

trapca Tripartite Forum 2011



FORUM REPORT

Theme

COMESA, EAC and SADC tripartite Free Trade Area: The Road Ahead

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1 KEY POLICY HIGHLIGHTS

1.1 Background

The timeous event on “*COMESA, EAC and SADC Tripartite FTA: The Road Ahead*” brought together various stakeholders in the regional integration process of the Tripartite Free Trade Area (TFTA)¹ in Arusha, Tanzania. The main aim was to review the progress on the TFTA talks and identify potential obstacles as well as highlight areas that can be used to build consensus.

The two day meeting was judged to be informative, especially by the private sector constituency, and rich in the discourse of the policy issues that included among them; market integration, trade facilitation and industrial development. There are issues that need to be considered by policy makers and the three participating regional economic communities (RECs) namely: the Common Market of Eastern and Southern Africa (COMESA) East African Community (EAC) and Southern African Development Community (SADC).

As the tripartite members states prepare for formal negotiations in 2012, trapca hopes to, in the medium term; provide the outcomes of the meeting to the member states (negotiators) in a analytical policy brief that will capture the aspirations and concerns of the various constituents that were at the meeting from the Trapca TFTA Forum 2011. The long-term objective is to contribute to the TFTA negotiation process by continuing to hold relevant and informal TFTA discussions with all the constituents.

1.2 Key Policy Points from trapca TFTA Forum 2011

- ✓ The three RECS appear to have embraced the spirit of the Abuja treaty which envisages the creation of an African wide trade area. However, a thorough reading of the treaties of forming COMESA, EAC and SADC reveal that only the COMESA treaty is in consonance with the Abuja Treaty.
- ✓ The value of integrating is evident and need not be justified or bogged down by narrow national interests; on the whole the political costs of liberalization are not as painful if countries undertake them jointly rather than individually. Further, the TFTA has the potential of solving the overlapping membership problem that characterizes regional integration on the continent.

¹ The 26 TFTA parties include: Angola, Botswana, Burundi, Comoros, DRC, Djibouti, Ethiopia, Eritria, Egypt, Kenya, Lesotho, Libya, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Swaziland, Sudan, Tanzania, Uganda, Zambia and Zimbabwe.

- ✓ It is clear that the larger economies of the 26 countries involved in the process may benefit more than the smaller ones. Thus to sell the initiative to small economies requires a delicate balance of pursuing market access/integration, for the “benefit” of larger economies and the other pillars of the TFTA- trade facilitation and industrial development for the sake of the smaller economies.
- ✓ The appeal of the TFTA to small economies should be expanded to incorporate plans and efforts that will include them in production processes such that the TFTA contributes to establishing thriving regional value chains.
- ✓ The pillar of industrial development has not yet been clearly defined but it was noted that there is already ongoing work through the trade facilitation pillar whose focus is on: revenue collection, safety and security, environment and health, consumer protection and trade policy.
- ✓ Given the foregone, it may be necessary to identify champions for each pillar and sequence the pertinent actions without losing the interest of any member state and minimizing the costs.
- ✓ It is also important to determine upfront, who the negotiating parties to the TFTA will be. That is, RECS or individual member states. Although the TFTA agreement permits the option of entering the negotiations as either; this may prove problematic. The EAC, as an active customs union intends to negotiate as a bloc but it is not clear how COMESA and SADC (despite having similar members) will approach the negotiations. This will have a bearing on harmonizing the negotiating positions.
- ✓ As with many FTA’s, the negotiation process will be guided by principles of variable geometry, reciprocity and standstill clauses among others. Interestingly though, the TFTA documents speaks of the member states commitment to a ‘Single Undertaking’ approach. This principle has been widely blamed for the jam that the World Trade Organization’s Doha Round finds itself in as it envisages an all or nothing approach to sealing a trade deal. The TFTA member’s states should take lessons from the Doha Round and evaluate this approach as an ambitious and well intended roadmap may be derailed by disagreement on a single matter.
- ✓ Concerns were raised about the short timeframes in the TFTA roadmap and the institutional capacities available to keep the RECs on track but it was reported by the RECs representatives that TFTA units had been established in COMESA and EAC and there were dedicated officers to support the member states and ensure that the activities of the TFTA will be on schedule.

- ✓ In addition to the above, it was felt that the TFTA should create tight compliance mechanisms that would ensure that the partner states implemented their commitments.

1.3 The TFTA Ambition

The TFTA initiative is no doubt ambitious and 26 countries' will be part of it, is laudable but the effort and work that will be directed to achieving it should not be underestimated. At the first instance, it may be useful to identify the areas that have the potential to cause wide gulfs amongst the parties and solve them so as to generate momentum and more appetite for the initiative resulting in an "early harvest". But the ultimate achievement will be in using the opportunity for trade to create development in the TFTA states.

2 OVERVIEW ON PRESENTATIONS

The following sections present in more detail the proceedings from the trapca TFTA Forum 2011. The TFTA Forum2011 was being held under the theme: *COMESA, EAC and SADC tripartite Free Trade Area: The Road Ahead*. The papers presented during the two days of 5 and 6 September 2011 are reflected in Table 1 and the list of participants is included under Appendix 1.

3 KEY TOPICS DISCUSSED

The key issues emerging from the two day Tripartite Forum 2011 are summarized under the sub-headings drawn from the programme including the following:

- Key note speech
- TFTA negotiation and tariff reform progress
- Movement of business persons and TFTA legal issues
- Requirements to move the TFTA process forward
- Key areas in the TFTA negotiation process
- TFTA and rules of origin (RoO)
- Business perspectives on the TFTA process

Each of the key topical issues discussed during the two day trapca TFTA Forum 2011 will now be documented and/or considered in more depth in the next sections.

3.1 Key Note Speech

The key note speech as well as the opening of the trapca TFTA Forum 2011 was done by the Director General of ESAMI, Professor Mwape. He raised a number of though provoking pointers, some of which are recorded below.

- ✓ Concern over multiple memberships within the Tripartite raised as a disease that require a cure.

- ✓ Good progress has been made in outlining the mandate of the Tripartite at the political level.
- ✓ Operational strategy question is: how long should the integration process take and what shape should it be?
- ✓ A technical question also asked: how do we then deal with the various tracks of the talks and what is the magnitude and level of ambition, sequencing and what is the outcome acceptable to all members.
- ✓ Delegates challenged to avoid formal and/or national negotiation positions during the Forum.
- ✓ There is need to avoid a Doha like situation in which case people tend to lose appetite for the talks.
- ✓ Few issues isolated for further deliberations during the Forum namely: rules of Origin (RoO), Trade in Services and Non Tariff Barriers
- ✓ The rules of origin: no need to condemn other trading partners for imposing complicated rules of origin while also imposing the same conditionalities on each other. RoO must enable businesses do business.
- ✓ Trade in services: Barriers to the regional growth in trade in services still remain.
- ✓ Non Tariff barriers: Still remain a thorny issue and have the tendency to erode any gains made in reduction of tariffs.

3.2 TFTA negotiation and tariff reform progress

This session set the scene for in depth discussion on the TFTA process. Focused presentations were made on the Political Economy of the Tripartite Process: the challenges and opportunities; Tripartite FTA: Why the Tripartite and Current State of Play by the first panel and Trade Facilitation and Trade Remedies by the second panel.

Dr. Mukhisa Kituyi of Institute of Governance delivered a presentation on the challenges and opportunities of the TFTA. He began by underlining the importance of regional economic integration, arguing that the vulnerabilities or political costs of liberalization are not as

painful if countries undertake them individually. However, to reach the final destination of a TFTA, Dr. Kituyi highlighted four factors that need to be addressed.

Firstly, the treaties establishing the three regional economic communities (RECs) – Common Market of Eastern and Southern Africa (COMESA), East African Community (EAC) and Southern African Development Community (SADC) seems to be at variance with the spirit of the Abuja Treaty that calls for African wide integration. Only COMESA’s treaty is somewhat aligned to the goals of the TFTA. The EAC’s Treaty contains provisions that envisage weaning off EAC members from other RECs. In the case of SADC, wide trade integration relations do not feature in the Treaty. This could be due to the fact that SADC was originally formed to support the fight against colonization, including apartheid in South Africa.

Secondly, the TFTA is rooted in the three pillars of market integration, trade facilitation and infrastructural development as well as industrial development. Greater market access through the first pillar offers many opportunities for the most dominant economies in the region that have industrial bases but not so much for smaller economies. Thus, to sustain the latter’s interest in the initiative partners should endeavour to sequence the activities under the pillars in a way that boosts all countries. This may require identifying ‘champions’ for trade facilitation and industrial development.

Thirdly, Dr Mukhisa cautioned against glossing over the “fact” that business will gain from wider integration. While this is usually the case it is advisable for countries and the private sector to proactively find ways in which the TFTA can build linkages to their economies and businesses and address any national barriers (regulations or other) that may prevent the TFTA from having optimum effect. Unfair productive practices such as subsidies which may put some companies at an advantage should also be looked to ensure that all countries are at a level playing field.

Lastly, Dr Mukhisa questioned the wisdom of following the ‘single undertaking’ principle in the TFTA negotiation process. This principle has been held responsible for the jam that the World Trade Organization’s Doha Round finds itself. This is because the ‘single undertaking’ principle holds that ‘nothing is agreed upon, unless there is agreement on all the issues on the table’. Therefore, it has the potential to prolong and derail trade negotiations. To avoid this

scenario it would be wise to identify areas that may cause rifts and address them early on so as to create appetite and momentum for the process by offering partner states quick wins or an early harvest.

Dr. Francis Mangeni from COMESA provided an update of the Current State of Play of the TFTA. He said that by virtue of having similar members and programmes the secretariats of the three RECs have been working closely on an informal basis since 2005. In 2007 they tabled the idea of a grand FTA to the Kampala Summit which endorsed the plan and after many consultations led to the 2011 Johannesburg Summit. The Johannesburg summit formally launched negotiations and developed a 5 year roadmap that will take us to the final destination of a TFTA with the potential of becoming a customs union or single market later on. Under the MOU between the parties, an interim taskforce has been set up to run the process which comprises of officials from the three RECs.

The third presentation on TFTA Trade Facilitation was led by Mr. Fudzai Pamacheche of Trademark South Africa. Mr Pamacheche highlighted the key areas that TFTA would focus on as revenue collection, safety and security, environment and health, consumer protection and trade policy. Mr Pamacheche also spoke on the WTO definition of trade facilitation. Trade facilitation was considered to focus on regulations and administration. Aspects on One Stop Border Shops were raised with the Chirundu One stop Border Post between Zambia and Zimbabwe cited as a good practice case. The role of institutions in trade facilitation was also discussed. Road charges and road blocks were further cited as aspects that required scrutiny when discussing trade facilitation.

3.2.1 Issues from discussants

Mr. Festus Femi the discussant from the AU underlined the fact that regional integration is a matter of necessity and not a luxury and was especially important in Africa as it would deal with the problem of overlapping membership in RECs. But it is also important to seek the development of communities through trade by enduring that the TFTA enables the countries to also integrate production processes through regional value chains.

It emerged that Africa is a continent of paradoxes, best explained by hunger in the midst of plenty. The continent still lags behind in terms of meeting the millennium Development Goals (MDGs). Time has come to put the blame on ourselves. The aspect of overlapping membership was also raised. It also emerged that adopting a European Model of integration will not be the best. Production and politics also needed to be integrated. In addition, the costs and benefits of the TFTA needed to be fully understood.

Prof. Gerhard Erasmus from Tralac reminded the audience that the biggest complaint from traders in the region is not high tariffs but customs procedures and other regulatory issues that delay trade. Fortunately, the TFTA Annex on trade facilitation calls for the simplification of customs procedures and facilitation of trade through Article 13-15. He said that while these provisions are good enough to set the ball rolling their language does not show a strong commitment to tackle these issues. This needs to be remedied by including provisions more strict compliance mechanisms that monitor the implementation of commitments and attract penalties where a partner state is found to be deviating from the agreement.

Trade facilitation was viewed as the acid test for the TFTA. The language used in the Draft TFTA Agreement was deemed weak and vague. It was also argued that governments that negotiate the agreements do not trade and issues of red tape, corruption etc emerged.

3.2.2 Issues from question and answer session

There was concern about the institutional mechanisms in the region that are meant to drive the TFTA process saying that the secretariats in the RECS do not inspire the confidence of the countries and that he was not convinced that they were dedicating enough time and resources to the initiative.

Concern was also raised about the ambiguity that the TFTA documents create with regard to who the parties to the trade deal will be. That it, it allows partner states to enter into the negotiations individually or as part of a regional bloc which although democratic may pose serious challenges in getting agreement on all the issues from smaller factions as opposed to dealing with three parties (the three RECs).

Participants were also not overly optimistic about the partner states reaching the 36 month deadline for market integration especially if the Single Undertaking approach will be used to get a deal. However, Dr. Mageni assured them that they were well on track.

On trade facilitation, one participant said that there was a need to reduce controls and procedures and even harmonize standards but cautioned against the TFTA dwelling too much in the soft trade facilitation issues without dealing with the hard component of it which is poor infrastructure.

Another participant in agreement with the above said that trade facilitation has always been dealt haphazardly and the TFTA gave partner states the opportunity to deal with the issue holistically and harmonize standards which may even eliminate the need of having regulations.

There was concern that we need to see beyond the political eyes. The role of Trademark as both financier and TFTA strategic partner was questioned. The response from the floor seemed to be that Trade Mark was overstepping its mandate. The need to manage change in the RECs was raised, with the transitional Secretariat for the TFTA questioned. It emerged that the coordinating units lack resources as they operate as seconded staff. It was felt that the Secretariat should be full time preparing the way for the TFTA negotiations. The TFTA taskforce meets on an Ad Hoc basis, and it was deemed inadequate for the task that lies ahead.

The view that the TFTA was like a 'tree' that produces benefits that mature at different times. However, emphasis was placed on realizing the low-hanging fruits from the TFTA process. Such low-hanging fruits (early harvests) would present a case for the TFTA to the political powers and, especially small countries. Efficient and effective negotiators needed to be identified with possibilities of smaller states grouping to present their positions from coordinated systems. Reservations were made to the effect that there was no need to institute NTBs in the form of studies and committees, but rather determine the interest of every member in the negotiation process.

The effects of inter-state de-industrialization need to be fully comprehended and mitigated. This then calls for technical input. Problematic member states also needed to be dealt with, an aspect that raised concerns in terms of voting and majority when passing decisions. Uganda was cited in terms of its role in the EAC with regards to the list of Sensitive Goods that it still claims, seven years after the EAC Treaty entered into force.

Issue of standards was raised. This led to discussions on the ‘software’ and ‘hardware’ in trade facilitation. A TFTA kind of definition, rather than the WTO definition of trade facilitation was needed. Fear to commit was noted as a common disease in the TFTA. Issues of the environment, health and trade were discussed. The role of donor involvement in infrastructure development, particularly, roads challenged the discussions. For example, over 1,000km of road identified for rehabilitation and the EU and Japan are key donors to this initiative.

The question: Do we really need borders in a TFTA was raised. This is one that has answers from the future certainly. In addition, eating the ‘elephant’ in small bits was deemed a more applicable way to approach the TFTA negotiations.

3.3 *Movement of Business Persons and TFTA Legal Issues*

On the movement of persons Ms. Dorica Phiri from the EAC said that Article 12 of GATS differentiates between the movement of service providers or business people and the movement of persons. It seems that the TFTA adopts the same approach with privilege being afforded business persons which shows the partner states intent to promote trade. What is not clear though is how the movement of business persons will be simplified and made quicker, for example, a question could be raised: how will visas be granted?

Prof Gerhard Erasmus presentation on the legal issues began by asking the partner states to clarify whether or not they sought a rules based dispensation. If so, the level of political ambition being displayed will have to be carefully reflected in any TFTA agreement by the legal drafters. Further, the issue of monitoring and implementation must be given the attention it needs so that the TFTA does not get bogged down by lack of implementation as is

the case currently in some RECs. While the TFTA documents envisage a dispute settlement mechanism, it seems flawed because the Council of Ministers will have a hand in approving the decisions of the judicial panel that will be created to hear trade disputes that may arise under the TFTA, which may create room for political maneuvering in the trade deal.

3.3.1 *Issues from Discussants*

The discussant in this panel, Prof Odek, raised thought provoking questions on dispute settlement: how do we ensure compliance in a rules based dispensation; is the TFTA willing to establish a supranational institution or not; how will it relate to other RECs; can the countries withdraw from the arrangement; how can the dispute settlement mechanism ensure that the costs and benefits of the TFTA are evenly distributed; how do we integrate the private sector into the mechanism; how do we capture anti-corruption and ethics in the framework; what is the administrative framework, is it clear, does it create a heavy bureaucracy.

Dispute settlement in the Draft TFTA Agreement was observed as borrowing heavily from the WTO provisions. The TFTA Agreement should bite so that members can comply with the rules based system. If a member state withdraws, what trade regime will that member have?

3.3.2 *Issues from question and answer session*

Does the definition of movement of persons incorporate informal traders? We need to differentiate this from GATT provisions. Business people were important in promoting trade. However, security concerns were still high in the TFTA. The informal sector is crucial in terms of trade in the TFTA and people from this sector are not considered business people per se. In addition, women play a central role in the informal sector and they too need to be recognised in the TFTA negotiations. In fact, a point was raised that we cannot move goods without people.

Article 3 of the Annex on the movement of persons speaks of those involved in substantial trade. It is not clear what substantial trade is and we must be cautious to lock out cross border traders through such a provision. What is being done to sensitize the public of these

provisions? Business needs to come to the table in terms of drawing up the nuts and bolts of systems as well as assisting governments to raise awareness.

It emerged that best practices could be drawn from the RECs. Issues of consensus need to be broken down in decision making.

3.4 Requirements to move the TFTA process forward

This session took the format of a panel discussion. The key members of the panel were: Rooma Pillay Narrainen (Mauritius Chamber of Commerce), Festus Femi Fajana (African Union), Mukhisa Kituyi (former Minister of Trade and Industry, Kenya), Bright Chunga, (Trade Kings Ltd, Zambia), Peter Kiguta (East African Community) and James Otieno-Odek (University of Nairobi). The major points emerging from the panel discussion are noted below.

- ✓ Key question is: what is the desired outcome? This will give strategic direction in terms of the TFTA Agreement and negotiation process
- ✓ We need champions from the three facets of negotiations – government, business and labour
- ✓ We need a dedicated, permanent and well resourced (financially, expertise and infrastructure) TFTA Secretariat
- ✓ Time frames in the TFTA negotiation should be realistic
- ✓ The TFTA is important because it will unite RECs and reduce the duplicity of efforts being undertaken by the three RECS
- ✓ The TFTA roadmap is ambitious and the partner states must show commitment in sticking to it
- ✓ RECS Secretariats should be dissolved at some point in time
- ✓ Aspects of ownership are relevant, including political will and changing of mindsets
- ✓ Partner states must be willing to surrender some national sovereignty through regional integration
- ✓ There is need to have a common understanding of who the parties to the negotiations will be, i.e., RECs or member states or both
- ✓ It is also important to determine how decisions will be made ie by consensus or voting

- ✓ The TFTA partners also ought to seek wide ownership of the process by bringing on board key stakeholders
- ✓ Substantive liberalization of tariffs and removal of non-tariff barriers are a necessary ingredient to the success of the TFTA
- ✓ There are governance issues that the TFTA model presupposes, that is that governments create NTBs yet the main factors seem to individuals in breach of government regulations
- ✓ The TFTA negotiations should offer a blend of quick wins to entice countries that will be worried about entering into the deal for fear of incurring losses
- ✓ The Champions of the TFTA should also come out strongly to rally support for the process
- ✓ The partner states should encourage and assist the private sector to play its role in value addition and especially encourage the financial markets to support such efforts
- ✓ We need to understand the gulfs inside and outside the RECs and the TFTA
- ✓ Small countries should receive preferential treatment for them to buy in as national interests are key
- ✓ Role of the media in raising awareness and shaping perceptions in the TFTA negotiation process is important

3.5 Key areas in the TFTA negotiation process

This session gave an Overview of Intellectual Property generation in the tripartite countries; Standards Harmonization within the tripartite and Non-tariff barriers issues.

Prof Odek, discussing the Intellectual Property (IP) approach taken by the TFTA cited Article 7 of the Annex on IP that encourages the TFTA partner states to harmonize their IP laws. More importantly though, the Annex does not outline how the member states will deal with practicalities of using IP regulations to boost innovation. There is a clause on cooperation of science and technology between partners but he argued we need provisions that go beyond cooperation and take a business-like approach to innovation for example by creating incentives that will lead to technology transfer from other countries or create an environment for the creation of another Silicon Valley in the region or something similar. He said that

most developed countries have Innovation Funds and we may need to also set aside some money for this purpose and create an Innovation Policy.

The TFTA normally sells raw materials without value addition due to lack of science and knowledge generation – innovation and IP. The TFTA member states rank very low on the World Competitive Index, apart from South Africa ranked 43. The top four are Japan, Switzerland, Sweden and the USA. The TFTA still good in the cultural sector but this still needs to be commercialized more. We are still very bad in agricultural innovation, yet this is the backbone of the TFTA member countries. Zimbabwe and South Africa were mentioned as innovative in terms of seed breeding.

Mr. Willy Musinguzi made a presentation on standards Harmonization within the TFTA. This issue is covered under Article 26 of the Draft TFTA Agreement. In October 2008 the Heads of Tripartite States endorsed the need to harmonise the policies of the TFTA institutions in order to attain regional integration and development driven by trade. Cooperation among the RECs has been on-going with meetings among the RECs taking place. One such meeting took place in May 2010 in Nairobi and involved subject specialists from Member States that developed the document on the Principles and Procedures for the development of Tripartite Standards, which defines the methodologies for the development, adoption and publication of Tripartite Standards

Mr Musinguzi indicated that the EAC has now harmonized about 1,110 standards, Comesa has harmonized 300 standards. In addition, a number of guiding documents on standards harmonization have been completed for the TFTA. Work is in progress to simplify border systems.

Mr. Geoffrey Osoro gave a presentation on non tariff barriers in the region and the measures that were being undertaken to tackle them. He reported that the TFTA's annex incorporates the African group's proposal to the WTO on NTBs in that it is very comprehensive. Mr Osoro indicated that NTB were justified for reasons that include: health, environment, protection of home industries, safeguards against revenue loss etc. Comesa has drawn up Draft NTB Regulations and these were being considered simultaneously by the EAC.

The EAC now has a quarterly bulletin on prevailing NTBs. In addition, the online system developed with technical assistance from Trade Mark is operational and is real time. However, it emerged that there is a need to agree on a common definition of NTB.

3.5.1 Issues from discussion

Although tariffs are declining, NTBs are generally on the rise. The NTBs are unpredictable and difficult to budget for. NTBs are many and could exceed 20 in number. Complex RoO still exist with bilateral arrangements at times being used as NTBs. However, it emerged that some NTBs require a simple government intervention and such even come without costs. For, example, the DRC-Zambia border has traffic moving one way yet a gravel road could be opened to facilitate quick movement. Time differences between the Tanzania-Malawi border mean travelers and goods are delayed either sides by one hour or more when the border closes in the process of clearance from the Tanzania Side.

Weigh bridges have emerged as serious NTBs. The Trade Mark online system might not be friendly to truck drivers, some of whom cannot even complete simple immigration and customs forms. Formal channels of reporting are needed.

3.5.2 Issues from question and answer session

Landlocked countries often take issues regarding NTBs as of national importance. The triangle on light vehicles in Mozambique can cost one some money in terms of police demands. The mind set, especially of government officials emerged as one of the NTBs.

For the TFTA to be innovative, there is need to recognize and award innovation, starting with giving incentives to engineers, Scientists and other disciplines. Innovation financing by outside organizations contributes to stealing the innovation. We need African sponsored research and development. South Africa has seven government sponsored research institutes. Hence it is doing well in terms of innovation. In developing countries there are innovation Funds. Such funds allow potential innovative ideas to be incubated.

The biggest barrier seems to be technical regulations and the private sector is baffled by what is tested and how it is tested?

It was also noted that a lot of effort and time is going into harmonizing standards that are no longer being traded or have become obsolete. Time frames for the harmonization of standards are needed. Quality testing laboratories and experts are also needed. The private sector certainly has good capacity and ways of developing partnerships with them should be devised. The EAC's effort to outlaw NTBs was lauded. International standards like ISO are good starting points in harmonization as these are part of the TFTA anyway. A call to have regular meetings to deal with NTBs in the TFTA was made. Local inspectorates were challenged to conduct vessel searches and other searches in a coordinated and holistic manner

The big question was raised: do we really need borders in a common market? However, security concerns were raised.

3.6 TFTA and rules of origin (RoO)

This session was structured in the form of a panel discussion. The panelists included: Sayed Elbous (Ministry of Trade and Industry, Egypt), Peter Mwaniki (Ministry of Trade, Kenya), Lynette Gitonga (International Lawyers and Economists Against Poverty), Rosetta Mwape (Zambian Association of Manufacturers), Viola Sawere (South African Development Community) and Geoffrey Osoro (EAC).

Rules of Origin (RoO) were said to be at centre of the TFTA because this is what will determine what will fall under the banner of free trade and are required where there are preference differentials. A distinction is made between Preferential RoO that determines origin versus Non-preferential RoO that allocates origin. The RoO applied by the TFTA partners differ because SADC's RoO are modeled along the EU's and follow three tests while COMESA's and EAC's are similar and simpler. Naturally, it will be necessary to align the three regimes or create a new regime for the TFTA that will be informed by the need to a) increase intra-African trade and encourage industrial development b) simple and easy to administrate as well as encourage cumulation (cumulation is important as it will encourage specialization in the region).

The panel in this session also highlighted that:

- ✓ RoO could be one of the things that are part of the early harvest items
- ✓ They could also be used to coordinate industrial development with sectors for an early harvest
- ✓ It is necessary to harness the other bilateral trade agreements that TFTA partner states may have with other third countries to promote business
- ✓ A line by line or sector by sector approach to RoO may create huge obstacles to finalizing a deal and a broad rule may be a better option

3.6.1 Issues from the floor

TFTA negotiations on RoO must avoid line-by-line approach and take the Draft RoO in the Draft TFTA Agreement as a good starting point. The private sector should be pro-actively engaged too. RoO should be simple and be able to facilitate industrialization, growth and trade. The three sets of RoO from the RECs should also be considered. The current Draft on RoO from the Draft TFTA Agreement was hailed as progressive and much improved than from the Kampala meeting.

RoO must recognize the different sizes of the private sector. The TFTA RoO could be a solution to multiple membership in the TFTA. However, the RoO must be transparent so as to address abuse. The SADC RoO are different from Comesa and EAC as these are product based. In addition, a few SADC countries have bi-lateral arrangements in place.

3.7 Business perspectives on the TFTA process

This session was structured in the form of a panel discussion. The panelists included: Eyessuswork Zafu (Ethiopian Chamber of Commerce), Gashwew Debebe (Ethiopian Chamber of Commerce), Samuel Menghis (Eritrean Chamber of Commerce), Gipson Kundani (Zimbabwean Association of Manufacturers), Said Moussa (Djibouti Chamber of Commerce), Rooma Pillay Narrainen (Mauritius Chamber of Commerce), C Kaferapanjira (Malawi Chamber of Commerce) and Agatha Nderitu (EABC). The private sector group that

formed the panel in this session identified the following needs that would help them capitalize on the TFTA:

- ✓ Economic integration makes business sense as this guarantees peace in the TFTA
- ✓ Successful countries invest within their borders, but our governments need to be organized in a better way
- ✓ All our infrastructure was discovered to lead to ports than the internal hinterlands
- ✓ Business should be left to deal with the business of business, and without business there is nothing to trade
- ✓ Free movement of business persons should be guaranteed to stimulate investment and 26 countries are a good market base that could be sustained into the future
- ✓ Developing capacity to buy internally
- ✓ Developing export capacity
- ✓ Developing regional value chains
- ✓ Creating business links amongst themselves
- ✓ Getting access to information on opportunities to trade within the TFTA
- ✓ Infrastructure development still remains critical and this should include energy, roads and airports. Models of private-public partnerships in infrastructure development as is with some airports in India could be viable for the TFTA.
- ✓ Regional air links are still a nightmare in the TFTA, with the O.R. Tambo and Jomo Kenyatta International Airports playing the midwifery roles
- ✓ The copy and paste syndrome needs to be addressed in all its facets if we are to win the future for the TFTA
- ✓ Those that hold the pen have the bigger say, hence those preparing the final documentation of the TFTA need to be transparent and fair while representing the majority views

3.8 Plenary: Concrete Steps and Way forward

- ✓ A dedicated, full time and well resourced TFTA Secretariat is needed.
- ✓ The legitimacy issue is critical – who should negotiate in the TFTA process? RECs or national governments or both?

- ✓ There is need for a broad negotiation process and the participants noted that we were at the beginning of the long journey.
- ✓ Early harvest can be utilized to facilitate quick buy-ins.
- ✓ The principle of single undertaking was challenged as being retrogressive, though no alternative was proposed.
- ✓ Priorities need to be placed on the table and the three priority areas identified in the Draft TFTA Agreement were said to be in order.
- ✓ Laws need to be harmonized so that member countries sing from the same hymn book.
- ✓ It emerged that generally there is great enthusiasm towards the TFTA and our politicians have already bought into it.
- ✓ Harmonization of standards remain critical
- ✓ We do not need to re-invent the wheel and good practices from the RECs are in order for a swift movement forward.
- ✓ Need to agree on the definition of NTB and on RoO. RoO must be simple and easy to understand and implement.
- ✓ Is the 36 months period enough? If not, what can be done within the stipulated time frame?
- ✓ We must own the process so that we can advocate for its success.
- ✓ The mandate is broad, but suits the desired outcomes.
- ✓ Partnerships between the private and public sector are crucial in a number of areas, including standardization.
- ✓ Private sector voices should be heard in the TF TA negotiation process
- ✓ Trade facilitation remains a thorn in our flesh but we also need to focus on facilitation.
- ✓ Capacity building and retention is critical.
- ✓ We also need value creation rather than value claiming.