

EPAs Rules of Origin and EAC: A Position Worth US\$ 1 Trillion

As the East African Community (EAC) sets its eyes towards a common market with SADC and COMESA through a Tripartite FTA (T-FTA), it should ensure that policy space is available for harmonization and simplification of the most beneficial policies to trade among the parties of the agreement. Special attention should be paid so that ongoing negotiations of the EAC with the EC for a Framework EPA (FEPA) do not interfere with regional integration efforts. More specifically, Rules of Origin (RoO) are of particular concern and should be improved.

Except for the textile and clothing sector, the current Interim EPA RoO and the ones under negotiations are essentially Cotonou+ rules, the same that governed trade between the EU and ACP countries under the Cotonou Agreement, which are considered among the most complex and restrictive rules in application. For instance, although the Framework EPA allows for cumulation with Algeria, Egypt, Libya, Morocco and Tunisia, Article 4(8) with Annex XI lists products that are excluded from cumulation with a critical trading partner of the EAC: South Africa.

There is no doubt that Rules of Origin provisions are essential in any preferential trade agreement. They help ensure effective preferential treatment to domestic economic actors and could potentially boost EAC's exports to the EU. However, inadequate RoOs as they are currently being negotiated under the EC-EAC EPA might act as a non-tariff barrier to EAC's trade, increase its balance of payment deficit with the EU and interfere with efforts towards building the African Economic Community (AEC) through the T-FTA. The combined GDP of the AEC, where South Africa will be a key player, is expected to reach US\$1 trillion in two years.

It is therefore important that the FEPA leaves enough policy space for the forthcoming harmonization and simplification of RoO between and among COMESA, EAC and SADC, which will encourage the establishment of production units, diversification, investment and transfer of technology in those three RECs. Therefore, EAC negotiators to the FEPA should focus on :

- ❶ In Annex XI and XII to Protocol 1 of FEPA, about products originating in South Africa, products should be listed by subheading with their designation. This will bring more clarity and transparency, and facilitate further negotiations of RoO as this will be done on a product-by-product basis;
- ❷ Abolishing the product exclusions and related administrative provisions relating to cumulation with South Africa, as these are not aligned to development prerogatives of the Eastern and Southern African regions, and undermine regional economic integration.

← QUICK FACTS

» The ESA BMO Network found that 47% of companies in COMESA, EAC and SADC neither know nor understand the Rules of Origin of the countries to which they export to

» Many companies in the region find the threshold of 35% value addition criteria difficult to attain mainly because most of the raw materials used which adds to the value of the imported material content are sourced outside the region.

» The combined GDP of the T-FTA is expected to reach US\$1 trillion in two years.

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What is the importance of Rules of Origin ?

With production becoming increasingly globalised, producers are often required to source materials from various countries in order to be internationally competitive. In this context, Rules of Origin (RoO) are a core part of preferential trade agreements (PTAs), such as the EU-ACP EPAs, as they set out the conditions under which goods traded between preferential trade partners can be considered as 'originating' in one of these partner countries. In other words, they define conditions for determining whether a product has undergone sufficient transformation in one of these countries, and hence can benefit from preferential treatment.

One major objective of such rules is to prevent products from third parties being merely channelled through a party to a PTA with no value addition, only to benefit from preferential treatment. Such trade would be referred to as "transshipment".

What are risks arising from Rules of Origin ?

While the prevention of transshipment is a legitimate function, the requirements associated with Rules of Origin have often been used as a discretionary trade policy instrument or as non-tariff barriers to trade. For instance, the granting of preferential Rules of Origin have sometimes been used as a leverage for gaining concessions and advantages in other areas covered by preferential trade agreements. Another example are RoO provisions designed to provide effective levels of protection to the domestic producers of one party, and discourage imports of certain products originating in the partner country.

Such situations are more likely to occur in PTAs between unequal trading partners, being those of vastly different economic size or levels of development, as well as in non-reciprocal trading arrangements where preferences are granted unilaterally.

What is the Tripartite Free Trade Agreement?

The Tripartite Free Trade Agreement (T-FTA) is a regional integration initiative among the three Regional Economic Communities of Eastern and Southern Africa, namely COMESA, EAC and SADC. It was endorsed by the Heads of State of member countries in October 2008 in Kampala, Uganda. When signed, this FTA will be a milestone towards the establishment of a continent-wide economic community: the African Economic Community (AEC). Progress towards achieving an agreement is the responsibility of the "Tripartite", an apex organisation.

The overarching objective of the Tripartite is to "contribute to accelerating the economic integration of Africa achieving sustainable economic development, thereby alleviating poverty and improving quality of life for the people of the Eastern and Southern African Region." It works towards improving coordination and harmonisation of the various regional integration programmes, which include the establishment of FTAs, Custom Unions, Monetary Unions and Common Markets, as well as infrastructure development projects in transport, information and communications technology and energy.

With more than 527 million people and a Gross domestic product (GDP) expected to reach US\$ 1 Trillion in 2 years, the 26 member countries of the Tripartite make up 57% of the population of the African Union and over 58% in terms of contribution to GDP.

USEFUL RESOURCES

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-  Naumann, E. *Rules of Origin and EPAs: What has been agreed? What does it mean? What next?*. March, 2008.
-  European Commission - Economic Partnerships Negotiations and Agreements http://ec.europa.eu/trade/wider-agenda/development/economic-partnerships/negotiations-and-agreements/#_eac
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