  

Key Issues in Regional Integration

Volume III

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ACRONYMS AND ABBREVIATIONS

ACIS	Advance Cargo Information System
AEC	African Economic Community
ASYCUDA	Automated System for Customs Data and Management
ASYCUDA	Automated System Customs Data
AU	African Union
CD	Customs Document
CET	Common External Tariff
CMA	Customs Management Act of the EAC
CMR	Customs Management Regulations
COMESA	Common Market of Eastern and Southern Africa
CTN	Common Tariff Nomenclature
DRC	Democratic Republic of Congo
EAC	East African Community
EPA	Economic Partnership Agreement
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Area
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
HS	Harmonized System
ICT	Information Communication Technology
ITC	International Trade Centre
LDC	Least Developed Country
NEMs	National Monitoring Committees
NEPs	National Enquiry Points
NEPAD	New Partnership for Africa's Development
NTBs	Non-Tariff Barriers

OSBP	One Stop Border Post
RCTD	Road Customs Transit Document
REC	Regional Economic Community
RISP	Regional Integration Support Programmes
RKC	Revised Kyoto Convention
RoO	Rules of Origin
RTA	Regional Trade Agreements
SACU	Southern African Customs Union
SADC	Sothern Africa Development Community
SAP	Structural Adjustment Programmes
SCT	Single Customs Territory
SPS	Sanitary and Phyto-Sanitary
TBT	Technical Barriers to Trade
TFA	Trade Facilitation Agreement
TFTA	Tripartite Free Trade Area
TMEA	TradeMark East Africa
ToRs	Terms of Reference
TRAINS	Trade Analysis and Information System
TRIST	Tariff Reform Impact Simulation Tool
TTNF	Tripartite Trade Negotiations Forum
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission of Africa
USAID	United States Agency for International Development
WCO	World Customs Organization
WTO	World Trade Organisation

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Introducing the Continental Integration Programme

"I am African" is a slogan the African Union has adopted to promote ownership of the continental integration programmes and institutions among the people, especially children and the youth. The closing ceremony of the special summit of the African Union on 26 May 2013, marking fifty years since the founding of the Organisation for African Unity was graced by children singing and reciting poems proudly declaring they were African, in different languages. The Heads of State and Government then adopted *Agenda 2063*, a vision that all Africa should be peaceful and prosperous by 2063. Programmes that promote peace and prosperity can therefore be expected to remain key pillars of the economic integration agenda in Africa.

Article 6 of the Treaty establishing the African Economic Community provides for the gradual establishment of the continental economic community, through progressive stages, beginning with free-trade areas established by the regional economic communities (RECs), customs unions established by the RECs, the continental customs union, the continental common market, and the continental economic and monetary union.

Since the RECs are building blocs for the continental integration programme, the African Union has recognized eight RECs in this regard, namely, the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), the Community of Sahara-Sahelo States (CSS), the Intergovernmental Authority for Development (IGAD), and the Arab Maghreb Union (AMU). If the building blocs fail to make progress towards deeper integration into customs unions and common markets, the continental objective will not be achieved; with vast political and economic implications.

At the African Union's Eighteenth Ordinary Summit in January 2012, the Heads of State and Government decided that a Continental FTA should be formed by 2017, and the Continental Customs Union by 2019. The COMESA-EAC-SADC Tripartite FTA, expected to be in place in 2015, will be the building bloc or launch pad for the Continental FTA. While ECOWAS, ECCAS, CSS and the AMU are expected to emulate the COMESA-EAC-SADC Tripartite FTA initiative by also establishing a single FTA among themselves, it doesn't appear that much progress is being made in that direction, except for a brief exploratory meeting organized by the African Union Commission on the margins of the African Union Conference of Ministers responsible for integration held in Mauritius in 2013. This would suggest that if this matter of forming the Continental FTA and Customs Union is not addressed soon, the timelines will come soon and pass without much to show. If the Tripartite FTA negotiations fail to achieve the intended result there won't be the Continental FTA, since the Tripartite FTA, given its economic and geographical size, is the key building bloc or the cornerstone for the Continental FTA.

Economic integration as a development strategy in Africa has, therefore, reached a cross-roads. Time has come to take a stand. In COMESA for instance, some Member States, for various reasons, are yet to join the free-trade area, established way back on 01 November 2000. The Democratic Republic of Congo, Eritrea, Ethiopia, and Swaziland, out of the 19 Member states of COMESA, are yet to come on board. Congo DR largely didn't join because of a debilitating war that has plagued the country for years. Eritrea and Ethiopia have pointed to their weak private sector and argued that they will not be able to beneficially participate in the FTA, although after a number of studies and in light of the robust economic performance of an 11% annual economic growth rate for Ethiopia, this stance might be changing, very slowly; Ethiopia in principle agreed to join the COMESA FTA by December 2014. And due to sibling rivalry, Eritrea is unlikely to join the FTA until Ethiopia does so.

Uganda didn't take the necessary steps to join the COMESA FTA when the integration momentum was high in the country, in the early 2000s when the COMESA FTA was established, focusing instead on the structural adjustment programmes and the economic liberalization reforms that the government continued to implement from the 1980s to the 2000s, but has now started implementing the COMESA FTA from 01 July 2014. Swaziland is a member of the Southern African Customs Union (SACU) and as such is required to maintain the SACU common external tariff against the rest of the world, including COMESA Member States. Under the bilateral trade arrangements though, some SACU countries have concluded free trade areas with third countries, for instance the Trade and Development Cooperation Agreement between South Africa and the European Union, and the Economic Partnership Agreement with the European Union.

The customs union was launched on 07 June 2009 against the backdrop of the mighty falls in Victoria Falls Town, but the three-year transition period within which it was supposed to become functional passed in June 2012 without any Member State indicating that it was ready to implement the customs union. A number of reasons were advanced for this state of affairs, which will be considered later. COMESA is due to formally launch its common market by 2015, according to its 2011-2015 Medium Term Strategic Plan; but the common market is already legally established by Article 1 of the Treaty.

In considering the common market, the FTA and the customs union will provide the inescapable backdrop. Implementing the common market is much harder than implementing the FTA or the customs union, because of the deeper nature of the integration, policy and political implications for the powers of governments in jointly implementing rules on free movement of services, persons, labour, capital, and enterprises. It is therefore important at this point in the long trajectory of economic integration in Africa, to think clearly and design a way forward in terms of re-launching the integration programmes or modifying them, but either way, to take decisions that can be implemented with gusto to achieve results.

The state of regional integration in COMESA holds out many best practices for the entire continent, but also raises some issues that need urgent attention. Addressing these issues will ultimately shape the entire continental integration process due to the similarity of most integration issues. This is, therefore, a unique opportunity to take a closer look and decide what to do, bearing in mind the history and the future of Africa in the world.

Introducing COMESA

The Common Market for Eastern and Southern Africa (COMESA) is a regional economic community of 19 Member States[1][i], with booming regional trade (formal intra-COMESA trade in goods reached US $19.3 billion in 2012 up from US $3.1 billion in 2000)[2][ii], a population of 458 million, a combined GDP of US $572 billion, and land mass of 10.9 million square kilometres. These figures mean that COMESA is a credible force in regional, continental and international relations; a force for good though, because according to Article 3 of the Treaty, the reason COMESA exists is to improve the living standards of the people in the region. The various programmes that COMESA implements are designed to lift the people out of poverty and misery, so they are freed to pursue their dreams in peace and prosperity.

COMESA is the largest FTA in Africa and through its raft of programmes and institutions it has made an indelible imprint on the continental integration process, not only through its sheer geographical and economic size, but more importantly through the pioneering nature of many of its programmes and institutions. The most successful COMESA institutions include the Clearing House, which has now established an international payment system called the Regional Payment and Settlement System; the Leather Products Institute; the Alliance for Commodity Trade in Eastern and Southern Africa; the COMESA Business Council; the COMESA Regional Investment Agency; and the COMESA Monetary Institute. The financial institutions of COMESA namely, the PTA Bank, the Re-insurance Agency, and the African Trade Insurance Agency have grown into continental ones, and enjoy excellent global rankings. The COMESA Court of Justice stands out for the wide jurisdiction it has and the access it provides to individuals and companies, as well as the Secretary General, COMESA institutions, and the Governments of Member States.

The integration programmes of COMESA include the following: the FTA since 2000 now with 15 Member States (Congo DR has finalized the legal instrument for joining while Ethiopia has taken a decision in principle at the political level to join; Swaziland has a derogation because it is a member of SACU); the Customs Union (still to be implemented by Member States); services liberalization regulations are in force (negotiated schedules of specific commitments are ready for consideration by the Council in four sectors: financial services, communications, transport and tourism; movement of persons); visa relaxation but the protocol on movement of skilled persons is not in force; infrastructure (transport, energy, ICT); agriculture (CAADP); industry and SMEs; gender; peace and security; science technology and innovation; intellectual property; and international negotiations.

All these programmes are embedded in the COMESA Treaty, which has been in force since 1994 having been ratified by all the Member States. From year to year, the Summit and the Council issue Decisions and Regulations to advance these programmes. The Regulations and Decisions become binding once published. Ensuring the implementation of COMESA programmes is the foremost priority of the COMESA family as a whole. Therefore, every year, Member States report on how they are implementing the programmes. The reports are now more structured than in the past, to encourage comprehensive reporting, and allow ranking or assessment of performance, and peer comparison.

In addition, the Secretariat has undertaken a comprehensive assessment of the state of play in the Member States, through missions undertaken to check the laws, policies and other relevant, national instruments that are supposed to be in place to facilitate the implementation of COMESA obligations in Member States. A general assessment is that 60-70% of COMESA programmes are being implemented by the best performing Member States. This definitely leaves a lot of room for improvement.

The vision of COMESA as a regional economic community is to become fully integrated, internationally competitive, prosperous and peaceful with high living standards, and fully supportive of the continental integration process. This vision derives from the objectives of COMESA and is the reason for the institution's existence.

The objectives of COMESA are "to attain sustainable growth and development of the Member States by promoting a more balanced and harmonious development of its production and marketing structures; to promote joint development in all fields of economic activity and the joint adoption of macroeconomic policies and programmes to raise the standard of living of its peoples and to foster closer relations among its Member States; to cooperate in the creation of an enabling environment for foreign, cross-border and domestic investment; to cooperate in the promotion of peace, security and stability among the Member States in order to enhance economic development in the region; to cooperate in strengthening relations between the Common Market and the rest of the world, and the adoption of common positions in international fora; and to contribute towards the establishment, progress and the realization of the African Economic Community".[3]

To achieve these objectives, the Member States made several undertakings[4], under which they "shall, in the field of trade liberalization and customs cooperation, establish a customs union, abolish all non-tariff barriers to trade among themselves; establish a common external tariff; co-operate in customs procedures and activities". This undertaking is the subject of a specific provision in Article 45, to the same end, calling for the progressive establishment of a customs union within a period of 10 years: that is, by 2004 since the COMESA Treaty entered into force in

1994. Article 46 specifically provides for the establishment of a free trade area by the year 2000.

The FTA, by eliminating duties, NTBs and other restrictive regulations of commerce, is by definition part of a customs union. In addition, there are undertakings relating to the fields of transport and communications, industry and energy, monetary affairs and finance, agriculture, and economic and social development; all of which are again the subjects of detailed specific provisions.

Further, there is the provision that "Member States agree to adopt, individually, at bilateral or regional levels the necessary measures in order to achieve progressively the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence by their citizens within the Common Market".[5] COMESA has already, in 2001, concluded a protocol on the free movement of persons, labour, services, and the right of establishment and residence, although it is not in force yet.

According to these objectives and binding undertakings, as well as the programmes being implemented, COMESA aims for deeper market integration covering the establishment and operation of a free trade area, a customs union, and a common market, as well as an economic union involving integration through harmonization and coordination of policies in the various sectoral areas, progressively leading to "a payments union as a basis for the eventual establishment of a monetary union".[6] This scope of integration is not unique to COMESA. The EU for example, has already quite successfully travelled down this road. And it is well worth recalling that Article 1 of the Treaty has already established the common market, by providing that "the High Contracting Parties hereby establish among themselves a Common Market for Eastern and Southern Africa".

The Economic Integration Development Strategy

Resulting from the horror and devastation of the Second World War of 1939-45, and in order to make war unthinkable, to reconstruct Europe, to ensure peace and prosperity, Europe adopted economic integration as the overarching strategy for building the future of Europe. Europe was to pursue ever closer integration of its peoples, economies, and countries. It became a customs union in 1968 and a single market in 1992. It is now the European Union. This deeper integration has been pursued to achieve the development and security objectives prioritized consistently over the years. The one most important achievement of the European integration project has been a full generation of peace and prosperity; and the moral of the story has been that deeper economic integration assists to make war unthinkable and to promote prosperity for the people, and of course that like anything else in life, there will be challenges along the way, to be overcome.

In the case of Africa, decolonization has now been achieved, which was the stated priority and objective of closer cooperation among Africa's States under the Organisation for African Unity, since the 1960s. Fighting together, pooling and sharing financial and military resources, one country after another became independent. But political emancipation was never the only or end goal of the struggle; economic emancipation too has been equally prioritized over the years. Following the adoption of the Lagos Plan of Action in 1980, successive instruments establishing regional economic communities in Africa have provided for economic integration as over-arching development strategies to be pursued by the Member States. The economic integration typically envisages deepening integration beyond FTAs into customs unions, common markets and economic unions and monetary unions, together with cooperation in key sectors such as infrastructure, industry and agriculture. This template has been consensus in Africa for decades, and COMESA was no exception when the Treaty was concluded in 1993. The other eight RECs in Africa, recognized by the African Union, provide for the same template for regional economic integration.

Of all the RECs in Africa, the EAC has achieved the most progress. It has been a common market since 2010, and it became a customs union in 2005 - levels of integration yet to be achieved in the other RECs. The experience of the EAC will always be valuable as it can provide important lessons for the other RECs such as COMESA for which it was in fact supposed to be a fast track; COMESA was supposed to follow suit as the EAC trail-blazed ahead.

Evidence available so far strongly suggests that the EAC integration programmes have been successful. Intra-EAC trade has doubled since 2005, and the closer integration and consultation framework has increasingly resulted in a peaceful and secure EAC, an island of peace amidst some war torn neighbours. Revenue collections from trade taxes have increased, especially on VAT and excise, resulting from increased trade, although revenue loss was grossly feared during the negotiation of the customs union. For instance, according to the Kenya Revenue Authority, revenue collections in Kenya quickly increased from a third a billion dollars to half a billion dollars annually, after the first year of the customs union.

A number of studies have been done to assess the impact of economic integration in Africa. All these studies have on the whole recommended that deeper economic integration will be beneficial. Before the conclusion of the Treaty establishing the African Economic Community, in 1991, a major World Bank study and others by the Economic Commission for Africa and the African Development Bank, ascertained that deeper economic integration in Africa was the way forward and would be the appropriate economic development strategy.[7] These studies continue to be done today, a typical incarnation being the "Assessing Regional Integration in Africa" series (ARIA), which is an annual joint publication of the Economic Commission for Africa, the African Development Bank and the African Union Commission.[8] These annual flagship publications have consistently argued and demonstrated that deeper integration is the way forward for Africa.

The above publications since 2010 inspired the programme now adopted by the African Union Heads of State and Government for building a Continental Free Trade Area and a Continental Customs Union on the basis of a number of pillars in the categories of market integration, industrial development, infrastructure development, and trade facilitation. Other notable institutions that have produced well researched and informative studies similarly recommending deeper integration are UNCTAD[9] and the United Nations Development Program[10]. These studies have also projected and demonstrated significant welfare gains from deeper integration.

The analytical work has been unanimous that elimination of customs duties on trade among the Member States, by itself, will not achieve the developmental aspirations of the people and will fall short of the potential welfare benefits available. By implication, this means that free-trade areas are not enough to achieve the developmental objectives of the Member States. The work further demonstrates that market integration should be coupled with industrial and infrastructure development, trade facilitation, and policy coordination and harmonization to address policy and regulatory constraints. Projections have also been unanimous that elimination of customs duties, when coupled with elimination of non-tariff barriers and trade facilitation, results in far more welfare.

Recent work in July 2013 by the Institute for Development Studies of Sussex University, for instance, estimates that a Tripartite FTA involving elimination of duties and non-tariff barriers as well as trade facilitation will generate additional new trade worth US $7.7 billion annually, constituting an increase of about 20% over the 2014 baseline; whereas mere elimination of duties would generate just US $250 million annually. The analysis has shown further that every Member State has industries that will gain from the Tripartite FTA, where growing incomes and jobs will be generated.

The importance of not limiting integration programmes to trade liberalization alone, or to free-trade areas as such has therefore become received wisdom. COMESA, for instance, has always pursued various integration programmes simultaneously rather than following the linear approach to economic integration, of first completing the FTA, then completing the customs union, and only then moving on to the common market and other stages of integration.

Rather than water-tight or compartmentalized stages of regional integration, COMESA already implements all necessary programmes that support the achievement of its developmental objectives. Some of the key programmes already being implemented include: services liberalization, because services facilitate trade and are essential welfare generating activities in themselves; infrastructure covering surface and air transport, energy, and ICT in order to promote competitiveness; and industrial and agriculture development in order to improve the productive capacity of Member States so they can better utilize the market access opportunities and achieve such public policy objectives as food and nutrition security and wealth creation including among the ordinary people and rural populations.

Others are science, technology and innovation, because development has always been technology-led and we live in the age of information and knowledge-driven economies; visa relaxation and freer movement of people; macro-economic and fiscal convergence in order to promote macro-economic stability; and peace and security in order to promote political stability and safety of human life, which are key location factors for generating investment. Under the linear model of regional integration, these other programmes are supposed to be initiated and implemented during advanced stages of regional integration, such as the common market or the economic union. On the contrary, this pragmatic approach seeking to tackle the existing challenges in order to achieve the common developmental objectives is the template for continental integration, and is embedded in the constitutive instruments of the RECs of Africa, including in the COMESA Treaty.

To pose the question of whether or not COMESA should pursue deeper economic integration is therefore to re-open a lot of issues that have been considered settled since the emergence of independent Africa; issues that have been investigated and settled in authoritative policy publications over the years by continental and international institutions. Before any REC is to change direction, it would be wise to think collectively on the continental and global level, revisiting all the work done so far and the resulting instruments and decisions already adopted at the highest political level as the continental and regional consensus.

As said earlier, COMESA has been a free trade area since 01 November 2000. It launched its customs union on 07 June 2009. Since then, however, progress on the regional integration programme has been slow. Due to entrenched national trade or economic policies that are diametrically inconsistent with customs unions particularly the element of the common external tariff, some Member States, notably Egypt, Mauritius, Seychelles and Zimbabwe, have been quite reluctant to implement the COMESA customs union, giving a number of reasons. If forming the customs union is considered problematic, going any deeper into the common market or economic union or monetary union must be even more difficult, raising far more serious policy questions. What are considered problems or obstacles to forming the customs union will emerge more voraciously with respect to common markets and economic unions or monetary unions. Therefore, the real question is whether the road to regional and continental integration in Africa should come to an end. Fortunately, there is no shortage of analytical work and empirical experience to draw upon. As indicated, the literature strongly demonstrates that deeper integration must be the way forward in Africa; and experience, for instance from the EAC verifies that deeper integration is indeed feasible and enormous welfare benefits will result.

Questioning Market Integration Now – How the Trade Policy World has been changing

Since the 1950s, trade policy in Africa has been changing, with implications for regional integration. Some eras and certain trade policy dispositions have been favourable and supportive of regional economic integration, while others have been unsupportive. We are in an era and a general trade policy disposition that is unsupportive of regional market integration in Africa (FTAs and customs unions), and instead prioritises access to developed country and emerging markets.

There is an irony in this though: with the stalling of the WTO negotiations between 2001 and 2013, developed countries have taken to regional trade arrangements (the transatlantic and the transpacific for instance) as the way around the market access promise of the WTO negotiations.

Before the 1960s, colonial policies prevailed in Africa, which was largely a source of raw materials for industries in the metropoles. Colonial regimes promoted regional integration in

Africa largely for their administrative convenience. However, some initiatives resulted in deep integration in terms of currency zones, common public services, and integrated labour markets, a prime example being the old East African Community that continued until 1977 when it broke up, as well as the Nyasaland Federation between current Malawi, Zambia and Zimbabwe. These colonial initiatives didn't prioritise the creation of regional markets for trade because trade was, supplying the metropolitan economies with raw materials. A telling example of this is that in central and West Africa, the creation of currency zones sometimes referred to as CFA monetary unions didn't in fact establish functioning monetary unions, let alone functional FTAs. To date, serious non-tariff barriers remain in the region and trade routes and transport infrastructure remain the colonial constructs of ferrying out raw materials to Europe.

One of the most important developments that ended the colonial period, however, was pan-Africanism, a movement that galvanized Africa as a whole into a coordinated resistance against colonialism and a solidarity for working together to tackle common challenges and pursue joint objectives. The Organisation for African Unity was the embodiment of the pan-African effort. It has always been fashionable to criticize the OAU for its shortcomings, but decolonization and the progressive evolution into the African Union in 2000 in order to refocus on economic emancipation can be put to its credit.

In the 1960s, together with the priority of decolonization and the universal optimism that included medium to long term development plans in Africa, import substitution polices were pursued by many countries in Africa. Import substitution seemed to resonate well with the formation of deep integration in Africa, in terms of creating economic spaces protected from imports from the rest of the world. This was not unique to Africa.

Raul Prebisch, who became Secretary General of UNCTAD, has been considered a leading proponent if not the father of import substituting regional integration in Latin America. The UN Economic Commission for Africa, established in 1958, was already championing regional integration, and working with Governments to form and operate various regional economic communities. The Preferential Trade Area of Eastern and Southern Africa of 1982 to 1993, the predecessor to COMESA, was in large measure a brain child of the ECA. By the 1960s, scholarship had more or less reached consensus that regional integration in Africa should not be confined to vinerian economics in terms of frowning upon trade diverting customs unions, but rather that regional integration in Africa was critically about development and should cover all pertinent interventions required for social economic transformation and development. On this basis, regional integration was immensely attractive in dealing with the pressing development challenges that faced the new nations of Africa. Regional integration was already development integration.

In the 1970s, programmes to establish the New International Economic Order, a global initiative pronounced at the level of the UN, were attempted. The programmes resulted in improvements in the international economic order, including the trade order. A number of development institutions or agencies were established as part of the UN system. The World Bank established development arms such as the International Finance Corporation, and put some focus on Africa after the reconstruction of Europe. Permanent sovereignty over natural resources was recognized as a right in international law. Work advanced on regulating transnational corporations, although the proposed draft code produced by UNCTAD was eventually shelved in the 1980s. In this sense, the world changed. Regional integration arrangements came to be seen as frameworks for continuing the work on the new international economic order, for they continued to echo the key sentiments of establishing new inter-state economic regimes in various sectoral areas designed to be different from the mainstream economic regimes of the day that largely were colonial relics which privileged developed country economic operators all over the world, and to deliver social economic development in developing countries, including in Africa.

In the international trade order, a number of provisions to address development challenges of developing countries that had been added to the General Agreement on Tariffs and Trade in the 1960s, such as Article 18 and Part IV, were operationalised in a limited sense. This was to allow developing countries some flexibility from the general rules, for instance to take measures to protect their balance of payments positions and allow them adopt initiatives for giving preferential treatment to imports from developing and least developed countries, under the Generalised System of Preferences (GSP) schemes. The Enabling Clause was adopted in 1979 to put these initiatives on a permanent basis in the international trade system, to allow GSP schemes and flexible rules for formation of regional trade arrangements among developing countries. The GSP schemes continuously grew in importance, and developing countries increasingly prioritized access to developed country markets over access to regional or even national markets, in a way perpetuating the colonial trade and infrastructure constructs that largely ignored the development of regional markets.

By the 1980s, however, the main thrust of the new international economic order was increasingly being abandoned. The overall assessment has been that the new international economic order failed largely because developed countries ultimately refused to agree to binding commitments that would have guaranteed this new order. Instead, trade liberalism took hold in the 1980s. Development optimism for developing countries had dwindled; commodity prices crashed, and heavy borrowing had resulted in high indebtedness. Structural Adjustment Programmes (SAPs) were adopted by most countries in Africa, and the international financial instruments oversaw the adoption and implementation of autonomous liberalization policies, liberalization of the current and even the capital accounts, deregulation in the economy, cutting down on the size of government, and closing down of government-funded social programmes including education, health and farmer organisations.

In the 1980s, during the onslaught of the SAPs, regional integration in Africa was de-emphasized, the most dramatic about-turn being the abandonment of the Lagos Plan of Action adopted in 1980, which called for the African Common Market and sustainable self-reliance in economic development planning. However, SAPs later came under attack for the adverse impact they were producing in Africa.

The Washington Consensus was largely replaced in the 1990s by the Third Way, meant to be the middle ground between extreme liberalism and the welfare state. This thinking was rigorous enough and attracted internationally renowned economists and sociologists (Dani Rodrik and Antony Giddens, for instance), and contributed to new approaches in trade policy and economic development thinking. Many countries adopted poverty reduction strategy papers that put significant priority to development of social services such as education and health. The WTO, formed on 01 January 1995 as the global guardian of a liberal trade order, quickly faced the challenge of invigorated developing countries calling for development initiatives in the multilateral trade system, such as access to medicine, special and differential treatment, abolition of distortive subsidies in developed countries, and capacity building.

With the collapse of extremist economic liberalism, regional integration took root again; and indeed the World Bank produced a new report launching new policies in Africa, which was supportive of regional integration. The Treaty establishing the African Economic Community was concluded in 1991, which provided the template for the constitutive instruments of the regional economic communities that were subsequently formed in Africa. The Preferential Trade Area for Eastern and Southern Africa was transformed into COMESA by Treaty, in 1993.

The revolt against the liberal trade order, however, has had unintended consequences on the programmes for regional integration in Africa. The revolt has tended to additionally fight market integration as well. For some Member States, no distinction has been made any longer between trade liberalization under the WTO and under other relations with developed countries such as the Economic Partnership Agreements with the EU, on the one hand, and trade liberalization under the regional integration programmes on the other. Uganda remains an example of a country that explicitly held out on joining the COMESA FTA on the grounds that it had already undertaken extensive trade liberalization under the SAPs and needed time to recover.

For developing countries to be able to take a stand at the WTO against developed countries, intensive capacity building programs were undertaken for them in negotiating tactics. A number of organizations seconded young graduates to government trade ministries of developing countries, as trade policy analysts and advisors, who saw their role as fighting the aggressive market access intensions of developed countries in trade negotiations. Civil society organizations worked closely with developing country negotiators to equip them with analytical work, slogans and hostility against trade liberalization at the WTO and under the Economic Partnership Agreements (EPAs) with the European Union. By 1999, developing countries were already showing signs of impressive confidence in saying NO to developed countries. That year's Cancun ministerial conference of the WTO collapsed, by ending without a declaration and failing to achieve the objective of developed countries of launching a new round of trade negotiations for further trade liberalization covering a number of new areas especially public procurement, investment and competition policy.

By the end of 2000, developed country efforts to strengthen the WTO rules on intellectual property had been defeated, and prioritization of development issues was the only way forward for the WTO. That is why the new round of trade negotiations eventually launched in November 2001 was called a development agenda (the Doha Development Agenda).

Developing countries participated actively in the new round of negotiations, blocking progress on practically all issues of priority interest to developed countries, including the opening up of the markets of advanced developing countries in the industrial goods sectors. Negotiations with the EU for economic partnership agreements had taken place in the same mold, with developing countries stridently challenging the EU tactics of driving hard deals. By 2013, with the WTO and EPA negotiations yet to be concluded, an army of seasoned developing country negotiators had participated in hard core trade negotiations with developed countries, and some had returned to their capitals and been re-deployed as the officials covering regional integration bodies like COMESA and the Tripartite. This brand of negotiators hardly changed gear or adjusted to the different set of issues and the need for a very different approach to negotiations for regional integration arrangements. They continued to oppose any semblance of trade liberalization in the regional integration programmes.

The expectation has been that regional integration negotiations should be considered as discussion among family, rather than with dangerous opponents. The reality, however, is that former WTO and EPA negotiators have been equally tough and adamant in the meetings of the regional integration organizations like COMESA and the Tripartite, as they have been in negotiations with developed countries at the WTO and in EPAs, which has now tended to block the required progress on regional integration programmes. In COMESA, joining the FTA has therefore been quite problematic for Member States that had not joined by the time the revolt against trade liberalism matured; and forming the customs union has equally been challenged as a complex trade liberalization initiative.

Certain Concerns about the Customs Union

The main problem that confronts the COMESA customs union and the continental integration programme of building the African Economic Community beginning with the Continental FTA and the Continental Customs Union is the national policies of some Member States that are unsupportive or even diametrically inconsistent. Such Member States fight those regional integration programmes that they think would unravel their national policies.

This paradox is striking. One would expect regional integration programmes as collectively adopted by the Member States to reflect consensus; and be international commitments that Member States should honour and faithfully implement. Also, one would expect the regional integration programmes, as a matter of course, to reflect the best practices at the national level and on this account to enjoy utmost ownership and support. But the reality on the ground is that some Member States have disowned some regional integration programmes on the basis of their national policies. What complicates matters is when such Member States don't take the obvious step of seeking derogation from or some accommodation but instead set out to delay or block due implementation of the programme.

Member States that aim to become duty free zones would find a customs union's common external tariff (CET) with positive duties to constitute policy reversal. For Mauritius and

Seychelles, about 85% of their tariff lines are already at a 0% MFN duty rate, and about 50% of their national tariff lines have rates that are different from the CET rates. Egypt and Zimbabwe have a large number of tariff lines with a 5% duty rate, which would need to be adjusted to the CET's 0%, 10% and 25% duty rates on raw materials and capital goods, intermediate products and final products respectively. These two countries have argued that raising the duties from 5% to 10% or 25% would reduce the competitiveness of their products due to higher duties of inputs and would reduce the welfare of the people due to higher consumer prices especially for essential products such as foods. On the other hand, reducing the 5% duty rate to 0% would cause revenue losses for the governments.

Sudan and Zimbabwe have pointed to the currently prevailing bad economic situation as posing difficulties in implementing the customs union. Sudan has pointed out that it lost key oil assets to South Sudan at the independence of South Sudan, while Zimbabwe has pointed to the decimation of its economy under the prevailing economic sanctions imposed by some economically significant countries of the world, which have weakened the domestic industry, and caused a shortage of government revenue.

Some Member States, especially Malawi and Zambia, progressed well in implementing the transition period in terms of domesticating the key customs union instruments, but with the change of government, new policy directions were adopted that slowed down the implementation. Zambia for instance is now reviewing its trade agreements as a new government policy, and this has been understood to include the customs union. Egypt and Mauritius have raised the matter of having to re-negotiate their tariff schedules at the WTO, arguing that the CET will result in raising their tariffs beyond the bound rates at the WTO. They have maintained this fear although it has been explained that the overall level of tariffs under the CET is lower than the overall level of national tariffs and therefore adoption of the CET would not require re-negotiation. These are the arguments that have been advanced to block progress on implementation of the COMESA customs union, and are likely to be the arguments against any customs unions involving these countries, especially those with CETs with positive rates and rates that are different from those under the national tariffs of the Member States.

A key issue is whether the short term revenue losses from elimination or reduction of customs duties on certain tariff lines, can be addressed. Analytical assessments, for instance the recent July 2013 study by the Institute for Development Studies of Sussex University, clearly demonstrated that revenue losses resulting from elimination or reduction of customs duties can usually be recouped from slight increases, of say 0.1%, on the rates of trade taxes such as VAT or excise. Even without the slight increases on trade taxes, the recent experience of the EAC following the adoption of the CET at the formation of the customs union in 2005, has demonstrated that increase in trade resulting from the formation of the FTA or the customs union or the general good economic performance, will more than offset the temporary revenue losses.

Furthermore, the COMESA Adjustment Facility has already been used by a number of Member States to address their temporary revenue shortfalls resulting from entering the COMESA FTA or the EAC Customs Union. In the first round, Burundi and Rwanda got disbursements from the

Fund; and in the second round, all the 14 eligible COMESA Member States will get disbursements for adjustment to implementation of COMESA obligations.

On loss of sovereignty, there can be no doubt that this is a concern that is critically dear to the governments of the Member States. This has always been the case since the days of decolonization. However, the matter was addressed by the principle of *uti possidetis*, under which existing borders, though they were colonial boundaries, were maintained and the sovereign equality of Member States recognized. Beyond that, the Member States clearly saw their limitations as individual states in light of the grave political and development challenges they faced. On this basis they agreed to joint efforts, which necessarily entailed a degree of limitation of sovereignty through joint decision-making. That was under the OAU.

After the 1994 genocide in Rwanda, and other serious divergences from African norms of the good life that resulted in loss of life, the African Union introduced an important modification to the principle of non-interference, in order to allow collective action to address serious breaches of the peace in Member States that results in un-acceptable loss of human life. The African Union, in addition re-invigorated the economic integration programmes by re-organising the Commission, setting clearer integration priorities for instance under the Minimum Integration Programme, strengthening relations with the RECs, and launching initiatives for the Continental FTA and the Continental Customs Union. All these initiatives, by definition, entail some agreement to joint action in a manner that limits unilateral action, the promise being that together the Member States are stronger and can jointly address cross-border challenges whether they be political, social or economic.

In terms of challenges to sovereignty, neither economic integration, nor the FTA or the customs union will undermine the sovereignty of Member States. As has always been the case, instead the weakened populations and governments resulting from under-development and disunity will undermine sovereignty. Peace and prosperity resulting from regional integration are perhaps the best sustainable ways of ensuring the sovereignty of each Member State in international relations for together; the Member States will be politically and economically stronger and richer.

The 0% to 10% to 25% CET structure reflects the industrial policy that the COMESA region adopted of promoting the importation and use of low-priced raw materials and capital goods through a 0% duty rate; and attempting a balance between low-priced inputs and promoting the emergence and growth of industries in the region producing intermediate products, which increases trade in inputs and promotes vertically integrated production structures; while protecting industries that produce finished products with a duty rate of 25%. For each tariff line, a number of considerations were then taken into account in determining the rate. These are: the need to promote competitiveness in the region, availability of or potential capacity to produce the product, and revenue implications of the tariff rate.

Before the launch of the customs union on 07 June 2009, the key instruments required for a customs union had been finalized and adopted, namely, the CET, the Common Tariff

Nomenclature (CTN), and the Customs Management Regulations (CMRs). The regulations governing the customs union were adopted, providing policy space and flexibility for dealing with situations that could arise. In particular provision was made for safeguard measures, above all providing that the FTA regime would continue to apply among the Member States including those that would not join the customs union. This was meant to assure the Member States that would remain outside the customs union that the CET would not apply to them, as the FTA regime would continue to apply.

A Committee on the Customs Union was established to oversee the implementation of the three-year transition period, and to address any outstanding and emerging issues. At its first meeting, the committee adopted a roadmap for the three-year transition period, which listed outstanding issues to be addressed and steps to be taken by the Member States in order to achieve the customs union. The most important steps to be taken were domestication of the CMRs and the CTN, and preparation and gazetting of schedules for alignment of the national tariffs to the CET.

Three schedules were to be produced: the schedule for tariff lines with rates that were already aligned to the CET rates, the schedule with tariff lines where the rates were not aligned but were to be aligned within the transition period, and the schedule where the tariff lines would only be aligned in the long run or even excluded from the CET for religious and cultural reasons.

The Secretariat produced guidelines on domestication of the customs union instruments, setting out the steps to be taken at the national level; as well as draft schedules for alignment for each Member State. The Secretariat assisted Member States with tariffs with specific duties to convert them to ad valorem equivalents, working closely with the WTO secretariat. The Secretariat undertook studies on the key outstanding issues of the 5% duty rates and how Member States with a substantial number of tariff lines with rates below the CET rates could deal with the customs union.

The studies recommended that the CET structure of 0% to 10% to 25% as already adopted by the Council and the Summit should be maintained and a 5% tariff band should not be introduced, and that once the concerned Member States prepared their lists of sensitive and excluded products, it would be obvious that the policy space and flexibility including safeguards, could be applied to fully address any residual issues. The studies assessed the implications for competitiveness and revenue losses and found that the fears were quite exaggerated, supported by the experience of the EAC, which was operating a successful customs union since 2005. As a last resort, the studies recommended progressive alignment, providing detailed scenarios for partial alignment.

To follow up on resolution of all outstanding issues, the Secretariat approached Member States to assist them facilitate national stakeholder workshops, where the customs union would be comprehensively discussed and consensus reached on the way forward. Successful missions and workshops were held in Malawi, Congo DR and in Zambia, where clear roadmaps for implementation of the customs union were developed.

On its part, the Council took a number of additional decisions to streamline the process of implementing the transition period. The decisions set thresholds for sensitive and excluded products of 20% and 5% respectively (the third schedule), clarified the policy space and flexibility available to Member States, recalled and re-affirmed the need to implement the transition period. What actually happened though was that the protagonists against the customs union had adopted a clear strategy of finding fault with any studies produced and calling for additional studies endlessly. So, there were also Council Decisions calling for follow-up studies. This trend didn't stop even when the Summit decided to set up a Ministerial Task Force on the Customs Union, to provide political guidance in the exercise of implementing the customs union.

The most important decision the task force took was to set new timeframes for taking the precise steps for producing tariff alignment schedules and domesticating the CTN and CMR. These timeframes were also quickly overtaken by events as a subsequent extra-ordinary meeting of the Council took the decision that the three-year transition period for implementation of the customs union should be extended by another two years, that is, from June 2012 when the three-year transition period expired, to June 2014.

The Secretariat produced a list of all issues raised against implementing the customs union over the three year transition period and produced a comprehensive paper addressing them. The issues were the following: loss of sovereignty, the existing FTA is adequate, the Tripartite FTA should be adequate and should be prioritized over the customs union, policy reversal for countries that would have to raise their duty rates in adjusting to the CET rates, loss of revenue, domestic industries would be wiped out, the industrial break down and the bad economic situation in some Member States especially Zimbabwe, and lack of capacity in Member States; as well as the issue of tariff lines with a duty rate of 5%.

In addressing these concerns, the Secretariat paper pointed out that there would be no loss of sovereignty but rather a sharing, in limited or selected areas, that would collectively strengthen the Member States when they coordinate and work jointly to address regional challenges and in relations with third countries. Here reference was made to the experience of the EU. The paper also pointed out that the customs union would build on, and consolidate, the FTA - and didn't conflict with the tripartite process, which similarly aimed to ultimately merge the three RECs into one.

On policy reversal, it was pointed out that the regulations already provide that the FTA *acquis* would be maintained under the customs union. The FTA regime would continue to apply among the Member States and the CET would not apply to trade among such Member States. The possibility of derogation was highlighted.

Regarding the fear of loss of revenue, reference was made to analytical work already done which demonstrated that the fear was exaggerated, while indicating the compensatory mechanism for revenue loss (the COMESA Adjustment Facility) which was already being used by some Member States to cover initial losses on joining the FTA.

On protection of domestic industries and the bad economic situation in some Member States, reference was made to the experience under the FTA showing that trade was booming and no adverse impact on domestic industries had resulted, besides the possibility of listing some key products as sensitive or taking safeguard measures.

Another issue raised was the position of the four Member States belonging to both the EAC customs union and COMESA, namely: Burundi, Kenya, Rwanda and Uganda. Analysis of the two customs unions established a significant degree of similarity, since indeed the two had copied from each other during the negotiation and preparation. On the CETs for instance, about 80% of the tariff lines had similar description and rates and were therefore harmonized. The remaining 20% were different due to misclassification, mis-description, or different descriptions of products, and could therefore be worked through. The other cause of difference is that COMESA being a larger REC has a little more tariff splits than the EAC. These too can be discussed and agreed by the two RECs for harmonization.

On the CMRs, it was established that the main difference was that the COMESA CMRs left lots of powers to the Member States, while the EAC Customs Management Act (CMA) was specific and detailed. On this, the way forward proposed was that the four Member States could put forward to COMESA the EAC CMA as their national law that implemented the COMESA CMRs. The upshot was that any perceived differences between the EAC and COMESA customs unions could be addressed, which would resolve the huge political issue, namely that the four Member States could belong to the two customs unions since they were harmonized, and would not have to take a difficult decision of a choice between EAC and COMESA.

This outcome is important to note. It means that the EAC in effect forms a core group of countries spear-heading regional integration in the southern and eastern Africa region and perhaps Africa at large, given the fast progress made and the membership of the five Member States in other regional economic communities and in the African Union. There is need to ensure harmonious development of future integration programmes, so that Member States of any regional economic community are not confronted with inconsistent regimes emanating from some of the organizations they belong to.

Anyway, the Member States discussed the paper and called for more papers and studies. It may be worth noting that in practice, while Member States have asked for study after study, the studies have been rejected when the analysis has reached conclusions that the Member States didn't expect or that were inconsistent with their prior stated positions.

The Real Reasons

The real reasons why some Member States have developed cold feet on the customs union and on the whole to regional integration may be different. The paradox of national trade and economic policies that go in a different direction not supportive of deeper integration in COMESA has been pointed out.

In addition, some Member States, having prioritized access to important markets of third countries over the years or due to cultural affinities to certain third countries, have entered FTAs that the CET would affect. Egypt for instance is a member of the Arab FTA and would find it problematic to apply the COMESA CET to members of that FTA especially as ensuring Arab unity is a key plank of Egypt's foreign policy. Other FTAs are with the EU, EFTA, Turkey and MERCOSUR. Mauritius likewise has a free trade area with India and other third countries against which it would not want to apply the COMESA CET.

Mauritius has pointed out in addition that its economic liberalization programmes are underpinned by donor and partner funding and conditions under which they are committed against any interventions that would amount to policy reversals, such as implementing the CET. This Mauritius takes quite seriously. Zimbabwe, Madagascar, Mauritius and Seychelles have concluded and ratified economic partnership agreements with the EU, which provide for bilateral FTA market access arrangements between each of these countries and the EU. The COMESA Treaty has the standard provision that recognizes this possibility but requires notification to COMESA and consistency with the objectives of COMESA. In this case the objectives include establishment of deeper economic integration covering the COMESA FTA, customs union and common market.

There is here a clear demonstration of the wisdom of these requirements in the Treaty, for FTAs with some third countries are resulting in adverse implications for the COMESA integration programme. The third parties involved would obviously not support the COMESA deeper integration programmes particularly the application of the customs union's CET. This trend is observed in many other states of the African Union and is likely to come back to haunt the continent when time for implementing the programmes for the continental customs union and common market are broached or implementation attempted. The political fallout would be obvious, and the entire paradigm for continental integration would be put in question, if not abandoned.

In real life, influential individuals with vested interests, especially industries that need patronage or protection from competition, have access to leaders in government. Implementation of regional integration programmes takes place in this context. Trade negotiations increasingly first take place at the national level between governments and influential private sector operators. These may commit governments to pursue certain national positions reflecting the objectives that are favourable to influential stakeholders. This is not surprising, given the priority programmes that governments have been pursuing, namely, attraction of investment and improving the business environment; and in this regard facilitating access by private sector operators to the executive and government officials at the highest political level without too much bureaucracy. In fact, government officials from trade ministries go into meetings with mandates that do not extend to pursuing the broader objectives of inclusive development, but narrowly limited to increasing the number and size of investments, and protecting important domestic industries.

There are of course other stakeholders that should be fully taken into account, to achieve the stated priority objectives of ensuring inclusive development that spreads the benefits of economic growth and advances in technology to all the people, especially the marginalized sectors. In this regard governments would be advised to fully accommodate all the stakeholders in a balanced manner, including consumers who are usually left out of major discussions due in part to absence of or weak consumer organizations and lobby groups in some Member States.

This is why trade agreements always provide a degree of policy space and flexibility. This is to allow some elbow room for governments to handle such situations through accommodating the need to protect certain industries, hopefully in a manner that on the whole doesn't result in overall welfare loss or in rent-seeking. Governments would need to have undertaken proper analysis on the basis of adequate data, to make informed decisions which can be implemented transparently, having notified the other Member States. But there has been inadequate analysis and data, resulting in opaque positions that have not promoted constructive engagement in a manner that supports overall progress with regional integration programmes.

In most Member States regional integration is under the docket of the trade ministries. In the absence of adequate ownership and involvement by the ministries of finance and planning and foreign affairs, which are influential ministries, regional integration has not been appropriately prioritized in development planning and national budgetary allocations. It is not uncommon for trade ministries to get a mere 1% allocation of the national budget. Apart from more financial and human resources, this calls for establishment of an inter-institutional framework to mobilize all relevant ministries to the regional integration effort.

Besides, in most Member States the units or desks dealing with COMESA matters are typically small and weak in terms of human resource and financial allocations. The approach in the EAC, where whole ministries dedicated to EAC affairs were established, is good practice to consider.

Above all, treaty obligations and decisions agreed and adopted by the Heads of State and Government and the Council meetings as the organs responsible for regional integration, have not been implemented. Without implementation there cannot be much progress yet the obligations on Member States are clearly to be implemented, not only for the welfare gains of the country and the region as a whole, and in the name of African solidarity and the longstanding pan-Africanism that secured the liberation of the continent, but also as a matter of duty and law.

Obstacles in Implementing Regional Integration Programmes

There are several reasons why implementation has not been better than it is. The overarching legal reason is that the COMESA instruments are not domesticated by the Member States. There should be domestic laws to that effect, through policy instruments and action plans that operationalize the COMESA obligations within the domestic legal, economic and political systems.

This inertia can be attributed to, among other things, dysfunctional government or civil service following years of economic survival and brutalization that has drained whole populations of the work ethic and reduced them to cynicism and apathy; in other cases it is a culture of impunity and no rule of law resulting from governments without accountability to stakeholders and without responsibility for peace and prosperity; international obligations are forgotten before the ink dries; treaties are not enforced in regional courts (including the COMESA Treaty) except perhaps the EAC Court which is increasingly generating important jurisprudence and establishing itself as the linchpin of the EAC integration programme; and paucity of integration lawyers in government (civil service, executive, parliament and judiciary), and in private law practice.

There are institutional reasons as well: integration instruments and programmes are not in the national long term, medium term and annual plans; lack of dedicated ministries or strong departments (again, EAC ministries are a best practice); lack of inter-ministerial coordinating committees (enabling laws and appropriate placement in the hierarchy of ministries are important); regional integration is not adequately mainstreamed into national decision-making processes (not a regular cabinet topic); weak or no parliamentary committees on regional integration (to demand accountability of implementation and prioritization); and multiple membership, which causes the possibility of conflicting sets of regimes to manoeuvre through by choosing some and disregarding others.

The more hefty reasons, however, might be some of the following political economy and social political factors: unsupportive or integration-blind foreign policies of member states (regional integration is not as important a priority as relations with some third countries who are important cultural, trade or development partners); weak coordinating ministries without clout; human and financial constraints; no dedicated training on regional integration in institutions of higher learning in the Member States; weak participation and ownership by stakeholders (private sector associations and entrepreneurs/ business persons); and there is no cogent salesmanship/ public relations machine for COMESA to market regional integration among influential stakeholders. A national policy and planning tool is, therefore, required to prompt governments to ensure that regional integration is fully factored into all the planning, budgeting and implementation or operational processes at the national level, covering public and private sector stakeholders. This could be the equivalent of the poverty reduction strategy papers; there is need for national country strategy papers for regional integration. This has recently been attempted in Malawi and Swaziland, with the technical assistance of the Economic Commission for Africa.

In the COMESA region, no one will lose an election just because they don't care about regional integration. Regional integration is yet to be a visible factor in the national and regional, social political processes – media, education, local government (*The East African* newspaper is a best practice though an isolated one in the region). But the business community is light years ahead of government, in a parallel domain, in terms of their regional cross-border enterprises and operations; struggling to survive the inaction or misfeasance of governments in the form of non-tariff barriers.

Funding for regional integration is shamefully inadequate. It is donors who largely fund the integration programmes, and this is not unique to COMESA. Donors fund 93% of the African Union budget yet alternative sources of funding proposals have been vigorously resisted by some Heads of State and Government at the African Union Summit. The Obasanjo Report recommended US $2 per hotel stay and US $10 on air tickets into and out of Africa, excellent proposals which shockingly drew some objection, at the January 2012 Summit. Well, without funding, the rest is history. Best practices from ECOWAS, however, hold out some hope: the community levy is functioning successfully, yielding upwards of US $600 million a year.

When all is said and done, the question is: to integrate or to die? Member States have not answered this question yet. The policy and law apparatus has not adequately been mobilized to the integration effort. The point needs to be made that those that resist or downplay regional integration are vigorously advancing political weakness and human poverty and misery. Fables need to be told again: you can break a twig easily, but a bundle of them, united, is much harder to break. To eat the stack of hay, two donkeys tied to each other, should agree to eat one stack first, together, then move on to the other. Without cooperation, the people will wallow in hunger and misery.

The timing for urgently tackling the dreadful enemies of humankind represented by hunger, poverty, disease, illiteracy, and injustice, has never been better; given the favorable international public opinion supporting initiatives to permanently address the development challenges facing the remaining poor countries on this planet.

And what is more, humankind now possesses the technological capacity to permanently rid the world of poverty and want, to ensure adequate food, water, shelter, education, medicine, and prosperity and freedom for all. What are required are frameworks for harnessing it, and regional integration is such a prime framework.[11] There is indeed a tide in the affairs of men, which taken at the high leads on to fortune and prosperity; but missed, the people will be stuck in poverty and misery (a play on Shakespeare's wisdom in the play *Julius Caesar*). If governments fail to rise to the challenge and seize the opportunity now, the rest will be a slow painful death for years to come.

The Legal Obligation to Implement the Integration Obligations – Case Study the COMESA Case of *Polytol V Mauritius*, Reference No. 1 of 2012

In a landmark case, in a judgment delivered on 31 August 2013 in Lusaka, the COMESA Court of Justice decided that the Government of Mauritius, by imposing a customs duty on imports of a product (car paint) from Egypt, acted contrary to Article 46 of the COMESA Treaty, which required that Member States eliminate by the year 2000 all customs duties and other charges of equivalent effect on goods which originate from the member states that are in the COMESA Free Trade Area.

The Court ruled, in addition, that an agreement between two or more Member States to re-instate customs duties on trade among themselves, in this case between Egypt and Mauritius, is contrary to the object and purpose of the Treaty and in breach of the Treaty; and that instead, Member States can use Article 61 of the Treaty which provides a possibility of taking safeguard measures against import surges, for one year after informing the Secretary General, and for additional years if approved by the Council of Ministers.

A company called Polytol Paints, based in Mauritius, on 15 February 2012 brought a case in the COMESA Court of Justice against the Government of Mauritius complaining that the government imposed a customs duty of 40% on its imports of Kapci paints from Egypt from 16 November 2001 up to 20 November 2010, over which period the company paid the duties, which it sought to be refunded. The Mauritius Revenue Authority had declined the claim for the refund. The Supreme Court of Mauritius supported this rejection, in a case in which it decided that: "non-fulfilment by Mauritius of its obligations, if any, under the COMESA Treaty is not enforceable by the national courts".

The company contended that since Mauritius joined the COMESA FTA on 01 November 2000, when it eliminated duties on products originating from COMESA Member States in the FTA including the Kapci paints imported from Egypt, the government acted inconsistently with the Treaty, in particular with Article 46, by re-introducing a customs duty subsequently in November 2001; even if this was done purportedly under an agreement with Egypt to address import surges experienced from 1997 to 2000 as the government claimed.

The court dealt with a number of specific issues. First, the company was challenged that it had no basis for challenging the failure by the Government of Mauritius to implement some Treaty obligations into its national law. On the question of whether the company could sue the government for failing to implement some obligations under the COMESA Treaty, the court held that only the Secretary General or a Member State could sue a Member State for failing to fulfil its obligations, under Article 24 of the Treaty. At the same time, the Court cited Article 26 of the Treaty, which says that: *"any person who is resident in a Member State may refer for determination by the Court the legality of any act, regulation, directive or decision of the Council or of a Member State on the grounds that such act, directive, decision or regulation is unlawful or an infringement of the provisions of this Treaty"*.

The Court therefore held that: *"a legal or natural person is only permitted to bring to Court matters relating to conduct or measures that are unlawful or an infringement of the Treaty but not the non-fulfilment of a Treaty obligation by a Member State. The responsibility of bringing a matter relating to non-fulfilment of obligations under the Treaty is reserved for Member States and the Secretary General"*.

The Court then proceeded to the question of whether or not the Government of Mauritius acted consistently with the Treaty when it introduced a customs duty on imports of the car paints from Egypt. The government argued that obligations under the COMESA Treaty are to be implemented progressively "irrespective of the Treaty timeframe", because only some Member States joined the COMESA FTA and not others, and also because the COMESA Council of Ministers recently extended the transition period for the Customs Union.

The COMESA Court of Justice rejected both arguments above. After citing Article 31 of the Vienna Convention on the Law of Treaties which provides that: *"a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of the its object and purpose"*, the court held that *"Article 46 is clear* *and unambiguous and its terms must be interpreted with their ordinary meaning in the context of the purpose and objective of the treaty to achieve free trade with the COMESA area"*, and that *"Mauritius infringed Article 46 by reintroducing duties on Egyptian products including Kapci paints even if it was for the protection of its industries"*.

On the question of whether or not individuals who reside in the Member States can have an enforceable right under the COMESA Treaty, the Court again cited Article 26 of the Treaty and held that:

> *"The content of this rule shows the extent the signatories of the COMESA Treaty have committed themselves to give some space in the COMESA territory not only to the Member States but also to individuals. By giving the residents of any Member State the right to challenge the acts thereof on grounds of unlawfulness or infringement of the Treaty, the Member States have in some areas limited their sovereignty. The proper functioning of the Common Market is, therefore, not only a concern of the Member States but also that of the residents. The Treaty is more than an agreement which merely creates obligations between Member States. It also gives enforceable rights to citizens residing in the Member States".*

The Government had tried to argue that the COMESA Treaty was not enforceable in Mauritius as the Government had not taken measures to domesticate the Treaty. The Court made it a point to explain at length that the government's actions had breached the Treaty and caused prejudice to the company in breach of its rights provided by the COMESA Treaty, and the government could not use its own internal laws as an explanation or a defense for not implementing the COMESA Treaty. The Court said:

> *"In the case at hand, the Respondent has imposed a customs tariff that is in breach of the Treaty. If the Respondent's Customs Tariff Regulations were consistent with the rules of the Treaty, the Applicant would have paid no customs duty on the Kapci products imported from Egypt during the relevant time. The Applicant was therefore clearly prejudiced because of the Regulations of the Respondent that was in breach of the Treaty. The argument of the Respondent's Counsel that the Treaty is not directly enforceable in some jurisdictions, including Mauritius, and therefore the individuals cannot have rights emanating from the Treaty is misconceived. It is indeed true that there are differences in legal systems regarding their position towards the domestication of international law. In some Member States, Treaties become directly applicable; in others they require another domestic legal instrument for their incorporation. Notwithstanding the differences in domestic legal systems the Treaty objectives can be achieved when all Member States fulfil their obligations under the Treaty. Any Member State that acts contrary to the Treaty cannot, therefore, plead the nature of its legal system as a defence when citizens or residents of that State are prejudiced by its acts. This is clearly*

stipulated in Article 27 of the Vienna Convention on the Law of Treaties, 1969 which provides that '[a] party may not invoke the provision of its internal law as justification for its failure to perform a treaty."

The COMESA Court drew upon the decision of the European Court of Justice, on a similar issue that arose before it. The European Court of Justice held that:

"The … Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community… according to the spirit, the general scheme and the wording of the Treaty, Article 12 must be interpreted as producing direct effects and creating individual rights which national courts must protect."

Another important issue the COMESA Court decided on was whether or not the bilateral agreement between Egypt and Mauritius could be relied upon by the Government of Mauritius, under which it was agreed to impose customs duties on imports from Egypt contrary to the COMESA rules which required that no customs duties or charges of equivalent effect should be imposed on imports that originate from other Member States. The COMESA Court again explained at length that bilateral agreements between Member States should aim to promote the achievement of the objectives of the COMESA Treaty, and that by instead seeking to reverse the rules under the COMESA FTA the bilateral agreement could not stand. The Court explained that Article 61 of the Treaty provides for the possibility of a safeguard measure that a Member State facing import surges can use, instead of seeking bilateral agreements that are inconsistent with the object and purpose of the Treaty. As the Court explained:

"The Treaty allows Member States to enter into bilateral agreements with each other or with third states. This should not however, be construed as giving the Member States a right to enter into agreements that defeat the main purpose of the Treaty which they have undertaken to respect."

In this connection Article 56(3) states that:

"Nothing in this Treaty shall prevent two Member States from entering into new preferential agreements among themselves which aim at achieving the objectives of the Common Market, provided that any preferential treatment accorded under such agreements is extended to the other Member States on a reciprocal and non-discriminatory basis."

Article 56(3) of the Treaty allows Members States to enter into agreements among themselves only if some basic requirements are met. First, whatever agreement the Member States enter into must contribute towards the achievement of the objectives of the Common Market. Second, the agreement should relate to a preferential treatment. Third, such preferential treatment should be extended to all the other Member States provided that the other Member States reciprocate. That there was communication between the States of Mauritius and Egypt on this matter is admitted by the Applicant's Counsel. The argument is that even if there was such an agreement it was contrary to the requirements of the Treaty.

> *"The Court has examined the nature of the communication preceding the imposition of the duties and the impact of the Regulations in light of Article 56(3) of the Treaty. The Regulation that was issued in 2001 by Mauritius imposed a 40% duty on Kapci products imported from Egypt. The purpose of the negotiations was not therefore to give preferential treatment to the products from Egypt, as envisaged by Article 56 but to levy additional duty on the same products. What Article 56(3) envisages is a situation where Member States give additional benefits to products apart from the minimum protection given to them under the Treaty. The agreement between Egypt and Mauritius had in effect raised the duty from zero, which is the rule under the Treaty, to 40%. This bilateral act was clearly against the basic objectives of the Treaty which include the elimination of customs duty and other non-tariff barriers within the time limit provided by the Treaty.*
>
> *Under Article 55 of the Treaty any practice which negates the objective of free and liberalized trade shall be prohibited. The agreement between Egypt and Mauritius hampered the process of liberalization of trade within the COMESA territory and could not relieve the Respondent from its obligations to uphold the principles of the Treaty."*

The Court then went on to cite Articles 18 and 41 of the Vienna Convention on the Law of Treaties, which provide that any such bilateral agreement can be entered by Member States if it is not prohibited by the Treaty and if the bilateral agreement does not create a derogation that is incompatible with the effective executive of the object and purpose of the COMESA Treaty as a whole.

In conclusion, the COMESA Court of Justice issued an order that the Government of Mauritius should refund to the company the customs duties paid for the period from 01 April 2005, when the company first sent a letter formally complaining about the customs duties, to 20 November 2010 when the law was removed, with interest at the rate applied by the courts in Mauritius, and to pay 70% of the costs the company incurred in pursuing the case.

Towards a Basis for the Way Forward

There should be strong political oversight to ensure ambitious FTAs and deeper integration, for the good reason that economic integration makes good political sense in terms of assisting the achievement and maintenance of peace and prosperity. By increasing intra-regional trade, generating investment supported by larger regional markets, by building cross-border infrastructure, and pooling resources such as energy sources or ensuring critical market sizes for large energy projects, by collectively tackling conflicts and cross-border challenges, regional integration programmes assist political leaders to achieve important public policy objectives of peace and prosperity; creating employment and wealth for the population especially the youth; and providing the macro-economic and political stability that are prerequisites for economic activity and the good life.

The reason COMESA as an institution exists is to deliver development in the region through the overarching strategy of economic integration and a focus on facilitating regional trade and investment. The vision of COMESA as a regional economic community, of being fully integrated, internationally competitive, prosperous and peaceful, and integral to the continental integration process, should rally all member states, all stakeholders, and all players, to the effort and provide the overarching framework for action.

Governments exist to provide peace and prosperity. COMESA as a region, by providing an outfit for cooperation and integration covering such a large geographical space and population and a number of countries, is a prime institution in which to operate. A critical challenge for governments at the moment is to provide employment, especially for the youth, and to ensure inclusive growth so that all sectors of the economy and the population benefit from economic growth and advances in technology and in the arts. The regional integration programmes of COMESA aim to provide a seamless economic space, a policy space that facilitates trade and investment, for job and wealth creation.

Of all the known ways of improving living standards and delivering prosperity for the people, especially the ordinary people, trade - lots of trade - is the legitimate and sustainable way. Opportunities to trade goods, services, and assets should continuously increase; which resonates naturally with the inherent drive of individuals to empower themselves with the capacities they need to pursue their dreams and to serve society. Regional markets provide these increasing opportunities.

It has been known for centuries now that larger markets assist to generate and to sustain higher levels of production, which creates more jobs and incomes. And it has been economic consensus in Africa that regional markets assist to overcome the size limitations of national markets. What might be considered relatively new is the adoption of a developmental approach to regional integration that covers market integration, and industrial and infrastructure development; but as pointed out already, this developmental approach too has been consensus in Africa especially since the adoption of the Lagos Plan of Action in 1980, although literature in the 1950s already advocated developmental integration to justify regional integration in Africa in the face of arguments that it would be largely trade diverting.

To facilitate regional trade and investment requires a number of complementary interventions, given the complex or multiple development challenges. To this end, the COMESA Treaty provides for integration and cooperation in a number of areas, which improve the location advantages of COMESA as a seamless economic space for trade and investment. Peace and security and monetary harmonization programmes, have been designed to promote political and macroeconomic stability in the region, two essential prerequisites for economic activity. Transport, energy and information and communication technology programmes, together with industrial and agricultural development programmes that cover SMEs as a priority, have been designed to promote competitiveness, while improving the capacity of operators to produce and move their products around the region efficiently.

Customs cooperation programmes aim to facilitate trade through addressing border procedures and customs administration, including through integrated or coordinated border management, and introduction of digital mechanisms. All these initiatives are designed to facilitate trade.

There won't be a regional market to talk of, however, if trade barriers are prevalent, if there isn't a harmonized policy space across the countries, and if there isn't a rule-based system to secure it. To assist planning by governments and economic operators, there should be predictability and rule of law, which in the case of COMESA is based on the Treaty and the institutions particularly the Policy Organs (the Authority of the Heads of State and Government and the Council of Ministers).

It is thus that the FTA has been in place since 01 November 2000, with clear rules that prohibit the re-imposition of customs duties and non-tariff barriers, with systems for addressing any trade barriers that crop up.[12] The most common non-tariff barriers have arisen in the areas of rules of origin, health and technical standards, and customs administration and cooperation.

A seamless economic space provides the required policy regulatory regime that facilitates trade and reduces the cost of doing business. There is, therefore, always a fundamental reason to go beyond a mere light FTA that provides for elimination of customs duties and non-tariff barriers, into the actual regulatory issues in order to adopt and implement harmonized or at least coordinated policies in key complementary areas that facilitate trade and investment, and in the context of regional trade this needs to be done at the regional level. To produce and trade goods, services and assets in the context of a regional market requires a policy space that covers customs cooperation, movement of services, movement of capital and investment, and movement of persons and enterprises.

COMESA has been implementing a wholistic approach to regional integration, covering all relevant and complementary programmes: trade in goods and services, trade facilitation, investment generation, macroeconomic and political stability, infrastructure development, and industrial and agricultural development. All these key programmes should continue.

At this point in time though, it is a priority to advance and complete the programme on customs cooperation since it is a key trade facilitating programme and in it is embedded an important industrial policy for the economic development of the region, namely the tariff bands of the common external tariff and the entire trade facilitation dimensions of the customs cooperation programmes. With this programme on-going, there will be merit in making quick progress towards facilitating the free movement of services, capital and investment, and persons and enterprises, in order to continuously promote better resource mobility, allocation and use in the region.

On the customs union issue, in light of the social-political realities, the extensive work leading to the adoption of the CET structures and allocation of duty rates to each tariff line, and the additional extensive work done subsequently to address these issues, resolving the problem of the customs union and reluctance to join regional FTAs, and perhaps to conclude and implement an ambitious Tripartite FTA, will require political solutions or interventions rather than technical analytical work. And the political decision should preferably be in terms of seeking appropriate derogations from or accommodation within the customs union, while the rest of the willing Member States proceed to implement the customs union progressively in line with existing adjustment programs or those to be adopted. Just like the COMESA FTA was started by nine Member States in 2000, but has now grown to 15 Member States, the customs union can be started by the Member States that are ready, and a standing agenda item maintained for annual reporting on progress being made.

The key instruments of the customs union should be implemented, if not immediately then progressively by the Member States as and when they are ready, but bearing in mind the Treaty obligations and the relevant Council Decisions. A quick initial step is for Member States to lock in what in their national instruments is at the moment aligned to the customs union instruments, namely, in the tariffs rates, the common tariff nomenclature, and the Customs Management Regulations.

The COMESA Secretariat has already produced for each Member State the relevant draft tariff alignment schedules, namely, the schedule with the tariff rates that are already aligned, and there is a Council Decision that each Member State should gazette and lock in that schedule; and the schedule with tariff rates that are not aligned but that can be aligned with the transition period, which should be progressively aligned. In this regard, Council has urged Member States to consider using the draft schedules produced by the Secretariat as starting points for preparing their schedule for alignment of these inconsistent tariff rates. The Council already adopted a formula for progressive alignment, to guide Member States in this exercise, which the Secretariat used in producing the tariff alignment schedules.

Lastly, Member States are required by Council Decision to produce the schedule of tariff lines which they will not align to the CET rates within the transition period, as well as the schedule of excluded products where the rate will not be aligned to the CET rates for religious and cultural reasons. For instance, Member States that have Islamic sharia law can be expected to prohibit or to have extremely high duty rates on alcoholic or certain food products. It was believed that each Member State would be in a position to readily produce this schedule, as they have laws in place that prohibit certain imports or regulate and restrict certain products, and therefore know these products.

The related consideration is that the implementation of the customs union should not be abandoned simply because a few Member States have raised some concerns. The idea should be for Member States to address those concerns and proceed to implement the customs union, or if they absolutely can't implement the customs union, to proceed and seek derogation. The other Member States that can should be in a position to proceed with the implementation.

It is worth bearing in mind, as a key consideration, that implementation of the deeper aspects of integration, such as free movement of services, labour, capital, investment and enterprises, is likely to be much harder than implementation of the customs union, because these aspects of deeper integration raise the very same concerns of feared loss of sovereignty more voraciously. A clear understanding of the pitfalls so far in implementation of regional integration programmes can assist the development of better strategies for taking the integration agenda forward.

Obstacles to the implementation of regional integration obligations have included human and financial resource constraints in Member States and at the Secretariat, lack of overarching national institutional frameworks that encourage team work and coordination among all relevant line ministries and private sector stakeholders, lack of sustainable capacity building for regional integration through long term formal training (or lack of dedicated institutions that provide specialized long term training in regional integration), and a weak culture of adherence to and enforcement of international obligations including under the regional instruments. In some cases poor governance and democracy results in low government accountability, among others. Preparation of country strategy papers for regional integration could assist to ensure that the national planning, budgeting, implementation and institutional processes. Duly take the regional integration priorities into account.

There are critical areas that now deserve the fullest attention of the region. Intra-regional trade in COMESA and Africa at large remains low, at less than 10% of total trade. The volume and value of intra-regional trade has been increasing over the years but the percentage remains low because trade with the rest of the world has increased much faster. Formal intra-COMESA trade in goods, for instance, increased from US $3.1 billion in 2000 to US $19.3 billion in 2012. The import bill of COMESA has risen to US $155 billion, with total trade estimated at US $262 billion. Trade is services are far larger that trade in goods. On average, trade in services contributes 60% to the GDPs of the Member States. In some countries, Egypt and Mauritius for instance, the contribution has risen to 70 percent.

While these figures show that the trade in COMESA is still miniscule, they show at the same time how phenomenal the rate of increase has been. In an excellent analysis of the low proportion of intra-regional trade in Africa to global trade, estimated at 12 percent, the UNCTAD Report on Economic Development in Africa 2013, points out that the proportion remains low because global trade has been rising faster, at 12 percent, than intra-Africa trade at 8 percent, though in absolute terms both the value and volume of intra-regional trade in Africa has been rising.

There are a number of issues that should be addressed in order to increase intra-regional trade, which should be among the backbone programmes in regional integration. The existing potential for intra-regional trade is constantly set back by the prevalence of NTBs, which restrict trade or increase the cost of doing business. A robust programme on NTBs remains a priority.

Together with removing NTBs, programmes that facilitate trade will assist the better utilization of existing market access opportunities created by the FTAs and customs unions. The topic of trade facilitation is broad, but the COMESA trade facilitation programme has been implemented over the years and provides clear guidance on the scope and thrust – adoption of common simplified transit procedures, adoption of simplified procedures for small scale traders, standardization and reduction of the number of documentation and procedures, common definition of transportation standards, adoption of health and technical standards, establishment of one-stop-border-posts, and other trade-related infrastructure. Robust programmes to address constraints that SMEs face will assist, by addressing financing, skills, management, marketing, and formalization constraints.[13] COMESA has in this regard developed a regional SME policy and SME Fund, as concrete interventions. Given that SMEs make up to 90% of the private sector in many member states, these interventions are critical.

The good economic growth rates in Africa, at around 6 percent, have attracted a lot of attention, with some assessments that in the long trajectory of economic development, Africa has now taken off, in a sustainable manner. It is estimated that by 2050, Africa's GDP will be equal to the current combined GDP of the US and the EU. There are risks of reversal of course, arising especially from civil unrest and climate change. This good performance in Africa has resulted from political stability, macro-economic stability, reforms that have improved the business environment, a rising consumer class, among others.[14] Regional integration has been part and parcel of this story, through the peace and security, monetary harmonization, trade facilitation, infrastructure, and industrial and agricultural development programs.

Trade in natural resource products has contributed to this boom, although estimates are that mineral resources constitute only 14% of this growth. Nevertheless, regional integration should step in to provide Member States with appropriate policies for jointly developing and benefitting from the vast natural resources of the region. Resource-based industrialization has been discussed at quite some length. What is required is a robust programme for ensuring that Africa appropriately benefits from its natural resources. This ranges from mundane issues such as the terms of the access contracts concluded, to the major policy interventions relating to taxation, value addition and beneficiation, employment, and sustainability as well as corporate social responsibility.

In addition, there is absolute need to ensure that the bilateral investment treaties that member states conclude avoid the pitfalls that have been highlighted in work undertaken by UNCTAD and ECA, including clauses that tie the hands of governments and prevent pertinent policy interventions; some of these clauses include prohibition of performance requirements, and extravagant definitions and rights for investors including in key policy areas like expropriation and requirements for compensation. This of course, is not to suggest at all that investors, local and foreign, should not have rights; they should, and they should have obligations as well, and work together with governments to achieve the developmental objectives of the country, the region and the world as a whole.

The good performance in Africa can be scaled up and better sustained, if the science, technology and innovation (STI) programmes are appropriately prioritized. Prospects for STI programmes are good. A recent mapping of institutions working in the area of STI in COMESA and Africa at large, in collaboration with NEPAD, has shown that there is a critical number of these institutions and a sizeable science community, led by the African Academy of Sciences, the Africa Science Observatory, and the AU-NEPAD science programs. There is however need to harness the communities and their products and put them to better service of society. The forces that sustain STI are prevalent in Africa: a huge rising youthful middle class, philanthropists providing funding, do-it-yourself innovators generating new products, and break-through platform technologies especially in the information and communications field that are positioned to address critical global challenges in various areas such as agriculture, energy, housing, education, and health.[15] Rwanda provides a good case study of how to rigorously implement STI programs with immediate visible results that set the tone and framework for national development initiatives.

And lastly, whatever is agreed to be done needs to be implemented, otherwise there is not much point in agreeing and adopting it. A clear understanding that programmes that are adopted should be faithfully implemented in good faith is absolutely necessary, in order to take forward the programs for regional integration. There is merit in considering a system of regular peer review of implementation of regional integration obligations. The COMESA programme on producing reports on the status of implementation by each Member State of treaty obligations and council decisions can be scaled up and institutionalized, along the lines of the EU scorecard system, but of course customized to COMESA conditions.

It might be worth noting that the European Court of Justice was instrumental in assisting to take forward the European integration programs, by clarifying the obligations and rights of Member States and the people, and in this way assisting the governments to implement and comply with the Treaty obligations. To their credit, the European member states respected and implemented judgments of the European Court of Justice, in this manner underpinning the integration process with the rule of law. It is widely believed, that it is this approach of a pro-active European Court of Justice and the willingness of the European member states to respect the judgments of the Court that greatly facilitated the European integration process from humble beginnings to the deep and wide and closer integration now prevailing in Europe, for the benefit of the member states and the people of Europe.

Final Remarks

The implementation of regional integration programmes in Africa has on the whole been unsatisfactory. What is required now is to examine this state of affairs and launch a vigorous way forward, to implement the programs with gusto in order to secure the future of COMESA and Africa at large as a peaceful and prosperous region, for there has never been any serious doubt that it is regional integration that will deliver the economic emancipation of the people of Africa. As individual Member States, African countries can hardly be expected to beneficially operate in the international economic order, and yet together they can be a strong political and economic power. To integrate or to die, that is the question.

Summary of Recent Analytical Work on the COMESA Customs Union

- *Breaking the Impasse*

By Francis Mangeni, Benedict Musengele, Anthony Walakira and Zerezghi Kidane

Introduction

The Thirty Second Meeting of the COMESA Council of Ministers held on 22-24 February 2014 in Kinshasa in the Democratic Republic of Congo, decided that all Treaty obligations and Council Regulations and Decisions be implemented by December 2014; and that a Member State not in position to do so should write to the Secretariat explaining the constraints faced in the process. The Decision, in paragraph 45, was as follows:

i. *Urged Member States to domesticate the COMESA Treaty and all Protocols and submit the instruments to the Secretary General not later than 31 December 2014;*

ii. *Urged Member States to domesticate all outstanding regulations by 31 December 2014;*

iii. *Urged Member States that are not in a position to comply with these decisions on domestication of the COMESA Treaty, all Protocols and instruments and all outstanding Regulations to notify the Secretary General of their respective positions, with justifications explaining why they cannot do so.*

The COMESA Authority of Heads of State and Government, at its Seventeenth Summit on 27 February 2014, considered and adopted those decisions of the Ministers and in its communique, specifically on the Customs Union:

> *"Urged Member States to domesticate and implement the customs union decisions, in particular the customs management regulations and the common tariff nomenclature; and*
>
> *Requested Member States that have not domesticated the customs union instruments to provide annual updates on the status of implementation and domestication of the customs union instruments."*

To implement the Customs Union, Member States need to domesticate three key instruments namely, the Customs Management Regulations as the regional customs law, the Common Tariff Nomenclature as the harmonized system for coding and describing the traded products, and the Common External Tariff as the uniform tariff system in trade with non-COMESA third countries. So, to support Member States in the implementation, the Secretariat has undertaken analytical work on the Customs Union, a key milestone in the integration trajectory of COMESA. The analysis shows the following:

Customs Law

First, the analysis has shown that the customs laws of the Member States and the COMESA Customs Management Regulations (CMR) largely draw from the same sources, namely, the best practices under the World Customs Organisation and particularly the Revised Kyoto Convention. The finding that the customs laws of Member States on the whole already comply with more than 90% of the provisions of the CMR was not surprising. Out of a total of 372 provisions of the CMR, the divergent provisions are only 5 for Seychelles; 8 for Zambia; 11 for Eritrea, Ethiopia and Mauritius; 12 for Zimbabwe; 17 for Sudan; 18 for Malawi; 20 for Swaziland; and 22 for Egypt.

Some of the differences relate to details such as definition of customs territory, which can be addressed progressively as the customs union deepens into free circulation, and to non-mandatory provisions where Member States can exercise some discretion. Where there are substantive differences, a programme for modification of the national customs law can readily be implemented as part of the trade facilitation programmes in the Member State.

What is more is that the COMESA CMR meet and are consistent with the international best practices and instruments as contained in the Revised Kyoto Convention and WTO Trade Facilitation Agreement. This was established by the very detailed provision by provision gap analysis between the three instruments. This is a relief and re-assurance to Member States that the regulations are sound. Indeed, implementation of the COMESA regulations at the same time assists Member States meet the standards under those international instruments. There is, therefore, great merit in immediately implementing the COMESA CMR in order to facilitate trade, and thereby generate investment, jobs and incomes.

Tariff Nomenclature

Second, the analysis has shown that the COMESA Common Tariff Nomenclature (CTN) is now based on the 2012 version of the Harmonised System of the World Customs Organisation, for coding and description of commodities. The transposition from the HS 2007 to HS 2012 resulted in a modification of only 220 out of 5206 tariff lines at 6-digits. The good news is that most Member States already adopted the HS 2012 as their national tariff nomenclature in 2013. These are: Burundi, DR Congo, Ethiopia, Eritrea, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Uganda, Zambia, and Zimbabwe. This means that the national tariff nomenclatures of these Member States are already similar to the CTN, except in cases of splits that may be uniquely national or for national purposes. These can be maintained by the Member State provided they don’t constitute a significant number of tariff lines; the understanding being that this will be a small number of tariff lines, say for ethnic products.

Revenue Performance

Third, the Tariff Reform Impact Simulation Tool (TRIST) analysis using 2013 figures showed that no Member State will lose revenue from implementing the CET. On the contrary, Member States will see increased revenue collections. These include Zimbabwe (0.3%), Madagascar (1.7%), Zambia (3.0%), Ethiopia (3.4%), Djibouti (21.8%), Malawi (22.2%), Eritrea (38.9%), Egypt (59.1%), Comoros (64.9%), Mauritius (64.5%), and Seychelles (129.2%); as shown in the table below.

Summary of TRIST Analysis, values in US $ Millions

Country	Eritrea	Ethiopia	Malawi	Zambia	Zimbabwe	Seychelles	Mauritius	Madagascar	Egypt	Djibouti
Partners	120	164	136	170	157	175	191	164	185	102
Tariff Lines	2,550	4,476	3,938	5,075	5,099	4,023	5,039	4,239	5,120	1,840
Impact on imports:										
Pre CET	461.8	8,911.6	1,528.2	13,363.7	6,982.4	793.8	4,213.7	2,609.9	60,912.1	1,048.0
Post CET	453.0	8,858.1	1,506.0	13,307.1	6,975.8	741.9	4,025.6	2,598.2	59,433.6	1,031.4
Change	(8.7)	(53.5)	(22.2)	(56.6)	(6.6)	(51.9)	(188.1)	(11.8)	(1,478.5)	(16.6)
% change	-1.9%	-0.6%	-1.50%	-0.4%	-0.1%	-6.5%	-4.5%	-0.5%	-2.4%	-1.6%
Impact on Tariff Revenue:										
Pre CET	23.2	693.6	53.1	978.6	302.3	17.9	38.9	146.6	1,530.6	46.4
Post CET	39.0	755.5	93.2	1,068.3	307.4	105.3	373.7	158.6	4,196.2	69.7
Change	15.9	61.8	40.0	89.7	5.1	87.4	334.8	12.0	2,665.6	23.2
% change	68.5%	8.9%	75.30%	9.2%	1.7%	488.4%	859.6%	8.2%	174.1%	50.0%
Excise Duty Revenue:										
Pre CET	3.7	160.8	24.5	301.6	380.8	9.5	93.9	-	2,961.7	22.2
Post CET	3.7	159.9	25.0	309.7	380.8	8.3	95.0	-	2,952.2	19.8
Change	0.0	(0.8)	0.5	8.1	(0.0)	(1.1)	1.1	-	(9.5)	(2.4)
% change	0.4%	-0.5%	2.00%	2.7%	-0.003%	-12%	1%		-0.3%	-11%
VAT Revenue:										
Pre CET	14.5	757.2	111.6	2,149.3	503.5	40.1	405.5	363.7	-	24.5
Post CET	14.7	750.9	113.1	2,155.4	502.3	41.0	417.0	360.3	-	24.0
Change	0.2	(6.3)	1.5	6.1	(1.2)	0.9	11.4	(3.4)	-	(0.5)
% change	1.4%	-0.8%	1.30%	0.3%	-0.23%	2%	3%	-0.9%		-2%
Total Tax Revenues on Imports										
Pre CET	41.4	1,611.6	189.2	3,429.5	1,186.6	67.4	538.4	510.3	4,492.4	93.2
Post CET	57.4	1,666.3	231.2	3,533.3	1,190.4	154.5	885.7	518.9	7,148.4	113.5
Change	16.1	54.7	42.0	103.9	3.9	87.1	347.3	8.6	2,656.0	20.3
% change	38.9%	3.4%	22.2%	3.0%	0.3%	129.2%	64.5%	1.7%	59.1%	21.8%

Source: COMESA Secretariat Statistics Unit; and Crown Agents

Sudan, however, would see a revenue fall of -4.8% largely due to the loss of oil revenues to South Sudan. In such cases, COMESA has arrangements for providing adjustment support. However, the Member State can be expected to complement such support with domestic fiscal reforms to deepen and widen the tax base, as well as improve revenue collection.

Regional Integration Support Mechanism

It should be noted that COMESA has an Adjustment Facility, under which financial support is provided to Member States to meet any revenue shortfalls resulting from implementation of regional integration obligations or for funds to support implementation of given regional integration obligations. A number of Member States have already benefited, as shown in the table below. This puts to rest the fear of revenue losses from implementing the COMESA Customs Union.

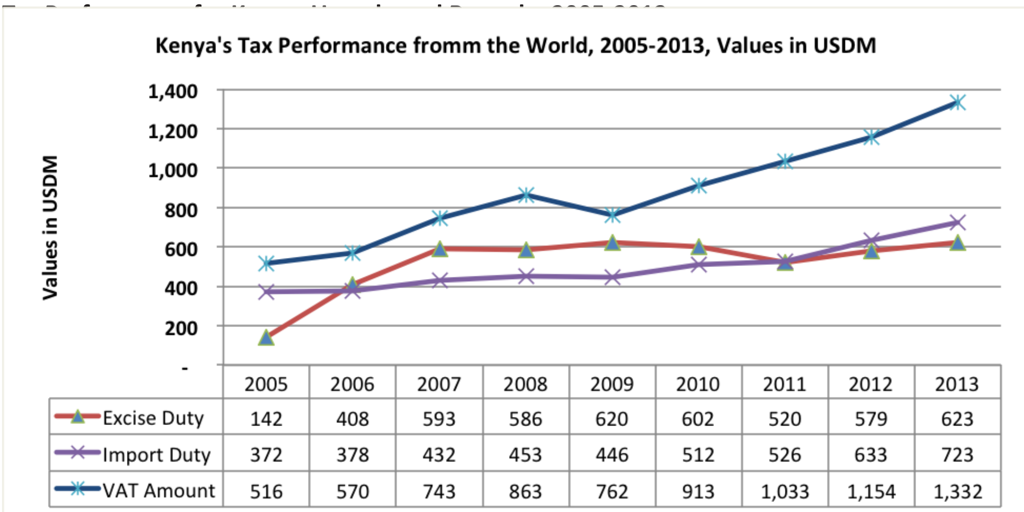
Disbursements under the Regional Integration Support Mechanism (RISM)

	Pre-Rider RISM payments*	***RISM Rider Payments***	
Member State	**2009-2010**	**2012**	**2013**
	Actual Disbursements to countries	**Funds approved in Dec 2012; paid out in 2013**	**Funds approved in Sept 2013; paid out in 2014**
Burundi	12,700,000	823,601	1,158,348
Comoros		618,152	435,952
Djibouti			692,557
DRC			1,372,168
Eritrea			
Ethiopia			
Kenya		1,764,345	2,469,963
Madagascar			
Malawi			1,020,227
Mauritius		1,288,567	903,309
Rwanda	22,600,000	823,601	1,158,348
Seychelles		618,152	871,904
Sudan			
Swaziland			947,411
Uganda		964,172	1,354,337
Zambia		1,083,117	1,520,173
Zimbabwe		1,764,345	2,469,963
TOTAL	**35,300,000**	**9,748,052**	**16,374,660**
Source: Caesar Cheelo, RISM Unit, COMESA Secretariat			

Empirical Case Study of the EAC Customs Union

Fourth, the projections from the TRIST analysis are consistent with the empirical experience under the EAC Customs Union, where Member States have seen increasing revenue collections and increasing trade among themselves since the formation of the EAC Customs Union in 2005. So, both the projections and the survey as a case study of performance in an actual Customs Union are consistent. It should be recalled that in 2004, the East African region was awash with fear of revenue loss and trade decline, and it took resolute political determination to launch the EAC Customs Union, the fear notwithstanding. The political leaders have been vindicated, as revenue collections and intra-regional trade have over the years increased phenomenally – from US $1.0 billion in 2005 to US $2.8 billion in 2013 for Kenya, US $479 million in 2005 to US $1.1 billion in 2013; and US $120 million to US $323 million in 2013 for Rwanda.

The figure below shows the tax performance or revenue collections for three Member States in EAC and COMESA, namely: Kenya, Rwanda and Uganda; data on revenue collections for Burundi was not readily available.

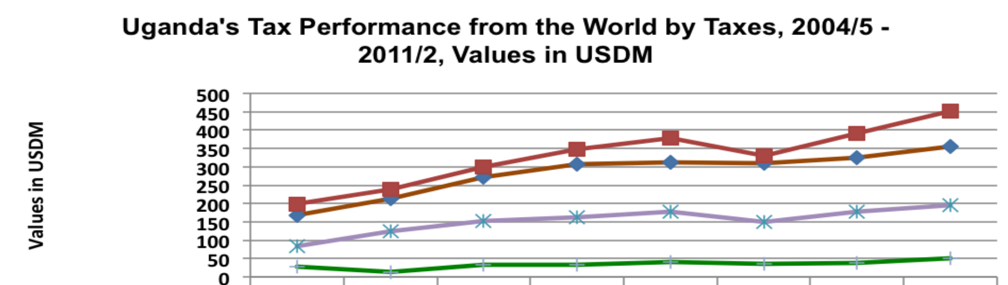


	2005	2006	2007	2008	2009	2010	2011	2012	2013
Excise Duty	142	408	593	586	620	602	520	579	623
Import Duty	372	378	432	453	446	512	526	633	723
VAT Amount	516	570	743	863	762	913	1,033	1,154	1,332

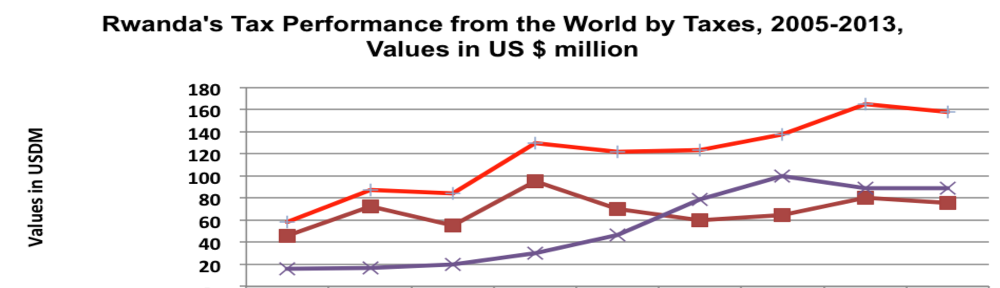
Source: COMESA Secretariat Statistics Unit

Fifth, trade performance in the four Member States in both EAC and COMESA continued to increase since 2005 when the EAC Customs Union was formed, as shown in the table below.

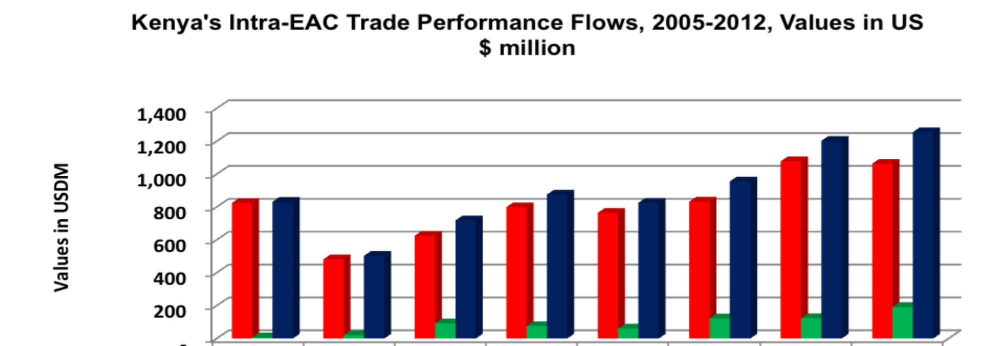
Trade Performance of Burundi, Kenya, Rwanda and Uganda under the EAC Customs Union, 2005-2013



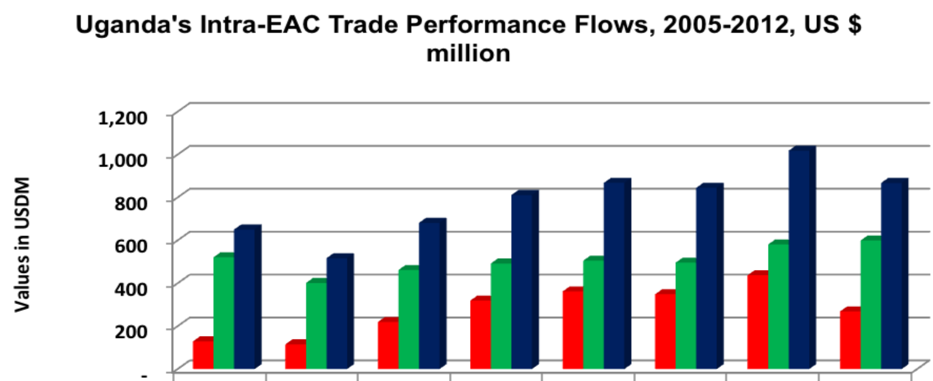
	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
-Petroleum duty	168.40	212.54	272.32	307.22	313.04	310.19	324.91	356.38
-Import duty	83.74	125.46	151.61	163.16	178.26	150.12	177.03	195.84
-Excise duty	27.45	13.62	31.98	33.99	39.43	34.52	36.92	51.00
-VAT on Imports	199.13	237.57	299.96	347.81	378.05	330.62	390.33	450.69



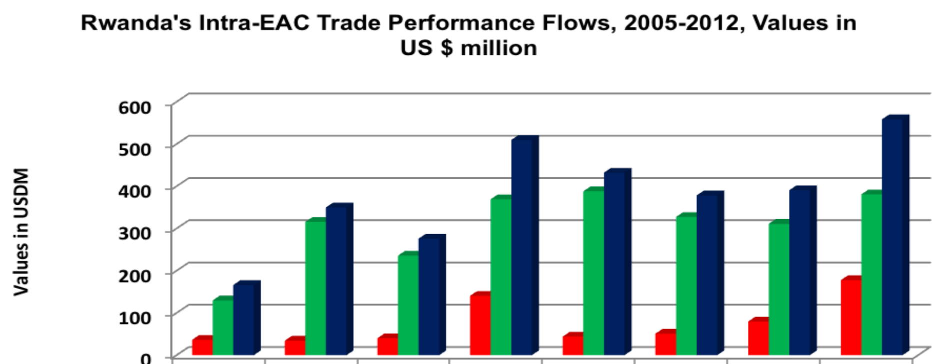
	2005	2006	2007	2008	2009	2010	2011	2012	2013
Customs Duty	46	73	55	96	70	60	65	81	76
Excise Duty	16	17	20	30	47	78	100	89	89
Value Added Tax	58	88	84	129	122	124	138	165	158



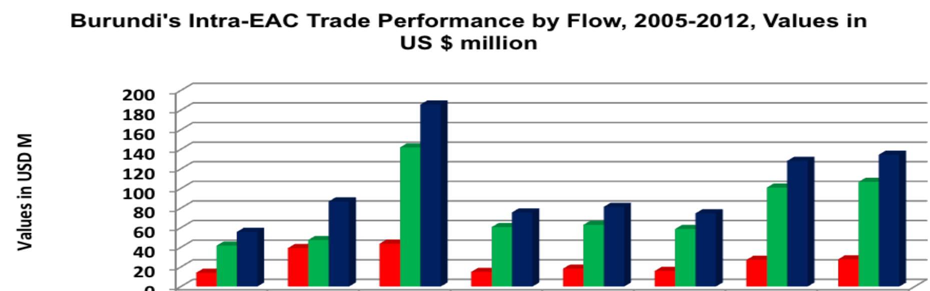
	2005	2006	2007	2008	2009	2010	2011	2012
Total Exports	824.60	481.97	625.74	799.14	764.69	832.86	1,078.50	1,063.71
Imports	7.37	21.51	93.00	76.64	61.27	123.75	124.32	192.24
Total Trade	831.96	503.48	718.73	875.77	825.97	956.61	1,202.82	1,255.95



	2005	2006	2007	2008	2009	2010	2011	2012
Total Exports	129.33	115.52	219.82	319.19	362.26	348.74	437.31	268.52
Imports	521.30	401.45	461.74	492.22	505.53	496.15	580.82	599.16
Total Trade	650.63	516.97	681.56	811.41	867.78	844.89	1,018.13	867.68



	2005	2006	2007	2008	2009	2010	2011	2012
Total Exports	36.37	34.32	40.16	140.63	44.04	50.91	79.60	177.64
Imports	129.72	315.59	235.77	369.18	388.20	327.35	311.11	380.89
Total Trade	166.09	349.91	275.93	509.80	432.24	378.26	390.71	558.53



	2005	2006	2007	2008	2009	2010	2011	2012
Total Exports	14.09	39.23	43.78	15.02	18.31	15.93	27.24	27.82
Imports	41.73	47.56	141.89	60.65	63.01	58.74	100.97	106.73
Total Trade	55.82	86.79	185.67	75.68	81.32	74.67	128.21	134.56

Source: COMESA Secretariat Statistics Unit

Sixth, the EAC and COMESA Customs Union are already significantly harmonized, which means that the four Member States can be members of both customs unions; indeed they can fast track the implementation of the COMESA Customs Union by demonstrating that they are already implementing it significantly, thus forming a lead group.

Regarding the customs laws, the EAC Customs Management Act, having been passed by the East African Legislative Assembly, is the national customs law of each of the four Member States, as required by the Treaty establishing the East African Community. The Customs Management Act implements what Member States are required to do under the COMESA Customs Management Regulations.

A provision by provision mapping and analysis clearly demonstrated that the EAC Customs Management Act was consistent with the COMESA Customs Management Regulations, both in respect to the legal effect of the substantive provisions and in respect to setting out what the COMESA Customs Management Regulations require national laws of Member States to set out. This means that the four Member States are already implementing the COMESA Customs Management Regulations.

Regarding the common external tariffs of the EAC and COMESA customs unions, a line by line analysis found that 74 percent of the tariff lines are identical in text and rate. This means that the four Member States are already implementing 74 percent of the COMESA Common External Tariff. COMESA has a total of 7,036 tariff lines while EAC has 5,422 lines. The difference is due to splitting of tariff lines. Comparison of the tariff rates has shown clearly that COMESA has 3,448 tariff lines with similar rates and text, 2,639 missing rates and 904 with mismatching rates but similar text.

However, after further analyzing the tariff lines with missing rates, it was found that 1,735 lines have got similar rates. This makes the tariff lines with similar or matching rates to be 5,183 (3,448 + 1,735) hence the lines with missing rates remain only 904 which is equivalent to 13 percent. The reason for the missing rates is that COMESA split the tariff lines, they are in the exemption regime of the COMESA Management Act or COMESA does not show the sub-chapters.

Overall, the analysis clearly shows that 74 percent of all the COMESA tariff lines are harmonized with EAC lines both in the tariff rate and text. Further, 13% have got mismatching rates but similar text while 13% have missing rates. The tariff lines with missing rates can easily be harmonized by mutual consensus that the organization with a missing rate adopts the rate of the other organization. The only major concern therefore remains the 13% tariff lines whose rates are different and, therefore, the two organizations will continue with discussions on these lines.

The implication is that the four countries can fast track the implementation of the COMESA Customs Union, and can immediately declare that they are implementing the COMESA Customs Union covering substantially all the trade.

COMESA and EAC as Supportive RECs

A political economy question is whether implementation of the COMESA Customs Union will weaken the EAC Customs Union. The fear is that the COMESA Customs Union is larger and would therefore shallow the EAC, making it redundant. This fear too, is exaggerated. The EAC is likely to continue moving much faster and deeper; and it is already a functioning common market and has signed a protocol establishing its monetary union. It will thus remain a trailblazer on core integration programmes, possibly until it becomes a federation as provided for in its Treaty.

In particular, having establishing its Customs Union in 2005 and completed the transition phase-in period in 2010, the EAC has now vigorously embarked upon a programme for the single customs territory, to deepen the Customs Union towards free circulation. This means that even on the Customs Union, the EAC will always remain ahead and therefore relevant.

Lastly, the existence so far of EAC, COMESA and SADC proves that the RECs with multiple memberships can still exist and have a role, although they need to work more closely, progressively converging in key areas. Indeed, this is the idea of using the RECs as building blocs for the Continental FTA and eventually the Continental Common Market. It is envisaged that within the Continental Common Market, the RECs will still have a role as a system of local governance or subsidiarity, on the basis of pragmatic considerations.

In international relations, countries never forget to act in their best interests. In the context of globalization, supporting and seeking the good of other countries may be in the best interests of a given country, as enlightened self-interest. The four Partner States have an abiding interest in COMESA. In trade terms, according to the trade figures of 2012, COMESA remains their leading export market (Kenya and Rwanda) well ahead of traditional export markets; or the second (Burundi) or third (Uganda) leading market, as shown in the table below. It is, therefore, in the best interests of the Partner States to maintain or develop their market shares in COMESA. Indeed the EAC Treaty recognized this and provided for relations between the Partner States and third countries.

COMESA as a Leading Export Market for Member States (value of 2012 in US $ million)

Country	Leading Destination	2nd Leading Destination	3rd leading Destination	4th Leading Destination
Djibouti	14.7			
Kenya	1871.1			
Rwanda	306.5			
Burundi		40.4		
Congo DR		1208.8		
Egypt		2479.8		
Eritrea		7.3		
Malawi		168.5		
Ethiopia			264	
Sudan			276.1	
Mauritius			207	
Uganda			492.8	
Zambia			1586.8	
Zimbabwe			120.9	
Seychelles				4.8
Swaziland				44.7

Source: COMSTAT

The Future – Towards the Continental Customs Union

Lastly, an important study undertaken by the Economic Commission for Africa has come up with insights into the future.[16] The study places the COMESA Customs Union in the overall paradigm of the continental integration programme. Africa is heading towards a Continental Customs Union, and an indicative date of 2019 has been set for programming purposes. A major finding of the study is that intra-Africa trade will more than double from 10.2 percent to 21.9 percent by 2022 if a Continental FTA is formed in 2017 and accompanied by ambitious trade facilitation measures, whereas the increase would be only to 15.5% if the Continental FTA is not accompanied by trade facilitation measures.

Trade facilitation measures include ambitious customs facilitation and modernization measures, such as those provided for in the COMESA and EAC Customs laws. However, under a Continental FTA even when accompanied by trade facilitation measures, Africa's exports to the rest of the world would decrease by -18.8%. But with a Continental Customs Union, that is, with a continental common external tariff along the lines of the COMESA structure, intra-African trade would more than double, and exports to the rest of the world would increase to US $91.0 billion and to Africa to US $75.1 billion.

Conclusion

In conclusion, Member States would be advised to formulate key next steps to take at the national level in implementing the COMESA Customs Union. Such steps could include immediate submission of explanatory briefs to management and policy makers in key relevant ministries, organizing retreats and forming national task forces made up of all stakeholders but taking into account any existing committees on implementing COMESA programmes, stakeholder awareness activities, preparation on action plans to result in implementation by December 2014, organisation of national workshops and continuous monitoring and evaluation of the national action plan, review and preparation of national laws, enactment by parliaments, dissemination to customs posts, capacity building for relevant implementing agencies, and continuous liaising with the Secretariat on any key issues arising.

The Adverse Impact of Non-Tariff Barriers on Intra COMESA Trade

By Rachael Nsubuga and Benedict Musengele

Introduction

It has been observed that with the advent of the Free Trade Area in the COMESA region, some Member States resorted to Non-Tariff Barriers (NTBs) as means of restricting intra-COMESA trade. There is growing protectionism under the guise of NTBs, and they persist even after recommendations to have them removed at all levels of authority in the region.

In a bid to fast track the resolution of NTBs, COMESA together with EAC and SADC, developed mechanisms that include the online system and the SMS tool for of reporting, monitoring and eliminating NTBs. This paper presents an audit of existing NTBs in the COMESA region and their impact, therefore, presenting an audit of the economic costs of the existing NTBs in the region.

This paper further sought to update existing knowledge on NTBs within the COMESA region; to assess the impact of NTBs, benchmark best practices from other RECs; and provide a baseline for future modeling work on NTBs within the COMESA region.

Classification of NTBs

The United Nations Conference on Trade and Development (UNCTAD) broadly classifies the non-tariff barriers (NTBs), into six categories. These are price controls; finance measures; licensing; quantitative controls; monopolies and technical barriers. These broad categories have sub-categories, the use of which can be major barriers to trade. In world trade in general, and the COMESA region in particular, it has become increasingly clear that the removal of NTBs is a key concern in trade, in order to mitigate their impact.

The World Trade Organization's definition of NTBs: *"Measures, such as quotas, import licensing systems, sanitary regulations, prohibitions, etc."* The East African Community defines NTBs as: *"quantitative restrictions and specific limitations that are obstacles to trade."* Such restrictions and limitations are embedded in laws, regulations, practices and requirements other than tariffs, and include non-tariff charges; government participation in trade, restrictive practices and policies; customs procedures and administrative practices; and technical barriers to trade.

According to the Mid Term Review of the SADC protocol on Trade, "the scope of NTBs in the SADC region is extensive, among those highlighted by the private sector and other stakeholders are customs procedures, import levies, import restrictions and prohibitions, road levies and pre-shipment inspection charges, TBT and SPS measures.

NTBs are also defined as any regulation of trade other than a tariff or other discretionary policy that restrict(s) international trade," for example export or import prohibitions; export or import quotas; export or import licensing; and minimum export prices.

Therefore, NTB's are trade barriers that restrict imports but are not in the usual form of a tariff. Many NTBs may exist for legitimate reasons such as consumer protection or as a component of the business methods necessary for doing trade. These are sometimes referred to as legitimate "non-tariff measures". Non-tariff measures (NTMs) are measures imposed on trade flows that are not in form of a tariff. Some of these measures may constitute non-tariff barriers.

These measures only become genuine NTBs when they are implemented in such a manner as to unnecessarily add to costs or inhibit trade, or are applied in an illegitimate manner.

NTBs may be categorized as follows:

i. Health, safety and environment NTBs: these barriers include exports bans, Sanitary and Phyto-Sanitary (SPS) requirements, standards and conformance requirements;

ii. Trade policy NTBs: these barriers include broader policy measures including public export assistance, export and import licenses, export and import quotas, production subsidies, state trading and import monopolies, tax concessions, trade remedy practices (such as anti -dumping, safeguard and countervailing measures);

iii. Administrative NTBs: these barriers include customs clearance delays, lack of transparency and consistency in customs procedures, overly bureaucratic and often arbitrary processing and documentation requirements for consignments, high freight and transport charges, and generally, services that are not user-friendly.

Initiatives to Remove NTBs in the COMESA Region

Having established that Member States do resort to NTBs for various reasons and that the COMESA treaty provides for removal of NTBs, the study also reviewed the initiatives and activities that have been undertaken by COMESA in order to identify and eliminate the exiting NTBs and as well as to ensure non re-introduction of NTBs by Member States.

In view of the above the COMESA Council of Ministers in 2004 decided that Member States should designate COMESA enquiry points at the Ministries of Trade or other relevant agencies for the purpose of:

i. Implementing Article 50 of the COMESA Treaty relating to non -introduction of new NTBs.

ii. Informing the COMESA Secretariat of reported NTBS through application of a common form to be used by importers and exporters.

iii. Providing clear guidelines to the business community on the areas identified as NTBs.

iv. Sensitizing stakeholders on the monitoring and evaluation mechanism and reporting tool

v. Facilitating access to information, including the electronic transmission of information to the business community; and

vi. Tracking and monitoring NTBs affecting intra-COMESA trade.

The National Enquiry Points (NEPs) were also expected to be instrumental in the implementation of, among others, the following Council decisions:

i. Facilitating the immediate removal of NTBs by the imposing Countries and submission of reports on their elimination based on the technical opinion submitted by the COMESA Secretariat.

ii. Facilitating Country missions by the Secretariat to resolve outstanding NTBs in a timely manner.

iii. Providing the Secretariat with trade regulatory requirements for all traded products for dissemination to the business community to assist in identifying NTBs in the course of trading.

iv. Providing clear guidelines to the business community on the areas identified as NTBs.

v. Facilitating access to information, including the electronic transmission of information to the business community.

vi. Tracking and monitoring NTBs affecting intra-COMESA trade through utilization of the common form for reporting.

Although the NEPs had their first meeting in September 2007, the study noted that they had not been very effective in meeting their mandate due to various constraining factors such as funding and lack of co-operation in terms of feedback from affected parties. In addition to NEPs and National Monitoring Committees (NMCs) whose membership comprise key stakeholder institutions, were set up in order to have a more effective system of monitoring and reporting NTBs and the NEPs serve as the secretariat for the NMCs.

The NMCs are expected to be the national institutional structure facilitating NTB reporting, elimination/reduction and feedback to the business community. The mandate of the NMCs includes coordinating the elimination of reported NTBs along the following lines:

i. Defining the process of elimination

ii. Defining mandate and responsibilities

iii. Confirming deadlines for action

iv. Agreeing on recourse to non-action.

Further, in order to enhance transparency and easy follow-up of reported and identified NTBs and NTM, COMESA has a web-based NTB monitoring mechanism, which is available on the website: http://ntb.africonnect.com. This web-based NTB monitoring and reporting mechanism is accessible to economic operators, government functionaries, Secretariat experts, academic researchers and other interested parties.

The NTB impact study for COMESA undertaken in 2008 established that some Member States were yet to designate officials to the NEPs thereby making the monitoring system not fully operational and effective.

In view of the above, it can be generally concluded that NTBs still exist among Member States and the current approach to eliminating and reducing NTBs within the COMESA region has not fully yielded the desired results because the provisions of the COMESA Treaty are not legally binding. The stated initiatives are voluntary and the effectiveness of such agreed modalities rests upon the good will of the Member States as well their respective commitments to ensuring implementation is achieved.

The NTB impact study established that non-tariff barriers act as an additional tax, in that they add more than 5 percent to the landed cost of a product and more than 20 percent to the total landed cost, which is ultimately passed on to the consumer thereby making commodities expensive. This implies that the costs of doing business and trade facilitation initiatives are negatively affected.

Empirical Review

It is believed that NTBs are the new form of protectionism (Fugazza and Maur, 2008). This study used CGE modeling, specifically GTAP Models in GEMPACK Software[1] and established that once NTBs are computed into advarolem equivalents, they were higher than ordinary tariffs. Past studies that have audited NTBs in the COMESA region have grouped them under four categories: restrictive trade practices, rules of origin, customs processes and documentation, and transit issues (Imani, 2009). These have been applied either as market entry policies, regulations, and conditions especially for protection of local industries from foreign competition. The same study discovered that NTBs, especially border delays, add an additional cost of US $3,500 per shipment

1 *Using Advarolem equivalents constructed by Kee, Nicita, and Olarreaga (2006)*

in the region. In fact past COMESA studies have prescribed NTB elimination mechanisms that include institutional arrangements. This study will, therefore, highlight the proposed NTB removal mechanisms that are negotiated currently.

In 2001 it was anticipated that the removal of NTBs in particular areas could yield global welfare gains of close to US $90 billion (Andriamananjara et al. 2004). The study problem for this report is in line with proposals of literature, as far as understanding the cost raising effects of NTBs, welfare effects as well as trade flow effects and increasing the burden of intra-regional transactions.

Other scholars (Joseph Karuga, et.al) by use of a Spatial Equilibrium Model (SEM) analysed data collected from traders and transporters of beef and maize products in East Africa and discovered that net monetary gains after removal of the identified NTBs for all the EAC member countries were positive. Even their positive findings on welfare were compelling to advocate for the complete removal of NTBs in the EAC region.

Past UNCTAD pilot work on NTBs[2] in four developing countries of Brazil, Chile, Philippines and Thailand (this work will extend to Tunisia and Uganda) involved conducting firm level business surveys, which later informed the process of quantifying NTBs which are currently reported by exporters to the TRAINS database. The results show that NTBs and trade facilitation are closely related, and cannot be separated. When trade is well facilitated, there are no barriers, and vice versa. The benefits of removing NTBs are huge, and UNCTAD urges all developing countries to consider facilitating trade by removing all trade distorting barriers before the border, and at the border policies. UNCTAD concluded that while studying NTBs at a regional level, it is very important to survey NTBs at a country level to establish feasible points of convergence and coordination for removal mechanisms. This literature also suggests strong institutional mechanisms to follow up enquiries and NTB notifications, as well as giving feedback to exporters on the progress about their complaint.

While attempting to model NTBs to understand their effect, UNCTAD proposed that studying the price, quantity or value effect of the policy towards certain product lines is crucial. It is also pertinent to take into account the policy measure and its implementation strategies over the years (Deardoff and Stern, 1997).

The modeling of NTBs is however still in its infant stages (Fugazza and Maur, 2008), and careful thought, time, and compiling of data sets needs to be made in order to avoid getting misleading analytical results. This study will, therefore, provide baseline information that COMESA can use to model NTBs and their effects on selected economic variables in the future.

It is therefore prudent, following the advice of Fugazza and Maur to allow for ample time to select a CGE Model and collect data for a future modeling direction. This report will for now follow Deardoff's advice to study time series trends, and try to establish the impact of NTBs on a few variables. The report will be updated annually and the next update will use a CGE GTAP Model analysis following Fugazza and Maur's approach to analyzing NTBs' impact.

2 *UNCTAD, Project INTOT7BA page XV*

An Audit of NTBs in the COMESA Region

This part updates existing knowledge on NTBs within the COMESA region by taking stock of the NTBs that have been reported via the online reporting system. The section further investigates the impact of NTBs on trade flows, business environment and generally logistical performance for the COMESA Member States.

The COMESA-SADC-EAC online reporting system categorizes NTBs into eight groups: restrictive government regulations, customs procedures, import levies, import restrictions and prohibitions, road levies and pre-shipment inspection charges, TBT and SPS measures.

Non-tariff barriers that restrain trade have been legitimately justified on four main grounds, which include safeguarding health, safety, and security of human beings, animals and plants, and against environmental pollution. These in broad terms are classified under Sanitary and Phyto sanitary (SPS) measures; to protect home industries and consumers; to safeguard national security; to safeguard local infant industries against fierce competition and revenue loss[3]. It is justifiable for governments to impose non-tariff measures where policy grounds hold water. However, where these restrictions have no basis, and are arbitrarily applied to the extent of posing barriers to trade, they qualify to be called NTBs. The process of NTB notification therefore becomes very important to justify imposition of measure.

A detailed report on the particular NTBs by coding, category and description of import restrictiveness as per the EAC-COMESA-SADC online reporting mechanism is given in the table below:

3 *1st Joint COMESA-EAC- SADC NTBs Meeting: Report, Page 7*

Reported NTBs in the COMESA region with recommendations on the way forward

NTB No.& Type	NTB Description	Reporting Member State	COMESA intervention So far	Imposing Member State	Analysis of the NTB	Recommendations
NTB-000-432 - Rules of Origin for fridges and freezers exports from Swaziland	Zimbabwe does not recognize certificate of origin for fridges and freezers exports from Swaziland	Swaziland	Two bilateral missions to both MS COMESA undertook an independent verification mission as well	Zimbabwe	Zimbabwe requested for more information to enable finalization of computations while Palfridgre, the manufacturing firm felt sufficient information had been availed It has taken a lot of time to resolve this NTB	Pursuant to Article 17 of the Treaty, COMESA experts recommended engaging an independent accountancy firm to conduct verification of production process to ascertain the appropriate value addition on the products in query. Council has also directed Secretariat to facilitate a bilateral meeting between the two MS, which is underway

NTB-000-433 Standards (SPS) for milk imports to Zambia	Kenya	Kenya	i. 2004 Scientific Audit of the Kenyan Milk value chain, (both Member States participated) ii. 2006 a round table in Lusaka facilitated by Secretariat iii. 2009 another scientific audit as a follow-up of the 2004 recommendations also facilitated by the Secretariat. iv. 2010 bilateral discussions at JPCC between Kenya and Zambia v. 2012 October/November-Study tour of the Zambian milk value chain by Kenya vi. 2013 July, bilateral meeting in Lusaka of the technical teams from both Member States. vii. Including the numerous times the matter has been discussed in the Trade and Customs Committee Meeting, where NTBs are deliberated on and up-scaled to Policy Organs for decision.	Zambia	It has also been established that similar milk from Uganda that applies the EAC Standards as Kenya is available in the Zambian market. The misunderstanding has taken a lot of time.	Engage a consultant to carry out a holistic scientific study to enable COMESA to facilitate the negotiations between the 2 MS for a solution. A case for safeguards for Zambian Dairy Industry could be explored should competitiveness issues emerge.
Soap - Rules of Origin	Madagascar not recognizing certificate of origin on Mauritian made soap	Mauritius	A Joint exercise Verification was carried out in 2011 but the two MS COMESA advised MS to engage an international costing expert	Madagascar	The two MS could not agree on costing method; Madagascar is yet to respond to the Secretariat's proposal to engage an international costing expert	Engage an independent accountancy firm to undertake verification of production processes. The recommendations will help resolve the NTB. (This work is on-going).

000-608 - Policy or regulatory NTB	Introduction of toll fees for all road users, on 1st November 2013 by Zambia. Foreign vehicles pay (between USD 10 and 16 per 100 kms; for road usage in the country.	FESARTA	The level of road user charges was recommended by COMESA	Zambia	Updated road user charges are being developed by the COMESA/EAC/SADC Tripartite and, when finalized, will be disseminated to member countries for their implementation. Thus there is no justification for Zambia to introduce toll fees for foreign vehicles, as it is a duplication of the road user charges paid by them on entry into the country.	The public reported this NTB and requested for its removal.
NTB-000-628- Special Supplementary duties for imported cigarettes in Malawi	Malawi applying a discriminatory excise duty, for imported cigarettes, a specific excise tax of US $30 per 1,000 cigarettes, compared to the excise rate of US $15 per 1,000 cigarettes with more than 70% local content.	Malawi importers		Malawi	This practice infringes the National Treatment (NT) principle which requires that cigarettes, once they have crossed the border and entered the domestic market of Malawi, be taxed no less favorably than locally produced cigarettes.	The Malawi government should not discriminate against regional imports as this gives unfair advantage to locally produced goods and thwarts regional trade.
Rules of Origin	Truckloads of Sugar exports into Kenya stranded at the Kenyan border -Rules of Origin	Kenya		Zambia	Kenya explained that there was suspected adulteration of the sugar but after bilateral consultations and verification that the Sugar was of Zambian origin, it was cleared.	Secretariat should obtain the outcomes from the tests carried out on the samples which *conformed* in order to engage Kenya with a view to deterring it from further such action on COMESA sugar, particularly where the CRF was requested for
Rules of Origin	Non-acceptance of COMESA certificates of Origin on Steel products - Rules of origin	Burundi		Kenya, Mauritius ,and Zambia	Burundi states that the products do not meet the declared criterion of value addition and hence has requested to undertake a Joint on the Spot Verification Missions to Kenya, Mauritius and Zambia.	Pursuant to Council decision, Secretariat will take the lead and facilitate the verification missions to the affected Member States

Rules of Origin	Non-acceptance of COMESA certificates of Origin on white milled sugar, LG Electronics	Kenya	A Joint on the Spot Verification Mission was carried out by Kenya and Egypt in 2012	Egypt	Kenya has not produced a report for reasons that the mission was inconclusive	Kenya has planned a second verification mission to Egypt to conclude the verification exercise in October 2014. Secretariat has been directed by council to backstop this mission with specific timeframes. It is reiterated that the MS involved in any JSV mission should make adherence to the protocol on Rules of origin and produce a joint report.
Rules of Origin	Non-acceptance of COMESA certificates of Origin on Copra, white oak, Frozen Fish	Seychelles		Kenya	Kenya clarified that it had not configured her Simba system to recognize Seychelles as an FTA Member. Appropriate measures being finalized by the Treasury and the system to be configured accordingly.	Secretariat to follow-up with Kenya to ensure the Simba system is appropriately configured so that the correct trade regime prevails for Seychelles originating goods

NTB-000-420 - Pure palm - based cooking oil- Rules of Origin	Non-acceptance of COMESA certificates of Origin on Pure-Palm based cooking oil	Kenya	A joint on the spot verification mission was undertaken in Kenya in 2003 but it did not bear much fruit	Zambia	The Kenyan producers substituted palm oil with corn & soya bean oil that qualified easily as local value addition The two countries have been undertaking bilateral consultations but without much progress in palm oil production	COMESA Secretariat was advised to engage an independent accountancy firm to undertake verification of production processes, & advise on forward to resolve the NTB. (This work is on-going). It is recommended that COMESA attaches specific timeframes for further verification missions(s). COMESA develop NTB Regulations

Transit related - Policy or regulatory NTB	Introduction of a requirement for Transit Inspection for Hides and Skins consignments in transit through Kenya issued on 12th July 2013-Kenya states that (i) Transit goods for all intent and purposes be subject to physical inspection & (ii) Exporters transiting through Kenya to possess Import permits from the countries of destination (iii) Exporters to poses Transit Permits (iv) Payment of Transit fees.	Kenya		Uganda	This new requirement is affecting eight (8) Ugandan companies in the business of exporting hides and skins that transit through Kenya. The measure will increase the cost of doing business and increase delays related to physical inspection	Kenya has been requested to remove the regulation
NTB-000-562 -Government Policy and regulations	The Kenya National Highways Authority (KENHA) is enforcing the axle load limits, rather than the GCM limit for the vehicle combination. This is seriously compromising the ability of the transporters in Kenya to operate effectively.	Kenya		FESARTA	Kenya Transporters Association (KTA) has taken the matter to court	COMESA should write to Kenya to find out the status of the reported NTB and if the Court has determined the case

NTB-000-605 – 8.8- Issues related to transit	Unstable situation at the Kasumbalesa border post between Zambia and the DRC causing serious delays on the North-South corridor.	FESARTA		Democratic Republic of the Congo	Since October 2013, foreign drivers have reported harassment and, on some occasions, being attacked by Police for speeding, “*un-roadworthy*” vehicles and incorrect documentation. Some drivers have been shot and wounded; the latest being Patrick Murifi, 31, a Zimbabwean truck driver. This has at times occasioned strikes from drivers entering DRC from the South.	The Government of the Katanga province of the DRC should be engaged to discuss the security of both the drivers and goods being transported.
Source: COMESA-SADC-EAC Online reporting System, May 2014						

Impact of NTBs on Trade Flows in COMESA Region

This part presents the NTB impact analysis using the trend analysis. The analysis was undertaken by comparing the trade flows of the affected product before and after the imposition of the NTB. The table below shows the products which were affected by NTBs as it was reported in the online NTB monitoring mechanism

Products that have been affected by NTBs in the COMESA Region

No	Product	Imposing member	Complainant
1	Fridges	Zimbabwe	Swaziland
2	Freezers	Zimbabwe	Swaziland
3	Milk	Zambia	Kenya
4	Soap	Madagascar	Mauritius
5	Cigarettes	Malawi	Other COMESA countries
6	Sugar	Kenya	Zambia
7	Steel Products	Burundi	Kenya, Mauritius ,and Zambia
8	White milled sugar	Egypt	Kenya
9	LG Electronics	Egypt	Kenya
10	Copra	Kenya	Seychelles
11	white oak	Kenya	Seychelles
12	Frozen Fish	Kenya	Seychelles
13	Pure-Palm based cooking oil	Zambia	Kenya
14	Hides and Skins	Uganda	Kenya
15	Meat and Meat products	Uganda	Kenya

Source: COMESA-SADC-EAC, 21 May 2014

Trends Analysis

Zimbabwe's Imports of Freezers/Fridges from Swaziland

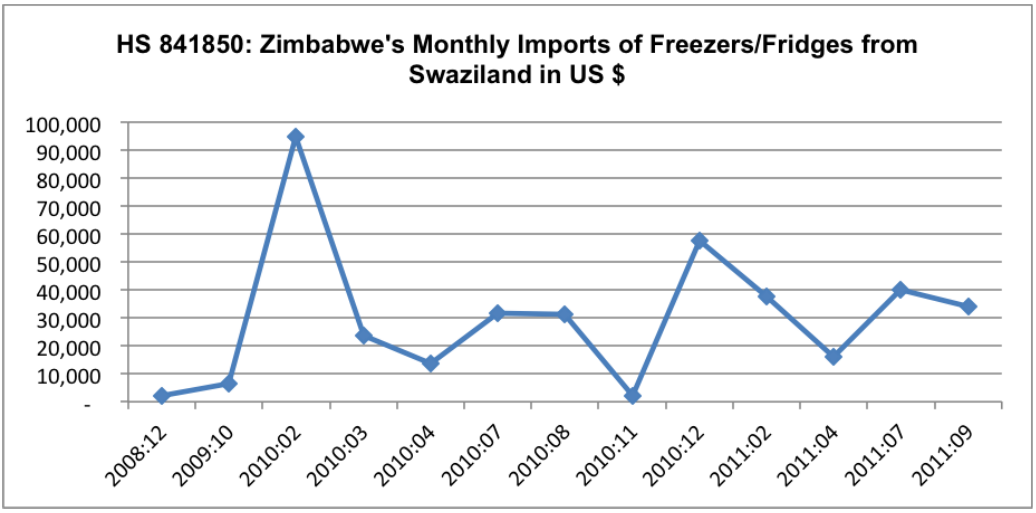
It was reported on 01 September 2010 that the Zimbabwe Revenue Authority (ZIMRA) was charging duty on fridges and freezers manufactured in Swaziland and exported into Zimbabwe under the FTA questioning the originating status of the products under HS Code 841850.

Figure one below shows that since the reporting of the NTB in September 2010, Swaziland's exports to Zimbabwe have significantly declined. From the figure it can further be observed that there was no trade at all in September 2010 and trade has only been reported for six (6) months since then. In these six months, positive trends were only observed in two months i.e. November 2010 and April 2011. This is contrary to the total exports of the same product from

Swaziland to the rest of the world where exports of freezers and fridges have been increasing and trade flows have been reported up to December 2013.

This clearly shows the NTB has negatively impacted on the export of freezers/fridges from Swaziland to Zimbabwe which have remained very low and in most of the periods zero.

Fig 1: Zimbabwe's Imports of Freezers/Fridges from Swaziland



Madagascar's Imports of soap from Mauritius

It was reported in 2004 that Madagascar was not recognizing the certificate of origin for soap produced in Mauritius. Since the specific product line affected by the NTB was not reported, the analysis considered the various types of soap imported by Madagascar from Mauritius.

Figures 2, 3, and 4 below shows that in 2008 and 2009 there was significant imports of soap from Mauritius by Madagascar but as from 2010 the imports of soap especially for HS 340119 and 340120 have reduced significantly and remain low up to 2013, the period covered by the study.

The low imports of soap from Mauritius clearly show that the NTB has had a negative impact on Mauritius' exports of soap to Madagascar because the imports by Madagascar have continued to decline.

Fig 2: Madagascar's Imports of Soap HS 340111 from Mauritius

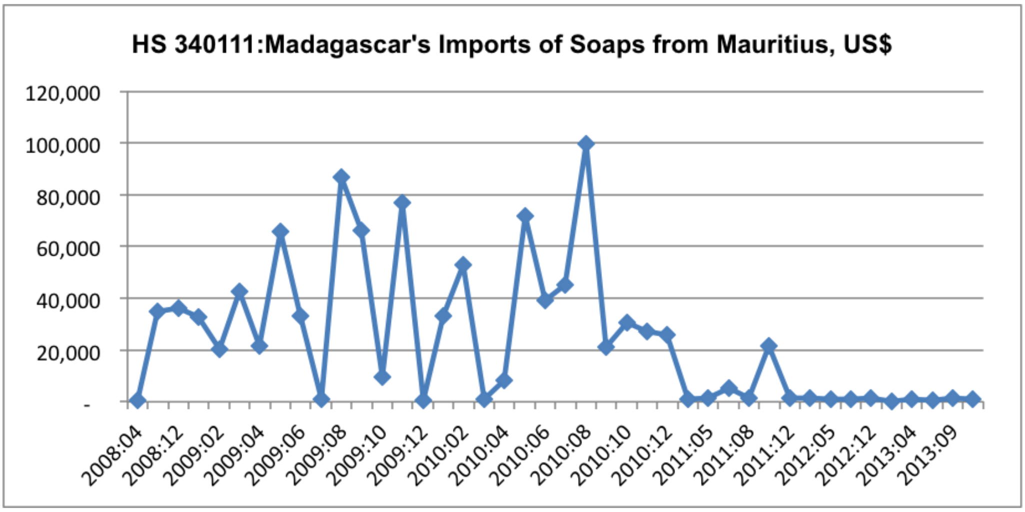


Fig 3: Madagascar's Imports of Soap HS 340119 from Mauritius

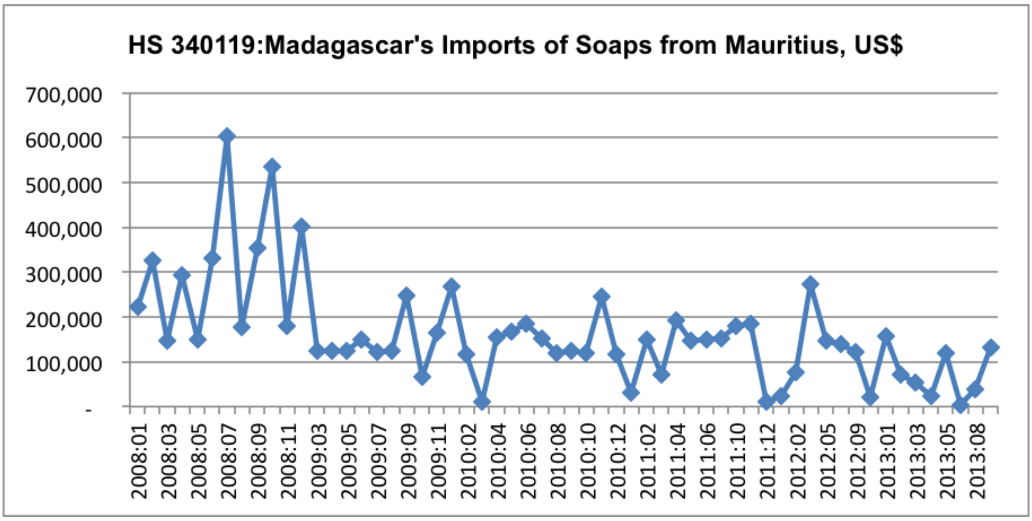
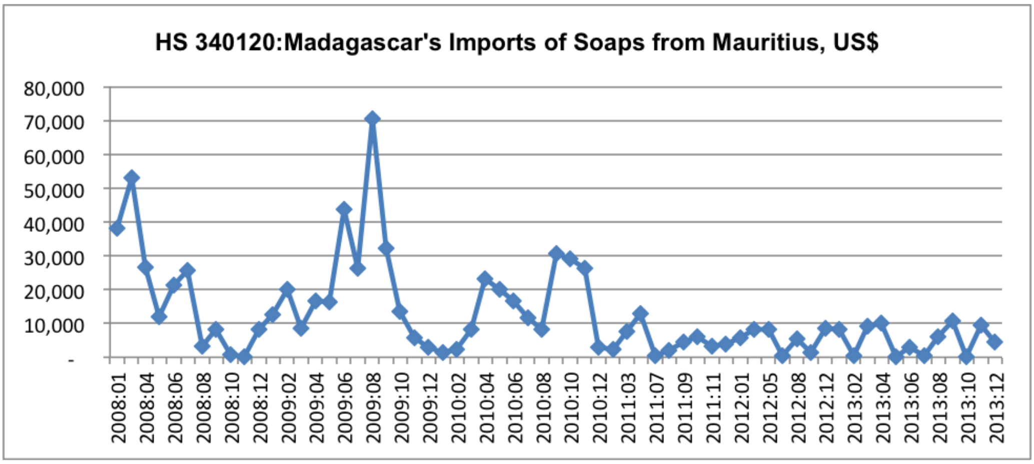


Fig 4: Madagascar's Imports of Soap HS 340120 from Mauritius

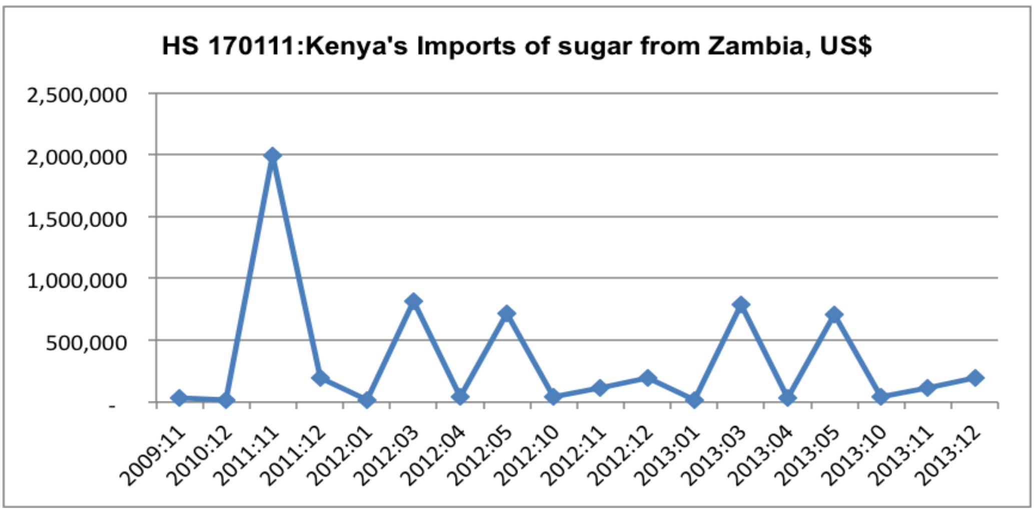


Kenya's imports of Sugar from Zambia

It has been reported in different periods that the truckloads of sugar exports into Kenya from Zambia were stranded at the Kenyan border. However, this has been taking different dimensions given that at some point it is resolved and after some time it recurs.

Figure 5 below shows that the effect of this NTB has been a mixed one as shown by alternating increase and decrease of the imports over time. However there are very little imports of sugar from Zambia into Kenya as shown by the fact that there were sugar imports for only 19 months out of the total 60 months covered in the study. This implies that the NTB has been a discouragement for exporters from Zambia to export their sugar to Kenya.

Fig 5: Kenya's Imports of Sugar from Zambia



Kenya's Imports of Fish from Seychelles

It was reported on 09 September 2009 that Kenya was not accepting COMESA certificates of origin on copra, white oak and frozen fish from Seychelles. However, Kenya clarified that it had not configured its Simba system to recognize Seychelles as an FTA Member. Despite the clarification, this NTB has been on and off.

Figure 6 shows that there was significant decline in copra imports from 2010 to 2011 with most of the months reporting zero trade but since August 2011, the trend was reversed and there has been an increase in the copra imports with a slight decline in September 2013. The scenario was slightly different for frozen fish as shown in Figure 7 whose imports into Kenya from Seychelles have been fluctuating up and down but with serious decline immediately after the reporting of the NTB up to the end of 2010. The frozen fish trend confirms the behaviour of the NTB, which has been on and off but for the copra the trend shows that the NTB has been resolved hence regaining the positive trend.

Fig 6: Kenya's Imports of Copra from Seychelles

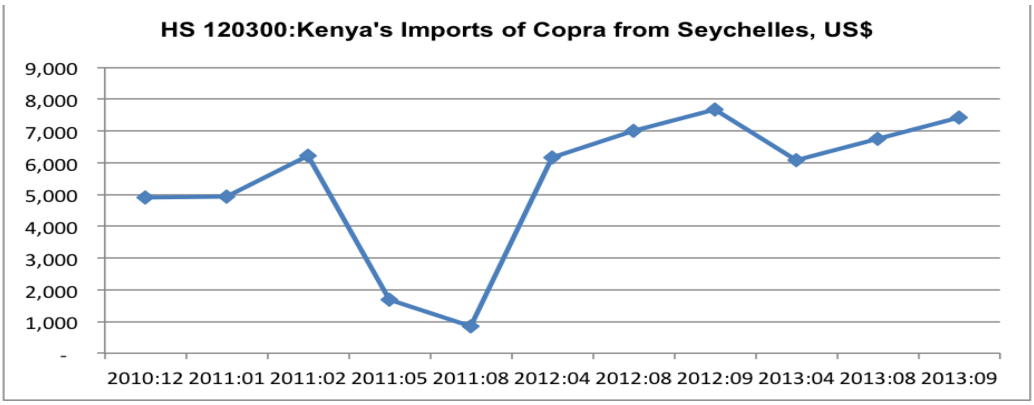
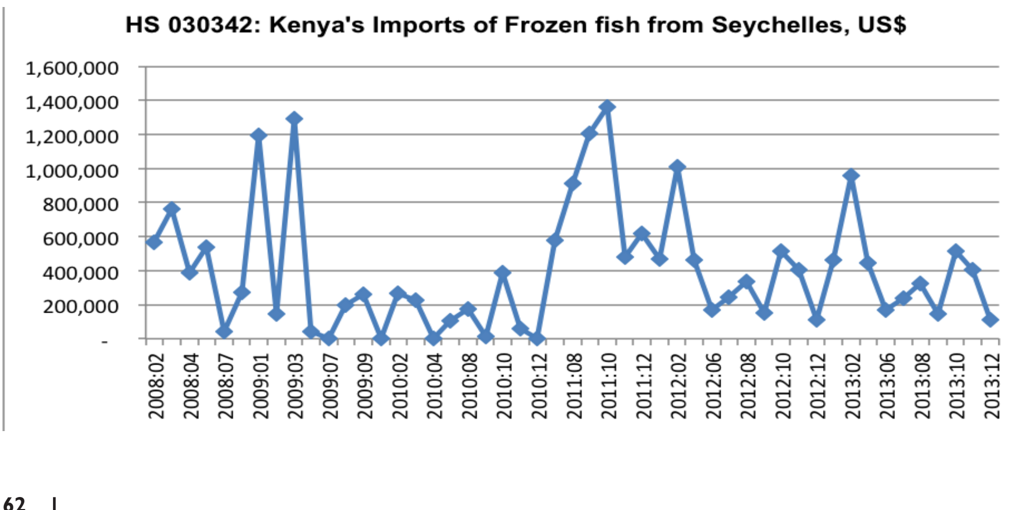


Fig 7: Kenya's Imports of Frozen Fish from Seychelles



Zambia's Imports of Palm Based Cooking Oil from Kenya

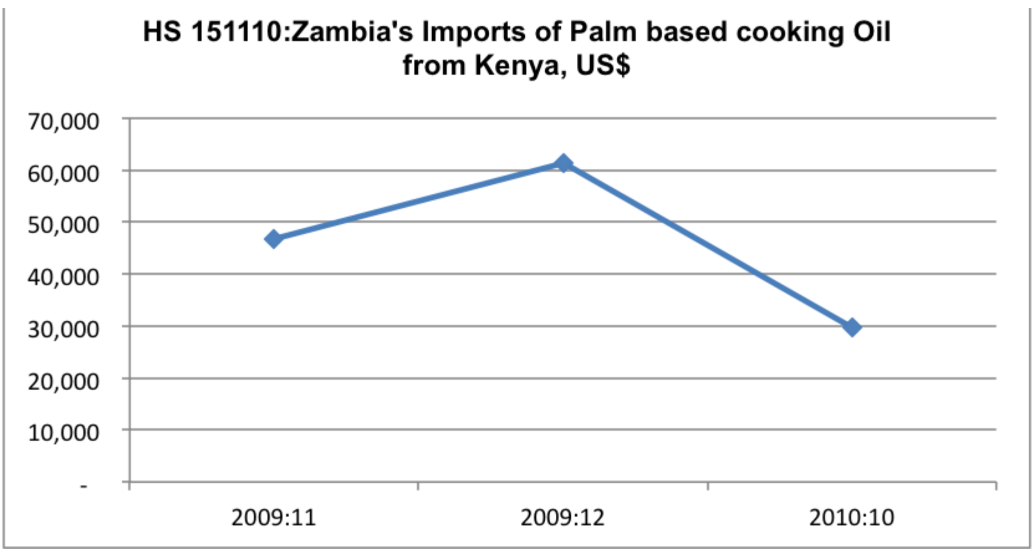
It was reported on 01 May 2011 that palm based cooking oil has been stopped from entering the Zambian market by Zambia Revenue Authority with the reason that the product does not meet 35 percent value addition criteria as required under COMESA product on the rules of origin. Zambia Government authorities, including the officials of the Zambia revenue Authority visited the affected company, Bidco oil refineries and confirmed that palm based cooking oils meets the 35 percent value addition criteria. Kenya Revenue Authority has also done a verification mission on the affected product, which was sent to ZRA. To date ZRA has not responded to the verification report of KRA on the company's product. Meanwhile the company continues incurring losses due to lost market share in Zambia. An argument has also been advanced that the Kenyan producers substituted palm oil with corn and soya bean oil that qualified easily as local value addition.

This NTB is applied at the border points. The Zambian importer has stopped importing palm oil cooking oils consignments from Kenya after the dealer paid the CET rate of 25 percent instead of 0 percent and incurred very heavy losses.

This study has revealed that since 2009, there have only been imports for three months as shown in the figure below. This confirms that since the imposition of the NTB, Zambia imports of product HS 151110, which is palm oil and its fractions, whether or not refined, but not chemically modified has reduced to zero. The impact of this NTB, therefore, has been total loss of the Zambian market by the affected firm in Kenya.

There is, therefore, a need to undertake a technical analysis of the affected product and resolve the NTB.

Fig 8: Zambia's imports of palm based cooking oil from Kenya



Kenya's Imports of Hides and Skins from Uganda

It was reported on 13 July 2013 that Kenya had introduced a requirement for transit inspection for hides and skins consignments from Uganda (in transit) through Kenya. The requirement stated that:

a) Transit goods for all intent and purposes be subject to physical inspection;

b) Exporters transiting through Kenya to possess Import permits from the countries of destination;

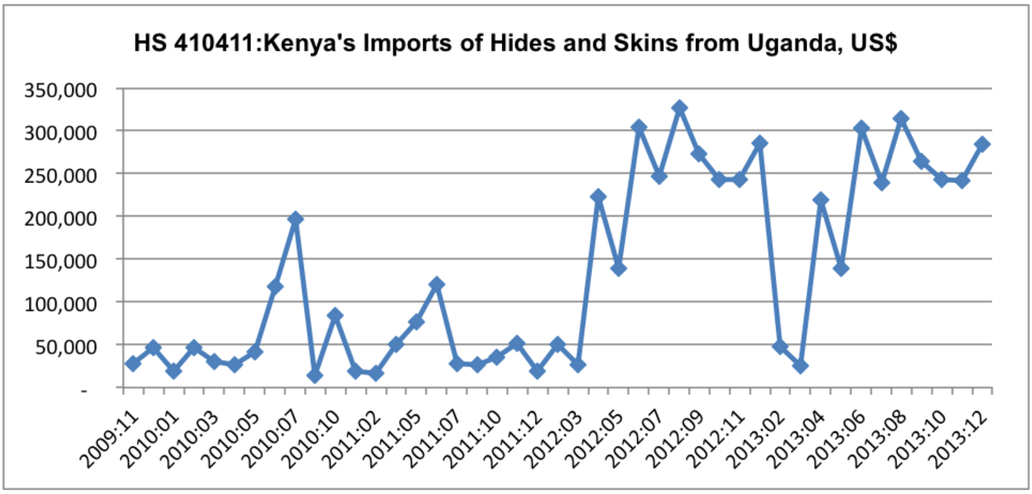
c) Exporters to poses transit permits; and

d) Payment of transit fees

It was further reported during the same period that the Kenya National Highways Authority (KENHA) is enforcing the axle load limits, rather than the GCM limit for the vehicle combination.

Figure 9 below depicts that after the imposition of the NTB in July 2013, there has been a decline in imports of hides and skins from Kenya with an increase only being observed in December 2013. This clearly shows that the NTB had a cost implication hence reducing the exports from Uganda through Kenya.

Fig 9: Kenya's Imports of Hides and Skins from Uganda



Zambia's Imports of Milk from Kenya

It was reported that milk and cream, not concentrated/sweetened, with fat content not exceeding 1 percent from Kenya has been barred from being imported into Zambia. On 16 July 2013, the Kenya focal point requested that the COMESA Secretariat intervenes and organizes a meeting where they will act as an arbitrator in helping the two Member States resolve the NTBs. At the Tripartite NTBs Online Reporting, Monitoring and Eliminating Mechanism

Meeting to launch the SMS reporting tool held from 09 to 10 April 2013 in Lusaka, Zambia, the two countries confirmed that Kenya undertook a mission to Zambia from 29 October to 02 November 2012 and that the report of the meeting was ready. Zambia reported that the Ministry of Trade was consulting with the Ministry of Agriculture on the dates, which were to be communicated to Kenya to discuss the report.

To date the NTB has not been resolved and this has significantly affected the product's export from Kenya into Zambia because the trade flows have remained zero since the imposition of the NTB. From the foregoing impact analysis using trend analysis, it can be concluded that NTBs have been having a negative impact on trade flows for most of the products. Most of the NTBs were in rules of origin and they either led to total loss of the market share like the case of palm oil; or to serious decline in trade with many months reporting no trade as observed in many of the products analyzed.

This concurs with earlier studies finding that NTBs negatively impact trade flows within COMESA. For example the 2008 NTB Impact Study, which was done by Imani Consultants established that non-tariff barriers act as an additional tax, in that they add more than 5 percent to the landed cost of a product and more than 20 percent to the total landed cost, which are ultimately passed on to the consumer thereby making commodities expensive. In effect the cost of doing business, and the trade facilitation initiatives are negatively affected.

For a successful FTA, NTBs and other administrative obstacles such as tariffs need to be removed, because NTBs also impede the free movement of goods and people.

In most RECs NTBs constitute the principal barriers to intra-regional trade, and UNECA (2008) highlighted that they are a growing concern. Other concerns are rent-seeking customs officials, police roadblocks and harassment by immigration officials. NTBs have an extensive scope as they impede intra-regional trade and serve the cause of protectionism (UNECA 2008). They also reflect the slow progress of regional integration agreements. Unattended, NTBs will curtail the benefits of greater market openness.

The COMESA Export and Import Market - An Analysis of the Potential Trade for Member States

By Benedict Musengele

Introduction

Regional integration has been considered as one of the prominent strategies for development among countries and regions. It promotes economic growth as well as the industrialization processes through fostering intra-regional trade, infrastructure development, and investment. It also provides a huge market for parallel development of new industries, which reduces external vulnerability through increasing bargaining power; in turn increasing the national income.

Since the establishment of the COMESA FTA on 31 October 2000, intra-regional trade has increased from US $3.1 billion to US $19.3 billion in 2012. This has been a phenomenal increase, but it could be much more. It is widely felt among the public and private sector that better information should be made available on trade opportunities in the region.

This paper, therefore, explores the trade potential of each Member State, by clearly indicating the products with the highest potential for export into the COMESA market.

Objectives of the Trade Flow Analysis

Intra-COMESA trade, as a percentage of total COMESA trade, remains very low. This is despite the tariff reduction programme that commenced in 1994 culminating into a Free Trade Area in 2000, with an initial membership of nine Member States. This membership has now grown to 15 countries. An examination of the trade among Member States reveals that there is possibility for a substantial increase as indicated by the fact that several products exported to third countries are yet again imported by Member States from the same countries.

The principal objective of this study is to make an initial assessment of the potential in intra COMESA trade, using the methodology highlighted below.

The second phase of the study will entail undertaking a firm survey of importers in identified Member States and their reasons for sourcing from outside the region. This will assist with determining factors such as price, quality, transport cost, delivery times, and perhaps payment complications, which act as obstacles to intra-COMESA trade.

Methodology

The International Trade Centre (ITC) in Geneva has developed a widely used methodology for Trade Flow Analysis under which the lesser of a country's exports of a given product to third countries and the target region's imports of the same commodity from third countries is the indicative trade potential.

One problem with this methodology is that one quantity or the other may be much larger, giving rise for example to situations whereby there is a huge demand within COMESA for imports of something that there is little capacity – at least as evidenced by actual production – to produce there. Conversely, the opposite situation, whereby there is large production and exportation of an item from within COMESA but little importation of it from outside the region, is also possible. In such instances, either demand within COMESA is already being satisfied from within the region, or the product is simply not there (e.g. an unprocessed input into an industrial product the production of which does not take place within the region).

Under the alternate methodology employed in this study, cases where the ratio of the exporting country's extra-COMESA exports to total COMESA extra-COMESA imports is close to one ($0.75<x<1.25$, as a first approximation, as discussed above) are identified.

One advantage of this methodology is that, unlike with the ITC's, it is not necessary to assume that the exporting countries have sufficient experience and technology to produce the products in question to expand supply. Those products identified are already exported outside the region in volumes similar to what the region imports from outside. Once such sectors have been identified, the next step is to identify the Member States that import those products from outside COMESA. The identified sectors are listed in Annex I.

Trade Developments

The COMESA region achieved a growth rate of 5.4 percent in 2012, down from 5.7 percent in 2011 but well above the world average of 2.2 percent. Despite continued fiscal consolidation in industrialized economies, slower than expected recovery from a weakened global financial system, depressed commodity prices, and continued low confidence in the policies of advanced economies, economic growth remained strong reflecting the increasing resilience of economies of COMESA Member States. However, the region still relies heavily on output of primary commodities. Big investment largely remains concentrated in a number of Member States in capital intensive extractive industries with few forward and backward linkages with the rest of the economy. As a result they have low employment intensity- that is the ability to generate jobs. Thus the region suffers from downside risks of high unemployment and inequalities. Wider diversification from primary commodity production to non-primary commodity sector is, therefore, needed.

Growth prospects in 2013 remained robust with average real GDP growth of 5.8 percent. On top of the key growth factors that underpinned the region's economic performance in 2013 are recent discoveries of natural resources. Robust domestic demand, especially private consumption and buoyant fixed investment in infrastructure and extractive industries, as well as high government spending will remain key drivers of economic growth in the region in the medium term. The down side risks for economic growth, include among others: weak institutional capacity, huge infrastructure deficit, slow global growth, and the Euro debt crisis.

Global Trade

Global trade for the COMESA countries in 2012 grew by 9 percent, from US $240 billion in 2011 to US $262 billion in 2012. Specifically, total exports rose by 12 percent from levels of US $96 billion in 2011 to US $108 billion in 2012, while imports also registered a 7 percent growth, from US $144 billion in 2011 to US $155 billion in 2012. See Fig 1 below:

Global COMESA Trade (2003-2012)

Some of the countries that greatly contributed to the overall 12 percent total exports growth in the region were Libya (108% growth), Burundi (24% growth), Rwanda (22% growth), Swaziland (18% growth) and Congo DR (12% growth). Notable among the countries that registered negative growth in their total exports in the year 2012 is Sudan, with a decline of 63%.

On the import side, Libya, Ethiopia, Zambia and Uganda contributed to the overall 7 percent growth in 2012 with growth rates of 46 percent, 36 percent, 23 percent and 19 percent respectively. Others were Kenya (10%) and Egypt (9%).

On the other hand, Sudan and Seychelles are among the countries that experienced drops in levels of their global imports with declines of 35 percent and 38 percent respectively. The table below depicts global COMESA trade performance by country for the period 2010 – 2012 and percentage changes in 2012.

Regarding the major export markets for COMESA products, the EU still ranked number one with exports worth US $34 billion destined to the EU market in 2012, up from US $31 billion exported in 2011, representing a 9 percent increase. Exports to the EU are primarily petroleum oils and oils obtained from bituminous minerals exported by Libya. Ranked second after the EU was China with exports worth over US $14 billion in 2012, a slight 3 percent gain over the previous year’s levels. These exports were mainly petroleum oils and oils obtained from bituminous minerals from Libya, and refined copper and cobalt from Congo DR and Zambia.

COMESA's Major Export Trade Markets (2003 – 2012) Values in million US$

Rank	Dest. Mkt	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
1	EU	17,864	22,840	29,685	38,027	38,053	55,014	34,889	49,791	31,143	33,977
2	China	2,116	1,932	3,462	7,000	3,079	12,180	11,659	17,141	13,845	14,305
3	COMESA	2,145	2,335	3,208	2,970	4,520	6,772	6,621	9,040	10,134	9,263
4	Switzer-land	948	1,266	1,823	3,214	3,714	5,791	3,930	4,909	5,550	6,471
5	South Africa	2,926	2,506	1,785	2,483	3,105	2,529	2,695	4,262	5,727	6,030
6	USA	1,516	2,071	3,548	4,865	5,201	6,350	4,285	4,950	3,697	5,833
7	UAE	272	305	873	1,272	859	1,586	2,104	3,105	3,053	4,854
8	India	635	548	693	1,948	1,854	2,752	2,401	2,392	2,889	3,836
9	Saudi Arabia	408	524	764	754	903	1,695	1,827	2,152	2,402	2,333
10	Turkey	1,142	1,649	2,161	681	669	1,168	1,236	1,451	1,736	2,156
RoW		5,427	6,500	7,792	9,663	13,919	16,795	13,663	16,023	16,249	18,503
Total		35,399	42,475	55,794	72,878	75,877	112,631	85,310	115,216	96,426	107,561

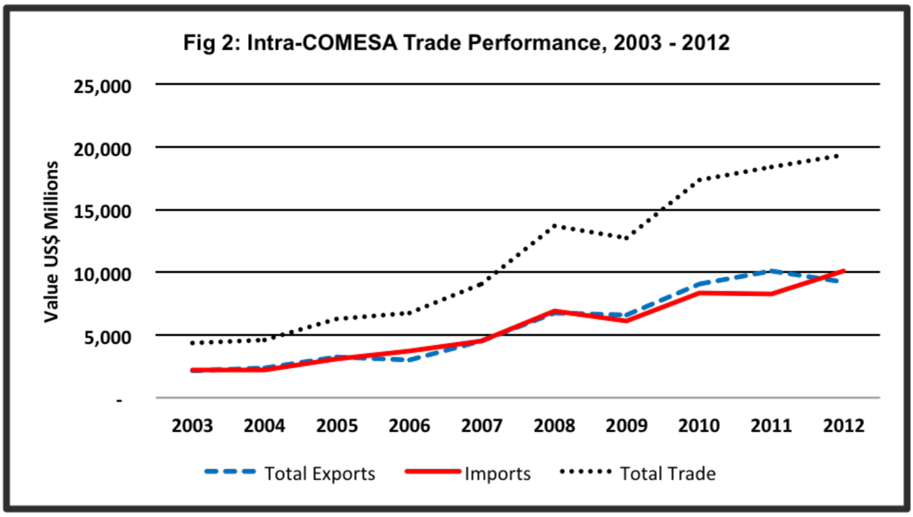
Source: COMSTAT Database and UN COMTRADE Database

On the import side, the EU still ranked number one as a major source of imports into the COMESA market. Imports from the EU in 2012 were worth over US $33 billion, up from levels of US $31 billion recorded the previous year, registering a growth of 6 percent. Ranked after the EU was China, South Africa, India and the COMESA region in that order.

Intra-COMESA Trade

Intra-COMESA trade grew by 5 percent in 2012 over 2011 levels, from US $18.4 billion in 2011 to US $19.3 billion in 2012. Among the countries contributing to this growth were Libya, Zambia and Rwanda, all with growths in both intra-exports and intra-imports in 2012. The figure below depicts the performance of intra-COMESA trade over the period 2003 – 2012.

Intra-COMESA Trade Performance, 2003-2012



Source: COMSTAT Database

Other notable contributors, with positive growth in their intra-COMESA exports, were Egypt while Malawi, Zimbabwe and Uganda also contributed with positive growth in intra-COMESA imports as seen in the table below.

Intra-COMESA trade by country (2011-2012) Value in million US$

Country	2011			2012			% Change (2012)		
	Exports	Re-Ex-ports	Im-ports	Ex-ports	Re-Ex-ports	Imports	Exports	Re-Ex-ports	Imports
Burundi	32	6	158	33	7	157	6.0	11.7	-0.7
Comoros	3		7	1		33	-62.6		334.0
Congo DR	1,256		1,172	1,209		1,348	-3.8		15.0
Djibouti	136	900	115	15		99	-89.2	-100.0	-13.9
Egypt	1,623		835	2,480		781	52.8		-6.5
Eritrea	10		95	7		92	-27.2		-2.5
Ethiopia	315	1	289	262	2	236	-17.0	45.3	-18.4
Kenya	1,760	301	617	1,598	273	726	-9.2	-9.4	17.5
Libya	70		607	127		1,587	80.8		161.3
Madagas-car	46	4	174	38	2	146	-16.7	-41.8	-16.1
Malawi	308	4	226	168	0	428	-45.5	-90.8	89.8
Mauritius	100	89	153	102	105	149	2.8	17.4	-2.4
Rwanda	116	36	368	225	82	421	94.0	129.9	14.5
Seychelles	247	0	51	5		45	-98.0		-12.5
Sudan	422	0	661	276	0	582	-34.6	-98.8	-12.0
Swaziland	95		7	45		5	-52.7		-23.2
Uganda	648	308	659	358	135	714	-44.8	-56.1	8.2
Zambia	1,063	84	1,637	1,422	165	1,872	33.8	96.6	14.4
Zimbabwe	137	14	462	108	13	641	-20.6	-9.6	38.8
Total	**8,386**	**1,748**	**8,294**	**8,479**	**784**	**10,063**			

Source: COMSTAT Database

Whereas over 98 percent of Libya's intra-COMESA trade is with Egypt with imports comprising of different products, Libya's exports to Egypt are mainly petroleum oils and oils obtained from bituminous minerals and these amounted to over US $92 million in 2012.

Zambia's imports from Congo DR in 2012 amounted to over US $1.2 billion and these were mainly copper ores and concentrates, copper powders and flakes and cobalt oxides. Zambia's major intra-COMESA export product was maize corn to Zimbabwe worth over US $240 million in 2012. Rwanda's major intra-export products were mainly tea and coffee to Kenya and Uganda (worth over US $126 million in 2012) while its major intra-COMESA imports comprised of Portland cement, animal or vegetable fats and palm oil all from Uganda.

Malawi's major intra-COMESA imports were petroleum gases and oils from Zambia and these amounted to almost US $300 million in 2012 while Zimbabwe's intra-COMESA imports for maize and tobacco from Zambia were worth over US $374 million in 2012 (almost 60% of the country's intra-COMESA imports). Over 83 percent of Uganda's intra-COMESA imports are from Kenya and these are various products topped by Portland cement and petroleum oils, among others.

Egypt had the biggest market share of 27 percent for intra COMESA exports, followed by Kenya, Zambia and Congo DR with shares of 20 percent, 17 percent and 13 percent respectively. On the import side, Zambia registered the biggest market share of 19 percent in 2012; followed by Libya with 15.8 percent, slightly above the previous year's share of 15.5 percent. Congo DR and Egypt were ranked third and fourth, with shares of 13.4 percent and 7.8 percent respectively, as seen in the table below).

Intra-COMESA Trade (2012) Values in million US$

Rank	Exporter	Value	% Share	Importer	Value	% Share
1	**Egypt**	2,480	26.8	**Zambia**	1,872	18.6
2	**Kenya**	1,871	20.2	**Libya**	1,587	15.8
3	**Zambia**	1,587	17.1	**Congo DR**	1,348	13.4
4	**Congo DR**	1,209	13.1	**Egypt**	781	7.8
5	**Uganda**	493	5.3	**Kenya**	726	7.2
6	**Rwanda**	306	3.3	**Uganda**	714	7.1
7	**Sudan**	276	3.0	**Zimbabwe**	641	6.4
8	**Ethiopia**	264	2.8	**Sudan**	582	5.8
9	**Mauritius**	207	2.2	**Malawi**	428	4.3
10	**Malawi**	169	1.8	**Rwanda**	421	4.2
11	**Libya**	127	1.4	**Ethiopia**	236	2.3
12	**Zimbabwe**	121	1.3	**Burundi**	157	1.6
13	**Swaziland**	45	0.5	**Mauritius**	149	1.5
14	**Madagascar**	41	0.4	**Madagascar**	146	1.5
15	**Burundi**	40	0.4	**Djibouti**	99	1.0
16	**Djibouti**	15	0.2	**Eritrea**	92	0.9
17	**Eritrea**	7	0.1	**Seychelles**	45	0.4
18	**Seychelles**	5	0.1	**Comoros**	33	0.3
19	**Comoros**	1	0.0	**Swaziland**	5	0.1
	Total	**9,263**	**100**		**10,063**	**100.0**

Source: COMSTAT Database

As for the top-most traded products within the region in value terms, Copper ores and concentrates still ranked as number one for the third year running since2010. Second was black tea, previously ranked number one in 2009 and 2008. Portland cement and cobalt ores and concentrates were ranked in third and fourth positions respectively in 2012.

The percentage of intra-COMESA trade to total COMESA trade in 2012 stood at 7 percent, a slight decline from levels of 8 percent registered in 2011. At country level, Member States trading more within the region are Rwanda, Congo DR, Zambia, Burundi, Uganda and Malawi.

Intra-COMESA Trade Potential Analysis

Trade Potential in Commodities

According to the data available at the Secretariat, global trade by COMESA Member States grew by 9 percent in 2012, from US $240 billion in 2011 to US $262 billion in 2012. Specifically, total exports stood at US $107.6 billion while the imports were worth US $154.6 billion. The data further shows that COMESA imported goods worth US $47 billion more than they exported.

During the same period, intra-COMESA exports stood at US $9.3 billion and imports at US $10.1 billion; indicating that intra-COMESA trade in 2012 was only 7 percent of the region's total trade, as shown in the table below:

COMESA Trade with Third Countries (2012) Values in millions US$

Country	Exports (US$ millions)	Imports (US$ millions)	Exports without matching Imports in COMESA (US$)
Burundi	204	641	5,528
Comoros	44	103	
Congo DR	4,841	3,477	45,188
Djibouti	20	2,060	
Egypt	26,779	63,501	884,713,033
Eritrea	430	217	19,604
Ethiopia	1,689	11,640	
Kenya	5,412	15,660	44,909,197
Libya	34,783	9,638	
Madagascar	1,196	2,340	104,906,008
Malawi	1,065	2,430	136,389,516
Mauritius	1,874	4,967	
Rwanda	203	1,233	269,275
Seychelles	654	952	
Sudan	3,092	5,608	15,484,923
Swaziland	1,903	1,635	3,530,908
Uganda	2,214	5,374	787,687
Zambia	8,057	6,946	140,056,073
Zimbabwe	3,836	6,102	282,512,314
Total	**98,296**	**144,544**	**1,613,629,254**

Source: Authors calculations from COMSTAT database

From the foregoing calculations, one can deduce that the region has huge potential for increasing intra-COMESA trade. The potential is estimated at US $96.7 billion. This can be achieved if all the total COMESA exports from third countries, less COMESA imports from third countries, which does not match with any Member States' exports (98,296-1,613) can be traded among the

Member States; because imports of similar products by Member States exceed total exports on average by US $47.9.0 billion.

Country-by-Country Analysis

As observed above, COMESA has the potential to increase its intra-regional trade. This section now focusses on various commodities in which different Member States have got the potential to increase that trade. The analysis is undertaken at a 6-digit level. We use US $100,000 as the cut off point for each commodity's exports by each COMESA country. The detailed table of the country-by-country product exports and their potential is given in annex 1.

It should be noted that some of the major commodity exports such as minerals and metals have been overlooked in this analysis, because their intra COMESA flows probably refer to trans-shipments. It can also be observed from the annex that for some countries, even though they have potential to increase intra-COMESA trade, the commodities they can trade within the region earn less than US $100,000. The analysis will, therefore, focus mainly on the commodities with huge trade potential, without neglecting the fact that even the COMESA exports to third countries that net less than US $100,000 can significantly contribute to the growth of intra-COMESA trade. The analysis further assumes that the commodities whose ratio of the country specific commodity export to the total COMESA imports of the same commodity is between 0.75 and 1.25, has a higher potential to increase intra-COMESA trade because the commodities supply is almost equal to COMESA's demand of the same.

Burundi

As observed from the total COMESA exports and imports to third countries, Burundi has the potential to increase intra-COMESA trade by US $0.2 billion by diverting its exports to third countries, to the other Member States. However, among the commodities exported to third countries, there was no specific commodity meeting the criteria set above.

Comoros

Comoros has the potential to increase intra-COMESA trade by US $0.04 billion and like Burundi, among its exports to third countries, there is no commodity attracting at least US $100,000 and has a ratio close to unity when compared to the total COMESA imports of the same.

DRC

Unlike Burundi, DRC has the potential to increase intra-COMESA trade by US $4.8 billion with the highest revealed potential being in live fish, precious metal ores and concentrates.

Djibouti

Djibouti has the potential to increase intra-COMESA trade by US $0.02 billion with its highest potential being in tanned or crust hides and skins of other animals, without wool or hair on; waste and scrap of primary cells, primary batteries and electric accumulators.

Egypt

Egypt has a very high potential to increase intra-COMESA trade of US $ 26 billion. Secondly it has the highest imports to third countries of US $63.5 billion, which accounts for 44 percent of the total COMESA imports to third countries. Egypt has several products for which trade potential exceeds US $10 million. Among these are ground nuts, essential oils, T-shirts, singlets and other vests, men's or boy's suits, ensembles, jackets, trousers, iron and steel products and household articles. The country also has substantial potential of between US $1 and US $5 million in medicaments, natural honey, vegetables, bananas, new pneumatic tyres, packaging containers, cotton yarn, babies garments and clothing accessories, ladies blouses and shirts, footwear, aluminium waste and scrap, and ball point pens.

Eritrea

Eritrea has the potential to increase intra-COMESA trade of US $0.4 billion if it exports its commodities to Member States importing the same. However, like Burundi and Comoros, most of its exports to third countries are worth less than US $100,000.

Ethiopia

Significant potential for exports to the COMESA markets exists for Ethiopia's dried leguminous vegetables, ginger, lac, fruit juices, cotton carded or combed, panty hose, tights, stockings socks and other hosiery and ladies singlets and other vests. If Ethiopia exports its commodities to other Member States importing the same outside COMESA, it has the potential to increase intra-COMESA trade by US $1.6 billion.

Kenya

Kenya, like Egypt, has high potential to increase its intra-COMESA imports and exports. By exporting commodities, which other Member States are importing from outside the region, Kenya will increase its intra-COMESA trade by US $5.4 billion. It can further enhance this trade by reducing imports from third countries. In fact Kenya and Egypt's combined imports are slightly above 50 percent of the total COMESA imports to third countries.

Kenya has the highest revealed trade potential, exceeding US $10 million in portland cement and tanned or crust skins. Other products with the potential to exceed US $1 million but below US $5 million include skins, coffee and tea, beauty or make up preparations, soap, diagnostic or laboratory reagents, packaging materials, insulated electrical wires and cables, self-propelled bull-dozers, angle-dozers and graders and telephone sets for exports to the COMESA market from Kenya.

Libya

Libya exports the highest outside COMESA as compared to the other Member States hence if it could export to fellow Member States, this will increase the intra-COMESA trade by US $34.7

billion. Ammonia, raw hides and skins of bovine, ferrous products obtained by direct reduction of iron ore and other spongy ferrous products, refined copper and copper alloys and unwrought lead are the leading products in which Libya has potential to increase its intra-COMESA trade.

Madagascar

Madagascar has potential for exports in COMESA of US $1.2 billion, with the highest revealed potential in commodities exceeding US $1 million being in pepper, essential oils and textile products. The other products where there is potential of less than US $1 million include: fish fillet, waste and scrap of primary cells.

Malawi

Malawi's revealed export potential is in live poultry, ground nuts, cotton seed, natural calcium phosphates, precious stones (other than diamonds) and semi-precious stones. Malawi has the potential to increase intra-COMESA trade by US $1.1 billion if it channels its exports to fellow Member States.

Mauritius

In the case of Mauritius, textiles, jewellery, prepared tuna and fruits are products for which there is significant export potential to the COMESA market. Diversion of the country's exports to third countries has the potential to increase intra-COMESA trade by US $1.9 billion

Rwanda

Rwanda has the potential to increase intra-COMESA trade by US $0.2 billion with its revealed export potential being in assortments of paper stationery.

Seychelles

Seychelles has the potential to increase intra-COMESA trade by US $0.7 billion. Its highest revealed potential is in flour, meal and pellets of meat, fish and shells.

Sudan

Sudan's list of products with a revealed export potential to COMESA are lac, gold, tanned or crust skins, fruits, meat of sheep and goat and video recording and reproduction. By exporting similar products to those demanded externally by fellow Member States, Sudan can increase intra-COMESA trade by US $3.1 billion.

Swaziland

Swaziland has the potential to increase intra-COMESA trade by US $1.9 billion. Milk and cream, fruits, nuts and other edible parts of plants, extracts, essences and concentrates of coffee and tea, textiles, wooden furniture and other wooden products are commodities for which Swaziland has significant revealed export potential to the COMESA market.

Uganda

Uganda's revealed export potential to COMESA is in bones and horn cores, pulps of fibres and radar apparatus. It has an export potential of US $2.0 billion if it were to channel its exports to third countries to other COMESA Member States.

Zambia

Bread and other wheat products; bars and rods of iron; precious stones; cut flowers and sugar rank high among the products for which Zambia has significant revealed export potential to the COMESA market. Zambia has the potential to increase intra-COMESA trade by US $8 billion if it can channel its exports to other COMESA Member States and also increase its imports from them.

Zimbabwe

Zimbabwe has the potential to increase intra-COMESA trade by US $3.6 billion with its revealed export potential being in wooden furniture and wood products, household items and agricultural products.

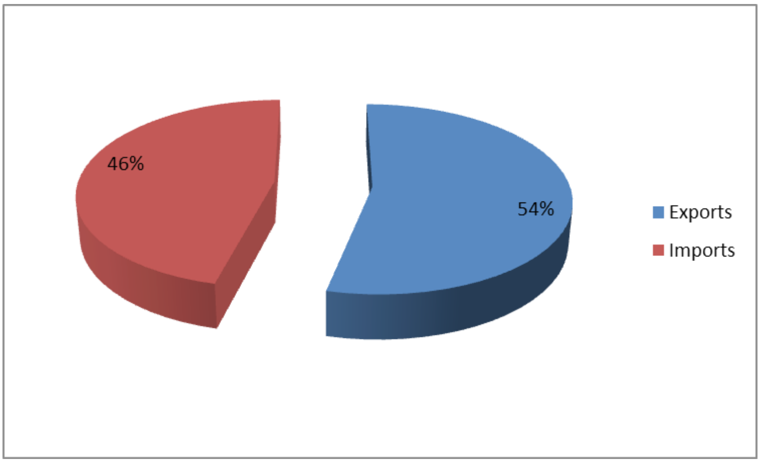
Sectoral Analysis

From the foregoing analysis, it can be derived that there is potential to increase intra-COMESA trade in textiles, wooden furniture, horticultural products, household items, hides and skins, footwear and leather products, Portland cement, coffee and tea concentrates, lac, precious metals, refined copper and copper alloys, essential oils, jewellery and white and red meat.

Trade Potential in Commercial Services

COMESA commercial services exports recovered in 2012, registering growth of 9.6 percent compared to 2011. Contributing to this recovery was the performance of Egyptian services exports, which accounted for 58 percent of COMESA's services exports and a growth of 12 percent. In total COMESA global trade in services amounted to US $76.5 billion with exports accounting for 54 percent and imports 46 percent as shown in the figure below. This shows that COMESA has potential in commercial services trade as shown by a surplus in its global trade. However, there is need to collect data on intra-COMESA trade in commercial trade in services so as to establish how much of the total trade in services is among the Member States.

COMESA Commercial Trade in services 2012



Source: Authors Computation with COMSTAT data

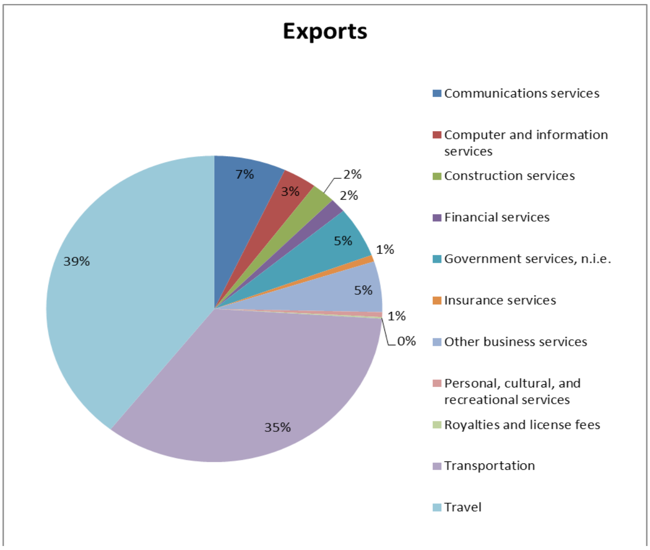
Sectoral Analysis

As depicted in the figures below, when the total trade in services was segregated in various sectors, it was observed that in 2012 COMESA trade mainly in 11 sectors. In exports, travel accounted for 39 percent and transportation 35 percent implying that the two complementary services sectors accounted for 74 percent of the total trade in services.

The scenario was not different in imports for the two sectors accounted for 14 percent and 43 percent respectively, indicating that they accounted for 57 percent of the total imports in services. This can be explained by the fact that for production of finished goods, COMESA Member States rely mostly on importation of intermediate goods, which are mainly transported through the sea. More so 50 percent of the Member States are land linked hence they require, in addition to sea transport, road and rail transport for their goods transportation. COMESA has also several leading airlines, which are used both within and outside the region for transporting both cargo and travellers.

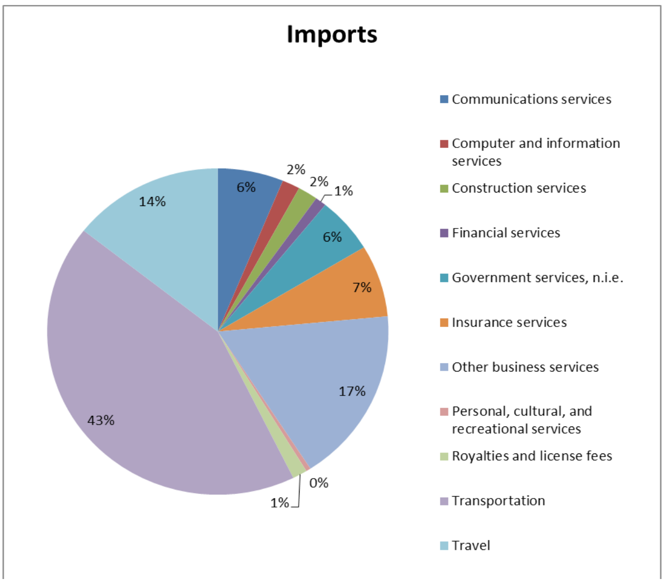
The other sectors which are significant in exports include communication services accounting for 7 percent and government services (5%). In imports, insurance services and communication services accounted for 7 percent and 6 percent respectively, government services stood at 6 percent while other business services were at 17 percent. This shows that apart from transport and travelling sectors, the region trades substantially in communication and government services, which are also related with transport and travelling due to the government documents required for both travelling and transportation across different countries as well as the communications between the parties involved for transaction purposes.

Percentage Export share of each sector



Source: Authors Computation with COMSTAT data

Percentage Import share of each sector



Source: Authors Computation with COMSTAT data

Country Analysis

As observed under the sectoral analysis, the key services sectors in COMESA are transport and travel. Travel services exports grew by 13 percent in 2012. Key drivers in this growth were Egypt, whose exports grew by 14 percent. Other notable countries with positive growth in this sector were Madagascar (45%) and Swaziland (43%). In terms of COMESA shares of travel services exports from Egypt accounted for 61 percent, while Mauritius, Uganda and Kenya accounted for 9 percent, 7 percent and 6 percent respectively.

Transportation services exports grew by 7 percent in 2012, leading to an increased share of total services exports of 39 percent. At country level, Zambia, Kenya, Rwanda and Egypt registered growths in these exports of 41 percent, 22 percent, 20 percent and 8 percent respectively. Transportation services are the largest import sector and accounted for 50.1 percent of commercial services imports in 2012. Kenya, Egypt and Ethiopia recorded growth rates of 21 percent, 17 percent and 15 percent respectively in 2012 and these were the top importing countries for these services.

Factors Affecting Intra-COMESA Trade in Goods

As highlighted in the methodology section of this paper, the factors affecting intra-COMESA trade in goods will be the main focus of the second phase of the study for we have already identified the products in which each Member State has the potential to increase intra-COMESA trade. However based on the existing literature, various obstacles have already been identified and this section highlights some of them.

For a successful FTA, NTBs and other administrative obstacles need to be removed, as well as tariffs, because NTBs also impede the free movement of goods and people. In most RECs in fact NTBs constitute the principal barriers to intra-regional trade, and UNECA (2008) highlighted that they are a growing concern - including rent-seeking customs officials, police roadblocks and harassment by immigration officials. NTBs have an extensive scope as they impede intra-regional trade and serve the cause of protectionism (UNECA 2008). They also reflect the slow progress of regional integration agreements. Unattended to NTBs will curtail the benefits of greater market openness. According to Alaba (2006) NTB's constitute the greatest hindrances to trade integration.[4]

Article 49 of the COMESA Treaty states that each of the Member States undertakes to remove immediately on the entry into force of the Treaty, all the existing NTBs to the import into that Member State of goods originating in the other Member States and thereafter refrain from imposing any further restrictions or prohibitions. The Council of Ministers of COMESA has already expressed concern that the COMESA FTA in particular and the trade regime in general have been undermined by some Member States' NTBs in the form of cumbersome import licensing and other administrative measures.

4 *Alaba (2006) classified NTBs into official (government sanctioned) and unofficial barriers. Official NTBs include government instruments such as import prohibition and quota restrictions. Unofficial NTBs that directly impede trade include bureaucracy, corruption in customs processes, slow port operations, poor roads and communication infrastructure, wastage and thefts at ports, poor storage conditions, harassment by police and other personnel at numerous road block within the region, and inter-country payment difficulties.*

Over the last two or three decades, successive Organization of African Union and AU summits have identified poor transport and communications infrastructure; deficient maintenance of road networks; and the inflexibility, unreliability and inefficiency of rail transport, power supply and water as key factors holding back inter and intra-REC trade.

According to Amjadi and Yeats (1995), transport costs provide a higher effective rate of protection than tariffs, and largely explain why sub-Saharan Africa has been marginalized from world trade. Limao and Venables (2000) estimated that a general 10 percent decrease in transport costs could lift trade volumes by up to 20 percent. Thus, regional cross-border infrastructure - in particular transport, energy and water provision – have the potential to boost intra-regional trade and investment, unlock national and regional comparative advantages, and address the special needs of land-locked countries.

The World Bank's Development Research Group (2006) estimates that Sub-Saharan Africa could gain in the range of US $20 billion annually (US $203 billion over ten years) from trade-related infrastructure upgrading projects.

As a result of the foregoing, COMESA has developed infrastructure development programmes which are aligned with the 2010-2015 AU/NEPAD African Action Plan. COMESA has prioritized four groups of infrastructure projects: transport and trade facilitation; air transport; lake transport; and telecommunications.

In conclusion, from the existing literature it can be deduced that the key factors hindering the growth in intra-COMESA trade are the existing NTBs among Member States, poor transport and poor communication infrastructure. In fact high transport costs and complicated customs procedures are the two key trade facilitation issues identified as most adversely affecting intra-regional trade. UNECA (2004) showed that transport costs are high in Africa averaging 14 percent of the value of exports compared with 9 percent for all developing countries and 17 percent for the least-developing countries, and higher still for land-locked Malawi (56 percent) and Rwanda (48 percent). The key problems affecting customs operations include excessive documentary requirements; outdated official procedures; and lack of up-to-date trade statistics. Insufficient use of automated systems; lack of transparency, predictability and consistency in customs activities; and lack of modernization of, and operation among customs and other governmental agencies also affects intra-COMESA trade.

Conclusion

The total value of opportunities to expand intra-COMESA trade using 2012 extra COMESA exports for goods stands at US $96.7 billion. This figure is computed by netting out, from the total COMESA exports to third countries, the value of the exports which are not imported at all in COMESA, implying there is no demand for the commodity within the Member States. However, it is critical to be cautious that COMESA as a region should not take a closed economy approach towards non-COMESA members; hence if at least 50 percent of the current COMESA exports to third countries were to be channelled within the region at least intra-COMESA trade would increase by US $48.4 billion.

Using the methodology discussed earlier, it was observed that commodities with the highest revealed potential have the potential to contribute approximately US $3,388,725,435 to intra-COMESA trade. This figure is just derived by summing up COMESA imports from third countries in products where the ratio between each country's exports to total COMESA imports from third countries for the specific product is between 0.75 and 1.25.

Egypt has a very high potential to increase intra-COMESA trade with US $26.0 billion. Secondly it has the highest imports from third countries, worth US $63.5 billion, which accounts for 44 percent of the total COMESA imports from third countries. Kenya, like Egypt has a high potential to increase its intra-COMESA imports and exports. In fact Kenya and Egypt combined import slightly more than 50 percent of the total COMESA imports from third countries.

Further, COMESA commercial services exports recovered in 2012, registering growth of 9.6 percent compared to 2011. In total COMESA global trade in services amounted to US $76.5 billion with exports accounting for 54 percent and imports 46 percent. This shows that COMESA has a potential in commercial services trade as shown by a surplus in its global trade. Travel and transportation sectors accounted for 74 percent of the exports and 57 percent of imports. The other significant sectors included communication, insurance and government services. However, there is need to collect data on intra-COMESA trade in commercial trade in services so as to establish how much of the total trade in services is among the member states.

From the existing literature, the key factors hindering the growth in intra-COMESA trade are the existing NTBs among Member States, poor transport and communication infrastructure. In fact high transport costs and complicated customs procedures are the two key trade facilitation issues identified to affect intra-regional trade. UNECA (2004) showed that transport costs are high in Africa averaging 14 percent of the value of exports compared with 9 percent for all developing countries and 17 percent for the least-developing countries, and higher still for land-locked Malawi (56%) and Rwanda (48%).

The key problems affecting customs operations include excessive documentary requirements; outdated official procedures; and lack of up-to-date trade statistics. Insufficient use of automated systems; lack of transparency, predictability and consistency in customs activities; and lack of modernization of, and operation among, customs and other governmental agencies also affects intra-COMESA trade.

Whilst this desk exercise was straightforward to accomplish and has already succeeded in pointing out targets of opportunity, it did not tell us why these products are not traded among the Member States. It is clearly necessary to push the Trade Flow Analysis (TFA) to the level of the exporting or importing enterprise. Those enterprises must first be identified and then questionnaires administered to them to ascertain why they do not export or import, respectively these products in COMESA. They may trade in those sectors both outside and within COMESA, but the identified volumes of COMESA trade with third countries are over and above what is taking place within COMESA.

Policy Implications

Based on the above findings, many policy implications can be drawn. The second phase of the study should involve the conducting of interviews with exporters and importers of products identified to have higher potential in increasing intra-COMESA trade so as to establish why they are not importing or exporting to/from the Member States. As COMESA regional integration is far from its potential intra-trade level, policy makers in Member States should adopt effective trade promotion measures to achieve trade potential level. These measures should include, but not be limited to: removal of non-physical transport barriers along major transit corridors, especially those connecting landlocked countries to sea ports; creation of One Stop Border Posts (OSBPs) and enforcement of adherence by Member States to protocols covering the area of transport and measures already adopted to facilitate transport and transit between Member States such as: harmonized axle load limits, the Harmonized Commodity Description Coding System, COMESA carrier license and transit plates, harmonized road transit charges, Customs Regional Bond Guarantee, the COMESA Customs Declaration, Third Party Motor Insurance (Yellow Card), the Advance Cargo Information System (ACIS), ASYCUDA and inter-railway working agreement between railway companies.

In addition, increasing regional trade requires the promotion of transport and communication infrastructure networks between the Member States. There is, therefore, need to fast track the on-going COMESA transport infrastructure projects such as: Shire-Zambezi waterways, which is aimed at linking Malawi with Mozambique, Zambia and Zimbabwe; SAGANET, an inter-island high speed cable link for Indian Ocean Commission islands; and the North-South Corridor, which runs from north Zambia's Copper belt (a joint COMESA-SADC-EAC activity) and the southern Democratic Republic of Congo to Dar es Salaam port and other ports in South Africa.

Further efforts should be exerted for attracting Foreign Direct Investment (FDI) as well as promoting the trade sectors with the highest potential, that is textiles, wooden furniture, horticultural products, household items, hides and skins, footwear and leather products, Portland cement, coffee and tea concentrates, Lac, precious metals, refined copper and copper alloys, essential oils, jewellery and white and red meat.

Finally, as COMESA's future plans are to implement an economic union, Member States should adopt comprehensive trade liberalization measures ranging from removing tariff barriers to improving customs port procedures at the borders. This can be easily achieved by creation of OSBPs at all the border points and simplifying the customs documentation.

Way Forward

Recommendation	Timeline	Responsibility
Undertake second phase of the study to establish factors hindering intra-COMESA Trade mainly by interviewing the firms identified to have the highest potential to increase intra-COMESA trade	October-December 2014	National Consultants/Research Unit
Collect data on intra-COMESA trade in commercial services	December 2014	Statistics Unit/Member States
Adopt effective trade promotion measures to achieve the revealed trade potential level	Continuous	Member States
Finalize the draft NTB regulations should and have them adopted by the Trade and Customs Committee thereafter submit them to the Legal Drafting Sub-committee	November 2014	Secretariat/TCMA
Finalize the audit and impact assessment of existing NTBs by and prepare a schedule for immediate removal	August 2014	TCMA/Research Unit
Creation of OSBPs in all the major border points between various Member States	December 2015	Secretariat/Member States
Finalize the module for overload control to be integrated in the CVTFS	June 2014	Secretariat
Promotion of transport and communication infrastructure networks between the members. 1. Shire-Zambezi waterway; 2.SAGANET, an inter-island high speed cable link for Indian Ocean Commission islands; 3.the North-South Corridor, which runs from north Zambia's copper belt (a joint COMESA-SADC-EAC activity) and the southern Democratic Republic of Congo to Dar es Salaam port and other ports in South Africa.	Continuous	Member States: Member States to utilize innovative financing instruments (such as infrastructure bonds, preference shares, guarantees) mechanisms (such as project and structured finance techniques) and wide resource mobilization from non-traditional partners such as private investors, equity funds, carbon funds and leveraging and blending with grants from the traditional donors, with emphasis on regional infrastructure development

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World Bank’s Development Indicators (Various Issues)

ANNEX 1: PRODUCTS WITH INTRA- COMESA TRADE POTENTIAL

DRC

HS	Product description	**Extra- COMESA Exports**	**Extra COMESA Imports**	**Extra Exports/ COMESA Imports**
030110	Live fish- Ornamental fish	387,439	530728.6	0.73
261690	Precious metal ores and concentrates - other	486,945	445012.2	1.09
843320	Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 84.37.- Other mowers, including cutter bars for	184,158	143335.8	1.23

Djibouti

HS	**Product description**	**Extra- COMESA Exports**	**Extra COMESA Imports**	**Extra Exports/ COMESA Imports**
410621	Tanned or crust hides and skins of other animals, without wool or hair on, whether or not split, but not further prepared.-- In the wet state (including wet-blue)	188,664	236258.9	0.80
854810	Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators; electrical parts of machinery or apparatus, not specified or included elsewhere in this Chapter.	65,775	83652.45	0.79

Ethiopia

HS	Product description	Extra- COMESA Exports	Extra COMESA Imports	Extra Exports / COMESA Imports
071339	Dried leguminous vegetables,	2,635,309	3007677.27	0.88
091010	Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices.- Ginger	3,904,636	3784030.45	1.03
130190	Lac; natural gums, resins, gum-resins and oleoresins	9,819,634	8119932.70	1.21
200931	Fruit juices and vegetable juices,	703,416	638669.93	1.10
520300	Cotton carded or combed.	4,469,875	3571033.17	1.25
611529	Panty hose, tights, stockings, socks and other hosiery, including graduated compression hosiery and footwear without applied soles, knitted or crocheted	1,733,930	2041364.66	0.85
620821	Women's or girls' singlets and other vests, slips, petticoats, briefs, panties, nightdresses, pyjamas, négligés, bathrobes, dressing gowns and similar articles.-- Of cotton	1,564,462	1984013.12	0.79

Egypt

HS	Product description	Extra- COMESA Exports	Extra COMESA Imports	Extra Exports / COMESA Imports
120210	Ground-nuts	31,524,747	35869962	0.88
200870	Fruit, nuts and other edible parts of plants,	157,381	158466.8	0.99
210610	Food preparations not elsewhere specified or included	1,461,311	1195166	1.22
271500	Bituminous mixtures	414,120	466425.1	0.89
300420	Medicaments (excluding goods of heading 30.02, 30.05 or 30.06)	1,524,668	1852229	0.82
040900	Natural honey.	3,403,175	2744382	1.24
060290	Other live plants cuttings and slips; mushroom spawn.- Other	1,228,106	1041133	1.18
070990	Other vegetables, fresh or chilled.- Other	47,179,831	54060605	0.87
071021	Vegetables	1,227,357	1161744	1.06

080300	Bananas, including plantains, fresh or dried.	3,745,032	4401075	0.85
330112	Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpe	156,843	133385	1.18
330129	Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpe	16,697,130	14540034	1.15
330190	Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpe	1,055,448	1225456	0.86
391910	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics	656,742	529260.7	1.24
392330	Articles for the conveyance or packing of goods, of plastics	2,141,304	1969139	1.09
401110	New pneumatic tyres, of rubber.- Of a kind used on motor cars	7,622,523	7522963	1.01
401161	New pneumatic tyres, of rubber.-- Of a kind used on agricultural or forestry vehicles and machines	1,766,027	1686714	1.05
410719	Leather further prepared after tanning or crusting, including parchment-dressed leather, of bovine (including buffalo) or equine animals, without hair on	668,915	836566.5	0.80
440890	Sheets for veneering (including those obtained by slicing laminated wood	187,620	242668.4	0.77
481141	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or rectangular sheets, of any size, other than goods of the kind described in head	224,235	202449.7	1.11
481830	Toilet paper and similar paper, cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape	120,566	112472	1.07

481940	Cartons, boxes, cases, bags and other packing containers, of paper, paper-board, cellulose wadding or webs of cellulose fibres	1,817,119	1469403	1.24
520511	Cotton yarn (other than sewing thread), containing 85 % or more by weight of cotton, not put up for retail sale.-- Measuring 714.29 decitex or more (not exceeding 14 metric number)	3,061,713	4079034	0.75
520822	Woven fabrics of cotton, containing 85 % or more by weight of cotton, weighing not more than 200 g/m2.-- Plain weave, weighing more than 100 g/m2	894,315	977450.3	0.91
520952	Woven fabrics of cotton, containing 85 % or more by weight of cotton, weighing more than 200 g/m2.-- 3-thread or 4-thread twill, including cross twill	141,965	132007.4	1.08
550969	Yarn (other than sewing thread) of synthetic staple fibres, not put up for retail sale.-- Other	522,460	441634.4	1.18
551612	Woven fabrics of artificial staple fibres.-- Dyed	284,113	254568.7	1.12
610520	Men's or boys' shirts, knitted or crocheted.- Of man-made fibres	199,891	184845.2	1.08
610910	T-shirts, singlets and other vests, knitted or crocheted.- Of cotton	239,897,939	2.04E+08	1.17
611190	Babies' garments and clothing accessories, knitted or crocheted.- Of other textile materials	1,572,751	1500612	1.05
620339	Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear).-- Of other textile materials	2,275,233	2072330	1.10
620342	Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear).-- Of cotton	125,678,881	1.4E+08	0.90
620343	Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear).-- Of synthetic fibres	6,788,793	8079189	0.84
620453	Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear).-- Of synthetic fibres	157,221	138525.1	1.13
620610	Women's or girls' blouses, shirts and shirt-blouses.- Of silk or silk waste	1,255,892	1658102	0.76
621790	Other made up clothing accessories	558,562	557393.3	1.00

640399	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather.	6,654,993	6354482	1.05
680690	Slag wool, rock wool and similar mineral wools; exfoliated vermiculite, expanded clays, foamed slag and similar expanded mineral materials	182,544	242642.1	0.75
721070	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated.- Painted, varnished or coated with plastics	4,414,980	3566592	1.24
721420	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling.- Containing indentations, ribs, grooves or other deformations produced during the rolling pro	13,730,700	17800744	0.77
721640	Angles, shapes and sections of iron or non-alloy steel.- L or T sections, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80 mm or more	168,652	176917.6	0.95
721699	Angles, shapes and sections of iron or non-alloy steel.-- Other	1,395,686	1227490	1.14
730690	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel.- Other	1,749,384	2059081	0.85
731290	Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated.- Other	504,627	422623.3	1.19
732112	Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel.-- For liquid fuel	181,609	200563.6	0.91
732392	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel.-- Of cast iron, enamelled	299,914	291578.1	1.03
732599	Other cast articles of iron or steel.-- Other	326,901	399317.5	0.82
760200	Aluminium waste and scrap.	5,477,076	7472757	0.73

761519	Table, kitchen or other household articles and parts thereof, of aluminum; pot scourers and scouring or polishing pads, gloves and the like, of aluminum; sanitary ware and parts thereof, of aluminum.-- Other	20,139,662	19953744	1.01
830990	Stoppers, caps and lids (including crown corks, screw caps and pouring stoppers), capsules for bottles, threaded bungs, bung covers, seals and other packing accessories, of base metal.- Other	503,906	531394.1	0.95
840290	Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers.- Parts	378,295	403088.2	0.94
841829	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 84.15.-- Other	322,007	260564.7	1.24
842139	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases.-- Other	118,901	132090.3	0.90
843699	Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.-- Other	120,333	111644.3	1.08
847759	Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter.-- Other	198,533	176719.3	1.12
853630	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes)	245,578	204482.4	1.20
854140	Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes; mounted piezo-electric crystals.- Photosensitive	917,721	1036743	0.89
871680	Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof.- Other vehicles	197,483	186578.1	1.06

902620	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 90.14, 90.15, 90.28 or 9	176,424	237635.3	0.74
960310	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), handoperated mechanical floor sweepers, not motorised, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers	170,056	134939	1.26
960810	Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating stylos; propelling or sliding pencils; pen-holders, pencil-holders and similar holders; parts (including caps and clips)	1,081,217	1036553	1.04

Kenya

HS	Product description	Extra- COMESA Exports	Extra COMESA Imports	Extra Exports/ COMESA Imports
151319	Coconut (copra), palm kernel or babassu oil and fractions thereof	661,622	357222.1	1.85
210120	Extracts, essences and concentrates, of coffee, tea or maté	1,243,720	1213559	1.02
220870	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages.- Liqueurs and cordials	199,035	197635.5	1.01
220890	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages.- Other	465,045	420531.2	1.11
252329	Portland cement, aluminous cement, slag cement, supersulphate cement and similar hydraulic cements	22,033,360	18247732	1.21
271500	Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example, bituminous mastics, cut-backs).	422,630	457915.6	0.92
282490	Lead oxides; red lead and orange lead.- Other	429,923	388707.2	1.11

283990	Silicates; commercial alkali metal silicates.- Other	186,969	150638.9	1.24
321290	Pigments (including metallic powders and flakes) dispersed in non-aqueous media, in liquid or paste form, of a kind used in the manufacture of paints (including enamels); stamping foils; dyes and other colouring matter put up in forms or packings for reta	124,347	100340.6	1.24
330499	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations.-- Other	4,620,522	4941667	0.94
340120	Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, moulded pieces or shapes, whether or not containing soap; organic surface-active products and preparations for washing the skin, in the form of liquid or c	5,592,648	4623277	1.21
382200	Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06; certified reference materials.	1,162,015	1054153	1.10
392010	Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials.- Of polymers of ethylene	2,220,869	1803207	1.23
392310	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.- Boxes, cases, crates and similar articles	3,329,935	2972478	1.12
392321	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.-- Of polymers of ethylene	7,696,644	8067102	0.95
392329	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.-- Of other plastics	5,409,022	6988344	0.77
410510	Tanned or crust skins of sheep or lambs, without wool on, whether or not split, but not further prepared.- In the wet state (including wet-blue)	16,814,400	19975416	0.84
410621	Tanned or crust hides and skins of other animals, without wool or hair on, whether or not split, but not further prepared.-- In the wet state (including wet-blue)	31,366,080	25126173	1.25

420219	Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverages bags, toile	152,595	124768.6	1.22
440791	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm.-- Of oak (Quercus spp.)	189,417	168119.4	1.13
441090	Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances.- Other	147,439	126283.7	1.17
482090	Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting-pads, binders (loose-leaf or other), folders, file covers, manifold business forms, interleaved carbon s	379,696	306508.3	1.24
630190	Blankets and travelling rugs.- Other blankets and travelling rugs	583,410	719132.8	0.81
680690	Slag wool, rock wool and similar mineral wools; exfoliated vermiculite, expanded clays, foamed slag and similar expanded mineral materials; mixtures and articles of heat-insulating, sound-insulating or sound-absorbing mineral materials, other than those o	232,792	192394.1	1.21
732112	Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel.-- For liquid fuel	199,769	182404.3	1.10
732394	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel.-- Of iron (other than cast iron) or steel, enamelled	704,386	856693.5	0.82
732599	Other cast articles of iron or steel.-- Other	392,302	333916.3	1.17
740819	Copper wire.-- Other	959,365	928592.6	1.03

820559	Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine tools; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks	406,748	458938.1	0.89
840999	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08.-- Other	227,366	1851637	0.12
841319	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators.-- Other	181,831	202178.6	0.90
842940	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers.-Tamping machines and road rollers	1,079,278	1088930	0.99
847759	Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter.-- Other	176,591	198661.2	0.89
848790	Machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, not specified or included elsewhere in this Chapter.-Other	367,891	423633.6	0.87
850300	Parts suitable for use solely or principally with the machines of heading 85.01 or 85.02.	954,641	1114786	0.86
850780	Electric accumulators, including separators therefor, whether or not rectangular (including square).- Other accumulators	291,164	233982.6	1.24
851718	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a lo	318,008	296216.4	1.07
851769	Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a lo	1,489,379	1361474	1.09

852380	Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter	196,380	190899.4	1.03
853630	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for	194,809	255250.9	0.76
854419	Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with	1,991,046	1582368	1.26
880320	Parts of goods of heading 88.01 or 88.02.- Under-carriages and parts thereof	470,320	421194.6	1.12
901831	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments.-- Syringes, with or without needles	310,263	293804.6	1.06
902780	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or	241,960	221410.8	1.09
950691	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table tennis) or outdoor games, not specified or included elsewhere in this Chapter; swimming pools and paddling pools.-- Articles and equipment for gene	116,007	126612.5	0.92

Libya

HS	**Product description**	**Extra- COMESA Exports**	**Extra COMESA Imports**	**Extra Exports/ COMESA Imports**
281410	Ammonia, anhydrous or in aqueous solution.- Anhydrous ammonia	7,617,361	7018849	1.09

410150	Raw hides and skins of bovine (including buffalo) or equine animals (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split.- Whole hides and skins	1,309,480	1588881	0.82
720390	Ferrous products obtained by direct reduction of iron ore and other spongy ferrous products, in lumps, pellets or similar forms; iron having a minimum purity by weight of 99.94 %, in lumps, pellets or similar forms.- Other	67,808,937	79190970	0.86
740321	Refined copper and copper alloys, unwrought.-- Copper-zinc base alloys (brass)	1,211,081	1249266	0.97
740329	Refined copper and copper alloys, unwrought.-- Other copper alloys (other than master alloys of heading 74.05)	318,539	282987.9	1.13
780191	Unwrought lead.-- Containing by weight antimony as the principal other element	1,593,316	1850992	0.86

Madagascar

HS	Product description	Extra- COMESA Exports	Extra COMESA Imports	Extra Exports/ COMESA Imports
030499	Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen.-- Other	277,907	265743.9	1.05
090411	Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum or of the genus Pimenta.-- Neither crushed nor ground	5,205,099	5808142	0.90
330129	Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpe	13,767,975	17469189	0.79
610343	Men’s or boys’ suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted.-- Of synthetic fibres	850,633	803660	1.06

610443	Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted.-- Of synthetic fibres	242,734	235467.4	1.03
611710	Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories.- Shawls, scarves, mufflers, mantillas, veils and the like	1,271,565	1080664	1.18
620332	Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear).-- Of cotton	1,929,689	2468488	0.78
620610	Women's or girls' blouses, shirts and shirt-blouses.- Of silk or silk waste	1,607,458	1306536	1.23
620920	Babies' garments and clothing accessories.- Of cotton	8,054,990	7326911	1.10
621111	Track suits, ski suits and swimwear; other garments.-- Men's or boys'	129,885	107593.9	1.21
854810	Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators; electrical parts of machinery or apparatus, not specified or included elsewhere in this Chapter.-	553,628	585337.4	0.95
902610	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 90.14, 90.15, 90.28 or 9	512,946	432259.1	1.19

Malawi

HS	**Product description**	**Extra- COMESA Exports**	Extra COMESA Imports	**Extra Exports/ COMESA Imports**
010594	Live poultry, that is to say, fowls of the species Gallus domesticus, ducks, geese, turkeys and guinea fowls.-- Fowls of the species Gallus domesticus	8,479	11055.03	0.77
120210	Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken.- In shell	9,355,880	9004852	1.04

120220	Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken.- Shelled, whether or not broken	9,177,331	9249346	0.99
120720	Cotton seeds, whether/not broken	2,116,888	2709830	0.78
251020	Natural calcium phosphates, natural aluminum calcium phosphates and phosphatic chalk.- Ground	632,075	555960.2	1.14
710310	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport.	102,015	127775.7	0.80

Mauritius

HS	**Product description**	**Extra- COMESA Exports**	**Extra COMESA Imports**	**Extra Exports/ COMESA Imports**
081090	Other fruit, fresh.- Other	1,981,806	2599770	0.76
090500	Vanilla.	366,084	334619.6	1.09
160414	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs, Tunas, skipjack and bonito (Sarda spp.)	314,844,210	3.53E+08	0.89
420221	Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverages bags, toile	5,213,145	6376640	0.82
420231	Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverages bags, toile	1,267,814	1432709	0.88
420291	Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverages bags, toile	1,422,463	1117227	1.27

510320	Waste of wool or of fine or coarse animal hair, including yarn waste but excluding garnetted stock.- Other waste of wool or of fine animal hair	36,252	31580.2	1.15
510610	Yarn of carded wool, not put up for retail sale.- Containing 85 % or more by weight of wool	6,664,527	5167306	1.29
551694	Woven fabrics of artificial staple fibres.-- Printed	267,529	319331.8	0.84
600191	Pile fabrics, including "long pile" fabrics and terry fabrics, knitted or crocheted.-- Of cotton	1,936,526	2276549	0.85
600320	Knitted or crocheted fabrics of a width not exceeding 30 cm, other than those of heading 60.01 or 60.02.- Of cotton	507,646	479200.1	1.06
600390	Knitted or crocheted fabrics of a width not exceeding 30 cm, other than those of heading 60.01 or 60.02.- Other	19,501	17660.78	1.10
600410	Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 % or more of elastomeric yarn or rubber thread, other than those of heading 60.01.- Containing by weight 5 % or more of elastomeric yarn but not containing rubber thread	1,867,589	1963790	0.95
610220	Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including skijackets), windcheaters, wind jackets and similar articles, knitted or crocheted, other than those of heading 61.04.- Of cotton	491,820	444829.1	1.11
610422	Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted.-- Of cotton	6,123,778	5675169	1.08
610452	Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted.-- Of cotton	2,404,532	2376485	1.01
610461	Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted.-- Of wool or fine animal hair	33,721	30028.39	1.12
610462	Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted.-- Of cotton	11,755,975	9652889	1.22

610590	Men's or boys' shirts, knitted or crocheted.- Of other textile materials	4,118,579	4070929	1.01
610819	Women's or girls' slips, petticoats, briefs, panties, nightdresses, pyjamas, négligés, bathrobes, dressing gowns and similar articles, knitted or crocheted.-- Of other textile materials	1,333,110	1258951	1.06
610990	T-shirts, singlets and other vests, knitted or crocheted.- Of other textile materials	77,092,548	64071310	1.20
620342	Men's or boys' suits, ensembles, jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear).-- Of cotton	104,232,430	87901887	1.19
711311	Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal.-- Of silver, whether or not plated or clad with other precious metal	3,520,076	4199038	0.84

Rwanda

HS	Product description	Extra- COMESA Exports	Extra COMESA Imports	Extra Exports/ COMESA Imports
481720	Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery.- Letter cards, plain postcards and correspond	140,972	148469.3	0.95

Seychelles

HS	Product description	Extra- COMESA Exports	Extra COMESA Imports	Extra Exports/ COMESA Imports
230120	Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves. - Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates	10,279,558	9500704	1.08

Sudan

HS	Product description	Extra- COMESA Exports	Extra COMESA Imports	Extra Exports/ COMESA Imports
020410	Meat of sheep or goats, fresh, chilled or frozen.- Carcasses and half-carcasses of lamb, fresh or chilled	3,788,069	3305171	1.15
130190	Lac; natural gums, resins, gum-resins and oleoresins (for example, balsams).- Other	13,522,099	14770980	0.92
200811	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.-- Ground-nuts	708,572	920447	0.77
410510	Tanned or crust skins of sheep or lambs, without wool on, whether or not split, but not further prepared.- In the wet state (including wet-blue)	19,227,233	17562583	1.09
710812	Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form.-- Other unwrought forms	2,152,606,614	1.85E+09	1.17
852110	Video recording or reproducing apparatus, whether or not incorporating a video tuner.- Magnetic tapetype	27,718	25375.36	1.09

Swaziland

HS	Product description	Extra- COMESA Exports	Extra COMESA Imports	Extra Exports/ COMESA Imports
040210	Milk and cream, concentrated or containing added sugar or other sweetening matter.- In powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5 %	871,249	1116233	0.78
200870	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.- Peaches, including nectarines	158,120	157728	1.00

210120	Extracts, essences and concentrates, of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof.- Ext	1,202,673	1254607	0.96
440729	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm.-- Other	24,324,881	30109317	0.81
620119	Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including skijackets), windcheaters, windjackets and similar articles, other than those of heading 62.03.-- Of other textile materials	816,330	1029299	0.79
847410	Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels,	1,033,653	1191127	0.87
870390	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars.- Other	179,047	152694.4	1.17

Uganda

HS	**Product description**	**Extra- COMESA Exports**	Extra COMESA Imports	Extra Exports/ COMESA Imports
050690	Bones and horn-cores, unworked, defatted, simply prepared (but not cut to shape), treated with acid or degelatinised; powder and waste of these products.- Other	465,867	490358.4	0.95
470610	Pulps of fibres derived from recovered (waste and scrap) paper or paperboard or of other fibrous cellulosic material.- Cotton linters pulp	1,070,353	1187066	0.90
847420	Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels,	2,003,463	2118678	0.95

852691	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus.-- Radio navigational aid apparatus	290,210	303681.7	0.96

Zambia

HS	Product description	Extra- COMESA Exports	Extra COMESA Imports	Extra Exports/ COMESA Imports
030193	Live fish.-- Carp	282,258	312614.8	0.90
060110	Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant, in growth or in flower; chicory plants and roots other than roots of heading 12.12.- Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant	379,480	363904.3	1.04
060319	Cut flowers and flower buds of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared.-- Other	1,337,555	1663269	0.80
190531	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products.-- Sweet biscuits	33,536,747	30761609	1.09
282490	Lead oxides; red lead and orange lead.- Other	373,725	444904.7	0.84
710399	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport.-- Others	5,800,778	5472996	1.06
711620	Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).- Of precious or semi-precious stones (natural, synthetic or reconstructed)	357,883	286885.1	1.25
721420	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling.- Containing indentations, ribs, grooves or other deformations produced during the rolling pro	17,209,377	14322066	1.20

721430	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling.- Other, of free-cutting steel	30,953	190543.5	1.21
721640	Angles, shapes and sections of iron or non-alloy steel.- L or T sections, not further worked than hot-rolled, hot-drawn or extruded, of a height of 80 mm or more	176,646	168923.7	1.05
820719	Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or ex	474,097	493468.2	0.96
842790	Fork-lift trucks; other works trucks fitted with lifting or handling equipment.- Other trucks	148,026	123682.1	1.20
842911	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers.--Track laying	197,845	221176.2	0.89
842959	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers.--Other	3,164,129	4120267	0.77
847170	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included.- Storage units	483,183	510313	0.95
850434	Electrical transformers, static converters (for example, rectifiers) and inductors.--Having a power handling capacity exceeding 500 kVA	972,588	818243.2	1.19
870410	Motor vehicles for the transport of goods.- Dumpers designed for off-highway use	2,397,925	2112884	1.13

Uganda

HS	Product description	Extra- COMESA Exports	Extra COMESA Imports	Extra Exports/ COMESA Imports
253010	Mineral substances not elsewhere specified or included.- Vermiculite, perlite and chlorites, unexpanded	2,824,896	3120520.99	0.91

440320	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared.- Other, coniferous	522,159	455259.73	1.15
441820	Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes.- Doors and their frames and thresholds	1,489,848	1599939.58	0.93
710229	Diamonds, whether or not worked, but not mounted or set.-- Other	113,111	112562.89	1.00
732392	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel.-- Of cast iron, enamelled	284,352	307140.1	0.93
732394	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel.-- Of iron (other than cast iron) or steel, enamelled	811,429	749650.74	1.08
841920	Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 85.14), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting	137,832	116906.57	1.18
842240	Dish washing machines; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers;	281,358	364496.4527	0.77
843280	Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers.- Other machinery	124,921	132415.42	0.94
852872	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus-- Other, colour	141,669	138715.73	1.02

Trade Facilitation and Regional Economic Integration in Eastern and Southern Africa

By Francis Mangeni[5]

Abstract

This paper sets out the trade facilitation programmes in place in the Common Market for Eastern and Southern Africa as a regional economic community, in order to make the point that trade facilitation has been embraced as a key plank of the architecture of regional integration in order to improve economic growth and competitiveness, and generate investment and jobs. To this end a number of programmes are highlighted, such as the one-stop-border-post. The most important point made here, and the predominant proposal, is that these trade facilitation programmes can be scaled up and replicated across the region to cover all Member States, which would result in more facilitation of trade and therefore economic growth. This will ultimately assist in the achievement of key public policy objectives of wealth creation and poverty eradication. A new focused initiative could be to create an online interactive COMESA Trade Facilitation Portal, freely accessible by economic operators as a one stop place for all regulations, documents and information about export, import and transit transactions.

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5 *Francis Mangeni is Director of Trade Customs and Monetary Affairs at the Secretariat of the Common Market for Eastern and Southern Africa. The very helpful suggestions for improvement from Martha Byanyima and Chris Hakiza are very much appreciated.*

Introduction

It came as no surprise at all when the Ninth WTO Ministerial Conference adopted the Agreement on Trade Facilitation on 11 December 2013 in Bali, Indonesia.[17] The case for trade facilitation was overwhelming. Of course, it was a huge surprise for the remaining eternal sceptics still left in our world of unimaginable possibilities; their caution nevertheless assisted a refinement of the Agreement through the negotiations.[18]

But it certainly wasn't a surprise for Kwegyere Msimuko, the Assistant Commissioner in charge of the One-Stop-Border-Post (OSBP) on the Zambia-Zimbabwe border at Chirundu, a polite and pleasant officer. He has been overseeing the OSBP for about two years now, and has seen the waiting times at the border for trucks continue to reduce, from up to five days in 2008 to a mere 20 minutes for accredited clients or two hours for importers that use the advance declaration system; and not more than two days for others.[19] And in light of the array of trade facilitation instruments that African regional economic communities are operating, as well as the analytical work done including a ground breaking report supervised by the prolific Stephen Karingi of the United Nations Economic Commission for Africa[20], which showed that Africa had the highest cost of doing business in the world[21], I wasn't surprised either. Besides, there are outstanding reports produced every year on the comparably low competitiveness of African countries, including specifically with respect to logistics[22], which provide a clarion call for action on trade facilitation.

It must be pointed out upfront that foreign direct investment into Africa continues to be on the rise, increasing by 4% in 2013 to reach US $57 billion[23]; despite the trade facilitation disadvantage, which has been mentioned as one of the four major complaints by Chinese investors about Africa (to pick on the Chinese); the others being social and political instability, differences in culture and labour laws, and lack of adequate infrastructure and good business conditions[24]. As explained by Helen Hai, a highly successful Chinese investor producing branded shoes out of Ethiopia:

> *"In order to make Africa the manufacturing center, there must be opportunities to make a profit. Although the logistics cost is 8%, four times the amount in China, labour is just 2% of production costs compared with 22 percent in China, so it is still much more profitable."*[25]

"Not decent jobs then", one would retort; but to that Helen said to a quizzical panelist at the 2014 Annual Meetings of the African Development Bank:[26] "Let the workers themselves decide whether they would rather take or refuse the job and not well paid bureaucrats." Well, there is a bonanza of about 85 million jobs moving out of China as the cost of labour rises there to match the social economic development levels being achieved. The question is whether Africa can get those jobs by improving logistics and the business environment, and through a cluster-based industrialization strategy as Justin Lin suggests[27], as well as strengthening regional markets that, through the economies of scale generated, and support high investment levels. And of course the issue of decent jobs must be consistently addressed, but without losing out on the job bonanza.[28] That said, the rest of this paper will focus on trade facilitation.

Meaning and Importance of Trade Facilitation

Facilitating trade requires reduction of the number, and simplification of the complexity, of documentation for exporting and importing goods; shortening of time spent at border crossings for goods vehicles and persons; publication of and easy access to information and applicable rules; use of tested international best practices in management of border operations; and efficient border customs, standards, environmental, immigration, and statistical agencies that address constraints faced by importers, exporters and logistics people.

As a matter of fact, the cost of doing business in Africa is high, in contrast to other regions, and this has significantly contributed to the perceived unattractiveness of Africa: 8 documents to export, 9 documents to import, 31 days to export, 37 days to import, US $1,990 to export a 20ft container, US $2,567 to import a 20ft container; figures twice or three times those of some other regions of the world.[29] And for this reason, improving the business environment in order to reduce the cost of doing business has been an important priority, for individual governments, and acting jointly within the framework of regional economic communities. To the Common Market for Eastern and Southern Africa for instance, trade facilitation has consistently been a key priority, both in terms of overarching programmes and of specific projects.[30]

The ultimate objective of trade facilitation is to reduce the cost of doing business and ultimately improve the competitiveness of products in terms of their price, quick delivery, and wholesomeness. This benefits producers and traders in terms of profitability resulting from efficiency and reduced costs (for just in time production for instance), which promotes investment, productivity and growth of enterprises, hopefully resulting in decent jobs for the people. Trade facilitation benefits consumers in terms of low prices and efficiency, including in delivery of products for improving the quality of life in terms of ready and speedy access to basic goods and services. Governments see in trade facilitation, therefore, an important means of achieving the public policy objectives of wealth creation and poverty eradication, job creation, and hence peace and stability in society. But that is not all.

Facilitating trade across Africa in order to boost intra-Africa trade and trade between Africa and the rest of the world will sustain the current positive trends towards social and economic development. Indeed, boosting intra-Africa trade, including through trade facilitation[31], and establishing a continent-wide free trade area are top priorities now officially adopted by the African Union, at the summit of Heads of State and Government held on 29-30 January 2012.[32]

These 14 years since the millennium fireworks and celebrations in the night of 01 January 2000, have seen an upbeat Africa, with supportive narrative on Africa Rising, as it is called.[33] I believe the African Development Bank's President, the indomitable Donald Kaberuka, has passionately and succinctly provided the key points describing what this good story actually is, explaining it while remaining realistic about the challenges. In an opening speech to the African Economic Conference on 27 October 2010 in Tunis, he said at length:

> *"Of late, much has been said about Africa. Thank God, this time much of it positive: not the Afro-pessimism of the 1990s nor the Afro-ebullience one hears about once in a while, but a sort of a cool, reasoned discourse which for, lack of better expression, I prefer to call Afro-realism!*
>
> *That discourse could be roughly encapsulated in the following eight points.*
>
> *First, a broad agreement that an unusually strong momentum has built up in the African economies over the last decade. The evidence is overwhelming.*
>
> *Second, that even though the crisis in the global economy has been a setback, it has not reversed, except momentarily, that positive trajectory.*
>
> *Third, contrary to popular belief, this is not simply about commodities. Although, indeed, high commodity prices have been helpful, that has not been the decisive element. The new momentum is well deserved. Reforms, over the past two decades, be they macro-economic, micro-economic, governance, political or structural, are paying off. Those are reflected in solid banking regulations, robust public finances and improved business environment. That is what provided the policy buffers during the crisis.*
>
> *Fourth, recognition that, despite this positive momentum and the faster pulse, poverty remains pervasive and growth in per capita incomes is too slow. Hence, poverty, unemployment, slow pace to the MDGs, despair among the poor and vulnerability to external shocks remain intact.*
>
> *Fifth, somewhere at the back of the mind a doubt, a question as to whether all this can be sustained or whether, as in the mind of many, this is not yet another false dawn, such as the mid-1970s when two successive oil shocks sent the economies into tailspin and two decades of structural adjustment.*
>
> *Sixth, what is the impact of climate change? Just look at what is happening in the Sahel: millions suffering food shortages while below the Sahel belt swathes of land suffer under massive floods unseen in years!*
>
> *Seventh, what is the implication of the massive infrastructure deficit? Is it really possible to sustain economies at 5, 6, or 7% growth without adequate power? Is it possible to diversify, to build resilience, to create a sound base with such a huge infrastructure gap?*

Eighth, and that, overall, Africa's sluggish convergence with the rest of the world's economics remains intact.

These are without any doubt, legitimate observations. As for us at the Bank, fully cognizant of these risks and uncertainties, we remain very bullish but pragmatically realistic as to the potential setbacks. We believe, nonetheless, Africa has come of age. We have pockets of problems – sometimes "big pockets" of problems – but we know where those pockets are and where we want to go. But while we know the desired destination, we agree that there are many roads to Damascus. Every country is different; its endowment and initial conditions, and hence the road to the destination, must of necessity be different.[34]"

This optimism is quite widespread, beyond Africa. *Abundance*, a book by Peter Diamandis and Steven Kotler[35], vividly describes how the global human family has now achieved the technological capacity to rid the world of its gravest afflictions of want of food, decent housing, clean water, abundant energy, exquisite education, and perfect health. They identify the forces at play that will bring this about: new transformational technologies, a do-it-yourself revolution of innovators addressing global challenges, wealthy philanthropists funding good causes and providing funds for developing new products that transform economies and societies, and the plugging of the very poorest of the poor (the bottom-billion) into the global economy. This is what they have to say, as if to freshly echo the Prophet Isaiah's[36] future world:

"So what is possible? Imagine a world of nine billion people with clean water, nutritious food, affordable housing, personalized education, top-tier medical care, and non-polluting, ubiquitous energy. Building this better world is humanity's grandest challenge. What follows is the story of how we can rise to meet it.[37]"

And what a story it is! "The typical American spending breakdown shows that 75 to 80 percent of the money we earn goes to meet basic needs such as water, food, clothing, shelter, health care, and education. It's over 90 percent in most developing countries. But many of the technologies investigated in this book have dematerializing properties: they service fundamental needs without costing us much beyond an internet connection".[38] In the trade facilitation speak, this is saying that an internet connection can dramatically reduce time to export, import and transit; with the policy implication for governments to make information and communication technologies ever more ubiquitous. It is of course noteworthy that those needs listed, are tradables and facilitating trade in them improves the quality of life of billions around the world, especially the poorest of the poor, now happily called the fastest billion rather than the bottom billion.

Professor Calestous Juma, a brilliant son of Africa, as the COMESA Ministers lovingly called him at their meeting on 25-27 August 2010 in Ezulwini in Swaziland[39], has in his 2011 book *The New Harvest* trenchantly set out the case for the modernization of the agricultural sector, through a number of interventions including trade-related infrastructure to facilitate trade in agricultural products, supported by the regional economic integration initiatives creating regional markets.[40] In interviews broadcast all over the world when his book was launched, his key message was that Africa can feed itself. Facilitating trade in agricultural products, therefore, has this vital motivation as well: to improve food and nutrition security, and rural livelihoods. And since up to 70 percent of the population derives its living from agriculture, this is a direct intervention for eradicating poverty.

The following year, 2012, the World Bank Report called "Defragmenting Africa" edited by Paul Brenton and Gozde Isik, graphically described how thick Africa's borders were, and what chaos and mountains of documents exporters, importers and transitors had to brave while trading in Africa, especially in agricultural products that were adversely affected in many cases by unnecessary trade barriers that didn't facilitate trade and undermined regional economic integration.[41] Ian Gillson and Nich Charalambides then published a paper with astounding figures: a Shoprite truck requires 1,600 documents to cross borders in Southern Africa; Shoprite spends US $20,000 a week on getting Zambian permits to import meat, milk and vegetables.[42]

Another thing that trade facilitation can do is assist address the malaise of corruption. Sir Paul Collier, in his book *The Bottom Billion*, points out that trade barriers or restrictions are a source of corruption:

> *"The corruption generated by trade restrictions works on both grand and petty scales. On the grand scale, governments confer protection on the businesses owned by their friends and relations, or ones that pay for the privilege. At the petty level, actually running the system of protection day by day can be lucrative. Becoming a customs officer is about the best job you can possibly get in these countries.[43]"*

Strategic leaders have seen in trade facilitation a possibility of building entire cities or hubs, creating jobs and wealth. Gateways can service hinterlands or landlocked countries, as a large industry. Landlocked countries can become land-linked countries where transit trade is voluminous enough and a number of countries can be traded with. Zambia, for instance, has eight neighbouring countries, including the vast Democratic Republic of Congo and its mineral-rich provinces. But the geographical accident of proximity or land-lockedness need not be the only asset. Despite the great port cities of Africa, such as Mombasa, Dubai still manages to hold itself out as a gateway to Africa, which greatly baffled the quick-witted Mukhisa Kituyi, now the Secretary General of UNCTAD, when he attended a huge conference there in May 2013 entitled *Dubai-COMESA: Bridging the Continent to the World*.[44]

Singapore, as well, is a global trade facilitation hub. As Kituyi surmised and indeed as the great Lee Kuan Yew[45] has ably shown, political leadership that shows itself in determination and results and that rallies the private sector to this vision, is what it takes to create a trade facilitation hub. I shall be coming back to political leadership and determination later, because of its critical importance.

Trade facilitation can contribute to the happiness of a vast number of people by reducing the stress-causing delays and complications for exporters, importers, transitors, logistics people, and those crossing borders as business persons including small scale traders and truck drivers. Lord Richard Layard, in his book *Happiness*, explains that modern advances in neuro-science now enable us to study and measure happiness. He sets out a programme for increasing happiness, covering mental health, life skills, behavior change, and economic policy[46]; and has co-founded a world happiness movement.[47] Lord Layard's initial work has now bloomed into UN reports on world happiness, which are brilliantly articulated into a discipline, with John Helliwell and Jeffrey Sachs.[48] This has not put paid to the issue of whence happiness, but the body of happiness economists is growing, some of them, Layard himself and Joseph Stiglitz[49] for instance, confessing that they became economists to pursue a career in increasing happiness in the world. The young philosopher Richard Precht in his book *Who am I*, already translated into 16 languages by March 2013, has argued based on a large body of philosophy, that happiness can be learned, and suggested seven golden rules for being happy: keep active, be sociable, focus on and relish the good moments, have realistic expectations, think good thoughts, don't take the quest for happiness too far, and recognize the pleasure of working.[50] No need to complicate this though; one only need to try importing or exporting a product, and hopefully see that better trade facilitation would make life a lot simpler, a lot less complicated, and therefore an important economic, social and political issue for action.

Political Commitment

Facilitating trade requires political commitment at the highest level and resources to formulate and implement policy and institutional reforms. In 2012, *The Fastest Billion,* a book by Charles Robertson of Renaissance Capital and his team, was published.[51] Using a universe of statistics and economic history, the authors concluded that by 2050, the African economy will be US $29 trillion, which will be equal to the current combined GDP of the US and EU. And they say:

> *"In short, Africa is getting richer faster than ever before, and faster than most of the rest of the world and it is achieving this against a background of improved stability and sustainability that is hard to match anywhere in the world.[52]"*

In *The Fastest Billion*, trade facilitation initiatives in Africa are cited as part of the good news of the Rising Africa, while pointing out what is to be done; with Rwanda, under the sterling leadership of President Paul Kagame, fittingly cited as the Singapore of Africa to inspire more success stories.[53]

Greg Mills, in his book *Why Africa is Poor* also cites a number of success stories where determined political leadership was what it took to turn round apparently insurmountable trade facilitation nightmares at ports and along trade corridors. He concluded that the only thing still keeping Africa poor is leaders who choose to keep Africa poor; a stunning indictment.[54] The statesman Lee Kuan Yew oversaw the development of Singapore into a center par excellence of trade facilitation. Widely recognized as a grand master according to Harvard Kennedy School of Government Professor Graham Allison et al[55], the statesman has himself written a treatise on how to develop a country, and shared some invaluable advice – be pragmatic, seek out and learn from best practice:

> *"We learned on the job and learned quickly. If there was one formula for our success, it was that we were constantly studying how to make things work, or how to make them work better. I was never a prisoner of any theory. What guided me were reason and reality. The acid test I applied to every theory or scheme was, would it work? This was the golden thread that ran through my years in office, if it did not work or the results were poor, I did not waste more time or resources on it. I almost never made the same mistake twice, and I tried to learn from the mistakes others had made. I discovered early in office that there were few problems confronting me in government that other governments had not met and solved. So I made a practice of finding out who else had met the problem we faced, how they had tackled it, and how successful they had been. Whether it was to build a new airport or to change our teaching methods, I would send a team of officers to visit and study those countries that had done it well. I preferred to climb on the shoulders of others who had gone before us.[56]"*

So, that is how important trade facilitation is. It is about freedom of transit for goods, fees and formalities, and publication and application of trade regulations[57]; as well as critical public policy objectives of African countries relating to, social economic development through boosting intra-Africa trade and investment growth, food and nutrition security, social and political stability, and sustaining the current booming economic performance. Political determination and acumen at the highest level will be important, as well as benchmarking best practice around the world.

Let us now look more precisely at trade facilitation in COMESA. The Common Market for Eastern and Southern Africa has been in place since 1994 as an African regional inter-governmental organization of the following 19 Member States: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe. [58] With a population of a population of 490 million, a combined GDP of US $525 billion, and land mass of 12.6 million square kilometres, COMESA is an important institution for its Member States and a weighty continental and global player. Its geographical location, spanning Northern Eastern and Southern Africa, means it has strategic importance in global trade and security.

The COMESA FTA Framework for Trade Facilitation

The overall framework for COMESA trade facilitation programmes is the Free Trade Area, which started operating on 01 November 2000[59], as a rule-based, duty-free, quota-free, exemption-free regime with a clear prohibition of non-tariff barriers.[60] The COMESA FTA has been a resounding success. At a stakeholders' consultation forum held on 04 April 2009 in Lusaka, with about 120 participants drawn from the private and public sectors, and parliaments, the representative of the Kenya Association of Manufacturers stated in his intervention that: *"We have continued to make money in COMESA, though export business to our traditional markets has been adversely affected by the current financial crisis".* This was at the height of the global financial crisis that hit in 2008.

Intra-COMESA trade in goods (merchandise trade) stood at US $3.1 billion in 2000 when the FTA was established, and has grown phenomenally over the years to US $19.3 billion in 2013[61], excluding informal cross-border trade in goods estimated by UNCTAD in its 2013 report at about 40% of total trade[62]; and excluding services, which on average contribute to 60% of the GDP of COMESA Member States. This astronomical performance of the FTA has generated regional investment and attracted foreign direct investment into the COMESA region.[63] For some indication of the level of investment, the COMESA Competition Commission processed mergers and acquisitions in the COMESA region estimated at US$ 1 billion in 2013 alone.[64] Intra-COMESA investment flows have also been on the rise, and rose by 86% between 2011 and 2012.[65]

In terms of the broader framework, mention can be made of the macro-economic convergence programme, which has assisted the macro-economic stability of the COMESA region; and of the political stability greatly assisted by the COMESA conflict prevention and resolution mechanisms under the auspices of the African Union Architecture for Peace and Security in Africa.

Operating a Rule-Based System

This success has been underpinned by the rule-based system that COMESA is operated as a public good institution. COMESA holds annual summits of Heads of State and Government, and ministerial and technical meetings to review progress and chart the way forward on its integration agenda.[66] According to field surveys of the extent of implementation of COMESA programmes undertaken by the Secretariat, Member States have scored well, with the best performing reaching 80%.[67]

This rule-based system has assisted to promote predictability and better planning, and confidence in the regional market, which has resulted in increasing cross-border investment and trade flows. The COMESA Court of Justice has shown that the rules can be upheld if needs be. In 2012, in the case of *Polytol v Mauritius*[68], the Court delivered a judgment in record time in which it found that the Government of Mauritius had breached its obligations under the COMESA Treaty to maintain the free trade area regime of not levying customs duties on originating imports from other Member States in the COMESA FTA, and called upon Mauritius to refund the duties collected to the SME company that filed the case.

Elimination of Non-Tariff Barriers, Including those on Trade Facilitation

Elimination of non-tariff barriers greatly assists to facilitate trade. The most common barriers in the COMESA region relate to restrictive practices, clearance of imports and exports, rules of origin, and transit traffic issues. The World Bank has estimated that 25% of border delays arise from poor infrastructure, while 75% from poor trade facilitation.[69] The elimination of non-tariff barriers has therefore been a key priority of COMESA, not only to facilitate trade but also for the effective functioning of the COMESA FTA.

An online system for reporting and monitoring non-tariff barriers has been put in place, so far with a success rate of at least 81%; that is, 382 NTBs have been resolved out of a total of 468 reported.[70] It operates on the basis of transparency and clarification of issues to assist the parties involved resolve the reported issues. Together with this online system, now complemented by the possibility of SMS reports in order to allow economic operators report NTBs instantly using their mobile phones, the Secretariat has organized on-the-spot verification missions for experts from Member States to ascertain the disputed facts and written advisory technical opinions with recommendations. In addition, at the COMESA annual meetings of trade officials and ministers, there is a standing agenda item on non-tariff barriers, where any Member State can raise matters on any non-tariff barriers for consideration. Bilateral consultations can take place in the margins of the meetings, and are usually helpful towards resolving issues.

All these mechanisms for addressing NTBs together have a success rate of over 99%. To date for instance, all reported NTBs in COMESA, a total of about 220, have been removed, except for five of them relating to trade in milk from Kenya into Zambia (health standards), palm oil from Kenya into Zambia (rules of origin), soap from Madagascar into Mauritius (rules of origin), fridges and freezers from Swaziland into Zimbabwe (rules of origin), and electronic products from Egypt into Kenya (rules of origin).

The rules of origin disputes are about whether these products undergo sufficient value addition to meet the minimum threshold for qualifying as products produced in those countries; whereas the standards dispute is about whether the bacterial load in the milk exceeds the maximum set under the domestic standards of Zambia. It is felt that these stubborn NTBs remain in place because influential economic operators are trying to protect the domestic market for their products against competing imports. Other non-tariff barriers have been about customs procedures and documentation, re-imposing of customs duties and other charges, and discriminatory internal taxes; these have been readily addressed through better information and clarification.

In the case of SPS measures, varied capacity across the private and public sectors in the Member States to implement SPS measures in line with best practice and international standards remains a key obstacle to the elimination or reduction of NTBs of SPS nature. Often, the implementation of SPS measures, particularly in border controls is viewed with a public health protection lens, with less focus on trade facilitation, even though the WTO SPS Agreement requires that where there is more than one option, Member States should choose the SPS measure that is least restrictive to trade or one that comes at a lower cost to traders and in a non-discriminatory manner (to exporters and importers). The Trade Facilitation Agreement places more emphasis on the need to balance public health and trade facilitation objectives, with specific provisions on greater collaboration between SPS authorities, customs officials and other border operators; dissemination of information on SPS import requirements; and notification of laws and regulations, to promote transparency and facilitate trade. It is important to note than many of the transparency provisions are already obligations under the SPS Agreement as well as the COMESA Treaty.

COMESA Trade Facilitation Programmes

Let us now look at specific trade facilitation programmes in COMESA. First, what is the basis for trade facilitation programmes in COMESA? Under the Treaty, Member States explicitly undertake in mandatory terms to co-operate in customs procedures and activities, adopt a common customs bond guarantee scheme, simplify and harmonise their trade documents and procedures, establish conditions regulating the re-export of goods, establish rules of origin, make regulations for facilitating transit trade, adopt a third party motor vehicle insurance scheme, adopt common standards of measurement systems and quality assurance practices, remove obstacles to free movement of services and capital; and harmonise the methodology of collection, processing and analysis of information, among others.[71] These undertakings are elaborated in detailed provisions throughout most of the Treaty, including chapter 6 on co-operation in trade liberalization and development, chapter 7 on customs co-operation, chapter 8 on re-exportation of goods, chapter 9 on simplification and harmonization of trade documents and procedures, and chapter 11 on co-operation in the development of transport and communications. There are four specific Annexes to the Treaty, namely: the Protocol on Transit Trade and Transit Facilities, the Protocol on Third Party Motor Insurance Scheme, and the Protocol on Rules of Origin; (the other protocol relates to the unique situation of some Member States (Lesotho, Namibia and Swaziland) that were required to maintain the Common External Tariff of the Southern African Customs Union and seeks to provide them exceptions on this basis). These provisions provide the mandate for the key COMESA trade facilitation instruments, which have been developed and implemented over the years.

The trade facilitation instruments in COMESA include the following: the COMESA Customs Document (which collapsed and simplified a total of 27 documents into one), the Simplified Trade Regime for small scale cross-border traders (operated on the basis of a yet simpler customs document for statistical purposes and a certification of origin issued by the customs officer on the spot), Yellow Card (a regional third party motor vehicle insurance scheme), the Regional Customs Transit Guarantee scheme (allowing transiting through all COMESA countries with only one transit Guarantee/Bond instead of multiple transit Bonds for each country transited), Advance Cargo Information System, Harmonized Road Transit Charges, Regional Carrier's Licence, Transit Plates, Harmonized Axle Loading and Maximum Vehicle Dimensions, Common Statistical Rules, ASYCUDA, simple and flexible rules of origin and a Protocol on Rules of Origin, online and standing mechanisms for reporting and removing Non-Tariff Barriers, Competition Regulations administered by the COMESA Competition Commission, Public Procurement Rules and a system of regional publication of tenders called PROMIS, the Fifth Freedom for regional air travel (to liberalize the skies), One-Stop-Border-Posts, COMESA Regulations on Sanitary and

Phyto-sanitary Measures, programmes on formulation of regional Technical Standards, and e-governance programmes.

What More Needs to be Done?

These programmes are in place and have been used by a number of Member States to facilitate trade, and need scaling up and replication in order to comprehensively cover the entire regional market. As an example of what more needs to be done, regarding COMESA Customs Document, 15 out of the 19 Member States are using a Single Administrative Document (SAD) based on the COMESA-Customs Document; however, the national customs declaration forms in various Member States differ in various ways including: number of fields (boxes); field (box) numbering; field (box) order; and printed and on screen presentation.

The lack of harmony in the implementation of the regional trade facilitation instruments may create disparities in the institutional and regulatory frameworks causing many of the NTBs to persist and remain unresolved. For example, by including the development of a commodity specific Green Pass (GP) certification scheme in its SPS Regulations, COMESA introduced a mechanism which, while protecting health and life, has the potential to facilitate trade. However, the greatest challenge has been in Member States not adopting common criteria and approach to operationalization of the certification scheme, so that it becomes an effective trade facilitation tool. COMESA is piloting approaches that can assist Member States to define specific criteria for implementation of the GP scheme, including a legal framework that is not in conflict with obligations under international standards and related treaties such as the International Plant Protection Convention.

A number of other programmes have been adopted and are at the stage of being rolled out or piloted. Two such key programmes are the COMESA Virtual Trade Facilitation System, which has been piloted on the Northern (Mombasa, Kampala, Kigali), Central (Dar-es-Salaam, Kigali, and Bujumbura) and Djibouti (Djibouti, Ethiopia) corridors; and the COMESA Electronic Market Exchange System. The virtual trade facilitation system contains a comprehensive package of trade facilitation instruments including: remote cargo tracking, advance declaration, and on-line customs and regulatory requirements; while the electronic market exchange system provides buyers and sellers with virtual buyer-seller meetings. Rwanda is already using a virtual trade facilitation system on transit cargo from Mombasa to Kigali. The Democratic Republic of Congo has already signed an MoU with COMESA Secretariat on the implementation of the virtual trade facilitation system.

A third set of the trade facilitation programmes relate to the COMESA Customs Union, namely: the Common Tariff Nomenclature based on the WCO HS 2012, and Customs Management Regulations based on the WCO's Revised Kyoto Convention. A gap analysis between the COMESA Customs Management Regulations and the Revised Kyoto Convention has established that the regulations are consistent with the Convention, but 10% of the regulations need updating. The Customs Union is not yet fully functional as Member States are still grappling with the adjustment process. The good news though, as indicated, is that these customs programmes are based on international instruments and best practices, and should therefore not pose significant conceptual challenges, though of course there will be resource implications.

There is yet a fourth category of trade facilitation interventions yet to be implemented, but on the drawing board. Under the Science Technology and Innovation Programme of COMESA, annual awards are given for innovations that have the potential to significantly contribute to the economic and social welfare of the region. At the annual awards of 2014, given out by President Yoweri Museveni of Uganda as the out-going chair of the COMESA Summit that year, some innovations showed tremendous potential for facilitating trade. In particular, one of the innovations for the youth category was the "remote weighing bridge system", designed by Joshua Mwangemi of Kenya. It may be noted in passing that the region has produced ground-breaking innovations that the private sector has taken up avidly, resulting in efficiency, jobs and economic growth; an example is the *M-Pesa* introduced by Safaricom of Kenya, for money transfers and payments using mobile phones and vendors spread across the length and breadth of countries; and now replicated by a range of mobile telephony operators across the continent and beyond.[72]

A fifth category relates to the specialized agencies that COMESA has established. To support the integration programme, COMESA has established financial institutions to provide not just the much needed credit (the PTA Bank), but also to provide insurance for non-commercial risks (the African Trade Insurance Agency), re-insurance (The COMESA Re-insurance Agency), to facilitate international payments (the Regional Payment and Settlement System), and to underpin competition in the region (the COMESA Competition Commission). These institutions are hugely successful and profitable. The PTA Bank was rated BB+ by GCR in 2012 and BB by Fitch in 2013; the African Trade Agency is rated "A" Stable Long-term by Standard and Poors; while COMESA Re-insurance Agency is rated B+ by AM Best. The Competition Commission got US $7,482,810 in merger fees in 2013, and processed mergers estimated at US $1 billion.[73] These institutions need to do even better and to be more supportive of COMESA programmes.

A sixth category relates to trade facilitation programmes that Member States have initiated autonomously, such as the single windows of Kenya and Rwanda.

Trade-Facilitating Hard Infrastructure

Hard infrastructure in terms of surface and air transport, energy generation and distribution; and prevalence of information and communications technologies, can greatly facilitate trade and assist improve competitiveness.

Under the Programme for Infrastructure Development in Africa (PIDA), African leaders have prioritized a number of projects, 16 of them.[74] Of these, the following six are in the COMESA region, costed at just over US $8 billion.[75]

No.	Project	Sector	Capacity	Total Estimated Cost US $ million	Funding Gap US $ million
1	Ruzizi III	Energy/Generation	147 megawatts	600	200
2	Batoka Gorge Hydropower Project	Energy/Generation	1,600 megawatts	6,000	6,000
3	Zambia-Tanzania-Kenya Transmission Line	Energy/Transmission	2,206 km, 400 megawatts	1,122	1.116
	Sub-Total			**7,722**	**7,316**
4	Serenje-Nakonde Road Project	Transport/Road	614.71 km	674	620
5	Kampala-Jinja Road Upgrading	Transport/Road	75 km	74	68
	Sub-Total			**748**	**688**
6	Lusaka-Lilongwe ICT Terrestrial Fibre Optic	ICT	10Gbit/s single channel fibre line	1.5	1.5
	Sub-Total			**1.5**	**1.5**
	Total			**8,471.5**	**8,005.5**

The Need to Scale up and Replicate COMESA Trade Facilitation Programmes

Because of these many operational and inchoate trade facilitation programmes in COMESA, some COMESA officials have been heard to say, with some justification that the region is light years ahead of the WTO Trade Facilitation Agreement. Well, there is always room for improvement. And a clear case in point is integrated and coordinated border management, involving all agencies, which remains an important area for COMESA to prioritise. And there will be continuous need for training and capacity building for new entrants in the public and private sectors, and on new international developments coming from the World Customs Organisation and such. In order to scale up and replicate the programmes to cover all Members States, there will always be resource requirements, and the need if appropriate for partners of a financial and technical nature. And on this note, let us now to turn to the concerns and priorities of African countries during negotiations for the Trade Facilitation Agreement.

Negotiating the TFA – the Concerns of Africa

Turning to the negotiations on the Trade Facilitation Agreement, much has been made of the concerns the Africa Group of countries expressed in the negotiations, together with some other groups of developing countries. However, there were perfect reasons for the concerns. For a start, as is well known that Africa has the obvious mundane resource constraints which are bound to get in the way of implementing resource-demanding international obligations, breach of which can attract a case before the WTO Dispute Settlement System, which has now cut its teeth. Taking their WTO obligations seriously, the Africa Group didn't want to agree to obligations they were well aware their governments could not implement; the Africa Group meant to implement agreed obligations in good faith as required by the Vienna Convention on the Law of Treaties.[76] It is for this reason that all they asked for was assistance from development partners and, in terms of the WTO system, predictable assistance that matched the obligations to be entered. This surely wasn't too much to ask.

Earlier in this paper, the broad scope and the importance of trade facilitation was highlighted; how it can assist governments in Africa to achieve key public policy objectives; and how to this end, political determination is required. For Africa, trade facilitation is much more that freedom of transit, publication of documents, discipline on fees, and quickening of imports from the rest of the world. It is about building robust regional markets where intra-Africa trade is boosted, which requires, hard and soft infrastructure, integrated border management, modernization of customs, institutions and regulatory reforms.

The surveys by the Secretariat on how well Member States are implementing their COMESA obligations have shown that the constraints they face are financial, technical, and institutional. Limited financial and human resources, and lack of or inadequate institutions in the Member States, pose challenges to implementation of obligations, including the COMESA trade facilitation programmes. The Member States have indicated that they need model instruments to assist in domestication of the COMESA regional instruments, to build human capacity in government through training and staff exchange, to build the required institutions, and to undertake awareness campaigns for stakeholders to improve usage of COMESA trade facilitation instruments.

In this connection, at their Eighth Ordinary Session on 24-25 October 2013, the Conference of African Union Trade Ministers spelt out its position on the trade facilitation negotiations as follows[77]:

> *"We, the Ministers of Trade of the Member States of the African Union …*
>
> *Reaffirm the importance of Trade Facilitation where our priorities include enhancing infrastructure and boosting productive and trade capacities, in addition to reducing transaction costs, barriers, incentivizing the undertaking of reforms and improvements to the customs regulatory systems as well as boosting intra-African trade;*
>
> *Re-emphasize the positions held by the WTO African Group on Trade Facilitation specifically that it is not a self-balancing, win-win and a monolithic pillar in the DDA negotiations. We call for an internally balanced agreement, providing developing countries and LDCs with policy space and flexibility to adopt and implement commitments commensurate with their capacity to do so. We stress the need for achieving balance with other issues on the agenda of MC9, with a view towards fulfilling the development dimension of the Doha mandate. In this regard, the Bali*

outcome should result in substantive outcomes in the area of Agriculture and Development issues. Where a balance is not attained, negotiations on Trade Facilitation shall continue post-Bali, with a view to attaining a balanced agreement that fully and effectively reflects the principles of special and differential treatment under Annex D of the 2004 July Package;

Further re-emphasize that obligations and measures being negotiated under the Trade Facilitation consolidated text must include binding, effective and operational rules on Special and Differential Treatment. The obligation on developing countries and LDCs to implement the Trade Facilitation Agreement should be based upon their acquisition of capacity to implement, including through fulfilling, by developed countries, the obligation of delivering binding, new and long-term technical and financial assistance and capacity building necessary for African countries to achieve full implementation capacity. We underline the importance of the principles of self-designation and self-assessment under Section II of the Draft Trade Facilitation Agreement by developing countries and LDCs in determining the acquisition of capacity to implement."

Well, good sense eventually prevailed, and lo and behold, the Agreement on Trade Facilitation was concluded: a balanced and flexible instrument that at least allows developing and least developed countries to self-designate which obligations they will implement immediately upon the entry into force of the Agreement (Category A), which they will implement after a transition period (Category B), and which they will need assistance to implement after the transition period (Category C).

The Trade Facilitation Agreement has 13 broad provisions in its section I, covering: publication and availability of information, opportunity to comment on laws and regulations before entry into force, advance rulings, appeal and review procedures, other measures for impartiality and non-discrimination and transparency, disciplines on fees and charges, release and clearance of goods, border agency co-operation, movement of goods under customs control intended for import, formalities on importation and exportation and transit including single window, freedom of transit, customs co-operation, and institutional arrangements. Section II has provisions on special and differential treatment for developing and least developed country members, giving, as already indicated, some flexibility in implementing the Agreement.

The obligations themselves read like international best practices already, given the prevalence of their application in the customs laws of many countries in Africa including in COMESA and the extensive provisions in the COMESA Treaty, which already provide for these as indicated in the part above on COMESA trade facilitation programs: the general publication of information relating to – the importing, exporting and transiting of goods; applied rates of duties and taxes; fees and charges; classification rules; rules of origin; restrictions and prohibitions; penalties; appeal procedures; agreements with other countries; and administration of tariff quotas; putting online the descriptions of the export import and transit procedures, of the forms and documents, and of enquiry points' contact information.[78]

The challenge now is to rise to the occasion, both on the part of development partners and African countries, to put in place the institutions and to implement these critical rules that could so much assist governments meet the public policy priorities of wealth creation and poverty eradication so the people, especially the ordinary people, can pursue their dreams in prosperity, peace and happiness.[79] As we get towards the end of this paper, I think it is in order to mention a case study of a specific important project – the establishment and operation of one-stop-border-posts, as this intervention directly results in shorter times for crossing borders, saving importers, exporters, and transitors, a lot of time and money – it is estimated that the charge for a stationary truck is US $200 to US $400 a day.

One-Stop-Border-Posts – Chirundu

As pointed out, COMESA has a number of trade facilitation instruments, covering borders and behind-the-border measures especially internal controls and regulations. A clear best practice, however, is the one-stop-border-post programme. Because the longest delays occur at borders, reducing the time it takes to cross borders has great potential to facilitate trade, as the Chirundu one-stop-border-post has shown. Waiting time for trucks has reduced from up to nine days, to a mere 20 minutes for accredited clients and a maximum of two days for clients who don't declare their documents in advance.[80] There is therefore merit in holding this intervention out as a best practice for replication across more borders in COMESA and beyond.

What then does it take to establish a one-stop-border-post? Let us return to where we started. In an interview with the Assistant Commissioner in charge of the border post on the Zambian side, Mr Msimuko, he underscored the importance of political determination at the highest level to establish and operate the system. He indicated also that the planning and design stage should ensure interconnectivity among all relevant agencies, and ownership by the local community and officials through consulting and sensitizing them. Other things to get right include sensitization of the logistics operators and the importers/ exporters of the benefits and how the system works; the legal agreement for joint sovereignty over the common control zone to give the mandate or basis for the system; installation of scanners and weighbridges; funds for and construction of the physical and soft infrastructure – buildings and operating systems; and training of officials to operate the system. For indicative purposes, Volume VI of Assessing Regional Integration in Africa, the annual flagship publication of the United Nations Economic Commission for Africa, has a good description of the layout and facilities that a OSBP requires.[81]

One may wonder what exactly was done at the Chirundu OSBP to bring down the waiting time? Mr Msimuko said: "The introduction of the scanner, which scans containers in 3-5 minutes replacing manual physical checking which could take days, advance lodging of documents so trucks arrive when the paper work is already done, introduction of the system of accredited clients (approved importers) which allows trucks to cross the border without prior payment of the duties and other checks on the basis of the accreditation system that provides for subsequent reconciliation and collation on dues and products (this category is 20% of total clients but contributes 80% of the total revenue collected as duties), building of trust among the Zambia and Zimbabwe officials which has promoted closer co-operation and reduced suspicion and the need for cross- or re-checking, the one stop mechanism where trucks into Zimbabwe clear only at the Zimbabwe side where the customs officials of both countries sit in one office and those into Zambia with only the Zambian side (the immigration officials of both sides also sit side by side); introduction of the system of payment of duties through various banks located over the country; and use of the ASYCUDA system."

The other measures were: harmonization of procedures between Zambia and Zimbabwe, introduction of the commercial cargo gate pass, and introduction of fast lanes for fuel tankers, vehicles carrying hazardous substances, empty trucks and vehicles not going to be scanned.

But as one would expect, there is room for improvement. Areas for improvement include the need for one desk (single window) for all agencies to sit together or be networked online in order to reduce the number of disparate offices to be cleared with, which at the moment are geographically located a distance from one another – immigration, environment, health and technical standards, customs; reorganization of the entry and exit traffic flows and the location of the weigh bridge and scanner in order to reduce congestion or traffic jams within the common customs zone, training of new officials on the existing systems and rules and training of old officials on new developments such as the Trade Facilitation Agreement, assistance with hardware such as computers and software including strong and reliable internet connectivity for all concerned border agencies, extension of opening or working hours for the border post to 24/7, and continuous sensitization of operators to use the advance lodging of documents.

Other one-stop-border-posts have been piloted at Malaba (Kenya-Uganda) and Nemba (Rwanda-Burundi). The following posts are the next set of candidates: Mchinji, Nakonde, Namanga, Rusumo, Akanyaru, and Gisenyi/Goma.

Conclusion

This paper has attempted to indicate the trade facilitation programmes in place in COMESA as a regional economic community in Eastern and Southern Africa, in order to make the point that trade facilitation is not as monstrous as sometimes portrayed; that on the contrary, it has been embraced as a key plank of the architecture of regional integration in order to improve economic growth and competitiveness, and generate investment and jobs to achieve important public policy objectives. And to this end, a number of programs have been mentioned. The most important point to make is that these trade facilitation programs can be scaled up and replicated across the region to cover all member states, which would result in more facilitation of trade and therefore economic growth, which can assist the achievement of key public policy objectives of wealth creation and poverty eradication.

Information on all COMESA trade facilitation programmes is published and is in the public domain. Each Member State has a coordinating ministry that works closely with stakeholders including the business community and regulatory agencies, to provide documentation and information. The information is in addition available on the COMESA website at www.comesa.int. The Secretariat has an active awareness creation programme, under which national stakeholder workshops can be organized in Member States upon request. This programme, as well as scaling up and replicating one-stop-border-posts, single windows, secure electronic cargo tracking, remote or in motion weigh bridges, scanners, computerization of customs offices and procedures, high speed/ broad band internet, and training of agencies that can facilitate trade and staff exchange with countries with best practices, development of model instruments to guide implementation, are key priorities for COMESA.

The challenge now is how the Bali Trade Facilitation Agreement will be a force for good, by serving as fresh impetus and as an instrument for resource mobilization, to support the review, refinement and or domestication of the COMESA trade facilitation instruments. But it shouldn't be an insurmountable challenge for COMESA Member States as they continue to implement the rich array of regional trade facilitation programmes. In this regard, partnerships for scaling up and replicating the programmes across the entire region are welcome, where there are gaps. That is the good news.

Finally, time has come for COMESA to establish an Online Interactive Trade Facilitation Portal. This initiative can be modelled along the Online NTB Reporting and Monitoring System, at www.tradebarriers.org; and for an example from a Member State, the Mauritian www.mauritiustrade.mu is an exemplar. The improvement, however, would be that the COMESA Trade Facilitation Portal would be interactive, allowing economic operators to get answers instantly and to complete and submit documents and get back the decisions from relevant authorities online. Furthermore, as a regional portal, it would link up all national trade portals and relevant authorities. It would in addition provide a forum for comment on new measures and feedback on those in operation.

Formulation of a Common Regional Trade Facilitation Project

By Mbubi Malinga Peter Patrick[82]

Abstract

Trade facilitation has been part of the Common Market for Eastern and Southern Africa (COMESA) agenda since 1993. The Treaty establishing COMESA, in Article 70 provides for the need for Member States to embrace initiatives that facilitate trade by: reducing the cost documentation; adopting common procedures in trade; and capacity building in trade facilitation issues.

Further in Articles 69 and 71 the Treaty provides for: standardization of trade documentation and information; and simplification and harmonization of customs and trade document and procedures. Customs administrations of the COMESA region have an important role to play in achieving competitiveness in the region. However, the increased volume of trade crossing the border and the speed with which goods are exchanged today make the work of Customs administrations more complex. Trade facilitation aims at minimizing the burden placed on legitimate trade by simplifying Customs legislation and procedures.

COMESA with its 19 Member States in the Eastern and Southern Africa is one of the best performing Regional Economic Communities (RECs) in Africa. Together with the EAC and SADC, COMESA has played a lead role in facilitating trade along the North-South Corridors. The current strategy of COMESA is summed up in the phrase, "economic prosperity through regional integration".

Leading up to the Bali Agreement on Trade Facilitation, COMESA conducted a needs assessment to identify gaps between national level practices/regulations and regional programmes/ agreements, including some of the issues that were later formulated in the Bali Agreement. WTO Member States, including those from COMESA have committed to implementing the trade facilitation measures in accordance with the Agreement.

The study findings are as follows:

1. *The review and analysis of the needs assessments carried out by COMESA were not detailed enough to enable the consultant to develop and propose an implementation framework. However, a mapping of the WTO Trade Facilitation measures with those of COMESA and the Tripartite was done at the higher level. This cannot, however, be used to develop implementation frameworks for the Member States.*

2.

a) COMESA can play a leading role in mobilizing and coordinating the implementation of the WTO Trade Facilitation Agreement, in the region;

b) There are eight (8) Member States and four (4) Partner States of COMESA who also belong to SADC and the EAC respectively;

c) That EAC and SADC are receiving Development Partner support from TMEA and USAID as support in the implementation of the Bali Trade facilitation Agreement;

d) COMESA Secretariat should urgently consult the EAC and SADC on how far they have progressed with the support that has been given by TMEA and USAID. This is important since the two RECs have already received donor support.

e) COMESA Secretariat should convene a consultative meeting of its Member States to discuss the merits of working together under the tripartite on this issue.

f) An online tripartite trade facilitation portal – open to all stakeholders and covering the areas of NTBs, eCOs, single windows, regulations, documents, consultations, etc., should be established.

g) More work still needs to be done in form of new detailed and comprehensive national needs surveys.

h) Development partners, with advice from the three Secretariats, should agree on how to fund the joint surveys.

i) Integration of existing programmes and alignment of mandates across organizations is very essential for the implementation of the Agreement;

j) Champions need to be identified to lead, own and facilitate the work and provide accountability and coordination for the proper management of this project;

k) Support in terms of dedicated resources and staff, funding, sensitization, and policies with regulation/enforceability is key to the implementation process;

l) Cooperation and collaboration on a multi-faceted approach in which various players come together cannot be ignored;

m) Action orientation towards a common vision preferably at a tripartite level for sustainable trade facilitation and the implementation of concrete strategies and solutions should be taken in a timely manner;

n) On-going dialogue should continue to bring groups together to discuss roles, strategic actions, progress, and best practices in sustaining the trade facilitation *agreement;*

o) *Exit plans are very essential for sustainability of the implementation of the agreement beyond the development partners' support.*

Background to the Study

The World Trade Organization's (WTO) Trade Facilitation Agreement

The Agreement on trade facilitation was adopted at the World Trade Organization's 9th Ministerial Conference in Bali, Indonesia, in December 2013. The Agreement provides a framework of rights and obligations that should see reform of border procedures around the world, if legitimate requests from developing countries for technical assistance are met. The Agreement broadly deals with trade facilitation measures and obligations on one hand; and focuses on flexibility arrangements for developing and least developed countries (otherwise known as "special and differential treatment").

It also creates binding commitments across 159(+) WTO Members to expedite movement, release and clearance of goods, improve cooperation among WTO Members on customs matters, and help developing countries fully implement the obligations. The Agreement will further increase customs efficiency and effective collection of revenue, and help small businesses access new export opportunities through measures like transparency in customs practices, reduction of documentary requirements, and processing of documents before goods arrive. It will reduce red-tape and streamline customs operations; it will be legally binding, require some expense and a certain level of technology; and LDCs will be supported in building capacities to implement the changes.

The Trade Facilitation agreement has a clear implementation time frame starting from the Bali agreement (December 2013), to the meeting of the preparatory committee on trade facilitation not later than 31 July 2014 (to annex to the Agreement notifications of Category A commitments) and ending with adopting the Protocol drawn up by the Preparatory Committee and opening the Protocol for acceptance until 31 July 2015. In other words, the process of finalizing and ratifying the final trade facilitation protocol leaves Member States with 18 months to comply with the requirements of the Bali agreement and the possible additional annexes to be negotiated before end of 31 July 2015. Developing countries and LDCs are given grace periods to implement the agreement ranging from two, six to eight years. In other words, the implementation time frame is tight and the technical requirements are extensive.

The WTO trade facilitation Agreement is built on a strong basis of other international trade facilitation instruments especially the GATT 1994 Articles V, VIII and X and the World Customs Organization's (WCO) Revised Kyoto Convention (RKC). While the WTO trade facilitation is very explicit and binding to the Member States, the 1994 GATT articles earlier mentioned are not quite as elaborate. The WCO's RKC on the other hand is not binding as is the trade facilitation Agreement.

Under the framework of the WTO Trade Facilitation Agreement (TFA), Member States have committed themselves to the implementation of a number of trade facilitation measures. The countries' commitments to each of these measures will have to be classified into categories A, B and C as follows:

Category A	Provisions that a developing country member or a Least Developed Country member has designated for implementation upon entry into force of the agreement.
Category B	Provisions that a developing country member or a Least Developed Country member has designated for implementation on a date after a transitional period of time following the entry into force of the agreement.
Category C	Provisions that a developing country member or a Least Developed Country Member has designated for implementation on a date as requiring a transitional period of time after the entry into force of the agreement and technical and/or financial assistance and support for capacity building.

The Regional level and Trade facilitation

At the regional level, trade facilitation is an equally significant agenda item. For instance, the East African Community (all of whose Partner States, except Tanzania, are also Member States of COMESA) has largely moved to operationalize the Single Customs Territory (SCT). Further reforms are currently under way to overhaul customs procedures and achieve interoperability amongst Partner States customs systems. Another example of progressing regional integration through customs and trade procedures can be found within COMESA and the entire Eastern and Southern Africa. To cement this co-operation, Member States have agreed to work towards reducing the cost of doing business in the region under the tripartite agenda. The reduction of trade related transaction costs is an equally significant agenda item at the national level. Trade facilitation policy objectives might be pursued by national customs administrations, trade ministries or, for that matter, any other government department involved in the governance of the cross environment.

The Tripartite and Trade Facilitation

The COMESA-EAC-SADC Tripartite was created in 2006 to assist in the process of harmonizing programmes and policies within and between the three RECs of COMESA, EAC and SADC and to advance the establishment of the African Economic Community.

The economic integration agenda being implemented at the level of the three RECs of COMESA, EAC and SADC has prioritized programmes addressing trade and transport facilitation challenges with the aim of lowering costs of doing business and improving the competitiveness of products from the eastern and southern African region. Such programmes encompass:

i. Regulatory and policy reforms encouraging the adoption of international instruments and best practices; and

ii. National and regional capacity building programmes to facilitate cross-border movements and enhancement of infrastructure facilities at border posts to improve efficiency of cross-border movements.

While the RECs have to a large extent been successful in facilitating trade through programmes such as the ones above, the challenges of limited implementation at the national level due to the overlap in REC memberships and other capacity limitations have been a catalyst for inter-REC collaboration. COMESA, EAC and SADC have established such a co-operation mechanism under the tripartite framework. The concept behind the Tripartite transport and trade facilitation programme is to implement a holistic programme that addresses transport and facilitation issues in an integrated manner in such a way that the interventions reinforce each other and contribute to the overall objective of reducing the costs associated with transit movements in the Eastern and Southern Africa region.

Implementation of the WTO-Bali Trade Facilitation Agreement in the COMESA Region

Trade facilitation has remained as an important trade policy measure in COMESA region as it is in an international environment, where falling tariffs and quotas no longer represent a major obstacle. The main objective of trade facilitation is to reduce the costs and time associated with often cumbersome administrative and customs procedures and controls to move goods and services across borders. As trade facilitation represents a win-win opportunity for governments, the business community and the consumers, it has gained forefront attention both at national and regional levels.

In recent years, leading up to the Bali Agreement on Trade Facilitation, COMESA undertook a series of needs assessments to identify gaps between national-level practices/regulations and regional programmes/agreements, including some of the issues that were later formulated in the Bali Agreement. Many COMESA Member States faced particular challenges in the process of planning, designing and negotiating bilateral and regional trade facilitation arrangements. These challenges arose not only from the lack of negotiating skills as such, but mostly from insufficient understanding of the technicalities of trade facilitation measures and lack of coordination among the stakeholders. To implement trade facilitation agreement measures, therefore, the agreement provides for staged implementation, where necessary and in accordance with the provided category levels – A, B, C. This will be based on further national needs assessments to determine assistance needs and costs, and a scheduling of commitments at individual Member State level.

It is against the above-mentioned backdrop that the World Bank agreed to provide assistance to develop a framework for implementation of the World Trade Organization Bali agreement in COMESA Member States.

Objectives, Scope and Purpose

Main Objective

The overall objective of this consultancy was to review the results of the needs assessments undertaken at the national and regional levels as well as relevant trade facilitation strategies prepared by COMESA and in the tripartite.

Purpose of the Study

The purpose of the assignment was to develop a framework for implementation of the World Trade Organization (WTO) Bali agreement in the nineteen (19) COMESA Member States. COMESA Secretariat is well placed to champion the implementation of the World Trade Organization (WTO) Bali Agreement of Trade Facilitation in COMESA Member States.

Scope

The assignment ToRs required the consultant to review the needs assessment reports undertaken at the national and regional levels as well as relevant trade facilitation strategies prepared in the COMESA region and the tripartite process. It also required the consultant to provide a mapping with the relevant articles of the WTO Bali Trade Facilitation Agreement and to identify areas where the region in general and Member States in particular have made sufficient progress that could eventually form the basis of category A commitments. Likewise the consultant was also to identify areas that could fall under categories B and C of the Bali Agreement.

Outcomes and Deliverables

According to the terms of reference, the main deliverables from this assignment were:

- An inception report which was submitted after 10 days of engagement. The report detailed or included the following:-
    i. Outline of the overall approach to the assignment, including the main discussion points;
    ii. Schedule of engagement forums with member states, including objectives, agenda and methodology thereof; and
    iii. Assignment Schedule with timelines.
- A final report including preliminary identification of specific technical assistance needed to implement the Bali TFA.

Methodology

The consultant conducted a desk review and examined the relevant documentation, which included reports, and various policy documents, and many others from COMESA Secretariat which included the tripartite trade facilitation strategies. COMESA provided about five national assessment reports and one Secretariat consolidated report of the assessments. The Consultant managed to obtain seven more reports. Other documents reviewed included the WTO Bali Agreement. The purpose of the documentary review was to collect published data and information on the subject as a basis for further verification. In order to complement the documentation identified, the consultant also collected relevant information from Internet websites and online discussions with high level secretariat officials

Limitations of the Study

The main limitation of this assignment was the serious gaps and challenges established in the needs assessments reports carried out by COMESA. The assessment reports were not detailed enough to enable the consultant to develop and propose (an) implementation framework (s). The consultant has, to the extent possible, addressed all the issues specified in the TORs in order to produce a report that fits proposed deliverables.

Findings

Review Results of the Needs Assessments Undertaken at the National and Regional Level within COMESA

A review of the 12 national needs assessment results (transposition reports) so far obtained, and the COMESA consolidated Transposition Survey Report revealed that it was a transposition assessment through which the COMESA Secretariat intended to evaluate the extent of domestication by Member States of the COMESA Council's resolutions/decisions. The needs assessment results reports of the following COMESA Member States that were reviewed: Burundi, Comoros, Djibouti, Egypt, Eritrea, Kenya, Madagascar, Mauritius, Rwanda, Sudan, Uganda and Zimbabwe. Each report was reviewed and analysed to establish the COMESA trade facilitation measures that were being implemented by the country. These were then checked against the WTO trade facilitation measures to establish the gaps between the WTO and COMESA trade facilitation measures.

The COMESA transposition surveys (needs assessments) were not comprehensive enough to show the extent of implementation of COMESA trade facilitation programmes at national or regional levels. More work still needs to be done in the form of new, detailed and comprehensive national needs surveys.

Review of the Relevant Trade Facilitation Strategies Prepared by COMESA Separately, and in the Tripartite Process

COMESA has nineteen (19) Member States namely: Burundi, Comoros, Djibouti, Democratic Republic of Congo (DRC), Egypt, Eretria, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Swaziland, Seychelles, Uganda, Zambia and Zimbabwe and is one of the best performing REC in Africa. The current strategy of COMESA is summed up in the phrase, "economic prosperity through regional integration". In recent years, leading up to the Bali Agreement on Trade Facilitation, COMESA undertook a series of needs assessments to identify gaps between national-level practices/regulations and regional programs/agreements, including some of the issues that were later formulated in the Bali Agreement.

The trade facilitation strategies prepared by COMESA show that trade facilitation has been part of the COMESA agenda since 1993. The COMESA Treaty in Article 70 provides for the need for Member States to embrace initiatives that facilitate trade by reducing the cost of documentation; adopting common procedures in trade; and capacity building in trade facilitation issues.

Further, the Treaty in Articles 69 and 71 provides for: standardization of trade documentation and information; and simplification and harmonization of trade document and procedures.

A review of the COMESA Treaty indicates that it has various provisions that stipulate the commitments expected of the Member States regarding the removal of NTB's and the increase of trade facilitation in order to increase and promote trade in the region. Some of these Treaty provisions include: Article 3(c); Article 4(1)(c); Article 4(2)(a); Article 4(2)(b); and Article 4(6)(a), to mention but a few.

i. Article 70 of the Treaty also provides for the need for Member States to initiate programmes aimed at facilitating trade. These include: Reducing the cost of documents and volume of paper work required in respect of trade among member States;

ii. Ensuring that the nature and volume of information required in respect of trade within the Common Market does not adversely affect the economic development of or trade among member States 17; and

iii. Adopting common standards of trade procedures within the common Market where international requirements do not suit the conditions prevailing among Member States.

Article 71 of the Treaty stipulates the need for Member States to standardize their trade document and information through use of computer and automated data management systems.

Likewise, the economic integration agenda being implemented at the level of the three RECs COMESA, EAC and SADC has prioritized programmes addressing trade and transport facilitation challenges with the aim of lowering costs of doing business and improving the competitiveness of products from the Eastern and Southern African region. Such programmes encompass:

i. Regulatory and policy reforms encouraging the adoption of international instruments and best practices; and

ii. National and regional capacity building programmes to facilitate cross-border movements and enhancement of infrastructure facilities at border posts to improve efficiency of cross-border movements.

In the area of trade facilitation the COMESA Secretariat is implementing programmes to improve the transport, communications systems and customs facilitation within the region as well as improving information available to businessmen desiring to trade both within and outside the region. A summary of the COMESA trade facilitation programmes and how they relate to the WTO trade facilitation Agreement is given below:

(a) Common Statistical Rules

The use of common statistical rules, which were adopted by the COMESA Council of Ministers at their meeting in April 1996, is necessary for comparison of trade data and statistics. All countries, which are implementing the COMESA Customs Document (CD), are also implementing the common statistical rules.

It has not been possible to establish through Web research how many countries are actually applying the COMESA-CD. However, it can be assumed that many of the COMESA countries are actually applying the COMESA-CD. Whether or not they are applying it in its original format is another issue to be established through needs surveys. In a way it can be argued that the use of common statistical rules by COMESA Member States can be mapped onto Articles 1 and 10 of the trade facilitation Agreement as long as a member state is using the common CD.

(b) ASYCUDA/EuroTrace

The ASYCUDA/EuroTrace programme is an important component of regional integration. ASYCUDA (Automated System for Customs Data and Management), was designed to make the customs processes more efficient, promote trade by reducing the time taken to clear goods (thus saving importers and exporters money), thereby reducing non-tariff barriers to trade. In addition, the ASYCUDA programme has a strong positive effect on revenue generation by making the tariff collection procedure more efficient.

As part of a wider regional integration support programme, COMESA formed the RISP project (titled "Regional Integration Support Programmes"), with funds secured from the European Union (EU), to provide a wide range of regional integration support programmes of which ASYCUDA's computerised customs declaration processing, transit and trade facilitation, Eurotrace and external trade data statistics are a cardinal part.

The programme relates and conforms to the measures of Article 12 of WTO-TFA which establishes a framework for co-operation that obliges Member States to share automated information in order to ensure orderly coordination of customs control, while respecting the confidentiality of information held. The practice of co-operation in COMESA is efficient.

(c) The COMESA Customs Document (COMESA-CD)

The COMESA-CD was officially adopted by the April 1996 COMESA Council of Ministers Meeting. A number of Member States have since implemented it. The Secretariat has run a number of training courses for Customs officials in order to facilitate the intended usage by all Member States in the long run. This is one of the programmes to harmonise customs and trade statistics systems (including ASYCUDA), financed by the European Union.

As mentioned in (a) above, a number of COMESA Member States are applying the COMESA-CD. This strategy is in conformity with Article 10 sub-sections 1, 2, 3, 4 and 7 of the Agreement. Member States have been progressively minimizing the incidence and complexity of import, export and transit formalities, at the same time decreasing and simplifying documentation requirements across borders. It covers the following:

i. *Formalities and documentation requirements*

Member States are increasingly using the Road Customs Transit Documents (RCTDs) as the common denominator documentary requirements for import, export and transit, and have ensured that such document aids rapid release and clearance of goods. This strategy has reduced compliance costs and time for traders. The EAC is leading the conformity.

ii. *Acceptance of copies*

Member States, where appropriate and with levels of automation and interconnectivity, accept paper or electronic copies of supporting documents. Equally, government agencies have been obliged to accept copies, including where applicable from the government agency that holds the original, rather than from the trader.

iii. *Use of international standards*

The majority of the Member States do follow best practice in the form of international standards.

iv. *Single window*

Member States within their RECs (especially EAC with support from TMEA) are in advanced stages of establishing a single window for the submission of documentation and/or data requirements for import, export or transit. Some countries such as Rwanda have already established the Single Window system.

v. *Common border procedures and uniform documentary requirements*

COMESA Member States are under broad obligations to apply common customs procedures and uniform documentation requirements for the release and clearance of goods throughout its territory.

(d) Harmonised Road Transit Charges

The road transit charges system was introduced in 1991 (currently being implemented by Burundi, Ethiopia, Kenya, Malawi, Rwanda, Sudan, Uganda, Zambia and Zimbabwe) and specifies that heavy goods trucks with more than 3 axles should pay a road charge of US $10 per 100km; trucks with up to 3 axles should pay a charge of US $6 per 100km; and buses with a capacity of more than 25 passengers pay US $5 per 100km.

The strategy conforms to Articles 6 & 11 of WTO-TFA. Since its introduction 23 years ago, the size of fees and charges to the approximate cost of the services rendered has been limited. Member States have published such charges and have never revised their fees and charges. Equally, Member States have ensured that penalties are imposed only on persons responsible for a breach of laws or regulations, and guard against conflicts of interest in the assessment and collection of penalties and duties. Equally, transit vehicles owners/drivers have benefited from the prevention of arbitrary imposition of fees and penalties.

(e) COMESA Carrier's License

The COMESA Carrier's License allows commercial goods vehicles to be issued with one license, which is valid throughout the region so that the vehicles can operate in all Member States. This means that vehicles can pick up back-loads in other countries, which makes more efficient use of the region's transport fleet and reduces the cost of trade. The license was introduced in 1991 and is currently in operation in 8 mainland countries (Burundi, Kenya, Malawi, Rwanda, Swaziland, Uganda, Zambia and Zimbabwe).

This policy conforms to the expanded freedom of transit in Article 11 of the Agreement.

(f) Harmonised Axle Loading and Maximum Vehicle Dimensions

In order to preserve the road infrastructure and ensure reasonable, usable life times, COMESA Member States have agreed the following Axle load limits for freight vehicles:

Single steering axle = 8 tonnes

Single load or drive axle = 10 tonnes

Tandem axle group = 16 tonnes

Triple axle group = 24 tonnes

This COMESA policy conforms to Article 6 of the WTO trade facilitation Agreement.

(g) COMESA Yellow Card Scheme

The COMESA Yellow Card is a vehicle insurance scheme, which covers third-party liability and medical expenses. A Yellow Card issued in one COMESA country is valid in all other countries participating in the scheme. As at November 2005, the scheme was operational in Burundi, Democratic Republic of Congo, Eritrea, Ethiopia, Kenya, Malawi, Rwanda, Swaziland, Uganda, Zambia and Zimbabwe. It was also operational in Tanzania. The insurance industries in some non COMESA Member States such as South Africa and Namibia have also expressed a wish to be part of the Yellow Card scheme and consultations are in progress.

The COMESA Yellow Card scheme seems to conform to Article 11 of the Agreement.

(h) COMESA Customs Bond Guarantee Scheme

The Regional Customs Transit Guarantee (RCTG) scheme is a system designed to facilitate efficient movement of goods throughout the region, under a system of secure, seal and motor vehicles, standardised declaration document and a reliable guarantee mechanism that will protect the interest of all stakeholders. The RCTG is an instrument that has been developed under the auspices of the protocol on transit trade and transit facilities of the COMESA Treaty.

This policy also conforms to Article 11 of the WTO trade facilitation Agreement.

(i) Advance Cargo Information System (ACIS)

The Advance Cargo Information System (ACIS) is a computer-based system, developed by UNCTAD. The full ACIS suite of programmes consists of port tracker, rail tracker, road tracker and Lake Tracker. To-date UNCTAD, the main contractor, has developed and installed only rail tracker, which tracks cargo on the railway systems of Zambia Railways, Uganda Railways, Tanzania-Zambia Railway (TAZARA), Kenya Railways and Tanzanian Railways, and some components of port tracker in the ports of Mombasa and Dar-el-Salaam.

The ACIS conforms to Article 1 of the Agreement.

(j) Telecommunications Harmonization

A reliable, efficient and cost-effective regional telecommunications network would greatly facilitate economic integration in the region. It is recognized that the existing network is not adequate to meet the needs of the users and the current practice of routing regional telecoms traffic via countries outside the region (mainly in Europe) makes the implementation of competitive tariffs very difficult. To address this problem, COMESA has initiated the establishment of a private, limited liability company (COMTEL) which will build an asynchronous transmission mode (ATM) system which will link national systems together. While gateway-to-gateway infrastructure is COMTEL's priority, the national infrastructures are equally important and there is a need for all countries in COMESA to continue to develop and improve national infrastructures.

This COMESA strategy conforms to Article 12 of the trade facilitation Agreement.

(k) Promotion of E-Commerce

The COMESA Secretariat is developing an e-commerce policy and modalities of its implementation. As part of its process of facilitating electronic communication among Member States and the Secretariat, COMESA has distributed computers and established e-mail and Internet facilities for all co-ordinating ministries. COMESA has facilitated establishment of informal cross border traders' hubs at various border crossings such as Malaba, Katuna, Namanga and Chirundu with Member States.

This strategy conforms to Article 12 of the trade facilitation Agreement.

(l) Removal of Non-Tariff Barriers

Significant progress has been made in the elimination of non-tariff barriers (NTBs) such as in liberalisation of import licensing, removal of foreign exchange restrictions, removal of taxes on foreign exchange, removal of import and export quotas, removal of road blocks, easing of Customs formalities, extending times border posts are open, etc. There are, however, still a number of improvements required to make intra-regional trade easier, such as improving the transport and communications structures, easing visa requirements, improving access to information on trade opportunities, and further reducing customs and bureaucratic procedures at border crossings. This COMESA strategy conforms to Article 6 of the Agreement.

The consultant reviewed the COMESA policies above basing on the COMESA needs assessments referred to earlier and cross referenced them against the WTO trade facilitation measures with the purpose of establishing how near or far these were. The review revealed two things: one was that COMESA has trade facilitation initiatives other than those covered in the WTO Trade Facilitation Agreement and two that there are many similarities between the two. COMESA for example emphasizes the use of a single customs document. It also emphasizes customs co-operation and simplification of customs procedures.

In 2009, COMESA launched a customs union and was expected to have implemented the customs union after three years. Discussions are still ongoing to ensure that the customs union comes into force. In preparation for the customs union COMESA Member States agreed to a harmonized external tariff and a common customs law whose content was built on the WCO's RKC. The common customs law would provide a good basis for the quick implementation of the WTO trade facilitation agreement. Without a customs union, however, these two important instruments cannot be implemented and therefore denying the member states closer co-operation in facilitating trade.

It should be mentioned however, that some of the Member states belong to more than one REC, which have their own trade facilitation policies and strategies (such as Annex II of the SADC Trade Protocol and EAC Customs law, harmonized customs procedures, standardized customs forms, etc.). Eight of the COMESA Member States namely: Democratic Republic of Congo, Madagascar, Malawi, Mauritius, Swaziland, Seychelles, Zambia and Zimbabwe, also belong to SADC. Burundi, Kenya, Rwanda and Uganda, belong to the East African Community. Each of these countries is committed to implementing trade facilitation policies and strategies of the respective organizations they subscribe to. Furthermore, the four countries that belong to the EAC, given that they are in a Customs Union have a deeper integration at customs level compared to those that are not.

The foregoing situation in RECs (commonly known as Spaghetti Mix arrangement) creates disharmony and complicates the very good intentions of facilitating trade in the greater Eastern and Southern region. As a result the three RECs (COMESA, EAC and SADC) decided to work together under a tripartite arrangement. The tripartite currently under negotiation to form a Free Trade Area, has agreed to a more inclusive programme that will see the pace of their trade facilitation policies and strategies harmonized faster to a greater extent.

The COMESA-EAC-SADC Tripartite has recently launched the Comprehensive Trade and Transport Facilitation Programme which is a series of initiatives from different RECs that have been brought together into one large integrated trade facilitation programme to be rolled out as a pilot on the North-South Corridor, starting in early 2011.

While the RECs have to a certain extent been successful in facilitating trade through such programmes, the challenges of limited implementation at national level are stirringly wide due to overlap in memberships between the RECs and other capacity limitations which have been a catalyst for inter-REC collaboration.

How then should COMESA Member States implement the WTO trade facilitation agreement? The role of COMESA is to provide technical support and advisory services to the Member States in the implementation of the Treaty. COMESA is therefore responsible for mobilizing and coordinating all regional activities for its Member States. This central role will be very necessary in the development of national implementation frameworks for the WTO TFA.

Currently, four COMESA Member States namely Burundi, Kenya, Rwanda and Uganda plus Tanzania which is member of SADC are receiving financial support from TradeMark East Africa (TMEA) to facilitate implementation of the WTO Bali Trade Facilitation Agreement. In fact these countries have already commenced activities that will lead to developing action plans for the implementation of the Agreement. To this end the EAC held a regional workshop from 16 to 18 July 2014 for its stakeholders in Nairobi, Kenya to educate and discuss how the EAC countries would work together in this direction. The workshop attracted over 60 participants from the public and private sector. Several presentations were made on the WTO trade facilitation Agreement and other relevant subjects.

The workshop revealed that although the EAC Partner States were well ahead with preparatory work on the implementation of the Agreement, there are still a number of challenges that are likely to slow down this process. For example, it is not clear how the issue of dual membership will be solved. Also, there is no clear regional strategy that has been agreed to ensure a common approach to the implementation of the Agreement. There are no established trade facilitation committees both at regional and national levels, with the exception of Rwanda which has taken steps to create one. Countries are also finding difficulties in determining relevant cost implications - despite the fact that these countries have a better opportunity of working together due to the fact that they belong to a Customs Union. The EAC's development establishes urgency for COMESA to use its central role to take up the responsibility for mobilizing and coordinating with the two other RECs to ensure the development of national implementation frameworks for the WTO TFA through inter-REC Secretariat vantage tripartite approach is completed. For instance, SADC may be encouraged in liaison with USAID, to replicate a similar. COMESA would, in the meantime, facilitate the remaining Member States (which are also WTO members) to hold a related stakeholders' workshop.

Identify areas where COMESA region and Member States have made sufficient progress and Category "A" Commitments that the Developing Countries are expected to make by the 31 July 2014 deadline

In order to determine whether sufficient progress had been attained by Member States and COMESA region in implementing trade facilitation measures identical to those in the WTO trade facilitation agreement, the consultant looked for details in the national needs assessments results and the COMESA trade facilitation policies. The findings at this level could thus provide those measures that would automatically fall under the category A commitments that developing countries are expected to implement on entry into force of the WTO trade facilitation agreement.

As mentioned above, it is not possible to provide precise data on progress so far made by each COMESA Member State given that the needs assessments carried out were intended at the time to inform the COMESA Secretariat on the level of implementation of the various regional instruments by Member States. The outcomes of the needs assessment reports were not comprehensive enough for the purpose and requirements of these ToRs. To make an informed position on this issue there should be urgent commencement of new national surveys conducted with the objective of establishing the progress by each country to date. However, the assessments at COMESA and tripartite levels (see matrix below) seem to suggest that there is sufficient progress at COMESA level since a number of policies are largely similar to those in the Agreement. This, however, cannot be used to conclude that category A or C or B commitments can therefore be easily identified.

Literature and information obtained[6] indicates that many countries through their customs administrations around the world prescribe to the WCO RKC whose principles are also enshrined in the WTO Bali Trade Facilitation Agreement. WCO's records also show that a number of customs administrations around the world including some from COMESA have not yet become contracting parties to the RKC. Other countries, even when contracting parties to the RKC, partially implement the RKC. Such countries have entered into reservations on certain portions of the RKC. In view of this situation, will these countries simply embrace the WTO trade facilitation agreement without becoming contracting parties to the RKC or implement it in

6 *List of contracting parties to the RKC – WCO website*

accordance with the established rules? In any case, does it matter if they decided to embrace the WTO Agreement without taking on board the RKC? What is it that prevents them from accepting the RKC? To make matters worse, some COMESA Member States are observers at the WTO while one is not a contracting party.

These and many more questions need answers and they would help in speeding up both the acceptance of the RKC and implementation of the agreement in the region. One thing is however clear: the WTO Agreement is not in any way tied to the RKC and vice versa. Implementing one of these instruments does not require a country to first embrace one and then the other. Nevertheless, the COMESA Secretariat has the task of pushing its Member States to embrace the RKC and at the same time spearhead the implementation of the agreement. Becoming a contracting party to the RKC would however help in speeding up the implementation of the agreement.

There is urgent need for a comprehensive programme at COMESA high level that should see both instruments implemented. For purposes of this report, no effort has been made to suggest a programme for those COMESA Member States that have not yet embraced the WCO RKC to do so.

Provide a Mapping with the Relevant Articles of the WTO Bali Agreement of Trade Facilitation

A mapping of the relevant articles of the WTO Trade Facilitation measures with those being implemented at national level can only be done once the required data and information is obtained through national surveys and analysis. However, an attempt to map the relevant articles of the WTO Agreement on trade facilitation with the COMESA and tripartite trade facilitation policies and strategies has been provided in the table below. As can be seen, the mapping has been provided at the higher levels. Detailed information regarding implementation by the individual countries cannot be obtained at such high levels. Furthermore, the tripartite trade facilitation measures given in the matrix are yet to be implemented given that negotiations on formation of a tripartite free trade area are on-going.

The EAC Trade Facilitation Forum and Lessons Learnt

Co-operation in trade liberalization and development is one of the fundamental pillars of the EAC. For this purpose, the EAC Partner States agreed in the EAC Treaty of 1999 to "establish among themselves a customs union, a common market, a monetary union and finally a Political Federation". It is against this background that the EAC trade facilitation forum that was held from 16 to 18 July 2014 in Nairobi, Kenya, and attracted a number of participants from the public and private sectors. The forum was organized by the EAC Secretariat and funded by TMEA to purposely sensitize stakeholders on the WTO trade facilitation agreement and establish what was obtaining in each Partner State. A number of presentations were made by invited presenters from COMESA, World Bank, IFC, WCO, WTO, UNEACE and the private sector.

The forum revealed that EAC Partner Sates have already done some work with regard to preparations for implementing the Agreement. What was obvious however was that each country initiated its own agenda initially with assistance from UNCTAD in some countries and now TMEA by carrying out needs assessments to enable them identify gaps between the WTO trade facilitation Agreement and their own trade facilitation programmes.

The EAC member countries of Burundi, Kenya, Rwanda, Tanzania and Uganda differ in their level of development, degree of integration in world markets, and success at establishing effective institutions. As a result, each country faces unique challenges in improving its trade environment. Furthermore, EAC member countries have had varying levels in applying global best practices in trade facilitation for both border procedures and transportation infrastructure. All the five countries are signatories to the WCO RKC and also use a common customs law. Implementing the customs law (the Customs Management Act, 2004) and other EAC harmonized instruments are coordinated and monitored by the EAC Secretariat.

Ordinarily one would expect the five countries to have a common approach to preparations for the implementation of the WTO trade facilitation Agreement. However, presentations on the needs assessments by each country indicated that there were major differences in the findings by each of them. The bigger part of the agreement is made up of the WCO's International Revised Kyoto Convention and since all the five states subscribe to the RKC it would imply that most of the measures in the agreement would be similar with the exception of a few. On the other hand, if the differences are genuine, it implies that some of these countries have made reservations on some of the principles in the RKC. This would, therefore, necessitate deeper and independent assessments to ascertain the reasons for the differences.

The forum also revealed that EAC countries should bring on board the regional picture while carrying out their national needs assessments. Not even the tripartite arrangement was considered by any of the five countries. Although all the five countries welcomed financial support from development partners, they nevertheless felt that dependence on donor support is not sustainable in the long run. The five EAC countries are currently receiving financial support from TMEA to carry out needs assessments; and TMEA is ready to provide more support beyond needs assessments.

The participants noted that there were some challenges with regard to determining the cost of activities that would require donor support under category C. They also said that some of the measures that are identified as category B with the scope "partial" could qualify for donor support but that is was not possible to easily cost them. To get details at this level, deeper needs assessments should be carried out.

Another challenge was the existing rivalry among the different players as to who should be leader on trade facilitation matters. It was also clear from the forum that there is need to establish a regional strategy and plan for the implementation of the agreement. The fact that the regional forum has come well after Partner States had already embarked on needs assessments confirms this need. Both the countries and the EAC Secretariat saw the need for establishing trade facilitation committees. The regional committee is to work closely with the national committees to coordinate all matters regarding implementation of the agreement. In view of this, the forum agreed that a meeting be held in October 2014 to develop an action plan on the implementation of TFA and assign responsibilities at the regional and national level.

The participants received useful advice from the presenters such as the proposal to have exit plans and the establishment of an online tripartite trade facilitation portal – open to all stakeholders encompassing NTBs, eCOs, single windows, regulations, documents, and consultations. They were also advised to work together in the region and to always ensure that the private sector is part of the process. Working together would help in focusing the scarce resources onto certain activities to avoid duplication and wastage.

Summary of the lessons drawn from the EAC Forum

a. Integration of existing programmes and alignment of mandates across organizations is very essential for the implementation of the agreement;

b. Champions to lead, own and facilitate the work and provide accountability and coordination need to be identified for the proper management of this project;

c. Support in terms of dedicated resources and staff, funding, sensitization, and policies with regulation/enforceability is key to the implementation process;

d. Co-operation and collaboration on a multi-faceted approach in which various players come together cannot be ignored;

e. Action orientation towards a common vision for sustainable trade facilitation and the implementation of concrete strategies and solutions in a timely manner;

f. On-going dialogue to continue to bring groups together to discuss roles, strategic actions, progress, and best practices in sustaining the trade facilitation Agreement; and

g. Exit plans are extremely essential for sustainability of the project after it closes.

Implementation Scenarios

The EAC trade facilitation forum is an eye opener as to what is prevailing in the region with regard to the implementation of the WTO Trade Facilitation Agreement. Some Member/Partner States[7] had carried out pre- the WTO 9th Ministerial Conference in Bali, Indonesia in December 2013 needs assessments and are in the process of carrying out reviews following the conclusion of the trade facilitation agreement. Each country has singularly embarked on this exercise without the involvement of any Regional Economic Community (RECs) secretariats. It is only recently that the RECs are coming on board and even then, there are no commonly agreed parameters for dealing with implementation at a regional level. Since Member/Partner States are already working together under the RECs and now under the Tripartite on many programmes, it is advisable that

7 *This statement should be restricted to the five Partner States of the EAC and perhaps Mauritius.*

they take advantage of these existing structures to avoid re-introducing individual approaches on the implementation of the WTO trade facilitation Agreement.

As indicated in the lessons learnt above, Member/Partner States stand a better chance to do better when they work as a group. The question however is: how can this be done given that two of the regions i.e., the EAC and SADC have already embarked on working closely with their member countries on this issue? What if COMESA also mobilises its other members to follow suit? Won't this result into renewed RECs conflicts in an attempt to do the same thing for countries that belong to two RECs? What about the absence of a coordination framework by development partners in the region that would integrate member states' individual financial requests and favour a quest for a common roadmap?

One thing is obvious: implementation of the WTO Bali Trade Facilitation Agreement is to be done by individual countries even if the RECs come on board to support the process. Further, most of these countries are already implementing the RKC and may have no major challenges in implementing the agreement. What is essential at this point is for the countries to work together at a regional level to develop common parameters that will expedite the implementation of the Agreement from a common base.

The EAC may have a bigger influence over its members since they are bound by common customs union instruments. However, COMESA can play a leading role in mobilising and guiding its Member States to implement the agreement. There are three implementation options or scenarios COMESA can take.

The first scenario is for COMESA to decide to go it alone. It can mobilise, coordinate and give guidance to all its Member States (those that subscribe to the WTO) to have a common framework for the implementation of the agreement. In this case, COMESA Secretariat can propose guidelines or parameters for the purposes of collecting data or carrying out needs assessments in each Member State. Other than the EAC countries and Mauritius that have embarked on needs assessments, it is not clear whether other countries in the region have also done the same[8]. COMESA can take advantage of this and develop common parameters basing on what these countries have done. A forum similar to the one conducted by the EAC would be a good starting point. From this forum a committee (on trade facilitation) would be formed to purposely embark on working with member states to carry our needs assessments.

The only challenge with this approach is that eight of COMESA Member States also belong to SADC while four countries belong to the EAC. An imposition of a single COMESA approach could cause dissent and get resisted by the other two RECs. It should be pointed out that each country has a different set of officials who handle RECs. The EAC and SADC having obtained financial support from development partners could also be considering the same approach. However, this approach would also lead to the duplication of efforts and hence misuse of the limited resources. The possibility of exploiting synergies and being accepted by EAC/SADC to play a coordination role, could be explored and most preferably secure backing through a summit

8 *The only information obtained by the Consultant is that USAID is supporting this process in SADC.*

decision.

The second scenario is for COMESA to mobilise, coordinate and guide only those Member States that do not fall in either the EAC or SADC with support from the World Bank. Since the remaining countries namely: Comoros, Djibouti, Eritrea, Egypt, Libya and Sudan are not members of the EAC or SADC, the World Bank can direct its resources for the purposes of implementing the agreement to bring them to the same level as the of the other countries. Those countries that do not belong to the WTO i.e. Eritrea can be handled under the auspices of the African Union Commission (AU).

Some of these countries are WTO observers and may not be bound by the WTO rules as far as this agreement is concerned. COMESA can however take on the WTO trade facilitation agreement as one of its regional policies and recommend that all its member states embrace the agreement.

The third scenario is for COMESA to work with the other two RECs of EAC and SADC, under the tripartite arrangement, to develop and implement the agreement under a single framework. Since the tripartite is still under negotiation, placing this activity under the tripartite programme would be very timely. However, given the tall order prevailing in the tripartite, discussions and agreement in the tripartite approach may be cumbersome and may take long to achieve the intended results. Further, the fact that some countries[9] are already preparing or have already started work in this direction with the support of two development partners, they may not be willing to wait for those that are still behind. It is also likely that altering the already existing tripartite timetable will not be possible.

Despite this shortcoming, the best option for COMESA would be to work in consultation with the other two RECs to implement the agreement. This work can be handled without bringing it directly under the main tripartite programme. There is already a precedent set under the tripartite customs co-operation activities. Some activities such as harmonization of customs capacity building and co-ordinated border management activities have been on-going without directly affecting the agreed tripartite programme. The three RECs can, through their Trade and Customs Committee, expeditiously start working on the implementation of the agreement.

Working under a tripartite arrangement may not seem to be as simple as one may think. First; two of the RECs that is COMESA and SADC are free trade areas. They do not have an operational common customs law under which quick comparison with the WTO Agreement would be carried out. COMESA has a customs law which, however, is not yet operational in any of its Member States. This means that Member States of COMESA and SADC are currently applying their national laws. Any needs assessments carried out in these two regions may have very wide differences when mapped against the trade facilitation agreement thus grouping under categories A, B and C is likely to have very wide differences. In fact, the needs assessments in these two regions must be done concurrently at a national and regional level. On the other hand, the EAC which has a common customs law should be expected to have fairly similar outcomes for all its Partner States. The recent forum held in Nairobi however, showed that the EAC countries also have very

9 *For instance, Uganda, other EAC Partner states and SADC member states are well advanced in the implementation plans.*

wide differences in categorising the measures against the trade facilitation agreement.

Of course there are certain measures that do not directly fall under customs. It is possible that these too may also yield similar results in some countries and completely different ones in others. Therefore, thought must be given on how these divergent situations can be handled.

The purpose of carrying out needs assessments is to identify gaps between the existing trade facilitation instruments or programmes and the WTO trade facilitation measures. Thereafter, the results will be grouped into either category A or B or C. If needs assessments are left to the individual countries, chances are that they will miss out some of the trade facilitation programmes being implemented at a regional level especially in COMESA and SADC.

It is not yet known how SADC is conducting its affairs with regard to the implementation of the WTO trade facilitation Agreement. The EAC which recently concluded a workshop on this issue has not yet come up with a common approach for its member countries. This is, therefore, an opportune time for all the three RECs to come together and hatch out a common approach. In this connection COMESA should quickly convene a consultative meeting for its Member States under the Theme "*Building stronger cooperation in promoting trade facilitation*". This meeting should agree on a common approach to the implementation of the trade facilitation agreement and establishing a trade facilitation committee at the COMESA Secretariat level.

Recommendations of this meeting should be presented to a special meeting of the Tripartite Task Force then the decisions of the task force should be tabled before a select team of officials, preferably trade facilitation committees of EAC and SADC.

National meetings will then be convened to discuss the report of the trade facilitation committees. It is on this basis that Member States of all the three RECs will base their plans to implement the WTO Trade Facilitation Agreement. Funding of these activities can be done by the individual development partners. TMEA can fund participants from the EAC and USAID funds those from SADC. The World Bank can fund officials from the remaining countries and also fund the venue and meeting utilities.

In the meantime, COMESA can embark on developing a regional online tripartite trade facilitation portal open to all stakeholders capturing: NTBs, eCOs, single windows, regulations, documents, consultations, etc.

The following programme is proposed:

Activity	Proposed date	Proposed Venue/Location
Consultative meeting of COMESA member states (Public and Private sector stakeholders to participate)	August 2014	Kigali
Meeting of tripartite Task Force	September 2014	Nairobi
Workshops in member states not covered by TMEA and USAID	September 2014	Djibouti

Recommendations for the Implementation of the World Trade Organization Bali Agreement in COMESA Member States

In view of the above proposed implementation scenarios, and given that the Secretariat cannot take a unilateral decision, it is recommended that:

i. COMESA Secretariat urgently consults the EAC and SADC on how far they have progressed with the support that has been given by TMEA and USAID. This is important since the two RECs have already received donor support.

ii. COMESA Secretariat convenes a consultative meeting of its Member States to discuss the merits of working together under the tripartite on this issue.

iii. Common needs assessment parameters should be agreed and adapted by all the RECs.

iv. Development partners, with advice from the three Secretariats, agree on how to fund the implementation of the WTO trade facilitation Agreement.

v. An online tripartite trade facilitation portal – open to all stakeholders capturing the NTBs, eCOs, single windows, regulations, documents, consultations, etc., should be established.

vi. More work still needs to be done in form of new detailed and comprehensive national needs surveys.

Conclusion

WTO developing and LDC member states have committed themselves to implement category A measures and also to implement categories B and C measures on a phased approach. Almost all COMESA Member States are members of the WTO and are therefore bound by the Bali Agreement. On category A measures, the implementation by each COMESA Member State is expected to get started as agreed and planned. However, the majority of the Member States may require both technical and financial support to be able to implement categories B and C.

Four (4) of COMESA's 19 Member States namely: Burundi, Kenya, Rwanda and Uganda belong to the EAC and eight (8) belong to SADC. TradeMark East Africa has committed funds to support the implementation of the Agreement in the EAC while USAID has committed funds to support SADC countries. This leaves a few countries in COMESA which will need such support. The World Bank has come in to give support to COMESA. However, given that some of COMESA Member States are already covered under SADC and EAC, it would not be prudent for the World Bank to spend its resources in the same area unless it concentrated on those countries that do not belong to either EAC or SADC.

To make good use of resources, it is recommended that this work be handled under the tripartite framework to avoid duplications and differentiated approaches. COMESA Secretariat can spearhead a consultative approach with the other two RECs in this exercise. Development partners should also agree on how they can coordinate funding on a tripartite level. Integration of existing programmes and co-operation and collaboration are key to building strong working relationships among the three RECs and their Member States.

Sources:

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Trade Facilitation Study in COMESA

Trade Facilitation in Africa: Pilot case study on COMESA Sub-Region

EAC Report on the "Trade Facilitation Forum" 16 to 18 July 2014

Mapping of the WTO Trade Facilitation Measures with the COMESA and Tripartite Trade Facilitation Instruments

Name of the measure in the Bali Agreement	Article	Equivalent in the COMESA Region	Remarks on the Current Situation in COMESA	Tripartite Trade Facilitation Instruments
Publication	Article 1(1)	Publication of trade statistics and other information		
Information available through the Internet	Article 1(2)	Advance Cargo Information System (ACIS)	To a certain extent an equivalent since it enhances performance, communications and exchange of information between transport operators and shippers on one hand and between modes of transport on the other hand.	
Enquiry Points	Article 1(3)		Equivalent to COMESA border information desks	
Notification	Article 1(4)			
Opportunity to Comment on New and Amended Rules	Article 2(1)			
Consultations	Article 2(2)	Article 66 of the Treaty (2)(d)	Consultations reported under prevention, investigation and suppression of customs offences	
Advance ruling	Article 3			
Right to Appeal or Review	Article 4(1)			
Notifications for enhanced controls or inspections	Article 5(1)			
Detention	Article 5(2)			
Test Procedures	Article 5(3)			

General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	Article 6(1)	Uniform rates for road transit charges		
Specific disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	Article 6(2)	Uniform rates for road transit charges (introduced in July 1991)	One of the COMESA trade facilitation instruments	
Penalty Disciplines	Article 6(3)			
Pre-arrival Processing	Article 7(1)			
Electronic Payment	Article 7(2)	ASYCUDA-EUROTRACE (ASYCUDA ++/WORLD)		
Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges	Article 7(3)			
Risk Management	Article 7(4)			
Post-clearance Audit	Article 7(5)			
Establishment and Publication of Average Release Times	Article 7(6)	Conducted in some countries	These were done some time ago	

Trade Facilitation Measures for Authorized Operators	Article 7(7)			
Expedited Shipments	Article 7(8)			
Perishable Goods10	Article 7(9)			
Border Agency Cooperation	Article 8	Article 66	One stop Border projects	Under the CTTTFP
Movement Of Goods Under Customs Control Intended For Import	Article 9	COMESA Treaty		
Formalities and Documentation Requirements	Article 10(1)	Articles 69 and 71 of the Treaty		CTTTFP; Under Article 14 of the Agreement: Annex 6, Article 3 - Reduction of Costs of Trade Documentation
Acceptance of Copies	Article 10(2)			
Use of International Standards	Article 10(3)	Article 71 of the Treaty	Implementation of common standards	Under Article 14 of the Agreement: Annex 6 - Article 4 Standardization of Trade Documents and Information
Single Window	Article 10(4)			
Pre-shipment Inspection	Article 10(5)			
Use of Customs Brokers	Article 10(6)	Article 93 of the Treaty		

Common Border Procedures and Uniform Documentation Requirements	Article 10(7)	Article 69 and 71 of the Treaty;_The COMESA Customs Document (COMESA-CD)	To a certain extent	Under the CTTTFP; Under Article 13 of the Agreement, Annex 5, Article 5 Simplification and Harmonisation of Customs Procedures; Article 14 of the Agreement: Annex 6, Article 3 - Reduction of Costs of Trade Documentation
Rejected goods	Article 10(8)			
Temporary Admission of Goods/Inward and Outward Processing	Article 10(9)			
Freedom of Transit	Article 11	Article 64(2)(e) of the Treaty; Annex I	Protocol on Transit Trade and Transit Facilitation	Under the CTTTFP; Article 17 of the Agreement; Article 2(1); Annex 6, Annex 7; Article 7 Tripartite Transit Document;
Customs Cooperation	Article 12	Article 63 of the Treaty		Article 13 of the Agreement, Annex 5

Measures Promoting Compliance and Cooperation	Article 12(1)			
Exchange of Information	Article 12(2)	Articles 65 and 66 of the Treaty		Under the CTTTFP; Article 17 of the Agreement; Article 2(1); Annex 6,
Verification	Article 12(3)			
Request	Article 12(4)			
Protection and confidentiality	Article 12(5)			
Provision of information	Article 12(6)			
Postponement or refusal of a request	Article 12(7)			
Reciprocity	Article 12(8)			
Administrative burden	Article 12(9)			
Limitations	Article 12(10)			
Unauthorized use or disclosure	Article 12(11)			
Bilateral and regional agreements	Article 12(12)	Articles 178 to 183 of the Treaty	General Provisions	
Committee on trade facilitation	Article 13(1)			
National Committee on Trade Facilitation	Article 13(2)	National Committees exist in member states to handle various regional issues including trade facilitation	Need to establish a regional trade facilitation committee.	Under Article 14 of the Agreement – Annex 6, Article 6 Sub-Committee on Customs Cooperation and Trade Facilitation

Export Taxes in the COMESA-EAC-SADC Tripartite Region

By Racheal Kemigisha

Introduction

In the course of negotiations on the TFTA, Article 10 of the Draft Tripartite FTA Agreement on the application of export duties has emerged as a contentious issue eliciting differing opinions from Member/Partner States. Proposals regarding the treatment of this article range from removing draft Article 10 altogether, to editing the content and scope of the Article.

This paper will expound on the subject of export taxes within the context of the tripartite region by drawing on experiences from within the region and globally.

The second section of the paper will provide a background by defining export taxes, the form they take and their purpose. This section will also provide insight into the global theory and practice on export taxes thus establishing a point of reference for possible application in the tripartite region.

The third section shall examine the status of export taxes and the rules that govern their application within the tripartite region highlighting those countries currently using the tax, on which products and their impact. Furthermore, a brief case study shall be presented giving context to the practical impact of export taxes to an economy. This section shall also provide a brief analysis of the proposals of Member/Partner States regarding Article 10 in the draft TFTA.

The fourth section will discuss the way forward and the various factors to be considered in the negotiating process.

The fifth section, taking stock of the issues within the paper shall provide recommendations for consideration.

Background

An export tax in simple terms is a duty applied by countries to products before export. It acts as a method of export restriction and it is often a preferred method of restricting exports, among the various policy options available. An export tax can be levied as an *ad valorem* tax which is a percentage tax of the value of the product, a specific tax levied on a per unit basis and a progressive tax which correspondingly changes with the increase or decrease in price of the product.

Developing and least developed countries, primary users of an export tax, have various policy reasons for imposing a tax on exports that include the following.

(i) ***Government Revenue***

Historically, the imposition of export on taxes was often driven by the need to collect revenues and these finances were then used for development purposes. This is considered a justifiable reason to tax exports and in cases where a country has a significant market share then revenues collected can be substantial. Russia is an example of a country where export taxes, among others on energy producers accounts for the largest source of tax revenue. However, countries must proceed with caution since revenues can be unstable as a result of fluctuating international prices as well as challenges associated with sustaining supply of the commodities. Countries tend to develop a fund that stores revenue windfalls to cover those periods when revenues decline and exporters may require subsidies.

(ii) ***Product Beneficiation***

Export taxes are often justified on the basis of promoting development of the local economy through value addition and growth of infant industries. It is argued that countries engaged in the exportation of raw materials do not have robust manufacturing sectors and rarely engage in value addition. Thus taxes on primary commodities act as an indirect subsidy, since the domestic price of the primary commodities reduces in response to the tax thereby guaranteeing supply to the manufacturing sector at prices lower than the world price. Furthermore, employment creation is also a benefit of this process, accrued to domestic population. Although product beneficiation is a valid policy objective, it is assumed that the tax imposing countries have the capacity to utilise the cheaper primary products thus engaging in value addition and manufacturing.

(iii) ***Food Security***

In some instances the motive for imposing taxes on exports is a direct response to food insecurity. A country will apply an export tax to its agricultural products thereby ensuring that there is adequate supply of key or staple food stuffs for the domestic population. In such instances the tax is imposed to address a specific food crisis and is not a long term policy.

(iv) ***Improve Terms of Trade***

It is argued that when a country possesses a degree of monopolistic power in the international market for a particular commodity, an export tax levied on the good can in fact improve a country's terms of trade. This means that for each unit of exported commodity, the country imposing the tax will be able to import more, thus increasing welfare. This argument is valid, although it is also based on an assumption, and trading partners may choose to retaliate against the tax imposing country. Furthermore, if the tax imposing country does enjoy a monopolistic position on the international market, it provides an incentive for other countries to develop substitute goods or technologies. Therefore, an export tax imposed for this reason might not ultimately benefit the tax imposing country.

(v) ***Retaliating to Tariff Escalation***

It is argued again that export taxes can be used as a retaliation policy in response to tariff escalation. Tariff escalation is the practice of charging higher import tariffs on processed goods than on unprocessed goods. Tariff escalation in developed countries discourages diversification of production in developing countries and increases their reliance on unprocessed, primary commodities.

(vi) ***Foreign Direct Investment***

Export taxes lead to the reduction in the price of commodities. In LDCs these are mostly raw materials. The lower domestic prices are then able to attract foreign investment and simultaneously promote industrial growth.

(vii) ***Address Currency Devaluations and Inflation***

The export tax reduces domestic prices of the taxed good thereby offsetting inflationary pressures.

(viii)***Income Distribution***

An export tax can also have redistributive effects both for the exporting and importing country. In a large country that levies an export tax, domestic production and export volumes fall. Consumers in the exporting country benefit from lower domestic prices while the producers lose, thus income is redistributed from producers to consumers. In the foreign importing country, consumers will lose since domestic prices increase.

In a small country, when an export tax is levied the domestic price of the commodity falls below the world price, which remains constant since a small country is unable to affect world prices. Domestic producers then bear the full cost of the export tax, which they are unable to pass onto the foreign consumer. Thus there is still an income redistribution effect from producer to consumer although there will be no redistribution effects in the foreign country.

The Global Perspective

The WTO adopts an asymmetric approach to the treatment of exports and imports. It does not prohibit the use of export taxes and considers them a legitimate instrument at the disposal of Members. The General Agreement on Tariffs and Trade (GATT) including its schedule of concessions, are silent on the issue of export taxes and only cover import duties and charges related to importation. In spite of this position in the WTO rules, interest in export taxes has intensified within the WTO. The European Commission and several developed countries advocate for disciplines on export restrictions while some countries like Switzerland want an outright ban but with the standard WTO flexibility for developing countries. The general consensus is that there must be some form of discipline to ensure that importing countries are able to get the supplies they need from the global market.-

Given that export taxes currently exist beyond the realm of the WTO rules, some Members have taken matters into their own hands; the EC is seeking the removal of export taxes through its FTAs and bilateral agreements, which prohibit the use of the taxes. In addition the WTO is using accession agreements to commit new Members to reducing or avoiding export taxes. Some Members have accepted restrictions on export taxes as part of their accession protocols (e.g. China, Mongolia, Saudi Arabia, Ukraine and Vietnam). These combined activities are increasing the pressure on countries to agree on a multilateral agreement on export taxes at the WTO, although how soon such an agreement could materialise is unpredictable.

Number of WTO Members Imposing Export Taxes and their Development Level

Number of countries/territories	imposing export taxes	not imposing export taxes	with information not available
-Members	93	62	2
-Observers	11	1	15
-Non-Members	7	3	46
Development level			
-OECD	4	28	1
-Developing	67	3	3
-Least-developed	40	3	7

Source: Solleder, O.2013. Trade Effects of Export Taxes, Working Paper 08/2013, Graduate Institute of International Studies, Geneva

Export taxes remain heavily used by more than half of all countries worldwide with the highest prevalence being among least developed countries (40 out of 43 countries surveyed, as seen in the table above). It can be inferred that the developmental status of a country is a good indicator of whether it imposes an export tax. Furthermore the link between development status and the levying of an export tax can be explained by the fact that developing countries have a limited export basket as compared to developed countries.

About one third of all export taxes levied globally are imposed on natural resources. This is a clear indicator on the type of products on which this tax is levied with the primary motive often being the protection of exhaustible and valuable resources, and value addition.

State of Play - Export Taxes in the Tripartite Region

This section presents facts on the use and impact of export taxes within the tripartite region. An overview of the tripartite region reveals that several countries across all three RECs have imposed export taxes on various products at one time or another.

Tripartite Countries Imposing Export Taxes

	Country	Products	Total Revenue Collection (2012/2013) USD
1.	Tanzania	Hides and Skins, Nuts (i.e. coco-nuts, brazil & cashew nuts)	21,810,204
2.	Namibia	Wooden furniture, fermented beverages	4,544,824
3.	Malawi	Wood	3,881,102
4.	Sudan	Hides and Skins, bovine animals	771,353
5.	Kenya	Hides and Skins	281,054

Source: COMSTAT

The data available provides valuable insight into the current state of play within the tripartite region. Out of 26 tripartite countries, five (5) levy export taxes, 14 countries do not and data was unavailable for seven (7) countries. The type of products and amount of revenues collected vary from country to country within the region. Namibia imposed taxes on over 200 products in 2012 collecting US $4,544,824 in revenue while Tanzania collected US $21, 810, 2014 from over seven (7) products ranging from nuts to hides and skins. On the other end of the spectrum are countries levying export taxes on few products and reaping minimal revenue collections, which is an indicator that revenues may not be the primary objective of the tax. Kenya which only taxes five (5) products, all of which are variations of hides and skins, collected US $281,054 in 2012 serving as a prime example of a country imposing this tax with the aim of increasing local value addition and development of the infant industry.

It is argued that only countries with substantial market power should tax their exports since countries with a smaller market share cannot have the desired impact on the world prices. The data presented indicates that most countries in the tripartite region are imposing export taxes on a wide range of products in which they do not enjoy worldwide market share. This leads to the conclusion that the tripartite countries are imposing the taxes for a variety of reasons as discussed earlier.

Case Study: Leather Sector in Kenya[10]

An example that aptly illustrates the ability to successfully use export taxes to promote value addition and protect infant industries, is Kenya's leather sector. The Government of Kenya, in response to the leather industry, levied a 20 percent export tax in 2004/5 and then doubled it to 40 percent the following financial year with the singular aim of boosting the leather processing industry. Value addition in the livestock sector had been minimal, and most of Kenya's exports had been in the form of unprocessed, raw hides and skins. The government's strategy to develop the leather industry sprung from its Vision 2030 Programme which promotes industrialisation and value addition in key sectors.

The hide, skins and leather industry is now one of Kenya's main agricultural sub-sectors that can contribute to economic growth through expanding exports of both semi-processed and finished leather goods. The development of the sector involves improving the raw material base (especially the quality of hides and skins), boosting the tanning sub-sector, producing leather goods, and marketing. The key stakeholders in this industry are livestock farmers, slaughterhouse operators, tanneries and leather goods manufacturers. Each of these stakeholders plays a key role at each stage of the production process.

The government's policy to increase export taxes has had several benefits for the Kenyan economy. Firstly, the tax has drastically reduced exports and boosted the processing of raw hides and skins (98 percent of skins produced in the country are now semi processed to wet blue or finished leather compared to 56 percent in 2004, while 96 percent of hides are processed to wet blue).

Secondly there has been a significant increase in earnings, with total earnings from the leather industry, according to government figures having risen from KShs 3.15 billion in 2005 to KShs 4.02 billion in 2008 – a rise of KShs 870 million (€7.8 million). Also notable is that the tanneries are paying around KShs 100 million (€900,000) in tax now, compared to around KShs 10 million (€90,000) before the export tax was doubled, indicating that the export tax has contributed to the widening of the tax base.

Thirdly, there has been a significant boost in employment since tanneries have increased from nine in 2005 to thirteen in 2009 with the anticipating of more opening. It is estimated that 1,000 direct and 9,600 indirect jobs (skilled and technical positions) have been created since the introduction of the export duty.

Currently, Kenya's hides, skins and leather industry contribute around 4 percent agricultural GDP and 1.5 percent of overall GDP. The country has in recent years produced over 2 million hides (mainly cattle, with some camel) and around 4 million skins (goats and sheep). The growth of the leather industry has also led the government to reinvest by committing to build and develop five medium tanneries in rural areas.

10 Case study information extracted from Curtis, M. *Developing the Leather Sector in Kenya Through Export Taxes: The Benefit of Defying the EU.* Traidcraft Exchange, http://www2.weed-online.org/uploads/case_study_leather_sector_in_kenya.pdf

Kenya's success with its export tax on hides and skins proves that these taxes can stimulate value addition, job creation and infant industry growth. Kenya's approach was targeted and the ability to recognise the huge potential of the leather industry was vital in their success.

The Kenya case study on the leather industry serves as a positive example of the impact of an export levy for countries that do not have a large world market share. Economies in the tripartite region, therefore, should focus on the benefits an export tax can have in terms of value addition. Furthermore, the case study highlights the importance of complimentary policies that ensure that the export tax has a maximum impact. Without targeted policies aimed at investment promotion, industrialization, creation of an enabling business environment and increased border control, the export tax may not have the desired impact.

Due to the varying and numerous products being taxed across the tripartite region, it is extremely difficult to identify both the objective of the tax and determine whether those objectives are being met. Member/Partner States would have to share more detailed information on the products being taxed and why, in order to understand the policy direction that countries were aiming for as opposed to assuming policy objectives. In the case of a few countries like Kenya and Tanzania that tax one type of product, it is clearer to understand the policy objectives that each government had when instituting the export tax.

Rules on Export Taxes in the COMESA-EAC-SADC Region

The three RECs, COMESA-EAC-SADC that compromise the tripartite have handled the issue of export taxes in two different ways. The EAC and COMESA instruments are silent on the issue of export taxes thus Member/ Partner States can choose whether or not to impose them. However, the EAC Customs Management Act, 2004 provides for prohibited and restricted goods and it is to this effect that the export of certain goods may be prohibited or restricted under the Act. Currently only two (2) countries within the EAC: Kenya and Tanzania impose export duties on hides and skins.

SADC however took a different approach and opted to address the issue of taxing exports under Article 5 of the SADC Trade Protocol which states:

ARTICLE 5 - ELIMINATION OF EXPORT DUTIES

1. *Member States shall not apply any export duties on goods for export to other Member States.*

2. *This Article shall not prevent any Member State from applying export duties necessary to prevent erosion of any prohibitions or restrictions which apply to exports outside the Community, provided that no less favourable treatment is granted to Member States than to third countries.*

SADC's approach to export taxes can be considered as a middle ground, since Member States are free to impose taxes on products being exported outside of the region although this is qualified by the fact that no less favourable treatment is granted to Member states. The decision to ban export taxes within the region ensures that the FTA operates as liberally as possible since export taxes would distort trade within the region thereby undermining the purpose of an FTA.

Tripartite Member/Partner States have presented various proposals regarding the treatment of export taxes in the tripartite FTA. The proposals on the treatment of export taxes can be summarised as follows: prohibited within the region, permitted within the region and all other destinations, permitted within the region with justification, no new taxes permitted except with certain justifications and lastly the FTA should be silent on the matter entirely.

Mauritius' proposal is the most absolute stating that Member/Partner States shall not apply export duties or charges having equivalent effect on goods for export to the territories of the tripartite state except as provided for in Article XI (general elimination of quantitative restrictions) and Article XX (general exceptions) of the GATT. This proposal is unambiguous in its intention that export taxes should not apply within the tripartite except in those circumstances when a country must use measures that are permitted under the aforementioned GATT articles and although more rigid, it has its merits since it essentially promotes free and fair trade within the region. Furthermore its silence on whether there is a prohibition on non-regional destinations means there is room for interpretation to allow for export taxes when necessary outside the tripartite.

The EAC and Angola propose that Member/Partner States may impose custom duties or taxes on, or in connection with the exportation of goods to all destinations. This proposal fully supports the imposition of export taxes within the region and beyond. This position could be motivated by the positive impact that some EAC states in particular have experienced as a result of imposition of export taxes, the growth of the leather sectors is a case in point. The use of export taxes within the region is the major point of contention; use beyond the tripartite region should ideally remain within the policy space of each Member/Partner State.

The Southern African Customs Union (SACU) proposes that export taxes be permitted though based on established criteria such as: specific revenue need, promotion of value addition and beneficiation, environmental protection, food shortages or in exceptional cases industrial development needs. The listed justifications though seemingly detailed are a list of the legitimate and recognized objectives for imposing an export tax. It can be argued that the SACU proposal lists these justifications as a means of ensuring that Member/Partner States do not abuse the use of export taxes. In the alternative, if a Member/Partner State were intent on abusing the export tax policy, they would establish a reason under the listed justifications though with non-disclosed intentions or objectives. Therefore, under this proposal countries must trust that Member/Partner States will utilise the provision for legitimate purposes.

Seychelles' proposal is similar in content to the SACU proposal and, it states:

> *"No new customs duties or taxes on, or in connection with the exportation of goods shall be introduced, nor shall those already applied be increased,*

in trade between the Tripartite Member/Partner States from the date of entry into force of this Agreement except if otherwise provided for in this Agreement."

The proposal goes ahead to stipulate that under exceptional circumstances, the list of objectives stated in the SACU proposal, Member/Partner States may impose export taxes which shall be applied to goods exported to all destinations. Seychelles' proposal allows for existing export taxes to subsist without change, but without the possibly of increasing the tax rate. The status quo is in essence maintained and trade within the region would be unencumbered except in those exceptional circumstances when a Member/Partner State invokes the exception clause of the provision. This proposed provision can be deemed as a compromise since it caters for Member/Partner States already imposing export taxes while allowing other Member/Partner States to temporarily resort to export taxes if and when the need arises.

The joint final proposal by Zambia, Egypt, Malawi and Zimbabwe presents a divergent position and these countries would rather that Article 10 of the draft TFTA be deleted, so that the TFTA would be silent on the issue of export taxes both within the region and with respect to all other destinations. This option can be interpreted as protecting Member/Partner State's policy space whereby there are no restrictions regarding the use of export taxes.

This approach could be problematic since Member/Partner States are not bound by any rules or guidelines and may impose export duties for national reasons that may conflict with the regional agenda especially when considering the industrialization aspect of the tripartite.

All the proposals made by Member/Partner States serve various interests with some being extremely restrictive. In the instances where provisions have called for justifications to be provided by Member/Partner States, it raises the question of what mechanism would be used to determine whether the justification being invoked is in fact valid. Thereby implementing the justification clauses may be more complex in practice since the burden of proof lies with the Member/Partner State invoking the listed justification. This can be a difficult task since other Member/Partner States may object to the evidence provided that supports the use of export taxes.

The Way Forward: Factors to Consider

As the negotiations on the treatment of export taxes under the TFTA proceed, some of the following considerations could be taken into account to assist countries arrive at a solution:

(i) ***The Industrialization Pillar under the Tripartite***

There is impetus across the African continent to promote commodity based industrialization as a pathway for inclusive and sustainable development. Africa is endowed with vast natural resources which if fully exploited can fuel the industrialization agenda. It should be noted that the tripartite region is committed to working towards industrialization efforts whose success is highly dependent on the exploitation of the region's natural resources. In light of the motives for using export taxes, this would naturally suggest that this prioritisation of a commodity-based industrialisation strategy at the entire continental level should be based on export taxes a core anchor provision.

However, permitting the use of export taxes and its impact within the tripartite region cannot be ignored given the possible consequences in the implementation of the industrialization pillar. Export taxes can be abused and restrict the free movement of natural resources that would be required to supply the proposed industrial development within the region. There is therefore need to ensure that abuse is prevented and addressed, while at the same time not restricting the availability of natural resources to champions that can spur the industrialisation process.

(ii) *WTO Compatibility*

The WTO does not prohibit export taxes, and leaves it to a Member to determine how to deal with the matter. However, some Members have been clear in their opposition to export taxes, and have resorted to bilateral FTAs to address the matter. In addition, new WTO Members have faced pressure to ban export taxes as part of their accession agreements.

(iii) *Acquis in the RECs*

There are several negotiating principles that have guided the tripartite process. Among these, the *acquis* principle is noteworthy since it is of importance in the instance of export taxes. This seeks to establish a single FTA by capitalising and building on the achievements of the existing REC FTAs. The Tripartite FTA should reflect the best practices in the RECs.

(iv) *Practice in Member/ Partner States*

Currently eight (8) Member/Partner States out of 26 impose export taxes with some countries applying them to hundreds of products. The decision on how to handle the issue within the tripartite should consider the Member/Partner States that already apply this policy. Some of these states such as Kenya have boosted their economies through value addition and growth of their industries. Therefore if export taxes were banned in totality or restricted, this would have dire consequences for states actively imposing these taxes. The integration process should seek to build on the progress that Member/Partner States have made thus far in their development as opposed to hindering or restricting development especially in the industrial sector.

Recommendations

The use of export taxes within the tripartite region, although contentious, can be resolved by the compromise and cooperation of Member/Partner States. This paper, having discussed export taxes both within the tripartite region and globally, has shown the divergent views of the validity and role of export taxes within the global trading system with developed countries deeming export taxes as an impediment to free trade therefore actively advocating for the WTO to ban them or at the very least regulate their use. Alternatively, developing and least developing countries consider export taxes as a legitimate trade policy tool that can advance their trade agenda and boost their economies whether the motive for imposition is increasing tax revenues or stimulating value addition and infant industry growth.

The treatment of export taxes under the TFTA should be addressed in a pragmatic manner, taking into consideration the resistance of developing countries towards the ban of export taxes while being mindful of the position of Tripartite Member/Partner States that deem export taxes as a useful policy, as well as the possibility of abuse or restriction of intra-tripartite trade and access to raw materials by industrial development champions.

In order to guide the negotiating process the following is recommended:

1. Member/Partners States be requested to provide information on export taxes and the impact on their respective economies;

2. The TTNF should reach a compromise on the issue of export taxes building upon the proposals that seek a middle ground;

3. If a compromise is not agreed upon, the TFTA should either remain silent on the application of export taxes, and include this matter in the built-in agenda for further consideration after the conclusion of the Tripartite FTA Agreement; and

4. The primary objectives of the Tripartite to boost intra-regional trade and economic development should remain at the forefront when determining the most viable approach to export taxes within the TFTA that will positively impact trade within the region.

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The Case for Customized Trade Remedies in the COMESA-EAC-SADC Tripartite Free Trade Area

By Francis Mangeni

Abstract

This paper argues that trade remedies, by providing a mechanism against import surges and unfair practices, can address the opposition of the private sector to liberalization resulting from free trade areas; and that, taking the capacity constraints of developing countries into account, the remedies should be user-friendly for them to be implemented. This position is supported by the results from a questionnaire administered to government officials in the Eastern and Southern Africa region. The paper additionally argues that WTO rules allow modifications, as may be appropriate, in given free trade areas.

Introduction

Meaning of Trade Remedies

Trade remedies have been variously defined, for instance:

"The term trade remedy measures or, simply trade remedies, generally refers to three types of import restrictions authorized under national and international trade laws: anti-dumping duties, countervailing duties, and safeguards." (Zheng, 2012).

"Trade remedies – or trade defence – are contingent measures enacted to defend local producers in certain circumstances. They take three principal forms: anti-dumping measures, countervailing measures and safeguard measures." (Illy, 2012); and

"The term 'trade remedy laws' refers to three types of national laws that impose import restrictions under specified circumstances. 'Safeguard measures' are temporary trade restrictions, typically tariffs or quotas, which are imposed in response to import surges that injure or threaten 'serious injury' to a competing industry in an importing nation. 'Antidumping duties' are tariffs in addition to ordinary customs duties that are imposed to counteract certain unfair practices by private firms that injure or threaten to cause 'material injury' to a competing industry in an importing nation. 'Countervailing duties' are tariffs in addition to ordinary customs duties that are imposed to counteract certain subsidies bestowed on exporters by their governments, when they cause or threaten to cause material injury to a competing industry." (Sykes, 2005)

Although these are not legal definitions - and leave out lots of details, the possibility of price undertakings for instance as one form the measures can take as well as the detailed conditions and parameters - they can greatly assist to provide a glimpse of the territory. The WTO Agreements contain the comprehensive definitions, as well as the substantive and procedural rules that govern these measures.

Brief History of Trade Remedies

A practical issue that governments usually address in entering trade agreements is the protection of domestic industries against unfair trade practices or significant injury by competition from imported products.

The world's first modern anti-dumping law was enacted by Canada in 1904, against American steel makers, on the following ground as articulated by the then Finance Minister:

"We find today that the high tariff countries have adopted that method of trade which has now come to be known as slaughtering, or perhaps the word more frequently used is dumping; that is to say, that the trust or combine, having obtained command and control of its own market and finding that it will have a surplus of goods, sets out to obtain command of a neighbouring market, and for the purpose of obtaining a neighbouring market will put aside all reasonable considerations with regard to the cost or fair price of the goods; the only principle recognized is that the goods must be sold and the market obtained … . This dumping then, is an evil and we propose to deal with it." (Illy, 2020)

The emotive politics of anti-dumping measures, as well as the interface with anti-competitive practices, has remained with us over the years. Other countries followed suit: New Zealand (1905), Australia (1906), South Africa (1914), the US (1916) and UK (1921). When the General Agreement on Tariffs and Trade (GATT) was provisionally adopted in 1947, its Article VI contained provisions condemning dumping.

Subsidies countervailing measures also have a long history, going back to Adam Smith's insightful discourses in 1776 on state bounties for exports and on mercantilism, and to the 1791 Hamilton Report which explained that unofficial bounties could harm US efforts to build its national industries. The first modern countervailing law was the US Tariff Act of 1897.

Safeguards, on the other hand came later; the first safeguard law being the US Reciprocal Trade Agreements Programme of the Trade Act of 1934. Earlier trade agreements didn't have safeguard clauses, or "safety valves" or "escape clauses" as they came to be known, and were either terminated or breached in times of crisis resulting from import surges. The US-Mexico Reciprocal Trade Agreement of 1942 had a safeguard clause in its modern form. The GATT 1947 provided for the emergency safeguard as it came to be called.

The GATT 1947 has been renegotiated in a number of rounds, and its latest modification or improvement is GATT 1994 now including three detailed agreements on anti-dumping, subsidies countervailing and safeguard measures; as part of the WTO Agreement which entered force on 01 January 1995. Negotiations are again underway, and yet to be completed since 2001, under the Doha Development Agenda, to improve the disciplines on dumping and countervailing measures while taking into account the concerns of developing countries; because the practice over the years has shown that there are various shortcomings to be addressed.

This background indicates that trade remedies have been a practice in international trade agreements and in national laws for a long time now. Starting with national laws and bilateral trade agreements, trade remedies were incorporated into the GATT when it was provisionally concluded in 1947 and maintained as the GATT has grown over the years into the multilateral regime on trade in goods covering a total of 159 countries of the world by March 2013, including 20 of the 26 tripartite Member/Partner States[83]; and that efforts at improvement remain on-going.

Key Issues in Considering Trade Remedies

What then have been the core issues in the discussion on trade remedies? Among others, these have been:

i. What useful purpose do trade remedies serve?

ii. Are trade remedies in their current form as set out in the WTO Agreements appropriate for achieving the intended objectives?

iii. How can abuse of trade remedies best be prevented?

iv. From a reading of the international rules, are trade remedies required, prohibited, or optional in free trade areas?

v. What flexibility exists for trade remedies in FTAs?

vi. How can developing countries improve their capacity to use trade remedies?

The terms of reference for the situation analysis capture these issues, in addition to the specific tasks on the state of play in the Member/Partner States and the RECs, assessment of utilization of trade remedies, a survey of good practices in other FTAs, and prevention of abuse; and recommendations on the way forward.

In addressing these issues, the overarching position taken in this paper is that trade remedies can serve a useful purpose in terms of encouraging countries to agree to ambitious levels of liberalization in Regional Trade Arrangements (RTAs), but every care should be taken to avoid abuse and to limit use to only the deserving cases. This position is backed by the policy and the relevant WTO rules and by the overall flow of scholarship on the matter, as this paper tries show. For the TFTA, if trade remedies are to be included, they should be flexible and simple to use, as indeed the TTNF instructed in the terms of reference establishing the TWG on Trade Remedies and Dispute Settlement. In addition, there should be concerted efforts by governments and partners to build the capacity of stakeholders especially the private sector and civil society including consumer organisations, as well as of all relevant line ministries that work to promote the public interest. Furthermore, to deal with the monopolistic abuses resulting from trade remedies, national and regional competition policy and law should complement market regulation interventions to ensure fair trade and efficient markets that support job and wealth creation especially among small economic operators, and to protect society at large.

The Case For and Against Trade Remedies

Regarding the purpose of trade remedies, opponents argue that trade remedies are protectionist tools that benefit some producers or even monopolists while hurting consumers, importers and manufacturers that need cheap inputs; and on the whole constitute bad economic policy by reducing welfare and maintaining inefficient producers through sheer tariff and quota protectionism. Trade remedies therefore serve no useful purpose and should be eliminated from international trade agreements in order to promote efficiency in resource allocation, to promote competition and functioning markets. Some in this group (Sykes, 2005) argue that the place of anti-dumping and countervailing measures can then be taken up by competition rules to deal with unfair trade practices and by direct challenges under WTO rules on prohibited or actionable subsidies against Member States that subsidize exports.

On the other hand, supporters argue that trade remedies provide governments the confidence to agree to liberalise trade in the knowledge that contingent measures exist to remedy situations which can arise in future where domestic industries would otherwise suffer material or serious injury or threat of it: "contingent protection measures can be seen as strategic tools for governments to reduce the political cost and internal domestic pressure involved in opening domestic markets to international trade." (Denner 2009) Supporters argue that dumping in particular may make good business sense in that sales abroad can still be profitable when sold below the price in the exporting market, without the intention of killing the competition, then raising the prices (predatory dumping); that a response to a government that subsidizes its exports to make them cheap in the importing market should be a "thank you note" to the embassy of the exporting country; and that the escape clause in terms of possible safeguard measures against import surges can only be prudent, because the clause assists to prevent breach or termination of trade agreements which would be the only resort where there is no provision for safeguard measures. Supporters therefore argue that trade remedies are indispensable. (Denner 2009)

There is a middle ground as well, arguing that trade remedies are bad economic policy but should be maintained for reasons of pragmatism or political expediency; political leaders do not have the will or the wherewithal not to have trade remedies in the agreements they conclude – they would lose office if they didn't negotiate for or support the application of trade remedies. This school of thought then focuses on how to make the best of trade remedies through improvements to prevent abuse. (Zheng 2012)

An illustration of recommendations proffered by scholars is the following:

> *"Eventually, WTO Members could instead respond to predatory dumping with competition laws, to illegal subsidies with WTO dispute settlement, and to import surges with safeguards pursuant to a reformed safeguard regime. In the shorter term, WTO provisions do not prevent RTA partners from eliminating trade remedies among themselves."* (Voon 2010)

Some of the scholars provide case studies or examples of reasons for improvement. Gomez, for instance, studied how the importation of stranded wire, rope and cables of iron steel originating from the UK was thwarted by an anti-dumping duty that the International Trade Administration Commission (ITAC) of South Africa investigated and recommended imposition of, although the investigation had shown that only fishing rope was being dumped. The investigation was instigated by SCAW South Africa (Pty), a South African producer of these products and a competitor of the British company (Bridon International Ltd), which was exporting the products to South Africa. When ITAC subsequently recommended the lifting of anti-dumping measures, after a finding that the injury or threat no longer existed, SCAW brought a case in the South African courts to prevent the lifting of the duties. Gomez recommended that South Africa could consider vigorously applying its robust competition laws to such cases. (Gomez, 2010)

The various views notwithstanding, there has been a large number of national investigations to apply trade remedies by WTO members: a total of 4,230 initiations of anti-dumping investigations from 01 January 1995 to 31 December 2012, 302 subsidies countervailing investigations over the same period; and 255 safeguard investigations from 29 March 1995 to 31 March 2013 (WTO, 2012). But not surprisingly, given the controversy, there has been a large number of disputes heard and decided by the WTO appellate body and panels, relating to trade remedies: 98 disputes on subsidies countervailing measures, 96 on anti-dumping measures, and 43 on safeguard measures (WTO, 2012). Many of the trade remedy measures were found inconsistent with the WTO rules.

The history of trade remedies, the use, and the interpretation put to them by the WTO Appellate Body and the panels show that they serve a purpose in multilateral trade liberalization in the context of GATT. The controversy however, as well as the large number of cases at the WTO, show also that trade remedies can be abused and that it is a quite complicated task to apply the rules correctly, more so for Member States with capacity constraints.

The Tripartite Task Force sent out a questionnaire to Member/Partner States seeking responses on a number of issues. A total of nine responses were received from Botswana, Burundi, Comoros, Egypt, Lesotho, Mauritius, Namibia, South Africa and Zimbabwe. The attached table is a compilation of the responses.

On the question of whether the Tripartite FTA should have trade remedies, all the nine Member States responded in the affirmative.

On the question of whether the Tripartite trade remedies should be shorter and simpler, six out of the nine Member/Partner States responded in the affirmative, namely, Burundi, Comoros, Lesotho, Mauritius, Namibia, and Zimbabwe (though Mauritius preferred to say the trade remedies should be simpler and easy to implement). Three Member States responded that they preferred to use the WTO instruments, namely, Botswana, Egypt and South Africa, giving the reason that they needed to respect their WTO obligations.

Member/ Partner States with Trade Remedy Laws and Institutions

Anti-Dumping Laws

According to their notifications to the WTO, the following eight tripartite Member/Partner States have anti-dumping laws: Egypt, Kenya, Malawi, Mauritius, South Africa, Uganda, Zambia and Zimbabwe. The remaining 18 Tripartite Member/Partner States do not have anti-dumping laws in place.

Subsidies Countervailing Laws

Ten tripartite Member/Partner States have made notifications to the WTO under the Subsidies Agreement. Of these, Burundi, Kenya, Mozambique, Namibia and Zimbabwe have notified that they don't have subsidies countervailing laws; Swaziland, Uganda and Zambia that they don't give any subsidies; Mauritius, Namibia and South Africa that they maintain some notifiable subsidies; and Uganda and Zambia that they have laws for taking subsidies countervailing measures.

Safeguard Laws

Only three Member States: that is, Egypt, South Africa and Zambia have laws for taking safeguard measures as notified to the WTO.

Questionnaire on Trade Remedies

A questionnaire was administered to government officials from the countries negotiating the Tripartite FTA. The results are shown in the table attached. On whether the Member/Partner State has the law for taking safeguard, anti-dumping, and subsidies countervailing measures, five Member/Partner States confirmed that they have the law, namely, Botswana, Egypt, Mauritius, South Africa, and Zimbabwe; while Burundi, Comoros, Lesotho and Namibia said they didn't. However, Mauritius said it didn't have a safeguard measures law, and Burundi explained that it can use the EAC trade remedy regulations. Botswana said it has recently enacted a law for taking these measures, in July 2013, but the President is yet to assent to it; the law will enter into force when assented to by the President. Then it will be notified to the WTO.

Trade Remedy Institutions

Only Egypt and South Africa have functioning regulatory and institutional frameworks, that is, investigating authorities. Zimbabwe indicated that it has a dedicated institution for undertaking investigations for trade remedies. Additional information received is that Mauritius has considered using private investigators, such as retired civil servants.

Assessment of the Prevalence of Trade Remedy Laws and Institutions in the Tripartite

It would then seem a fair assessment that trade remedy laws and institutions are scarce in the tripartite region. Noting that the WTO Agreements require the existence of WTO-compliant and notified national laws and institutions as a prerequisite for taking trade remedy measures under those agreements, it can also be a fair assessment that tripartite Member/Partner States on the whole lack the legal and institutional capacity at the moment to invoke and impose trade remedy measures under the WTO Agreements. In this vein, the next section looks at the actual utilization of WTO trade remedy agreements.

It may be noteworthy that Uganda's notification to the WTO, just like the other trade remedy notifications, referred to and notified the COMESA Treaty provisions on trade remedies, being the only country that has done this. But it can be pointed out in passing that subsequently, the Uganda Law Reform Commission has had a draft Bill for a detailed WTO-consistent law and regulations for about ten years, without much success of it being passed by the Parliament. Kenya and Mauritius also continue their efforts to have trade remedy laws; while Zambia and Zimbabwe have what Ousseni Illy termed "partial" trade remedy laws (Illy, 2012, p.42), meaning incomplete. It would appear that parliamentary processes, including lack of prioritization for placement on the agenda in light of other pressing national priorities or due to a backlog or low familiarity with the subject, can also pose challenges to adoption and use of trade remedy laws.

Empirical Facts on Utilisation of WTO Trade Remedy Measures

Between 01 January 1995 and 31 December 2012[84], WTO Members initiated a total of 4,230 anti-dumping investigations. Of this total, South Africa initiated 217 investigations, while Egypt did 71, these being the only two Tripartite Member States that have ever undertaken anti-dumping investigations and notified them to the WTO since the establishment of the WTO in 1995.

Over the same period, WTO Members initiated 302 subsidies countervailing investigations. Again, only South Africa and Egypt participated, with 13 and 4 initiations respectively.

Regarding safeguard measures, of a total of 255 investigations over the period of 1995 to 2013, Egypt initiated nine (9) and South Africa three (3).

These figures show quite clearly that utilization of trade remedy measures by the Tripartite Member/Partner States has been minimal, with only Egypt and South Africa as users; even these two are relatively minimal users compared to the other WTO members. In contrast, the most avid users have been the developed countries and the advanced developing countries. For instance, over the 1995-2012 period India did 677, US 469, Argentina 303, Brazil 279 and Australia 247 anti-dumping investigations. The US carried out 119 safeguard countervailing investigations out of the total of 302. India initiated 69 safeguard investigations out of the total of 255 over the period.

Further, the responses to the questionnaire on trade remedies are also to the effect that, among the nine Member/Partner States that responded, only Egypt and South Africa have invoked the trade remedy measures under their national laws.

The RECs Regimes on Trade Remedies

The COMESA, EAC and SADC have provisions in their respective instruments on anti-dumping, subsidies countervailing and safeguard measures.

Availability of Trade Remedy Provisions – Primary Sources

Regarding the availability of trade remedy provisions and general structure, the primary sources, that is, the REC instruments, show that:

The main treaties or protocols contain provisions on trade remedies in broad terms. These provisions are then supplemented in two ways: either by providing that Member/Partner States can use the relevant applicable WTO Agreements, namely, the Agreement on Anti-dumping, Countervailing, or Safeguard Measures, in the case of SADC; or through setting out detailed substantive and procedural provisions that are WTO-consistent, in regulations in the case of COMESA or in an annex and regulations in the case of the EAC. The COMESA and EAC instruments create dedicated regional sub-committees on trade remedies to oversee the implementation of the provisions; but the instruments do not create regional investigating authorities; and if an example be given of a cooperative investigating authority: under the International Trade Administration Act of South Africa of 2003, the Government established the International Trade Administration Commission (ITAC) also in 2003, in accordance with the requirement under the SACU Treaty of 2002 that Member States should have national laws and institutions on trade remedies; ITAC now serves as the investigating authority for the other SACU Member States, namely: Botswana, Namibia, Lesotho and Swaziland as members of the customs union. SACU investigations are supposed to use detailed WTO-consistent rules (Joubert, 2012).

Regarding the content of the trade remedy provisions of the RECs, it can be noted that the provisions define trade remedies and set out the substantive requirements in the usual standard or conventional terms as in the WTO Agreements, except that Article 61 of the COMESA Treaty provides for a safeguard measure against “serious disturbances occurring in the economy of a Member State following the application of the provisions of this chapter”, rather than “serious injury or threat of serious injury” as the WTO Safeguards Agreement says. However, it should be added that the detailed COMESA Regulations on Trade Remedies faithfully clone the WTO Agreements, which it should not be forgotten have not been used yet in the region especially with respect to anti-dumping and subsidy countervailing measures.

Definitional and Substantive Requirements

A comparison and contrast of the requirements under the WTO trade remedy rules shows that there are substantial similarities across the three WTO Agreements.

The Appellate Body has noted the similarities:

> *"We note that Article 11.3 is textually identical to Article 21.3 of the SCM Agreement, except that, in Article 21.3, the word "countervailing" is used in place of the word "anti-dumping" and the word "subsidization" is used in place of the word "dumping". Given the parallel wording of these two articles, we believe that the explanation, in our Report in US — Carbon Steel, of the nature of the sunset review provision in the SCM Agreement also serves, mutatis mutandis, as an apt description of Article 11.3 of the Anti-Dumping Agreement.[85]"*

The similarities may make a case for having one instrument covering the three remedies, or at least close coordination among the various trade remedies. Considerable similarities exist especially with respect to the procedural requirements for notifications, thorough investigations, and the idea of provisional measures and eventually final measures that are nevertheless subject to possible to judicial review, and have to eventually be terminated since they are by nature temporary measures.

For anti-dumping measures, the main definitional and substantive requirements are as follows:

> *"Dumping occurs when an enterprise sells a product in an importing market at a price below the market value in the market of the country from which the product is exported, with a direct result of causing material injury or threatening material injury to industries producing like or directly competitive products. The market value can be established using, the price when the product is sold in the export market or in a third market, or using the constructed value, that is, constructed from the production cost and reasonable mark-ups. The antidumping measures take the form of duties not higher than the margin of dumping or price undertakings to raise the price in order to remove the dumping;*
>
> *The measures are taken in respect of the particular dumped imported product; and there are detailed requirements on parameters, duration and reviews, among others."*

For subsidies, there are two main approaches. A WTO Member can directly take another to the WTO Dispute Settlement Mechanism to challenge its prohibited or actionable subsidies under the Subsidies Agreement. The second approach is to take subsidies countervailing measures against the subsidized imports if they cause or threaten to cause material injury to a domestic industry producing like or directly competitive products. The countervailing measures, in the form of higher duties or price undertakings, must not be more than necessary to offset the subsidy. There are detailed provisions on parameters, duration and reviews.

For safeguards, there should be an unforeseen surge in imports that causes or threatens to cause serious injury to a domestic industry producing like or directly competitive products. Reports from the WTO Appellate Body and Panels show that it has proved very difficult for safeguard investigations and measures to have complied with the WTO Safeguards Agreement.

One major difference not to be lost sight of is that the injury or threat for taking anti-dumping and subsidies countervailing measures must be "material", while the injury or threat for taking safeguard measures must be "serious". The difference between these two is that "serious" injury is a higher standard than "material" injury.

Other differences include the duration of provisional measures and the final measures, the nature of the remedies (instead of higher duties, safeguards may take the form of quotas), provisions for special and differential treatment for developing countries (a threshold of at least 3 percent of total imports of the product for safeguard measures to be taken by developed countries against a developing country), constructive remedies should be explored for anti-dumping measures against developing countries, and so on. These differences should be borne in mind in producing a consolidated law or agreement on trade remedies, as indeed has been done in the EAC and COMESA consolidated regulations on trade remedies.

Procedural Requirements

The detailed regulations under the COMESA and EAC instruments reproduce the detailed procedural requirements set out in the three WTO Agreements on trade remedies. The SADC Trade Protocol says it doesn't prevent the member states from using the WTO Agreements. The main procedural requirements are notification of the initiation of the investigation, and of the taking of provisional and final measures; but above all the undertaking of a thorough public investigation involving interested parties to establish that the trade remedy measures can be taken – proof of the act of dumping or benefit of a subsidy or a surge in imports; proof of injury or a threat of it (material in the case of dumping and subsidization and serious in the case of safeguards); proof of a causal link; and establishment of the parameters or the extent of the measures to be taken to ensure they do not exceed the margin of dumping or subsidy, or the duties and quotas necessary to prevent serious injury from a surge of imports.

Regarding the form that safeguard measures can take, the Appellate Body has been of the following view:

> *"In our view, the text of Article XIX:1(a) of the GATT 1994, read in its ordinary meaning and in its context, demonstrates that safeguard measures were intended by the drafters of the GATT to be matters out of the ordinary, to be matters of urgency, to be, in short, "emergency actions". And, such "emergency actions" are to be invoked only in situations when, as a result of obligations incurred under the GATT 1994, an importing Member finds itself confronted with developments it had not "foreseen" or "expected" when it incurred that obligation. The remedy that Article XIX(1)(a) allows in this situation is*

temporarily to "suspend the obligation in whole or in part or to withdraw or modify the concession". Thus, Article XIX is clearly an extraordinary remedy.[86]*"*

The overarching preliminary legal and institutional requirement is that the country should have WTO-consistent national laws under which the trade remedies can be invoked and imposed, and institutions to undertake the investigations for and administration of the trade remedies; which should have been notified to the WTO. Except for Egypt and SACU countries, the Tripartite Member/Partner States, for not having both the laws and the investigating authorities, may not qualify to use WTO Agreements on trade remedies on this critical ground.

Special and Differential Treatment

The WTO Agreements provide for some special and differential treatment for developing countries. Safeguard measures should not be taken against imports of a product from a developing country if less than 3 percent of total imports of that product, or unless total imports of the product from developing countries exceed 9 percent of total imports. Constructive remedies should be considered when taking anti-dumping measures against imports from developing countries. Developing countries in addition benefit from longer time frames for the application of trade remedies.

In the tripartite, building on this idea, if there are to be trade remedies, some consideration could be given to having a high threshold below which no such measures should be taken against imports from other Tripartite Member/Partner States.

The Level of and Constraints to Utilisation of REC Regimes on Trade Remedies

No EAC partner state has used the EAC trade remedy provisions; and neither has any SADC member state invoked the SADC trade remedy provisions.

It can be noted that Egypt and South Africa have been the only users of trade remedy measures in the tripartite region, but they have invoked and applied their domestic laws, and not the COMESA, EAC or SADC trade remedy provisions. The national laws have been formulated for consistence with the WTO Agreements as the thrusting motivation, rather than consistence with the REC regimes.

In COMESA, Kenya has used a safeguard measure on sugar imports since 2002, which is due to expire in 2014, but the initiation of the safeguard measure was not under the detailed COMESA Trade Remedy Regulations; rather the measure was initiated under Article 61 of the Treaty which simply provides that a member state may take safeguard measures to last for up to one year after informing the Secretary General and the other Member States, but the measure may be extended by the COMESA Council of Ministers if satisfied that the member state has taken necessary measures to overcome the imbalances for which the measure was taken. The extensions of the Kenya safeguard measure have been on the basis of recommendations from comprehensive reports prepared by the Secretariat confirming adherence to the conditions, which the Secretariat has produced after on-the-spot verifications and interviewing all relevant stakeholders in Kenya and on the basis of the conditions set by the Council.

Kenya invoked Article 61 again for a safeguard on wheat flour in 2002, which ended in 2008. This safeguard, however, allowed for limited imports at zero duty from Egypt and Mauritius.

Zambia and Malawi each unsuccessfully attempted to invoke Article 61 for safeguard measures for wheat flour, because the studies commissioned concluded that there was no justification for taking the safeguard measures.

Mauritius, in November 2001 replaced the existing 0% duty rate on imports of Kapci paints from Egypt with a rate of 40 percent, under a bilateral arrangement between the two member states, instead of invoking Article 61 of the COMESA Treaty, which governs the invocation of safeguard measures. The grounds Mauritius advanced were that there was a surge of imports between 1997 and 2000, and some industry players had made representations against implementation of the 0% duty rate on 1 November 2000 when Mauritius operationalized the COMESA FTA. In a judgment delivered on 31 August 2013 in the case of *Polytol Paints v The Government of Mauritius*, Reference No.1 of 2012, the COMESA Court of Justice ruled that this was not consistent with the COMESA Treaty and ordered a refund of the customs duties paid by the importing company. The Court explained that bilateral trade arrangements between COMESA member states should aim to promote the objectives under the Treaty and not to reverse the progress achieved, inconsistently with the Treaty.

Some Relevant Literature on REC Trade Remedy Regimes

A number of works have undertaken an analysis of the trade remedy provisions of the three RECs. The TMSA training module on trade remedies[87] provides both a comprehensive analysis of the WTO rules and the REC provisions. It is suggested that the following two papers, in addition to the others cited in this paper, are fairly comprehensive on the matter of the REC regimes of trade remedies. Denner (2009) provides an exquisite analysis of the REC provisions in his publication on trade remedies and safeguards in southern and eastern Africa; as well of course as Ousseni Illy (2012) in his publication on the experience, challenges and prospects for trade remedies in Africa.

Some of the key points made in the literature are the following:

i. Except for Egypt and South Africa, tripartite member/ partner states have not really utilized existing WTO or REC trade remedies in pursuing their development goals, and seeking to stave off the de-industrialization that resulted from the extensive trade liberalization especially since the 1980s. As Africa re-industrialises or booms[88], trade remedies against the rest of the world may just become as critical as they now are for the emerging powers (China, India, Brazil, Argentina and South Africa).

ii. The constraints tripartite member/ partner states face in this regard include the following: inexistence of national legal and institutional frameworks, high cost and lack of expertise, local producers' weakness or lack of awareness or poor organization, and fear of repercussions from their donors who might get upset if trade remedies were applied against imports from their countries.[89]

iii. Another possible reason could be that until recently, most countries have enjoyed quite high bound tariff rates, which have provided the possibility of increasing applied rates up to the bound levels as measures to protect domestic industries. However, with the increase in bilateral and pluri-lateral FTAs that Africa's countries are entering with partners, and in light of the waves of multilateral trade liberalization, this room for manoeuvre has been rapidly disappearing.

iv. Ways should be found to address these constraints, including long term capacity building, legal reforms, and establishment of regional committees and possibly investigating authorities, designation of trade or revenue ministries as the competent and investigating authorities, and use of private investigators who may be retired civil servants or other resource persons. In the TFTA, the secretariat could have a function of closely assisting the member/ partner states in dealing with trade remedies.

v. If the tripartite is to have trade remedies, there could be merit in making appropriate modifications in the FTA rules on trade remedies, just as this has been the practice in other FTAs. This point is taken up in the next section on good practices in other FTAs. It is worth recalling again that the existing WTO-consistent REC regimes have hardly been used.

Good Practices in other FTAs

The WTO Committee on Regional Trade Agreements established in 1996 has the mandate to examine regional trade agreements, including FTAs and customs unions that are notified to the WTO, as well as services liberalization agreements. The committee has been active, and has studied trends in the formulation of regional trade agreements. One such trend is how issues of trade remedies are addressed in RTAs.

Modification of WTO Rules on Trade Remedies among RTA Members

Sagara Nozomi back in 2002 already attempted to analyse the work of the committee in this area and the disputes decided by the WTO Appellate Body and Panels, and made the following findings:

RTAs were taking different approaches: some provided for trade remedies in accordance with WTO rules, others eliminated them, while others modified or tightened the disciplines beyond the WTO rules to reduce use and abuse. On the whole, European (EU, EEA, EFTA), American (Canadian and Mercosur though NAFTA provides for trade remedies among the parties), and

Oceania RTAs were making modifications or eliminating trade remedies. These mixed findings were cleaned up in a subsequent study in 2009 by Tania Voon, cited below.

Sagara concluded that provisions in RTAs that eliminated trade remedies were not found inconsistent with WTO rules. However, there were disputes regarding the correct procedures to be followed when a global safeguard measure was applied while excluding imports from members of the RTA. A framework for provisional safeguard measures can sooth the liberalization process on RTAs if import surges are anticipated. Anti-dumping and subsidies countervailing measures can be abolished in RTAs in light of substitutes such as competition policies and also given that GATT Article 24 calls for the elimination of restrictive regulations of commerce among members of a free trade area or customs union.[90]

The Numbers

In his survey of more than 150 RTAs around November 2009, Tania Voon made the following findings:

i. 25 RTAs did not mention the WTO Trade Remedy Agreements or made no significant modifications;

ii. 28 RTAs provided for bilateral safeguards but in accordance with WTO rules;

iii. 66 RTAs made procedural changes to WTO rules and provided additional rules on bilateral safeguard measures; and

iv. 8 RTAs restricted the application of antidumping measures, 4 the application of subsidies countervailing measures, and 30 the application of global safeguard measures of which 4 prohibited both global and bilateral safeguards. (Voon, 2010, p. 37-9)

This analysis would appear to suggest, in terms of preponderance of numbers, that practice is tending towards making modification to WTO rules (66 RTAs) or even restriction of trade remedies (8+4+30); in contrast to those that maintain WTO rules (25) or provide for bilateral safeguards in accordance with WTO rules (28). Before moving on to the WTO law on these different approaches, the next section deals with the drafting techniques carrying those approaches.

Text for the Different Approaches

RTAs that maintain the WTO trade remedies either remain silent on the matter, or contain a provision to the effect that the RTA does not affect the rights and obligations of the parties under the WTO Agreement, or explicitly require Member States to use WTO Agreements on trade remedies, or reproduce the WTO provisions.

RTAs that modify the WTO Agreements on trade remedies can contain explicit provisions that omit some of the requirements in the WTO Agreements, for instance, omitting the requirement for "unforeseen circumstances" in the RTA as a pre-condition for taking a safeguard measure (it has been argued that any negotiator of a trade agreement should expect that trade liberalization will result in increased imports and increased trade, and therefore should be deemed to have foreseen import surges, except perhaps the "serious" injury to domestic industries for which there should be a remedy even if the import surges were foreseen)[91]; abridging the time frames; limiting the actual measures to tariffs only and excluding quotas and price undertakings (the idea of the tariff-only approach is to promote transparency and tariffication as a means towards predictability and better planning of production costs, and to reduce rent seeking and political interference); and providing for high thresholds below which the measures should not be taken in order not to reduce trade as a result of generous use of trade remedies. It is absolutely important to highlight that such modifications would only apply among the members of the RTA under that agreement; but not to non-members of the RTA that are WTO Members. Any trade remedy measures against non-members of the RTA that are WTO members would need to be in accordance with the WTO Agreements.

Provisions that tighten the disciplines could additionally take the form of limiting the trade remedies to listed products or limiting the measures to products on which tariff phase outs have not reached zero (that is, during the transition period), requiring consultations before application of the measures, or providing for enhanced notification requirements as additional hoops to clear before the trade remedy can be invoked and applied.

RTAs that restrict the trade remedies may explicitly state that no trade remedy measures may be taken against imports from members of the RTAs, or provide for harmonized and common behind-the-border measures, or provide for free factor movement, or provide that trade remedies may only be taken "when no mutually acceptable alternative course of action has been determined by the Member States"[92], or link the abolition of trade remedies with competition rules: for instance,

> *"A Party shall not apply anti-dumping measures as provided for under the WTO Agreement on Implementation of Article VI of the GATT 1994 in relation to goods of a Party. The Parties recognize that the effective implementation of competition rules may address economic causes leading to dumping.[93]"*

Regarding safeguards, NAFTA for instance provides that:

> *"Any party taking an emergency action under Article XIX or any such agreement shall exclude imports of a good from each other Party from the action unless: imports from a party, considered individually, account for a substantial share of total imports; and imports from a party, considered individually, or in exceptional circumstances imports from parties considered collectively, contribute importantly to the serious injury, or threat thereof, caused by imports.[94]"*

The TFTA negotiations therefore have a range of options; it would of course be best to take the one that makes the most sense and taking the practice in other RTAs into account.

Does GATT Article 24 provide for elimination of trade remedies in RTAs?

This has been a vexed legal question. It has arisen in disputes at the WTO when a country has excluded members of the FTA or customs union it belongs to from the application of a safeguard measure, pleading the FTA or customs union as the defense or excuse; notably the US pleading NAFTA as a free trade area and Argentina pleading Mercosur as a customs union. The question has arisen also in the critical discussion on whether RTAs can eliminate trade remedies among themselves despite the WTO Agreements.

Article 41(1) of the Vienna Convention on the Law of Treaties, which has been used and observed by the WTO Appellate Body and Panels, provides for *inter se* modifications to the WTO Agreements, that is, modifications under an agreement entered by a group of WTO members among themselves and to apply only among themselves; for it says:

"Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

a. The possibility of such a modification is provided for by the treaty; or

b. The modification in question is not prohibited by the treaty and:

i. Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

ii. Does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole."

On the basis of these provisions of the Vienna Convention, Tania Voon, in a definitive paper on the subject, concluded that:

> *"Article XXIV of the GATT 1994 confirms that Members may enter RTAs modifying their WTO obligations, subject to the conditions laid out in that provision and the rest of the WTO agreements. Specifically, Article XXIV(5) states that the "provisions of this Agreement shall not prevent, as between the territories of Members, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area …". (Voon, 2010, p.26)"*

On its part, the WTO Appellate Body has had occasion to address this matter in quite some informative detail that can provide sufficient guidance.

The point of departure is that there must be no intention on the part of the Member/Partner States to raise barriers to trade with third countries, but rather, the whole purpose of the provisions of the TFTA, including the provisions on trade remedies or how they are addressed, should be to facilitate trade among the Member/Partner States within the framework of the TFTA. WTO jurisprudence has been consistent that the purpose of the RTA, the FTA in the case of the tripartite, should be to facilitate trade among the Tripartite Member/Partner States, and the TFTA should do this in a manner that does not raise barriers to trade with third countries not members of the TFTA. The Appellate Body has been consistent on this:

> *"According to paragraph 4 (of GATT Article 24), the purpose of a customs union [read FTA] is "to facilitate trade" between the constituent members and "not to raise barriers to the trade" with third countries. This objective demands that a balance be struck by the constituent members of a customs union. A customs union should facilitate trade within the customs union, but it should not do so in a way that raises barriers to trade with third countries. We note that the Understanding on Article XXIV explicitly reaffirms this purpose of a customs union, and states that in the formation or enlargement of a customs union, the constituent members should "to the greatest possible extent avoid creating adverse effects on the trade of other Members".[95]"*

With this in mind, the TFTA can operate as an exception to the WTO rules on non-discrimination, specifically the WTO MFN rule and any other rule in the GATT 1994. The TFTA can so operate as an exception on the basis of GATT Article 24 (or the Enabling Clause). As the Appellate Body has stated consistently:

> *"… in examining the text of the chapeau to establish its ordinary meaning, we note that the chapeau states that the provisions of the GATT 1994 "shall not prevent" the formation of a customs union. We read this to mean that the provisions of the GATT 1994 shall not make impossible the formation of a customs union (read FTA). Thus, the chapeau makes it clear that Article XXIV may, under certain conditions, justify the adoption of a measure which is inconsistent with certain other GATT provisions, and may be invoked as a possible "defence" to a finding of inconsistency.[96]"*

If one wonders whether this idea of GATT Article 24 operating as an exception applies to the WTO Agreements on trade remedies, the Appellate Body has resolved this issue by explaining that GATT 1994 incorporated the old GATT 1947 and the new Agreements relating to trade in goods, including the WTO Agreements on trade remedies. The exception under GATT Article 24 therefore operates in respect of the entire GATT 1994, including the Agreements on trade remedies:

> *"Thus, the GATT 1994 is not the GATT 1947. It is "legally distinct" from the GATT 1947. The GATT 1994 and the Agreement on Safeguards are both Multilateral Agreements on Trade in Goods contained in Annex 1A of the WTO Agreement, and, as such, are both "integral parts" of the same treaty, the WTO Agreement, that are "binding on all Members". Therefore, the provisions of Article XIX of*

the GATT 1994 and the provisions of the Agreement on Safeguards are all provisions of one treaty, the WTO Agreement. They entered into force as part of that treaty at the same time. They apply equally and are equally binding on all WTO Members. And, as these provisions relate to the same thing, namely the application by Members of safeguard measures, the Panel was correct in saying that "Article XIX of GATT and the Safeguards Agreement must a fortiori be read as representing an inseparable package of rights and disciplines which have to be considered in conjunction."[97]"

Or, again, as the Appellate Body similarly decided regarding the Antidumping Agreement:

"… Article VI of the GATT 1994 and the Anti-Dumping Agreement are part of the same treaty, the WTO Agreement. As its full title indicates, the Anti-Dumping Agreement is an "Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994". Accordingly, Article VI must be read in conjunction with the provisions of the Anti-Dumping Agreement, including Article 9."

It is common ground among scholars that trade remedies are "restrictive regulations of commerce" within the meaning of GATT Article 24. However, there are two strongly opposed legal views on whether or not they should be eliminated in FTAs and customs unions. One view is that they should, because GATT Article 24 requires "duties and other restrictive regulations of commerce" to be eliminated in FTAs and customs unions on substantially all trade among the members of the FTA or the customs union. The other view is they can be maintained. The bone of contention arises from the interpretation of paragraph 8(b) of GATT Article 24, which states that,

"A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories."

Because the excepted provisions in brackets which can be maintained in the FTA, *where necessary*, do not include the GATT Articles on trade remedies, namely, Article VI, XVI and XIX (6, 16 and 19), has been the basis for the argument that these trade remedies should also be eliminated as restrictive regulations of commerce. But the other side has responded that the list of excepted provisions is only illustrative and there was no explicit intention or decision not to mention the provisions on trade remedies. Tania Voon's analysis indicates that this view is factually incorrect, as the drafting history shows that the matter of the list of exceptions was considered and the trade remedy provisions were omitted from the list.[98] This should settle the matter.

However, this position means that trade remedies as restrictive regulations of commerce, are subject to the overall requirement that duties and the restrictive regulations of commerce be eliminated on "substantially all the trade"; raising another troublesome issue. While the Appellate Body has avoided producing an explicitly quantitative position on what constitutes "substantially all trade", it has at least provided the following guidance:

> *"Neither the GATT CONTRACTING PARTIES nor the WTO Members have ever reached an agreement on the interpretation of the term 'substantially' in this provision. It is clear, though, that 'substantially all the trade' is not the same as all the trade, and also that 'substantially all the trade' is something considerably more than merely some of the trade. We note also that the terms of sub-paragraph 8(a)(i) provide that members of a customs union may maintain, where necessary, in their internal trade, certain restrictive regulations of commerce that are otherwise permitted under Articles XI through XV and under Article XX of the GATT 1994. Thus, we agree with the Panel that the terms of sub-paragraph 8(a)(i) offer 'some flexibility' to the constituent members of a customs union when liberalizing their internal trade in accordance with this subparagraph. Yet we caution that the degree of 'flexibility' that sub-paragraph 8(a)(i) allows is limited by the requirement that 'duties and other restrictive regulations of commerce' be 'eliminated with respect to substantially all' internal trade."*[99]

This can be understood to mean that a decision on whether or not to have trade remedies in the FTA or customs union should be based on an evaluation of whether the requirement of eliminating other restrictive regulations of commerce to substantially all the trade will be met. This would mean that the FTA or customs union that allows extensive use of trade remedies would not meet this requirement, while the one which eliminates them or keeps them to a minimum would be more likely to meet the requirement.

As the Appellate Body has said:

> *"With respect to "other regulations of commerce", Article XXIV:5(a) requires that those applied by the constituent members after the formation of the customs union [read FTA] "shall not on the whole be … more restrictive than the general incidence" of the regulations of commerce that were applied by each of the constituent members before the formation of the customs union. Paragraph 2 of the Understanding on Article XXIV explicitly recognizes that the quantification and aggregation of regulations of commerce other than duties may be difficult, and, therefore, states that "for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required". We agree with the Panel that the terms of Article XXIV:5(a), as elaborated and clarified by paragraph 2 of the Understanding on Article XXIV, provide:*

… that the effects of the resulting trade measures and policies of the new regional agreement shall not be more trade restrictive, overall, than were the constituent countries' previous trade policies. … .[100]

Now, to explicitly answer the question of whether the FTA can exempt its members from the application of a global safeguard against other members of the FTA: as regards WTO members that are not in the TFTA, the rules of the WTO Safeguards Agreement must be complied with by Member/Partner States in imposing safeguard measures, that is, including the rule that the safeguard should be global, on a non-discriminatory basis. However, if the investigation explicitly shows that imports from the third countries, excluding imports from tripartite Member/Partner States, satisfy the conditions for applying the safeguard measure and an explicit finding to that effect is made, then the safeguard measure applied by a tripartite Member/Partner State can exclude imports from other tripartite member/ partner states. The Appellate Body has reached this result, while avoiding a direct answer to the issue, by developing the rule now known as "parallelism":

"… we do not prejudge whether Article 2.2 of the Agreement on Safeguards permits a Member to exclude imports originating in member states of a free-trade area from the scope of a safeguard measure. We need not, and so do not, rule on the question whether Article XXIV of the GATT 1994 permits exempting imports originating in a partner of a free-trade area from a measure in departure from Article 2.2 of the Agreement on Safeguards. The question of whether Article XXIV of the GATT 1994 serves as an exception to Article 2.2 of the Agreement on Safeguards becomes relevant in only two possible circumstances. One is when, in the investigation by the competent authorities of a WTO Member, the imports that are exempted from the safeguard measure are not considered in the determination of serious injury. The other is when, in such an investigation, the imports that are exempted from the safeguard measure are considered in the determination of serious injury, and the competent authorities have also established explicitly, through a reasoned and adequate explanation, that imports from sources outside the free-trade area, alone, satisfied the conditions for the application of a safeguard measure, as set out in Article 2.1 and elaborated in Article 4.2. …[101]*"*

In conclusion then, as a legal matter, GATT Article 24 provides the possibility of excluding trade remedies from application among members of the FTA and customs union the TFTA in this case.

Way forward

Throughout the paper, it has been clear that only Egypt and South Africa have trade remedy laws and functioning investigating authorities, and have quite actively used trade remedy measures in the multilateral trade system. The rest of the tripartite Member/Partner States, even those few that have notified the WTO that they have trade remedy laws, have hardly used the measures, and lack functional investigating authorities.

This is a sharp contrast that requires an approach that objectively reflects this reality, taking also into account that Egypt and South Africa might be reluctant to stop using their existing laws and institutions, while the other member/ partner states would stand no realistic chance of using trade remedy laws in accordance with the WTO Agreements as experience since 1995 to date has clearly shown.

To minimize abuse and to limit use to deserving cases, and in light of the requirement to eliminate restrictive regulations of commerce on substantially all trade among members of a free-trade area, there should be overarching provisions on:

a. Maintaining the core definitional requirements under the WTO Agreements, but relaxing the parameters and the procedural requirements in order to prioritise consultations;

b. A requirement for a compulsory public interest test, to ensure that consumers, other importers of inputs and manufacturers, relevant line ministries, community-based organizations and relevant non-state actors can be adequately heard before trade remedy measures are taken;

c. Appropriate thresholds so that the measures are taken in serious cases, and without reducing trade and economic welfare, or constituting higher or more restrictive regulations of commerce;

d. Notifications, with a requirement for allowing the respondent member/ partner state to take reasonable measures to address the matter within a reasonable period of time;

e. A condition of only resorting to the trade remedy track where consultations have failed to result in a mutually agreed solution after a reasonable period of time;

f. Duration and periodicity, to avoid the application of trade remedy measures for overly long periods of time and to prevent repetitive investigations designed to discourage companies from exporting to the country doing the repetitive investigations;

g. An active role for the secretariat throughout the stages of taking a trade remedy measure;

h. Recognizing the possibility of using private investigators;

i. Recognizing the possibility of joint investigating authorities established among groups of TFTA Member/Partner States especially those that are customs unions;

j. Establishment of a TFTA subcommittee on trade remedies as a forum for national competent and investigating authorities, for among other things assisted consultations, information sharing, cooperation among themselves, and technical assistance;

k. A flexibility provision to reflect the asymmetry between the bigger economies and the small ones, in terms of a higher threshold, mandatory consultations and a grace period following the end of consultations to allow the exporters from smaller economies to take corrective measures; and

l. A link to resorting to national and regional competition policy and law so as to minimize abuse and protect the public good, and to assist promote properly regulated and functioning markets.

m. An anti-circumvention provision can be attempted, to prevent importation of inputs for later assembly as a way of dodging the higher duties or restrictions under the trade remedies, but even the WTO found it problematic to have this provision in the GATT and later in the WTO Agreements.

Should there be no consensus on the matter, trade remedy provisions can be left out of the TFTA and a built-in agenda to develop them should be provided for, to be concluded when the TFTA is in force. This will mean, however, that in the interim period, Member/Partner States will be left with more of the current unsatisfactory situation where they are unable to use trade remedies.

The TFTA should have a work programme to address constraints that member/ partner states are facing in trying to utilize trade remedies, covering long term capacity building, legal reforms, establishment of joint investigating authorities, designation of trade or revenue ministries as the competent and investigating authorities, and use of private investigators who may be retired civil servants or other resource persons. In the TFTA, the secretariat could have a function of closely assisting the Member/Partner states in dealing with trade remedies.

Responses to trade remedies questionnaire

Total number of responses received: 9

Member/ Partner States: Botswana, Burundi, Comoros, Egypt, Lesotho, Mauritius, Namibia, South Africa, Zimbabwe

Question	**Yes**	**Member/ Partner States**	**No**	**Member/ Partner States**
Do you have a law on safeguard measures?	4/9	Botswana, Egypt, South Africa, Zimbabwe	5/9	Burundi, Comoros, Lesotho, Mauritius, Namibia,
Do you have a law on anti-dumping measures	5/9	Botswana, Egypt, Mauritius, South Africa, Zimbabwe	4/9	Burundi, Comoros, Lesotho, Namibia,
Do you have a law on subsidies countervailing measures	5/9	Botswana, Egypt, Mauritius, South Africa, Zimbabwe	4/9	Burundi, Comoros, Lesotho, Namibia,
Has the law been notified to the WTO?	3/9	Egypt, South Africa, Zimbabwe	6/9	Botswana, (Burundi), (Comoros), (Lesotho), Mauritius, Namibia,
Has the law been found to be consistent with the WTO Agreements?	4/9	(Botswana), Egypt, South Africa, Zimbabwe	5/9	(Burundi), (Comoros), (Lesotho), (Mauritius), Namibia,
Has the law ever been invoked?	2/9	Egypt, South Africa	7/9	Botswana, (Burundi), (Comoros), (Lesotho), Mauritius, (Namibia), Zimbabwe
Should the Tripartite FTA have safeguard measures?	9/9	Botswana, Burundi, Comoros, Egypt, Lesotho, Mauritius, Namibia, South Africa, Zimbabwe		
Should the Tripartite FTA have anti-dumping measures?	9/9	Botswana, Burundi, Comoros, Egypt, Lesotho, Mauritius, Namibia, South Africa, Zimbabwe		
Should the Tripartite FTA have Subsidies countervailing measures to apply to trade relations among the tripartite countries?	9/9	Botswana, Burundi, Comoros, Egypt, Lesotho, Mauritius, Namibia, South Africa, Zimbabwe		
Should the Tripartite FTA trade remedies system among the tripartite countries be shorter and simple?	6/9	Burundi, Comoros, Lesotho, Mauritius, Namibia, Zimbabwe	3/9	Botswana, Egypt, South Africa,

Compiled by the author

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Typology of Non-Tariff Barriers in the COMESA Region

By Tasara Muzorori

Introduction

When trade liberalisation is threatened, this can lead to adverse effects on the economic development of any region. In order to avoid a situation where trade liberalisation is negated by the imposition of non-tariff barriers, the COMESA Treaty (in Article 49) calls on Member States to eliminate all existing non-tariff barriers and to refrain from imposing new ones.

Within the context of the Tripartite Arrangement among COMESA, EAC and SADC, and to afford pooling of resources and sharing of experiences, an online system of reporting, monitoring and eliminating NTBs was developed. The system provides a systematic way of capturing, storing, monitoring and tracing progress towards elimination of NTBs among the tripartite countries. The COMESA-EAC-SADC Tripartite developed a web-based NTB reporting, monitoring and elimination mechanism whose web address is www.tradebarriers.org. This dynamic online system provides a systematic and transparent process for identification and elimination of barriers to trade in the tripartite region.

The paper provides the categorisation of NTBs and indicates the relative frequency of the occurrence of each of the categories.

Categorisation of NTBs

On the NTBs online system the NTBs that are currently restricting trade in the region have been identified and placed in eight categories as follows:

> ***Government participation in trade and restrictive practices tolerated by governments* – ** these include **e**xport subsidies; government monopoly in export/import; state subsidies, procurement, trading, state ownership; Preference given to domestic bidders/suppliers; requirement for counter trade; domestic assistance programmes for companies; discriminatory or flawed government procurement policies; import bans; determination of eligibility of an exporting country by the importing country; determination of eligibility of an exporting establishment (firm, company) by the importing country; occupational safety and health regulation; multiplicity and controls of foreign exchange market; "buy national" policy; and lack of coordination between government institutions.

Customs and administrative entry procedures – these include non-standardised systems for imports declaration and payment of applicable duty rates; non-acceptance of certificates and trade documentation; incorrect tariff classification; limited and uncoordinated customs working hours; different interpretation of the Rules of Origin and non-acceptance of certificates of origin; application of discriminatory taxes and other charges on imports originating from Member States; pre-shipment inspection and cumbersome procedures for verifying containerised imports.

Technical Barriers to Trade (TBT)

Sanitary and phyto-sanitary (SPS) measures: specific limitations – include: qquantitative restrictions; exchange controls; export taxes; quotas; import licensing requirements; proportion restrictions of foreign to domestic goods (local content requirement); minimum import price limits; embargoes; non-automatic licensing; prohibitions; quantitative safeguard measures; export restraint arrangements; other quantity control measures; and restrictive licenses.

Charges on imports – include: prior import deposits and subsidies; administrative fees; special supplementary duties; import credit discriminations; variable levies; border taxes.

Other procedural problems – include arbitrariness; discrimination; corruption; costly procedures; lengthy procedures; lack of information on procedures (or changes thereof); complex variety of documentation required; consular and immigration issues; and inadequate trade related infrastructure.

Transport, Clearing and Forwarding: government policy and regulations: administrative (border operating hours, delays at border posts, etc.); immigration requirements (visa, travel permit); transport related corruption; Infrastructure (air, port, rail, road, border posts); Vehicle standards; Costly Road user charges /fees; and Issues related to transit

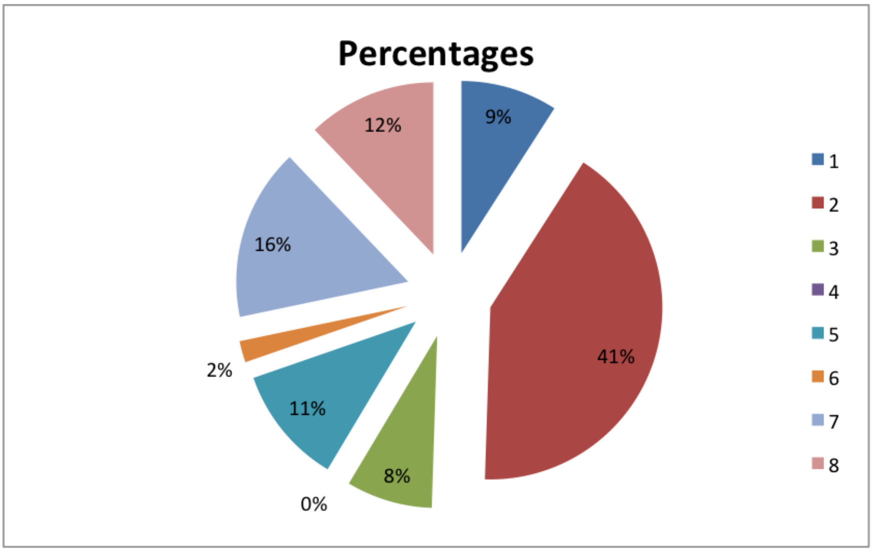
Relative Frequency of Occurrence of Each of the NTB Categories

On the online system there are 476 reported NTBs, of which 385 have been resolved and 84 still pending to be resolved. Seven of the reported NTBs are non-actionable, meaning that there is no action to be taken to resolve the situation within the framework of the NTBs resolution. For instance, a report like there is too much theft at a border or there are no banking facilities at the border. These kinds of reports require other means of resolution. Taking out the seven (7) non-actionable NTBs, leaves a total on 469 reported NTBs, meaning that 81% of reported NTBs have been resolved.

As indicated in the pie chart below, of the 385 resolved NTBs, 41 percent were in category 2 which is **customs and administrative entry procedures.** This category is the most frequently encountered NTB and streamlining issues relating to customs clearance, rules of origin and other customs administrative procedures will go a long way to facilitate the smooth flow of goods in the region. Following distantly in frequently occurring NTBs is category **seven (7):** other procedural problems.

Surprisingly, of the reported NTBs, there is no NTB of category 4 – SPS related, which suggests that Member States apply the SPS measures judiciously. When the SPS measures are applied appropriately, they constitute non-tariff measures, which is different from NTBs in the sense that the former serve justified policy objectives.

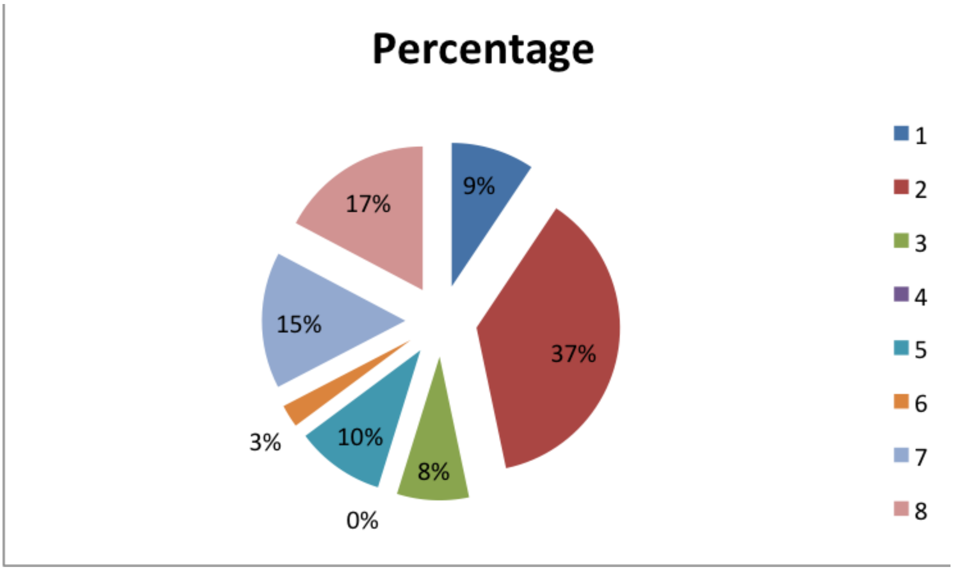
Resolved NTBs by Category



Total Reported NTBs

Of the 469 total reported and actionable NTBs, 175 of them representing 37 percent where of category 2: **ccustoms and administrative entry procedures**. Following distantly behind is category 8: **transport, clearing and forwarding with 81 NTBs representing 17 percent of the total and c**ategory 7: **o**ther procedural problems; with 72 NTBs representing 15 percent of the reported NTBs. These three categories accounted for 69 percent of the reported NTBs. Again there were no SPS related NTBs reported. The share of the categories in the total reported NTBs is shown in chart 2 below with the numbers on the right indicating the categories.

Total Actionable NTBs by Category



Rules of Origin NTBs

Of the total number of 469 NTBs on the online system, 43 are rules of origin related, under the broad category 2. It is difficult to determine those that relate to the 35 percent value addition rule because either there is not enough information reported or it is difficult to infer from the information provided. For instance, in some rules of origin related NTBs the explanation is that the certificate of origin was not accepted. On the basis of this information, one cannot then be in position to know the precise reasons why the certificate of origin was not accepted. It could be that the signature was not authentic or that the authorities doubted that the criterion claimed to have been met was actually met. The criteria could be any of the five COMESA independent criteria of conferring origin. In addition, some of the issues cited as rules of origin related NTBs pertained to delays in issuing the certificates of origin, delays in transmitting the authorised signatories, and of course doubt on the originating status of the goods.

It is noted that some NTBs are recorded as resolved when in fact they have not been resolved. For instance the Madagascar-Mauritius soap issue is recorded as resolved when it is still not resolved.

Only those NTBs that specifically mention that doubts on meeting the 35 percent value addition was the reason for not granting the COMESA tariff preferences are the ones that have been selected for the purpose of getting a sense of how prevalent this criterion is as an NTB.

With regards to the active NTBs on the online system, there are only four which are related to rules of origin. These are:

a. Doubts on meeting the 35 percent value addition for soap from Mauritius by Madagascar

b. Doubts on meeting the 35 percent value addition of pure palm-based oil from Kenya by Zambia;

c. Doubts on meeting the 35 percent value addition on fridges and freezers from Swaziland by Zimbabwe; and

d. Refusal to honour a certificate of origin on laundry soap from Kenya by Sudan.

With regards to the resolved NTBs, only three can be identified as relating to doubts on meeting the 35 percent value addition and these are:

a. Rwanda doubting that the galvanised steel sheets from Kenya meet the 35 percent value addition criteria;

b. Sudan doubting that shaving blades from Egypt meet the 35 percent value addition criteria; and

c. Zambia doubting that trailers and semi-trailers from Malawi meet the value addition criteria.

Of the 39 resolved rules of origin related NTBs, only three (3), representing 7.7 percent, of the rules of origin related NTBs were value addition related.

By comparison, in relation to the total NTBs reported on the online system, rules of origin related NTBs represent 9.2 percent and value addition related NTBs represent 1.3 percent.

It can then be inferred that the 35 percent value addition criterion is not the major source of NTBs. As the 35 percent value addition rule of origin is the most commonly used and familiar for the private sector especially SMEs, this rule has proved useful and should be maintained.

Policy Issues and Conclusion

There has been a policy discussion on whether the threshold of 35 percent is not too high, given that production uses lots of imported inputs. A possible improvement could then be, while keeping the value addition rule, to review the threshold downwards, say to 20 percent. Together with this approach, the rule of origin setting the threshold of not more than 60 percent for non-originating materials could be revised upwards to say 80 percent, in order to allow more use of imported inputs in light of the integrated or globalised production structures.

This brief analysis based on just the numbers of NTBs has shown that the most frequently occurring NTBs are customs and administrative procedures followed by transport, clearing and forwarding; and other administrative procedures. One is tempted to infer that greater effort should be focused on addressing these areas that are a source of the NTBs, especially through trade facilitation interventions.

The good news though is that already, with a success rate of 81 percent, the current online system for notification and monitoring of NTBs is quite useful. However, the sticking NTBs, the remaining 19 percent, still pose a challenge. An analysis, in a separate paper, has shown that trade in these products has dramatically plummeted, causing loss of jobs. It is therefore critical that enforcement mechanisms be put in place, beyond reporting and monitoring, for ensuring a speedy resolution of all NTBs.

(Endnotes)

1 [i]Burundi, Comoros, Congo DR, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe.

2 [ii]Some estimates are that informal cross border trade in the region could amount to 40% of total trade.

3 Article 3 of the COMESA Treaty

4 Article 4

5 Article 164

6 Article 4(4)(a)

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12 The systems consists of an on-line NTB reporting and monitoring system (www.

tradebarriers.org), a standing agenda item where a the Secretariat presents a Report on NTBs in the report to the meetings of the Technical Committee on Trade and Customs for consideration and resolution, provision for the Secretariat to assist through producing technical opinions and facilitating bilateral consultations to resolve NTBs, and national NTB committees and focal points that coordinate the resolution of NTBs.

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23 UNCTAD, World Investment Report 2014; please see also the press release at http://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=189

24 Justin Lin's blog at http://blogs.worldbank.org/developmenttalk/how-to-seize-the-85-million-jobs-bonanza

25 http://africa.chinadaily.com.cn/weekly/2014-02/21/content_17296567.htm; visited on 30 June 2014

26 At the Annual Conference of the African Development Bank in Kigali held on 19-23

May 2014; http://www.afdb.org/en/annual-meetings-2014/

27 Justin Lin, ibid

28 Please see the UN System-Wide Plan of Action on the Second United Nations Decade for the Eradication of Poverty (2008-2017) – Full Employment and Decent Work for All

29 ECA, 2013, p.4

30 Ibid

31 The second of the 7 clusters of the Action Plan for Boosting Intra-Africa Trade is on trade facilitation, covering removal of roadblocks, simplification of procedures and documentation, establishment of one-stop-border-posts, and integrated border management

32 Decision of the Eighteenth Ordinary Session of the African Union Assembly of Heads of State and Government, AU document with reference Assembly/ AU/Dec.394 [XVIII])

33 The Millennium Declaration itself (http://www.un.org/millennium/declaration/ares552e.htm) captures the maturity of humankind achieved so far, in terms a resolute solidarity as one global family, founded on values of "human dignity, equality and equity at the global level"; and peace and wellbeing of everyone in the world. It says for instance:

1. We, heads of State and Government, have gathered at United Nations Headquarters in New York from 6 to 8 September 2000, at the dawn of a new millennium, to reaffirm our faith in the Organization and its Charter as indispensable foundations of a more peaceful, prosperous and just world.

2. We recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to all the world's people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs.

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37 Ibid, Page 11

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52 Ibid, Pages 33-34

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58 www.comesa.int

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60 Articles 45, 46 and 49 of the Treaty Establishing the Common Market for Eastern and Southern Africa

61 COMSTAT, the COMESA statistical data base, available at http://comstat.comesa.int

62 UNCTAD, Economic Development in Africa Report 2013 – Intra-African Trade: Unlocking Private Sector Dynamism, pp. 14-17

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78 The TFA, Articles 1 and 2, for instance, of course read in light of Section II on special and differential treatment

79 Reducing the cost of doing business increases the profitability of business especially MSMEs, creates more jobs through successful and new businesses, and provides much needed incomes for families.

80 On the spot interview with truck drivers and customs authorities at the Chirundu one-stop-border-post

81 At pages 37-41

82 This report was prepared under the World Bank's Trade Facilitation Facility, for COMESA in support of the initiative to produce a regional trade facilitation program.

83 Tripartite Member/ Partner States that are WTO Members are the following: Angola (1996), Botswana (1995), Burundi (1995), Congo DR (1997), Djibouti (1995), Egypt (1995), Kenya (1995), Lesotho (1995), Madagascar (1995), Malawi (1995), Mauritius (1995), Mozambique (1995), Namibia (1995), Rwanda (1996), South Africa (1995), Swaziland (1995), Tanzania (1995), Uganda (1995), Zambia (1995), and Zimbabwe (1995). Observers are Comoros, Ethiopia, Libya, Seychelles and Sudan; while Eritrea is

neither a member nor an observer. South Sudan is yet to join COMESA, EAC or SADC, though it has been recognized at the UN and African Union as a new nation.

84 This section draws on the 2012 Annual Reports of the WTO Committees covering trade remedies, available at www.wto.org

85 US — Corrosion-Resistant Steel Sunset Review, footnote 114 to paragraph 104

86 Korea – Dairy, paragraph 86

87 Freely available at http://trademarksa.org/resources/trade-negotiation-capacity-building ; for comparison or contrast, please see the Asian Development Bank toolkit on trade remedies also freely available at http://www.adb.org/publications/trade-remedies-tool-kit

88 One of the latest interesting articulation of Africa rising, is Charles Robertson's The Fastest Billion, Renaissance Capital, October 2012. As usual, there must be some caution, and a pertinent one is that development for the last 100 years has been technology-led, and so it must in Africa as well, indeed as eloquently explained by Peter Diamandis and Steven Kotler in their Abundance - The Future is Better Than You Think, 2012.

89 Estimates are that some investigating authorities require at least $600,000 per year in recurrent costs and staffing levels of 100.

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91 However, for safeguard measures against WTO members under the WTO Safeguards Agreement, the Appellate Body has insisted that the surge in imports must have been unforeseen:

… we said in Argentina — Footwear (EC) that "the increased quantities of imports should have been 'unforeseen' or 'unexpected' ". In doing so, we were referring to the fact that the increased imports must, under Article XIX:1(a), result from "unforeseen developments" in order to justify the application of a safeguard measure. Because the "increased imports" must be "as a result" of an event that was "unforeseen" or "unexpected", it follows that the increased imports must also be "unforeseen" or "unexpected". Thus, the "extraordinary nature" of the domestic response to increased imports does not depend on the absolute or relative quantities of the product being imported. Rather, it depends on the fact that the increased imports were unforeseen or unexpected. In US – Steel safeguards, paragraph 350.

92 Article 16.1(c) of the Australia-New Zealand Closer Economic Relations Trade Agreement, 1983 as amended.

93 Article 18 of the EFTA-Chile Agreement signed 26 June 2003, entered force 1 December 2004.

94 Article 802.1

95 Turkey – Textiles case, paragraph 57

96 Turkey – Textiles case, paragraph 45

97 Argentina – Footwear (EC), paragraph 81

98 Tania Von (2010), p. 32

99 Turkey – Textiles, paragraph 48

100 Turkey – Textiles, paragraph 53-55

101 US – Line Pipe, paragraph 158

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