

Review of SADC & COMESA Provisions for Trade in Times of Crisis and Pandemic

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Policy Brief

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A contribution to the Policy Hackathon on Model Provisions for Trade in Times of Crisis and Pandemic in Regional and other Trade Agreements

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Executive Summary

This policy brief reviews challenges or difficulties faced by countries related to trade during Corona Virus Disease pandemic of 2019 (dubbed the novel COVID -19), and thereafter recommend measures and provisions to be considered in future trade agreements as a result.

The focus of the brief is on the trade protocol provisions for regional blocs Southern Africa Development Community (SADC) and Common Market for East and Sothern Africa (COMESA) covering the following sectors; food, medical supplies, SMEs and transport and logistics.

The brief will discuss Exceptions and Transparency measures. It will also give insights into how certain provisions have been evoked in Trade of Goods during the pandemic, particularly from the SPS and TBT Agreements.

The author focuses on SADC and COMESA regional blocs as he is familiar with them. These two blocs have not been spared by the COVID -19.

Countries most affected by the COVID-19 in SADC bloc are South Africa, DRC, Madagascar, and Zambia, while in COMESA these are Egypt, Kenya, Ethiopia, and Sudan.¹ While sectors heavily affected include tourism and leisure, aviation and maritime, automotive, construction and real estate, manufacturing, financial services, education and the oil industry.²

¹ WHO Coronavirus Disease Dashboard; https://covid19.who.int/?gclid=Cj0KCQjwjer4BRCZARIsABK4QeUbZUMtm8Z2KhZ1Wwt_6oiXpCk-lfr2T0iESzgjqs-ztNf67QfthKoaAtEiEALw_wcB

² Impact Of Covid-19 Pandemic On SADC Economy : Volume 1 - April 2020

The World Trade Organization, World Health Organisation and regional bodies have highlighted the challenges and offered some guidance on how to conduct trade and not create unnecessary barriers during the pandemic.

A snapshot of the findings shows that some member states in SADC and COMESA have notified the WTO secretariat in response to the COVID-19 pandemic under the emergency/urgent notification provisions in the Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) Agreements,³ Article 6 and Articles 2, 5 and 7 respectively.

About fifty per cent the notified measures were reported as temporary with respect to TBT, while SPS measures, almost two-thirds of the notifications as emergency measures, and half were categorised as temporary measures.⁴

For instance Botswana, Egypt and Uganda notified its prohibition or restriction on imports for SPS reasons as part of the COVID-19 pandemic.

Updates also indicate that some countries in SADC and COMESA blocs, and being members of the WTO, have complied with transparency provisions.⁵ Countries like Angola, DR Congo, Kenya, Malawi, Mauritius, South Africa, and Zambia had

³ Under the SPS Agreement – Article 7, and Annex B (2) and B (6); under the TBT Agreement – Articles 2.10, 2.12, 5.7, and 5.9.

⁴ WTO, the information note of 20 May 2020, “Standards, Regulations and Covid-19 – What Actions Taken by WTO Members?”

⁵ WTO Secretariat Information Note entitled “Transparency – Why it matters at times of crisis”

notified on tariff reductions on selected products during the COVID-19.⁶

To facilitate Trade of Goods, the two blocs have developed guidelines on how to harmonize, simplified customs procedures.

However, most of the measures or policies proposed and adopted remain ad-hoc or emergency solutions which mostly are general in nature or less bidding on member states.

It is hoped that this paper will make a modest contribution by highlighting challenges and give some recommendations for future actions in connection with pandemics.

Context and importance of the SADC and COMESA provisions

Trade is vital for economic growth and wellbeing of global order. This means goods and services should move from one corner of the world to another with fewer obstacles or barriers.

Table 1 gives a snapshot of the general statistics of SADC and COMESA blocs for the year 2019. With the pandemic still ravaging the SADC and COMESA members, the statistics will great reduce in the year 2020 but improve as guidelines are followed and eventually vaccines rolled out.

The reduction in trade statistics after the COVID-19 will mainly be attributed to the less flow of goods and services and the invoked trade restrictions and trade barriers related to standards.

⁶ Market Access Map, COVID-19 Temporary Trade Measures. Temporary trade measures enacted by government authorities in relation to COVID-19 pandemic rapidly spreading across the world. <https://macmap.org/covid19>

Table 2 compares the COVID -19 cases and the number of death as of 23 July 2020 for the two regional blocs. According to WHO, these figures are not expected to flatten out soon.

Table 1. Key Facts trade blocs

	SADC	COMESA
GDP (USD, bn)	680	882
Population (million)	345	560
Members	16	21
Export of Goods & Services (% of GDP)	30.77	17.89
Import of Goods & Services (% of GDP)	35.42	25.47
Trade of Goods with Africa (USD, 2008 bn)	49.8	27.3

Source: COMESA, Comstat, 2019.

Table 2. Key Facts COVID-19 Statistics

	SADC	COMESA
COVID-19 Cases	428643	170859
COVID-19 Deaths	6555	6207

Source: WHO, COVID-19 statistics (23 July 2020)

Besides countries creating barriers to trade through tariffs and non-tariffs, application of trade rules during pandemic or natural disasters can result in trade barriers.

However, such actions should be in line with the fair trade of WTO agreements. For instance Article XX: b of GATT 1994⁷ under General Exceptions allows for diversion from the rules under certain circumstances, i.e. health and security issues.

⁷ Article XX : b of the GATT 1994, entitled ‘General Exceptions’, states:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any [Member] of measures:

b. necessary to protect human, animal or plant life or health;

However, GATT 1994 generally prohibits export bans and restrictions, it allows members to apply them temporarily to prevent or relieve critical shortages of foodstuffs or other essential products.⁸

When trade restrictions occur due to natural disasters like pandemics, in this case, COVID-19, the provisions (Market Access, National Treatment, and IP issues) governing fair trade are viewed differently. In both the SADC and COMESA trading blocs the effects of COVID-19 are common. The COVID-19 pandemic has affected these blocs' trade negatively.

The two blocs have dealt with pandemic differently. For example, SADC has been encouraging the private sector to shift (“re-direct”) production lines towards the production of Personal Protective Equipment (PPE).⁹

⁸ Article 12 of the Agreement on Agriculture entitled "Disciplines on Export Prohibitions and Restrictions" provides that, where a member institutes any new export prohibition or restriction on "foodstuffs" in accordance with Article XI:2(a) of GATT 1994, it shall undertake two actions.

Firstly, it shall give due consideration to the effects of such prohibition or restriction on importing members' food security. Second, before instituting the measure, it shall give notice to the Committee on Agriculture including information on the nature and duration of the measure.

Upon request, it shall consult with any member having a substantial interest in the measure in question, which in practice will take the form of bilateral consultations. The member instituting the export prohibition or restriction shall also provide additional information upon request.

⁹ Outcome of SADC Council of Ministers Virtual Meeting held On 29th May, 2020, Para. 4

The SADC Council of Ministers in general provided further regional Guidelines on Harmonization and Facilitation of Movement of Essential Goods and Services across the SADC Region so as to facilitate trade in goods and services, and to improve the socio-economic life.

The other measures include *“setting regional standards to facilitate harmonization of systems and capacities in the health sector; prioritizing digitization; joint resource mobilization and pooled procurement; developing a framework for logistics, connectivity and automation of border management for effective logistics and trade facilitation.*

Others measures are *provision of financial lifelines to Small and Medium Enterprises (SMEs); expanding social safety nets and social protection measures for the poor and vulnerable; synchronising fiscal and monetary measures to mitigate the effect of COVID-19 pandemic on the region's macroeconomic and financial stability; developing recovery plans; accelerating the implementation of the SADC Industrialization Strategy and Roadmap 2015-2063 focusing on value chains to among others, pharmaceutical value chains; and to deepen regional cooperation and integration”*¹⁰.

As for the COMESA bloc, in April 2020, response to this global economic crisis, the COMESA Business Council (CBC) through various engagements with its members and Associations developed a position report titled “COMESA Business Position Statement: Facilitating the Movement of Essential Goods and Services Across Borders

¹⁰ Outcome of SADC Council of Ministers Virtual Meeting held On 29th May, 2020, Para. 8

During the Period of the COVID-19 Pandemic.”¹¹

The COMESA Regional Guidelines *are aimed at, among others, limiting the spread of COVID-19 through transport across borders; facilitating the implementation of transport-related national COVID-19 measures in cross-border transportation; facilitating the flow of essential goods such as fuel, food and medicines; limiting unnecessary and mass movement of passengers across borders; and harmonizing and coordinating transport-related national COVID-19 policies, regulations and response measures.*¹²

These Regional Guidelines for both SADC and COMESA blocs recognize the need for the Member States to implement common measures to sustain the movement of goods and services during the COVID-19 period.

However, notification, transparency and general movement of goods and services in the two regional blocs cannot be described as above board.

Are the current measures in SADC and COMESA regional blocs enough to promote trade? Can these measures be used in future, in the event that another pandemic occurs? Do these measures work in tandem with motherboard, WTO, and safeguard all member states' interests?

¹¹ COVID-19 Business Insider Special Report, 17 April 2020. *COMESA Business Position Statement: Facilitating the Movement of Essential Goods and Services Across Borders During the Period of the COVID-19 Pandemic.* www.comesabusinesscouncil.org

¹² COVID-19 Business Insider Special Report, 17 April 2020. Key Highlights Of The COMESA Regional Guidelines

Challenges of the SADC and COMESA blocs Policy option(s)

As for the SADC policy implementation of encouraging the private sector to shift their core business to production to PPEs, this seems like a temporary (ad-hoc) measure and might not meet international standards in times of crisis. This can aggravate the health crisis in countries with less monitoring mechanism as standards might be compromised to meet the desired targets.

Production shift, manufacturing of PPE or other medical supplies, in the regional blocs calls for extra resources for setting production bases in selected countries. Procurements of these medical supplies from these production bases should be bidding on member states in order to create production incentives. Given the political economy of trade and the alliances with developed countries, this seems unlikely in both SADC and COMESA blocs.

Nevertheless, on the matter of trade facilitation of goods and services, both blocs had put recommendations in line with member states objectives to promote trade and safeguard the health of their people. This has allowed the movements of foods, medical supplies, and transport logistics.

As earlier mentioned, the SADC bloc has general or less bidding recommendations which also do not consider member states' variable geometry. In future, this may result in unbalanced trade policies and makes pandemic prevention and mitigation measures difficult.

With regard to support of SMEs during the COVID-19, member states through their central banks have provided some kind of stimulus packages so that SMEs stay afloat and minimize massive job losses.

On the other hand, COMESA is specific to the measures to facilitate trade and a definite reporting mechanism developed, which fall into three categories, Preventive Measures in Place, Trade Facilitation or Business Support and Coordinating Ministry (National Contact Points) .

Policy Recommendations

Coverlet Protectionist policies would do more harm than good. Few WTO members globally have adopted protectionist policies, mainly export restrictions, for fear of shortages of supply or goods associated with COVID-19, as well as other essentials goods such as food and basic materials. Some SADC and COMESA member states have adopted these protection measures including standards.

Trade policies adopted by some member states and other WTO countries during the crisis have affected the cost and availability of COVID-19-related medical supplies as well as necessities, like food.

Policy specifications are bidding than general ones. For a robust response to future crisis or pandemics, the regional blocs SADC and COMESA, member states need precise provisions in the trade protocols so that there will not exist loopholes and pose health risks.

Pooled procurement measures to put in place. Further, the regional blocs need to strengthen a pool procurement process which either is centrally located or an online platform to reduce long procedures in procurement of medical accessories if an individual member state did procure by itself especially the medical supplies during the pandemic.

Promotion of Research and Development strategy for healthcare and Vaccine. The regional blocs should strength their research

units and strategically promote the production of healthcare items and vaccine delivery within the regional bloc in a fast manner. The blocs boost of qualified scientists and other professionals, hence what lacks are financial resources. But with lobbying and commitment from member states, the initiative will prove a venture worth the investment when future pandemics occur.

Conclusion

The response calls for regional to facilitate the flow of essential goods and services and ease the burden on the effects of COVID -19 can help member states minimize the overall impact.

There also is a need for active policies to support SMEs so that disruptions are not permanent, and the shocks do not persist. This requires a coordinated effort between governments, banking sector and domestic firms.

As they chart their future beyond the pandemic, SADC and COMESA regional blocs should reconsider their industrial policies and encourage firms to rethink their strategies to address emerging uncertainties in the area of food production, pharmaceuticals and other medical supplies.

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