of value addition to produced goods. The bulk of the exports are primary commodities. The only way out of this will be to promote industrialisation. The investment climate is not very attractive for foreign direct investment (FDI) for various reasons. The forces of the three blocs' external trading partners pose challenges to the region, the roles of China, the US and the EU, for example. The blocs already had established groupings which the EU could have used for EPA negotiations. One would question why there were other blocs for EPAs when the existing ones were there already. The lack of common policies amongst the regions will compromise their positions when dealing with external parties. The region needs to speak with one voice when dealing with external parties. The big question of control of resources from the external forces and the pressure from the multinational companies derails regional integration in the region.

There is also need for political will as there has been rhetoric of a continental unit which is different from the reality on the ground. The African leaders tend to 'worship in the alters of strong sovereignty wile preaching continental unity'. Thus there is great need to walk the talk. Divergences of interests, endowments as well as economic priorities seem to magnify this lack of unity in the region.

The political instability in some of these member countries, such as the Sudan, the DRC and other countries, render the region risky for investment and therefore counter the benefits of the FTA if it fails to attract FDI.

It is also critical to know who the drivers of regional integration in the region are and what their motives are. The challenge remains involving all the stakeholders beginning from the grassroots. It has to be a bottom up approach not only top down. There has to be buy-in support from those parties that will be involved in the implementation of the FTA. Serious public awareness and information sharing will ensure the wider FTA comes to fruition.

Conclusion and recommendations

COMESA, EAC and SADC have committed themselves to form a unified FTA. However the groups are at various stages in terms of implementing their regional integration agendas. More so, their policies are divergent although they are making efforts to harmonise them. All three RECs have low intra-regional trade and have been facing challenges to gradually integrate themselves into the world economy. Trade barriers through the imposition of tariffs have been largely eliminated in the RECs. NTBs, however, are still prevalent and these restrict trade in the regions.

There are possible benefits the region will enjoy through the unified FTA. These include increased markets, cross-border investment, free movement of goods and persons, low prices, dealing with the problem of multiple memberships, pooling of resources to deal with regional infrastructure challenges, improving bargaining power when dealing with external trading parties, etc.

However, challenges the individual regions have been facing may be magnified if not dealt with effectively when the form they FTA. These relate to weak enforcement mechanisms, lack of institutional capacity, low manufacturing value addition, low industrial capacity, political risk, influence of external partners and lack of regional units, among others.

These therefore need to be addressed if the region is to participate meaningfully and competitively in the world economy. It is only when these factors, among others, are rectified that the benefits of regional integration can trickle down to the member states and solve their developmental concerns.

Endnotes

1 Source: UNECA 2008

2 Source: ECDPM 2008

3 Source: ECDPM 2008

4 Source: Imani Development 2007

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Towards a services agenda for the COMESA-EAC-SADC Tripartite Free Trade Area

Trudi Hartzenberg

The importance of services in the global economy, including developing and least developed countries, is undoubtedly growing. It is no surprise that trade in services has become an important issue in the context of discussions on regional trade agreements. It is, however, important to recognise at the outset, that the trade in services agenda is much more complex than the trade in goods agenda. This is so for many reasons, some of which will be referred to in this paper, while others will be beyond its scope.

A cursory review of the World Bank Development Indicators database[1] provides ample evidence of the importance of services' contribution to gross domestic product (GDP), to employment and to global trade. It is however true that services dataa and in particular services trade data, is at this stage still not easily accessible and that trade measures and instruments that impact on services trade are embedded in a very complex web of domestic policy and regulation. In addition, the international commitments that countries have made in the World Trade Organisation (WTO) in the negotiations on the General Agreement on Trade in Services (GATS), bilateral investment treaties and other international agreements also have to be taken into account.

A very important focus of recent analytical and policy work is the role of services in manufacturing competitiveness. It's obvious that any manufacturing activity requires service inputs. Transport, logistics, retail, wholesale, financial and communications services are inputs into the production of virtually all goods. The trend of production fragmentation which has led to the geographic separation of stages of the production chain across the globe, with the emergence of new clusters of competitiveness, many in developing countries, emphasises the role of services in the competitive production and supply of manufactured products. Services therefore play a role not only in production activities, as connectors between stages of production in a supply chain, but also in trade facilitation. Trade transactions require transport, financial, communication and a host of other services to facilitate the cross-border transactions of international trade. Trade transaction costs are related therefore not only to infrastructure services but also to business, professional and many other services.

Services are also very important on the domestic development agenda. Many services, including financial, communication, healthcare and education services, address

key development priorities. Domestic policy priorities, such as universal access, are therefore quite common for these sectors, and need to be taken into account when developing a services liberalisation agenda. In short, it makes sense for countries, in particular developing countries, to take the development of a services agenda seriously, and also to consider specifically how to structure a trade liberalisation agenda covering the multilateral, regional trade agreement (RTA) and unilateral tracks. There is much that can be done at the national level; unilateral reform and liberalisation can deliver significant benefits independent of a services liberalisation agenda.

At the outset, however, it is important to recognise that services trade liberalisation does not guarantee efficient domestic services markets or accessible, cheaper and better quality services. For services liberalisation to be effective in supporting better market outcomes, it must result in increased competition. Increased competition will lead to lower prices, better quality and easier access to services. This outcome requires not only a liberalisation agenda but also a supportive domestic regulatory reform agenda and other support policy measures such as skills development and technology transfer programmes.

The focus of this paper is on a trade in services agenda within the proposed Tripartite Free Trade Area (FTA) among the member states of three regional economic communities (RECs) in Eastern and Southern Africa. It must be kept in mind that the objectives spelt out for the establishment of the Tripartite FTA, and ultimately a customs union, do not necessarily require services provisions. However, there are references in the Final Communiqué to services, and it may well be argued that services liberalisation could well be an important contribution to the overall regional integration objectives of the member countries.[2]

Taking as a point of departure the fact that references to services (different sectors as well as modes of supply) are included in the Final Communiqué, the paper makes a modest start on the work programme that is necessary for the development of a trade in services agenda. It recognises the inter-relatedness of the services trade agenda with domestic regulatory reform agendas to support the introduction of competition which is essential if trade in services, both among the member states and with other partners in the global economy, is to be facilitated, and if services are to support competitiveness of the firms and sectors of member states in the proposed Tripartite FTA.

Data availability is a particular challenge when working on services at this stage, so this remains a work in progress. The Appendix at the end of this paper provides data on the role of services in the economies of the member states as well as their overall trade in services profiles. Much work remains to be done to gather data on specific sectors, the structure of these sectors, key players and the nature of competition in these sectors.

Taking this into account, the paper contributes to the development of an agenda for services liberalisation in the Tripartite FTA. The Final Communiqué from the Summit

contains reference to some substantive issues that will feature on a services liberalisation agenda. A range of issues that are pertinent to a services trade agenda and that distinguish this agenda from a trade in goods agenda are raised. Some ideas on the preparatory work that needs to be done by countries participating in the FTA negotiations are presented. It is clear that the preparatory work requires detailed sectoral analysis as well as a review of broad development strategy and economic and social policy objectives for the country. Finally the paper makes a start on the review of the commitments that countries have made in the WTO in the context of the GATS.

The Final Communiqué from the Tripartite Summit: towards a services agenda?

The member states of the East Africa Community (EAC), the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC) resolved at the COMESA-EAC-SADC Tripartite Summit of Heads of State and Government held in Kampala, Uganda on 22 October 2008 to establish a Tripartite Free Trade Area encompassing the member states of the three regional economic communities, with the final aim of establishing a customs union.

The Heads of State of the countries belonging to three RECs noted in their Final Communiqué that the Summit was held "[i]n pursuit of the broader objectives of the African Union to accelerate economic integration of the continent, with the aim to achieve economic growth, reduce poverty and attain sustainable economic development"[3].

A programme of harmonisation of trading arrangements amongst the trade blocs, as well as the free movement of business persons, joint implementation of inter-regional infrastructure programmes, and institutional arrangements, on the basis of which to foster cooperation were also agreed upon at the Summit. The arrangement is a key step forward on the path towards achieving an African Economic Community (AEC).[4]

The Final Communiqué does not provide for the development of a comprehensive services liberalisation agenda for the proposed Tripartite FTA. At first glance the focus is very much on a traditional FTA agenda with a strong emphasis on trade in goods, with goals following the linear regional integration model advancing from a free trade area to a customs union. There are however references to elements which fit into a services agenda. It could be argued that the motivation for their inclusion could well have been to address specific supply-side constraints or specific infrastructure challenges.

The Final Communiqué refers to the decision by the Tripartite Summit directing the RECs to put in place a joint programme for a 'seamless upper airspace'[5]. The Summit launched a Joint Competition Authority on Air Transport Liberalisation to oversee the implementation of the Yamoussoukro Decision on Air Transport in the

RECs starting in January 2009. A joint programme for an 'accelerated, seamless inter-regional ICT Broadband Infrastructure network, a joint programme for implementation of a harmonised policy and regulatory framework that will govern ICT and infrastructure development in the three RECs' are also provided for. In addition, within a year a Regional Master Transport Plan for the RECs, and a Regional Energy Priority Investment Plan and an Energy Master Plan are to be in place. Facilitation of the movement of business people is also noted as a priority for the Tripartite FTA.

In summary, the following, which would usually be included in a services agenda, are noted in the Final Communiqué:

- Information and Communications Technology
- Transport (including air transport which is often excluded from services liberalisation negotiations)
- Energy
- Movement of business people.

These[6] could all feature in a broad-based services strategy for the integrated economic space in Eastern and Southern Africa. And reference to facilitation of the movement of business people brings into focus the movement of people, often a contentious issue on a services agenda.

It is of course possible for other services sectors and specific issues to be included in an agenda for the Tripartite FTA, should member states decide to do so. In designing such an agenda, it is useful to reflect carefully on what an FTA could achieve in terms of addressing key constraints on intra-regional trade, key supply-side constraints that are linked to services sectors (e.g. infrastructure services such as transport, communication and others) as well as skills shortages, which are associated with services such as education and training, and the movement of people, and investment in services sectors.

Services liberalisation is much more complex than trade in goods liberalisation. The complexities of the services agenda stem from various issues. The inter-connectedness of the liberalisation agenda with domestic regulatory agenda, as well as the links of specific services sectors to infrastructure development programmes, human resource development and labour market issues are important to keep in mind.

The domestic regulatory agenda refers not only to sector specific regulation, but also to broad-based regulation such as competition law and policy, investment policy and law (e.g. bilateral investment treaties), company and related legislation (including, for example, Black Economic Empowerment in South Africa). The complexity of these connections results not only from the specific nature of services, but also the various modes of delivery. The basic features of services trade mean that the political economy of negotiating liberalisation of services in FTAs is fundamentally different from trade in goods negotiations in FTAs. Separating protectionist from

legitimate policies makes it very difficult to design international rules and commitments, perhaps providing some explanation for the lack of progress on the multilateral GATS negotiations front.

Preparing for a trade in services agenda for the Tripartite FTA

Data is of course very important in the development of a trade in services agenda. Much work remains to be done here. Existing statistical databases are not extensive and reliable as yet, despite many recent efforts including those of the WTO, especially for developing countries. The measurement of trade in services becomes more complicated when delineating the four modes of supply (discussed later in the paper) used in the GATS negotiations. The modes of supply that provide an analytical framework for the GATS and associated services liberalisation negotiations, do not provide a framework that is accessible to services suppliers or consumers. A foreign investor is unlikely to use the language of the GATS – Mode 3 – when discussing investment opportunities or policy and regulatory issues related to the proposed investment.

Estimates of services trade do however indicate that trade through commercial presence (Mode 3), is by far the most important component of services trade, followed by cross-border supply of services (Fink and Jansen 2007). This means that services trade is very closely linked to foreign investment, and the consideration of investment governance instruments such as Bilateral Investment Treaties (BITs), and investment provisions in RTAs becomes important in the development of a services trade agenda.

Preparatory work for the development of a services agenda starts at national level, and should include the collection of data on the services sectors as well as trade in services. In addition to data matters, the following are also important:

Data Collection

- Domestic competitiveness matters and supply-side constraints
  Each member state should assess its supply-side constraints as they relate to services, for example infrastructure/network services (transport, communications, financial services) and other services.
- Regulatory scan
  Review what regulation exists in various services sectors, as well as cross cutting regulation that impacts on service delivery and services sectors, for example empowerment policy, small business development policies and more.

- GATS commitments and services provisions in other RTAs
  Most countries contemplating membership of the Tripartite FTA are members of the WTO and those that are not, are in the process of accession. For WTO members, a review of GATS commitments is important. This will provide the floor from which services liberalisation negotiations will move – an FTA is by definition WTO-plus. WTO-plus in the context of services is, however, more complex than WTO-plus in the case of trade in goods liberalisation. Reference to the GATS, in particular Article 5, is important in this regard.

If a country has entered into other FTAs (either bilateral or regional), then a review of what has been included is equally important. Keep in mind the importance of commercial presence (Mode 3) with regards to services trade; this means reviewing all BITs and RTAs that may have investment provisions.

Identification of domestic priorities

Once the data gathering exercise is complete, then the focus on domestic development strategy is required to identify the following:

- Defensive interests
  Domestic priorities such as universal access to specific services, for example as telecommunications, must be taken into account. Objectives such as the promotion of corporate ownership by nationals (empowerment) or specific business interests (small business development) will be important with regard to commitments that will be undertaken. These objectives may need to be safeguarded by specific approaches and commitments in the negotiations.

- Promotion of domestic competition and sector development
  It may well be that a national government sees services liberalisation as an opportunity to promote domestic competition in certain sectors or to bring in new technology or skills through services liberalisation. This could be done through Mode 3 for example, as the benefits of new investment in services sectors could promote more competitive markets, technology transfer and learning or skills development.

- Offensive interests
  Identifying opportunities for domestic services and service providers in partner countries (or for foreign consumers in the home country, for example tourism or education) is an important exercise.

This base-line analysis is indispensible for a coherent services negotiations strategy for country.

Background on trade in services: What have countries committed to in the WTO?

This section of the paper reviews services within the member states of the proposed Tripartite FTA and looks at the status of GATS commitments undertaken by these countries. These commitments provide the floor for a services liberalisation agenda for these countries. Following this it is important to consider regional initiatives such as the trade in services agendas of SADC, COMESA and EAC.

Trade in services involves simultaneous production and consumption, in many circumstances requiring direct contact between producers and consumers. Some services are traded internationally across borders such as telecommunications, while others may require a consumer to move to where the producer is located, as in tourism. The necessary proximity of consumers and producers, required for some services supply, means that factors of production must move across national borders to the place of consumption. As a result, foreign direct investment (FDI) may be used to establish a foreign commercial presence, and cross-border movement of labour may temporarily be required to serve foreign consumers (COMESA 2008), and the movement of people to consume services such as tourism or educational services is essential to facilitate that consumption.

Trade in services currently accounts for over 60 per cent of global production and employment, but only represents around 20 per cent of total trade. Although a modest share, many services have become internationally mobile, a trend which is likely to continue. More than half of all FDI flows are now linked to services, with developing countries in particular standing to gain from an exploitation of this sector. One cannot overestimate the importance of services in the domestic economy, as key producer services are closely linked with economic growth and development. A country with an efficient services sector is also likely to gain more from goods liberalisation as services are inputs to production processes (TIPS & AusAid).

The GATS – An overview

The General Agreement on Trade in Services (GATS) entered into force in January 1995 following the Uruguay Round negotiations. All members of the World Trade Organisation (WTO) are signatories to the GATS. The objectives of the GATS are comparable to those of the General Agreement on Tariffs and Trade (GATT) which applies to merchandise trade. The GATS contains a number of General Obligations and Disciplines, including Most-Favoured Nation (MFN) treatment and transparency. Under the MFN principle, countries are obliged to not discriminate between members of the WTO, such that if a country grants a concession to one member state, it must grant concession to all other members as well. Preferential treatment, provided through the formation of free trade areas, is an exception to this principle. Progressive liberalisation is another important aspect of the agreement[7].

The GATS applies to most service sectors while distinguishing between four modes of supply. The implications of services liberalisation differ according to the delivery mode, and thus restrictions on trade also vary according to how the service is traded (TIPS & AusAid).

- Mode 1: Cross-border supply
  Cross-border supply of services is most similar to trade in goods as the service is supplied from abroad. Production takes place in a specific location, different to where the consumer is found, which means that the factors of production do not have to move to meet the consumer. Examples would include distance education and international telephone calls. Technological advancements greatly influence cross-border supply, in some cases making cross-border supply of services easier while in others making supply possible where it was not feasible before. The Internet and mobile communications technologies have led to massive improvements in the ease of supplying services. In some cases this has caused challenges for regulation. Regulations are the main barriers to trade in services in general, with most industries facing regulations of some kind. An important issue in services liberalisation is to balance the need for deregulation with the need to correct for market failure. Barriers to trade for cross-border supply are largely related to the transmission of funds, for instance exchange controls in South Africa (TIPS & AusAid).

- Mode 2: Consumption abroad
  This mode of supply involves consumers moving to the service providers, which has important implications for the production of the service as well as the location of the factors of production. Examples include tourism or education of students in countries other than their home country. Controls on the movement of currency or people constitute the main restrictions to consumption abroad; for example, limits on the amount of currency allowed to cross borders or visas required by tourists or students (TIPS & AusAid).

- Mode 3: Commercial presence
  Commercial presence involves the establishment of a local branch by service providers from abroad in order to supply the local market from within the country's borders. This is the most important means of service provision, and again means that the factors of production come into contact with the consumers, which need not have to occur in the market for goods. Examples include banking, insurance, transport, catering, and accommodation. This mode of supply generates foreign direct investment because the foreign firm is required to establish (and either fully or partly own) the local branch (TIPS & AusAid).

- Mode 4: Presence of natural persons
  This mode of supply concerns the input of foreign workers rather than the production itself. The service involves the movement of persons across borders. Data on the presence and movement of natural persons, though not com-

prehensive, do suggest that developing countries are exporting considerably more than developed countries. The so-called ‘Brain drain’ presents a real problem for many countries in Africa. Immigration regulations are the main barrier to this form of services trade, although there are other methods employed by governments to prevent entry. Countries may, for instance, refuse to recognise the qualifications of foreign service suppliers, which will limit the range of work such persons can undertake. In some cases, membership of, or registration with professional bodies may also be required. Some countries will only admit foreign workers on condition that their employing firm establishes a commercial presence in the country, while in others, certain work may be limited to local citizens with restrictions on the ability of foreigners to become citizens (TIPS & AusAid).

During the GATS negotiations, member states provided offers on any liberalisation they are willing to make, organised by the four modes of supply and according to the principles of market access[8] and national treatment[9], which requires that foreign firms are treated as being equal to local firms. Countries are able to make offers for individual service sectors or horizontal commitments which apply to all services. Requests are made by other members following a country’s offer; the differences between the offers and requests are resolved through bilateral negotiations. Under the MFN principle, the results of the possibly increased access are then extended to all WTO members (TIPS & AusAid). There are thus two kinds of provisions contained within the GATS: general obligations, some of which apply to all service sectors (horizontal commitments); and specific commitments, which are particular to each signatory. The latter are recorded in national schedules once the negotiations have been completed, forming an integral part of the GATS[10].

Each member’s Schedule of Specific Commitments identifies the services for which they guarantee market access, national treatment, and any limitations which may be attached. The schedule may be used to assume additional commitments, such as those regarding the implementation of specified standards or regulatory principles, which are undertaken with reference to each of the four modes of service supply (TIPS & AusAid). Full commitments (where ‘none’ is indicated in the appropriate column of the schedule) entail that the member does not seek to limit market access or national treatment in a given sector and mode of supply in any way through measures inconsistent with Articles XVI and XVII of the GATS. However, limitations listed in the horizontal section of the schedule will still apply. Members may in some cases provide commitments with limitations, for instance to partially bind measures affecting a given category of suppliers. When no commitments are made (limitations are ‘unbound’), the member remains free to introduce or maintain measures inconsistent with market access or national treatment in a given sector and mode of supply. In some circumstances, a particular mode of supply will remain unbound due to lack of technical feasibility[10]. Members are free to develop or upgrade their existing commitments at any time.

The interests of developing countries have inspired the general structure of the GATS as well as individual articles: for instance, the objective of facilitating the increasing participation of developing nations in services trade has been enshrined in the preamble to the agreement and underlies the provisions of Article IV. Stated in the preamble is that members desire "to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness"[11]. Article IV requires that members negotiate, among other things, specific commitments relating to the strengthening of developing countries' domestic services capacity; the improvement of developing countries' access to distribution channels and information networks; and the liberalisation of market access in areas of export interest to these countries (TIPS & AusAid).

The GATS, SACU, SADC, EAC and COMESA

Southern African Customs Union[12]

The Southern African Customs Union (SACU), consisting of Botswana, Lesotho, Namibia, South Africa and Swaziland, is the oldest functioning customs union in the world, having originally been established in 1910. It became necessary to renegotiate the agreement during the 1960s, culminating in the 1969 SACU Agreement. With the advent of a democratic government in South Africa in 1994, meaningful negotiations began to revise the treaty. The WTO's Trade Policy Review in 1998 also played a crucial role in stimulating the negotiating process that led to the conclusion of the new SACU Agreement of 2002, which was signed in Gaborone, Botswana in 2001 and entered into force in July 2004. Article 2 of the agreement lists the objectives of SACU, one of which is "to promote the integration of member states into the global economy through enhanced trade and investment" (p.8)[13].

The agreement provides that trading arrangements should be entered into by the member states as a group and not individually[14]. It pertains largely to trade in goods. However, with the exception of Swaziland, all members of SACU recorded greater growth within the services industry during the 1990s than the rest of the economy (TIPS & AusAid). In 2001, services accounted for 62 per cent of SACU's GDP as a whole[13]. Liberalisation within the services industry should improve the efficiency of other economic activities within SACU as well as the competitiveness of its exports, particularly by reducing costs related to telecommunications, transport, and energy[15].

Botswana, as an individual country, participates in a number of bilateral, regional, and multilateral trade arrangements, with the common key objective being to facilitate and expand trade through the reduction and eradication of all forms of barriers to trade[16]. Services play an important role in Botswana's economy, having accounted

for 43 per cent of the country's value-added GDP in 2007[17]. The SACU Agreement is at the core of Namibia's regional integration efforts, where two key elements of the country's trade policy framework and development strategy are trade liberalisation and investment promotion. The services sector is the greatest contributor to Namibia's GDP, with a value-added contribution of 59 per cent in 2007[18]. It also provides employment for around 57 per cent of all employed persons. Government services are the major contributor to the sector, with other important contributors being financial services, real estate and business services, tourism, and the wholesale and retail trade sub-sectors[19].

Lesotho's trade policy stance is also significantly influenced by those of SACU, and includes a general liberalisation of markets, removal of non-tariff barriers (NTBs) to trade, and a commitment to a phased reduction of import tariffs. In terms of services, the sector plays a major role in the economy (contributing 41 per cent to value-added GDP in 2007)[18] and has potential for further growth. Through the liberalisation of a number of service activities, progress has been made in raising the competitiveness of local producers, including in financial services, telecommunications, and energy. Private participation has in recent years been introduced, moving the role of the government from service provider to regulator[19].

South Africa's economy is reasonably diversified. Services and manufacturing contribute a sizeable share of total GDP, the former accounting for 66 per cent of the country's value-added GDP in 2007[18]. The tourism industry is the main contributor to services exports in South Africa. Swaziland is a small open economy whose trade comprises a very high proportion of national production. In both 2006 and 2007, value-added services contributed 45 per cent to the country's GDP. A considerable share of this trade is in the form of exports to preferential markets in the European Union (EU) and the United States (US). The continuation of these preferential market access arrangements would be an important application of the WTO concept of special and differential treatment[19].

Each country within SACU holds a Schedule of Specific Commitments relating to trade in services at the WTO, as they are all members of the multilateral trade body. South Africa scheduled commitments in several service categories under the GATS, and also adopted the Reference Paper for basic telecommunications (the Fourth Protocol) on practices related to pro-competition and transparency. The country participated in the GATS negotiations on financial services which culminated in the acceptance of the Fifth Protocol in January 1999[20]. Botswana made only a few commitments under the GATS, although it is Namibia that has made the least commitments out of all the SACU countries, meaning that its services sector is relatively open to international trade. Lesotho has a fairly extensive schedule of commitments; Swaziland's liberal government policies are reflected in its schedule.

All countries except Swaziland have made horizontal commitments, those which apply to services across all sectors listed in the schedules. South Africa and Botswa-

na have made commitments on market access as well as national treatment, while Lesotho and Namibia have made commitments only on market access[21]. There are no limitations on market access for cross-border supply of services (Mode 1), because most SACU members have few or no exchange controls, the exception being South Africa. Barriers to consumption abroad (Mode 2) relate mostly to the movement of persons between countries, which is generally not a problem within SACU as being a citizen of any member state grants access without a visa to any other SACU country. Exchange controls may, however, also be a restriction on such services trade (TIPS & AusAid).

Both Botswana and South Africa placed restrictions on national treatment in terms of commercial presence (Mode 3). Foreign companies in Botswana are encouraged to enter into joint ventures with locals, but the Ministry of Commerce and Industry is to be notified of any sale of business interests with priority being given to locals to purchase these interests[22]. In South Africa, companies with a non-resident shareholding of more than 25 per cent are limited in the amount of money they may borrow from domestic banks[23]. The limit is set by a formula including the equity ratio, which takes into consideration factors such as the percentage of foreign-ownership and the firm's debt. The limit was raised in 2004 although the EU has still requested that South Africa does away with this restriction (TIPS & AusAid).

There has been little progress in liberalising the movement of natural persons (Mode 4), largely because of the difficulty of preventing the temporary migration of people from becoming permanent. This argument is pertinent within SACU due to the high unemployment rates, particularly in South Africa. It is believed that available jobs should be taken by local workers first, and that a position should only be filled by a foreigner if there is no local worker to do the job. All countries within SACU lack skills in certain sectors; the economic evidence therefore firmly suggests that the introduction of foreign skilled workers will lead to the creation of further jobs while improving economic growth. The protectionist mindset may hence appear to be harmful in the long-run, even if it provides short-term benefits (TIPS & AusAid).

A number of horizontal commitments have, however, been made with regards to the presence of natural persons. Entry and residence in both Botswana and Namibia is subject to immigration laws, regulations, guidelines and procedures, while employment of foreigners is subject to labour laws with a residence and work permit required in Botswana. The employment of foreign natural persons for the implementation of foreign investment services is required to conform to localisation policy in Botswana, and professionals are required to register with the appropriate professional body. In Namibia, employment of such persons shall be agreed upon by the contracting parties, subject to the approval of the Namibian government[24]. In accordance with the laws of Lesotho, automatic entry and work permits are granted for up to four expatriate senior executives and specialised skill personnel, and any additional persons requiring approval. Enterprises must also provide higher skills training to locals to enable them to assume specialised roles, as is the case in Botswana[25]. South Africa has an

unbound limitation on this mode, without requiring compliance with an economic needs test, for the following natural service providers: services salespersons, intra-corporate transferees (excluding executives, managers, specialists and professionals), and personnel engaged in establishment. This limitation in general does not apply to the temporary presence of natural persons for a period of up to three years[23].

South Africa, the largest economy in SACU, has the most sector-specific commitments, although all five countries have made some commitments. The presence of natural persons is generally regulated only with horizontal commitments, and various commitments have been made with regards to commercial presence.

We begin by looking at the financial services sector, an important producer service with significant inputs throughout the economy. However, a shortage of skilled labour means supply is hampered, despite knowledge of the fact that liberalisation of this sector (i.e. introducing foreign skilled workers) could most boost economic growth. The sector is important (a) because it allocates capital to investors – the more efficiently this happens, the more investment will occur – and (b) because it manages the risks related to currency, maturity of investments, and credit (TIPS & AusAid). Only Lesotho and South Africa have made commitments in this sector.

With regards to insurance and related services, the two countries have made commitments on market access for supply through commercial presence. Both countries require that insurers be incorporated as a public company as stipulated in local laws, and in South Africa, must be registered with the supervisory authority to carry out insurance and related business in the country. In order to ensure fair competition, a (registered) company is required to obtain written approval by either the Registrar of Companies in Lesotho or the Registrar of Insurance in South Africa, by both residents and non-residents, in order to acquire shares (or any other interest) with a value of 25 per cent or more[26]. These restrictions in effect mean that international firms will have little control over their own local branch (TIPS & AusAid).

Most other banking and financial services, including lending of all types, financial leasing, all payments and money transmission services, guarantees or commitments, settlement and clearing for financial assets, provision and transfer of financial information and financial data processing, and advisory and other auxiliary financial services are also subject to market access limitations on Mode 3 supply. In Lesotho, no person is to conduct the business of a bank unless they are a public company, registered in terms of the relevant laws of the country. Foreign banks wishing to obtain a controlling interest in a local bank are required to establish a domestic public company. Furthermore, no bank or controlling company (either domestically or foreign-controlled) may issue or allot any of its shares to a person with a value greater than the total nominal value of all issued vote-bearing shares in the institution, with a limit of 49 per cent of its shares. The Minister of Finance may, however, grant concession above this amount, with provisions[27].

In South Africa, a number of exchange controls are in place that limit market access through commercial presence. Dealings in foreign exchange are only to be carried out through a dealer authorised by the South African Reserve Bank, and only banks registered to operate in the country with the required minimum capital base are eligible to seek authorisation as a dealer in foreign exchange. Licensed exchange may only be undertaken by a separately capitalised incorporation in South Africa, as a public or private company that is registered with the relevant authority. Companies involved in asset management, collective investment schemes, and financial instruments (including equities and bonds) are to be incorporated as public companies in the country while being registered with the supervisory authority to carry out business in South Africa[23]. In terms of national treatment, a minimum balance requirement of R1 million is placed on the deposit accounts of natural persons for branches of banks not incorporated in South Africa (TIPS & AusAid).

The telecommunications sector is another important producer service, and has experienced many reforms throughout SACU over the past decade. However, despite attempts at liberalisation, the sector is still relatively closed to foreign entry. Botswana, Namibia, and South Africa have all limited foreign participation in any firm to 49 per cent. It is also highly regulated. Only South Africa and Lesotho have made commitments on telecommunications under the GATS (TIPS & AusAid).

Telecommunication services in South Africa (including facilities based on public switched telecommunication services, packet- and circuit-switched data transmission services, telex services, facsimile services, and private leased circuit services) are subject to a market access limitation on cross-border supply such that it is only allowed through a duopoly on international traffic. Similarly, mobile cellular and data services are only allowed to be supplied through a duopoly for cross-border trade. In terms of commercial presence, such services are only allowed to be provided in a duopoly, where foreign investment is limited to 30 per cent[23]. In Lesotho, various telecommunications services are bound on Modes 1 and 3 supply with regards to both market access and national treatment (TIPS & AusAid).

Transport is also a key producer service within SACU. The main means of transport in the region is the road network, while rail, maritime, and air transport play ancillary roles. Transport in the region is more important than in most customs unions because three of the five member countries are land-locked and hence rely on the other members for international trade (TIPS & AusAid). In Lesotho and South Africa, there are unbound limitations on both market access and national treatment for Modes 1 and 2 supply of road transport services, including passenger and freight transportation. Supply through these modes is thus relatively open. South Africa has offered bound commitments for Mode 3. In both countries, the supply of road maintenance services and the repair of road transport equipment is subject to unbound limitations on both market access and national treatment for cross-border supply due to lack of technical feasibility[23].

In the tourism sector, all SACU members have made commitments with regards to market access and/or national treatment. In Lesotho and South Africa, hotels and restaurants have unbound limitations on cross-border supply; in Swaziland, Mode 1 is unbound due to technical infeasibility[28]. In Botswana, Lesotho and South Africa, full commitments have been made on the cross-border supply of catering services such that market access and national treatment is not limited in any way. With respect to travel agencies and tour operators, Botswana and South Africa have granted full commitments on both market access and national treatment for cross-border supply; limitations are unbound in Lesotho. Supply of all the above services through the presence of natural persons is regulated only with horizontal commitments in Botswana, Lesotho, and South Africa[29]. Namibia has made full commitments in these two subsectors (hotels and restaurants, and travel agencies and tour operators), i.e. limitations are bound on all modes of supply in both market access and national treatment[30].

The construction industry is a relatively liberalised sector, and South Africa and Lesotho have made strong commitments. Botswana, Lesotho, and South Africa have made commitments to market access and national treatment limitations on architectural services, where in the latter two countries, Modes 1 and 2 supply are restricted such that larger buildings (of 500 m^2 and above) are required to employ the services of a locally registered architect[31]. While there are no limitations on Modes 1, 2 and 3 supply of urban planning and landscape architectural services in these two countries, Mode 4 is bound by horizontal commitments. Similar limitations are found for engineering and integrated engineering services[26]. In Botswana, commercial presence requires that a foreign company be a registered institution allowed to practice in the country of origin[22]. Swaziland has bound limitations on the presence of natural persons for senior qualified chartered engineers or professional personnel who hold a higher university degree of professional training and who are not available in the country[32]. This indicates that Swaziland has realised the potential contribution the presence of foreign natural persons can make to services trade.

All countries except Namibia have made commitments on medical and dental services. Botswana has an unbound market access limitation on cross-border supply; for commercial presence, foreign-owned hospitals or clinics are encouraged to enter into joint ventures with locals provided the service is supplied through natural persons. National treatment restrictions on Mode 3 supply are such that the work of doctors, medical personnel, and supporting staff is limited to Botswana nationals. Foreign qualifications should be recognised by the Botswana Medical Council in the Ministry of Health, the Ministry of Agriculture, or the Botswana Nursing Council[22]. Lesotho has an unbound market access and national treatment limitation on medical and dental services while full commitments have been made on commercial presence. Mode 4 is bound by horizontal commitments[23]. South Africa has given full commitments on both market access and national treatment for Modes 1 through 3, while Mode 4 is subject to horizontal commitments[23]. In Swaziland, cross-border supply and the presence of natural persons is bound for specialist doctors while consumption abroad and commercial presence is subject to no limitations[32].

In addition to the specific commitments made by each country in SACU, of which the above is not exhaustive, South Africa and Swaziland have made commitments to Article II MFN exemptions. In terms of financial services, both countries have indicated that members of the Common Monetary Area (Lesotho, Namibia, South Africa and Swaziland) enjoy preferential access into their capital and money markets while the transfer of funds to or from the area of any member is exempt from exchange controls. The Common Monetary Area Agreement is aimed at sustained economic development of the area as a whole, encouraging the advancement of less developed members of the area. It has an indefinite duration. Exemptions are also applied to road transportation, in order to enhance the development of an integrated road transport system to underpin the economic development of the region while ensuring the availability of an efficient distribution network for relief supplies in case of natural disasters, such as frequently occurring droughts in the region. It is also linked to the regional characteristics of road transport services[33].

The extent of SACU's commitments makes it clear that member countries are relatively open to services trade occurring through Modes 1 to 3, although Mode 4 is rather restricted. This indicates that SACU countries are not benefiting from the movement of skilled workers (TIPS & AusAid), despite the fact that it could be a good way of encouraging intra-SACU trade.

Southern African Development Community

The Southern African Development Community (SADC) is one of the largest of the African trade blocs[34]. The current membership comprises the five SACU countries as well as ten others[35]. The SADC Treaty was signed in 1992 and amended in 2001; it provides a framework within which policies are coordinated, harmonised, and rationalised. A number of protocols have been provided in specific areas, including trade, investment, and finance[36]. The establishment of the SADC Free Trade Area in August 2008 was an important step towards achieving the community's goals of forging common political interests while advancing trade and investment flows between member states. It was also critical to the process of deepening regional economic integration. The Protocol on Trade, signed in 1996 and in effect since 2000, forms the legal basis for the FTA[37].

Stated in the Protocol on Trade is that "member states recognise the importance of trade in services for the development of the economies of SADC Countries". Furthermore, "member states shall adopt policies and implement measures in accordance with their obligations in terms of the WTO's General Agreement on Trade in Services (GATS), with a view to liberalising their services sector within the community"[38]. Trade in services makes a significant contribution towards enhancing economic growth and increasing the livelihoods for people living in SADC[39]. The regional services sector contributed around 48.6 per cent to value-added GDP in 2007, with

the highest percentage contribution in Mauritius, Seychelles, and South Africa[40]. The sector is also a major contributor to employment and export earnings, and could make a major contribution to trade. In light of the recent institutional changes in the management of global services trade, policymakers in the region have to comply with current global efforts to liberalise the sector. It seems clear that policies which reform the domestic services sectors and liberalise services trade are likely to increase capacity in the services industry (Ndulo, Hansohm & Hodge 2005).

Cross-border import of services within SADC is generally much greater than exports, the latter not being particularly significant in the region. Trade through consumption abroad favours all SADC members, with the exception of Angola and Malawi who import more services than they export. Commercial presence is related to FDI in the services sector, but such investment is often reported in conjunction with investment in goods, making it difficult to find accurate statistics. Some authors have estimated that investment in the services sector is around 30 per cent of GDP, as a rule of thumb (Ndulo, Hansohm & Hodge 2005). Most FDI inflows to SADC go to South Africa, although less developed SADC countries generally attract more FDI inflows than the more developed countries. The presence or movement of natural persons is an important mode of supply in most developing countries, especially on the import side. This is because capacity building entails that the region access specialists and professionals from within the region as well as abroad (Ndulo, Hansohm & Hodge 2005).

In terms of commitments made under the GATS, Botswana and Lesotho are the only countries to have made horizontal commitments with regards to cross-border supply and consumption abroad. Full commitments have been made on market access and national treatment in Lesotho; in Botswana, there is a limitation on national treatment such that capital remittances and transfer of funds require approval from the Bank of Botswana[41]. Eight of the SADC countries[42] made horizontal commitments to the supply of services through commercial presence. In terms of market access, Mauritius has placed limitations in the provisions of government acts related to company registration, income tax, banking, exchange control, and property regulations[43]. Zimbabwe has also placed limitations on foreign investors when applying to acquire shares in companies listed on the Zimbabwe Stock Exchange, including a limitation such that a single investor cannot invest more than 5 per cent of the shares on offer[44]. In Malawi, Mauritius, Zambia and Zimbabwe, national treatment limitations are unbound except for measures affecting the entry and temporary stay of highly qualified natural persons, persons in managerial positions, specialists, and persons in expert jobs[45]. In Malawi and Zambia, permission needs to be gained from the Central Bank to obtain loans. The Democratic Republic of Congo (DRC) has placed both market access and national treatment limitations on commercial presence such that authorisation is required for real estate acquisition by foreigners[46].

Most WTO members have made commitments on Mode 4 supply (the presence of natural persons) on a horizontal rather than a sectoral level, largely because policy in this arena is not generally made on a sectoral basis. Countries instead devise a

common migration policy that details how to handle all types of permanent and temporary migrants. Within these policy frameworks, the only sectoral specifications include an economic needs assessment that accommodates the temporary movement of people with occupations that are in excess demand. SADC countries have not made significant commitments to liberalise the movement of natural persons under the GATS (Ndulo, Hansohm & Hodge 2005).

Nevertheless, of the non-SACU members, the DRC, Malawi, Mauritius, Zambia, and Zimbabwe have bound market access for measures concerning the entry and temporary stay of certain categories of natural persons. In the DRC, market access is bound for senior executives and specialists who possess knowledge essential for the provision of the relevant services (generally, for a period of up to one year), while in Mauritius, the limitation applies to highly qualified natural persons[47]. In Malawi and Zambia, the limitation applies to natural persons in management and expert jobs for the implementation of foreign investment (of whom the employment shall be agreed upon by the contracting parties and approved by the Ministry of Home Affairs), and in Zambia the enterprises are to provide higher skills training for locals to enable them to assume specialised roles[48]. Zimbabwe has placed the limitation on intra-corporate transfer of persons in executive or senior managerial positions as well as specialists, subject to lack of availability in the local labour market[44]. Horizontal commitments to limitations on national treatment for Mode 4 are unbound except for measures concerning the categories of persons already mentioned in the DRC, Malawi, Mauritius, and Zambia. In Zimbabwe, limitations are bound with respect to the natural persons mentioned above, and are unbound with respect to all other categories of such persons.

There are various trade barriers with regards to the different modes of supply. Exchange controls are the only significant barrier to cross-border trade, limiting the amount of foreign exchange that may be used to import services. Most SADC countries have relaxed or removed such controls, although South Africa has exchange controls on the current account. The major market access barriers to consumption abroad include the need for entry visas and residence permits. Limitations on national treatment are also significant barriers to this mode of supply. Because most SADC countries have relaxed or removed foreign exchange controls, the limit on the availability of foreign exchange is not significant. Of those countries who have made commitments on the movement of natural persons, all have placed a limitation on market openings to highly skilled persons only, who work for a company that is formally established in their home country. In terms of market access, some countries require that professionals register with the host country's professional associations before being able to offer their services, which does serve as a barrier to trade (Ndulo, Hansohm & Hodge 2005).

A number of sector-specific commitments have been made under the GATS to varying degrees for each member of SADC. In the financial services sector, trade liberalisation has potentially large benefits. SADC countries generally import rather

than export financial services; the limited trade in the region often consists of trade facilitation services, such as trade insurance and financing. South Africa provides the exception, where the banking and insurance industry has expanded into the region as a whole. The country accounts for 75 per cent of the insurance market in sub-Saharan Africa, and is the cornerstone for intra-regional trade. However, there is enormous scope for improvement within SADC, which could form the basis for learning and the development of necessary scale economies to export internationally in the future. A number of countries, notably Botswana, Mauritius, and South Africa, have already adopted this strategy (Ndulo, Hansohm & Hodge 2005).

Seven members of SADC have made commitments in the financial services sector, all of which have commitments in banking. Only three countries have, however, made commitments in insurance. These are Lesotho, Mauritius and South Africa, although Zimbabwe has made a number of horizontal commitments related to foreign investment as indicated above. The purchase of shares is limited to 25 per cent per counter of the listed share capital, in addition to any existing foreign holding in a company. Furthermore, foreign investors who bring hard currency into the country are limited to investing only 15 per cent of their assets in primary issues of bonds and stocks[45].

There are a number of trends amongst SADC countries in terms of limitations on financial services. Restrictions focus on market access, with most countries having imposed few restrictions on national treatment. This is largely because there is little need for restrictions on national treatment if market access limitations are in place. Restrictions are concentrated on Modes 1 and 3, with exchange controls presenting a common reason for limiting cross-border supply. Restrictions on commercial presence generally involve compliance with domestic regulations and being locally incorporated (Ndulo, Hansohm & Hodge 2005).

Angola has made commitments on market access in the banking sector for the acceptance of deposits and other repayable funds from the public; lending of all types; and liquidation and transfer of monetary services. Residents may request loans from abroad only after receiving authorisation from the National Bank of Angola (the Central Bank). Similar authorisation is required for consumption abroad. Commercial presence is limited such that banks and foreign financial institutions in Angola may only operate if they abide by the relevant regulations of the country. Most commitments on the presence of natural persons are unbound, although at least half of the personnel of subsidiaries of foreign financial institutions are required to be Angolan citizens[49].

Malawi and Mozambique appear to have the most liberal financial services regimes. In Malawi, there are no limitations on trade in banking services except as specified within the horizontal commitments on Mode 4; in Mozambique, compliance with local regulations is required for service provision through commercial presence[50]. Zimbabwe has bound foreign equity participation in financial institutions at 60 per cent[44]. Mauritius has the most extensive list of limitations on the provision of financial services. While the limitations on national treatment are generally bound for Modes 1,

2 and 3, Mode 4 is unbound except as specified within the horizontal commitments. Market access limitations on the presence of natural persons and supply through commercial presence are similarly restricted. Only institutions holding a banking licence – or non-institutions authorised by the Bank of Mauritius – are able to accept deposits, and lending of all types is bound except with regards to credit exposure of branches of foreign banks in which the capital of the head office is not considered. Trading for one's own account is bound with the exception of trading in shares through commercial banks, which is subject to prior approval by the Central Bank. Inter-bank transactions are similarly subject to clearance by the Central Bank[43].

In addition to the sectoral commitments, Mauritius, South Africa, and Swaziland have placed Article II MFN exemptions[51]. Financial services as listed in the annex at the end of this paper are included in the exemption, with the exception of those services specified in the countries' Schedule of Specific Commitments. In Mauritius, restrictions are placed on cross-border supply and commercial presence to suppliers of all other countries on the basis of reciprocity, designed to enhance access of Mauritian financial service suppliers to the foreign financial market. The intended duration of the exemptions is ten years[43].

The telecommunications sector is another important contributor to economic performance and overall development; it influences the profitability of all trade activities. The past two decades has witnessed a transformation of the sector within SADC, with the range and magnitude of services on offer being tremendously increased. Countries in the region were very conscious of GATS limitations, with only five countries making commitments: the DRC, Lesotho, Mauritius, South Africa, and Zimbabwe. Most commitments were made to liberalise the value-added services (Ndulo, Hansohm & Hodge 2005). The DRC, Lesotho, and Zimbabwe have the most liberal commitments on both market access and national treatment for all modes of supply. The presence of natural persons is in all cases subject only to horizontal commitments[52]. Mauritius has a number of limitations on supply through commercial presence, including the provision that foreign companies have a registered office in the country[43].

Transport by rail is important in the region for both domestic and regional service provision. It is managed by public monopolies in most SADC countries and is dominated by freight. There were no specific commitments made in the rail transport services sector, nor in the maritime services sector. However, road transport, which is relatively well-developed in the region, is restricted in both Lesotho and South Africa. The sector is in general liberalised within individual countries, although regional trade still needs to be improved. A number of constraints to the expansion of cross-border trade in road transport services include cross-border permits, regional traffic facilitation, and border administrative requirements (Ndulo, Hansohm & Hodge 2005).

Angola has committed Article II MFN exemptions in the maritime transport sector. For coastal shipping (cabotage) and liner trade, rights are granted to trade partners

under laws, decrees, and regulations based on bilateral or multilateral agreements in the sector. The exemption applies for ten years and is renewable; the aim is to stimulate international trade and promote regional economic integration. In terms of long-distance maritime transport, resolutions have been adopted for implementation of specific provisions of the United Nations Code of Conduct for Liner Conferences. The conditions for the exemption arise from the need to guarantee that 40 per cent of regular traffic goes to national ship-owners. The objective is to promote the development of the national fleet by using it as a stimulus of the national economy; to ensure that exporters are more competitive while decreasing the cost of imports; to promote auxiliary maritime and port services; and to promote the development of new installations[53].

Tourism is the world's largest and fastest growing industry, with the potential to be one of the biggest earners of foreign exchange within SADC and a strong impetus to economic growth. Although the sector has expanded over the past decade, it needs to be modernised and reformed in order to realise its potential. South Africa is the most important tourist destination in the region, followed by Mauritius, Tanzania, and Namibia. A number of commitments have been made under the GATS in the travel and tourism sector, indicating its importance in the region with the potential to increase the flow of FDI and promote economic growth. Because the sector has historically been more open than other service sectors, it was relatively easy to open up (Ndulo, Hansohm & Hodge 2005).

Malawi and Zambia have indicated full commitments on market access and national treatment for all sub-sectors provided through Modes 1, 2 and 3, while Mode 4 is subject to horizontal commitments[48]. Namibia has bound limitations on all modes of supply[30]. Most limitations on hotels and restaurants are such that supply of services through the presence of natural persons is unbound, although there are a few exceptions[54]. Limitations on travel agencies, tour operators, and tourist guide services are found in all countries except Angola, Mozambique, Swaziland, and Tanzania[55]. Commitments made by Mauritius are more complicated and more extensive than the other SADC countries.

Apart from the SACU countries, only the DRC, Malawi, and Zambia have made commitments in the business services sectors, construction and related engineering services, and health and related social services. In all cases, limitations on Modes 1, 2 and 3 are bound while Mode 4 is subject only to horizontal commitments. Madagascar has made commitments only in the business services sector, covering, *inter alia*, technical testing and analysis services; research, analysis, preparation and control of basic equipment in certain sectors; maintenance and repair of equipment; and tourism and hotels, excluding transport activities relating to tourism. Cross-border trade and presence of natural persons is unbound, while supply through commercial presence requires approval from the authorities concerned and compliance with the performance requirements stated in the approval document, including the national value-added criterion[56].

Although the services sector in SADC makes up the largest portion of GDP, investment and employment, its contribution to external trade is still insignificant as its potential is not fully exploited. This is largely due to lack of supply capacity in the domestic services sector as well as restrictions on services trade. Of principal developmental concern to all SADC countries is thus the effective management of the services sector as well as diversification of SADC economies so that good quality, low cost, and reliable services are provided. As barriers to services trade are removed and economies are opened, the sector will likely make a significantly increased contribution to total exports, although this will depend on supply capacity in the regional services sector (Ndulo, Hansohm & Hodge 2005).

East African Community

The East African Community (EAC) was established in 1967, but disagreements between the founding members – Kenya, Tanzania, and Uganda – later led to its collapse. A treaty was signed in 1999 for the re-establishment of the community, which entered into force in 2000. Burundi and Rwanda acceded to the EAC Treaty in 2007, becoming full members of the Community. The EAC aims at widening and deepening cooperation amongst member states in political, economic, and social fields, among others. A customs union was to this end launched in 2005, and the community is working towards the establishment of a common market by 2010, a monetary union by 2012, and ultimately a Political Federation of the East African States. The regional integration process is making encouraging progress, as the East African Customs Union, the enlargement of the community with admission of Burundi and Rwanda, the ongoing negotiations of the East African Common Market, as well as the consultations on fast tracking the process towards an East African Federation all highlight the determination of the community to construct a powerful and sustainable East African economic and political bloc[57].

According to the treaty establishing the EAC, member states have agreed to cooperate in infrastructure and services[58]. Infrastructure in the region needs urgent improvement in order to facilitate business and encourage investment, as strategic regional infrastructure interventions are able to attract investment into the region, improve competitiveness, and promote trade. The development objectives of the community in this regard include the following: to improve road connectivity and operations across the region; to maximise benefits of safe, secure, and efficient railway, maritime, and air transport systems in the region; to expand and upgrade metrological services; to integrate information and communication technology (ICT) into regional development initiatives; and to increase access to sufficient, reliable, affordable, and environmentally-sound energy sources[59].

Total trade in services makes a large contribution to GDP within the EAC, where in 2007, services accounted for 58 per cent of value-added GDP in Kenya[18]. Kenya is

the largest economy within the bloc, and services continue to be the most important sector of the economy in terms of contribution to GDP. Transport and telecommunications are Kenya's most important subsectors, while tourism is one of the primary foreign exchange earners. Kenya is a net exporter of services, with the sector absorbing over 60 per cent of the labour force[60].

Services have emerged as a backbone of Uganda's economy, accounting for 57 per cent of GDP in 2004[61]. Uganda's services sector grew by 9.2 per cent in 2006, improving from 8.7 per cent in 2005. Growth in the services sector remains robust and has become a key component of Uganda's economic growth performance. It has been the largest sector of the economy since 2001. Telecommunications, hotels and restaurants, and construction services recorded the fastest growth between 1999 and 2004, while tourism is a key foreign exchange earner. The services trade account in Uganda has fluctuated over the past few years, with a deficit recorded in 2004. However, during this year, financial services exports for the first time outweighed imports[62].

Tanzania's services sector contributes around 40 per cent to GDP. Tourism is a principal component of the sector, contributing around 16 per cent to GDP and generating about 25 per cent of the country's foreign exchange earnings[63]. The tourism industry has been the fastest growing sector of the Tanzanian economy for over ten years. The country is currently implementing a National Tourist Development Programme (2006–2015) which seeks to encourage increased tourist activity while preserving the environment, raising job creation, and contributing to overall poverty reduction[64]. However, the country has traditionally registered services trade deficits[63]. Infrastructure in both Kenya and Tanzania needs to be upgraded, which when combined with further liberalisation of services, should improve the efficiency of their economies[65].

Rwanda is a net importer of services, with the sector accounting for 50 per cent of value-added GDP in 2007[18]. The services sector in Burundi accounted for 45 per cent of the country's value-added GDP in 2005[18], most activities concerning transport, communications, and trade-related services. The government is aware of the importance of services for the development of its economy, and has over the past few years undertaken various reforms in sectors such as financial services and telecommunications. Government services play a large role in the economy, having accounted for 16.6 per cent of GDP in 2001. Financial services, as in Rwanda, are relatively underdeveloped[66].

Each member of the EAC is also a member of the WTO, and each country has made commitments under the GATS. However, only Kenya and Burundi have made horizontal commitments. In Kenya, there is a horizontal limitation on market access for commercial presence which requires that foreign service providers be locally incorporated or established in the country. There is also a limitation on the entry and temporary stay of natural persons employed in management and expert jobs for purposes of foreign investment, such that their employment has to be agreed upon

by the contracting parties and approved by the government[60]. Burundi's horizontal commitments on commercial presence are unbound for market access, with the exception of medical specialists, specialised senior management, and managers. The limitation on the presence of natural persons applies to the aforementioned categories of persons, including persons who have specialised (and not general) knowledge of the profession; engage in it regularly and exclusively; and have studied beyond a general level[66].

Kenya has made numerous sector-specific commitments under the GATS, and is the only country to have scheduled commitments in financial services. In all cases, supply through the presence of natural persons is limited only by horizontal commitments for both market access and national treatment. There are, however, a number of limitations on commercial presence: with the acceptance of deposits and other repayable funds from the public, only institutions approved as banks under the Banking Act are able to supply services through this mode. Foreign investment is bound at 40 per cent of the shareholding of a (locally-incorporated) company for participation in securities and related services (except underwriting). Foreign investors may, however, take up to 40 per cent of any additional public offering by a foreign convened listed company. With the exception of pension fund management, supply of asset management services through commercial presence requires that 30 per cent of the paid up capital be held by Kenyan nationals[60].

Limitations on cross-border trade are either fully liberalised or unbound for both market access and national treatment. However, securities issued in a foreign jurisdiction are limited in that they cannot be offered or traded in the Kenyan market. There are also various limitations on insurance services, including the requirement that minimum amounts of paid up capital be held by Kenyan nationals: for life insurance services, supply through commercial presence is required to have 30 per cent of the paid up capital owned by Kenyan nationals; and for insurance broking, the requirement is 60 per cent. Agency services are entirely restricted to Kenyan nationals[60].

Communication services have limitations in both Kenya and Uganda. In Kenya, cross-border trade of voice telephone services has the following limitations on market access: for international home country direct services, supply is restricted to service suppliers operating direct voice communication routes; for public use and closed user groups, international call-back services are not permitted; and for closed user groups, supply is restricted to Telkom Kenya Limited or a monopoly. In terms of supply through commercial presence, telex and telegraph services, facsimile services, and packet- and circuit-switched data transmission services are also limited to supply through Telkom Kenya Limited or a monopoly. Foreign investment is bound at 30 per cent for the aforementioned services as well as various value-added services, internet and internet access services, satellite-based mobile services, and fixed satellite services. For value-added services and internet services, only facilities of licensed network operators are permitted in the country. Supply through the presence

of natural persons is subject in all cases only to horizontal commitments. Cross-border supply of installation services and maintenance of telecommunications equipment is unbound due to lack of technical feasibility[60].

In Uganda, international basic voice telephony traffic, with respect to various telecommunication services as well as private voice and data for closed user groups, is to be carried through networks of the duopoly of major licence holders. A similar market access limitation is placed on the cross-border supply of mobile cellular voice and data services, the internet, and paging services. In many cases, companies must be registered in Uganda in order to carry out communication services through commercial presence, while supply through the presence of natural persons is unbound with the exception of technical personnel, unless Ugandans are or become available to undertake the job. The entry and temporary stay of foreign service suppliers is also subject to compliance with laws, regulations, and guidelines in force in Uganda. Full commitments have been made on national treatment for Modes 1 through 3, while Mode 4 is unbound except for technical personnel. Uganda has also accepted the Fourth Protocol on basic telecommunications[62].

All EAC members have made commitments on tourism and travel related services. In the hotels and restaurants sector (including catering), Kenya has an unbound market access and national treatment limitation on cross-border supply as a result of technical infeasibility. Mode 4 supply is bound only by horizontal commitments on market access, while full commitments have been made on national treatment for such persons. Travel agencies and tour operators, as well as tourist guide services, are similarly restricted[60]. In Uganda, market access for hotels, restaurants, travel agencies and tour operator services, is restricted on commercial presence such that government approval is required in accordance with the Investment Code. Mode 4 is bound only for technical personnel, except where Ugandans are or become available to undertake the service. The entry and temporary stay of foreign service suppliers is also regulated by national laws. National treatment limitations on the presence of natural persons are unbound except for technical personnel[62].

Rwanda has placed limitations on hotels and restaurants (including catering) such that all modes of supply are bound, with Mode 4 bound only for senior executives, specialists, and directors who possess knowledge essential to the provision of the service[67]. Tanzania's limitations apply only to hotels of four stars and above: while market access is bound for Modes 1 and 2, Mode 3 requires approval for acquisitions of domestic firms and mergers by foreigners. The acquisition of land by foreigners, or domestic companies with foreign equity ownership, is also subject to approval. Mode 4 is unbound except for measures concerning senior managers that possess skills not locally available. National treatment limitations are bound on Modes 1 and 2 and unbound on Modes 3 and 4[63]. Burundi has made full commitments in the tourism sector for all services supplied through Modes 1, 2 and 3; Mode 4 is bound only for managers[66].

Kenya is the only country to have placed limitations on transport services and metrological data information services, for both market access and national treatment. For the repair and maintenance of aircraft, Mode 1 supply is unbound due to technical infeasibility and Mode 3 is also unbound. The selling and marketing of air transport is unbound for commercial presence, except for advertising activities and the establishment of regional sales offices. Passenger transportation services are bound on Mode 1 for both market access and national treatment, the latter for persons employed in management and expert jobs. Market access is unbound for all the above services provided through Mode 4 except as indicated in the horizontal section. Similar limitations are placed on market access and national treatment for metrological services[60].

Burundi and Rwanda have made commitments to limitations on market access and national treatment for medical and dental services: full commitments have been made on Modes 1 through 3 while Mode 4 is unbound except for specialists, managers, and senior executives[68]. Burundi has placed similar restrictions on veterinary services, as well as advertising; market research and public opinion polling services; management consulting services; services relating to agriculture, hunting and forestry; services incidental to fishing; maintenance and repair of equipment; and packaging services. Both market access and national treatment is unbound for supply through the presence of natural persons of the following services: construction and related engineering services; distribution services; and health related and social services. In each case, managers or specialists are exempt from the limitation[66]. Rwanda has made full commitments on all modes of supply for legal services; adult education services; environmental services (sanitation and similar services); and recreational, cultural, and sporting services[67].

From the above commitments at the WTO, it appears that services trade within the EAC is relatively liberalised for Modes 1, 2 and 3 while Mode 4 is more restricted, generally by horizontal commitments which apply to all sectors. The presence of natural persons is, however, an important means by which services can be improved through the use of foreign skilled workers. The potential of the services sector in the region thus remains largely unexploited; further liberalisation and commitments under the GATS, particularly with regards to Mode 4, should attract investment in services as well as improve the efficiency of other economic activities and competitiveness of the region's exports[69].

Common Market for Eastern and Southern Africa

The Common Market for Eastern and Southern Africa (COMESA) has its origins as a Preferential Trade Area (PTA) launched in September 1992. The objective of the PTA was to take advantage of a larger market size, to share the region's common heritage and destiny, and to allow greater social and economic cooperation, ulti-

mately leading to the creation of an economic community. The treaty establishing the PTA envisaged its transformation into a common market; COMESA was to this end launched by 23 countries[70] in November 1993 in Kampala, thereby dissolving the PTA Treaty[71].

The establishment of the PTA, and its transformation into COMESA, was in conformity with the objectives of the Organisation of African Unity (OAU), as well as the Lagos Plan of Action (LPA) and the Final Act of Lagos (FAL) which envisaged that regional economic communities would constitute building blocks upon which the creation of an African Economic Community (AEC) would ultimately be erected[72]. The vision of COMESA is thus to "be a fully integrated, internationally competitive regional economic community with high standards of living for all its people ready to merge into an African Economic Community"[73]. COMESA's strategy in attaining this vision has been to emphasise economic integration through the removal of barriers to investment and trade. Although good progress has been made in this regard, the next decade and beyond will shift focus to development integration, where increased prominence will be given to the supply side of integration – investment in the productive sectors. This shift falls in line with both regional and global developments. Globalisation in general and trade liberalisation under the WTO in particular, is encouraging the removal of trade barriers and the opening up of markets. Full integration in COMESA is viewed as a long-term objective, although in the short to medium-term, the programme focus will be on the elimination of impediments to investment and trade[74].

Stated in the COMESA Treaty is that member states shall create a customs union (CU) between themselves within which customs duties and other charges imposed on imports will be eliminated, non-tariff barriers and administrative obstacles to trade in the region shall be removed, and a common external tariff (CET) will be established and maintained in respect of all goods imported into member states from third countries[75]. Member states shall apply the principles of most-favoured nation treatment as well as national treatment[76]. Substantial progress on the creation of the customs union was made in October 2000 when nine COMESA members[77] established a Free Trade Area (FTA). Burundi and Rwanda joined the FTA in 2004, with a common external tariff being established in the same year. Negotiations on the CU have been concluded with a view to its launch within the first half of 2009[78]. COMESA has also committed to the implementation of programmes to enable the free movement of services, labour, and capital between 2000 and 2025, ultimately leading to a monetary union.

There are currently 19 members in COMESA[79], some of which are members of other trade blocs in Eastern and Southern Africa. Burundi is a member of the EAC and COMESA, as are Kenya, Rwanda, and Uganda. Tanzania is the only EAC member who is not part of COMESA, having withdrawn from the bloc in 2000. The DRC, Madagascar, Malawi, Mauritius, Seychelles, Swaziland, Zambia, and Zimbabwe are members of both SADC and COMESA; Angola, Botswana, Lesotho, Mozambique and Namibia, members of SADC, have withdrawn from COMESA. Swaziland is unique in that it is a member of three trade blocs: COMESA, SADC, and SACU.

Services trade plays an important role in COMESA's economy; between 2005 and 2007, value-added services contributed over 50 per cent to the region's GDP[80]. It was agreed at the 12th Meeting of the Council of Ministers on 30 November 2001 in Lusaka, Zambia that "the Secretariat should expedite the preparation of a framework strategy paper on trade in services and that trade in services be an item for consideration by the Trade and Customs Committee"[81]. The decision was made in accordance with COMESA's objective to create an integrated region in which goods, services, capital, labour, and persons are able to move freely. The importance of services trade within the global economy also inspired the decision. The trade body has subsequently undertaken various programmes with the intention to facilitate trade in services, including, but not limited to, air transport liberalisation; a COMESA Carriers Licence; Harmonised Road Transit Charges; and the African Trade Insurance Agency. Although these programmes do not in themselves constitute trade in services, they are trade facilitation methods which contribute to the services industry (COMESA 2008).

The 12th Meeting of the Trade and Customs Committee in Lusaka, Zambia in February 2003 established a working group to initiate the development of a regional Framework for Trade in Services in COMESA. The working group's first meeting was held in October 2003, at which members received information on GATS provisions and the preparation and readings of schedules of services commitments (COMESA 2008). Various terms of reference were adopted to guide the group's work, including "[t]o review and to consider the nature of the process of liberalisation of trade in services and to identify those actions that COMESA member states may need to take in order to undertake such trade liberalisation"; "[t]o oversee the preparation of a series of studies on the services sector and regional services trade"; and "[t]o recommend to the Committee on Trade and Customs a work programme for COMESA and to suggest how most effectively to allocate the work amongst the committee, working group, other organs of COMESA and institutions in member states" (COMESA 2008). Progress is being made on the preparation of a COMESA-wide services liberalisation programme, which is to be submitted to the working group, the Trade and Customs Committee, and finally the Council of Ministers for consideration (COMESA 2008). A recent meeting in April 2009 was to finalise a framework for services liberalisation and provide a basis for the preparation of schedules by member states.

Within COMESA, Comoros, Eritrea, Ethiopia, Libya, Seychelles, and Sudan are not members of the WTO and thus have not scheduled commitments under the GATS. Of the remaining members who are not a part of SACU, SADC or the EAC, Egypt and Djibouti have made commitments on services.

Trade is a key tool in social and economic development, as well as poverty reduction in Djibouti. Djibouti's economy is heavily services-oriented, dominated by port activities. The country is a net exporter of services, and the industry as a whole accounts for some 87 per cent of real GDP, the highest in the region. The most important subsectors are transport and communications, non-market services, trade and

tourism, and banking and insurance. The share of transport in GDP, particularly port services, is around 30 per cent and has grown steadily for over 20 years. The importance of this sub-sector for the economy is evident in Djibouti's geostrategic position at the crossroads of major sea and land routes for international trade (especially for East Africa). The tourism sector has been hindered somewhat by competition from other countries in the sub-region offering similar attractions, better infrastructure, and a higher international reputation. The supply of services remains largely a state monopoly, and the potential for trade in services remains under-exploited. Recent reforms should enable the country to streamline its trade regime and prepare for full participation in the COMESA Customs Union[82].

Trade also plays an important role in Egypt's economy, with exports of goods and services being a motor for economic recovery in recent years. The country has traditionally been a net exporter of services, with services receipts substantially exceeding merchandise exports. Egypt generally runs a strong surplus in services trade. The services sector has a share of about 48 per cent in GDP, and is vital to Egypt's economy. The largest contribution to the sector is made by commercial and financial services, although their share in GDP has been on the decline since 1997. Tourism and transport along the Suez Canal provide important sources of foreign exchange for the country, as well as remittances from Egyptians working abroad. Egypt has been a WTO member since June 1995, and supports greater multilateral trade liberalisation within the services sector. Together with other developing nations, Egypt submitted three communications to the WTO Council on Trade in Services in the special session, with the aim to achieve greater liberalisation in services trade as well as increased participation by developing country members[83].

Only Egypt has made horizontal commitments. While supply through commercial presence is subject to no limitations on market access, supply through the presence of natural persons is restricted according to the Labour Code of 1981 and its executive regulations. The entry and temporary stay of foreign natural persons necessary to the supply of services in any entity is limited to 10 per cent of the total number of employed personnel, unless otherwise specified. There is also a horizontal commitment on national treatment for the acquisition of land and/or real estate property: supply through Mode 3 requires authorisation, with applications considered on the basis of the evaluation of the specific projects for which the acquisition is requested as well as in accordance with national policy objectives. In free zone areas, the acquisition of land and/or real estate is unbound. Mode 4 supply has no limitations[84].

Egypt has scheduled commitments to limitations in the financial services sector, with a number of regulations in place which restricts the provision of such services in the country. The country also adopted the Fifth Protocol in this sector. For all insurance services, supply through Mode 3 is subject to an economic needs test. For life, health, personal, and accident insurance and related services; non-life insurance services; and reinsurance and retrocession, a commitment has been made such that foreign and joint-venture companies are limited to carry out business in free

zones, provided their activities are confined to the transactions carried out in convertible currencies. There is, however, no maximum limit required on the foreign shareholding in free zones. Foreign insurance companies' branches and agencies are not allowed, and in areas other than free zones, foreign capital equity is limited to 51 per cent of the total capital required for the company[84].

Legal cessions of the total transactions must be given to the Egyptian Reinsurance Company according to percentages decided by the supervisory authority, and 5 per cent of the company's treaties to the African Reinsurance Company. This also applies to national treatment limitations on Mode 3 supply of life, health, personal, and accident insurance and related services. These services, as well as non-life insurance services, also have limitations on supply through the presence of natural persons. Market access limitations are such that qualified non-Egyptian directors are allowed to operate for a five-year term which may be renewed. Their appointment and renewal is subject to the approval of the Supervisory Authority. National treatment limitations entail that non-Egyptian directors are required to have at least two Egyptian understudies[84].

For actuarial services, loss assessment, and consultancy services for risk and asset management, supply through Mode 3 is subject to a market access limitation which entails that foreign service suppliers must be authorised to perform the specific profession from a competent authority in their home country and registered in Egypt for that purpose. There are no national treatment limitations on Mode 3, and Mode 4 has no limitations on service supply. In the banking services sector, various Joint-Venture Banks (JVBs) have limitations on Mode 3 supply. These services include acceptance of deposits and other repayable funds; all types of lending; all payment and money transmission services; guarantees and commitments; credit reference services; money broking; and safekeeping of securities, among others. The market access limitations entail that the share of non-Egyptian capital of JVBs and private banks may exceed 49 per cent of the issued capital of any bank. On a non-discriminatory basis, ownership of more than 10 per cent of the issued capital of any bank requires the approval of the Central Bank of Egypt (CBE) Board of Directors, except in cases of inheritance. Restrictions on supply through Mode 4 entail that a General Manager should have banking experience in Egypt of at least ten years for banks established in Egypt, other than branches of foreign banks. National treatment limitations on Mode 3 require that foreign service suppliers offer on-the-job training for national employees. Other financial services, including financial leasing and securities (underwriting, brokerage, trading in securities, clearing and settlement, marketing and market promotion, portfolio and investment management, establishment of collective investment funds, and venture capital) are not subject to any limitations[84].

Both Egypt and Djibouti have made commitments in the communications sector. In Djibouti, telecommunications services are unbound on Modes 1, 2 and 4 for market access and national treatment, while to operate under commercial presence requires authorisation and is limited to public network concessionaire exclusively.

The same limitations are found on voice telephone services and data transmission by dedicated links (including by satellite); mobile telephone services using radio-electric modulation of telephony channels; circuit-switched data transmission and telex services; and telegraph services, among others. For electronic message services and electronic mail with automatic translation, cross-border supply is limited to the public network specialised link. Supply through commercial presence requires establishment and prior government authorisation with a limitation on operators, and access fees are to be paid to the public network concessionaire. Mode 4 is unbound on both market access and national treatment[85].

Egypt's commitments on telecommunications, which do not include services supplied for distribution of radio or television programming for direct reception by service consumers, have a number of market access limitations on supply through commercial presence. Licences are required for the provision of all telecommunication services in the country, and are to be granted only to registered companies by the Telecommunications Regulatory Authority subject to consultations between Egypt and members of the WTO. Licences providing international data communication services require the lease of international private lines from Telecom Egypt throughout the period of exclusivity. Companies working in the telecommunications sector are also required to train local human resources. Egypt has, in addition to these and other commitments in the sector, adopted the reference paper on basic telecommunications (the Fourth Protocol)[84].

Stated in the COMESA Treaty is that member states shall cooperate in the development of transport and communications. To this end, "[t]he member states undertake to evolve coordinated and complementary transport and communications policies, to improve and expand the existing links and establish new ones as a means of furthering the physical cohesion of the member states, so as to facilitate movement of inter-state traffic and to promote greater movement of persons, goods and services within the common market"[86]. This includes cooperation in, *inter alia*, roads and road transport; railways and rail transport; air transport; maritime transport and ports; multimodal transport; postal services; telecommunications; and radio and television[87].

Transport services are subject to limitations in Egypt. For international maritime transport of passengers and freight, commercial presence is only allowed for joint-venture companies, and foreign capital equity should not exceed 49 per cent. For supply through the presence of natural persons, 95 per cent of the crew are required to be nationals, and their wages and salaries should not be less than 90 per cent of the total paid up wages and salaries. The Chairman and majority of the Board of Directors must be nationals. Port dredging, a supporting service for maritime transport, has a foreign capital equity limit of 75 per cent. At least 25 per cent of both the personnel and members of the Board of Directors are also required to be nationals[84].

Both countries have made commitments in the tourism and travel-related services sector. Djibouti has made commitments only on restaurants and hotels, such that there are no limitations on Modes 1 through 3 while limitations on Mode 4 are unbound except for measures affecting senior executives and specialists who possess knowledge essential for the provision of the service[84]. Egypt has more extensive commitments, focused on supply through commercial presence. For hotels and motels, casino hotels, resort hotels and accommodation facilities, as well as full service restaurants, fast food restaurants and cafeterias, an economic needs test is to be performed which yields a licence to operate in the country. Limitations on the total number of services operations that can be performed depend on the economic needs test requirement. These limitations also relate to tour operators, packagers and wholesalers, and travel agencies. Casino services can be provided only through 5-star hotels (where gambling is allowed only for foreigners), and foreign capital equity should not exceed 49 per cent in projects to be established in Sinai. Limitations on national treatment entail the training of Egyptian employees by the foreign natural persons within the terms of the contract[84].

Egypt has also made commitments in the construction and related engineering services sector, with regards to construction work for civil engineering. The services covered are the building of bridges, elevated highways, tunnels and subways; waterways, harbours, dams and other water works; long distance pipelines, communication and power lines (cables); and construction for mining and manufacturing. Supply through Modes 1 and 2 is unbound due to lack of technical feasibility, while Mode 3 is allowed only through joint-venture companies. Foreign capital equity is bound at 49 per cent of the total capital required for the project. There are no limitations on supply through Mode 4[84]. Djibouti has also placed limitations in the recreational, cultural, and sporting services sector: full commitments have been made on underwater diving centres[85].

In addition to the sector-specific commitments as outlined above, Egypt has also committed Article II MFN exemptions. In all sectors, full national treatment is extended to foreign personnel of the following countries: Greece, Iraq, Jordan, Libya, Qatar, Sudan, the United Arab Emirates (UAE), and possibly others. The measure has been put in place to ensure the opening of markets in the aforementioned countries, as the major trading partners do not accord the Egyptian nationals satisfactory opportunities. Exemptions have also been indicated in the supply of road transport (passenger and freight) services, as well as audiovisual services (cooperation agreements)[84].

Annex:

List of documents used from the World Trade Organisation (WTO)

Angola – Draft consolidated Schedule of Specific Commitments. S/DCS/W/AGO, 24 January 2003. Geneva.

Botswana – Draft consolidated Schedule of Specific Commitments. S/DCS/W/BWA, 24 January 2003. Geneva.

Burundi – Schedule of Specific Commitments. GATS/SC/116, 30 August 1995. Geneva.

Cameroon – Schedule of Specific Commitments. GATS/SC/15, 15 April 1994. Geneva.

Central African Republic – Schedule of Specific Commitments. GATS/SC/17, 30 August 1995. Geneva.

Chad – Schedule of Specific Commitments. GATS/SC/108, 30 August 1995. Geneva.

Congo – Schedule of Specific Commitments. GATS/SC/21, 15 April 1994. Geneva.

Djibouti – Schedule of Specific Commitments. GATS/SC/104, 30 August 1995. Geneva.

Egypt – Draft consolidated Schedule of Specific Commitments. S/DCS/W/EGY, 24 January 2003. Geneva.

Gabon – Schedule of Specific Commitments. GATS/SC/34, 15 April 1994. Geneva.

Ghana – Draft consolidated Schedule of Specific Commitments. S/DCS/W/GHA, 24 January 2003. Geneva.

Kenya – Draft consolidated Schedule of Specific Commitments. S/DCS/W/KEN, 24 January 2003. Geneva.

Lesotho – Draft consolidated Schedule of Specific Commitments. S/DCS/W/LSO, 24 January 2003. Geneva.

Madagascar – Schedule of Specific Commitments. GATS/SC/51, 15 April 1994. Geneva.

Malawi – Draft consolidated Schedule of Specific Commitments. S/DCS/W/MWI, 24 January 2003. Geneva

Mauritius – Draft consolidated Schedule of Specific Commitments. S/DCS/W/MUS, 24 January 2003. Geneva.

Mozambique – Draft consolidated Schedule of Specific Commitments. S/DCS/W/MOZ, 24 January 2003. Geneva.

Namibia – Draft consolidated Schedule of Specific Commitments. S/DCS/W/NAM, 24 January 2003. Geneva.

Protocol on the Establishment of the East African Community. Communication from the parties: Addendum. WT/COMTD/25/Add.1, 1 November 2006, Geneva.

Protocol on Trade in the Southern African Development Community. Communication from Tanzania, dated 2 August 2004. WT/REG176/1, 8 October 2004. Geneva.

Rwanda – Schedule of Specific Commitments. GATS/SC/107, 30 August 1995. Geneva.

South Africa – Draft consolidated Schedule of Specific Commitments. S/DCS/W/ZAF, 24 January 2003. Geneva.

Swaziland – Draft consolidated Schedule of Specific Commitments. S/DCS/W/SWZ, 24 January 2003. Geneva.

Tanzania – Draft consolidated Schedule of Specific Commitments. S/DCS/W/TZA, 24 January 2003. Geneva.

Trade Policy Review – Burundi: Report by the Secretariat. WT/TPR/S/113, Geneva.

Trade Policy Review – Cameroon: Report by the Secretariat. WT/TPR/S/187, 27 August 2007, Geneva.

Trade Policy Review – Central African Republic: Report by the Secretariat. WT/TPR/S/183, 7 May 2007, Geneva.

Trade Policy Review – Chad: Report by the Secretariat. WT/TPR/S/174, 11 December 2006, Geneva.

Trade Policy Review – Congo: Report by the Secretariat. WT/TPR/S/169, 23 August 2006, Geneva.

Trade Policy Review – Djibouti: Report by the Secretariat. WT/TPR/S/159, 23 January 2006, Geneva.

Trade Policy Review – East African Community: Report by the Secretariat (and annexes). WT/TPR/S/171, 20 September 2006. Geneva.

Trade Policy Review – Egypt: Report by the Secretariat. WT/TPR/S/150, 28 June 2005, Geneva.

Trade Policy Review – Gabon: Report by the Secretariat. WT/TPR/S/188, 27 August 2007, Geneva.

Trade Policy Review – Rwanda: Report by the Secretariat. WT/TPR/S/129, Geneva.

Trade Policy Review – Southern African Customs Union: Report by the Governments. WT/TPR/G/114, 24 March 2003. Geneva.

Trade Policy Review – Southern African Customs Union: Report by the Secretariat (and annexes). WT/TPR/S/114, 24 March 2003. Geneva.

Uganda – Draft consolidated Schedule of Specific Commitments. S/DCS/W/UGA, 24 January 2003. Geneva.

Zaire – Schedule of Specific Commitments. GATS/SC/103, 30 August 1995. Geneva.

Zambia – Draft consolidated Schedule of Specific Commitments. S/DCS/W/ZMB, 24 January 2003. Geneva.

Zimbabwe – Draft consolidated Schedule of Specific Commitments. S/DCS/W/ZWE, 24 January 2003. Geneva.

Appendix:

Table 1: Services, value added (percentage of GDP)* in East, Central and Southern Africa[88]

Country/Region	2000	2005	2006	2007
Botswana	39	44	43	43
Lesotho	41	41	40	41
Namibia	61	60	58	59
SA	65	67	66	66
Swaziland	40	46	45	45
SACU	49.2	51.6	50.4	50.8
Angola	22	20	21	22
DRC	30	28	27	29
Madagascar	57	56	57	58
Malawi	43	47	46	45
Mauritius	63	66	68	70
Mozambique	54	48	46	45
Seychelles	68	70	71	69
Tanzania	39	37	37	-
Zambia	52	48	46	40
Zimbabwe	57	57	-	-
SADC	48.73	49	47.92[1]	48.62[1]
Burundi	41	45	-	-
Kenya	49	54	54	58
Rwanda	40	47	45	50
Uganda	42	49	51	53
EAC	42.2	46.4	46.75[1]	53.67[1]
Comoros	40	38	-	-
Djibouti	81	80	80	79
Egypt	50	49	48	51
Eritrea	62	55	60	58
Ethiopia	38	40	39	40
Libya	-	-	-	-
Sudan	37	39	39	41
COMESA	49.4[1]	50.78[1]	51.73[1]	52.4[1]
Cameroon	42	50	48	52
Central African Republic	31	29	29	28
Chad	46	25	25	32
Republic of Congo	23	27	26	35
Equatorial Guinea	4	3	3	3
Gabon	38	34	34	37
CEMAC	30.67	28	27.5	31.17

Missing data

1 Totals are approximate due to insufficient data

Value added is the net output of a sector after adding up all outputs and subtracting intermediate inputs. It is calculated without making deductions for depreciation of fabricated assets or depletion and degradation of natural resources. The industrial origin of value added is determined by the International Standard Industrial Classification (ISIC), Revision 3. Services correspond to ISIC divisions 50–99 and include value added in wholesale and retail trade (including hotels and restaurants), transport, government services, financial services, professional services, personal services such as education, health care, and real estate services. Also included are imputed bank service charges, import duties, and any statistical discrepancies noted by national compilers as well as discrepancies arising from rescaling.

Table 2: The role of services in economic activity and trade, averages 2000–2002, percentages[89]

	Services value addes % of GDP	Commercial services trade to GDP ratios		Commercial services trade to GDP ratios	
		exports	imports	exports	imports
Angola	23.58	2.29	29.22	2.88	46.41
Botswana	50.12	6.77	9.85	12.78	23.69
Burundi	31.16	0.40	5.10	6.28	24.06
Comoros	47.18	13.22	9.98	65.32	34.10
Djibouti	82.10	12.93	9.21	69.22	20.90
Eritrea	61.23	14.73	3.96	72.44	4.73
Ethiopia	44.16	6.43	8.12	46.35	26.90
Kenya	69.94	6.67	5.77	27.89	17.16
Lesotho	40.12	4.28	5.26	10.70	5.48
Madagascar	55.67	5.82	8.88	24.97	30.80
Malawi	47.12	2.41	10.59	9.22	27.10
Mauritius	42.18	25.42	17.22	40.78	28.58
Mozambique	45.61	8.49	14.71	33.97	32.61
Namibia	59.48	6.77	8.31	15.59	16.87
Rwanda	37.54	2.55	6.71	36.82	33.32
Seychelles	68.10	44.10	27.33	56.84	32.27
Sudan	41.76	0.41	4.99	2.99	28.90
Swaziland	37.87	11.43	15.10	13.25	15.48
Tanzania	39.26	6.37	6.69	43.49	29.90
Uganda	44.41	3.69	8.34	31.38	32.49
Zambia	52.12	3.28	9.46	13.13	25.00
Zimbabwe	57.76	2.17	3.50	12.51	16.69
Egypt	50.20	9.60	6.79	56.58	31.63
South Africa	64.80	4.02	4.60	12.93	16.71
SADC	52.49	4.80	7.12	14.24	22.23
COMESA	44.45	7.01	7.69	32.61	29.60
ACP	47.13	7.22	8.76	19.54	23.80

Japan	67.45	1.65	2.56	14.62	25.58
United States	74.65	2.72	2.07	27.36	15.05
EU (15)	61.88	3.56	3.42	33.86	32.69

Note: EU(15) trade refers to extra-EU trade, the value in the first column for Djibouti is the value for the year 2000, for the United States the average for 2000–2001.

Endnotes

1 Available online at: www.worldbank.org

2 The rationale for including services in an FTA, and specifically the proposed Tripartite FTA, are not spelt out here.

3 Final Communiqué of the COMESA-EAC-SADC Tripartite Summit of Heads of State and Government, 22 October 2008, p. 1. Available online at: http://www.tralac.org/cause_data/images/1694/FinalCommunique Kampala_20081022.pdf

4 The proposal is that the FTA will consist of 26 countries from the three RECs: Angola, Botswana, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Lesotho, Libya, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe.

5 It is important to note that air transport is effectively excluded from the General Agreement on Trade in Services (GATS) and usually from RTAs as well.

6 Air transport may of course be included, if the member states so wish.

7 General Agreement on Trade in Services (Uruguay Round Agreement, Annex 1B). Available online at: http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm

8 GATS Article XVI. The measures listed comprise four types of quantitative restrictions (sub paragraphs a–d), limitations on forms of legal entity (e), and limitations on foreign equity participation (f).

9 GATS Article XVII. Unlike for market access, this Article does not contain an exhaustive list of the types of measure which would constitute limitations on national treatment.

10 WTO document: S/L/92, 28 March 2001

11 General Agreement on Trade in Services: Preamble

12 Although SACU is not specifically recognised as a participating REC in the Tripartite configuration, it is included separately here since all SACU member also belong to SADC, and SACU has an agreement which may influence the services agendas of its members.

13 WTO document: WT/TPR/S/114, 24 March 2003

14 Article 31 of the SACU Agreement

15 WTO document: WT/TPR/S/114/ZAF, 24 March 2003

16 WTO document: WT/TPR/S/114/BWA, 24 March 2003

17 World Development Indicators Database, September 2008. See Appendix

18 World Development Indicators Database

19 WTO document: WT/TPR/G/114, 24 March 2003

20 WTO document: WT/TPR/S/114/ZAF, 23 March 2003

21 WTO documents: S/DCS/W/BWA, S/DCS/W/LSO, S/DCS/W/NAM, S/DCS/W/ZAF, S/DCS/W/SWZ; 24 January 2003
22 WTO document: S/DCS/W/BWA, 24 January 2003
23 WTO document: S/DCS/W/ZAF, 24 January 2003
24 WTO documents: S/DCS/W/BWA, S/DCS/W/NAM; 24 January 2003
25 WTO documents: S/DCS/W/BWA, S/DCS/W/LSO; 24 January 2003
26 WTO documents: S/DCS/W/LSO, S/DCS/W/ZAF; 24 January 2003
27 WTO document: S/DCS/W/LSO, 24 January 2003
28 WTO documents: S/DCS/W/LSO, S/DCS/W/ZAF, S/DCS/W/SWZ; 24 January 2003
29 WTO documents: S/DCS/W/BWA, S/DCS/W/LSO, S/DCS/W/ZAF; 24 January 2003
30 WTO document: S/DCS/W/NAM, 24 January 2003
31 WTO documents: S/DCS/W/BWA, S/DCS/W/LSO; S/DCS/W/ZAF; 24 January 2003
32 WTO document: S/DCS/W/SWZ, 24 January 2003
33 WTO documents: S/DCS/W/ZAF, S/DCS/W/SWZ; 24 January 2003
34 Information obtained from the SADC website. Available online at: www.sadc.int
35 Angola, the Democratic Republic of Congo (DRC), Madagascar, Malawi, Mauritius, Mozambique, Seychelles, Tanzania, Zambia, and Zimbabwe
36 WTO document: WT/TPR/S/114, 24 January 2003
37 SADC Free Trade Area (FTA) website. Available online at: www.sadc.int/fta
38 SADC Protocol on Trade, Article 23. In WTO document: WT/REG176/1, 8 October 2004
39 www.sadc.int
40 World Development Indicators Database, excludes Tanzania and Zimbabwe
41 WTO documents: S/DCS/W/LSO, S/DCS/W/BWA; 24 January 2003
42 Botswana, Lesotho, Namibia, and South Africa are among these countries, and all are members of both SADC and SACU. Commitments have been outlined for these countries in the previous section. Seychelles has not scheduled any commitments as it is not a member of the WTO.
43 WTO document: S/DCS/W/MUS, 24 January 2003
44 WTO document: S/DCS/W/ZWE, 24 January 2003
45 WTO documents: S/DCS/W/MWI, S/DCS/W/MUS, S/DCS/W/ZMB, S/DCS/W/ZWE; 24 January 2003
46 WTO document: GATS/SC/103, 30 August 1995. (Communication from Zaire, now the DRC)
47 WTO documents: GATS/SC/103, 30 August 1995; S/DCS/W/MUS, 24 January 2003
48 WTO documents: S/DCS/W/MWI, S/DCS/W/ZMB; 24 January 2003
49 WTO document: S/DCS/W/AGO, 24 January 2003
50 WTO documents: S/DCS/W/MOZ, S/DCS/W/MWI; 24 January 2003
51 MFN exemptions applicable in South Africa and Swaziland have been listed in the previous section
52 WTO documents: S/DCS/W/ZWE, S/DCS/W/LSO; 24 January 2003; GATS/SC/103, 30 August 1995
53 MFN exemptions for Angola. Retrieved from WTO Trade in Services database
54 WTO documents: S/DCS/W/AGO, S/DCS/W/ZWE, S/DCS/W/ZMB; 24 January 2003
55 WTO documents: S/DCS/W/AGO, S/DCS/W/MOZ, S/DCS/W/SWZ, S/DCS/W/TZA; 24 January 2003 and GATS/SC/103, 30 August 1995
56 WTO document: GATS/SC/51, 5 April 1994

57 Information obtained from EAC website. Available online at: www.eac.int
58 EAC Treaty - 1999. Chapter 15. Available online at: https://www.givengain.com/unique/tralac/pdf/20060606 _EAC_treaty.pdf
59 EAC Development Strategy 2006-2010: Annex 1.16. Available from EAC website
60 WTO document: WT/TPR/S/171/KEN, 20 September 2006
61 WTO document: WT/TPR/S/171/UGA; 20 September 2006
62 WTO document: WT/TPR/S/171/UGA, 20 September 2006
63 WTO document: WT/TPR/S/171/TZA, 20 September 2006
64 WTO document: WT/TPR/G/171, 20 September 2006
65 WTO documents: WT/TPR/S/171/KEN, WT/TPR/S/171/TZA; 20 September 2006
66 WTO document: WT/TPR/S/113, 5 March 2003
67 WTO document: WT/TPR/S/129, 13 April 2004.
68 WTO documents: WT/TPR/S/129, 13 April 2004; WT/TPR/S/113, 5 March 2003
69 WTO document: WT/TPR/S/171, 20 September 2006
70 Angola, Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, the Somali Democratic Republic, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe
71 COMESA Treaty, Article 188. Available online at: http://about.comesa.int/attachments/comesa_treaty_en.pdf
72 Information obtained from the COMESA website. Available online at: http://about.comesa.int/
73 About COMESA – Vision and Mission. Available online at: http://about.comesa.int/lang-en/overview/vision
74 http://about.comesa.int/
75 COMESA Treaty, Chapter Six: Article 45
76 COMESA Treaty, Chapter Six: Articles 56 and 57
77 Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe
78 Launch of COMESA Customs Union postponed, e-COMESA Newsletter, Issue 180. 14 November 2008.
79 Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe
80 World Development Indicators Database, excluding Libya
81 Paragraph 167, document COM/CM/XII/2. In COMESA (2008), Trade Performance. Available online at: http://programmes.comesa.int/index.php?option=com_content&view=article&id=52&Itemid=62&lang=en
82 WTO document: WT/TPR/S/159, 23 January 2006
83 WTO document: WT/TPR/S/150, 28 June 2005
84 WTO document: S/DCS/W/EGY, 24 January 2003
85 WTO document: GATS/SC/104, 30 August 1995
86 COMESA Treaty, Chapter Eleven: Article 84
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88 World Development Indicators database, September 2008
89 Jansen 2006

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The trade policy and trade facilitation agenda of the COMESA-EAC-SADC Tripartite

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There has been much written on the issue of overlapping regional economic organisations in Eastern and Southern Africa and the impact this has on the pace and structure of regional integration. Solutions to challenges of overlapping memberships and overlapping mandates of the Regional Economic Communities (RECs) of COMESA, EAC and SADC have been proposed, ranging from countries choosing one REC to remain a member of, closing down a REC and merging the RECs, but none of these proposed solutions have been acceptable to the majority of countries that created the three RECs in the first place.

There are a number of reasons as to why countries in sub-Saharan Africa initially created the RECs and why they would wish to remain as members of more than one REC. Over time the areas of intervention of each of the RECs have evolved so that now the three RECs under consideration – the Common Market for Eastern and Southern Africa (COMESA); the East African Community (EAC); and the Southern African Development Community (SADC) – have relatively similar mandates, meaning that not only are memberships overlapping but so are mandates. This, in itself would not be much of a problem (except in terms of wasted financial resources and time of experts and the public sector) if the mandates were addressed in a uniform way. For example, all three RECs are at various stages of implementing their own Free Trade Agreements (FTAs) and if these were the same, in terms of rules of origin and product coverage, there would be no real problem. But the reality is different. The reality is that each REC has its own ways of determining origin compliance and its own list of product coverage. In addition, each REC has, in some but not all cases, different trade facilitation instruments, meaning that either trade facilitation is not as effective as it could be, or that countries are not in compliance with one or more of the trade facilitation measures they have agreed to as members of the RECs.

The secretariats of the RECs operate under instruction from their member states and can only implement policies and programmes as determined by the member states through the REC policy organs. However, although the member states of the RECs have not been able to resolve the issue of overlapping mandates and memberships, they have taken steps to mitigate problems caused by these overlaps. One of the more significant actions taken is an instruction to the REC Secretariats to work closely together in terms of implementation of policies and programmes so that the

RECs can learn from the experiences of each other; can avoid duplication as much as possible; and avoid implementation of contradictory policies.

This inter-REC coordination process has been formalised as the Tripartite Process and, as part of this process, the COMESA-EAC-SADC Tripartite Heads of State met in Kampala, Uganda on 22 October 2008 and decided on a number of issues, including the following:

- A programme of harmonisation of trading arrangements amongst the three RECs, free movement of business persons, joint implementation of inter-regional infrastructure programmes as well as institutional arrangements on the basis of which the three RECs would foster cooperation.
- The three RECs should immediately start working towards a merger into a single REC with the objective of fast tracking the attainment of the African Economic Community (AEC) and the development of a roadmap by the three secretariats for the implementation of this merger.

The Heads of State also approved:

- The expeditious establishment of a Free Trade Area (FTA) encompassing the member states of the three RECs with the ultimate goal of establishing a single customs union.
- The development of joint programmes that enhance cooperation and deepen coordination in industrial and competition policies, financial and payment systems, development of capital markets and commodity exchanges.
- The preparation of coordinated and harmonised positions on the Economic Partnership Agreement (EPA) negotiations and other multilateral negotiations including the World Trade Organisation (WTO) Doha Development Round Negotiations.

In the area of infrastructure development, amongst other issues, the Heads of State directed the three RECs to effectively coordinate and harmonise within one year: Regional Transport Master Plans; Regional Energy Priority Investment Plans and the Energy Master Plans; and to develop joint financing and implementation mechanisms for infrastructure development.

One of the main contributors to high production costs in the Eastern and Southern African region is the high costs of transport. For example, between October and December 2008 it cost just under US$7,000 to ship a twenty-foot container from the port of Durban to Lusaka, including the costs of transport, customs clearance, cargo dues, acquittals and empty container return. This is four to five times the cost of shipping a container from Japan to Durban. If producers continue to face such high production costs in land-locked African countries, and in areas that are far away from the ports even in countries with a coastline, they will be reluctant to invest, for obvious reasons. It is, therefore, imperative that costs of production are reduced and, in reducing costs of production, transport costs are reduced so that economic growth, job creation and poverty reduction can take place.

The solutions to regional transport problems in Africa are holistic. This means that it is necessary to make improvements in physical infrastructure (roads, rail, and ports) while also sequentially aligning and harmonising countries' trade and transport policies, procedures, and regulations (i.e. those measures conventionally referred to as trade facilitation).

Trade facilitation challenges and opportunities in the region with specific reference to the North–South Corridor

Road transport

The Eastern and Southern Africa regional transport sector is characterised by a highly competitive, deregulated private road transport system competing openly with rail services, which has led to a marked shift in general freight volumes from rail to road resulting in lower transport costs. The shift in traffic is also partly due to relatively high rail tariffs and unreliable service, both attributed to poor management, inadequate use of assets and poor costing practices. The permissible gross vehicle mass of 56 tons for road transport is one of the highest in the world, and has the effect of further increasing the competitiveness of road against rail and also of significantly increasing the cost of road maintenance.

Most of the freight that moves along the North–South Corridor into or out of the ports of Dar es Salaam or Durban is by road and this is especially true for the route to Durban. The reason for this is because road transport is more flexible, more reliable and usually cheaper per ton/kilometre than rail transport and this will remain the case until investments in railways have taken place to allow improved management and infrastructure to be put in place.

Figure 1: The roads within the North–South Corridor

Figure 2 is a schematic of the distances and journey times by road (and waiting times at borders) between the main towns on the North–South Corridor:

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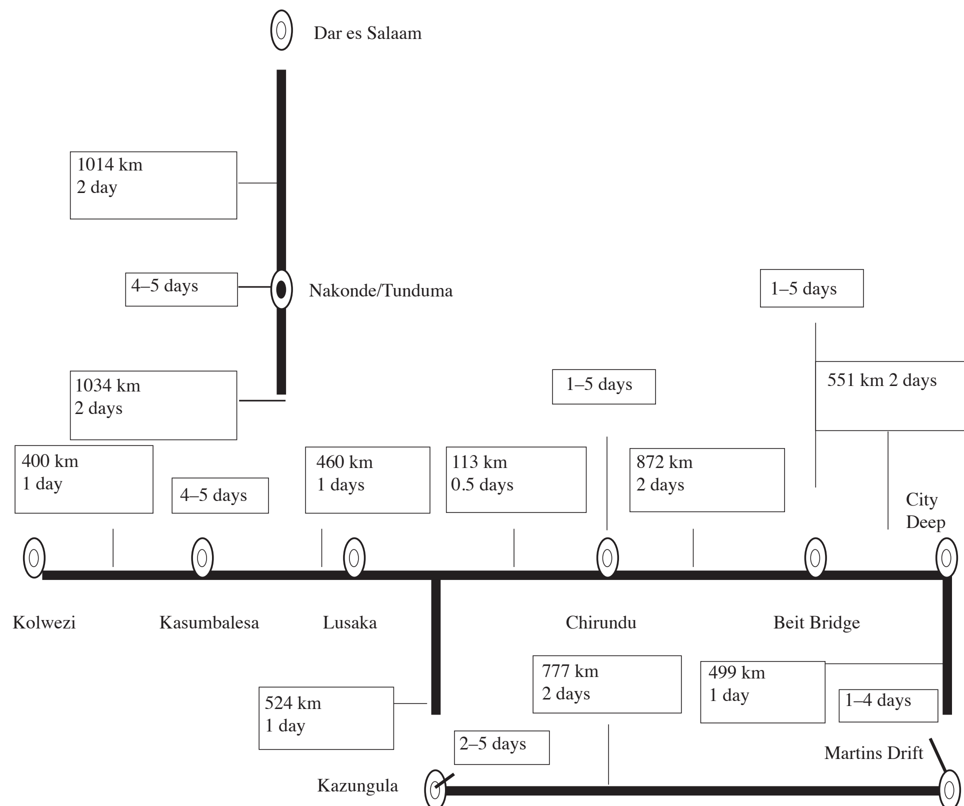

(Note: Distances are for southbound traffic – times are averages)

Table 1: Border post delays at Chirundu

Vehicles types	Travel direction	Delays (in hrs)
Passenger cars, Buses, Mini-buses, Light vehicles	North-bound	1
	South-bound	1
Refrigerated trucks, Oil tankers	North-bound	28.5
	South-bound	7
Heavy trucks, Containerised	North-bound	40.5
	South-bound	20.5

Average travel times and average border crossing times vary considerably by type of cargo (break bulk, containers, tankers, perishable goods, etc– see Table 1); by direction travelled; by whether in transit or not; by whether the computerised systems are functioning; by whether all papers are in order, etc. From Figure 2 it can be seen that the journey from Kolwezi to City Deep (in Johannesburg which is an Inland Container Depot) takes on average 15 to 20 days for general cargo (i.e. not refrigerated or dangerous goods), with 10 to 15 days in down time at the border crossings. If the transporter chooses to use the route through Botswana his pay load will be restricted[1] because the

ferry at Kazungula across the Zambezi has a maximum gross vehicle mass (GVM) of 45 tons, compared to the maximum GVM of 56 tons for the road network as a whole. In addition, the journey time is longer and the time saved at border crossings is minimal, if any. The same is true if a transporter chooses to cross into Botswana at Kazungula and into South Africa at Labatse (Gaborone) instead of Martins Drift. Some transporters using the Botswana route are now by-passing the delays at Kazungula by going further west to cross the Zambezi over the new bridge at Katima Mulilo and then coming back east into Botswana via Ngoma. Even with the additional distance, the additional border crossing (and associated additional charges), some transporters reduce costs in this way, by avoiding the waiting times associated with the Kazungula ferry. This is because the standing costs for a 56-ton vehicle is between US$200 and US$400 a day, depending on the configuration of the vehicle.

Trucks coming from Malawi to City Deep (and from City Deep cargo will go to ports in South Africa or Mozambique) must cross the suspension bridge over the Zambezi at Tete in Mozambique and, as this bridge is in urgent need of repair or replacing, it has a maximum GVM of 48 tons in place (in theory at least, although there is anecdotal evidence to suggest that trucks with higher GVMs of 48 tons are crossing the bridge). This means that all road traffic from Malawi to South Africa, which is the route used mainly for Malawi imports and exports, should be carried on trucks with a GVM of 48 tons, which would add significant trade costs to Malawi. Although times and distances for Malawi traffic are not shown in Figure 2, a similar story prevails – the distance between Lilongwe and City Deep is about 1,900 km which, travelling at an average speed of 60 km per hour and driving at 8 hours per day, should take less than four days. However, the maximum number of journeys a truck can do on this route, if all goes well, is two a month, with most time spent waiting rather than travelling.

The easiest and quickest way to reduce the costs of transport along the North–South Corridor is to reduce the time taken in journey times. This can be done mainly through reducing the time taken at border posts. Converting border posts into one-stop border posts, requiring infrastructure upgrades as well as system upgrades and streamlining, is anticipated to reduce waiting times at borders by at least half.

However, it is not enough just to address border post issues. Significant savings can be made by upgrading the road and bridge infrastructure. It is true to say that most of the North–South Corridor (NSC) road network is in reasonable condition but the cost of maintenance is high and there are some sections that need urgent upgrading. There are also river crossings (at Kazungula and at Tete in particular) that need new bridges. If these road and bridge infrastructure upgrades are done, not only will there be savings brought about in reducing queues (with long queues at both the ferry crossing at Kazungula and the bridge at Tete) but there will be savings in running times for trucks, lower costs of truck maintenance and from fewer accidents.

Finally, reductions in journey times and in the cost of trade can also be made with the improvement of existing trade facilitation measures, the introduction of new trade facilitation measures and the implementation of agreed trade facilitation measures by countries that the NSC services.

Trade facilitation measures

Trade facilitation is recognised as an effective way of reducing the cost of doing business and generally lowering transaction costs in international trade. Trade facilitation is part of the Doha Development Agenda (DDA) of the World Trade Organisation (WTO), but negotiations are limited to Articles V (Freedom of Transit), VIII (Fees and Formalities connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations) of the General Agreement on Tariffs and Trade (GATT) 1947. Although it is important to address these issues in the framework of the DDA negotiations, if trade facilitation instruments are to assist in reducing transborder costs, they will have to be a lot more encompassing than those being negotiated at the multilateral level. This is an argument to take a wider perspective when addressing trade facilitation at a regional level rather than an argument to request an expansion of the negotiations on trade facilitation at the multilateral level.

The member states of COMESA, EAC and SADC have devised and have been implementing, through the RECs, a number of important trade facilitation measures over the last few years and these apply to all corridors. These trade facilitation measures, described in their broadest sense as non-tariff measures to alleviate procedural constraints faced by traders in order to facilitate cross-border trade, have had a significant impact on improving the trading environment. However, there are also ways in which existing trade facilitation measures could be improved, either in the way that they are implemented, implying a harmonisation process between countries and RECs, and, in some cases, in the way they are designed to take account of technology changes or simply of changing circumstances.

The main regulatory and trade facilitation measures that are used by the RECs to facilitate cross-border trade include the following:

Regulatory and competitive environment

The regulation of the safety and environmental aspects (including oil spillage, disposal of dredged material, handling of dangerous cargoes and dealing with distressed vehicles) of the regional transport sector are generally well-defined and covered by international conventions and national legislation and procedures.

Ideally, the regional transport sector should function in a manner which requires the minimum amount of economic regulation or is mainly self regulating in a truly competitive and harmonised environment. To a certain extent, this is the case for regional road transport where there is open competition from a multitude of regional operators but with a degree of protection still existing in the application of cabotage rules (the transport of goods on the domestic market by foreign registered operators) and restrictions on third country operators (the transport of goods along routes which do not pass through the country of registration). The continued application of these rules requires performance monitoring and regulation. The policy documents (protocols and treaties) of COMESA, SADC and EAC have stated objectives of removal of all these constraints or barriers, but a high degree of harmonisation of regulations and policies will be required before this can be implemented. Import regulations, duties, fuel prices, operating conditions, and so on, must all be similar if all barriers are to be removed, otherwise competitive advantages will arise.

Road safety

The sub-Saharan Africa Transport Program (SSATP) estimates that, although Africa does not have the highest number of road accident related deaths in absolute numbers, the traffic-related mortality rate per capita is the highest in the world at 28.3 deaths per 100,000 of population.

The road crash cost in Africa is estimated at US$3.7 billion. Studies have indicated that the rate of return on investment to reduce crashes may be very high and that there is clearly a motivation to implement crash reduction measures. Since the costs of crashes are not carried by one particular organisation, none of the relevant sectors have identified road safety as its main priorities, for example the key priority in the transport sector is maintenance and the key priority in the health sector is HIV/AIDS.
Road Safety is a priority area of concern for SSATP and efforts need to be made to improve road safety along the North–South Corridor, both through SATTP and other road safety initiatives. South Africa is a focus country for the Global Road Safety Partnership and the COMESA-EAC-SADC Tripartite has put emphasis on road safety.

Combating HIV/AIDS

There are a number of initiatives that are used to combat HIV/AIDS along the North–South Corridor, including programmes under the Corridors of Hope, the North Star Foundation and SSATP operations targeting HIV/AIDS.

The North Star Foundation's Wellness Centres are being rolled out in all major sub-Saharan transport corridors and a number of wellness centres are already opera-

tional along the North–South Corridor, including wellness centres on both sides of Chirundu, at Mesina and at Beit Bridge[2].

The North–South Corridor was the first corridor targeted by SSATP operations on HIV/AIDS prevention. A baseline study supported by SSATP is being carried out along the corridor to assess vulnerable groups and communities, and identify mitigation measures to be carried out. SSATP work on HIV/AIDS prevention will expand to the North–South corridor as well.

The Corridors of Hope programme was initially designed to proliferate and strengthen condom social marketing activities for the prevention of HIV/AIDS at key cross-border locations in Zambia and Zimbabwe, and has since been extended into Lesotho, Namibia, Mozambique, South Africa and Swaziland. Activities focus on the five highest-risk target groups: commercial sex workers, truckers, informal traders, uniformed officials, and adolescent girls.

One-stop border posts

The African Union (AU) and the New Partnership for Africa's Development (NEPAD) have agreed on the need to establish one-stop border posts as a way to reduce costs of cross-border trade in goods.

A one-stop border post is a border post shared by border officers from two adjacent countries to conduct joint cross-border and security clearance procedures. It is seen as a practical way to reduce duplication of controls and so reduce the clearance processing times and costs involved in crossing borders by unifying border control processes within a single sequence and reduce opportunities for fraudulent exchanges of invoices.

Along the North–South Corridor the RECs, with COMESA as the lead agency, are piloting a one-stop border post at Chirundu, the border post between Zambia and Zimbabwe. The governments of Zambia and Zimbabwe have provided the political support needed to implement a one-stop border post and implementation is done under a bilateral agreement. Under guidance from the RECs and with assistance from the Japan International Cooperation Agency (JICA) and the United Kingdom's Department for International Development (DFID), the two governments have: constructed a new bridge over the Zambezi river (financed by JICA) new buildings; passed national legislation needed to allow a one-stop border post to operate (including national legislation to allow extra-territorial exercise of powers by officials from both countries to perform their functions in a foreign country and allowing the declaration of common areas of control and harmonisation of roles, powers and responsibilities of officials with an interest in border control); and implemented a single operating procedure that allows all exit and entry documentation to be submitted in a consolidated manner and only once.

The economic and social benefits of a fully functioning one-stop border post at Chirundu are linked to the time saved at the border post (which will be measured in days as opposed to hours for commercial freight). The economic benefits include a reduction in the cost of transport[3] which, in turn, will reduce the cost of imports and exports, leading to firms and producers in countries along the North–South Corridor becoming more competitive. This should promote economic growth and employment creation and so create an environment in which across-the-board poverty alleviation can take place. The social benefits include a reduction in the infection rates of HIV/AIDs and other sexually transmitted diseases. The relatively large number of truck drivers spending days at Chirundu with little to do except wait for their documentation to be cleared attracts a proportionately large number of sex workers to the border post area, resulting in high infection rates amongst drivers and the local community. Reducing the time needed to cross a border should result in a reduction in infection rates, although other measures are also required.

Good progress is being made in rolling out the one-stop border post at Chirundu and it is expected to be in operation as a one-stop border by the fourth quarter of 2009. The lessons learned at Chirundu and the national legislation passed should allow faster and smoother roll-outs of one-stop border posts at other border posts along corridors and this will in turn lead to higher economic and social benefits accruing to the region as a whole.

Simplification and harmonisation of customs procedures and legislation

To make processing of documentation quicker, it is necessary to harmonise customs practices, procedures and legislation, such as bringing countries onto the GATT valuation system; ensure countries are on the same version of the Harmonised System of Customs Classification; simplify and harmonise temporary admission, re-exportation and transit procedures; harmonise exemption and other duty relief measures; dispense with all pre-shipment inspections; and adopt regional anti-dumping and countervailing duty regulations, etc.

A programme to put the harmonisation process into operation is underway. It mainly consists of activities that are part of a coherent inter-regional programme which is being implemented by national customs administrations with the support of regional economic communities. The various components of this programme include activities aimed at:

- synchronising customs laws, procedures, documentation and practices to ensure they conform to international conventions and best practices
- systematically removing trade facilitation bottlenecks that currently exist in the region
- enhancing the comprehension in customs administrations of trade facilitation issues to elevate trade facilitation as one of their key functions

- providing platforms for customs administrations to share modernisation experiences and to learn from each other
- developing common risk management capabilities and strategies for their implementation
- developing common guidelines for conducting post clearance audits
- developing regional toolkits for various initiatives such as management of border posts, risk management, establishment of one-stop border posts, etc.
- developing joint training programmes and building capacity in pertinent customs and related areas
- raising the levels of customs administrations' integrity and adopting of a pro-customer care culture.

Regional customs bond guarantee schemes

A regional customs bond guarantee would eliminate the avoidable administrative and financial costs that are associated with the current practice of nationally executed customs bond guarantees for transit traffic. At present transporters transiting through a country to get to another country need to take out a customs bond at least equal to the duty which would be payable on their cargo. When they prove that the cargo has actually left that customs territory, the bond is released. However, the process of releasing bonds takes time so large amounts of money are tied up in the system of national bonds. This, plus the fact that it costs money to issue a bond, means that the cost of transport is higher than it needs to be if a system were found that would replace the national bond system. SADC and COMESA are working on the development of a regional customs bond. There are both slight and fundamental differences between the two systems and the challenge is to implement a harmonised system so that the end result is a single regional customs bond system. If one country along a transport route operates a different bond guarantee system to that operated by its neighbours then the benefits of the regional system are greatly reduced.

Harmonising and enforcing axle load and vehicle dimension limits

All roads are designed for specific maximum usage and, as such, it is important to set limits on the mass or weight (axle loading) and physical dimensions of vehicles using the road network. The setting of these limits and their enforcement ensures that vehicles do not operate outside the pavement design parameters of the road network and so limits the wear and tear on the roads and also maintains a certain standard of road safety.

Member states of the RECs have agreed to harmonise axle loads, which are specified by the gross vehicle mass (GVM) by type of vehicle (vehicle and trailer and the combined number of axles) with a maximum GVM of 56 tons allowed on the regional

road network. Axle loads are also specified by the distribution of loads on axles and this depends on both the number of axles a vehicle has as well as the number of tyres on an axle.

Although the RECs have agreed to harmonise axle loads and vehicle dimensions there remain a number of outstanding issues to resolve in the implementation of these common rules and procedures. On some routes axle loads are *de facto* restricted because of the poor quality of the infrastructure.

Owing to the highly competitive nature of road transport in Eastern and Southern Africa, the financial incentive for transporters to run trucks with higher axle loads than allowed is high.

There is also an on-going debate in the region on the issue of super single tyres (which are wider tyres than normal tyres). Transporters are always looking for ways to reduce the tare (or unladen) mass of their vehicles as this will allow them to legally increase their payloads and, in turn, bring down the cost of transport. The use of super single tyres instead of dual tyres will result in a reduction in the vehicle tare mass but, at present, axle load limits are set according to the number of axles on a vehicle and the number of tyres on an axle. Therefore, there would need to be a change in legislation to allow the use of super single types on a interlink (or double semi-trailer), which is the main vehicle combination for heavy vehicle transport throughout most of Eastern and Southern Africa. It is generally agreed that super singles should be given a higher load limit than for normal tyres but the issue to be agreed is what that load should be to ensure the vehicle does not damage the road while allowing the vehicle to carry a higher payload.

The issue of harmonising vehicle dimensions along the North–South Corridor is not as problematic as harmonising axle loads and enforcement. The maximum vehicle dimensions agreed by the RECs are:

- 12.5 m for a rigid chassis single vehicle or trailer
- 18.5 m for articulated vehicles[4]
- 22 m for truck and draw-bar trailer
- 2.65 maximum width
- 4.30 to 4.60 maximum height[5].

These vehicle dimensions (the length at least) only becomes an issue for mountainous countries in that a vehicle that is 22 m in length will have difficulty negotiating sharp bends in roads that are on a steep gradient.

Lane width should be based on traffic volume and vehicle type and speed. The width of a truck and semi-trailer is 2.5 m and a bus is 2.6 m so, according to the Southern Africa Transport and Communications Commission's (SATCC) Code of Practice for the Geometric Design of Trunk Roads of 2001, for the sake of safety, a lane width should not be less than 3.1 m and not more than 3.7 m (with no operational or safety benefit

accruing from lane widths wider than 3.7 m) and so give adequate clear space on either side of trucks and buses. Intermediate conditions of volume and speed, as are the norm in the region, can be adequately catered for by a lane width of 3.4 m.

From the above it can be seen that it is of extreme importance to agree and enforce appropriate axle load limits. If trucks are not carrying their maximum payloads then the costs of transport, and so imports and exports, will be higher than they should be and, conversely, if axle loads are higher than those the road is designed to carry, the costs of repair and maintenance will be higher than expected.

Harmonising road transit charges

In practice road charges vary by country, with most countries basing their road charges on a rate per distance travelled and with South Africa operating a road toll system. COMESA countries have agreed to set their road user charges at US$10 per 100 km but not all COMESA countries use this rate. The tripartite has agreed to introduce a harmonised road user charge and SADC is the lead institution in developing the system. A road user charge model has been designed and modified by SADC member states and this model is now under final discussion and testing.

Regional carrier's license

COMESA has introduced a regional carrier's license which allows commercial goods vehicles to be licensed with one license which is valid throughout the COMESA region so that the vehicles can operate in all of these states. This means that vehicles can pick up back-loads in other countries and this allows for a more efficient use of the region's transport fleet and so reduces the cost of trade. However, evidence suggests that the COMESA carrier's license is not operational or usable in all countries that have signed up to using this instrument.

In SADC a system of bilateral agreements is in place and the issuance and management of transport permits is fully described in these agreements. In countries that belong to both COMESA and SADC there is some confusion as to which system to use.

Third party vehicle insurance schemes

There are currently three main systems of third party liability insurance in use for cross-border transport in the COMESA-EAC-SADC region, namely, cash payments, fuel levy and the Yellow Card system.

Cash payments at the border are country-based and follow the laws and regulations of the country where payment is collected. For example, in Mozambique, payments apply to foreign vehicles only and cover third party vehicle and property damage. In Zimbabwe, appointed agents collect the premiums which cover liabilities to third parties and damage to property.

The fuel levy system involves indirect payments for third party insurance, made whenever there is a purchase of fuel. As foreign vehicles refuel in a foreign country they are automatically covered. The scheme covers injury to third parties and does not cover property damage. Fuel levy schemes are operational in the SACU states, namely, Botswana, Lesotho, Namibia, South Africa and Swaziland.

In 1985 the Preferential Trade Area (PTA), the predecessor of COMESA, established a motor vehicle third party insurance system, called the Yellow Card, after noting problems with the cash payment system then in use in its member countries. The underlying concept is that when a visiting motorist is legally liable for an accident, the local Bureau (Handling Bureau) deals with the claim and seeks reimbursement from the Bureau of the country of origin (Paying Bureau).

The rail sector

Most of the railway network, with the exception of the South African heavy mineral lines and the TAZARA railway, was built at a time when road transport was not a viable option. The railway network is, therefore, more a result of technological and economic development and political factors than the result of regional cooperation and careful planning.

Rail traffic is characterised by exports of mining and agricultural products and imports of manufactured goods and, although it is economically important to have a return pay-load in road transport, balanced freight flows are less critical for rail, because of the inflexibility of the system and the cost and time of repositioning wagons and the breaking up of unit trains. It is often more efficient to return the wagon as quickly as possible to pick up the next load on a fixed schedule basis to achieve optimum equipment utilisation (for example, the highly efficient operation of the bulk ore lines).

The rail transport system as a whole operates at well below its original design capacity, although some railway sections require refurbishment and upgrading and improvement in operations, and consequently suffer from poor efficiency and hence capacity constraints, including speed restrictions, shortage of operational railway wagons, reduced availability of locomotives, and a lack of operating capital for the purchase of spares and fuel.

While current trade volumes do not in all instances justify infrastructure investment, in theory, current volumes can be carried by one transport corridor, rather than six or seven competing systems. Inappropriate investment could lead to increased rather than reduced transport costs and inefficient expenditure by governments. On the other hand, targeted and well-considered investment in upgrading and operational improvements of the sub-region's corridor transport infrastructure could bring costs down and optimise expenditure and investment.

With the exception of the South African dedicated bulk lines, the regional freight transport sector is characterised by long distances, relatively low volumes and relatively high railway tariffs. It is also generally characterised by inflexibility, in relation to schedules and poor inter-modality, resulting in delays and unreliability. The availability of rolling stock is still low compared to other regions of the world and disjointed railway operations together with poor tracks and rolling stock results in delays, unreliability and increased transport costs.

The regional railways are all built to the 'Cape gauge' of 1,067 mm (3 ft 6 inches) between the rails, with the exception of the Tanzania Railways Corporation (TRC) system in northern Tanzania and the Kenyan/Ugandan systems which have a 1,000 mm gauge. This means that there is almost full railway interconnectivity within the Eastern and Southern Africa region. Axle loads are generally 15 tons to 18 tons in the region, and up to 26 tons in South Africa. To make rail more competitive with road, axle weights should not be less than 20 tons. This would allow a railway wagon to carry almost twice as much as a large combination road rig. Braking systems are gradually being upgraded to air to allow trains longer than 40 wagons.

Competition between the regional railway companies is open and unregulated and linked to the relative performance of the regional ports. The choice of railway route is generally governed by the shortest distance and not necessarily by the lowest cost. This has led to some unfair and uncompetitive practices by private sector railway concessionaires. These practices highlight the need for an effective regional economic transport regulator. Regional economic regulation could also serve the function of approving concession agreements and tariffs to avoid the danger of private sector exploitation and monopolistic behaviour.

The main policy issues to be addressed are the following:

1. Removal of administrative and operational hindrances between networks and at border crossings – the southern railway system is physically integrated, yet the lack of cooperation among rail operators, transparent, fair and well-regulated mutual access rights and undue delays in border crossings considerably reduce the advantages that should result from this physical integration.
2. Realistic investment burden sharing between private operators and governments – rail concessions, with the exception of dedicated mining rail operations, in Africa in general, cannot cover both track rehabilitation costs and rolling stock

maintenance and upgrades. Accordingly, rail network track financing upgrades will remain the responsibility of host governments and existing and/or planned concessions should acknowledge this basic financial constraint.

3. Challenge of assets preservations – existing volumes of rail traffic and associated revenues would need to at least double, if not triple, to cover both long-term track maintenance needs and rolling stock upgrades and are not likely to ever be able to cover long-term rehabilitation costs. This means that in the current context, unless a major shift in transport modality is achieved over the next five to ten years, maintenance needs and the backlog of track rehabilitation investment will continue to grow inexorably as maintenance requirements become rehabilitation needs. To preclude this from happening, there is a real need to re-assess the rail/road investment priority regionally – including the long-term sustainability of multiple rail corridors for landlocked countries, rebalancing rail/road competition and devising realistic inter-operability criteria and border crossing standards that foster significant increases in rolling stock usage efficiency.

Potential challenges for deeper integration in the proposed FTA

The tripartite has been working on the documentation necessary for the creation of the Tripartite Free Trade Area as instructed by the Tripartite Summit in Uganda in October 2008. This FTA has a potential membership of 26 countries (the total membership of COMESA, EAC and SADC) which is nearly half of the countries in Africa and so would constitute a major step towards implementing the Arica Economic Community and the fulfilment of the Lagos Plan of Action.

The tripartite is, therefore, preparing the FTA Roadmap, comprising the draft text of an FTA agreement including rules of origin, an implementation timetable and explanatory notes. As this is still a work in progress and has not been presented to the member states it is premature to analyse what this roadmap looks like. There will, however, be a number of challenges to address in both the design and implementation of the FTA Roadmap, including the following:

WTO compliance

For a Free Trade Area to be accepted by the WTO membership it has to comply with Article XXIV of the 1947 GATT. In particular account should be taken of the following:

- Duties or other charges of equivalent effect should not be higher or more restrictive than they were prior to the introduction of the FTA (Article 5(b)).
- The FTA must be implemented within “a reasonable time”, interpreted in GATT 1994 as not exceeding ten years except in exceptional circumstances (Article 5(c)).

- An FTA is understood to mean a group of two or more customs territories in which duties and other restrictive regulations of commerce are eliminated on substantially all trade between the constituent territories in products originating in such territories (Article 8(b)).

With regards to the first bullet point (Article 5(b)), this will be of particular concern to member states of COMESA. The COMESA FTA has no statutory exclusions and allows free trade in all products as long as they conform to the COMESA Rules of Origin. For both SADC and EAC there are restrictions on what goods can be traded within the FTA, even if the goods are originating from within the country they are being exported from. Although these restrictions are considered temporary, if they find their way into the Tripartite FTA then COMESA member states will be increasing duties on some goods that are now traded free of duty within the COMESA FTA.

With regards to the second bullet point above (Article 5(c)), it is clear that the Tripartite FTA, if it is to be WTO compliant, will need to be either implemented within ten years as stated in GATT (1994) or exceptional circumstances will need to be proved.

Regarding the third bullet point (Article 8(b)), this will also be of concern to COMESA member states. The COMESA FTA has no restrictions whereas the FTAs of both SADC and EAC have (temporary) restrictions so that if restrictions are placed on goods that can be traded free of duty in the FTA then the Tripartite FTA may not be considered as beneficial to COMESA member states as the COMESA FTA.

Rules of origin

The main purpose of preferential rules of origin is to reduce trade diversion and trade deflection to a minimum. This can be achieved by having rules of origin which are simple and transparent. Rules of origin should not be used for trade or industrial policy reasons such as protecting domestic industries by giving preference to countries or inducing vertical integrated industries in beneficiaries.

The challenge for the tripartite is whether to try to harmonise the rules of origin of COMESA, EAC and SADC or whether there should be new rules of origin. There are challenges to both courses of action.

One of the challenges of trying to harmonise existing rules of origin is that there is no obvious way of doing this. Each of the RECs have rules of origin that are based on the Lomé/Cotonou Rules of Origin which are, in turn, based on either wholly produced (for products that do not go through substantive transformation which are mainly agricultural or mineral products such as fresh meat, fresh fish, minerals, crops such as maize, wheat, coffee beans, etc.) criteria or on value addition for products that do go through substantive transformation. Value addition is based on the value added

in the process of manufacturing and is usually relatively restrictive, with value additions of 35 per cent and higher being commonplace. There are a number of challenges in using a value addition method, including:

- Value-addition may deter a manufacturer from investing in more efficient plant and machinery as this may reduce the cost of the manufacturing process which could result in the value added through processing to be reduced to below the value addition threshold which confers origin.
- If the relative value of a currency changes this can change the value addition, so a good can move from being considered to be produced in a country to not being produced (or vice versa) simply because of a currency fluctuation and with no change in process.
- It is technically difficult to determine what the value addition is, especially if a raw material has a number of end-products;[6]
- The value-addition methodology is a very out-dated methodology that does not take account of the impacts of globalisation on modern manufacturing processes where it is unusual to have a high value-addition from a local process or input.
- The level of percentage threshold may be arbitrarily set and may vary to non-economic factors.
- The costs of labour in developing countries are relatively cheap and in a value added calculation it may turn an asset into a penalty.
- The calculations may be difficult and may entail some accountancy expertise generally not available in most small firms in developing countries.

The RECs have, in some instances, been trying to move from a value addition rule to a change of tariff heading (or change of tariff classification) rule. This is much simpler to use to determine whether a good is originating as the good will move from one Harmonised System (HS) code to another after processing. However, a change of tariff classification does not always infer substantive transformation. For example, if fish is dried, or frozen or salted, the tariff classification changes but few would argue that substantive transformation has taken place. Conversely, if a refrigerator is made from an imported compressor the tariff heading of the refrigerator does not change from the heading of the compressor but few would argue that substantive transformation has not taken place.

Free Trade Agreements that have been negotiated with the United States of America (USA) recently have used a value of non-originating materials and value of originating materials as the basis for determining origin. This type of calculation has an obvious advantage in that:

- It should be the quickest and easiest way to reach an agreement on rules of origin in that the rules of origin can be negotiated on a generic basis and not on a line-by-line basis.

- The percentage criterion method of calculation can be adjusted to minimise its shortcoming and could be drafted in such as way as to compensate for additional costs incurred in transportation charges on inputs by landlocked countries.
- The methodology used to calculate value addition is based on two formulas called build-down and built-up, using best practice from the United States Central American Free Trade Agreement (US-CAFTA). The formulas take into account the special situations related to the transport costs of input materials to landlocked least developed countries (LDCs) in particular.

Coverage of the FTA

A Free Trade Agreement usually limits itself to trade in goods and to those goods that are considered originating. However, the Tripartite FTA is mandated to also cover trade in services, free movement of business persons and removal of non-tariff barriers (NTBs) (although it could be argued that NTBs should also be included in a free trade agreement). The inclusion of these additional issues will no doubt strengthen and deepen the regional integration process as envisaged by the tripartite but it may also delay the process of concluding the Tripartite FTA as it adds a large complication to the negotiating of the FTA.

Conclusion

In conclusion, the Tripartite Process has a lot of advantages in that:

- There are strong political drivers as was seen at the Tripartite Summit in Kampala, Uganda in October 2008 and at the High-level Meeting (attended by four Heads of State and donors and cooperating partners at a high level) in Lusaka, Zambia on the North–South Corridor.
- There are strong drivers at the regional level, with the direct and active participation of the Chief Executives of COMESA, EAC and SADC.
- There is considerable good will and support from the RECs cooperating partners.
- There is sufficient expertise and knowledge in the region to prepare the documents necessary for the implementation of the Tripartite Free Trade Area and to harmonise the programmes necessary to deepen integration through linking infrastructure and improving trade facilitation measures.
- The Tripartite Process is moving the process of implementation of the African Economic Community forward.

However, the challenges to implementing the Tripartite FTA and of deepening the regional integration process through linking and sequencing infrastructure upgrades and trade facilitation measures should not be under-estimated. There are a number of sub-national, national and regional vested interests to overcome and it is not always the case that the common good at regional or national level triumphs over vested interests of individuals and well-entrenched groups that have influence over political processes and the decision-making process. So far progress has been remarkable and it is hoped that this progress can be maintained.

Endnotes

1 This is a restriction in theory as, although there is a theoretical gross vehicle mass of 45 tons, this is not applied by the operators.

2 See "North Star Foundation – Geographical Analysis of potential HIV/AIDS wellness centre locations in SADC countries" July 2007 by Mark de Blois and Andrew Thow.

3 The road transport sector in Eastern and Southern Africa is characterised by transport companies competing for customers in an open market and highly competitive environment, meaning that if costs of transport are reduced then prices will also be reduced.

4 Some countries enforce a vehicle length of 17 m but efforts are underway to harmonise the length to 18.5 m.

5 South Africa (and effectively Botswana and Mozambique) has a height restriction on 4.3 m with Zambia and Zimbabwe having a height restriction of 4.6 m. the recent SADC Panel of Experts recommended that maximum height of 4.3 m be adopted.

6 A good example may be palm oil which is imported into the region and from which soap, cooking oil, margarine and Oleochemicals are made.

Modalities and scenarios for establishing a Tripartite Free Trade Area

Farai B. Zizhou

The decision to establish the COMESA-EAC-SADC (CES) FTA was made by the 1st Tripartite Summit of the Heads of State and Government of the member states of the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC) and the East African Community (EAC), in Uganda in 2008. Even though the Summit meeting was convened in "...pursuit of the broader objectives of the African Union to accelerate economic integration of the continent, with the aim to achieve economic growth, reduce poverty and attain sustainable economic development" (COMESA-EAC-SADC 2008), it was hastened by the rather urgent need to create a framework for the resolution of the multiple and overlapping memberships of the three regional economic communities (RECs) by several member states. The haste reflects the then impending declaration of a free trade area (FTA) by SADC at the end of 2008, en-route to the proposed creation of a SADC customs union in 2010; the then impending establishment of a COMESA customs union; as well as the revival of the EAC customs union.

This paper seeks to:

- identify possible scenarios and modalities for the establishment of the CES FTA
- explore possible challenges and constraints to creating the FTA
- assess the institutional implications of the FTA for existing RECs.

The paper takes cognisance of the fact that COMESA, SADC and EAC have commissioned a study into the establishment of the CES FTA and the results of that study have yet to be made public. It also takes into account the fact that inter-regional cooperation into infrastructure development, trade facilitation, trade policy coordination, etc. actually preceded the decision to establish the FTA.

This paper is the product of a desk study of official documents and reports, as well as other published works especially on background information. There were no field visits, given the limits of the budget. No published works on scenarios for the creation of the CES FTA were available for providing alternative ideas. The scenarios for establishing the grand FTA outlined elsewhere in this paper were deducted purely from the observed historical development of FTAs in Africa, based on the information obtained from official documents. Possible constraints were extrapolated from

the current situation affecting the implementation of the three RECs' programmes. The institutional implications were deduced from the expected work programme for the proposed FTA, and include extensions from on-going tripartite regional cooperation programmes.

Background

The quest for the establishment of the Tripartite FTA has its roots in the desire to establish the United States of Africa, an idea first mooted during the early independence era by Kwame Nkrumah of Ghana, which initially found expression in the Organisation of African Unity (OAU) in 1963. The idea gained modern day expression through the Lagos Plan of Action (LPA) of 1980, the Abuja Treaty (1991) which aims to establish the African Economic Community (AEC) by 2028, and more recently the formation of the African Union (AU). COMESA's constitutive treaty, the EAC Treaty as well as the SADC Treaty (as amended) derive international and regional political legitimacy from the LPA and the Abuja Treaty. The African Union Constitutive Act and the Abuja Treaty recognise these three RECs (of the eight African RECs) as the building blocks of the proposed African Economic Community.

In 2001, the chairpersons of COMESA and SADC met at the Heads of State level and agreed to form a COMESA-SADC task force to steer the process of harmonising their regional programmes. Initially the task force dealt with information exchanges designed to prevent the overlap of future programmes and projects rather than harmonising existing programmes. This was to change a few years later with coordination taking place at various levels. In 2006, the EAC was invited to be part of the task force. Sub-committees of the task force were mandated to look at coordinating issues to do with infrastructure, trade policy and trade facilitation. It can be argued that this work gave birth to the idea of forging even closer ties between the three RECs in the form of an expanded FTA.

The proposed CES FTA, which covers 26 countries (i.e. half the continent) from Libya to South Africa (see Figure 1), is the latest attempt by African countries to bring the idea of a continent-wide FTA into reality.

Figure 1: COMESA-EAC-SADC countries[1]

The idea is to create a free market of 527 million people (2006) with a combined gross domestic product (GDP) of US$624 billion (2006), which is 58 per cent of the African Union (COMESA-EAC-SADC 2008). Nine of the 26 member states have a GDP per capita per day of less than US$1. These nine regions have a population of 255 million people, which makes up 48.4 per cent of the region, and contribute to only 9 per cent of regional GDP. Another four countries have a collective population of 69 million people and an average GDP per capita per day ≥US$1<US$2 (2006) and contribute to about 5.5 per cent of the regional GDP. This means that the market size is not as big as the numbers would suggest.

The fear of losing trade preferences has stalled the untangling of the web of multiple REC memberships among the member states. Table 1 shows that multiple memberships within the three RECs[2] involve 13 of the 26 member states.

Table 1: Countries with multiple memberships to COMESA, EAC and SDC

Country	COMESA	EAC	SADC
Burundi	▲	▲	
D R Congo‡	▲		▲
Kenya	▲	▲	
Madagascar‡	▲		▲
Malawi	▲		▲
Mauritius	▲		▲
Rwanda	▲	▲	
Seychelles‡	▲		▲
Swaziland	▲		▲
Tanzania		▲	▲
Uganda	▲	▲	
Zambia	▲		▲
Zimbabwe	▲		▲

▲ Denotes membership of Regional Economic Community

‡ Currently not a member of the SADC FTA

This means that these member states are negotiating to become members of at least two customs unions, which by definition is not possible. There is currently no evidence to show that the member states concerned will publicly indicate their preferred customs union. On the contrary, this has led to the decision to work towards the establishment of an all encompassing CES FTA. It may therefore be argued that if this venture is successful, the multiple memberships, far from being a constraint to the consolidation of regional economic communities, have actually acted as a catalyst to broader regional integration.

The alternative argument is that the multiple memberships have been muddling and therefore slowing down the linear progression of the regional integration agenda of the three RECs. The technical, human and financial capacities of the member states to deal effectively with multiple and different trade regimes are stretched to the limit where there are multiple memberships. This results in poor implementation records on agreed positions. Political commitment is often found to be inadequate in such cases, thereby acting as a barrier to deeper integration.

The situation is further complicated by the emergence of Interim Economic Partnership Agreements (IEPAs) which some member states of COMESA, SADC and EAC have signed with the European Union (EU). This development has highlighted the idea of divergent interests and compromised the ability of SADC and COMESA to negotiate with the EU as consolidated RECs. This development may have serious implications for the envisaged half-continent FTA. The next section discusses possible scenarios on how such an FTA may be constructed.

Possible scenarios for building the COMESA-EAC-SADC FTA

Member states of the three RECs have agreed to build a single FTA, as outlined during the Tripartite Summit Resolution: "The Tripartite Summit resolved that the three RECs should immediately start working towards a merger into a single REC with the objective of fast tracking the attainment of the African Economic Community" (COMESA-EAC-SADC 2008). The resolution is further expounded as follows: "In the area of trade, customs and economic integration, the Tripartite Summit: ... approved the expeditious establishment of a FTA encompassing the member/partner states of all three RECs with the ultimate goal of establishing a single customs union" (COMESA-EAC-SADC 2008). This ultimate goal can be achieved through various possible scenarios.

Principles to underpin the Tripartite FTA

It is expected that the process of setting up the Tripartite FTA will be guided by a number of principles, including variable geometry, subsidiarity, gradualism and open regionalism. The bulleted list below defines the principles that are implicit in the summit deliberations, but quite explicit when it comes to variable geometry.

- **The principle of variable geometry** was applied during the tariff phase-down process of the three RECs to take care of a number of concerns, including infant industry protection and the time taken to put in place measures to counter loss of revenue, among others. The 2008 Tripartite Summit re-affirmed the requirement for the future FTA to take into consideration the principle of variable geometry (COMESA-EAC-SADC 2008:9).
- **The principle of subsidiarity** implies that the institutional setup to manage and coordinate the new REC will only be given responsibilities that cannot be managed or implemented at member-state level so as not to overstretch human and technical capacities. The latter could prove harmful to the whole regional integration project.
- **The principle of gradualism** is related to variable geometry and is meant to ensure that sensitivities of member states are taken care of, particularly during the tariff phase-down process.
- **The principle of open regionalism** ensures that even though there is an initial period where the region is looking inwards, the region will open up (lower tariffs) to other trading partners as a bloc. In practice, this is usually attained at the level of the customs union through a common external tariff. This follows the theoretical postulation that the benefits of trade are greater in a low tariff trade regime.

Scenario A: Extension of free trading arrangements by member states (customs territories)

The three RECs negotiate mechanisms to enable member states (customs territories) to extend free trade preferences to each other (all other member states), taking advantage of the existence of a nucleus of countries that already have memberships in more than one REC, particularly those member states belonging to both the SADC FTA and the COMESA FTA. This option would not interfere with current FTA and customs union configurations and would allow them to continue to develop towards customs unions or monetary unions. Other member states would sign up to a new FTA over a pre-determined period of time or they may choose not to join at all. The new FTA could start off with zero duty on at least 85 per cent of tariff lines and member states of the current RECs that are not in both the SADC FTA and the COMESA FTA would be called upon to align their tariff schedules at the time of signing on. Such an arrangement would introduce variable geometry at the member state level. This arrangement requires that the rules of origin be agreed upon upfront.

Advantages

This proposal has the potential to create a FTA among some of the 26 member states quickly and thereby introduce immense possibilities for economies of scale, competitiveness at both regional and international level, as well investment opportunities for millions. The flexibility that allows member states to implement the new arrangement at varying speeds whilst maintaining current preferences (standstill clause) would be more attractive to member states that have serious sensitivities. Each of the three RECs would be able to pursue their original mandate, and consolidate as they wish. This is because member states would be able to opt out of a regional economic community developing into a customs union if they already belong to a customs union without losing free trade benefits. This would have the potential to remove the problem of multiple memberships, subject to the extent of other non-trade interests that countries may have.

Disadvantages

Such an arrangement would not result in a merger of SADC, EAC and COMESA, and this is contrary to the Tripartite Summit Resolution. It also has the potential to slow down greatly the goal of achieving the African Economic Community as member states continue to defend their narrow interests disguised as sensitivities. Some of the member states not currently participating in FTAs in their respective RECs may opt not to join at all.

Scenario B: Extension of free trading arrangements to member RECs

The three RECs negotiate to extend free trade preferences to each other as blocks. This option would also not interfere with current FTA and customs union configurations and would allow them to continue to develop. Member states access markets throughout the wider FTA without individually signing any trade protocol as this is done at REC level. The negotiators would have the option of the immediate removal of customs duties so member states of the three RECs could trade freely from the date of signing, or a customs phase down process would be negotiated and implemented over a pre-determined period of time. Member states who are already members of FTAs in more than one REC would maintain current preferences.

Advantages

This arrangement is likely to produce a FTA much more quickly than the one based on member states signing up. This option would, over time, allow the evolution of the wider FTA into a customs union. The evolution would allow for member states' sensitivities to be taken care of.

Disadvantages

There is a possibility of disagreements on who constitutes the negotiating teams. Within SADC, for example, should this be the responsibility of the Trade Negotiating Forum (TNF), of the Secretariats (they are implementers and coordinators), or of the Councils of Ministers? How are countries with multiple memberships to be represented? Are current structures designed for intra-REC negotiations suitable for negotiations at inter-REC level? There is the further complication of countries that belong to SADC and COMESA, but are not members of the FTA, such as Angola and the Democratic Republic of the Congo (DRC). The question that arises is whether they can access the benefits of trade liberalisation in other RECs even before they implement tariff reductions for their own peers. Alternatively, can RECs sign agreements on behalf of only some member states, for example members of the FTA, to the exclusion of non-members? These kinds of issues would need to be dealt with clearly, firmly and decisively.

Scenario C: Merge COMESA-EAC-SADC

COMESA, EAC and SADC member states sign up to a new FTA created through a merger of the three RECs and abandon the current FTA and customs union configurations altogether. The new FTA would have the potential to progress to a customs union and beyond, and will serve as a consolidated building block for an African

Economic Community. The new FTA will start off at zero duties on intra-regional trade whilst a common external tariff would be negotiated over a set period, though this is not critical for the initial FTA stage. Other areas that will need to be attended to quickly include non-tariff barrier (NTB) removal, trade policy alignment and co-ordination, infrastructure development as well as the development of other trade facilitation instruments.

A new FTA will require a new secretariat to take charge of the process and could be set up based on the needs of the new REC through a merger and rationalisation of current REC Secretariats. The member states will decide whether or not the new secretariat would have some supranational powers.

Advantages

This arrangement is generally in conformity with the Tripartite Resolution. The tripartite arrangement will be taken more seriously by both the African Union and external partners because of the demonstrated seriousness of the political leadership. Benefits of a wider FTA will be realised immediately by the main economic actors thereby allowing for investment decisions to be made that would take advantage of the bigger market.

Disadvantages

NTBs would need urgent attention because of their demonstrated ability to stifle trade in a duty free environment. There has been significant cooperation already within the three RECs in harmonising the approach to NTBs. However, the coming together of the three would inevitably have new ones cropping up due to the sheer size and divergent interests of member states in the enlarged group. In addition, some member states may have difficulty with the immediate zero tariff approach and would be given a time period to implement the requirement.

Institutional framework

The COMESA-EAC-SADC FTA will need to be supported by much a stronger institutional framework than is currently the case in the three regional setups. The first development is that of a Memorandum of Understanding (MOU) on inter-regional cooperation and integration which will spell out the powers of various levels of authority. The Tripartite Summit of Heads of State is already constituted to sit once every two years, although there is provision for it to meet in extra-ordinary sessions as and when the need arises. This development seems to suggest that for the foreseeable future, the current RECs are expected to continue operating as before. The current setup

is such that the Heads of State meet at Summit level at least once a year and have in practice met more than that within the SADC area in view of the many demands made by a developing and evolving region. It is possible that the arrangement is an interim one pending the signing of the MOU. Indeed, pending the signing of the same, all the institutions approved for establishment in tripartite fashion are expected to meet at least once a year indicating that there is not much work expected of them.

It will be interesting to see the level of powers the MOU allots to the centralised REC secretariat. As noted elsewhere in this paper, the current REC secretariats are just that, secretariats for coordinating agendas and implementing member state decisions. It has been argued by scholars that the member states have to part with some level of sovereignty if regional integration is to be deepened successfully. Some scholars point to the nationalistic outlook of most African member states which will not allow this to happen. This is particularly because of their recent history to liberate themselves from colonialism. The issue of supranational authority is likely to remain a major challenge for the region.

Challenges and constraints

There are two sets of challenges that will confront the Tripartite FTA. These include challenges in the process of setting up the FTA and those that arise once the setup has been done. In addition, some challenges will arise depending on the method used to merge the three organisations. Some of these are outlined in the preceding discussion of the alternative scenarios. The following discussion looks at the challenges that will be faced in the creation of the FTA

Merging of mandates

A very critical part of the merger process relates to the amalgamation of mandates of the existing RECs, since:

> *"COMESA and SADC are following very different approaches to regional integration. Since its inception as the [preferential trade area] PTA, COMESA has been following an approach based on classical Vinerian arguments, looking at the benefits of regionalisation to derive almost exclusively from a trade angle. Its integration programmes are thus centred on trade, e.g. removal of tariff and non-tariff barriers; programmes embodied in the concept of trade efficiency; and other trade-related issues such as trade and investment, trade and competition policy, trade and labour migration (not labour standards yet), trade and finance (payments and settlement systems, currency convertibility, trade finance, etc.), trade and procurement policy, etc. In contrast, SADC, stemming from the economic independence desires and political security needs of the Front Line States, has had a development approach to regional integration" (*Kritzinger-van Niekerk 2002:2*).*

The resolutions of the Tripartite Summit are silent on such issues as democracy and good governance as well as security cooperation, which are critical components of the current SADC mandates. In other words, will the implementation of a COMESA-EAC-SADC FTA be consistent with the SADC Common Agenda (Article 5a) that guides SADC's integration? We will need to wait a little longer to see whether these will be incorporated later on.

Legal processes

The first tripartite legal document will be the MOU, which was drafted according to the Tripartite Summit. Other legal provisions will be developed thereafter, also taking into account the recommendations of the road map that is being worked on. A likely nightmare scenario relates to the process of instituting changes to the laws of member states to replace existing RECs with the new one. Member states have various approaches; some countries only require cabinet approval whilst others require parliamentary ratification of protocols. Takirambudde (1990) refers to the approval process as the Achilles' heel of founding texts of regional integration agreements. Indeed, experience from the 1980s up to now suggests that this will be no mean feat and will consequently delay the whole process.

Adopting zero-tariff regimes at the launch of the FTA

It has already been mentioned that having a zero per cent tariff regime for substantially all trade at the launch of the Tripartite FTA would be desirable. However, a major challenge will be the incorporation of those member states that, for various reasons, are not implementing the zero-tariff regimes of the current FTAs. Angola and the DRC have not joined the SADC FTA. Other states like Madagascar are also lagging behind. This is why it may be prudent to start off the FTA with a nucleus of committed states with the door open for later accession by other states.

Economic Partnership Agreements

The multiple memberships challenge has been brought to the fore by the Economic Partnership Agreement (EPA) negotiations between the European Community and the African, Caribbean and Pacific countries (ACP) grouping. The EPAs are meant to align the parties' trade regime with the reciprocity required by World Trade Organisation (WTO) rules. According to Khumalo (2009) "though EPAs are meant to promote regional integration, among other aims, their immediate impact has been the fragmentation of COMESA and SADC. Clearly the current state of economic

integration (or disintegration to be precise) in Africa requires new strategies and approaches if the vision of a virtually borderless continent in economic terms is to be realised. However, the EPAs have, if anything, demonstrated that existing regional communities are not only too many but are largely too shallow and therefore unlikely to lead to continental integration as envisaged by the Abuja Treaty". This calls for the AU to play a stronger coordinating and monitoring role. The signing of the interim EPAs by some Southern African Customs Union (SACU) member states has already led to a rise in tensions and mistrust within the grouping.

In view of the above, the Tripartite Heads of State Summit "…directed the chairpersons of the Councils of Ministers of the three RECs to ensure that the Secretariats participate, coordinate and harmonise positions on the EPA negotiations and other multilateral negotiations including the WTO Doha Round negotiations" (COMESA-EAC-SADC 2008).

Rules of origin alignment/harmonisation

COMESA and EAC have similar rules of origin (see paper by Mmatlou Kalaba this book), whilst SADC has its own specific rules of origin. The extension of preferences including free trade access implies that there must be an agreed set of rules defining products that can be traded under preference of duty free. Several studies have already referred to SADC's specific rules as hindering rather than facilitating trade, a factor that is likely to be of concern to non-SADC member states. Possible disagreements on the rules may delay the implementation of any agreement on the quick establishment of the Tripartite FTA, given that the issue has been under discussion, even within SADC, for a several years. The expanded region must, however, develop its own rules with the principal aim of facilitating trade and taking into account some common aspects from existing rules, such as the value addition principle.

Implications for existing REC institutions

Dissolving current configurations

A major challenge for the new arrangement will be how to wind-up the current configurations. These are legal entities which have mandates bestowed upon them by member states. The modus operandi is expected to be spelt out in the Memorandum of Understanding that the Summit has directed must be developed.

However, replacement of the current arrangements by a single one necessarily means that SADC, COMESA and the EAC have to be wound up. Member states have not yet openly pronounced themselves on this development. Certainly events that have

taken place within the existing RECs since the Tripartite summit do not suggest even a moratorium on further developments within the existing RECs. In June 2009, COMESA went ahead and launched the COMESA customs union and SADC is still targeting 2010 for the launch of its customs union. It may be prudent to suggest that the replacement FTA would have to co-exist with the existing RECs until such time that all legal instruments have been dealt with so as not to create a vacuum.

It can be argued that these developments within the RECs are designed to make the future merger easier for the member states, especially considering that there is a very strong likelihood that the RECs would adopt similar common external tariffs. It is also likely that similar treatment of revenue sharing would be adopted (no revenue sharing). The study commissioned by the three RECs is expected to give in-depth recommendations on this front.

Dissolution of existing regional institutions

Related to the fate of the three RECs is the fate of the three secretariats. Currently, within each current arrangement, the trend is toward stronger institutions although not supranational, nor apex organisations, possessing a notable degree of sovereign power. "National governments remain the main if not sole actors for the foreseeable future, while the regional 'secretariats' serve as cooperation facilitators or coordinators, monitoring agencies as well as 'think tanks' within their respective regional domains."

Dissolution of the three RECs would mean dissolution of the secretariats. What is clear, however, is that whichever process of REC merger or rationalisation will be adopted will also encompass their secretariats and other institutions that play a supportive role such as the SADC Tribunal and COMESA Court of Justice. However, it should be noted that there are vested interests in these institutions and these will not be wished away through the creation of new institutions.

In addition, the Tripartite Summit did not suggest a time-table for the implementation of the FTA idea, save for the fact that the MOU on cooperation and integration was expected six months from date of Summit and the road map for implementation was expected to be considered at its next (regular) meeting (2011). This means that for the foreseeable future current institutions in the three RECs will continue to operate as usual, including cooperating with each other in the current tripartite fashion.

There will also be no change to the functioning and mandates of the SADC Tribunal and the COMESA Court of Justice.

Regional trade facilitation and infrastructure programmes

Current tripartite regional trade facilitation programmes have achieved a lot especially in policy related areas. These programmes, covering trade policy, customs laws, harmonisation of customs and other border procedures, development corridors, one-stop border posts, harmonisation of transport regulations, etc. have involved the three RECs being supported by International Cooperating Partners. Again in the foreseeable future, these activities are likely to continue without disturbance. In addition, member states have set up cooperative arrangements in air transport, information and communications technology and energy.

Conclusions

There are still many degrees of uncertainty over what constitutes deepening regional integration, even when we recognise the essential link between the political and the economic processes. It is questionable whether the creation of a FTA incorporating COMESA, SADC and the EAC constitutes deepening integration or simply widening it. What is clear is that there is a lot of work that has gone into creating the three regional institutions and replacing them fully is a mammoth task which will require a lot of resources, including human capacity and skills, financial resources, time and patience. The adoption of a free trade regime at the launch of the Tripartite FTA will be a critical ingredient of the whole process and a morale booster for cooperating partners. The fact that there has already been a lot of cooperation and harmonisation of programmes and projects among the three RECs outside the legal framework of a Tripartite FTA is a very positive starting point which the new REC would be advised to build upon. It will be necessary to involve civil society, the business community and the population at large in the process of forging this new extensive relationship. At the end of the day, all this will be for their benefit.

Endnotes

1 Source: http://knowledge.uneca.org/member-states/observatory-on-regional-integration/regional-economic-commissions-in-africa/eac-comesa-sadc/EAC_COMESA_SADC.gif.

2 This excludes memberships of other regional trading arrangements such as the Southern African Customs Union (SACU), the Indian Ocean Commission (IOC), the Inter-governmental Authority for Development (IGAD), and the Maghreb Union, in which some member states participate.

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Exploring the COMESA-EAC-SADC Tripartite Free Trade Area: An approach for rules of origin

Mmatlou Kalaba

The heads of states of the Common Market for Eastern and Southern Africa (COMESA), the East Africa Community (EAC) and the Southern African Development Community (SADC) met in Uganda in October 2008 to discuss the broader objectives of the three regional trading blocs. This was later referred to as the Tripartite Summit. The discussions of the summit were around achieving goals of accelerating of economic integration on the continent in line with the Abuja Treaty and African Union's objectives of the formation of one continental economic bloc. The key issues for the three blocs were regional trade liberalisation, infrastructure development as well as the legal and institutional framework. The leaders agreed to initiate a process of coordination and harmonisation of integration programmes to progress towards the goals of expanding trade, of alleviating poverty and of overall development. The summit sets a platform for three blocs to join forces in forming a larger Free Trade Area (FTA).

The three blocs have similar or related development objectives and are all implementing the linear regional integration model. COMESA and EAC are each already a customs union, launched 2009 and 2004, respectively. SADC is currently a FTA looking to launch a customs union in 2010. Considering that there are overlapping memberships between the three blocs, the proposed Tripartite FTA may provide a possible solution to that problem. However, on the trade and economic front there will be more challenges created by the formation of such a FTA.

One of the anticipated challenges with the creation of a large FTA from a trade perspective will be with regards to the rules of origin (RoO). It is expected that the three blocs would work towards establishing a single set of rules. This, which requires bringing together the three sets of rules, will have major effects on the rules currently in place in the three blocs. The RoO are generally contentious in nature. They are also complex to negotiate and agree on. Therefore selecting RoO suitable to a particular agreement is very important. The purpose of this paper is to guide the discussions on how best the RoO can be designed. The discussions will examine the existing RoO for the three blocs, highlight the common features, identify concerning issues and suggest a possible approach to RoO for the larger FTA.

This paper is organised as follows, the next section deals with definitions and functions of the RoO. The following section focuses on the features of the RoO and dis-

cusses the general conditions of the RoO. Then the three blocs are compared and some of the conflicting rules are discussed. Then the potential problem areas in forming a single FTA are identified and possible ways of approaching new rules under the larger FTA are provided. Then the final section concludes by suggesting ways that the RoO of the three trading blocs can be harmonised.

Functions of RoO

In any preferential trading agreement, RoO are required to determine whether the goods traded are eligible for preferential treatment. They represent a legal framework within which the origin of goods, for example from where they are shipped and where they are deemed to have been produced, is determined. Furthermore, they provide a set of criteria to distinguish between goods that are produced in the region and those that are considered to have been produced outside the preferential area. Goods which are classified as produced in the region according to the set rules will be entitled to preferential tariff treatment. Those which are considered to be from outside the area will then attract full import duties.

The rules serve an important role in ensuring that goods that have been substantially transformed or 'sufficiently processed' in the exporting member of the trading bloc get favourable treatment. This is to avoid a mere channelling of goods into the preferential area from a third country. This process reflects transhipment and is also referred to as trade deflection. If it is allowed to take place, it will undermine the objectives of a preferential trade agreement. Therefore, the rules ensure that non-members do not benefit from market access privileges intended only for members.

Another role for RoO is as an instrument to promote development within the preferential area (Flatters 2002). This role is of secondary importance but comes across by default: if RoO are too stringent, the local producers will be forced to source from the region. This will affect relative prices of regional goods and those from outside the region, and will therefore enable regional industrial capacity to expand. The rules thus play a protective role, and indirectly provide some room for the expansion of the size of the protected market.

The rules can, however, add to the regional customs authorities' administrative burden. The full application of rules requires highly skilled personnel in various fields (legal, accounting, technical and trade) and financial resources. These requirements can potentially stretch the limited human and fiscal resources of many developing countries. To exporters, importers and producers, rules add to the cost of doing business and to the administration burden. Compliance with the rules therefore can be a deterrent to trade even in situations where products meet the import requirements.

RoO that are designed to enhance regional industrial capacity are usually very complex as they attempt to achieve two goals. The first one is to prevent trade deflection, the second is to encourage product development using regional materials. If RoO are not clear on these requirements, traders may end up being frustrated by the process of showing that inputs from outside the region comply with the rules. This will then force traders to consider only regionally produced goods to lessen the compliance burden. But the process may also be a costly one resulting in trade diversion. Therefore for RoO to play a role in fostering intra-regional trade, they need to be objective, understandable, fair, consistent and predictable.

Features of RoO

The three regional blocs apply distinct RoO under their regional integration agendas. In turn, substantial deviations are associated with the application of product specific rules, such as in the case of SADC. This section discusses the general framework within which the origin of goods is determined in the three trading blocs.

Determination of origin

As an integral and important part of trade agreements, RoO attempt to capture all eventualities and product configurations. This also implies that rules get more complex and technical with more trade arrangements. The basic premise of applying them is that of determining origin and beneficiary countries. The general determination is that goods should be:

- wholly produced or obtained in that country, or
- sufficiently worked or processed there for origin to be conferred.

Wholly produced products are those that are wholly produced or manufactured in a particular beneficiary country. That is, they should have not received any input from any other country. This definition applies mainly to items that occur naturally in a given country. It is also applicable to goods that are made entirely from locally sourced inputs. Products that could be considered ‘wholly produced’ in a beneficiary country may include:

- minerals extracted from ground or seabed
- vegetable products harvested in the beneficiary country
- live animals born and raised in the country
- products obtained by hunting or fishing
- goods produced exclusively from products mentioned above.

This list is not exhaustive as there are variants of this definition.

Whilst the list mostly refers to raw materials of agricultural and mining products, production of goods has become more fragmented with rapid integration of world economies and growing trade flows. Therefore goods often undergo different stages of production in a number of countries and use materials from various sources. In addition, new industrial configurations, in both producer-driven and buyer-driven value chains, have globalised production in product categories. Therefore the 'wholly produced' rule excludes many products that are traded globally.

The products that are not 'wholly produced' can obtain 'originating status' provided the imported materials used in the manufacture are 'sufficiently worked or processed' in the country claiming preferential treatment. There is no universal rule determining what constitutes 'sufficiently worked'. Different regional agreements have different definitions and that disparity is also on a product basis. The overarching principle underlying this determination is that goods are deemed to be 'sufficiently worked' if they meet one of the following three criteria:

- the minimum value added (VA) rule: whether a prescribed minimum value is added locally
- the change of tariff heading (CTH) rule: whether the good has been substantially transformed to result in a different tariff heading to that of the imported input materials used
- the specific process (SP) rule: whether prescribed processes have been undertaken in the production of the good in the country claiming preferential treatment.

In some cases 'the sufficiently worked' rule is not enough to positively determine the originating status of the product. It is for this purpose that a list of 'insufficient work or processing' is typically included by the customs authorities to define origin. This is also referred to as a negative list as it states what does not confer origin rather than what does. The operations on this list on their own and/or in combination with others are not considered to be sufficient to confer originating status on a product. These include the following (not exhaustive):

- operations to ensure preservation of product in good condition
- changes in packaging or simply placing in bottles, cases, etc.
- affixing of marks, labels or other distinguishable signs
- simple assembly of parts to constitute completed products
- mere dilution, blending and other types of mixing
- slaughter of animals
- other minor operations.

Several exceptions are provided to the rules and principles (Brenton 2003). These exceptions can influence whether or not origin is conferred on the product. They further the impact of the RoO on the trade flows. These exceptions include cumulation, tolerance rules and drawback provisions.

Cumulation

Cumulation is an instrument that allows producers to import materials from a specific country or region without undermining the origin of the product. Cumulation is an important concept in the RoO and determines whether the levels at which countries are able to use the trade preferences available to them fall within the regional grouping. In effect, it is a derogation from one of the concepts of origin of a good having to be 'wholly produced' in the exporting country. Cumulation can potentially be an important driver of regional integration through greater trade flows and shared benefits.

The most basic form of cumulation is *bilateral cumulation*. In this case, originating inputs imported from a partner qualify as domestic content when used in the country's exports to the partner. There can be another type of cumulation, *diagonal cumulation*. This allows the use of materials originating in one or more countries of the same (recognised) regional grouping to be considered as originating in the beneficiary country. Finally, there can be *full cumulation*. In this case any processing activity carried out in any country participating in a regional group can be counted as qualifying. This is regardless of whether the processing is sufficient to confer originating status to the materials themselves. *Full cumulation* provides for deeper integration by allowing for more fragmentation of production processes among members of the regional group.

Tolerance or de minimis

Tolerance or *de minimis* rules allow a certain percentage of non-originating materials to be used without affecting the origin of the final product (Grynberg 2005). This rule is mostly applicable to the change of tariff heading and the specific manufacturing rules. However it does not affect the value added rules. This rule makes it easier for products with non-originating inputs to qualify for preferences.

Since the implementation of trade policies and regional integration initiatives requiring differential treatment, RoO are almost unavoidable. Even though the primary aim of the rules is to ensure that preference is given to the members of the group, they are often complex and act as barriers to trade. If traders have to use more financial and human resources to comply with the RoO rather than in other productive capacities, they may channel their trade to regions with less stringent requirements. There are important differences across the three blocs in the use and nature of the provisions relating to the rules explained above and these have significant implications for creating a single set of rules. This will in turn affect the impact and design of the Tripartite FTA rules.

Comparison of COMESA, EAC and SADC rules

The previous section focused on general rules without particular reference to a region or bloc. The focus now switches to the three blocs in Eastern and Southern Africa. It compares the rules in the region as well as their application. RoO vary across products and agreements. Table 1 shows some similarities and differences between the three blocs.

Table 1: Summary of rules of origin criteria in COMESA, EAC and SADC[1]

	COMESA	EAC	SADC
Origin Criteria			
1) Wholly produced	Yes	Yes	Yes
2) Sufficiently processed			
a) VA rule			
i) imported material	c.i.f. $\leq$ 60% of ex-factory costs[2]	c.i.f. $\leq$ 60% of ex-factory costs	c.i.f. $\leq$ prescribed % of ex-works price[3]
ii) local materials	VA $\geq$ 35% of ex-factory costs	VA $\geq$ 35% of ex-factory costs	VA $\geq$ prescribed % of the final product
iii) Economic importance rule	VA $\geq$ 25% of ex-factory costs	Not applicable	Not applicable
b) CTH rule	Yes	Yes	Yes; double CTH is required in the case of clothing and textiles, except for MMTZ members
c) SP rule	No	No	Yes
3) Cumulation			
a) bilateral	Yes	Yes	Yes
b) diagonal	Yes, with bloc members	Yes, with bloc members	Yes, with bloc members
4) Tolerance or *de minimis*	No provision	No provision	$\leq$ 15% of ex-works price excluding clothing and textiles, vehicles and vehicle parts

Note: C.i.f. stands for cost insurance freight. VA stands for Value added. MMTZ stands for Malawi, Mozambique, Tanzania and Zambia

The table shows some similarities between the three blocs. These include the rule on 'wholly produced'. The rules also refer to the 'sufficiently worked' principle, although there is a difference on the conditions to be met. All three blocs have bilateral and diagonal cumulation with diagonal cumulation limited to the members of the bloc.

Besides the aforementioned similarities, Table 1 illustrates that SADC RoO are substantially different from those in application in the other two blocs. The EAC rules, in contrast, somewhat closely resemble those in COMESA. Their requirements for value added are similar in both imported and local materials. For a product to meet the value added rule the imported materials must not exceed 60 per cent of ex-factory costs or local materials must exceed 35 per cent. The blocs do not require specific process criterion and thus their change in heading rule has no additional conditions.

Goods of particular economic importance – COMESA

The single main difference between COMESA and the EAC is that the latter does not make a provision for 'goods of particular economic importance'. This is essentially an exception to the rule for certain products with significant qualification requirement, hence a minimum of 25 per cent of the imported materials. The rationale for making an exception for 'goods of particular economic importance' is not clear. It is not apparent what objective is being pursued by applying this rule. However, given other possible functions of RoO, it can be assumed that these goods are not produced sufficiently in the COMESA area and as a result require the application of flexible rules. Such goods might also serve particular industrial objectives, which may be associated with the need to encourage the manufacturing of products using these goods. As such, flexible rules are required to generate an incentive for the production of these goods.

There also does not seem to be any clarity on the criteria for the classification of 'goods of particular economic importance'. This may add to confusion as well as create an additional burden on the administrators, exporters and importers when determining whether a good meets the conditions or not. It may be necessary to review this derogation before drafting RoO for the enlarged FTA.

Sector specific rules – SADC

SADC RoO are substantially different from those applied by the EAC and by COMESA. The SADC RoO include both general conditions and specific rules for all chapters of the harmonised system (HS) classification. They therefore vary widely across product chapters, headings and subheadings. In general, they are modelled similarly to the European Union (EU) rules and those that are in place under the Trade, Development and Cooperation Agreement (TDCA). SADC's RoO consist of a mix of CTH, VA and SP criteria. In order to find the exact requirements to be compliant with rules on particular goods, one would need to check the list of conditions required in the Appendix I of Annex I of the SADC Trade Protocol.

For example, in order for black tea (HS 0902) to meet the requirements for preferential treatment, it must be 'wholly produced' in the SADC region, or be manufactured with imported materials that do not exceed 40 per cent of the weight of the product (SP requirements). Sugar confectionery (HS 1704) must be produced from materials of any HS heading except HS 1704 and in which all materials of Chapter 17 used originate from the SADC region (CTH combined with 'wholly produced'). Fruit juice (HS 2009) must be produced from imported materials of any HS heading other than HS 2009 (CTH) or the value of imported materials used must not exceed 60 per cent of the ex-works price of the product (VA). The RoO in SADC however provide the

use of imported materials as long as they do not exceed 15 per cent of the ex-works price with the exception of clothing and textiles and of vehicles and vehicle parts. The single transformation rule applies to all product groups except textiles and clothing. Textiles and clothing also account for most of the products on the list of rules. The essential reason is the two stage transformation of the clothing and textile products. This implies that, for example, fabric needs to be manufactured from unprepared fibres. Then the two stage transformation will entail the carding and combing of fibre, as well as spinning of the yarn. For clothing, the processes necessarily include the weaving of fabric and assembly of the garment.

Malawi, Mozambique, Tanzania and Zambia (MMTZ) were granted a derogation of single-transformation when exporting to the Southern African Customs Union (SACU). However, this is subject to the quotas set for these product groups. This derogation has been extended until 2009. A subcommittee on clothing and textiles will review it at the end of the period (Naumann 2008).

Rules on fisheries

Fish and fish products constitute important economic activity for some of the countries in the COMESA, EAC and SADC area. In terms of the RoO, this sector is usually a very sensitive one. The rules on fisheries usually include 'wholly produced' and processing requirements for fish categories. The wholly produced definition in the case of fisheries specifies conditions of the fishing vessel.

The fishing vessel is regarded as part of the territory and thus adds another layer of regulations to the rules. They also need to consider the territory in terms of place of production of marine, river or lake products as well as in relation to the vessel harvesting the fish. Furthermore, where the products are landed must also be taken into account. Certain vessel conditions must be fulfilled before the rules are satisfied. The conditions for the three blocs are reflected in Table 2.

Table 2: Conditions of fishing vessels[4]

Conditions	COMESA	EAC	SADC
Registration	Must be in a MS*	Must be in a MS	Must be in a MS
Flag	No Provision	No Provision	Must be of a MS
Nationality	≥ 75% of crew or officers	≥ 75% of crew or officers	≥ 75% of crew and officers
Ownership	> 50% equity	> 50% equity	> 50% equity

Note: *MS refers to member state of the regional bloc

The general RoO on fish and fish products in the three blocs require the registration of the vessel in a member country, that most officials and/or crew are nationals and that ownership and the flag under which the vessel sails is regional. COMESA and the

EAC have similar RoOs. They both require that the vessel be registered in the member state, 75 per cent of crew or officers be nationals and that majority control and equity holding with respect to the vessel be held by nationals of a member state, institutions, enterprise or corporation of government. The two blocs make no provisions for the flag under which the vessel sails.

Table 2 shows that SADC conditions require that the vessel must sail under the flag of a member state and that 75 per cent of crew as well as officers be nationals. This deviation from the other two may makes it harder to comply as it is double condition that must be met. The conditions on ownership and registration are similar to those in the other two blocs. The RoO relating to fisheries may be easier to harmonise than in other areas.

In summary, determination of origin is complex and requires technical skills in many areas. With no universal standards and guidelines on RoO, it is difficult to find agreement between several groups of countries. Nevertheless, the RoO between the three blocs in Eastern and Southern Africa show many similarities in the case of COMESA and the EAC. The SADC rules are distinct as they appear to be serving multiple purposes. The rules seem to encourage industrial development with the two stage transformation in the clothing and textile sector and can potentially be protective of the sector. The double transformation rule demands more added value for products to meet the conditions, and therefore forces member states to develop industrial and manufacturing capacities. Most encouraging in the three blocs is the fact that in one of the most contentious sectors, fisheries, there seems to be few differences.

Concerns for policymakers in the larger FTA

The issues that are likely to be of concern to policy makers in the three regional groupings relate to what is currently different between members states. So far, it would seem that COMESA and the EAC will be on one side and SADC on another, given that there are more similarities between the first two blocs than with SADC. Apart from the fact that RoO are by nature very difficult to interpret and to agree, they are further complicated by trying to bring three regional blocs into one. The fact that the blocs have overlapping memberships is an indication of many areas of disagreement and therefore large challenges are to be expected.

The first major issue will be to bring the three sets of rules together and to replace them with one set of RoO. Of concern here is the fact that some blocs have rules aiming to achieve several goals. They are combined with other trade policy instruments such as quota, anti-dumping and countervailing measures and several others. Designing with one set of rules would require unpacking all measures and dealing with them separately.

By their nature, RoO are complex and require technical skills in various fields and from all stakeholders involved. The second challenge is whether the set of rules for the enlarged FTA can be simplified, made predictable and enable uniform interpretation. But the most important part is whether they can be suitable to the majority of businesses and stakeholders in the three blocs which happen to be small and medium and have different profiles from their counterparts in the developed world. The current rules of the three blocs do not make sufficient provisions for small and medium traders as they require higher levels of administration, accounting, technical and skilled personnel. Most small business in the region do not have all these resources. Furthermore, the value of goods which is allowed to be traded without going through RoO procedures is very small.

Thirdly, and most contentiously, the ‘sufficiently worked’ principle under SADC product specific rules may need to be adjusted as they are currently too far apart from those of EAC and COMESA. For the enlarged FTA, this is the source of major deviation from the rules between the two blocs. The problems to deal with will also be compounded by the fact that even within SADC member states, there are still some unresolved rules on certain products (SADC 2008b).

The fourth challenge requires a decision to be made on the methodology of evaluating the value added rule. COMESA and the EAC currently use the ex-factory costs, which is the value of total inputs used. SADC uses ex-works price which includes value added materials and profit, but excludes internal taxes paid. One of the calculations of value added would need to be dropped.

The application of the rules on ‘goods of particular economic importance’ provided for under COMESA provides the fifth problem area. This is also one rule that is substantially different from those applied by the EAC. As mentioned earlier, the rationale and criteria for this value added rule are not clear. It would seem to add unnecessary complication if it is not clarified by the time the process of designing commences.

The sixth issue relates to tolerance derogation which is provided for under SADC rules and not in COMESA or in the EAC. The tolerance rule makes the determination of origin slightly less onerous than when it is absent. Policymakers in the three blocs need to find a common ground for it when designing one set of rules.

The seventh challenge is on the rules relating to fisheries. The deviations are mainly with the flag of the vessel and whether that rule should be maintained as it is the case with SADC or otherwise. The other issue on this rule has to do with the nationality of the crew and officers. The current condition under SADC is that together they should make at least 75 per cent, and it is only one condition. COMESA and the EAC provide separate conditions for crew and officers.

Finally, consideration must be given to other RoO with other regional blocs and countries. Policymakers would need to pay particular attention to possible contradictions and conflicts of rules. The most significant regional bloc is the EU because almost all members of the three blocs have some arrangement of one form or another with the EU. So, these arrangements with third parties will play an important role in shaping the rules of the enlarged FTA.

An example of one major challenge that is possible with third parties is with agreements that provide for cumulation of production. The EU has arrangements with African, Caribbean and Pacific (ACP) states that have initialled an Economic Partnership Agreement (EPA) (Naumann 2009). This will pose a serious challenge given that not all members of the three blocs have initialled. The second problem with the EPAs is that cumulation possibility for some products with South Africa is excluded. For example, if any of the members of the enlarged FTA use imported materials from South Africa for a product intended for the EU market, then the value added of a member must exceed that of South Africa. South Africa is expected to be a member of the enlarged FTA and therefore would be affected by this rule as it introduces bias against South African and therefore negates the objective of enlarging the FTA.

Suggestions on approach and ways forward

The initial steps towards designing a single set of rules should involve looking at the three sets and bringing them together to find common ground. This will not happen easily, but there is a base for such development. From the previous sections it was established that there are several areas within the existing rules where common rules can be found. Therefore a foundation is already there to develop RoO that are sound, relevant to the region and progressive.

In pursuing a single set of rules, there should be a drive towards more objective, understandable, fair, consistent and predictable rules. Therefore the approach towards a single set of rules should start with the adoption of the principle of simplicity. Although this is a difficult goal to attain given the nature of the rules, relative simplicity can be the second best option. And the way this can be done is by designing rules in such a way that they converge towards those which are the simplest amongst the three blocs.

The second principle that should be considered is that of focused objectives. This implies that the primary objective of the rules should be to prevent trade deflection. And where possible, that should also be the only objective. If it happens that the rules end up serving other purposes, it should be by default or unintentionally. The deliberate use of rules for protection purposes should be avoided. They might even be to the detriment of the initial objective of encouraging intra-regional trade. RoO are not effective instruments for many roles. If such objectives are desired, then appropriate measures should be designed and can be applied directly for those particular objectives.

The application of the rule on ‘goods of particular economic importance’ should not be extended to an enlarged trade bloc in its current form. If it is to be considered, then there will need to be more clarity on its rationale, objective and selection of such goods. If it is to be extended to the enlarged FTA, consideration should be given to making it a clear and well-defined derogation. Another alternative is to have it as a tolerance provision. It could also be added or combined with the current SADC provision on tolerance to avoid confusion and to solve the existing differences.

The sector and product specific rules should be carefully considered and if possible limited to a few sectors where necessary. The fact that one regional bloc applies them means that they are required. Nevertheless, they add to the overall complexity and require large administrative, technical and accounting capabilities. There may be a few sectors such as clothing and textiles as well as fisheries where such rules are required at all costs. Unfortunately, there are no easy solutions on this, and these rules may have to be experimented with over a period of time before the issues are solved.

There should be continuous efforts to simplify rules and documentation procedures. Initially the rules will be onerous due to pulling together three sets of different rules. The same will happen with the documentation to prove origin. For the first few periods of application of the new rules, there will be confusion with its compliance and application. It will be difficult to have uniform administering, understanding and interpretation. Therefore during these early days, a great deal of effort should be dedicated to making information available, to training of administrators and communicating with business communities and other stakeholders.

The rules should be designed in such way that they accommodate small and medium business. The viewpoint is that the current rules are not suitable for most of the countries that are classified as least developing countries (LDCs). They require ‘in house’ accounting that only larger and sophisticated businesses have or can afford. The cost of providing the necessary documents to prove origin can be so high and prohibitive. There are also technical requirements that may just be beyond the capabilities of most small and medium businesses. If this provision is not made, then the rules may negate the aims of regional integration.

In order to accommodate third parties and improve on intra-regional trade, it may be useful and necessary to consider diagonal cumulation provisions beyond just members of the bloc. Diagonal cumulation allows non-originating materials from specified third parties outside the FTA. This provision, on the back of EU trade arrangements with many members, has the potential to increase intra-regional trade substantially.

All three blocs have made commitments to eventually remove all forms of trade barriers. If this goal is attained, it will be a great achievement for all of them and very helpful to have simple RoO. However, this will only be possible if the removal of trade barriers is extended to third parties. A fair application of progressive RoO will

also be enhanced by such developments. The use of RoO becomes less important with the removal of other protection measures and lower tariff rates will minimise the need for complex and restrictive rules. So, with fewer and less stringent conditions, the administrative burden will be reduced and this can lead to less requirements for human and financial resources.

Conclusion

The number of FTAs has been growing exponentially in the last decade. With each of these agreements there is a set of preferential RoO. These preferential rules are major determinants of the impact of the agreement and trade flows. In Eastern and Southern Africa, an initiative was taken in 2008 to join three regional blocs of COMESA, EAC and SADC. Although the process will result in collapsing three sets of rules to one, it does not necessarily mean that it will be easy.

The RoO are set to determine the origin of the good being exported. They are there to help prevent transhipment or trade deflection. The role of these preferential rules is to ensure that only goods that are originating from participating countries enjoy the preferences. Goods manufactured from materials imported from outside the FTA will have to meet a specific set of rules.

Goods get preferential treatment if they are wholly produced in the region or have been 'sufficiently worked' to meet the requirements and conditions under those rules. Those requirements are set in terms of value added, change in tariff heading or specific conditions for each product. However, other provisions and exemptions from the rules can be provided through cumulation, tolerance or other means. The fact that these conditions must be applied makes RoO complex, technical and often contentious.

In the three regional blocs under focus in this paper, COMESA and EAC have more aligned rules compared to SADC. The key distinguishing feature is that SADC applies product specific rules, while the other two blocs apply more general rules. Therefore SADC rules, including those that require double heading change, are problematic within member states as well. There are still some outstanding rules in that particular FTA that show the depth of existing difficulties.

The challenges that are likely to face the formation of a single set of rules are numerous. One of them is inherent due to the fact that there are no standard guidelines, and that by nature RoO are not simple. Another key challenge is to bring SADC rules closer to those of COMESA and the EAC. Methodologies of determining whether manufactured goods have been sufficiently worked will also need to be agreed upon.

The new set of rules should adopt a principle of simplicity, by converging to the simplest rules of the three blocs. They should also avoid serving multiple purposes. All they should be concerned with is the prevention of transhipment. Another important element is that they should be designed in a way that makes them suitable and accommodative of many businesses of the region, which are largely small to medium. The rules should also consider diagonal cumulation and tolerance to overcome some of the differences, but also to be less restrictive.

Endnotes

1 Source: COMESA (2002), EAC (2005) and SADC (2008)

2 Ex-factory cost refers to the value of total inputs used in production of a given product.

3 Ex works price is the price paid for the product ex works (factory price) to the manufacturer in whose undertaking the last working or processing is carried out. This price includes the value of all materials used and excludes internal taxes (custom duties).

4 Note: Source: COMESA (2002), EAC (2005) and SADC (2008)

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