

SAFEGUARDS & TRADE REMEDIES IN COMESA AND THE TRIPARTITE FREE TRADE AREA AGREEMENT

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THE COMESA EXPERIENCE

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- The COMESA Treaty addresses Trade Remedies through the following general provisions:
 - ◆ *Article 51 – Dumping*
Paragraph 3 provides for levying of anti dumping duty)
 - ◆ *Article 52 – Subsidies Granted by Member States*
Paragraph 4 provides for countervailing duty
 - ◆ *Article 61 - Safeguard Clause*
Provides for safeguards measures subject to review and extension by the Council of Ministers

THE COMESA EXPERIENCE

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- The COMESA Council of Ministers approved the COMESA Regulations on Trade Remedies
- The Regulations provide details on Safeguards, Anti Dumping and Countervailing measures and the requisite procedural processes to be followed in conducting investigations.
- Regulations heavily based on WTO Trade Remedy Agreements and also similar to those under the EAC regime
- Member States have not utilised Trade Remedies Regulations

Kenya Sugar Safeguard: The Exception

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- Kenya in 2002 sought and was granted a sugar safeguard as the country demonstrated that its sugar sector would be unable to compete with sugar from other COMESA Member States.
- Directive Number 1 of 2007 required Kenya to restructure its sugar sector resulting in it being competitive.
- The safeguard has been in place for 13 yrs due to a number of extensions granted by the Council of Ministers, with the most recent being an extension of the safeguard *from April 2015 to February 2016 subject to review and renewal for an additional year.*

Challenges in COMESA

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- Possible Reasons for Non Utilisation of Trade Remedies in COMESA:
 - 1) Capacity constraints: trade remedy investigations require significant technical expertise to conduct
 - 2) Resource constraints: setting up investing authorities and conducting investigations.
 - 3) Intra COMESA trade remains low at 7%, and industrialization levels are still low

TRADE REMEDIES IN THE TRIPARTITE

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- The Tripartite adopted a three tier approach;
 - 1) general provisions in the TFTA Agreement (Part V- Article 17-20),
 - 2) Annex II on Trade Remedies , and
 - 3) The Tripartite Guidelines on the Implementation of Trade Remedies that are an integral part of the Annex

TRADE REMEDIES IN THE TRIPARTITE

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- Negotiations on Trade Remedies are advanced, noting that the TFTA Agreement has been signed
- Annex II on Trade Remedies has been developed and provide principles
- The Guidelines are detailed and establish rules for the conduct of trade remedy investigations and the application of trade remedy measures in Tripartite Member/Partner States

TRADE REMEDIES IN THE TRIPARTITE

- Presence of WTO and Non-WTO Tripartite Members/Partner States has been a challenge, but consensus was reached by Member States on how to balance interests of both.
- Recognition of WTO Trade Remedy Agreements and rights of Tripartite members to apply legislation consistent with WTO Trade Remedy Agreements. Provided for in Guidelines

TRADE REMEDIES IN THE TRIPARTITE

- Member States agreed on preferential safeguards and this is enshrined in Article 19 of the TFTA Agreement
- The Tripartite Guidelines have been based on the WTO Agreements with Member States agreeing on the language in the Guidelines

Implementation in the Tripartite

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Key Issues:

- 1) Existing implementation challenges at REC level expected to persist at the Tripartite level
- 2) Limited experience of Tripartite Member. Only South Africa and Egypt have established and functional trade remedy institutions. Both have experience in implementing Trade Remedies at the WTO. Most recently Zambia (Steel products Safeguard)
- 3) The need for Trade Remedies may be more pronounced at Tripartite level. Presence of strong economies and the impact on smaller economies.

Conclusions

- 1) Tripartite should recognise and prepare for the challenges related to the implementation of a robust trade remedies regime
- 2) The existence of the preferential safeguard will be key as it is expected that this will be commonly utilised
- 3) Recognise that the Tripartite FTA is an opportunity for inexperienced Member/Partner States to firstly develop domestic legislation and commence implementation of Trade Remedies

THANK YOU