"Regional Investment rules in Eastern and Southern Africa : *COMESA Common Investment Area (CCIA) towards the Tripartite COMESA-EAC-SADC and Pan African investment arrangements"*

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Presentation outline

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- Background of the Tripartite Initiative
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- Venn Diagram of the COMESA –EAC-SADC Tripartite
- MAP of the COMESA –EAC-SADC Tripartite
- BITs: "Spaghetti bowl" in the Tripartite
- Consolidation of regional investment rules: Tripartite initiative and Continental investment arrangement

1. Introduction: COMESA-EAC-SADC in the Continental context

- COMESA, EAC and SADC : established following the adoption of Lagos Plan of Action which seeks to establish an African Economic Community;
- COMESA, EAC and SADC : first sub- regional *building blocks* embarked in the integration process of the African Economic Community
- COMESA (1993), EAC(1967) and SADC (1992) : same goal with other regional groupings such as ECOWAS(1975), ECCAS (1988), CEMAC(1994), IGAD (1996)...

2. Background of the COMESA – EAC-SADC Tripartite

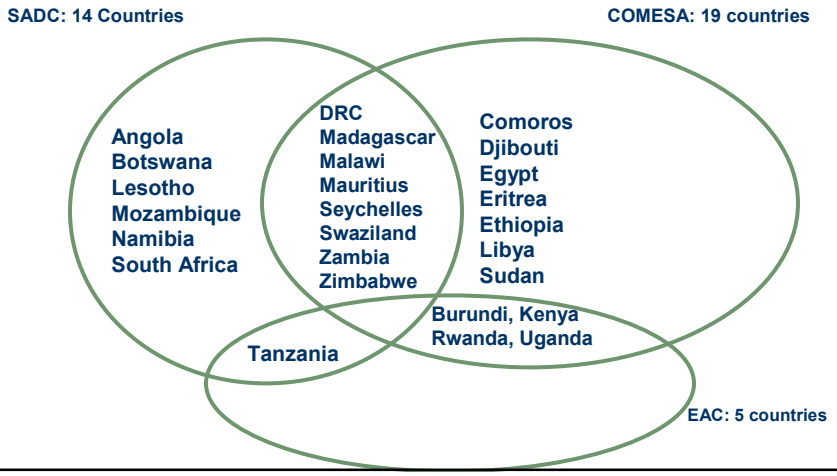
- Tripartite : comprised of 3 Regional Economic Communities (RECs) namely:
  - Common Market for Eastern and Southern Africa (COMESA);
  - East Africa Community (EAC); and
  - Southern African Development Community (SADC).
- Tripartite has more than 527 million people and a Gross domestic product (GDP) of approximately 624 Billion US Dollars.
- 26 member countries (vey soon 27 with South Sudan) of the Tripartite make up 57% of the population of the African Union (AU) and just over 58% in terms of contribution to GDP.

3. Main pillars of the COMESA – EAC-SADC Tripartite

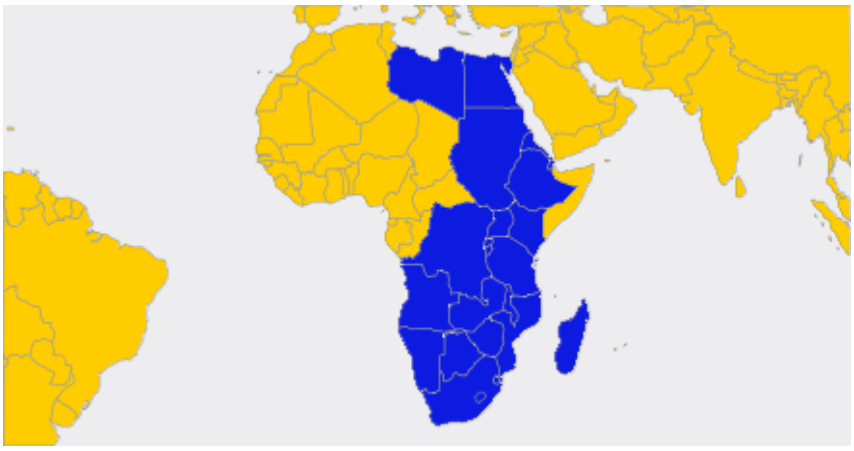
- On 12 June 2011 in Johannesburg, South Africa: Tripartite summit agreed on the use of the integration approach built on three pillars namely:

- *Market integration (* through trade facilitation to improve the flow of goods along transport corridors by lowering transit times and the cost of trading);
- *Infrastructure development* of surface (road, rail, border posts, seaports) and air transport, ICT and energy;
- *Industrial development*

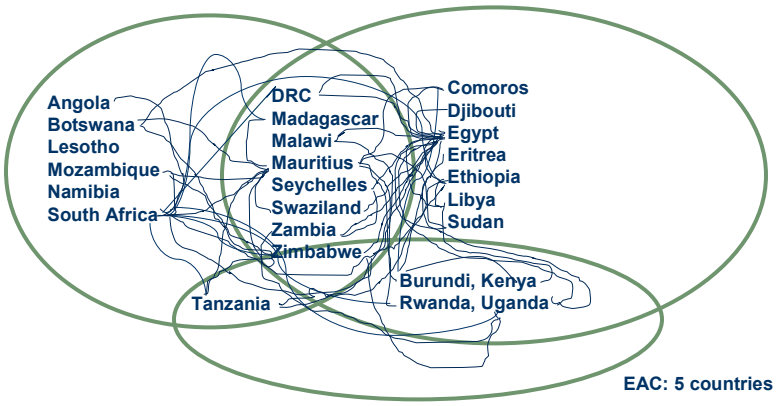
4. Venn Diagram of the COMESA –EAC-SADC Tripartite



5. MAP of the COMESA –EAC-SADC Tripartite



6. BITs: "Spaghetti bowl" within the Tripartite COMESA –EAC- SADC



6 (a) Disentangling "Spaghetti bowl" in the Tripartite COMESA –EAC- SADC

Number of BITs signed and/or ratified by 26 countries within the Tripartite to June 2011:

- Egypt: 13 BITs out of 110 BITs
- South Africa: 11 BITs out of 46 BITs
- Mauritius: 10 BITs out of 36 BITs
- Zimbabwe: 8 BITs out of 31BITs
- Uganda, Ethiopia, Libya, Tanzania, and Mozambique: 4 BITs each
- Botswana, Burundi and Comoros: 3 BITs each
- Zambia, DR Congo, Swaziland, Sudan, Seychelles, Rwanda, Malawi, Kenya and Madagascar: 2 BITs each
- Angola, Djibouti and Eritrea: 1 BIT each
- Namibia and Lesotho: 0 BIT each

6 (b). DTTs: "Spaghetti bowl" within the Tripartite COMESA –EAC- SADC

- Number of DTTs signed and/or ratified by 26 countries within the Tripartite to June 2011
- Mauritius: 11 DTTs out of 39 DTTs
- Zambia: 4 out of 19 DTTs
- Swaziland: 3 DTTs out of 5 DTTs
- Uganda: 3 DTTs out of 10 DTTs
- Seychelles: 2 DTTs out of 12 DTTs
- Zimbabwe: 2 DTTs out of 14 DTTs
- Egypt: 1 DTT(with Sudan) out of 47 DTTs
- Ethiopia: 1 DTT(South Africa) out of 9 DTTs
- Malawi: 1DTT (South Africa) out of 9 DTTs
- Kenya: 1 DTT(with Zambia) out of 12 DTTs
- DR Congo: 1 DTT(with South Africa) out of 3 DTTs
- Rwanda: 1DTT (with Mauritius) out of 2 DTTs
- Sudan: 1 DTT(with Egypt) out of 10 DTTs

7. Consolidation of the international investment treaties in the Tripartite COMESA-EAC-SADC

- **COMESA initiative**: *Investment Agreement for the COMESA Common Investment Area* (CCIA) since 2007 and creation of a COMESA regional investment agency among other COMESA institutions to support trade and investment (*PTA-Bank, ATI, COMESA fund)*

Main features of the investment Agreement for the CCIA

(i) Investment and investor protection from expropriation and any other measure having similar effect

(ii) Setting up standard for national treatment and Most-Favoured –Nation (MFN) status for COMESA investors

(iii) Investment liberalization by removal of conditions on Foreign investors (taking into account issues such as protection of infant industries, food security, public health...)

(iv) Right for a State party to regulate in the public interest (Art. 22)

(v) Corporate responsibility (Art 13)

(vi) Harmonization of investment policies

(vii) Arbitration option including existing fora for the settlement of investment disputes (e.g. COMESA Court of Justice, ICSID)

7. Consolidation of the international investment treaties in the Tripartite COMESA-EAC-SADC (cont)

- **COMESA initiative (cont)**

- Major programmes under CCIA

(i)Creation of an enabling business environment in Member States through policy and institutional reforms, transparency of investment policies, regulations and procedures by making the information widely available

(ii) Co-operation on investment by organising joint investment promotion activities, signing Double Taxation Agreements...

(iii) Opening up of economic sectors (liberalization) by reducing and eliminating restrictive investment measures

7. Consolidation of the international investment treaties in the Tripartite COMESA-EAC-SADC (cont)

- **Rationale** : *no need for COMESA countries to sign new BITs among themselves*; and further, terminate the existing BITs in the Region.

- **Regional Double Taxation Agreement arrangement**: adoption of the COMESA Model on Double Taxation Agreement in February 2012 aiming at facilitating DTAS negotiation among COMESA countries and between COMESA countries and third party countries.

7. Consolidation of the international investment treaties in the Tripartite COMESA-EAC-SADC (cont)

- **SADC initiative**: Investment and Finance Protocol with following major features are:

(i) Co-operation on investment
(ii) Investment promotion and protection
(iii) Promotion of PPP
(iv) Right for country to regulate in public interest (Art. 26: State party may conclude bilateral investment treaties with third states)
(v) Harmonization of investment policies
(vi) Corporate responsibility (Art. 10)
(vii) Arbitration option for dispute settlement (SADC Tribunal and other fora)

Existing SADC MODEL OF Double Taxation Agreements

- **EAC initiative**: - prospect on setting up a common investment area
  - Existing EAC Model of Double Taxation Agreement

7. Consolidation of the international investment treaties : *Tripartite COMESA-EAC-SADC and continental investment arrangements (cont)*

- For COMESA only: 374 BITs and 193 DTTs signed by 19 Member States
- Similarity of features between the Investment Agreement for the CCIA(COMESA) and investment provisions under the Investment and Finance Protocol (SADC)
- Eight COMESA and SADC countries participate in the CCIA (COMESA) and in the Investment & Finance Protocol (SADC)
- Four EAC States (out of 5) are part of the COMESA Common Investment Area
- 1 State (Tanzania) is part of the SADC Investment & Finance Protocol

7. Consolidation of the international investment treaties in the Tripartite COMESA-EAC-SADC (cont)

- Need to consider the consolidation of the existing investment rules in the context of Tripartite
- Need for consultations on the creation of a ***Grand common investment area*** by incorporating the investment chapter in the Free Trade Area instrument
- **Provisions to be considered**:

  Apart the classic provisions, considering the following:

  - no need to conclude new BITs among the Member States within the region
  - regional approach for negotiations with the third state
  - gradual transfer of negotiation power to the region

7. Consolidation of regional investment rules: Continental investment arrangement (cont)

- Initiative taken at the African Union level to address the Free Trade Area and investment rules at the continental level
- Roadmap set up to launch the continental free trade area in 2015 and start related negotiations in 2017
- First meeting of experts from regional economic communities (COMESA-EAC-SADC-ECOWAS-ECCAS-IGAD…) and supporting institutions, held in Addis Ababa on 4-5 September 2012
- Objective of the meeting: Harmonization of investment rules across the continent starting by the adopt ion a Pan African Investment Code: The related Terms of Reference for the consultancy service were discussed and adopted by experts

Consolidation of the international investment treaties

Thank you