

EAC GENEVA FORUM

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to the WTO

COUNTRY UPDATE NOTE N°4



TRADE FACILITATION IN THE TFTA

A Closer Look at the EAC

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June, 2012



PACT EAC PROJECT
Promoting Agriculture, Climate and Trade Linkages
in the East African Community

This note is produced as part of the "Promoting Agriculture-Climate-Trade linkages in the East African Community" (PACT EAC) project, undertaken by CUTS International Geneva with funding support from the Swedish International Development Agency. More information at <http://www.cuts-geneva.org/pactec>.

INTRODUCTION

At the 2012 WEF meeting on Africa, the Director General of the WTO had indicated that “African countries do not trade with each other very much or nearly do they agree that they could or they should.” The negotiations currently taking place between COMESA, EAC and SADC¹ are attempting to mend this intra-African trade gap by establishing a Tripartite Free Trade Area (TFTA). In it there is great emphasis on Trade Facilitation (TF), which is arguably the fundamental basis for the Tripartite. TF is indeed a formidable challenge in the region for which resolutions continue to be sought throughout the region as well as at the multilateral level in the course of WTO negotiations on TF. This short note will take a glimpse into the TF negotiations at the WTO and provide a quick overview of some of the TF related challenges and opportunities in the TFTA with a special focus on the EAC.

WHAT IS TRADE FACILITATION?

As a concept, TF means developing a consistent, transparent, and predictable trading environment. Specifically TF refers to harmonization of laws and regulations and simplification of procedures, documents, and formalities in addition to improving physical infrastructure and facilities. TF measures aim to reduce transaction costs, time, and complexity, in addition to improving the trading environment and enhancing government control and effectiveness in revenue collection. Particularly these measures include harmonization of standards, standardized documentation, simplified regulations, customs valuations and a

¹ Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), and Southern African Development Community (SADC)

wide range of other administrative, customs, and transportation procedures, policies and regulations. This is also in line with the WTO approach on TF where the working understanding of TF is the ‘simplification and harmonization of international trade procedures.’ It is generally accepted that the Articles V (Freedom of Transport), VIII (Fees and Formalities Connected with Importation and Exportations) and X (Publication and Administration of Trade Regulations) of the GATT 1994 were written with TF in mind.

State of Play: Trade Facilitation at the WTO

TF was first brought to the WTO agenda as an item for discussion only following the Singapore Ministerial (1996). However, not a lot of progress was made until after Cancun in 2003 when a group of LDC countries, led by Bangladesh and supported by a number of developing countries proposed moving forward on TF on the condition the other Singapore issues² were dropped. The developing countries were successful in getting 3 categories of demands into the negotiations: clear provisions on the scope of the negotiations, the extent to which special and differential treatment (S&D) would be offered, and that any new requirements stemming from an agreement would be met with technical and financial support. The questions of technical and financial support have divided the developing and developed countries since the beginning. The developing countries did not want legally binding commitments for fear of not being able to implement the obligations. If required to sign onto new commitments, the developing countries have been asking for technical and financial support in addition to S&D to be able to

² Singapore issues are transparency in government procurement, trade and investment, trade and competition policy, and trade facilitation.



comply with them. However, in December 2009, the WTO Negotiating Group on Trade Facilitation (NGTF) put on the table a draft consolidated negotiating text, which reflects the progress made on TF since 2004. In 2009 it was claimed that only 'cleaning up' of the language in the text was necessary. Since then however, the WTO member states have diverged in terms of details on the rules and the legal status of the rules.

At the same time, the Tripartite remains fully committed to the TF negotiations at the WTO. As explained in following paragraphs, the negotiations at the Tripartite have not been limited to what is being discussed at the WTO. TF is leading the regional integration. The developments at the TFTA level could help to pilot possible convergences of customs and TF measures world-wide, if advantageously used at the WTO level. At the same time, it is important to constantly refer back to the TF measures taken at the WTO and World Customs Union level to ensure that there will be no conflicts between rules developed at the TFTA and at the multilateral levels of negotiations.

TRIPARTITE FREE TRADE AREA

Guided by the Lagos Plan of Action and the Abuja Treaty (1991) to establish the African Economic Community (AEC), the COMESA-EAC-SADC Tripartite idea was already established by 2006. However, it received political impetus at the first Tripartite Summit in October 2008 where a Tripartite FTA Roadmap, scope and processes were agreed on by the Heads of States. Specifically a program of harmonization of trading arrangements within the three Regional Economic Communities (RECs), joint implementation of infrastructure programs in the region, and furthering

institutional cooperation efforts among the RECs was agreed upon. At the second Tripartite Summit on June 12, 2011, negotiations for the Tripartite Free Trade Area (TFTA) were launched. The TFTA is being formed by integration of the RECs' economies into a single market with the eventual goal of achieving a Customs Union. This will be achieved by removing tariff and NTBs between the 26 countries belonging to the three RECs. The Tripartite is guided by three main pillars spelled out in the Vision and Strategy document: 1) market integration focusing on tariffs, NTBs, and TF; 2) planning and implementing infrastructure programs; and 3) industrial development.

It is a reality, regional economic groupings in Sub-Saharan Africa have not been effective because intra-regional trade in Africa as a contributor to total foreign trade has been insignificant compared to other similar groupings across the world. Intra-African trade only accounts for 10% of their total trade compared to 40% in North American and 60% in Western Europe. High cost of doing business across the EAC-SADC-COMESA borders has been a constraint on intra-regional trade. The expense and lengthiness of road transport are important challenges to the competitiveness of the Tripartite members. World Bank statistics shows that in Africa about 25% of delays at borders are caused by poor infrastructure and the remaining 75% by poor TF (Ministry of Industry and Commerce, Zimbabwe, 2011). In the Tripartite, the cost of transportation, particularly road transportation, which accounts for 95% of all cargo transported, is directly linked to the time needed for the passage. Cargo forced to sit at the border waiting for long clearances can incur an additional daily cost of US\$200-400, which is directly passed into the cost of the goods. Intra-African shipping of goods over a distance is many times more expensive when compared to same distances elsewhere. For example, it cost US\$5,000-8,000 to ship a 20ft container from

Durban to Lusaka while it only costs US\$1,500 for the same journey from Japan to Durban (Pearson, 2011). This in turn makes African goods less competitive within Africa and on the international market.

TF is an effective way to reduce business and transaction costs. In order to make African goods more competitive in African as well as in external markets, there need to be holistic solutions to the regional transportation problems while harmonizing trade and transport policies, procedures, and programs. These are some of the objectives of the Tripartite. The TF initiatives of the Tripartite will facilitate faster economic integration of the three RECs, which arguably could be seen as fundamental basis for the TFTA formation.

The TF measures already undertaken in the TFTA context

The common integration priorities for the EAC-SADC-COMESA are trade and transport facilitation at borders and infrastructure development to lower transaction costs and improve competitiveness. For trade and transport facilitation, regulatory and policy reforms are needed at the national, REC, and Tripartite level to make them concurrent with international instruments and practices. National

and regional capacity building programs to better facilitate trade are also another priority area.

To better coordinate the TF activities in the Tripartite, they have created one overall integrated TF program called the Comprehensive Tripartite Transport and Trade Facilitation Program (CTTTFP). The North-South Corridor is the main infrastructure program of the Tripartite on which many of the TF measures will be applied. Using Aid for Trade funding, the Corridor was created by the Tripartite as a pilot program designed to demonstrate the effectiveness of an economic corridor in reducing costs. The implementation of the Corridor started in 2011 with work started on the North South Corridor, which is then to be expanded throughout the RECs. It is imperative that imports, duties, fuel prices, regulations on road safety, One Stop Border Posts, etc are harmonized across the region to equally distribute competitive advantages and disadvantages among the members of the three RECs. The customs and transport harmonization programs under the CTTTFP are already working on the aspects listed in table 1, some of which can be easily implemented, while others need more work on harmonization and development among the three RECs.

Table 1 – CTTTFP areas of work as of 2011

Customs tariff nomenclature	Customs and legislative procedures	Corridor monitoring systems	Cooperation of customs officers	Immigration requirements
Harmonization of third party motor vehicle schemes	Management of border posts, creating One Stop Border Posts, such as the one established at Chirundu on the Zambian-Zimbabwe border	Joint Competition Authority on Air transport liberalization.	Harmonizing administrative customs documents	Regional transport corridor management systems
Regional customs bonds	Axle loads and vehicle dimension limits	Regional road user charges		

As part of TF, work is also underway to fashion a common framework for categorizing NTBs to be in accordance with the WTO/UNCTAD rules. Slow customs procedures, health and safety, technical standards, road blocks, import bans, etc. are all barriers to trade. Eliminating NTBs, which will allow goods from the overall larger economic market to be more competitive by reducing the cost of doing business, is the priority cooperation area in the Tripartite. To address this, a reporting and monitoring mechanism to remove NTBs among the RECs has been established.

CHALLENGES TO TRADE FACILITATION IN THE TFTA

There are several challenges to TF present in the Tripartite and in the individual RECs:

- Variation of the trade and transportation facilitation instruments active in the individual RECs necessitates a strong harmonization program. The challenge is to accommodate the interests and needs of the individual nations, RECs, and Tripartite.
- There are overlaps in donor support for TF projects. Meaning, there are multiple International Cooperation partners active in the field engaging in transport and trade facilitation. Better harmonization is needed so they are not competing with each other.

- The differences of size of the three REC members poses a problem relating to the distribution of costs and benefits, thus highlighting the need for compensation plans to ensure the smaller countries will benefit from TF measures equally.
- Private sector and general public have been largely left out. While the process is often public sector driven, TF requires strong private sector involvement to complement the public sector. Private sector should be creating bottom-up pressure on politicians to address trade openness issues and the general public needs to be kept in the loop of what the growing integration means for them.
- The overlapping membership among the RECs cannot be dismissed. This overlap leads to administrative and financial costs, affects the timing of the liberalization processes, complicates the tariff structures, and overall creates another level of bureaucracy for business to navigate.
- Overreliance on primary commodities is a problem that cannot be overlooked. Industrial and value added goods are often absent from African trade, thus the potential for increased trade within the Tripartite may be limited. On a positive note, the manufactured goods produced in Africa are largely consumed in Africa, which suggest that if more manufactured and value added goods could be produced there would be a market for them in Africa.
- In EAC specifically, NTBs account for 30-40% of the trade costs. Offending measures are generally found in customs procedures and documentation, quality inspection processes, transit procedures, road blocks, and immigration procedures. Though the East African Community Customs Union commits the EAC partner

states to rapidly eliminate, and refrain from adding new NTBs on intra-African trade, NTBs still pose a major obstacle to trade in the EAC. There have been 35 NTBs identified since 2008 and only about one-third have been adequately addressed. For example, there are more weight bridges, more roadblocks on the North-South Corridor, problems with issuing borders bonds, lack of port procedure manual harmonization, corruption on the Central and Northern Corridor, entry fees for trucks drivers, long procedures to gain work permits, road user charges not harmonized, non-recognition of EAC Rules of Origin certificates, lack of harmonization of standards despite laws in place, legal enforcement missing to address NTBs, etc. The NTB situation in the EAC is so excessive that Rwanda is threatening to take its neighbours to court over persisting NTBs. In principle, the EAC partner states have agreed to remove NTBs by December 2012, but since a legally binding framework is missing, each partner state is counting on just the willingness of the other partner states. In the EAC, transit procedures often represent non-tariff barriers (NTB) to trade. Therefore, the Article V of WTO 1994 on freedom of transit, providing for freedom from regulation and tariffs against goods in transit, could be considered partially violated.

WAY FORWARD FOR THE EAC

As evident, problems with NTBs are considerable in the EAC. However, one cannot deny the progress that has been made against NTBs on borders with Electronic Single Window Systems, 24/7 border-crossing and reduction of roadblocks (e.g. in Tanzania from 37 to 15). Many WTO TF principles have been included

into the EAC customs law, such as, adopting common documentations and procedures within the EAC, regular reviewing of adopted international trade and TF procedures, advocating for common solutions among the EAC partner states for TF, reducing bureaucratic procedures at customs checkpoints among the partner states, etc. EAC has adopted relevant provisions of the WTO TF as well as the Revised Kyoto Convention on Customs procedures. Nevertheless, still work remains to be done:

- Cooperation with the other two RECs on their legally-binding mechanisms governing NTBs would be valuable to reproduce their best practices of dealing with NTBs.
- In the EAC, a legal institutional framework is also needed to deal with NTBs among the partner states. However, there should not be too many institutions dealing with the same question.
- Equally valuable is close collaboration among the other RECs to analyse and come up with solutions to the current bottlenecks in regards to NTBs.
- The Monitoring Committee on NTBs should be made stronger and it is recommended to create a portal for exchanging views on NTBs among the partner states based at the EAC Secretariat.
- The East African Court of Justice should be given jurisdiction over trade disputes.
- Ownership by the people of the integration processes cannot be overemphasized because it will greatly help to fight the NTBs problems.
- Though NTBs are a huge TF issue that needs to be addressed by the EAC, there are other TF issues that need to be closely

examined. There is a pilot case study on TF in COMESA. Perhaps there could be one complete study done on the EAC? The U.S. Trade Representative is currently preparing an investigation on “Trade Facilitation in East African Community: Recent Developments and Potential Benefits,” however this is not in the public domain and the report will only highlight some of the benefits of overall TF improvements in the EAC³ (import and export volumes, export diversification, economic development, etc).

As a final remark, the EAC could regards resolving the NTB problems as an opportunity to create good and best practices, which then can be applied to tackling the same problems in the TFTA.

CONCLUSIONS

To boost the intra-African trade, the TF measures need to stay a priority. Momentum needs to continue on addressing African competitiveness and potential for development, growth, and poverty alleviation. TF in the Tripartite is an economic Corridor based approach. In order for the EAC to take full advantage of the greater market area, it needs to address the customs related NTB issues. EAC has the opportunity to break new ground here, as good and best practices with NTBs with the EAC could become the best practices within the Tripartite. Since TF can be the most effective way forward for Africa to improve its trade balances, development and facilitate its rise to greatness, the EAC should actively participate in

³ As a background, the report is prepared due to the U.S. and the EAC having started preliminary discussions on a possible new trade and investment partnership. The imminent benefits of the partnership are seen to better facilitate the EAC customs clearance and other border practices.

the WTO TF negotiations to ensure its development dimension. The TF events taking place in the TFTA and those in the WTO are

complementary and the EAC as part of the TFTA can assert greater influence on the TF negotiations at the WTO.

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