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# Towards and EAC, COMESA and SADC Free Trade Area: Issues and Challenges

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# TOWARDS AN EAC, COMESA AND SADC FREE TRADE AREA

## Issues and Challenges

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## ABBREVIATIONS AND ACRONYMS

| | |
|---|---|
| AEC | African Economic Community |
| AU | African Union |
| Bb/d | barrels per day |
| CET | Common External Tariff |
| COMESA | Common Market of Eastern and Southern Africa |
| EAC | East African Community |
| EPA | Economic Partnership Agreement |
| FDI | Foreign Direct Investment |
| FTA | Free Trade Area |
| FTAA | Free Trade Area of the Americas |
| GATT | General Agreement on Trade and Tariffs |
| HS | Harmonised System |
| ICT | Information and communication technology |
| JCA | Joint Competition Authority |
| MOU | Memorandum of Understanding |
| MW | Megawatts |
| NAFTA | North American Free Trade Area |
| REC | Regional Economic Communities |
| ROO | Rules of Origin |
| SACU | Southern African Customs Union |
| SCAD | Single Customs Administrative Document |
| SADC | Southern African Development Community |
| WTO | World Trade Organisation |
| YD | Yamoussoukro Declaration |

# 1. BACKGROUND

The importance of regional economic integration as a means for accelerating and consolidating economic and social development has long been recognized by African decision-makers and leaders including Kwame Nkrumah, Thabo Mbeki, George Patmore, and Muammar Gaddafi, to name a few. Hence the call for integration is well-rooted in African history, though in most instances the initial aim was more to gain greater political influence and voice in the international arena. As the challenges of globalization and interdependence make their impact felt on the countries of the African region, including the possible marginalization of the African continent, the imperative of integration has took centre stage once again.

To this end African countries, under the aegis of the African Union (AU), previously known as the Organisation of African Unit, have agreed to establish a single economic space to be called the African Economic Community (AEC) by 2027. This is contained in the Lagos Plan of Action adopted by the Heads of States of AU countries. The goal of continental integration contained in the Plan was buttressed by the Abuja Treaty which was signed in 1991. Under the auspices of the AU, regional economic communities (RECs), including those in eastern and southern Africa, are considered as building blocks to the AEC.

The proposed Free Trade Area (FTA) between the East African Community (EAC), Common Market of Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC) is a positive inter-regional initiative and therefore the three RECs serve as building blocks to the AEC. As building blocks, they have initiated a process of coordination and harmonisation of integration programmes in the areas of trade, economic and infrastructure development as a first step towards the realisation of continental integration.

The first major milestones to institutionalise this new-found accord was achieved when the three RECs agreed to a Memorandum of Understanding (MOU) that spells out the terms of cooperation and integration in Kampala, Uganda in October 2008. The MOU defines the roadmap for harmonisation of trade and investment regimes, harmonisation of infrastructure programmes and cooperation in the programme for facilitation of free movement of persons. It also sets out a modus operandi of a Tripartite Coordination mechanism which is to be set up.

The paper is intended to elicit discussion on the process of regional integration in Eastern and Southern Africa. It will discuss the stages and status of integration among the three RECs in Eastern and Southern Africa; current trends and developments in cooperation and harmonization of programmes among the RECs; the challenges that the RECs currently encounter and are likely to encounter in seeking to contribute to the realization of a single African REC. The paper also discusses the pertinent issues of other regional trade arrangements (e.g. the Free Trade Area of the Americas) and discerns lessons for the envisaged trilateral FTA. The paper will conclude by providing recommendations on the architecture of the agreement, regional trade policy, monitoring and evaluation plans and consultation mechanisms.

# 2. OVERVIEW OF THE THREE REGIONAL ECONOMIC COMMUNITIES

## 2.1 Membership

The 3 RECs are comprised of 26 member countries. Table 1 show that COMESA has the highest membership, followed by SADC and then the EAC. However, membership of the three RECs overlaps significantly. Only nine of the 26 countries belong to one REC, and the remaining 17 countries belong to 2 of the 3 RECs.

**Table 1: Membership of RECs**

| | COMESA | EAC | SADC |
|---|---|---|---|
| **Angola** | | | X |
| **Botswana** | | | X |
| **Burundi** | X | X | |
| **Comoros** | X | | |
| **Congo DR** | X | | X |
| **Djibouti** | X | | |
| **Egypt** | X | | |
| **Eritrea** | X | | |
| **Ethiopia** | X | | |
| **Kenya** | X | X | |
| **Lesotho** | | | X |
| **Libya** | X | | |
| **Madagascar** | X | | X |
| **Malawi** | X | | X |
| **Mauritius** | X | | X |
| **Mozambique** | X | | X |
| **Namibia** | | | X |
| **Rwanda** | X | X | |
| **Seychelles** | X | | X |
| **South Africa** | | | X |
| **Sudan** | X | | |
| **Swaziland** | X | | X |
| **Uganda** | X | X | |
| **Tanzania** | | X | X |
| **Zambia** | X | | X |
| **Zimbabwe** | X | | X |
| **TOTAL REC MEMBERSHIP** | 19 | 5 | 14 |

Source: REC websites: www.comesa.int; www.eac.int; www.sacu.int; www.sadc.int

Central to the objectives of the proposed arrangement is the need to overcome the challenge of overlapping membership.

## 2.2 Market Size

With a combined population of over 700 million people, the members of the 3 RECs are relatively small economies in terms of GDP, except for South Africa and Egypt, which are respectively first and second largest economies in the whole continent. The combined GDP of the 3 RECs was USD 712 billion in 2007. SA accounted for 40% of the combined GDP of the 3 RECS, while Egypt, accounted for just 17%.

The 3 RECs, being the building blocks for the AEC, account for a significant share of the continental economy, contributing approximately 60% to the total output of the continent.

**Table 2: Size of the COMESA, SADC, and EAC Market, 2007**

| Country | GDP, US$' m | Population, '000 | GDP per capita, US$ | GDP Country Share, % |
|---|---|---|---|---|
| **AU** | **1,065,228** | **917,564** | **1160.93** | |
| **COMESA** | **286,775** | **398,130** | **720.30** | |
| **EAC** | **46,593** | **121,571** | **383.26** | |
| **SADC** | **379,256** | **248,002** | **1,529.25** | |
| South Africa | 277,581 | 47,391 | 5,380.60 | 40.84 |
| Egypt, Arab Rep. | 128,095 | 75,397 | 1,425.57 | 17.21 |
| Angola | 58,547 | 16,391 | 2,686.41 | 7.05 |
| Libya | 58,333 | 5,965 | 8,435.88 | 8.06 |
| Sudan | 47,632 | 37,003 | 1,015.19 | 6.02 |
| Kenya | 29,509 | 35,143 | 602.85 | 3.39 |
| Ethiopia | 19,395 | 72,712 | 183.12 | 2.13 |
| Tanzania | 16,181 | 39,477 | 323.83 | 2.05 |
| Zambia | 11,363 | 11,862 | 919.49 | 1.75 |
| Botswana | 11,781 | 1,758 | 5,874.86 | 1.65 |
| Uganda | 11,214 | 29,874 | 312.04 | 1.49 |
| Congo, Dem. Rep. | 8,955 | 59,338 | 143.97 | 1.37 |
| Mozambique | 7,752 | 20,144 | 377.68 | 1.22 |
| Mauritius | 6,363 | 1,253 | 5,146.05 | 1.03 |
| Namibia | 6,740 | 2,051 | 3,106.78 | 1.02 |
| Madagascar | 7,326 | 19,087 | 288.10 | 0.88 |
| Zimbabwe | 3,418 | 13,086 | 382.85 | 0.80 |
| Swaziland | 2,648 | 1,126 | 2,351.69 | 0.42 |
| Rwanda | 2,494 | 9,244 | 269.80 | 0.40 |
| Malawi | 2,232 | 13,163 | 169.57 | 0.36 |
| Lesotho | 1,476 | 1,789 | 825.04 | 0.24 |
| Eritrea | 1,085 | 4,538 | 239.09 | 0.17 |
| Burundi | 807 | 7,833 | 103.03 | 0.12 |
| Djibouti | 757 | 806 | 939.21 | 0.12 |
| Seychelles | 750 | 86 | 8,720.93 | 0.12 |
| Comoros | 403 | 614 | 656.35 | 0.06 |
| **Totals** | 624,368 | 527,131 | 50,879.98 | **100** |

Source: World Bank, 2006 data

## 2.3 Approaches to Regional Integration

The 3 RECs have all launched FTAs and progress towards establishing customs unions has been attained (albeit at different paces for both the EAC and COMESA). Furthermore the 3 RECs have trade facilitation and trade policy measures to streamline trade and ensure fair trade practices. The following sections provide a brief approach to regional integration of each REC.

### 2.3.1 Common Market of Eastern and Southern Africa

COMESA started as a preferential trade area in 1982, formed a FTA in October 2000 and launched a customs union in June 2009. Of the 19 member countries only 14 are participating in the FTA with the remaining five (DRC, Eritrea, Ethiopia, Swaziland and Uganda) working towards becoming members of the FTA.

COMESA's trade integration foresees the transformation of the region into a common market in 2014 and an economic union in 2025.

The key elements of the REC's customs include, inter alia:

- Common external tariff (CET) bands of:
    - 0% duty rates for capital goods;
    - 0% duty rates for raw materials;
    - 10% duty rates for intermediate goods (e.g. wheat, maize, rice, etc.); and
    - 25% for finished products (e.g. cane sugar).
- Allowing member states a period of three years to align their national tariffs with CET – provided that after 18 months from the date of the launch, the period of three years may be reviewed for a period not exceeding five years from the date of the launch.
- Allowing member states with the 5% tariff band to continue to apply it after the launch of customs union during the transitional period.
- Establishment of national task teams to steer national and regional process leading to the finalization of sensitive products lists and tariff alignment schedules.
- Establishment of a standing Committee on regional trade policy – tasked with the establishment and operation of the customs union.

To ensure that the customs union operates smoothly, the REC has rules and regulations to support trade and investment promotion in the customs union. The rules and regulations include: competition law and policy, harmonization of national product standards and adoption of regional standards, regional safeguards and trade remedies and development support measures for the customs union (including infrastructure development, payment systems and sectoral development programmes).

### 2.3.2 East African Community

The EAC is a customs union and constitute Burundi, Kenya, Rwanda, Uganda and Tanzania as its members. The region is gradually reducing its internal tariffs and this exercise will be over in 2010. Trade among EAC member countries is conducted on a FTA basis for approximately 99% of the tariff lines. The grouping aims to establish a common market and is also scheduled to establish a monetary union in 2012.

The main elements of the EAC development strategy are removal of internal tariffs and non-tariff barriers on intra-EAC trade, introduction of a CET, and an agreement on a list of sensitive products.

The structure of the EAC and COMESA customs unions are similar in that the EAC has adopted a CET with a three band structured as follows: 0% for raw materials and capital goods; 10% for intermediate goods; and 25% on finished goods. Furthermore, the COMESA and EAC rules of origin are identical and so are documentation and customs procedures related to intra-regional trade. This might make the two regions effectively one customs union and hence there might be no need for member states to choose between the two RECs.

2.3.3 Southern African Development Community

SADC launched its FTA in August 2008 and only 12 countries are participating in the FTA. The FTA was envisaged by the SADC protocol on trade and it aims to liberalise intra-regional trade in goods and services. Specific strategies to achieve this objective include: elimination of tariffs; adoption of common rules of origin; harmonization of customs rules and procedures; attainment of internationally acceptable standards, quality, accreditation and metrology; harmonization of sanitary and phytosanitary measure; and liberalisation of trade in services

SADC member states began implementing the trade protocol in 2001 with the aim of gradually liberalizing 85% of intra regional trade on goods by 2008. The remaining 15% (which constitute sensitive products) of intra-trade will be gradually reduced to zero in 2012.

However, the FTA arrangement so far does not include services liberalization. Considering that services contribute to SADC GDP in the range of 35 percent to 70 percent, it becomes clear what was left out of the FTA is quite significant. Other challenges to the full implementation of the FTA include:

- Individual countries introducing non-tariff barriers such as:
  - levies for environmental conservation;
  - new duties on a variety of goods;
  - regional transporters facing a proliferation of taxes levied on trucks; and
  - private standards on food safety and quality.
- Lack of progress on tariff harmonization with some countries reporting data at new Harmonised System (HS) versions while others still using older and nearly outdated HS versions

SADC aims to launch a customs union by 2010, but the grouping does not have a customs union road map as yet. However, customs rules and procedures in the region have been getting attention. Some actions in the pipeline to fast track customs procedures include regulations on SADC rules of origin, SADC transit regulations, SADC Customs Act, SADC transit customs bond guarantee scheme, the Single Customs Administrative Document (SADC-SCAD), the SADC Certificate of Origin, transit documentation and the Voucher of Correction of SADC-SCAD).

Beyond the FTA and customs union, SADC's overall regional integration road map also includes: common market by 2015; monetary union by 2016 and a regional central bank and common currency by 2018. At the time of present research it was reported that SADC has abandoned the objective of achieving a customs union by 2010.

# 3. THE PROPOSED TRILATERAL FTA – AREAS OF HARMONISATION

The RECs have identified infrastructure development and trade arrangements as starting points and priority areas for harmonization. Harmonization is premised on the understanding that all the RECs have launched their FTAs and are implementing similar customs and infrastructure programmes.

## 3.1 Trade and Customs

Specific areas of harmonization in trade and customs among the 3 RECs include, inter alia:

Trade facilitation
Rules of origin
Customs laws
Common tariff nomenclatures
Customs documentation
Safeguards and trade remedies
Elimination of non-tariff barriers
Customs valuation
Trade capacity building

The effect of customs measures on easing trade can be remarkable, as some examples in the sub-Saharan African regions have shown. In Ghana, the introduction of new technology, coupled with simple administrative procedures at the airport has reduced clearing time from three days to four hours on average. Furthermore, income from airport traffic has also increased by 30%. Similar reforms in Mozambique resulted in a 58% increase in customs revenue.

At the time of the present research, the 3 groupings did not develop architecture for the envisaged trilateral FTA.

## 3.2 Services and infrastructure development

Regional trade liberalisation initiatives outlined above, on their own, cannot have the desired effects in terms of promoting economic growth and poverty reduction. Inadequate investment in infrastructure, services and utilities, coupled with skills deficiency and inappropriate reforms of the regulatory regimes among others, have led to depressed socio-economic development. Enhancing physical interconnectivity, therefore, is an important factor in speeding up development and facilitating inter-regional trade. Moreover, providing adequate infrastructure that can be accessed by the poor is certainly a critical component of an overall poverty reduction strategy.

With rapid globalization and the integration of regional markets, roads, aviation and railway networks can no longer be limited within national boundaries if they are to spur inter-regional trade and development. This is particularly important in the three RECs, where many countries are geographically contiguous and landlocked. Adequate road and railways infrastructure, for instance, is critically important for countries in the three RECs, to strengthen economic links among themselves and with other countries in Africa.

The critical shortage of power remains another major constraint to economic development. To this end, additional power generation capacity and inter-connected transmission infrastructure are needed to meet the growing power needs of the region and to facilitate power trade between countries and cross-border investments.

The development of telecommunications infrastructure and services, in this digital era, where countries face the challenge of survival amidst rapidly changing technologies as well as the opportunity of jumpstarting development by pursuing knowledge and information and communication technology (ICT)-based activities, is vital. The last decade has shown the critical importance of the telecommunications sector, not only as a growth industry itself, but also as an enabler for other economic activities, boosting trade and enhancing the remote communities' access to information, thereby empowering them to participate more closely in the development process.

Another set of challenges pertains to the need to ensure that infrastructure development does not impinge on environmental sustainability. Great care must be taken to prioritize programmed infrastructure projects in such a way that damage to the environment is minimized and mitigated, that the infrastructure to be built does not lead to social and health problems, and that the benefits are equitably shared among the population.

Estimates on annual investment level currently required by the region to construct and improve physical infrastructure are in the order of US$40 billion (covering various priority projects and programmes in roads, railways, maritime transport, civil aviation, ICT and energy) which have been identified for funding in order to enhance regional infrastructure networks. The three RECs, therefore, faces a formidable challenge of financing the development of the infrastructure crucial to promoting growth and reducing poverty. This calls for urgent and diversified joint mobilisation of financial and technical resources.

The specific services and infrastructure development programmes the 3 RECs are cooperating on include:

### 3.2.1 Transport, communications and energy services

In the recent past COMESA, EAC and SADC have put emphasis on co-coordinating, promoting, development and implementation of joint regional infrastructure in transport, communications and energy. More achievements have been realised in the area of policy and regulatory harmonisation and trade and transport facilitation instruments than in the physical infrastructure development. These are discussed below.

#### *3.2.1.1 Surface Transport*

The Eastern and Southern African regions have adopted development of corridors as a strategy for facilitating trade in the sub-regions as well as the movement of people. The three sub-regions are working towards developing and implementing a joint and robust programme of corridor infrastructure development encompassing road, rail and ports infrastructure as well as trade and transit transport facilitation. This initiative requires a collective approach, given the regional and multinational nature of corridors, which include among others, the following:

Djibouti Corridor;

Northern Corridor (Transit Transport Coordination Authority);
Central Development Corridor (Dar es Salaam – Kigoma – Burundi, Rwanda, DRC and Uganda);
Dar es Salaam Corridor (Dar es Salaam – Kapiri Mposhi- Lubumbashi);
North-South Corridor (Durban-Lubumbashi);
Tunduma – Namanga – Moyale Corridor
Mtwara Development Corridor;
Nacala Development Corridor;
Beira Corridor;
Limpopo Development Corridor;
Maputo Development Corridor;
Lebombo Development Corridor;
Trans Kalahari Corridor;
Trans Kunene Corridor
Trans Caprivi Corridor;
Namibe Corridor
Lobito Corridor; and
Malanje Development Corridor.

*3.2.1.2 Road Transport*

The regional road transport sector is characterised by deregulated road transport services competing with relatively more inefficient rail services which has led to a shift in general freight volumes from rail to road. The permissible gross vehicle mass of 56 tonnes is one of the highest in the world (with only Australia having a higher allowable Gross Vehicle Mass) and has the effect of increasing the competitiveness of road against rail, and also of significantly increasing the cost of road maintenance, which is not fully compensated for in the setting of road user charges and toll fees. There is also a degree of cross subsidisation of road freight from passenger vehicles and directly from government.

In terms of volumes, regional trade is characterised by exports of mining and agricultural products and imports of manufactured goods. The main operating feature of the regional road transport routes, which affects transport efficiency, costs and tariffs, is the imbalance of freight flows, leading to empty return hauls, or waiting for return hauls. This imbalance can be seasonal and can also vary month by month. An empty return haul by road effectively means that transport costs almost double.

The road network is generally in good condition although there are sections of road that are in urgent need of rehabilitation and upgrading. There are also sections that are common to more than one transport corridor and are more heavily used and if there is a blockage in these sections the whole corridor network may be closed. It is also the case, that recent increases in mining activities have led to much heavier use of the road network in particular and there are now sections of the regional road network that are being used above their design capacity.

In this sub-sector another challenge is overloading of vehicles by the transport operators which is causing premature damage to the road infrastructure. The region has developed a harmonised axle load control system for implementation across the entire region.

#### *3.2.1.3 Rail Transport*

With the exception of the South African dedicated bulk lines, the regional rail freight transport sector is characterised by long hauls, relatively low volumes and relatively high railway tariffs. It is also generally characterised by inflexibility, unreliability, and inefficiency (in relation to schedules and poor inter-modality), resulting in delays and increased transport costs.

The regional railways are mostly built to the 'Cape gauge' of 1,067 mm (3'6") between the rails, with the exception of the Tanzania Railways Corporation system, the Kenyan-Ugandan and the Ethiopia-Djibouti systems which have a 1,000 mm gauge. Thus there is almost no railway interconnectivity between Eastern and Southern Africa which if addressed is one way of making the rail more effective. Axle loads are generally 15 tonnes to 18 tonnes in the region and up to 26 tonnes in South Africa. To make rail more competitive with road, axle weights should not be less than 20 tonnes. This would allow a railway wagon to carry almost twice as much as a large combination road rig. Braking systems are gradually being upgraded to air to allow trains longer than 40 wagons.

The shift in traffic from rail to road is partly due to relatively high rail tariffs and unreliable service, both attributed to poor management, inadequate use of assets and poor costing practices. Almost all the regional railway systems, including in Zimbabwe, Zambia, Malawi, Mozambique, Tanzania and Kenya Uganda railway services have been privatised through concession agreements that focus on improving management rather than infrastructure and have been criticised as replacing an inefficient public sector monopoly with an inefficient private sector monopoly.

Balanced freight flows are less critical for rail than they are for road, because of the inflexibility of the system, the cost and time of repositioning wagons and the breaking up of unit trains. It is often more efficient to return wagons as quickly as possible to pick up the next load on a fixed schedule basis to achieve optimum equipment utilisation as it is to wait for a return load.

#### *3.2.1.4 Ports and Harbours*

The region has a number of natural harbours with good access from the sea. However, the most important operational feature of the regional ports, besides road and rail access and the efficiency of the terminal handling equipment, is the depth of the port and quays. Increasing volumes of international trade requires the use of larger vessels and most regional ports do not have sufficient depth (at least 13m) and capacity to handle these larger (Capesize and Panamax) vessels. There is, therefore, need for expansion and modernization of the regional ports to improve the capacity and operational efficiency.

#### *3.2.1.5 Improved Trade and Transit Transport Facilitation Measures along Corridors*

Trade facilitation is recognised as an effective way of reducing the cost of doing business and generally lowering transaction costs in international trade along key transit corridors. The implementation of harmonised trade facilitation instruments ensures smooth and seamless flow of transit traffic within the intra-regional framework. All three RECs are jointly developing and implementing trade facilitation programmes. The Tripartite Framework of implementation of these programmes ensures that the facilitation programmes being developed and rolled out by COMESA, EAC and SADC neither duplicate nor contradict each other.

The trade facilitation instruments which are in place and are at different stages of development and implementation include the following:

One Stop Border Posts
One Stop Border Post is a border post shared by border officers from two adjacent countries to conduct jointly cross-border and security clearance procedures. It is seen as a practical way to reduce duplication of controls and involves setting up a common border post for two countries in a single physical location. A One Stop Border Post should reduce costs for both the countries concerned, and reduce border dwell times by up to 40 – 50%.

Simplification and harmonisation of customs procedures and legislation
Significant progress has been made in the harmonization of customs procedures and legislation. In order to make processing of documentation quicker it is necessary to harmonise customs procedures and legislation, such as bringing countries onto the General Agreement on Trade and Tariffs (GATT) valuation system; ensuring countries are on the same version of the HS of Customs Classification, simplify and harmonise temporary admission, re-exportation and transit procedures, harmonise exemption and other duty relief measures, dispense with all pre-shipment inspections, adopt regional antidumping and countervailing duty regulations, etc.

Single Administrative Document for customs
The 3 groupings have all agreed that one document common to all should be used to clear customs in the region but this Single Administrative Document is yet to be agreed on by all countries and utilised.

Harmonisation of ITC systems and electronic customs management systems:
COMESA, EAC and SADC have agreed to implement electronic customs management information systems and to develop ICT network for information exchange and transmission.

Harmonised axle loading:
In order to preserve the road infrastructure and ensure reasonable usable life times, countries in the COMESA, EAC and SADC have agreed the following axle load limits for freight vehicles:

| | |
|---|---|
| o single steering axle (two tyres) | 8 tonnes |
| o single axle (dual tyres) | 10 tonnes |
| o tandem axle (four tyres) | 16 tonnes |
| o tandem axle (dual tyres) | 18 tonnes |
| o triple axle (six tyres) | 24 tonnes |
| o triple axle (twelve tyres) | 24 tonnes |
| o combination rig (gross vehicle mass) | 56 tonnes |

However, not all countries apply these axle loading limits so the load weight on a freight vehicle will be limited to the load which is in compliance with the lowest axle load limit along the entire route

Maximum vehicle dimensions
The 3 RECs have agreed on maximum vehicle dimensions, in terms of height, width and length of vehicles. Member states have agreed to these maximum vehicle dimensions at the regional

level, few countries have passed national legislation to enforce this instrument and even fewer countries actually implement this instrument.

Harmonised road transit charges
In practice road charges vary by country. The RECs have introduced systems of harmonised road transit charges whereby most countries apply a road transit charge of US$10 per 100km.

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

Regional third-party vehicle insurance
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. This saves time and money in taking out insurance each time a border is crossed. In South Africa and Botswana (along the North-South Corridor) a third-party vehicle insurance levy is included in the price of fuel.

Regional customs bond guarantee schemes:
The RECs have developed and are in the process of operationalising a harmonised regional customs bond guarantee scheme. The regional bond is intended to eliminate the avoidable administrative and financial costs that are associated with the current practice of nationally executed customs bond guarantees for transit traffic.

*3.2.1.6 Air Transport*

Air transport in the region has improved considerably with the implementation of liberalised air transport policies within the framework of the Yamoussoukro Declaration (YD) and improved competition regulations. In 2005 the growth in Africa's air traffic, at 11%, was the highest in the world. There are now many more daily flights between city pairs than there were five years ago and the air transport fares and cargo rates have declined in real terms. Although a number of national carriers have collapsed, capacity has increased owing to the privatisation of some national air carriers and new private sector entrants into the market.

COMESA, EAC and SADC are jointly implementing the YD. In this regard, the regions have adopted common Air Transport Services Liberalisation Regulations; Guidelines, Provisions and Procedures for the implementation of the common regulations and established a Joint Competition Authority to oversee the air transport liberalisation process. The regions have completed the legal and institutional framework that is required for the commencement of the full implementation of YD by 1st January 2009. The following milestones have been achieved:

The Joint Meeting of COMESA, EAC and SADC Ministers responsible for air transport approved the establishment of the Joint Competition Authority (JCA)

Each of the three RECs, have nominated two of their Member States to the JCA as follows;

- o COMESA -
- o EAC –
- o SADC – South Africa and Zimbabwe

SADC has put in place the administrative structure for the JCA Secretariat.

Partner states are also engaged in various airport projects to support the expanded operations. Further, the regions are cooperating in the development and implementation of a regional air transport programmes covering:

Upper Airspace Control Centre project for communications, navigation and surveillance/air traffic management systems; EAC and SADC have completed studies for the creation of upper air spaces and COMESA is conducting a study to include non EAC and non SADC member states in order to harmonise the air space.

Air Transport Safety;

Aviation Security; and

Aviation Search and Rescue.

*3.2.1.6 Information and Communications Technology*

Remarkable technological and market developments over the past two decades have resulted in significant change in the assumptions and practices that previously influenced policy debates and the roll out of services in our region in line with global trends. The reform of the sector which has resulted in changes in legislative and regulatory frameworks has been experienced by most if not all of the member states which have seen the liberalisation of the sector and the introduction of competition leading to more private sector entities becoming players in our market segments. This development and the accompanying growth in mobile subscribers has resulted in a shift from the traditional focus on fixed line incumbents for service delivery to mobile and wireless services and has had significant implications on the design and delivery of universal Service goals and policies.

As regards access to services the region continues to be lacking in investment and continues to face huge developmental challenges including that of bridging the digital divide, thus leaving the region with a great potential to improve telecommunications usage and infrastructure deployment. The region recognises the widening digital divide as a special problem that requires timely and concerted regional efforts. Today, for example more than 75% of the world's internet users live in the developed world that accounts for less than 15% of the world's population.

The gap between Africa and the industrialized world in terms of access to and the use of ICTs for development is widening and the situation below illustrates the point:

Internet penetration in Africa as at December 2007 according to Internet World Statistics is about 4.7% compared with 43.4% in Europe, 71.1% in North America, 57.1% in Oceania/Australia, 22.2% in Latin America/Caribbean, 17.4% in the Middle East and 13.7% in Asia;

In terms of % of world usage of the internet Africa is 3.4%, Asia 38.7%, Europe 26.4%, Middle East 2.5%, North America 18%, Latin America/Caribbean 9.6% and Oceanic/Australia 1.5%. The situation in Africa is very serious taking into account that about 14.2 % of the world population are from the continent and a very high number of the internet users in Africa are nationals of other parts of the world residing in Africa; and

According to the 2006 Report of the International Telecommunication Union, countries in the COMESA-EAC-SADC region did not meet the 2005 tele-density targets of 4% for fixed telephony and 7% for the mobile telephony.

Most of the traffic originating and terminating in the region is currently routed via Europe and US thereby making the call charges more expensive and also resulting in a foreign exchange drain from the sub-region. It is estimated that the region spends more than USD 150 million per annum on transit charges paid for in hard currencies. Therefore, one of the region's major challenges should be to minimise such foreign exchange outflows.

As part of the regional effort COMESA-EAC-SADC have been cooperating in the development and implementation of programmes in the areas of:

ICT policy, legislative and regulatory framework harmonisation;

ICT broad band infrastructure development;

Harmonisation of ICT infrastructure master plans;

Joint programme implementation and resource mobilisation;

COMESA-EAC-SADC has already in place effective legal and regulatory frameworks that can create an environment that supports public confidence and environment that ensures stability, transparency, competition, investment, innovation and growth in the ICT sector;

The region is currently engaged in creating regulatory incentives for rolling out ICT broadband infrastructure through private, public sector initiatives; and

The region is currently looking at ways in which it can undertake joint and common programmes through a harmonised infrastructure master plan. There is a need for the three RECs to create improved awareness of policy makers on resource mobilization and investment options (e.g. public-private partnerships, generation of local resources, stimulating private investment or new sources through policy incentives, soft loans, etc.), on priorities (national and regional backhaul or distribution networks) and other related policy issues.

*3.2.1.7 Energy*

The three RECs are endowed with huge energy potential but most of it is not exploited. Of great significance is the 100,000 mega watts (MW) hydro power potential of the Democratic Republic of Congo, which is the highest in the region, most of which is concentrated on the Inga river. The total installed power capacity of the three sub-regions is around 79 300 MW, which is 74% of Africa's installed capacity. Almost 79% of the installed capacity is thermal, whereas 18% of it is hydro based. The electricity supply – demand balance situation in all the three sub-regions continues to be unstable and is adversely affecting regional trade, provision of social services and regional integration. The power supply deficit is expected to worsen in the forthcoming years due to increased demand as a result of sustained economic growth in most countries in the three regions.

In terms of other energy sources, the proven crude oil reserves for the three regions are in excess of 32 394 billion barrels. Regional current production of oil is approximately 4.2 million barrels per day (bb/d) whereas total consumption is slightly above 1.8 million bb/d. Gas reserves of the three sub-regions are about 131 trillion cubic feet, whereas, the production is about 2.308 trillion cubic feet and the consumption is about 1.414 trillion cubic feet per annum, respectively. The recoverable coal reserves in three sub-regions are 55 151 million short tones. Total coal production and consumption are 276 and 202 million short tonnes per annum, respectively. There is also considerable potential for renewable energy resources such as nuclear, biomass (in terms of fuel-wood and charcoal), bio-fuels, solar, wind, geothermal, small hydropower, biogas, waste to energy in the three sub-regions.

With all these vast energy resources, the region continues to faces an acute shortage of power and has some of the lowest access rates to modern energy for most of its member states.

As part of the regional effort, the three RECs have been cooperating in the development and implementation of programmes in the areas of:

Energy policy and regulatory harmonisation;
Development of Power Pools;
Inter-regional power trading arrangements;
Development of master plans;
Generation and transmission infrastructure development; and
Mobilisation of financial resources.

COMESA, EAC and SADC have adopted an integrated approach to generation and transmission expansion for their respective power pools with a view to take advantage of the economies of scale that can be derived for the synergy of their individual expansion plans. East African Power Pool is in the process of developing an electrical power master plan while Southern Africa Power Pool is reviewing its Power Expansion Plan, which was expected to be completed by the end of 2008. Taking cognisance of scarcity of financial resources for the development of power sector and in order to further take advantage of the collective benefits of discounted costs savings it is important that the three RECs further integrate their power investment plans for harmonised resources mobilization in order to accelerate attainment of the most needed additional power generation capacity and inter-connected transmission infrastructure.

### 3.2.2 Mode 4 services

The three RECs have developed programmes to ease movement of people in their respective RECs. This is premised on the understanding that it will facilitate cross-border trade through movement of goods and services and promote cross-border investment. The first move towards mode 4 services liberalization involves relaxing visa requirements for business people and other professionals and gradually extended to the rest of the citizens. It is envisaged that regional passports by citizens will be recognized and those RECs without regional passports will be established and extended to their citizens. This will be attained through a binding agreement or protocol where the member states undertake to relax visas on a progressive basis starting with business people and professionals and then to other citizens.

## 3.3 Competition Policy

The three RECs have recognized the significance of competition policy to ensure fair business practices and consumer protection. In this regard, the RECs have adopted competition frameworks at the regional level with aim of developing an inter-REC competition policy including a dispute settlement mechanism, harmonizing competition instruments and undertaking joint capacity building activities.

# 4. CHALLENGES AND OPPORTUNITIES

## 4.1 Challenges

The challenges that have been met by the individual RECs may be magnified in the larger FTA if not dealt with effectively. These relate to possible polarization, forces of external parties' agreements, fiscal challenges, institutional weaknesses and the political and stability.

### 4.1.1 Economic polarisation

Economically, the 26 member countries, potentially offers increased market share and development of new markets for member states. However, the asymmetric product complementarity in the regions means that the more developed economies of Kenya, Egypt and South Africa are in a much better position to market their exports. This also raises a concern over possible polarization as investment may be attracted towards these economies. This has the potential to seriously undermine the proposed integration effort.

### 4.1.2 Negotiations with external parties

The forces of the three blocs' external trading partners pose challenges to the envisaged trilateral FTA. The lack of common policies amongst the RECs will compromise their positions when dealing with external partners.

### 4.1.3 Fiscal challenges

The fact that the majority of countries in the three RECs, with the exception of South Africa and Egypt, are dependent on trade taxes for fiscal revenue will amount to a major obstacle for tariff liberalization. For example, in countries such as Lesotho, Namibia and Swaziland trade taxes account for over 50% of their total fiscal revenue. The proposed trade arrangement may lead to changes in the structure of individual economies that could lead to a contraction of previously import-substituting industries that were important sources of revenue (notwithstanding the fact that most of their imports, on average, come from outside the regions). However, this should not be used as an excuse to delay the implementation of the initiative. Care will have to be taken to broaden the effective tax base and seek alternate sources of revenue and if the revenue sources are limited, better expenditure control should be emphasized.

### 4.1.4 Institutional harmonization

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

However, replacement of the current arrangements by a single one necessarily means SADC, COMESA and EAC have to be wound up. Member states have not yet openly pronounced themselves on this development. Certainly events that have taken place within the existing RECs since the trilateral summit do not suggest even a moratorium on further developments within the existing RECs. In June 2009, the COMESA went ahead and launched the COMESA Customs Union. SADC is still targeting 2010 for the launch of its Customs Union. It may be prudent to suggest that the replacement FTA would have to co-exist with the existing RECs until such time that all legal instruments have been dealt with so as not to create a vacuum.

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

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

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

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

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

#### 4.1.5 Political will and stability

There is also a need for political will as there has been rhetoric of continental unity which is not matched by practical action. Some have expressed a concern that the proposed roadmap for regional integration may be unrealistically ambitious given the diversity of economies involved and the reality that economic integration takes time. Others have cautioned that care must be taken to ensure that such cross-border liberalization actually produces the desired results. It should be noted that the desired results can be achieved with full implementation of the commitments to remove tariffs and if accompanied by measures to address other barriers to trade in the region.

Political instability in some of key member states including Sudan and the DRC renders the region risky for investment and counter the benefits of the envisaged trilateral FTA.

## 4.2 Opportunities

### 4.2.1 Overcoming overlapping membership

Multiple membership to different trade regimes risk trade deflection and dealing with multiple trade regimes and instruments pose legal and administrative challenges to member states. Therefore rationalizing and harmonizing the trade arrangements through a FTA could minimize and eventually eliminate the contradictions brought about by overlapping membership. It would mean that countries would not have to choose one trading bloc over another. It would also further the vision of a united Africa. Clarity is required from higher political levels as to what happens around and beyond 2010 when some countries will be eligible for membership of at least two custom unions. The longer the uncertainty continues the more frustrating the situation will appear.

### 4.2.2 Enhanced inter-REC co-operation on multilateral/bilateral trade negotiations

All members belonging to the three organisations are involved in bilateral and multilateral trade negotiations. Notwithstanding the different configurations under which these negotiations are being conducted, it is important that the second and subsequent phases of these negotiations be used as a vehicle towards greater convergence in interfacing regionally and with third parties. For example, EPA negotiations could be a catalyst for achieving regulatory convergence on trade in services, investment and other trade-related areas which are the subject of the current and future phases of the EPA process.

Greater co-operation and eventually common approaches is necessary amongst the three RECs in their interaction with key partners.

# 5. LESSONS FROM THE FREE TRADE AREA OF THE AMERICAS

The Free Trade Area of the Americas (FTAA), which was being negotiated by 34 widely diverse (in terms of size and levels of development) countries of the Americas, was intended to be the most far-reaching trade agreement in history.

The FTAA negotiating process was designed to be a lengthy one, as it was felt that many of the participants needed time to prepare adequately for negotiations. The end date for the FTAA negotiations was therefore fixed at the outset as January 2005, making the FTAA a decade-long project. For nine of these ten years the negotiating process was very intensive and tremendous progress was made. However, in the very final stretch, the gradual diversion of negotiating attention from the FTAA towards the Doha Round, combined with major changes in the political governance and economic circumstances of countries in the Hemisphere in 2002, changed the focus of key participants and altered the basis of consensus on which the FTAA negotiations had been conducted. Eventually these changes proved to be so large that the FTAA negotiating process foundered before it could be brought to a successful conclusion. It has been stalled since early 2004 and unable to recover.

Current developments indicate that the polarization of trade relations in the Western Hemisphere is widening rather than diminishing. Lessons from the FTAA experience for the three RECs who are thinking of launching a trilateral FTA should be useful ones to consider so that the same fate will not meet a similarly ambitious undertaking.

## 5.1 Some Features of the FTAA

### 5.1.1 Economic diversity of the economies

The participants in the FTAA negotiating process range from the largest single economy in the world - the US - to some of the smallest (namely the Caribbean island states). The range in the level of economic development of the participants is also extremely vast, stretching from the two advanced economies of Canada and the United States, to the middle economies of Mexico, Chile, Argentina, Brazil and several of the small Caribbean islands, to the poorer countries of Central and South America.

One of the countries in the Hemisphere is counted among the World Bank definition of “least developed”, namely Haiti, while Guyana, Honduras and Nicaragua fall in a very low income category. Such a broad diversity among levels of economic development or participants would is also the case for the trilateral FTA.

### 5.1.2 Attention to the needs of the smaller economies

A non-negotiating Consultative Group on Smaller Economies was established from the outset of the FTAA process to deal with the unique situation of smaller economies, a category to which 25 of the 34 participating countries felt themselves to belong. This group was important in airing the concerns of smaller and relatively less developed economies. While the FTAA negotiations were unique in having established such a group for the first time, this example was subsequently reproduced at the World Trade Organisatin (WTO) level in the Doha Development Round talks.

### 5.1.3 Incorporating capacity-building as an integral part of the FTAA negotiations

Although capacity-building work was carried out from the inception of the FTAA process by the three institutions of the Tripartite Committee (the Organisation of American States, the Inter-American Development Bank and the Economic Commission for Latin America and the Caribbean), Trade Ministers in the Western Hemisphere agreed to formally establish a Hemispheric Cooperation Programme in November 2002 to attend to the technical assistance needs of smaller countries as an integral part of the negotiations. The efforts of this Committee were to continue after the negotiations had been concluded as well, in the form of capacity-building assistance to FTAA members in their efforts to adjust to free trade.

### 5.1.4 Transparency of the FTAA negotiating process and outreach to civil society

The FTAA was unique in creating a Committee on Civil Society from the outset of the negotiating process. Public submissions were welcomed on an ongoing basis and open meetings were held periodically on the various negotiating issues. Very significantly, the draft text of the FTAA Agreement was made public on three different occasions. This represented a unique step in the history of trade negotiations and the first time that governments involved in a negotiating process agreed to publish a negotiating text.

## 5.2 Challenges of the FTAA

### 5.2.1 Extended time frame for the negotiations

The time frame set for the FTAA negotiations turned out in the end to have been too long to reach a successful agreement. Allowing for a decade between start and projected conclusion meant that at least two governments and often three governments would be elected and as many new trade ministers and negotiators would be appointed in the participating countries. While some governments (such as those of the US, Chile and others) were willing and able to maintain the continuity of policy and vision necessary for such an ambitious undertaking during this extended time period, other governments (such as those of Brazil, Argentina, Venezuela) changed their focus following a change in leadership. In the end, the FTAA turned out to have made its most substantive contribution in terms of its preparatory process and the training ground it provided for negotiators to master their subjects and practice their negotiating techniques. The lengthy preparatory period built into the process (three and a half years formally, four years effectively) meant that the negotiations did not really begin in earnest until January of 1999. This allowed too much time to lapse, while other factors appeared to divert interest and attention.

### 5.2.2 Very ambitious negotiating agenda

The ambitious negotiating agenda agreed in the FTAA process also presented a major challenge to the negotiations. While the future FTAA agreement was viewed as one that would be "state of the art", the very extensive coverage of behind-the-border, trade related issues would prove to be one of the factors that created a division among participants. The ambition of the negotiating agenda was used by some governments to justify moving very slowly in the negotiations, and during the penultimate year, to request a scaling down of initial objectives.

### 5.2.3 Large diversity of participants

The large number of participants in the FTAA negotiating process included countries in the Americas of extreme differences in size and economic diversity. The latter was measured not only by levels of development and GDP per capita, but also by the sophistication of national institutions and the legitimacy of government itself. This meant that the negotiators faced a huge challenge in reaching an agreement that could be accepted and effectively implemented by all. Although the Tripartite institutions were active in carrying out capacity-building, national government officials and negotiators often changed or were rotated, or left public service, so that training proved to be an ongoing challenge.

### 5.2.4 Lack of clarity on what constitutes "WTO plus"

One of the challenges facing any group of very diverse countries setting out to negotiate a free trade agreement is the very wide-ranging judgment of what can constitute an acceptable level of "WTO-plus" disciplines. Making this determination is complicated by the fact that the WTO itself (or rather its members) has been unable to set out clear benchmarks for evaluating the compliance of regional trading agreements with WTO requirements – Article XXIV of the General Agreement on Trade and Tariffs (GATT) in the case of goods and Article V of the General Agreement on Trade in Services (GATS) in the case of services. Partly, but not only, for this reason existing regional agreements vary widely in their coverage and disciplines, as well as in their degree of market opening for goods and services.

In the FTAA process, this lack of clarity meant that participants, while agreeing on the general "WTO-plus" principle, had considerable latitude to argue which disciplines and market access conditions would qualify for this status. It is fair to say that as no single template exists for a regional trade agreement, this will pose a challenge to the three RECs members setting out to negotiate a trilateral FTA, as the level of ambition of what participating governments would like to see as a final outcome is likely to vary widely in terms their conception of an acceptable "WTO-plus" agreement.

#### 5.2.5 Services and investment

The services/investment area proved to be politically very sensitive in the FTAA negotiations. Many Latin American nations feared that they would have to give up their right to regulate in a discriminatory fashion by entering into comprehensive services and investment disciplines. They thus preferred to move more slowly and gradually towards liberalization. Because of this reluctance, the services/investment area in the FTAA was beset with a major difference in vision as to how a trade agreement should be constructed. A large sub-set of countries (the "like-minded" North American Free Trade Area (NAFTA) countries that had either negotiated with the US or were in the process of doing so) wished to proceed along the lines of a "negative list approach" or a comprehensive coverage of all services sectors within the disciplines of the agreement (subject to the negotiation of an agreed number of exceptions or "non-conforming measures") and binding of all of these non-conforming measures at the level of current regulatory practice.

However, MERCOSUR members wished to follow a more modest, less comprehensive modality for liberalization of services and investment, similar to what has been done under the WTO General Agreement on Trade in Services (namely the "positive list" approach), with sectors included at choice, and weak disciplines on the level of binding commitments.

An additional problem involving the services/investment areas in the FTAA context was the question of where to deal with investment to supply services - to treat it solely within the services chapter as one mode of service supply, or to deal with it as part of a comprehensive investment chapter covering both goods and services. The answer to this question would also determine how the FTAA agreement would be structured. However, it remained unresolved. Also relating to the investment area was the delicate question whether investor-state disputes would be a part of the FTAA and consequently subject to arbitration, akin to the controversial NAFTA Chapter 11 provisions that were carried (with slight modifications) into the US-Chile and US-Central America FTA free trade agreements.

Lastly, the issue of the inclusion of the temporary movement of skilled and semi-skilled labour was a controversial one in the services/investment area that remained unresolved in the FTAA discussions. This area was of the greatest interest to the countries of the Caribbean, as well as to several of those in Latin America, who wanted FTAA visas from Canada and the United States, akin to H-1B visas, not only for skilled workers and corporate employees, as well but also for an additional category of technical workers.

The US negotiators were unable, however, to discuss any type of commitment to temporary movement of persons in the FTAA negotiations, given Congressional objections to including this area within trade agreements (a firm decision since 2003), combined with heightened security worries.

## 5.3 Lessons to be drawn from the FTAA Experience for the Trilateral FTA

A few key lessons may be drawn from the FTAA experience that should be of relevance to the three regions. These are summarized below.

### 5.3.1 Unity of vision among the major economies

For negotiations on a trilateral FTA to be successful, there must be a unity of vision on the objective and finality of a regional agreement among the major economies in the region, namely South Africa, Egypt and Kenya. This unity of vision must be present at the beginning of the process and must be maintained until the end of the process. If these three economic giants do not see the objective and the finality of a trilateral FTA with a positive eye, or do not maintain a common purpose, then the negotiations will either not begin at all, or they will not succeed. It was after the unity of vision between the United States and Brazil disappeared, that the FTAA negotiations stalled. And in spite of the fact that 30 of the 34 countries in the Hemisphere continue to actively support this objective, it has not proved possible to put the negotiations back on track.

### 5.3.2. Short negotiating process

One of the major problems of the FTAA turned out to be its time framework. The decade given for the negotiations proved to be too long. While lesser developed REC members can always sign on later to a trilateral FTA, agreement among the major countries must be seized in a time frame that does not admit too many changes of government. While ten years proved to be excessively drawn out for this process, two years would clearly be too short, so a period not longer than four to five years should probably be a reasonable one for such negotiations. A fixed deadline would be necessary, however, in order to focus efforts from the outset.

### 5.3.3. Targeting an achievable outcome

The trilateral FTA negotiating agenda should not be overly ambitious, or this may derail the process. For example, in the area of services and investment, given the even larger diversity of economies in the region than in the Americas, the more advanced regional members may need to consider a more nuanced approach in terms of services/investment commitments.

Reaching a region-wide agreement among so many widely-divergent economies will certainly prove challenging. If South Africa and other major economies in the region were to insist on an ambitious agreement, then the alternative to a trilateral FTA in the first instance might be a staggered approach, whereby those economies that consider themselves ready to take on the disciplines of a “state of the art agreement” could do so at the time of completion of the FTA, while the other members could do so when they would consider themselves ready. An integral component of the trilateral FTA would then consist of a strong trade capacity-building programme, much like the Hemispheric Cooperation Programme of the FTAA. This programme would be designed to assist those less advanced economies in reaching the necessary levels of institutional sophistication that would allow them to assume the new FTA disciplines. No specific time frame would be attached to this accession process, which would be limited to those members.

### 5.3.4. Minimal interference from other regional trade negotiations

For the trilateral FTA negotiations to succeed there should be minimal distraction from outside or other negotiating efforts. The FTAA negotiations proceeded at a rapid clip until the Doha Development Round was launched and attention was diverted as between negotiating arenas. This became even more apparent after the US obtained the Trade Promotion Authority in 2002 and began to seriously engage in bilateral trade agreements. This effort sapped the negotiating attention (and the ability to act in an independent manner) of both the Central American countries and the Andean countries and weakened those in favour of pushing the FTAA forward. And although it is not impossible for negotiators to participate in various negotiating fora, it was clear in the Western Hemisphere that the amount of human resources required for multiple negotiations is much greater and the attention is subsequently less than would otherwise be the case.

For this reason, a standstill agreement at the outset to cease negotiating other regional trade agreements during the period of the trilateral FTA discussions would be strongly desirable; otherwise too much distraction will be generated by parallel efforts. Additionally, the negotiating leverage of large trading partners with smaller ones in bilateral trade agreements could take away their ability to be full participants in the trilateral FTA negotiating process.

Likewise, a clause similar to what was agreed in FTAA should be included at the outset in the negotiating principles of a trilateral FTA in order to clarify the status of existing or previously-negotiated trade agreements and their relationship to a future region-wide agreement. This clause could make it clear that the trilateral FTA, once finalized and put in place, would prevail over all previous agreements, unless the disciplines of these pre-existing trade agreements were deeper and went beyond the trilateral FTA.

### 5.3.5 Chairmanship of the process

The FTAA experience showed clearly that placing any of the major players in a position of leadership does not lead to a satisfactory outcome. Just as in the Doha Round negotiations where WTO members prefer not to assign the chairmanship of key negotiating groups to representatives of either the US, the EU or Japan, likewise in a regional negotiating process the chairmanship of the Trade Negotiations Committee should be given to a small but committed participant, who is not likely to try and influence the process for its own national objectives.

### 5.3.6 Willingness and capacity to finance and support the negotiating process

Financing for the FTAA negotiations was provided both by the governments hosting the FTAA Secretariat (one-third), as well as by the Tripartite Committee (two-thirds of the cost of the negotiating process). The cost of providing the technical support to the negotiating groups and chairs, as well as carrying out capacity-building activities, was absorbed by the budgets of the Tripartite Committee institutions. The equivalent of this grouping of institutions does not exist in the region, other than the Industrial Development Corporation (IDC) and the Development Bank of Southern Africa (DBSA). Therefore, the question of who would finance this technical and analytical support (professional expertise) and who would provide the administrative support (presumably a new Secretariat) would have to be considered in advance. The development finance institutions would need mandates from their members to contribute to the financing of an FTA process, just as the Inter-American Development Bank had to obtain one annually from its members. Capacity-building efforts to train and support trade negotiators would be particularly important for the negotiations to succeed, given the diversity of economies in the eastern and southern African region.

# 6. SUGGESTED WAY FORWARD

## 6.1 Architecture of the envisaged FTA

The tripartite summit in Kampala, Uganda, on 22 October 2008, agreed that a roadmap for the creation of the unified FTA would be developed by April 2009. The paper takes cognisant of the fact that COMESA, SADC and EAC have commissioned a study into the establishment of the Free Trade Area and the results of that study have yet to be made public. The following sections will attempt to provide guidelines to the architecture of the trilateral FTA.

### 6.1.1 Principles of the agreement

It is expected that the process of setting up the trilateral FTA will be guided by a number of principles, including variable geometry, subsidiarity, gradualism, and open regionalism. Box 1 below defines the principles that are implicit in the summit deliberations, but quite explicit when it comes to variable geometry.

Furthermore the measures to address the differences in the levels of development and size of the economies should be agreed upon and should be consistent with the objectives and principles of the trilateral FTA. In this regard, these measures should be able to:

1. Provide a flexible framework that accommodates the characteristics and needs of each one of the countries participating in the FTA negotiations.
2. Be transparent, simple and easily applicable, while recognizing the degree of heterogeneity among the FTA economies.
3. Be determined on the basis of case by case analysis (according to sectors, topics and country/countries).
4. Include transitional measures, which could be supported by technical cooperation programmes.
5. Take into account existing market access conditions among the countries of the 3 regions.
6. Consider longer periods for compliance with obligations.

Box 1: Principles to underpin the COMESA-EAC-SADC FTA

Moreover, the consensus principle for agreeing on decisions by all participants in the negotiating process should be set out as the basic means of moving forward, similar to the WTO.

Lastly, a key principle that is particularly important in light of the external regional trading arrangements by individual RECs is the final FTA agreement should not displace any pre-existing sub-regional integration arrangement in the three RECs. All previously negotiated sub-regional agreements would continue to exist, but their provisions would prevail only to the extent that the rights and obligations under these agreements are not covered by or go beyond the rights and obligations of the new trilateral FTA.

### 6.1.2 Market access

It is important that market access provisions agreed by member states should be consistent with the provisions of the WTO, including article XXIV of the GATT 1994 and its Understanding on the Interpretation of Article XXIV of the GATT 1994, to progressively eliminate, tariffs, and non tariff barriers, as well as other measures with equivalent effects, which restrict trade between participating countries. Furthermore most tariff lines should be subject to negotiation and that different trade liberalization timetables be negotiated in order to facilitate the integration of smaller economies and their full participation in the FTA negotiations.

One option for building the FTA is for the three RECs to negotiate to extend free trade preferences to each other as blocks. This option would not interfere with current FTA and customs union configurations and would allow the RECs to continue their integration process. Member states will access markets through the wider FTA without individually signing any trade protocol as this is done at REC level. The negotiators would have the option of immediate removal of customs duties so member states of the three RECs trade freely from date of signing or a tariff phase down process would be negotiated and implemented over a pre-determined period of time.

This option would, over time, allow the evolution of the wider free trade area into a customs union. The evolution would allow for member states' sensitivities to be taken care of. However, there is a possibility of disagreements on who constitutes the negotiating teams. Within SADC, for example, should this be the responsibility of the Trade Negotiating Forum of the Secretariat, or of the Council of Ministers? Are current structures designed for intra-REC negotiations suitable for negotiations at inter-REC level? There is the further complication of countries that belong to SADC and COMESA, but are not members of the free trade area. The question that arises is whether they can access benefits of trade liberalisation in other RECs even before they implement tariff reductions for their own peers. Alternatively, can RECs sign agreements on behalf of only some member states, e.g. members of the FTA, to the exclusion of non-members? Such issues would need to be dealt with firmly and decisively.

The other option is for COMESA, EAC and SADC member states sign up to a new FTA created through a merger of the three RECs and abandon current FTA and customs union configurations altogether. The new FTA would have the potential to progress to a customs union and beyond, and will serve as a consolidated building block for the AEC. The new FTA will start off at zero duties on intra-regional trade whilst a common external tariff would be negotiated over a set period though it is not critical for the initial FTA stage. A new FTA will require a new secretariat to take charge of the process and could be set up based on the needs of the new REC through a merger and rationalisation of current REC Secretariats. The member states will decide whether or not the new secretariat would have some supra-national powers. Though this arrangement might be in conformity with the Tripartite Resolution, it is highly unlikely. The political and administrative costs of undoing what has already been achieved by individual RECs are immense.

#### 6.1.3 Services liberalization

Some of the member countries of the 3 RECs are engaged in services negotiations at different levels — i.e. bilaterally, with external partners (such as the EU Economic Partnership Agreements), or individually through negotiating at WTO. Thus, it is important for the 3 RECs to engage in the necessary technical work to clearly identify their offensive and defensive interests and be clear on how they would want to see such interests crystallized in the envisaged trilateral FTA, in other interregional trade agreements context (EPAs), and the multilateral (WTO/General Agreement on Trade in Services) level. There may be advantages and disadvantages with liberalization at the different levels, and it is important to determine which forum is likely to deliver the greatest gains on particular issues or sectors.

With respective to an agreement on trade in services the starting point will clearly be the guidelines provided by the WTO to ensure that there is compliance with those requirements. A draft that is fairly representative and reflect the challenges and needs of the regions from both skills shortages to the need to access better, affordable and applicable services in an inter-regional context.

For a more inclusive integration, the RECs should set up a mechanism for consultation with associations of trade in services providers, with a view to ensuring their involvement in the integration process of the region, increasing the intraregional foreign direct investment (FDI) flows and boosting private sector development. FDI and private sector development are discussed in detail in the following section.

#### 6.1.4 Investment

In their efforts to achieve expansion and rationalization of production capability and to acquire technology for industrial growth, policymakers in the three regions should recognize the important role that regional multilateral corporations and those from other developing countries could play to promote economic growth. The following recommendations are suggested in order to establish and strengthen corporate integration in investment:

##### *6.1.4.1 Undertaking FDI projects on a regional basis*

Cooperation should start with the identification and formulation of industrial projects of mutual interest, including the undertaking of feasibility studies and the formulation of bankable project proposals. Efficient information networks should be established to provide accurate and up-to-date information on investment opportunities, technological and market potential, national laws and regulations, costs, availability of labour and other inputs, potential partner experiences, etc. The development of industrial associations at the regional level could play a particularly stimulating role in linking local firms in different countries. Given infrastructural gap in the region and its negative effect on regional integration, regional infrastructure projects are among the best candidates for these regional FDI projects. Moreover, given the importance of agriculture in most African economies, investment in the agricultural sector, both at the production and processing level, should form part of the development strategy at the regional level. These investments would preferably be greenfield investments in order to raise their very low level to at least the same level as mergers and acquisitions. In this regard, public–private partnerships could offer an interesting investment model given the complementarity of state and private sector actions combined with the enormity of the resources required to implement such projects.

#### *6.1.4.2 Deepening the regulatory measures to encourage intra-African FDI*

Regulatory changes that occurred in the past two decades at the national level have deepened liberalization and deregulation which are expected to have a positive impact on FDI. In a survey of investment promotion agencies carried out in 2006, more than 90 per cent of African respondents stated that their policies targeted FDI from other developing countries, notably from within their own region. South Africa tops the list of countries targeted and this country also has an active strategy of involvement in regional investment schemes.

To ensure that the interests of the business community are respected, its representation on national and regional policymaking bodies should be increased and made more systematic. Moreover, investment policies should be harmonized at the regional level to prevent conflicting objectives. To achieve this aim, there has to be balance between the role of micro (enterprises) and macro agents (governments and regional and international agencies) in the promotion of foreign investment in the three regions.

#### *6.1.4.3 Regional bilateral investment agreements*

The strengthening of more limited initiatives on a bilateral basis should not preclude a region-wide approach to economic cooperation. A study done by UNCTAD points out that of the approximately 700 bilateral investment treaties concluded by sub-Saharan African in 2007, 120 were among themselves. The study further postulates that bilateral schemes should result in regional or multilateral schemes rather than vice versa. In order to attract more intra-African foreign investment, regional investment agreements are more effective than bilateral agreements. COMESA is a useful example of a regional bloc which is encouraging regional integration in the investment area.

Regional integration among countries at different levels of economic development may favour the more developed partners in terms of the distribution of the fruit of regional investment. To avoid this potential problem, home-host government incentives in directing investment flows and industrial development activities must take into account a sense of balance acceptable to all integrating parties.

#### *6.1.4.4 The need for a strong financial sector*

Efficient financial and payments systems are essential for the promotion of regional trade and investment. It contributes to the reduction in the cost of doing business through timely payments. In this regard, the three RECs should co-ordinate and co-operate in areas of:

- Real Time Gross Settlement Systems;
- cross-border transactions and settlement and the building of domestic and inter-REC Payment System overnight capacity;
- electronic money regulation;
- regulatory framework to facilitate effective co-operation in payments and clearing;
- effective mechanisms for anti-money laundering and the combating of financial terrorism; and

risk assessment system in the financial sector.

Moreover, the IDC and the DBSA are involved in, for example, equity financing of private sector projects in the Southern Africa region and elsewhere in Africa. In addition to participating directly in financing investments, IDC helps companies identify investment opportunities abroad.

The three regions should also consider co-operation in development of capital markets. These are critical for the mobilisation of investment resources. The existing capital markets in the region are nascent and small in size due to the limited sizes of national economies. It is, therefore, important to jointly promote the development of capital markets in the region. This can be achieved through:

i) the development of harmonised inter-REC capital market policies;
ii) providing incentives for the development of the capital markets;
iii) providing a framework to allow cross-listing of firms across RECs;
iv) developing a regulatory framework relating to participation of market players, investors, issuers, investors in the markets of RECs;
v) developing regional stock exchanges.
vi) harmonising regulatory framework for trading, clearing and settlement rules of the stock exchanges;
vii) undertaking capacity building and sensitisation on capital markets in the region.

6.1.5 Trade supporting and countervailing measures

To examine ways to deepen, if appropriate, existing disciplines provided in the WTO Agreement on Subsidies and Countervailing Measures and enhance compliance with the terms of the WTO Agreement on Subsidies and Countervailing Measures.

To achieve a common understanding with a view to improving, where possible, the rules and procedures regarding the operation and application of trade remedy laws in order to not create unjustified barriers to trade in the Hemisphere

6.1.6 Dispute Settlement

COMESA has elaborate dispute settlement procedures in cases where origin is disputed and in cases where unfair trade practices (dumping, illegal subsidies) are suspected. The EAC has also developed its own dispute settlement procedures but SADC is in the process of developing its regime. COMESA has a Court of Justice and so does EAC, but SADC has administrative structures for such disputes, but not a formal court. Thus there will be a need to harmonise these procedures.

6.1.7 Competition Policy

As pointed out in section 3.3 above the three RECs have adopted competition frameworks at the regional level with aim of developing an inter-REC competition policy including a dispute settlement mechanism, harmonizing competition instruments and undertaking joint capacity building activities.

6.1.8 Institutional arrangements

As part of the FTA architecture negotiating groups should be created in the areas of cooperation as outlined above. For example negotiating groups could be constituted of market access; services; investment; dispute settlement; subsidies, antidumping and countervailing duties; and competition policy. These negotiating groups will have specific mandates from Ministers and the central trade negotiation committee to negotiate text in their subject areas and meet regularly throughout the year.
Three committees/groups to address horizontal issues related to the negotiations should also be considered. For example, this might involve a consultative committee on smaller economies, committee on the participation of civil society and a technical committee to consider the overall architecture of the FTA agreement including general and institutional matters.

Furthermore, the trilateral FTA will need to be supported by much a stronger administrative institutional framework than is currently the case in the three regional setups. The first development is that of a MOU on inter-regional cooperation and integration which will spell out the powers of various levels of authority. The Tripartite Summit of Heads of State is already constituted to sit once every two years, although there is provision for it to meet in extra-ordinary session as and when the need arises. This development seems to suggest that for the foreseeable future, the current RECs are expected to continue operating as before. The current setup is such that the Heads of State meet at Summit level at least once a year and have in practice met more than that within the SADC area in view of the many demands made by a developing and evolving region. It is possible that the arrangement is an interim one pending the signing of the MOU. Indeed, pending the signing of the same, all the institutions approved for establishment in tripartite fashion are expected to meet at least once a year indicating that there is not much work expected of them.

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

Two options are proposed regarding the institutional make-up. At the adoption on an interregional FTA, institutions established under the RECs could be dissolved on the ground that jurisdiction under the trilateral FTA vests in the new FTA institutions which then take over. If this happens, any inconsistencies in powers of and in organs created under RECs will not feature after the transition.

The other option is for the RECs to then function as divisions of the new trilateral FTA institution on practical considerations that running the new institutional framework from a determined headquarters would require a bureaucracy exceeding the 3 RECs resources and that therefore organs of the RECs such as the courts, technical committees, and secretariats be subordinate organs of corresponding new institutional framework.

In both cases differences in organs created and their functions, will not constitute fundamental obstacles to the transitions, provided a harmonizing instrument can put REC institutions under appropriate new institutional structure. But such an instrument would be unnecessary if the RECs had uniform institutional structures, for this would simply be designated as subordinate to the new institutional structure and would at once start functioning as such even within the RECs before adoption of adoption of an interregional structure with the benefit of spreading out the financial burden and of locating the structures out. Therefore uniform structures should politically strengthen the interregional institutional structure.

### 6.1.9 Technical capacity

The measures to address the treatment of the differences in the levels of development and size of the economies should be accompanied by a programme of complementary supporting measures, which could include:

A regional cooperation programme, for the purpose of which the proposed consultative committee on smaller economies is instructed to draft a proposal based on contributions from the negotiating groups.

Technical assistance and training during negotiations and the implementation process.

The cooperation programme should include, *inter alia*, the following modalities:

Establishment of a mechanism to receive, disseminate, evaluate, and consider possible financing of specific project profiles submitted by FTA countries and groups of countries or negotiating groups.

Establishment of a mechanism to enable countries to define, prioritize, and articulate needs related to strengthening the capacity for: i) preparing for negotiations; ii) implementing trade commitments; and iii) adjusting to integration.

Interaction between countries seeking assistance to improve their trade-related capacities and those countries and institutions that are in a position to provide assistance, through, for example, roundtable meetings focusing on specific areas of need, including the preparation of studies related to fiscal scenarios, socio-economic impact and competitiveness analysis. Information on needs identified in the Database, project profiles, and other sources will be used as input to facilitate exchanges between donors and countries.

Additional forms of technical assistance, to be determined.

Financial assistance.

Institutional cooperation that complements current and future multilateral and bilateral programming.

Experience and knowledge transfer related to FTA topics through workshops, internships, and other mechanisms.

Countries participating in the FTA that seek assistance under the cooperation programme shall develop national or regional strategies that define, prioritize, and articulate their needs related to strengthening the capacity for:

preparing for negotiations,
implementing trade commitments, and
adjusting to integration.

The aforementioned categories should be addressed simultaneously, taking into account the changing needs over time. In order to facilitate coordination and sharing of experiences, the strategies should follow a common format that will be developed by the consultative committee on smaller economies. While these strategies are being prepared, the cooperation programme should also respond to immediate assistance needs for the purpose of strengthening the participation of countries in the negotiations.

## 6.2 Monitoring and evaluation framework including targets and milestones

Progress of the FTA negotiations and implementation should be continually monitored and evaluated against measurable targets and milestones. In this regard, the proposed committee tasked with the overall architecture of the agreement should develop and enforce a monitoring and evaluation mechanisms.

## 6.3 Common trade policy and development strategy

Trade policy should be part of an overall long-term development strategy which defines a country's development objectives and the way they should be reached. The lack of such a coherent framework in many African countries has prevented them from maximizing the benefits they could derive from bilateral and multilateral economic relations. A report by UNCTAD argues that conceiving trade policy outside a development strategy could help explain why trade has not brought the expected development benefits to many countries in Africa. When a long-term development vision is in place, it is relatively easy to determine what role trade should play to achieve some of the development objectives.

At the regional level, the conception of a regional development strategy could draw from the New Economic Partnership for Africa's Development spatial development programme. Launched in 2007, this programme identifies possible economic clusters in different regions as well as strategic activities that can support these clusters with specific milestones and outputs. The key goals are to (a) stimulate investment-led economic growth and development; (b) facilitate trade, including intra-Africa trade; (c) promote regional economic cooperation and integration; (d) optimize the utilization of infrastructure; (e) encourage economic diversification; (f) enhance the competitiveness of African economies; and (g) stimulate employment and wealth creation. Operationalizing this programme at the regional level will require integrating it into individual countries' own development strategies.

This strategy would also help the region gain more from its engagement with the rest of the world. All members belonging to the three RECs are involved in multilateral and bilateral trade and investment relations with external parties such as the EU, China, India, MERCUSOR, etc. It will also be of upmost importance for the region to develop common policies in agriculture, industry, tariffs, services, investment and other trade related areas as pointed out in the preceding sections.

## 6.5 Consultation mechanisms

The three RECs will have to strengthen and deepen their consultations with business and civil society (including labour and consumer groupings) at the national level, and identify and foster the use of best practices for outreach and consultation. Consultations could take the following form.

> **Advisory Bodies:** Establish advisory bodies or other consultative mechanisms that consist of representatives from broad sectors of civil society (businesses, unions, academics, nongovernmental organisations, etc.). These institutional mechanisms could be permanent or ad-hoc, and could meet periodically in order to review the progress of the FTA negotiations,

analyze/study specific governmental policies and proposals, and provide input/advice to the government.

**Public Events:** Organize public events (conferences, workshops, seminars, forums, etc.) periodically and in various locations in order to raise awareness, consult, discuss and debate about various FTA issues of interest to the general public and/or to specific sectors, which are open to civil society and to citizens.

**Meetings:** Hold meetings with interested stakeholders (individuals or groups) for information exchange and/or consultation purposes: i.e. to identify and interpret the sensitivities and interests of the different sectors affected and/or interested in the FTA negotiations.

**Parliamentarians:** Engage in an ongoing and open dialogue with parliamentarians throughout the FTA negotiating process, via the participation of public officials in parliamentary committee hearings, seminars, working groups, and the like.

**Information Material:** Develop documents on a periodic basis (e.g. weekly bulletins) to educate and create awareness among stakeholders by providing general information about the FTA negotiations, updates on the status of the negotiations, etc.

**Electronic Information Networks:** Use web sites and electronic mail to disseminate relevant, accurate and timely information related to the FTA process. These networks provide access to key documents about the FTA, announce the holding of public events, and include press releases, speeches, as well as media advisories. They also provide a feedback mechanism in order to receive comments and queries from interested parties.

**Official newspapers:** Issue invitations and other notices in official newspapers (e.g. Gazette, Federal Register) in order to inform the public about key governmental initiatives related to the FTA.

**Other Communication Tools:** Share key information with civil society through letters, print media (e.g. local newspapers) and third-party publications (e.g. business journals, NGO newsletters, etc.), radio, television, and via the participation of government officials in various events organized by non-governmental entities.

This list is descriptive and not exhaustive.

A business and a civil society forum should be considered. The former could be established in order to allow for the business community to meet and to discuss and provide recommendations on all of the issues under negotiation. Whilst the civil society could be established in order to serve an important outreach function in allowing public interest groups and nongovernmental organisations in the region to express their views on the issues under negotiation. This model of interaction with civil society has served to inspire the outreach efforts of the WTO Secretariat at the multilateral level, especially in the early stages of the Doha Development Round of negotiations.

## 7. CONCLUDING REMARKS

The proposed FTA between the three RECs is a positive inter-regional initiative. The arrangement is premised on the understanding that the three RECs implement similar trade, customs and infrastructure programmes. Consequently a need arose to harmonise and coordinate these programmes through joint planning and implementation, which culminated with the setting up of a Tripartite Task Force to spearhead the process.

Central to the objectives of the proposed arrangement is the need to overcome the challenge of overlapping membership – Almost two thirds of the twenty-six countries that comprise the combined membership of COMESA, EAC and SADC, are either already in a customs union and participating in negotiating an alternative customs union to the one they belong to or are in the process of negotiating two separate customs unions.

There has been some progress towards harmonisation and cooperation in the areas of trade and customs and infrastructure development programmes joint coordination. However, the proposed trading arrangement is not without its challenges.

The three RECs should also learn from the failed FTAA. The FTAA, which was being negotiated by 34 widely diverse (in terms of size and levels of development) countries of the Americas, was intended to be the most far-reaching trade agreement in history. It is currently in a long coma with no signs of life whatsoever for the past several years and years to come.

Without an appropriate way to effectively incorporate business and civil society interests into the negotiations, subordinating “the national interest” to the common good, and responding to the needs of smaller economies, the dream of a tripartite free trading area may prove difficult to realize. Furthermore, the length, scope and agenda of the negotiations are important to consider. These are the key complexities that put the FTAA in a coma. History should not be allowed to repeat itself.

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## 9. GEOGRAPHICAL COVERAGE OF COMESA, EAC AND SADC


**Perceived Geographical Coverage of the EAC-COMESA-SADC Free Trade Area (FTA)**