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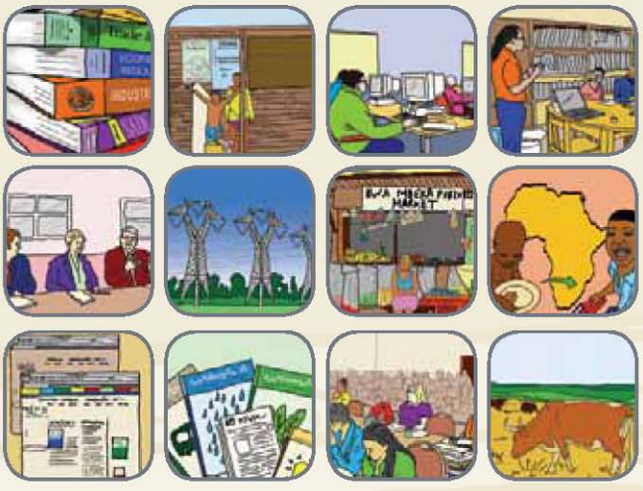

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Exploring the COMESA-EAC-SADC Trilateral Free Trade Area: An Approach to Rules of Origin

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EXPLORING THE COMESA-EAC-SADC TRILATERAL FREE TRADE AREA: AN APPROACH TO RULES OF ORIGIN

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1. Introduction

The heads of states of the Common Markets for East and Southern Africa (COMESA), the East Africa Community (EAC) and the Southern African Development Community (SADC) met in Uganda in October 2008 to discuss broader objectives of the three regional trading blocs. This was later referred to as the Tripartite Summit. Discussions centred on achieving acceleration of economic integration on the continent in line with the Abuja Treaty and on the African Union objective of the formation of one continental economic bloc. The key issues for the three blocs were regional trade liberalisation, infrastructure development and a legal and institutional framework. The leaders agreed to initiate a process of coordination and harmonisation of programmes in order to progress towards the goals of expanding trade, alleviating poverty and attaining the overall development objective. The Summit provided a platform for the three blocs to join forces in forming a larger Free Trade Area (FTA).

The three blocs have similar or related objectives on development and are implementing the linear regional integration model. COMESA and EAC are already party to Customs Unions, launched in 2009 and 2004, respectively. SADC is currently a Free Trade Area (FTA) and is looking to launch a Customs Union in 2010. Overlapping memberships exist between the three blocs and the proposed FTA may provide a possible solution to that problem. However, on the trade and economic front, there will be more challenges created by the formation of such an FTA.

One of the anticipated challenges with the creation of large FTA around trade issues will be with regards to the rules of origin. It is expected that the three blocs will work towards establishing single set of rules, an exercise that would require the bringing together of the three existing sets of rules. This would have a major effect on the current rules as implemented by the three blocs. Rules of origin are generally contentious in nature and are complex to negotiate and agree upon. The purpose of this paper is to examine the rules of origin for the three blocs, to highlight the common features, to identify issues of concern and to suggest a possible approach to rules of origin for the larger FTA.

The paper is organised as follows:

Section Two defines the functions of the rules of origin;
Section Three focuses on the features of rules of origin and discusses general conditions under the rules;
Section Four compares the three blocs and discusses some of the conflicting rules;
Section Five identifies potential problem areas in the forming of a single FTA;
Section Six provides possible ways of approaching new rules under the larger FTA.
The final section draws conclusions as to how the rules of origin between the three blocks should be implemented as part of the formation of a single FTA.

2. Functions of rules of origin

In any preferential trading agreement, rules of origin are required to determine whether goods being traded are eligible for preferential treatment. They represent a legal framework within which the origin of goods is determined, both point of shipment and where they are deemed to have been produced. Furthermore, they provide a set of criteria to distinguish between goods that are produced within the region and those that are considered to have been produced outside of the preferential area. Goods classified as having been produced in the region according the set rules will be entitled to preferential tariff treatment, while those considered to be from outside of the area will attract the full import duties applicable.

The rules serve an important purpose in that they ensure that goods that have been substantially transformed or "sufficiently processed" in the exporting member of the trading bloc receive favourable treatment. This is to avoid a mere channelling of goods into the preferential area from a third country. Such a process of transhipment is also referred to as 'trade deflection'. If it is allowed to take place, it will undermine the objectives of a preferential trade agreement. The rules therefore ensure that non-members do not benefit from market access privileges intended only for members.

Another role for rules of origin is as an instrument to promote development within the preferential area (Flatters, 2002). This role is of secondary importance and is thus carried over by default. If rules of origin are too stringent, local producers will be forced to source from the region thereby nurturing development of regional industrial capacity. The rules will thus be playing a protective role, and using that as an opportunity to expand the size of the protected market.

The rules can also add to the administrative burden of customs authorities. The full application of rules requires highly skilled personnel in various fields (legal, accounting, technical and trade) as well as financial resources. These requirements have the potential to stretch the limited human and fiscal resources of many developing countries. To exporters, importers and producers, rules add both to the cost of doing business and to the administrative burden. Compliance with the rules can therefore be a deterrent to trade, even in situations where products meet the conditions. Thus, for rules of origin to play a role in fostering intra-regional trade, they need to be objective, understandable, fair, consistent and predictable.

3. Features of rules of origin

The three regional blocs apply rules of origin under their regional integration agenda and the rules are rarely applied in a uniform manner across the three blocs. Substantial deviations are inevitable when product-specific rules are applied, such as in the case of SADC. This section discusses the general framework within which the origin of goods is determined.

3.1. Determination of origin

As an integral and important part of trade agreements, rules of origin attempt to capture all eventualities and product configurations. This also implies that rules become more complex and technical. Central to the application of the rules is the determination of the country of origin and the beneficiary country. The general determination is that goods should be:

- **Wholly produced or obtained** in that country; or
- **Sufficiently worked or processed** there**.**

Wholly produced products are those that are produced or manufactured in their entirety in a particular beneficiary country. They should have not received any input from any other country. This definition applies mainly to items that occur naturally in a given country. The 'wholly produced' status is also applicable to goods made entirely from locally sourced inputs. Products that could be considered wholly produced in a beneficiary country may include:

- Minerals extracted from ground or seabed;
- Vegetable products harvested in the beneficiary country;
- Live animals born and raised in the country;
- Products obtained by hunting or fishing;
- Goods produced exclusively from products mentioned above.

This list above is not exhaustive as there are other modifications of this definition. The list also refers mostly to raw materials of agricultural or mining origin. However, production of goods has become more fragmented with the rapid integration of world economies and growing trade flows. Goods, therefore, often undergo different stages of production in a number of countries and using materials from various sources. In addition, new industrial configurations, in both producer-driven and buyer-driven value chains have globalised production in product categories. The "wholly produced" rule therefore excludes many products that are traded globally.

Products that are not "wholly produced" can therefore obtain "originating status" provided that the imported materials used in their manufacture are "**sufficiently worked or processed"** and are thus eligible for preferential treatment. There is no universal rule determining what constitutes "sufficiently worked". Different regional agreements employ different definitions and the disparity continues on a product-to-product basis. In making this determination, the overarching principle is that goods are deemed to be "sufficiently worked" if they meet one of the following three criteria:

a) *the minimum value added rule (VA) rule*: whether a prescribed minimum value has been added locally;
b) *the change of tariff heading (CTH) rule*: whether the goods have been substantially transformed to justify a tariff heading different to that of the imported input materials used; and
c) *the specific process (SP) rule*: whether prescribed processes have been undertaken in the production of the goods in the country claiming preferential treatment.

In some cases the "sufficiently worked" rule is not enough to positively determine the originating status of the product. It is for this purpose that a list of "insufficient work or processing" has been compiled. This is also referred to as the "negative list" as it states what *does not* confer origin rather than what *does*. The operations on this list on their own and/or in combination with others are not considered to be sufficient to confer originating status on a product. These include the following (not exhaustive):

- Operations to ensure preservation of the product in good condition;
- Changes in packaging, or simply placing goods in bottles, cases, etc;
- Affixing of marks, labels or other distinguishable signs;
- Simple assembly of parts to constitute completed products;
- Mere dilution, blending and other types of mixing;
- Slaughter of animals; and
- Other minor operations.

Several exceptions to the rules and principles are provided for (Brenton, 2003). These exceptions can influence whether or not origin is conferred on the product. They further the impact of the rules of origin on the trade flows and include cumulation, tolerance rules and drawback provisions.

Cumulation is an instrument that allows producers to import materials from a specific country or region without undermining the origin of the product. Cumulation is an important concept in the rules of origin and determines the levels at which countries are able to use the trade preferences available to them within the regional grouping. In effect, it is a derogation from one of the concepts of origin – that goods must be "wholly produced" in the exporting country. Cumulation can potentially be an important driver of regional integration through greater trade flows and shared benefits.

The most basic form is *bilateral cumulation.* In this case, originating inputs imported from a partner qualify as domestic content when used in the country's exports to the partner. A second type of cumulation, *diagonal cumulation*. This allows the use of materials originating in one or more countries of the same (recognised) regional grouping to be considered as having originated in the beneficiary country. *Diagonal cumulation*, of course, is subject to certain conditions.

Finally, there can be *full cumulation*. In this case any processing activity carried out in any country participating in a regional group can be counted as qualifying. This is regardless of whether or not the processing is sufficient to confer originating status to the materials themselves. *Full cumulation* provides for deeper integration by allowing for more fragmentation of production processes among members of the regional group.

Tolerance or *De Minimis* rules allow a certain percentage of non-originating materials to be used without affecting the origin of the final product (Grynberg, 2005). This rule is mostly applicable to the change of tariff heading and the specific manufacturing rules. However, it does not affect the value added rules. This rule makes it easier for products with non-originating inputs to qualify for preferences.

Since implementation of trade policies and regional integration initiatives requires differential treatment, rules of origin are therefore almost unavoidable. Even though the primary aim of the rules is to ensure that preference is given to the members of the group, they are often complex and act as barrier to trade. There are important differences across the blocs in the use and nature of the provisions relating to the rules explained above. This means that creation of a single set of rules will have significant implications that will, in turn, affect the impact and design of FTA rules.

4. Comparison of COMESA, EAC and SADC rules

The previous section focused on general rules without particular reference to a region or bloc. The focus now switches to the three blocs in eastern and southern Africa with this section comparing the rules in the region, as well as their application. Rules of origin vary across products and agreements. Table 1 reflects both similarities and differences among the three blocs.

Table 1: Summary of rules of origin criteria in COMESA, EAC and SADC

	COMESA	**EAC**	**SADC**
Origin Criteria			
1) Wholly produced	Yes	Yes	Yes
2) Sufficiently processed			
a) VA rule			
i) imported material	c.i.f. ≤ 60% of ex-factory costs[1]	c.i.f. ≤ 60% of ex-factory costs	c.i.f. ≤ prescribed % of ex-works price[2]
ii) local materials	VA ≥ 35% of ex-factory costs	VA ≥ 35% of ex-factory costs	VA ≥ prescribed % of the final product
iii) Economic importance rule	VA ≥ 25% of ex-factory costs	Not applicable	Not applicable
b) CTH	Yes	Yes	Yes; double CTH is required in the case of clothing and textiles, except for MMTZ[3] members
c) SP rule	No	No	Yes
3) Cumulation			
i) bilateral	Yes	Yes	Yes
ii) diagonal	Yes, with bloc members	Yes, with bloc members	Yes, with bloc members
4) Tolerance/*de minimis*	No provision	No provision	≤15% of ex-works price excluding clothing and textiles, vehicles and vehicle parts

Source: COMESA (2002), EAC (2005) and SADC (2008)

[1] An Ex-factory cost refers to the value of total inputs used in production of a given product.
[2] Ex works price is the price paid for the product ex works (factory price) to the manufacturer in whose undertaking the last working or processing is carried out. This price includes the value of all materials used and excludes internal taxes (customs duties).
[3] MMTZ refers to the least developed members of SADC, i.e., Malawi, Mozambique, Tanzania and Zambia

Among the obvious similarities among the three blocs is the rule on "wholly produced". The rules also embody the "sufficiently worked" principle, however there are differences in the conditions to be met. All three blocs have bilateral and diagonal cumulation and diagonal cumulation is limited to members of the bloc.

It is clear from Table 1 that SADC rules of origin are substantially different from those in the other two blocs. The EAC rules closely resemble those in COMESA. Their requirements for value added are similar in both imported and local materials. For a product to meet the value added rule, the imported materials must not exceed 60% of ex-factory costs or local materials *must* exceed 35%. The blocs do not require specific process criterion and thus their "change in heading rule" has no additional conditions.

4.1. Goods of particular economic importance – COMESA

The single main difference between COMESA and EAC is that the latter does not make a provision for *goods of particular economic importance*. This is essentially an exception to the rule for certain products with a significant qualification requirement, hence a minimum of 25%. The rationale for making an exception for *goods of particular economic importance* is not clear and the objective being pursued by applying this rule is not apparent. However, given other possible functions of rules of origin, it can be assumed that these goods are not produced in sufficient volume in the COMESA area and, as a result,require flexible rules. Another possibility could be the industrial objective under which flexible rules are meant to provide an incentive to encourage manufacturing of products from these goods .

In addition, there appears to be no clarity on the criteria for classification of *goods of particular economic importance.* This may add to the confusion, as well as to the burden of administrators, exporters and importers, when determining whether a good meet the conditions or not. It may be necessary to review this derogation before drafting rules of origin for the enlarged FTA.

4.2. Sector specific rules - SADC

SADC rules of origin are substantially different from those applied by EAC and COMESA. The SADC rules of origin include both general conditions and specific rules for all chapters of the harmonised system (HS) classification. They therefore vary widely across product chapters, headings and subheadings. In general, they are modelled similarly to the European Union rules and those under the Trade, Development and Cooperation Agreement (TDCA). SADC rules of origin consist of a mix of CTH, VA and SP criteria. In order to find the exact requirement to be compliant with rules on particular goods, one would need to check the list of conditions required in the Appendix I of Annex I of the SADC Trade Protocol.

For example, in order to meet the requirements for preferential treatment, *Black Tea* (HS 0902) must be "wholly produced" in the SADC region, or be manufactured with

imported materials that do not exceed 40% of the weight of the product (SP requirements). *Sugar confectionery* (HS 1704) must be produced from materials of any HS heading except *HS 1704*, and in which all materials recorded in Chapter 17 used originate from the SADC region (CTH combined with "wholly produced"). *Fruit juice* (HS 2009) must be produced from imported materials of any HS heading other than *HS 2009* (CTH) or the value of imported materials used must not exceed 60% of the ex-works price of the product (VA). The rules of origin in SADC, however, provide for the use of imported materials as long as they do not exceed 15% of the ex-works price. This, of course, excludes clothing and textiles, vehicles and vehicle parts.

The single transformation rule applies to all product groups except textiles and clothing. Textiles and clothing also account for a substantial part of the list of rules. The essential reason is the two-stage transformation of clothing and textile products. Fabric, for example fabric, needs to be manufactured from unprepared fibres and the. two-stage transformation entails the carding and combing of fibre, followed by the spinning of the yarn. For clothing, the processes necessary include the weaving of fabric and assembly of the garment.

Malawi, Mozambique, Tanzania and Zambia (MMTZ) were granted a derogation of single-transformation when exporting to SACU. However, this is subject to the quotas set for these product groups. The derogation has been extended until 2009 and a subcommittee on clothing and textiles will review it at the end of the period (Naumann, 2008).

4.3. Rules on fisheries

Fish and fish products constitute important economic activity for some of the countries in the COMESA, EAC and SADC area. In terms of the rules of origin, this is usually a very sensitive sector. The rules on fisheries include "wholly produced" as well as processing requirements for fish categories. The wholly produced definition specifies, in the case of fisheries, conditions for the fishing vessel.

The fishing vessel is regarded as part of the territory and thus adds another layer of regulations to the rules. The rules must also consider the territory in terms of place of production of marine, river or lake products, as well as in relation to the vessel harvesting the fish. Furthermore, the location where the products are landed must be taken into account. Certain vessel conditions must be fulfilled before the rules are satisfied and the conditions for the three blocs are reflected in Table 2.

Table 2: Conditions for fishing vessels

Conditions	**COMESA**	**EAC**	**SADC**
Registration	Must be in MS*	Must be in MS	Must be in MS
Flag	No Provision	No Provision	Must be of MS
Nationality	≥ 75% of crew **or** officers	≥ 75% of crew **or** officers	≥ 75% of crew **and** officers
Ownership	> 50% equity	>50% equity	> 50% equity

*MS refers to member state of the regional bloc
Source: COMESA (2002), EAC (2005) and SADC (2008)

The general rules of origin on fish and fish products in the three blocs require registration of the vessel in the member country, specify nationality of the officials and crew, ownership and the flag under which the vessel sails. COMESA and EAC have similar conditions. Both require that the vessel be registered in the member state, that 75% of crew or officers be nationals, and that majority control and equity holding with respect to the vessel be held by nationals of the member state, or by national institutions, enterprises, corporations or government. Neither bloc makes provision for the flag under which the vessel sails.

Table 2 shows that SADC conditions require the vessel to sail under the flag of the member state and that 75% of crew and officers be nationals. This slight deviation from the other two may provide an easier condition to meet. The conditions on ownership and registration are similar in all three blocs and it may be easier to find common ground in the rules of origin relating to fisheries than in other areas.

In summary, determination of origin is complex and requires technical skills in many areas. The fact that there are no universal standards and guidelines on rules of origin means that it is more difficult to find agreement between several groups of countries. Nevertheless, the rules of origin among the three blocs in eastern and southern Africa, show many similarities in the cases of COMESA and EAC. The SADC rules deviate from the others as they appear to be serving multiple purposes. The rules seem to encourage industrial development with the two-stage transformation in the clothing and textile sector and can potentially be protective of the sector. The double transformation rule demands more added value for products to meet the conditions, and therefore forces member states to develop industrial and manufacturing capacities. Most encouraging in the three blocs is the fact that in one of the most contentious sectors, fisheries, there seem to be few differences.

5. Concerns for policymakers in the larger FTA

The issues most likely to be of concern to policy makers in the three regional groupings are those where differences currently exist between member states. So far, it would seem that COMESA and EAC will be on one side and SADC on another, given that there are more similarities between the former two blocs. Apart from the fact that rules of origin are, by nature, very difficult, further complication arises from trying to bring three regional blocs into one. The fact that the blocs have overlapping memberships is an indication of the presence of many areas of disagreement and challenges are therefore to be expected.

The *first* major issue will be the bringing together of three sets of rules and then narrowing them down to one. This problem is aggravated by the fact that some blocs have rules aiming at achieving several goals. They are combined with other trade policy instruments such as quota, anti-dumping and countervailing measures and several others. Designing a single set of rules would require unpacking all the existing measures and dealing with them separately.

By their nature, rules of origin are complex and require technical skills in various fields and from all stakeholders involved. The *second* challenge, thus, is whether the set of rules for the enlarged FTA can be simplified, made predictable and open to uniform interpretation. The most important part, however, is whether they can be rendered suitable for the majority of businesses and stakeholders in the three blocs which happen to be small and medium and which have different profiles from their counterparts in the developed world. The current rules of the three blocs do not make sufficient provisions for small and medium traders.

Thirdly and most contentious, "sufficiently worked" under SADC product specific rules may need to undergo substantial transformation. For the enlarged FTA, this will definitely be unavoidable as it is the source of major deviations from the other two blocs. The problems to deal with will also be compounded by the fact that, even within SADC member states, there are still some unresolved rules on certain products (SADC, 2008b).

The *fourth* challenge requires a decision to be made on the methodology of evaluating the value added rule. COMESA and EAC currently use ex-factory costs – the value of total inputs used. SADC uses ex-works price which includes value added materials and profit, but excludes internal taxes paid. One of the calculations of value added would need to be dropped.

The application of the rules on "goods of particular economic importance" under COMESA provides the *fifth* problem area. This rule is also substantially different from those applied by EAC. As mentioned earlier, the rationale and criteria for this value added rule are not clear and it would seem to add unnecessary complication if not clarified by the time the design process commences.

The *sixth* issue relates to tolerance derogation, provided for under SADC rules but not under COMESA or EAC. The tolerance rule makes determination of origin slightly less onerous than when no such rule is in play. Policymakers in the three blocs need to find common ground on tolerance derogation when designing a single set of rules.

The *seventh* challenge is concerned with the rules relating to fisheries. The deviations revolve mainly around the flag of the vessel and whether that rule should be maintained, as is the case with SADC, or otherwise. The other issue concerning this rule has to do with the nationality of the crew and officers. The current requirement under SADC is that, together, crew members holding the nationality of the country concerned should comprise at least 75% of the crew, and this is a joint condition for crew and officers. COMESA and EAC, however, provide separate conditions for their crews and officers.

Finally, consideration must be given to other rules of origin with other regional blocs and countries. The policymakers would need to pay particular attention to possible contradictions and conflicts of rules. The most significant regional bloc is the EU because members the three blocs generally have one or other arrangement with the EU. Accordingly, these arrangements with third parties will play important role in shaping the rules of the enlarged FTA.

An example of a major challenge that is possible with third parties has to do with agreements that provide for cumulation of production. The EU has such an arrangement with ACP states that have initialled the EPA (Naumann, 2009). However, given that not all members of the three blocs have initialled the EPA, this will pose a serious challenge. The second problem with the EPAs is that the possibility of cumulation with South Africa for some products is excluded. For example, if any of the members of the enlarged FTA use materials imported from South Africa for a product intended for the EU market, then the value added of a member must exceed that of South Africa. South Africa is expected to be a member of the enlarged FTA and would therefore be affected by this rule as it introduces bias against South Africa and therefore negates the objective of enlarging the FTA.

6. Suggestions on approach and wayforward

The initial steps towards designing a single set of rules should involve looking at the three sets and bringing them together to find common ground. While this will not happen easily, it does provide a base for such development. The previous sections have established that there are several areas within the existing rules where this is possible and a foundation is, therefore, already there.

In pursing a single set of rules, there should be a drive towards their being more objective, understandable, fair, consistent and predictable. The approach towards a single set of rules should thus start with the adoption of the principle of simplicity. Although this is a difficult goal to attain, given the nature of the rules, relative simplicity could be the second best option. This could be achieved by designing rules in such a way that they converge towards the simplest of the three blocs.

The second principle that should be considered is that of narrow objectives. This implies that the primary objective of the rules should be to prevent trade deflection and, where possible, that should also be the only objective. If it happens that rules end up serving other purposes, this should be by default or unintentionally. The deliberate use of rules as protection, to enhance development or to support industrial policy should be avoided. If they are used for other purposes, they end up being unnecessary protective measures to trade, sometimes to the detriment of the initial objective of encouraging intra-regional trade. Rules of origin are not effective instruments for many roles. If such objectives are desired, then appropriate measures should be designed and applied directly to the attaining of those particular objectives.

The application of the rule on *goods of particular economic importance* should not be extended to the enlarged FTA in its current form. If it is to be considered, then there will need to be more clarity on its rationale and objectives and the selection of such goods. If it is to be extended to the enlarged FTA, consideration should be given to making it a clear and well-defined derogation. Another alternative would be to have it as a tolerance provision. It could also be added to or combined with the current SADC provision on tolerance to avoid confusion and to solve the existing differences.

The sector- and product-specific rules should be carefully considered and, if possible, limited to a few sectors where necessary. The fact that one regional bloc applies them means that they are required. Nevertheless, they add complexity and require immense

administrative, technical and accounting work. There may be a few sectors – such as clothing and textiles, as well as fisheries – where such rules are unavoidable. Unfortunately, there are no easy solutions to this matter and they may have to be experimented with over a period of time before the issues are solved.

Continuous effort should be made to simplify rules and documentation procedures. Initially, the rules will be onerous due to three sets having been pulled together. The same will happen with the documentation necessary to prove origin. For the first few periods of application of the new rules, there is likely to be confusion around compliance and application. Difficulties in the uniform administering, understanding and interpretation of the rules are likely and, therefore, during these early days, a great deal of effort should be dedicated to making information available, to train administrators and to communicate with business communities and other stakeholders.

The rules should be designed in such way that they accommodate small and medium business. The viewpoint is that the current rules are not suitable even for most of the countries classified as “least developing” (LDCs). They require “in house” accounting that only larger, sophisticated businesses have or can afford. The cost of providing the necessary documents to prove origin can be prohibitively high. There are also technical requirements that may simply be beyond the capabilities of most small and medium business. If this provision is not made, then the rules may negate the aims of regional integration.

In order to accommodate third parties and improve on intra-regional trade, it may be useful to consider diagonal cumulation provision beyond just members of the bloc. Diagonal cumulation may be necessary and would allow non-originating materials from specified third parties outside the FTA. This provision, on the back of EU trade arrangements with many members, has the potential to increase intra-regional trade substantially.

All three blocs have made commitments to eventually remove all forms of trade barriers. If this goal is attained, it will be a great achievement for all of them and be very helpful in facilitating simple rules of origin. However, this will be possible only if removal of trade barriers is extended to third parties. A fair application of progressive rules of origin will also be enhanced by such developments. The use of rules of origin declines with removal of other protection measures and, therefore, lower tariff rates will minimise the need for the rules. With that, the administrative burden will be reduced and this could lead to lessened requirements for both human and financial resources.

7. Conclusions

The number of FTAs has been growing exponentially in the last decade. With each of these agreements there is a set of preferential rules of origin. These preferential rules are major determinants of the impact of the agreement and of trade flows. In eastern and southern Africa, an initiative was taken in 2008 to join the three regional blocs of COMESA, EAC and SADC. Although the process will result in collapsing of three sets of rules into one, this does not necessarily mean that the process will be easy.

The rules of origin are set to determine the origin of goods being exported. They are there to prevent transhipment or trade deflection. The role of these preferential rules is to ensure that only goods that originate from participating countries enjoy the preferences and goods manufactured from materials imported from outside the FTA will have to meet a specific set of rules.

Goods get preferential treatment if they are wholly produced in the region or have been "sufficiently worked" to meet the requirements and conditions under those rules. The requirements are set in terms of value added, change in tariff heading or specific conditions for each product. However, other provisions and exemptions from the rules can be provided through cumulation, tolerance or other means. The fact that these conditions must be applied makes rules of origin complex, technical and often contentious.

In the three regional blocs of Africa, the rules applied by COMESA and EAC are more closely aligned with each other than with those of SADC. The key distinguishing feature is that SADC applies product-specific rules, while the other two apply more general rules. For this reason SADC rules – including those that require double heading change – are also problematic within member states. In addition, certain outstanding rules in that particular FTA further reflect the depth of the complexities.

The challenges that are likely to face the formation of single set of rules are numerous. One of these is that there are no standard guidelines and that rules of origin are, by nature, not simple. Another key challenge is to bring SADC rules closer to those of COMESA and EAC. Methodologies of determining whether manufactured goods have been sufficiently worked will also need to be agreed upon.

The new set of rules should adopt a principle of simplicity, by converging on the simplest existing rules of the three blocs and should avoid serving multiple purposes. All they should be concerned about is prevention of transhipment. Another important element is that they should be designed in a way that makes them suitable for and able to accommodate , many businesses in the region, which are largely small to medium in size. The rules should also consider diagonal cumulation and tolerance, both to help overcome some of the differences and to be less restrictive.

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