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**COMMON MARKET
FOR EASTERN AND SOUTHERN AFRICA**

First Meeting of COMESA Non-Tariff Barriers Enquiry Points

Blantyre, Malawi
27-29 September, 2007

**FINAL REPORT OF THE FIRST MEETING OF
COMESA ENQUIRY POINTS FOR NON-TARIFF BARRIERS**

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A. INTRODUCTION

1. The First Meeting of COMESA Enquiry Points on Non-Tariff Barriers was held from 27th - 29th September, 2007, in Blantyre, Malawi.

B. ATTENDANCE, OPENING OF THE WORKSHOP AND ORGANISATION OF WORK

Attendance

2. The meeting was attended by delegates from Burundi, Union des Comores, Democratic Republic of Congo, Djibouti, Egypt, Kenya, Malawi, Mauritius, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. The meeting was also attended by representatives of the following organisations: Southern African Development Community, East Africa Business Council, Malawi Chamber of Commerce and Industry and Malawi National Working Group on Trade Policy. The list of participants is attached at Annex 8

Opening of the Meeting (*Agenda item 1*)

3. Mr. Newby Kumwembe, Principal Secretary for the Ministry of Trade and Industry opened the meeting. In his statement, Mr. Kumwembe welcomed the delegates to Malawi.

4. He noted that the meeting was being held at an opportune moment following the decisions taken at the May 2007 Policy Organs meetings regarding establishment of a Customs Union in December 2008. The meeting, which was a follow-up on the workshop held in Nairobi in June 2007, had brought together the important actors, from public and private sectors, involved in international trade with the capacity to address Non-Tariff Barriers.

5. He noted that a Customs Union will entail that members would have a common external tariff (CET) against third countries while trade amongst members would be duty free and would not be subject to non-tariff barriers. He further noted that this process would be rendered meaningless if non-tariff barriers to intra-COMESA trade are not resolved.

6. He reminded the meeting that the elimination of non-tariff barriers (NTBs) remained an urgent priority for the COMESA member States and in this regard underscored the objective of the meeting, which was to agree on operational modalities for the operationalisation of the NTB enquiry points.

7. The Principal Secretary observed that non-tariff barriers had contributed towards reducing the gains from trade by restricting domestic market access to regional exporters, in addition to denying consumers welfare enhancing opportunities through access to reasonably priced regional imports.

8. He also noted that in recent years, the relative importance of NTBs as both protection and regulatory trade instruments had been raised by the lowering of Most Favoured Nation (MFN) tariffs, particularly in preferential trading

arrangements like a Customs Union. With this tariff liberalization, NTBs are increasingly becoming prime market access concerns. He gave several reasons to explain such concerns:

- ✓ The first, and most immediate, concern is that NTBs have considerable potential to decrease or even nullify market access liberalization achieved through the binding and/or removal of tariffs.
- ✓ Second, many NTBs are disciplined under the WTO Multilateral Trade Agreements, such as import licensing, technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS) or anti-dumping measures, and are supposed to serve quite legitimate and important objectives, including protection of human, animal and plant health. In practice, however, there is the problem of actual or potential abuse when such measures are employed to disguise protectionist purposes, thus complicating market access, particularly for developing countries.
- ✓
- ✓ Third, it is now widely recognized that most NTBs are quite complex and expensive technical and policy tools, with serious implications for developing countries as both users and targets of such measures.
- ✓ With regard to the meeting, he expressed hope that it would lead to a successful initiation of discussions on methodologies, classifications, quantification and development impacts of NTBs, thus hastening the momentum for their resolution and removal.
- ✓ In conclusion, he thanked the COMESA Secretariat and officials of the Ministry of Trade and Industry of Malawi for their efforts in organizing the meeting and wished delegates fruitful deliberations during the meeting.

9. Mr. Happias Kuzvinzwa, representing SADC Secretariat expressed appreciation for having been invited to participate at the meeting as the process would further inform the SADC process on the development of a similar NTB monitoring framework.

10. SADC expressed commitment to cooperation and harmonization on issues of trade facilitation in the region and noted that their participation at the meeting was testimony to their commitment.

11. SADC further indicated that the success of the NTB framework would be measured by “walking the talk” as implementation should now be the main focus.

12. Earlier, Mr. Geoffrey Osoro, Senior Trade Policy Expert of the Division of Trade, Customs and Monetary Affairs at the COMESA Secretariat had delivered a statement on behalf of the COMESA Secretary General. In his statement he thanked the Government of Malawi for hosting this important meeting on Non-Tariff Barriers. He also thanked the Permanent Secretary for the Ministry of Trade and Industry, Mr. Kumwembe for having agreed to officiate at the opening ceremony for the meeting.

13. He noted that the meeting was extremely important since it was providing an opportunity for representatives of the public and private sector within the COMESA region together with SADC and EAC and other important stakeholders to further develop modalities for reducing the incidence of Non-Tariff Barriers.

14. He observed the elimination of Non-Tariff barriers would enable industries to benefit from economies of scale in addition to availing competitively priced products to the regions consumers, thus enhancing general welfare.

15. On the agenda for the meeting, Mr. Osoro noted that the meeting for Non-Tariff Barriers Enquiry Points was being held to forge common strategies at the regional level in response to shared concerns regarding the continued proliferation of Non-Tariff Barriers in intra-regional trade. He also advised that COMESA, in fulfillment of Council decisions, had undertaken a raft of measures and actions specifically inclined towards freeing regional trade from the NTBS menace. He noted that though several of these decisions are yet to be fully implemented by all the member States, the fact remains that the framework and foundation had been well established for the sustained treatment and removal of Non-Tariff Barriers.

16. He also noted that the Council of Ministers had also established institutional frameworks to facilitate the implementation of decisions and Treaty provisions. Among these are the establishment of national enquiry points by all member states and in conformity with this decision, a number of countries have since established them.

17. He advised that the meeting would focus on three substantive items;

- (i) Operational modalities for the NTBS enquiry points as recommended by the Council of Ministers.
- (ii) National and regional action plans for the elimination of NTBS including monitoring and evaluation mechanisms.
- (iii) Networking arrangements between the NTBS focal points for future collaboration on NTBS matters.

Adoption of the Agenda and Organisation of Work (*Agenda item 2*)

18. The meeting adopted the following agenda:

1. Opening
2. Organisation of Work
3. Status of Elimination of Non-Tariff Barriers in COMESA
4. Operational Modalities for the NTBS Enquiry Points
5. Country Experiences on Utilisation of NTBS Reporting Form

6. National and Regional Action Plans for the Elimination of NTBS
 7. Presentation on Online Reporting System
 8. Working Group Session
 9. Reports by the Working Group
 10. Adoption of the report, wrap-up and Closure
19. The meeting adopted the following hours of work:

Morning	:	0900 – 13. 00 hours
Afternoon	:	1400 – 17.00 hours

C. ACCOUNT OF PROCEEDINGS

Status of Elimination of Non-Tariff Barriers in COMESA (*Agenda item 3*)

20. The Secretariat presented an update on the status of resolving the cases that had been reported by member States as Non-Tariff Barriers. The Secretariat noted that it required additional information from Member States on a number of reported NTBs to enable it to provide technical opinion. In this respect, the Secretariat will write to Member states detailing the additional information required.

21. The meeting was informed that Article 49 of the COMESA Treaty obliges member States to remove immediately upon entry into force of the Treaty, all the then existing non-tariff barriers to the import into that member State of goods originating from the other member States and thereafter refrain from imposing any further restrictions or prohibitions.

22. The status reports and corresponding advice from the Secretariat appear in Annex 1.

Recommendation

23. (i) The meeting recommended that the Secretariat works with the countries concerned to resolve the cases by the end of December 2007.
- (ii) The Secretariat to write to members States before the next trade and customs committee detailing the additional information required on each of the reported NTBs.

Operational Modalities for the NTBS Enquiry Points (*Agenda item 4*)

23. The Secretariat presented a report on the operational modalities for NTBS enquiry points.

24. The Secretariat advised the meeting that the Seventeenth Meeting of the COMESA Council of Ministers in 2004 had decided that member States should designate COMESA Enquiry Points at the Ministries of Foreign Trade or other relevant agencies for the purpose of:

- (i) Implementing Article 50 of the COMESA Treaty relating to non-introduction of new NTBS.
- (ii) Informing the COMESA Secretariat of reported NTBS through application of a common form to be used by importers and exporters.
- (iii) Providing clear guidelines to the business community on the areas identified as NTBs.
- (iv) Sensitising stakeholders on the monitoring and evaluation mechanism and reporting tool;
- (v) Facilitating access to information, including the electronic transmission of information to the business community; and
- (vi) Tracking and monitoring NTBs affecting intra-COMESA trade.

25. The Enquiry points were also expected to be instrumental in the implementation of, among others, the following Council decisions:

- (i) Facilitating the immediate removal of NTBs by the imposing Countries and submission of reports on their elimination based on the technical opinion submitted by the COMESA Secretariat.
- (ii) Facilitating Country missions by the Secretariat to resolve outstanding NTBs in a timely manner.
- (iii) Providing the Secretariat with trade regulatory requirements for all traded products for dissemination to the business community to assist in identifying NTBs in the course of trading. Member States should apply in their intra-COMESA trade the adopted COMESA standards and international standards for the goods on which COMESA has not yet adopted standards.
- (iv) Providing clear guidelines to the business community on the areas identified as NTBs.
- (v) Facilitating access to information, including the electronic transmission of information to the business community.

- (vi) Tracking and monitoring NTBs affecting intra-COMESA trade through utilisation of the common form for reporting.

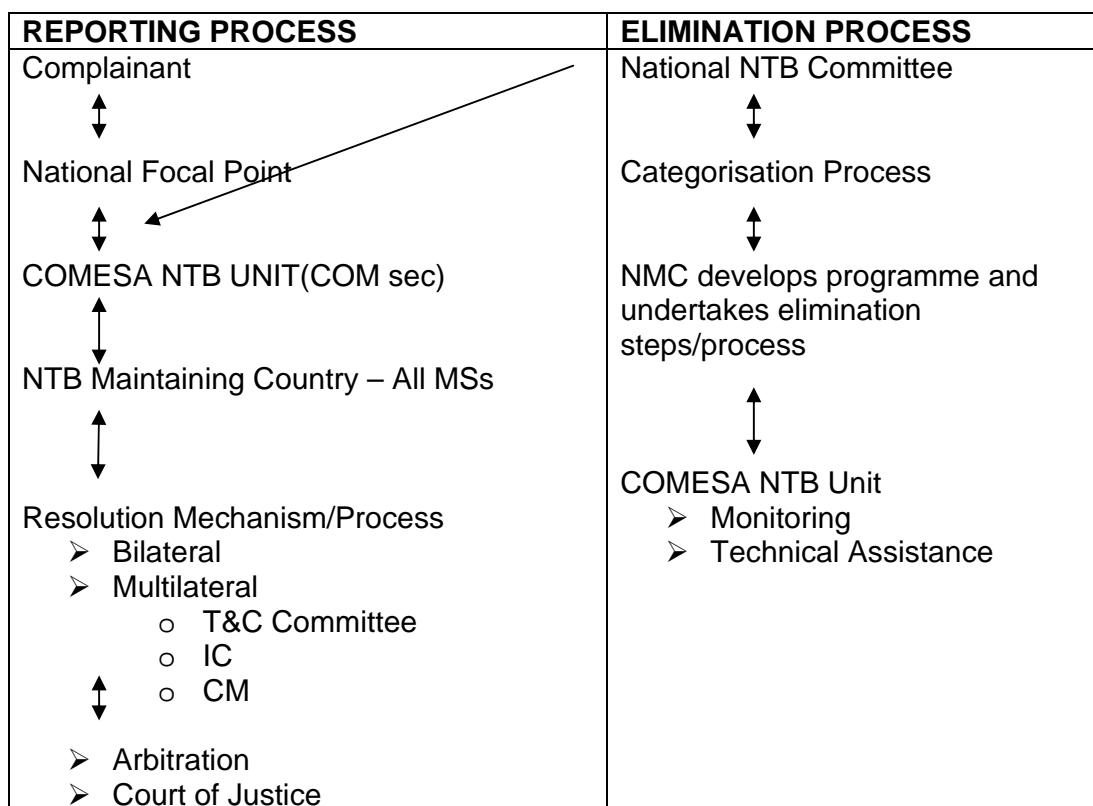
26. The meeting was further informed that nine countries have so far designated the NTB Enquiry points, these being Kenya, Zambia, Egypt, Seychelles, Mauritius, Sudan, Uganda, Zimbabwe and Malawi. The meeting was further informed that the enquiry points that were in place had not been quite effective in meeting their mandates in view of certain constraining factors. In this respect, the workshop on NTB's that was held in June 2007 had advocated for the adoption of operational modalities which would facilitate and guide the operations of the NTBS Monitoring Committees and the National Enquiry Points and had further recommended that a regional meeting of the notified enquiry points be organized to agree on operational modalities.

27. In the ensuing discussions on this matter, it was observed that countries that had not established the National Enquiry Points to expeditiously do so and to designate an officer who will be discharged with the task associated with the NEP.

28. Regarding operational modalities of the NTBS Enquiry Point the Secretariat advised that the National Enquiry Point would be part of the structure of the National Monitoring Committees in order to have a more effective system of reporting, monitoring and elimination of NTBs. The NEPs will serve as the secretariat for the NMCs, under which technical assistance will also be factored in. This will be the national institutional structure aimed at facilitating NTB reporting, elimination/reduction and feedback to business community. It was necessary to expedite the establishment of the National Monitoring Committees (NMC), comprised of key stakeholder institutions whose key responsibility will be to coordinate elimination of reported NTBs along the following lines:

- (i) Defining the process of elimination
- (ii) Defining mandate and responsibilities
- (iii) Confirming deadlines for action
- (iv) Agreeing on recourse to non-action

29. The Reporting and Institutional Structure for Elimination NTBs was adopted as follows:



30. The meeting was informed that Key stakeholders from the Public and Private Sector should be selected at the national level, and each should be represented at the NMC. Some examples include:

No	Institution	Designation of member
1	Ministry in charge of Trade and Industry matters	Permanent Secretary
2	Ministry in charge of COMESA matters	Permanent Secretary
3	Ministry in charge of Foreign Affairs	Permanent Secretary
4	Ministry in charge of transport, communications, roads	Permanent Secretary
5	Ministry in charge of Public Finance	Permanent Secretary
6	Ministry in charge of Agriculture, livestock, and fisheries matters	Permanent Secretary
7	Ministry in charge of immigration matters	Permanent Secretary
8	Revenue Authority	Commissioner General
9	Customs and Excise Department	Commissioner
1	Weighbridges Department	Director or Head of department
0	Bureau of Standards/ authority	Director/ Head/ Chief Executive
11	Ports Authority	Chief Executive
12	Railways Corporation/authority	Chief Executive
13	Institution in charge of plants health and pest control inspection services	Chief Executive
14	Weights and Measures Agency	Chief Executive
15	Business association/ manufacturers association	Chief Executive
16	Clearing and forwarding association	Chief Executive
17	Chamber of Commerce and Industry	Chief Executive
18	Export Promotion Council/ public trade promotion organisation	Chief Executive
19	Selected businesses with substantial regional trade (exports and imports)	Managing Directors
20	Selected local authorities whose functions impact substantially on business activities	Town Clerk

31. The meeting was further informed that it was essential that consensus should be achieved at the national level on the major responsibilities of key stakeholder institutions in reporting, monitoring and facilitating NTBs elimination process. Such responsibilities include:

Stakeholder Institution	Responsibilities
Businesses	Reporting existence of NTBs to their associations or chambers of commerce, and monitoring whether planned/recommended actions are being implemented by line ministries and agencies responsible for enforcement.
Business Associations/ Chambers of Commerce/ Clearing & Forwarding Associations	<ul style="list-style-type: none"> ▪ Receiving NTB complaints from members. ▪ Where possible verifying the genuineness of cases reported. ▪ Preparing reports on reported cases for the NMC¹ members, line ministry in charge of REC matters and the COMESA Secretariat for information and facilitation of regional discussions/ policy action. ▪ Building a database on reported NTBs. ▪ Acting as watchdogs on the progress of eliminating NTBs. ▪ Following up progress achieved in eliminating or minimizing NTBs at NMC meetings. ▪ Inform their members on the progress made in resolving NTBs at national and regional level.
Line ministry or agency responsible for enforcing a regulation and taking action on reported NTBs	<ul style="list-style-type: none"> ▪ To receive NTBs complaints from individual businesses, business associations and chambers of commerce. ▪ To verify the genuineness of reported cases, review the justification for the law, regulation or procedure, and whether such laws, regulation or procedure contravenes any COMESA or international requirements (for example WTO agreements) ▪ To prepare quarterly reports on NTB cases reported and actions taken, and table them to NMC meetings.
NTBs National Monitoring Committees (NMCs)	<p>Each NMC will be the national arm monitoring the progress of eliminating NTBs experienced at the national and COMESA level. It will be Co-Chaired by the Private and Public sector and will be responsible for:</p> <ul style="list-style-type: none"> ▪ Receiving copies of NTB complaints sent to line ministry or agency by business associations, chambers of commerce, and individual businesspeople. ▪ Discussing whether actions taken by the line ministry or agency responsible for enforcement are sufficient. ▪ Initiating bilateral discussions with counterpart NMC in other COMESA partner states on NTB cases that may be of a cross-border nature, and initiating an elimination process. Where necessary, equivalent agencies responsible for enforcement of trade regulations will be brought together to negotiate a harmonization process, if the NTB in question is in form of varying trade requirements between member states. Bilateral dispute resolution will always be used before any NTB cases are referred to the COMESA Secretariat for policy action. ▪ Forward information to COMESA Secretariat on actions taken by line ministry or agency responsible for enforcing an NTB for dissemination to other Partner States NMC. ▪ Disseminating information on actions taken on reported cases in other partner states to the business associations and chambers of commerce for onward transmission to the business community. ▪ Referring cases to relevant COMESA Secretariat, where no satisfactory solution in form of a planned review, amendment or withdrawal has been proposed by the agency responsible for enforcement within one calendar month from the date of reporting. Such cases will be forwarded to COMESA Secretariat within one calendar month from the date of reporting by the

¹ NMC – National Monitoring Committee

Stakeholder Institution	Responsibilities
	<p>business association/chamber of commerce.</p> <ul style="list-style-type: none"> ▪ Holding an annual regional forum where members can share experiences on the NTBs elimination process, achievements made, challenges faced and necessary initiatives for improving the efficiency of the Monitoring Mechanism.
COMESA Secretariat	<ul style="list-style-type: none"> ▪ Receive quarterly progress reports from NMCs on resolved or unresolved cases. ▪ Prepare progress reports on resolved cases for the COMESA Trade and Customs Committee and Co-ordination Committees. The reports will inform the committees regarding resolved cases and guide further action. ▪ Initiate dispute resolution by the Arbitration Committee and Court of Justice on cases that have not been resolved at the national, bilateral and regional level discussions. ▪ Facilitate an annual verification of actual practices by the COMESA Trade and Customs Committee.
COMESA Trade and Customs Committee	<p>As mandated by the COMESA Treaty, the COMESA T&C Committee will</p> <ul style="list-style-type: none"> ▪ Prepare comprehensive implementation programs and prioritise actions to be taken on NTBs ▪ Monitor and constantly review implementation programs and actions ▪ Submit reports and recommendations to the Co-ordination Committee on implementation of actions related to NTBs ▪ Undertake annual verification of actual practices at entry/ exit border stations
Co-ordination Committee (Permanent Secretaries)	<p>The Permanent Secretaries of ministries responsible for COMESA matters in each partner state will form the NTB Coordination Committee in line with their mandates under the COMESA Treaty. They will chair the NMC in their respective countries and also:</p> <p>Private Sector to co-chair the committee</p> <ul style="list-style-type: none"> ▪ Submit NTB reports and recommendations to the Council of Ministers and progress achieved in eliminating NTBs. ▪ Implement decisions of the Council of Ministers. ▪ Receive and consider reports of the T&C Committee and co-ordinate their activities. ▪ Request T&C Committee to investigate specific NTB cases ▪ Refer cases that cannot be resolved by the T&C Committee to the Council of Ministers for policy direction and guidance
Arbitration Committee and Court of Justice	<p>The Arbitration Committee will handle NTBs disputes that cannot be resolved either on a bilateral basis or by the T&C Committee as mandated by the COMESA Treaty. Any cases that cannot be resolved by the Arbitration Committee will be referred to the COMESA Court of Justice to make the final ruling.</p>
Regional business associations/ Chambers of commerce	<ul style="list-style-type: none"> ▪ Disseminate information on NTBs elimination progress to business people. ▪ Undertake an annual Business Climate Index (BCI) Survey, aimed at monitoring whether the business climate within the region is improving, or whether new initiatives are required in dealing with NTBs. ▪ Organise regional NMC forums to facilitate sharing of experiences on the NTBs elimination process, achievements made, challenges faced and new initiatives for an efficient Monitoring Mechanism.

32. Regarding reporting of Non-Tariff Barriers, the meeting was informed that NTB complainants should report on existence of NTBs using the NTB Reporting Form (Annex 2) under the following thematic areas so as to facilitate an easy elimination/ reduction process:

- (i) Agricultural products (including SPS issues and single channel marketing)
- (ii) Standards harmonisation
- (iii) Visa harmonisation (travel and work)
- (iv) Transport and transit (infrastructure, charges, tolls, permits etc)
- (v) Customs procedures and documentation
- (vi) Border post management and services
- (vii) Import and export permits and licenses (if not covered elsewhere)
- (viii) Anti-corruption mechanisms
- (ix) Other NTBs

33. Following discussions, it was agreed that a footnote would be added by the COMESA Secretariat to the reporting form appearing in annex 2 to clarify the meaning of “value”. This would refer to the total value of the consignment which was affected by the reported NTB. In addition, it was agreed that countries that had not submitted the names and details of their National Enquiry points to the COMESA secretariat should do so within two weeks.

34. The meeting was also informed that the National Monitoring Committees would use the complainant reports to further prepare elimination/reduction proposals to COMESA Secretariat using the template below, which categorises NTBs under WTO codes, proposes a timeframe for elimination, and type of intervention required.

NTB category (as per thematic areas above, and under WTO NTB categorisation codes)	Imposing Country	NTB Description	Impact			Removal/Harmonisation proposed			Intervention (required action)	Responsibilities (for elimination/reduction)
			H	M	L	Immediate 0-12 months	Medium 0-2 yrs	Long-term 0-5 years		

35. To facilitate the elimination process at national level, the proposed template for monitoring and eliminating NTBS was given as follows:

Name of Country: _____

Template for Monitoring and Eliminating NTBs at National Level and Reporting Form

1	2	3	4	5	6	7	8	9	10
NTB No.	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsibility	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
	<p>Generic description of area where NTB identified.</p> <p>Example</p> <p>Customs documentation and administrative procedures</p>	<p>Description of all NTBs identified the generic area</p>	<p>Provide listing of the negative impact NTB has on business</p>	<p>Department or Ministry responsible for administering the NTB in question</p>	<p>Suggested steps to improve application of measure and reduce negative impact on business</p>	<p>This could be set timelines for clearance of goods, production of improved operational manuals, reports, etc.</p>	<p>Reports and information, feedback on implementation of agreed steps to correct NTBs.</p>	<p>Provide constraints faced in eliminating NTB, i.e. resistance from Department concerned, financial or human resource inadequacies, etc.</p>	<p>This could be in form of sensitisation of officials and business operators, sufficient resource allocation by Governments, improved communication, i.e. between Head Office and border points</p>

36. The meeting was further provided with the following guiding principles for NTB reduction and elimination:

- (i) Recognition that in accordance with the provisions of Articles 49 and 50 of the COMESA Treaty, many NTMs may exist for legitimate reasons such as consumer protection, public safety, & environment protection. Such measures only become genuine NTBs when they are implemented in such a manner that unnecessarily adds to costs or inhibit trade, are discriminatory or are applied in an illegitimate manner. Such consequences should be avoided as much as possible.
- (ii) In general, apart from the straightforward category of border restrictions (e.g. import or export quotas), some measures become non-tariff barriers if the administration (or lack thereof) become obstacles during their implementation. Also measures such as rules may present obstacles to intra-regional trade.

37. The elimination procedure is predicated upon political commitment at the highest official level so that carrying out the tasks becomes only a technical matter.

38. The Secretariat indicated the following steps to be taken in the elimination process of NTBS:

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- (i) Re-examine each of the verified NTBs and classify them correctly, indicating their purpose and elimination procedures.

- (ii) Select NTBs that are unnecessary and can be removed without being replaced with alternative measures. Automatic import licensing is an example.
- (iii) Prepare to eliminate the first set of NTBs identified as potentially highly non-transparent and discriminatory.
- (iv) In addition specify the requirements of the alternative measures that will replace them.
- (v) Undertake similar preparations for the second set, i.e. road transit charges, prohibitions on non-sensitive goods, and single channel for imports.
- (vi) For the last set which may be SPS, standards and TBTs, a longer time frame will be necessary if it involves significant resource allocation.
- (vii) Study the main official documents (laws, regulations, decisions) which serve as the legal basis for each NTB. Ascertain the procedural and time requirements for amending these.
- (viii) Draft the necessary amendments to the legal documents. This will include the rationale, replacement measure, date and period of effect. A transition period for the replacement measure may be specified.
- (ix) Secure the necessary amendments within the targeted timeframe.

39. A suggested initial draft work programme for NTB elimination is tabulated in Annex..... Since NTBs are imposed by law or executive decree, amendments to these and the issuance of accompanying implementing rules will indicate completion of the process of NTB elimination, in this case including phase-out or transition plans. Responsibilities for each task will fall on members with the assistance of technical experts. The COMESA Secretariat will be actively involved in monitoring progress and providing technical support in each area.

40. The Secretariat also presented the following guide on how to measure the impact of NTBS.

Yardsticks that will guide how to measure the impact of NTBs

NTB Yardstick	Impact Measure
Official payments	How much did the business spend on official payments such as quality inspection on imports?
General expenses (e.g. staff costs, storage costs, etc)	How much did the business spend on accommodation of managers and other employees while awaiting verification or clearance of cargo at border crossings due to delayed clearance?
Non-official payments and rent-seeking activities	How much did the business spend on bribery payments at border entry and exit in order to speed up clearance of goods? Such bribes could have been paid to officials such as: <ul style="list-style-type: none"> ▪ Customs officials to facilitate the entry or exit of goods, assist in preparation of correct documentation, shorten the process of clearing goods and subsequent clearance of goods. ▪ Port officials to assist in jumping the import release queue. ▪ Quality inspection officials in order to facilitate speed certification, inspection, or to assist in undercutting the inspection/ laboratory analysis procedures. ▪ Police officers at road blocks/ border crossings to ignore flouted traffic requirements, overloading of commercial trucks or to circumvent physical verification of goods being transported. ▪ Immigration officials to assist in issuance of travel documents. ▪ Officials at weighbridges to ignore flouted axle load and gross vehicle mass specifications. ▪ Officials in charge of licensing and registration functions to shorten or ignore cumbersome processes.
Lost business opportunities	What is the value or quantity of a lost business opportunity arising from application of discriminatory tax rates and other import procedures? Examples of discriminatory tax rates could include a higher than applicable COMESA tariff being applied by one partner state on a product originating from other states, a higher domestic tax being applied on imports than on equivalent domestically produced goods, or even a procedure being applied on imports and not on equivalent domestic products.
Wasted products	What is the value or quantity of perishable goods that go to waste due to a full inspection instead of sampled inspection, or during weighing of axle load/ Gross Vehicle Weight specifications?
Cost of time lost in understanding and complying with non-transparent procedures	Is the regulation or procedure justified and transparent? How much time was spent due to: <ul style="list-style-type: none"> ▪ The process of sorting out import/ export documentation queries, quality and quantity queries, road blocks and weighbridges? ▪ The process of understanding a new trade related requirement in order to enable compliance? ▪ Application of import/export and other trade regulations introduced without sufficient lead time to enable proper understanding and compliance².

41.. The Secretariat also advised that for an effective NTB reporting, monitoring and reduction/elimination process, technical assistance and other supportive arrangements would be required at the national and regional level for an effective NTB reporting, monitoring and reduction/elimination process.

42. The Secretariat further elaborated on the risk factors that will have to be overcome in order to achieve the desired success and among these were:

² An example of regulations that may be difficult to understand could include the controversial PVOC in Kenya.

- Good will and commitment
- National regulatory framework/official gazzement of the NMC structures for purpose of legitimacy and sustainability of operations.
- Resource availability, both in terms of human and financial resources (National/Secretariat)
- Sustained Inter-regional harmonization efforts towards the elimination of NTBS.

43. In this regard, it was necessary that in addition to technical assistance that should be facilitated by the COMESA Secretariat, Member States need to establish the necessary regulatory frameworks for the NMCS as appropriate, allocate sufficient and timely resources for NTB related work through their national budgets or from trade related technical assistance programmes for monitoring and facilitating elimination of NTBs. Such resources could be utilized in at least these areas:

- (i) Facilitating periodic verification of practices at the border posts by the COMESA Secretariat.
- (ii) Undertaking an annual Business Trade Facilitation Index Survey.
- (iii) Facilitating establishment of joint projects where necessary, including those related to ports, customs, transit procedures and transport matters.
- (iv) Providing monitoring and reporting resources to the National NTB Contact Point.
- (v) Technical assistance and legal resources to implement an agreed Programme for NTB Elimination.
- (vi) Assist the COMESA Secretariat to coordinate the regional level reporting, verification, monitoring and arbitration of notified NTBs.

44. In the discussions that ensued, the need for an elaborate feed back mechanism on the operational modalities of the NTB monitoring and elimination and timelines on the elimination of NTBs after being reported was emphasized. The presence of both the arbitration and the court of justice was noted as being systematic way of ensuring all possible channels of solving NTBs are exhausted.

45. In reference to the experience in the SADC region, the meeting was informed that the region has been facing the same predicament on NTBs. The region has developed a similar reporting instrument to that of COMESA and country studies have been undertaken on the NTBs. SADC is now in the process of developing action plans.

46. The meeting recognized the need for updating the matrix that was submitted by the secretariat. It was also noted that there is need to ensure that there is representation of the private sector in the NMC.

47. The EABC in their contribution to the discussions reiterated the importance of constant communication by the various NEPs, the involvement of the national security agents in the NMC and the co-chairing of the NMC by the public and private sector. It was noted that there is need to empower the COMESA business Council to provide support to the process and be responsible for various activities such as organizing the NMC forums. In addition, the NMCS should be co-chaired by the Public and Private sectors.

48. The meeting noted further that it is important to have half-yearly meetings for the NEPs for NTBs.

Recommendations

49. The meeting recommended as follows:

1. Adoption of the operational modalities consisting of Institutional structures for facilitating NTBS reporting, regional NTBS reduction process and the national NTBS reduction process.
2. Member states should establish the NMCS and also restructure the NEPS as Secretariats to NMCS
3. COMESA Secretariat to facilitate the establishment of technical assistance within the NTB reporting, monitoring and elimination process, the COMESA Secretariat should prepare the necessary budgets based on submissions from the member states and facilitate the sourcing of any required financial resources.
4. A footnote would be added by the COMESA Secretariat to the reporting form to clarify the meaning of "value".
5. Member states endeavour to support the implementation of operational modalities.
6. Half yearly meetings for NEPs for NTBs to be held prior to the Trade and Customs Committee.
7. The Private Sector should co-chair the NMCS

Country Experiences on Utilisation of NTBS Reporting Form (*Agenda item 5*)

50. The leader of the Egyptian delegation presented the experiences of the Great Arab Free Trade Area on the management and elimination of NTB's and the institutional arrangements in place for this purpose.

51. He outlined the major aspects of the integration programme of GAFTA and the context in which NTB's are reported and eliminated. The full presentation is shown in Annex 3.

52. The Head of the Kenya delegation also outlined Kenya's experience regarding administration of the NTB's reporting and management instruments. He advised the meeting that the reporting form was working and support was coming from all relevant stakeholders. He, however, expressed great concern on the time it took to resolve reported NTB's and in this regard suggested for greater responsiveness on the part of the Secretariat and greater urgency in concluding the studies requested for with regard to a mechanism to having a penalty system for non-adherence to Treaty provisions. The presentation appears in Annex 3.

53. The representative of the East African Business Council made a presentation on the results of the Business Climate survey that was conducted in the partner States of the East African Community. The main message from his presentation was the need to have a more holistic view of the measures to be adopted to address NTB's as there were two distinct stages in the process being: (i) resolution of reported operational problems and (ii) the implementation of medium to long-term measures that would result in an environment that would ensure that such NTB's do not arise in the future. The full presentation appears in Annex 4.

National and Regional Action Plans for the Elimination of NTBS (*Agenda item 6*)

54. The Secretariat in presenting this agenda item recalled that comprehensive country surveys had been undertaken in eighteen COMESA member states with the technical and financial support of the Regional Trade Facilitation Programme (RTFP) that aimed at providing information on the main NTB's which covered the following:

- (i) scope and nature of NTBs that affect intra-COMESA trade;
- (ii) products and markets most affected by the NTBs;
- (iii) documentation of exporters' concerns regarding NTBs, that are practised on products intended for trade within the region;
- (iv) identification of the source country enforcement agencies and specific laws, regulations, practices, and requirements that have to be complied with in order for one to be authorised to trade (export or import);
- (v) identification of the COMESA destination countries where the NTBs are applied, and the specific laws, regulations, practices, and requirements that have to be complied with;
- (vi) assessment of the impact that NTBs have had on affected exports and traders, including additional cost in terms of the time incurred to

ensure compliance, lost business opportunities, value and the value and volume of goods that go to waste during inspections at COMESA countries' exit and entry points;

- (vii) assessment of how the producers, exporters and traders have responded to challenges posed by NTBs; and
 - (a) The meeting was advised that NTB surveys were conducted in Malawi, Mauritius, Zambia, Zimbabwe, Kenya, Uganda, Burundi, Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Madagascar, Rwanda, Seychelles, Sudan and Democratic Republic of Congo.
 - (b) The NTBs survey reports were discussed at a regional validation workshop held in Nairobi, Kenya on 27th – 29th June, 2007 which suggested that Member States should submit comments on the country surveys by 13th July in order to enable finalization of the reports.
 - (c) The meeting was further informed that based on the distillation of information contained in the country reports, the Secretariat had developed a draft matrix (Annex 6), which is an action plan for implementation of a programme and supporting institutional mechanisms for the elimination of NTBs with elements of identification & prioritization of NTBs based on activity, impact on trade and the removal/harmonization timeline.
 - (d) The meeting was also advised that the classification regarding whether the impact on intra regional trade is high, medium or low had taken account of various factors: The restraining effect, value and cost of the NTB on intra regional trade;
 - (e) The frequency or number of countries reporting the prevalence of the NTB i.e. volume of trade affected
 - (f) Whether the NTB has previously been reported to the Secretariat and resolution efforts have been embarked upon i.e. frequency of incidences

55. The following major NTBs, categorized according to the WTO classification, were highlighted:

Part I: GOVERNMENT PARTICIPATION IN TRADE AND RESTRICTIVE PRACTICES TOLERATED BY GOVERNMENTS

56. Government participation in business especially in importation, selling, and distribution is considered as of high impact to intra regional trade. Firstly, it has a potential crowding out effect on the private sector. Secondly, it may potentially restrict intra regional trade. However, the intervention period for the removal of these practices is medium in considering the requirement for policy change and the period of time essential for achieving such.

57. Strict control regulations are reported in Ethiopia and Seychelles and are classified as of medium impact requiring medium term intervention period in consideration of measures that may be implemented by Government towards resolving the exogenous factors responsible for the foreign exchange controls.

58. Cross border registration of business is reported as a hindrance in the EAC Countries and is classified as of medium impact deserving medium term intervention in consideration of the ongoing development of an EAC investment code and the implementation of the various phases of the EAC Free Movement of Persons Protocol.

Part II: CUSTOMS AND ADMINISTRATIVE ENTRY PROCEDURES

a) Customs valuation

59. Several Countries among them Burundi, Egypt, Eritrea, Ethiopia, Madagascar have reported on the difficulties experienced with customs valuation and is therefore of high impact. The intervention measures are medium term in view of the necessary requirements such as capacity building, accession to WTO, and the regional implementation of the Simplified Trade Regime.

60. In addition, the parallel exchange rate regime between Zambia and Zimbabwe is classified as of high impact and an immediate intervention would be appropriate. The matter is under consideration at bilateral level between the two states.

61. The lengthy procedures involved in the clearance of goods as reported by Comoros, Kenya, Seychelles, Swaziland, Zambia (small traders) and Uganda requires medium term intervention involving Capacity building as well as the development of more efficient operational modalities and in some instances long term interventions where infrastructural development is essential.

b) Rules of Origin

62. The rejection of Certificates of Origin on account of non adherence to the originating criteria and lack of sample signatures of the issuing authorities as reported by Burundi, Egypt, Eritrea, Kenya and Sudan is classified as high impact and warrants immediate intervention involving implementation of the protocol on the Rules of Origin as well as capacity building. Issues relating to the issuance of certificates of origin as reported by Sudan as well as issues relating to the interpretation and application of the COMESA Rules of Origin are classified as of medium impact requiring medium term intervention to be addressed through capacity building.

c) Pre- Shipment Inspection

63. This has been classified as high impact as reported by Burundi, Egypt, Eritrea and Ethiopia and should therefore be immediately removed as it results from the violation of treaty provisions as well as Council decisions. The

intervention measures for their elimination involve capacity building, implementation of the treaty and council decisions.

d) Customs Formalities

64. This is classified as high impact on trade and is reported by Burundi, Congo DR, Eritrea, Ethiopia, Rwanda, Seychelles, Uganda, Sudan and Kenya. However, the removal period is medium term, and in some instances long term on account, due to the need for policy change and capacity building, accession to the WTO, and harmonization of Programmes.

Part III: TECHNICAL BARRIERS TO TRADE

65. The lack of harmonization of regional standards, and technical specifications as well as lack of information on regional standards and technical specifications and the severe shortage of accredited laboratories have been reported by Burundi, Congo DR, Egypt, Ethiopia, Kenya, Malawi, Rwanda, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. However, the reported level of NTBs arising from standards and other technical requirements are low thus justifying the classification of medium impact to intra regional trade. The intervention measures are medium term and in certain instances long term involving the implementation of COMESA standards as well as harmonization of regional standards.

Part IV: SANITARY AND PHYTO SANITARY MEASURES

66. Limited facilities, stringent and arbitrary requirements as well as limited knowledge is reported by Congo DR, Ethiopia, Kenya, Madagascar, Mauritius, Swaziland, Zambia and are classified as medium term by virtue of the low level of reported incidences with the exception of Kenya whose exports of beef and poultry have been denied market access to Uganda on account of SPS requirements.

67. The period for their elimination is considered as medium to long term requiring policy review, capacity building and harmonization of standards.

Part V: SPECIFIC LIMITATIONS

68. The ban imposed on various imports, export duties, price controls, marking, labelling and packaging requirements, export restraints, export restrictions and quotas, import procedures and discrimination resulting from bilateral agreements are reported by Burundi, Congo DR, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Seychelles, Sudan and Zambia.

69. Based on the level of reported incidents these have been classified under medium impact with the exception of the Rwanda's ban on beer imports from Burundi as well as import quota by Burundi on rice, beans and onions and discrimination resulting from bilateral agreements as reported by Sudan which have been classified under high impact. Consequently the remedial period is

prescribed as medium term to long term involving policy change amongst other measures.

Part VI: CHARGES ON IMPORTS

70. Import permit requirements, imposition of withholding tax, import declaration charges as well as circulation of VAT on CIF values is reported by Eritrea, Ethiopia, Kenya, Madagascar and Rwanda. In addition to these, Burundi has reported on the potential loss of geographical indications on coffee as well as lack of customs operations between Burundi and DRC. These are considered to be of medium to low impact deserving removal periods of medium to long term due the measures involved which include policy change, capacity building as well as infrastructural development.

Part VII: OTHER

71. These include limited container space at Mombasa, requirements for escorts in Rwanda as well as Uganda, lack of infrastructure, storage capacity, high road charges and transport costs, lack of banking facilities, overlap of memberships, cabotage restrictions and lack of foreign exchange and are classified as medium to low impact on intra-regional trade by virtue of the remedial measures, which span from medium to long-term. These include infrastructural development and the development of efficient operational modalities and mechanisms.

72. However, lack of trade related information which is reported by Congo DR, Egypt, Eritrea, Ethiopia is considered of high impact due to the importance of such information for exploitation of regional markets and thus expansion of intra-regional trade.

73. The meeting was also informed that the Secretariat had embarked on the process of developing a repository of trade regulatory information based on the distillation of information from the survey reports, on exports and imports (Annex 7) in conformity with the 23rd Council of Ministers' decision. Such a repository of information would provide the business community in COMESA with the necessary information database. However, the Secretariat requested the member states to provide the complete set of trade regulations in conformity with Council decisions, for inclusion in the matrix.

74. During the discussions that ensued it was agreed that the matrix should be updated and validated further by Member states. There was also varying opinion on the impact of some NTBs and countries were advised to review the matrix and forward any recommendations to the Secretariat.

75. Following some concerns raised by the Ugandan delegation on endorsement of commercial documents by the Egyptian Embassy in Uganda, the meeting noted that Egypt had earlier circulated to Member States, through the Secretariat the notification concerning the waiver of the endorsement of commercial documents by the Egyptian Embassies in the COMESA region. It was agreed that the Secretariat will take up the issue with Uganda and finalize it once and for

all. The EABC proposed that the same notification be circulated to all business people.

76. The Secretariat informed the meeting that it was preparing the TORS in order to undertake an impact assessment of NTBS in addition to a dispute resolution and penalty mechanism.

IV RECOMMENDATIONS

77. The meeting recommended as follows:

(i) Member states will provide to the COMESA secretariat their comments/amendments on the matrix of NTBS by the end of October 2007. The Secretariat should circulate again all the Country survey reports on NTBS undertaken by consultants.

(ii) Member states to provide the complete set of trade regulations in accordance with Council decisions, by end of October, 2007.

(iii) Member states adopt the action plans at annex 8 as the future basis for the development of the national and regional action plans for the elimination of NTBS.

(iv) Member states embark on the process for the elimination of the NTBS in accordance with the intervention measures contained in the matrix.

(v) Members states who have not appointed NTBs Enquiry Point to do so within two weeks and forward the details to the Secretariat and also to designate officials to the National Enquiry Points.

(vi) The Secretariat to circulate all the details of Enquiry points to member states

(vii) Member states to submit draft work programmes for NEPS and NMCS and support needs by the end of October, based on the guidelines to be provided by the Secretariat

viii) The Secretariat should finalize the studies on impact assessment of NTBS in addition to a dispute resolution and penalty mechanism.

(Vii) The Secretariat should organize meeting for the NEPs to finalize the work programmes and support needs both technical and budgetary for the NMCs.

Presentation on Online Reporting System (*Agenda item 7*)

78. The meeting was informed the COMESA Secretariat, with technical and financial assistance from the Regional Trade Facilitation Programme (RTFP),

was developing an NTB database with a built-in online reporting mechanism that is easy to use and which generates specific and standard reports.

79. The meeting was advised that most of the development work on this online reporting system has already been done and the system is scheduled to be launched at the next Trade and Customs Committee Meeting in November 2007.

80. The COMESA NTB web-based database has three core objectives:

- (i) to identify and subsequently remove NTBs that have arisen;
- (ii) to allow those who experience NTBs to report them and monitor the progress on the removal of those barriers; and
- (iii) to make the administration of NTBs reporting and removal easier.

81. The meeting was also informed that the following reports would be available:

- (i) outstanding complaints;
- (ii) complaints by tariff code, country, border station of occurrence, complainant, NTB type, Status, Action Taken;
- (iii) monthly emailed report detailing all current or outstanding complaints and current actions will be sent to COMESA and Country contacts; and
- (iv) monthly reminder emails to user(s) that a complaint is currently assigned to.

82. In the discussions that ensued member States were of the view that the web based NTB monitoring and resolution system be piloted prior to launch and security access levels should be set in a way that facilitates users ability to interact with the system while protecting the integrity of the information posted onto the system, in particular inter-State consultations. Access in terms of inputting information should be managed for the purpose of effectiveness.

Working Group Session (*Agenda item 8*)

83. The meeting was divided into three working groups with the terms of reference to Review the proposed (matrix) classification of NTBS

1. Impact (High/Medium/Low)
2. The removal/harmonization period (Immediate/Medium/Long-term)
3. Intervention modality
4. Responsibility

Reports by the Working Group (*Agenda item 9*)

84. The working groups reviewed the matrix on NTBS and made revisions. The revised matrix is attached as Annex 6.

Adoption of the report, wrap-up and Closure (*Agenda item 10*)

85. The report of the first meeting of the COMESA Enquiry Points for Non Tariff Barriers was adopted with amendments

Closure of Meeting

86. A representative from the COMESA Secretariat thanked all the delegates for constructive discussions and emphasized that the task of moving forward the initiative would require support and cooperation from all the member states. In this regard, he called upon the member states to endeavor to undertake the tasks agreed upon in respect to the recommendations while observing the time frames.

87. The representative also thanked the SADC and the EABC for their participation and noted that this would be the foundation for sustained cooperation on NTBS matters which is also pursued within the tripartite task force involving SADC, COMESA and EAC.

88. In her closing remarks, the Chair person commended the delegates for the achievements of the meeting which she noted would go a long way in eliminating NTBS in intra-regional trade. She also thanked the delegates for the support that they had extended to the Chair.

Table 5: Draft Programme for NTB Elimination

MAIN AND SUB-TASKS		OUTPUT	TIMELINE ³
1.	Reexamine each of the verified NTBs	Validated inventory of NTBs specifying purpose, products affected, legal basis, implementing procedures, and classification based on criteria suggested	
a.	Review submitted lists and complete the information on intent and legal basis		
b.	Provide the official implementing procedures of that NTB		
c.	Describe actual manner of implementation		
d.	Classify NTB correctly		
2.	Establish a system of gathering information on NTBs including private sector participation in verification and monitoring	Network of information sources	
3.	Select NTBs that are unnecessary and can be removed without being replaced with alternative measures. Automatic licensing	List of NTBs that can be removed without being replaced	

³ Proposed Timelines will be an output of the COMESA NTB Workshop

MAIN AND SUB-TASKS		OUTPUT	TIMELINE ³
	is an example		
4.	Prepare to eliminate the first set of NTBs identified as potentially highly non-transparent and discriminatory. Specify the requirements of the alternative measures that will replace them	List of highly non-transparent and discriminatory NTBs and alternative measures i.e. estimated tariffs with phase down schedule, kinds of fiscal incentives, risk management system	
a.	In the case of tariffs which are to replace non-automatic licensing, quotas or administrative levies estimate the rates for each product affected. Specify phase down schedule.		
b.	In the case of risk management and post-entry audit at customs, develop a system and build customs capacity to implement it		

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