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**COMMON MARKET
FOR EASTERN AND SOUTHERN AFRICA**

First Workshop on the Development of a Monitoring
Mechanism for the Elimination of Non-Tariff Barriers to Trade

Nairobi, Kenya
27-28 June, 2007

REPORT OF THE WORKSHOP ON NON-TARIFF BARRIERS

A. INTRODUCTION

1. The Workshop on Non-Tariff Barriers was held from 27th - 28th June, 2007, in Nairobi, Kenya.

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

Attendance

2. The workshop was attended by participants from Burundi, Union des Comores, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Kenya, Malawi, Mauritius, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. The workshop was also attended by representatives of the following organisations: Regional Trade Facilitation Programme (RTFP), and the Northern Corridor Transit Transport Coordination Authority (NCTTCA). The list of participants is attached at Annex III.

Opening of the Meeting (*Agenda item 1*)

3. Mr. David Nalo, Permanent Secretary for the Ministry of Trade and Industry opened the workshop. In his statement, Mr. Nalo welcomed the delegates to Kenya and noted that the workshop was being held at an opportune moment following the decisions taken at the May 2007 Policy Organs meetings and the workshop had brought together the important actors involved in international trade whose collective wisdom was necessary for addressing the elaborate subject of Non-Tariff Barriers.
4. Since 1994, COMESA had made substantial progress in reducing tariff levels to trade culminating in the attainment of the Free Trade Area in October, 2000. This sustained progress in trade liberalization had resulted in the average annual trade growth exceeding 15%. He further advised the delegates that the scope for increased intra-COMESA trade had been illustrated by the trade flow analysis conducted in 2006 whose objective was to evaluate the potential for trade expansion by identifying products which could be traded at the regional level. The findings of this exercise were indicative of the fact that there exists a huge potential to increase trade by a margin of U.S \$ 1 billion annually. This potential could only be realized through implementation of supportive measures such as addressing the removal of Non Tariff Barriers in the intra regional trade.
5. Non-Tariff Barriers have contributed towards reducing the gains from trade by restricting domestic market access to regional exporters, in addition to denying consumer's welfare enhancing opportunities which arise from access to reasonably priced regional imports.
6. Some of the reasons which have been advanced for the proliferation of NTBS are protection of revenue sources, domestic industries as well as health reasons. While some of these concerns may be legitimate, there are laid down procedures which can be used to address these concerns without necessarily resorting to trade restricting Non-Tariff Barriers.

7. Article 49 of the Treaty contained provisions for the removal and non-imposition of trade barriers and the Council had issued a number of decisions to implement this Treaty provision. Mr. Nalo informed the participants that in compliance with Council decisions, Kenya had now established a national enquiry point where all occurring Non-Tariff Barriers are notified through the utilization of the regional reporting instrument. This had been achieved through collaboration between the Government and the private sector.
8. The need to have an effective programme for the elimination of Non-Tariff Barriers as the region proceeds to the launch of the Customs Union in December, 2008 as one of the main tenets of a customs union is free circulation of goods which pre-supposes the elimination of any encumbrances to trade.
9. In addition to reviewing the current strategies for the elimination of the NTBS, an assessment of comprehensive country surveys had been conducted with a view to provide information on the main NTBs as well as their quantitative impact on volume, composition and direction of intra-COMESA trade. This process would lead to the eventual development of a monitoring mechanism which would later be harmonised with the EAC and SADC, thus leading to harmonisation of a regional process of eliminating NTBS.
10. In conclusion he thanked the delegates for their participation at the workshop and wished them successful deliberations.
11. Dr. Charles L. Chanthunya, Director of the Division of Trade, Customs and Monetary Affairs at the COMESA Secretariat delivered a statement on behalf of the COMESA Secretary General. In his statement he thanked the Government of Kenya for hosting this important regional workshop on Non-Tariff Barriers. He also thanked the Permanent Secretary for the Ministry of Trade and Industry, Mr. David Nalo for having agreed to officiate at the workshop opening ceremony.
12. He noted that the workshop was extremely important since it was bringing together representatives of the public and private sector within the COMESA region and other important stakeholders for the first time to deliberate on the subject of Non Tariff Barriers.
13. He further observed that while intra-COMESA trade had grown since the launch of the FTA in October 2000, there is sufficient evidence that it could have been growing at a faster rate if there was effective utilization and application of essential trade facilitation instruments, increased knowledge of the prevailing trade opportunities and effective elimination of incidences of Non-Tariff Barriers which act as impediments and restrictions to trade.
14. He noted that the major Non-Tariff Barriers include restrictive application of rules of origin and sanitary and phyto-sanitary measures, cumbersome customs clearance procedures, non-transparent enforcement of import regulations, imposition of arbitrary non-tariff charges, unclear technical regulations and imposition of high transit fees.

15. He further observed that elimination of Non-Tariff barriers would enable industries to benefit from economies of scale in addition to availing competitively priced products to the region's consumers thus enhancing general welfare.
16. On the agenda for the workshop, Dr. Chanthunya highlighted the importance of the country surveys which would be considered by the delegates. He observed that the country surveys would assist the delegates to develop a time bound action plan for the elimination of NTBS and the minimization of those which cannot be eliminated. Such an action plan would be subject to ongoing monitoring and evaluation and would be a benchmark for implementation of Council decisions on Non-Tariff Barriers.
17. He concluded by thanking the Regional Trade Facilitation Programme (RTFP) for the technical and financial support accorded to the Secretariat for the implementation of this important project. He also thanked the participants for their presence and readiness to actively participate in the workshop deliberations.

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

18. The workshop adopted the following agenda:

- 1) Opening of the Workshop
- 2) Adoption of the Agenda and Organisation of Work
- 3) Presentation of Reports
- 4) Monitoring Mechanism
- 5) Way Forward
- 6) Date and Next Venue of the Workshop
- 7) Any Other Business
- 8) Adoption of the Report and Closure of the Workshop

19. The workshop adopted the following hours of work:

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

C. ACCOUNT OF PROCEEDINGS

Summary and Update of the Non-Tariff Barriers in the COMESA Region (Agenda item 3)

20. The Secretariat presented a report on the status of the programme of elimination of NTBs in the COMESA region.

21. In his presentation, the Secretariat's representative informed the meeting that COMESA had identified the following as constituting potential sources of NTBS:

- (i) Customs Clearance Procedures
- (ii) Import Regulations
- (iii) Sanitary and Phyto-sanitary Measures (SPS)
- (iv) Non-Tariff charges
- (v) Technical Regulations
- (vi) Transit fees

22. Regarding elimination of NTBs he informed the workshop that the main legal provision dealing with NTBs was Article 49 of the COMESA Treaty which stipulates that:

“except as may be provided for or permitted by this Treaty, each of the member States undertakes to remove immediately upon entry into force of this Treaty, all the then existing non-tariff barriers to the import into that member State of goods originating in the other member States and thereafter refrain from imposing any further restrictions or prohibitions.”

23. Based on the above Treaty provision, a number of decisions had been made by the Council of Ministers which are intended to eliminate NTBs highlights of which include the following were:

- (a) Eleventh Meeting of the Council of Ministers held in Cairo, Egypt, in May 2001, which adopted the Road Map for the Implementation of a Schedule for the Elimination of Non-Tariff Barriers, Obstacles and Restrictions, and actions to be taken within a specific timeframe (see Annex 1).
- (b) Seventeenth Meeting of the COMESA Council of Ministers, held in Kampala, Uganda, in June, 2004 which tasked member States to undertake the following specific activities:
 - (i) providing clear guidelines to the business community on the areas identified as NTBs;
 - (ii) facilitating access to information, including the electronic transmission of information to the business community;

- (iii) designating COMESA Enquiry Points at their Ministries of Foreign Trade or other relevant agencies for the purpose of tracking and monitoring NTBs affecting intra-COMESA trade. The Council also stipulated that a common form be used by importers and exporters for reporting to the COMESA Enquiry Point the NTBs that they have encountered;
 - (iv) adoption of a programme aimed at making progress towards the elimination of NTBs; and
 - (v) the Trade and Customs Committee should monitor member States' implementation of the proposed measures.
- (c) Twentieth Meeting of Council in December 2005, which decided that the Secretariat should make an assessment of the status of the implementation of the Schedule for the elimination of NTBs for submission to the next meeting of the Trade and Customs Committee (April 2006).
- (d) Twenty-first Meeting of the Council of Ministers, held in May 2006, decided that:
 - (i) the Secretariat should put in place a permanent mechanism for expeditious resolution of issues arising from NTBs;
 - (ii) member States should provide advance notification on the introduction of new NTBs that impact on intra-COMESA trade and ensure adherence to Article 49 of the Treaty;
 - (iii) the Secretariat should initiate development programmes relating to conformity assessment procedures, such as Testing, Metrology and Accreditation, and ensure their harmonisation at the regional level;
 - (iv) the Secretariat should expedite the Development of a Regional Policy on Standardisation and Quality Assurance; and
 - (v) 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.
- (e) Twenty-Second Meeting of the Council of Ministers held in November, 2006 in Djibouti decided that:
 - (i) member States that have not notified the Secretariat of the designated NTBs Enquiry Points should do so by 31st March, 2007;
 - (ii) member States should sensitise stakeholders on the monitoring and evaluation mechanism and reporting tool;

- (iii) member States should refrain from introducing new NTBs in conformity with the relevant Treaty provisions and Council Decisions;
 - (iv) member States that have not yet adopted COMESA Harmonised Standards at the national level, should do so;
 - (v) a study be undertaken by the Secretariat to assess the impact of NTBs on the competitiveness of landlocked countries; and
 - (vi) member States should finalize the NTB monitoring and resolution mechanism prior to the next meeting of the Trade and Customs Committee (April 2007).
- (f) Twenty-third Meeting of the Council of Ministers held in Nairobi, Kenya in May 2007 decided that:
- (i) the Secretariat should analyse all NTBs reported to it and convey technical opinion on them to the imposing country with recommendation for immediate removal of such NTBs and submit a report on their elimination to the next Council meeting;
 - (ii) the Secretariat should undertake country missions to resolve outstanding NTBs in a timely manner; and
 - (iii) member States should provide 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.
- (g) Fourth COMESA Business Forum held in May, 2007 which recommended in view of the persistent constraining effects of NTBs on intra-regional trade, COMESA should introduce a COMESA NTBS penalty to act as a deterrent for member States employing NTBs to block regional trade; in addition to developing faster mechanisms for NTB resolution. The Secretariat will submit a proposal to the next Trade and Customs Committee on the nature of penalties to be imposed.

24. The Secretariat then gave an update on the progress achieved in the implementation of the Council Decisions on elimination of NTBs.

:

- (i) designation of NTB Enquiry Points by member States;
- (ii) utilisation of the format for reporting NTBs;
- (iii) urging member States to eliminate reported NTBs;

- (iv) ensuring that the “*Status Report on NTBs*” is a permanent agenda item for all Trade and Customs Committee meetings;
- (v) undertaking missions to member States to discuss NTB related issues;
- (vi) development of a web-based database for the NTB on-line reporting and monitoring system which should be operational by September, 2007; and
- (vii) a dedicated office on NTB matters has now been established at the COMESA Secretariat.

25. Other actions undertaken by the Secretariat in relation to the elimination of NTBs include:

- (i) ***Meetings by Directors of Customs:*** these meetings aim to ensure, amongst other things, that goods are cleared smoothly. It is important that all documentation requirements be standardized so that all member States are using the same documentation before the Customs Union is effective.
- (ii) ***Training of Customs officers:*** A COMESA training policy, strategy and action plan as well as training modules on the Treaty, Customer Care, Integrity and Customs Valuation was adopted by 16th Meeting of the Council in Lusaka, Zambia, in December 2003.
- (iii) ***Action Plan to Promote Integrity in Customs:*** This was adopted by Council and has been circulated to all member States for implementation. The Directors of Customs endorsed a training policy, strategy and action plan on Integrity in Customs at their meeting in Kigali, Rwanda, in May 2003.
- (iv) ***Harmonization of Standards:*** Directors of COMESA Standardization and Quality Assurance have agreed and mutually recognized over 200 common standards to facilitate trade development.
- (v) ***Other measures:*** such as the Regional Customs Bond Guarantee Scheme (RCBG) and Simplified Trade Regime (STR).
- (vi) ***Co-operation with other RECS:*** The three regional economic communities (RECs) of COMESA, SADC and EAC are currently at various stages of developing formal and structured mechanisms for identifying, monitoring and eliminating NTBs and are collaborating closely in this process through the facilitation of the Joint Task Force comprising of COMESA, SADC and EAC.
- (vii) ***Development of an NTBS monitoring mechanism.*** In conformity with the decisions of the 21st and 22nd Meetings of the Council of Ministers, the Secretariat has undertaken comprehensive country surveys with the technical and financial support of the Regional Trade Facilitation Programme (RTFP) that aims to provide information on the main NTBs

as well as quantitative impact on volume, composition and direction. The workshop had been convened to consider the findings of these studies.

26. In the discussion that ensued, the following issues were raised:

- (i) The need for guidelines on the operations of enquiry points and the need for capacity building for designated enquiry points.
- (ii) Co-ordination between the secretariat and the enquiry points, and also co-ordination between the enquiry points themselves.
- (iii) The COMESA Secretariat NTBs monitoring unit should have the necessary capacity to offer technical opinion on a reported non-tariff measure that is said to be restricting trade unfairly.
- (iv) COMESA Secretariat should continue capacity building efforts in areas such as interpretation and administration of technical instruments such as rules of origin.
- (v) That there should be an evaluation and audit of the implementation of Treaty and Council decisions which are addressing NTBs and an action plan should be developed to ensure that implementation is achieved.
- (vi) The need to identify technical and financial resource requirements for eliminating capacity related NTBs such as those related to SPS and Technical Barriers to Trade and to develop pragmatic timelines for their elimination.

Recommendations

27. COMESA should circulate details of all the enquiry points.

28. A regional meeting of the notified enquiry points should be organised to agree on operational modalities.

29. Member States that have not notified the Secretariat of the designated NTBs Enquiry Points should do so by 31st August, 2007.

COMESA Instrument for Reporting and Monitoring NTBs and other Barriers to Trade

30. The representative from the COMESA Secretariat reported that the Eleventh Council of Ministers decided that importers and exporters use a particular form to report to the COMESA enquiry points when facing NTBs as shown in Annex II.

31. The reporting and Monitoring mechanism should be guided by the following principles:

- (i) Good will and commitment by the Member States

- (ii) Awareness creation and sensitization
- (iii) Regular monitoring
- (iv) Resource allocation

32. The form for reporting and monitoring NTBs is a straight forward matrix requesting for among others:

- (i) Company details
- (ii) Product name (also signifying sector)
- (iii) Description of the NTB or other Barriers
- (iv) Trade encountered when trading in COMESA
- (v) Station of occurrence
- (vi) Date

Recommendation

33. Member States should report NTBs incidences through application of the reporting instrument

Presentation by the Northern Corridor Transit Transport Coordination Authority (Agenda item 4)

34. A representative of the Northern Corridor Transit Transport Coordination Authority made a presentation which gave the background to the TTCA, its mandate and operational issues being addressed to facilitate transit traffic along the Northern Corridor.

35. With regard to Non-Tariff Barriers, he identified the following major issues:

- (i) Clearance procedures at the Port of Mombasa;
- (ii) Customs procedures and documentation;
- (iii) Movement of goods in transit, i.e., rail, road, pipeline and lake transport;
- (iv) Lack of adequate infrastructure and facilities along the Northern Corridor;
- (v) Clearance formalities at the border posts;
- (vi) Transit parking yards; and
- (vii) Inadequacy of the Kampala goods shed.

36. As a way of addressing these issues he outlined the TTCA approach which is part of the TTCA Strategic Plan that has the following 5 major programs:

- (i) Private Public Sector Partnership

- (ii) Transit & Transport policy development
- (iii) Customs and Trade Facilitation
- (iv) Infrastructure Development & Management
- (v) Monitoring Evaluation and Capacity building

37. Regarding the important issue of Customs and Trade Facilitation, which collectively embraces most of the identified Non-Tariff Barriers, he highlighted the programme under implementation as containing the following elements:

- (i) Streamlining customs documentation and procedures;
- (ii) Elimination of unnecessary charges imposed on transit traffic and cargo and barriers to international and regional trade;
- (iii) Working in close collaboration with government agencies within the members States;
- (iv) Working in close collaboration with Cooperative and Development partners;
- (v) Strengthening private/public sector partnerships among the Northern Corridor Stakeholders;
- (vi) Adoption of modern information and communications technology for expeditious and exchange of information between customs authorities;
- (vii) Effective and efficient customs surveillance system;
- (viii) Facilitation of transit trade and traffic;
- (ix) Harmonization of working hours at the border posts and terminals, including the port; and
- (x) Establishment of one-stop border posts and improvement of border post facilities.

38. He also highlighted further transit transport facilitation measures under implementation such as:

- (i) Harmonized axle load limits and overload control; and
- (ii) Encouraging institutional reforms in the management of roads, railways and port infrastructure and services.

39. The TTCA representative informed the meeting on the progress achieved under customs and trade facilitation programme:

- (a) Documentation and procedures:
 - (i) The RCTD designed and tested along the Northern Corridor has in the long run replaced 13 different National documents;
 - (ii) Transformation of the RCTD into a single goods declaration (COM-CD); and
 - (iii) Harmonization of transit procedures.
- (b) Closer co-operation among the customs administrations:
 - (i) Harmonization of working hours;
 - (ii) Introduction of computerized documentation processing through SIMBA 2005 and ASYCUDA(+++) systems; and
 - (iii) Sharing of information via IT system.
- (c) Harmonization of Transit Charges
- (d) Licensing of Transit Operators
- (e) Third Party Motor Insurance Scheme:
 - (i) TTCA Beige Card forerunner of the COMESA Yellow Card; and
 - (ii) Beige card abandoned in favour of the yellow card when all TTCA members became COMESA members.
- (f) Establishment of One Stop Border Post at Malaba for rail and road and soon in other border posts.
- (g) Established of the Northern Corridor Stakeholders Forum.
- (h) National Trade and Transit Facilitation Committee have been established in Rwanda and Uganda, and will soon be established in other member States.
- (i) Achievement to date at the Port of Mombasa:
 - (i) Creation of one-step document processing centre at the port;
 - (ii) Harmonization of working hours of various parties at the port;
 - (iii) Enforcement of joint cargo verification and scanning;
 - (iv) Implementation of 24 working hour shift;
 - (v) Reduction in cargo release stamps;
 - (vi) Speedy release of cargo by the port;
 - (vii) Standardization of port levies;
 - (viii) Improvement of security at the port;
 - (ix) Gate pass.

- (j) Introduction of the Regional Customs Bond Guarantee System.
- (k) Transit time has been reduced from 30 days to 15 days.

40. In the discussions that ensued the following issues were raised:

- (i) The need to have a closer working relationship between TTCA, the road management authorities, Rift Valley Railways and other stakeholders involved in provision of infrastructure to ensure coordination of regional efforts to improve road and railway infrastructure;
- (ii) The need to assess the impact that the dilapidated transport equipment is having on transit times and costs and the consequent elaboration of mitigation strategies in collaboration with other stakeholders;
- (iii) The importance of upgrading road infrastructure which in essence is the major constraining factor in attaining efficiency improvements in the Northern Corridor;
- (iv) The need to ensure that there is broader participation in the trade facilitation committees established at country level, especially by the private sector level; and
- (v) The licensing of trucks and trailers which do not comply with technical requirements for transportation of transit goods.

Presentation of Survey Reports on NTBs (*Agenda item 5*)

41. The consultants presented the results of the surveys conducted in member States on NTBs.

(a) Objectives of the Survey

42. The main objective of the survey was to identify and analyse the nature and scope of Non-tariff barriers (NTBs) that hamper intra-regional trade in COMESA, EAC and SADC, thus impairing the ability of their Member States to optimise on gains from the trade preferences offered through their respective trading arrangements. All three regional economic communities (RECs) are currently at various stages of developing formal/structured mechanisms for identifying, monitoring and eliminating NTBs and are collaborating closely in this process. It is envisaged that these efforts will ultimately result in the adoption of a single NTB monitoring and elimination mechanism that will cover all three RECs.

(b) Method of Analysis

43. The study was divided into two main groups:

44. Group One included SADC and EAC Countries (excluding DRC) for which inventories of NTBs had been compiled in 2004 and 2005. The surveys for these

countries focused on updating and re-verifying the 2004 and 2005 studies. In addition, a review of the COMESA harmonised transit documentation and other related trade facilitation instruments was to be done for those countries which are also members of COMESA.

45. Group Two included all other non-SADC/EAC COMESA countries plus the DRC but excluding Libya (11 in total) which required a full NTB survey to be completed.
46. Country consultants were tasked with conducting both a desk review as well as a selected number of interviews with key stakeholders, including relevant large retailers, importers, exporters, cross-border traders, transport companies, freight forwarders, other business people engaged in intra-SADC and EAC trade, Chambers of Commerce and Industry, customs services, trade ministries, and other government agencies. A standardised questionnaire and approach was developed prior to commencing fieldwork. A similar methodology was used for both the Group One and Group Two countries to maximise synthesis of the reports across the various groupings. The major differences between the two approaches were that Group One countries required an update of the existing studies, while studies for Group Two required a new inventory to be developed. In addition, the status of implementation of COMESA Harmonised Transport Procedures was included for those member countries.
47. The review and compilation of the inventory of NTBs for each country was done according to the WTO NTB classification schedule for clarity and uniformity. In addition to this exercise further information was elicited with regard to regulations traders face as well as potential reporting structures and contact points for NTB monitoring and elimination within each country.
48. There was a consistent view expressed by the business operators that, as a whole, NTBs prevailing in the region have a serious impact on regional trade in terms of business costs and restrictions to market access. Agricultural products are the worst affected with particular commodities facing restraints such as import and export bans, quota restrictions, variable SPS and TBT restrictions, licensing requirements and seasonal restrictions. General manufactured goods face few restrictions and when they do exist they tend to be on the need to meet national standards or rules of origin requirements. There is very little intra-regional trade in mineral products and restraints tend to be on exports such as single channel marketing and export permits.
49. Non-Tariff Barriers (NTBs) have been identified as a major impediment to the progression of further integration within the region, and as tariff barriers fall NTBs have gained importance and are highlighted. However, in many instances NTBs have become considerably less identifiable as trade liberalisation and tariff reform processes have been implemented over the last decade. In the past, state intervention through price controls, foreign currency controls, import licensing and state marketing meant that such barriers to trade were obvious to all concerned. Today most of these controls have been lifted in most countries with the result that the prevailing NTBs tend to be more arbitrary, qualitative and non-transparent. Nevertheless they still exist in one form or another in all countries

and depending on the product and the transaction lead to a reduction in intra-regional trade.

(c) General Classification of NTBs

50. Broadly most NTBs fall into the following categories:

- (i) Misuse of internationally agreed measures governing product qualities, normally established for consumer protection, and not directly aimed at the limitation of international trade. This includes misuse of measures concerned with food safety, plant and animal health (SPS) and technical standards. It also includes the misuse of measures aimed at protecting national security.
- (ii) Misuse of internationally agreed measures and commercial strategies that end up inhibiting free trade, such as anti-dumping measures and safeguard clauses.
- (iii) Misuse of measures directed at the enforcement of trade agreements, such as rules of origin.
- (iv) Imposition of charges on services or import/export clearance other than those internationally agreed, or above internationally agreed levels. This includes import and export licence fees, administrative charges, transit bonds, and special deposits.
- (v) Misuse of legal measures concerning immigration and movement of persons (passports, visas, health documents).
- (vi) Improper administrative interventions, which include Customs authorisations and procedures that may be used to impede the passage of products and traders.
- (vii) Lack of capacity to meet SPS and other quality standards imposed by importing countries. The lack of harmonised SPS and other quality standards within the COMESA and SADC region may also constitute a NTB.
- (viii) Inadequate trade-support services: finance; insurance; transport services; market information; electronic communications systems, standards authorities. Barriers include lack of nation-wide availability of services.
- (ix) Although not strictly an NTB, deficiencies of infrastructure such as ports, roads, airports, and border posts pose what many businesses consider as the most significant constraint to trade in the region. Hence, for the purposes of COMESA and SADC infrastructure and transport issues were given equal weight in determining NTBs in the region.

51. It was observed that in the absence of direct and full dialogue between governments and the private sector, the problem of NTBs was likely to continue

unabated. There was a need to have a benchmark on the basis of which NTBs could be evaluated. It was noted in the country reports that there are numerous examples given by the business community of the barriers they face. These examples are often very product and country specific and cumulatively present a consistent picture of cumbersome and non-transparent bureaucracy hindering the flow of trade. Such barriers add to the final cost of a product which in turn is borne by the consumers.

52. After reviewing the input from the country reports it is possible to group the most prevalent NTBs in the region as follows:

NTB	Primary Reason
Non-acceptance of SADC/COMESA Certificate of Origin	Non-notification of change of verifying signatures, suspicion of authenticity of declaration
Changes in road and border tolls	Short-term revenue generation
Temporary bans on selected products	Local industry protection, vested interests, health protection
Non-acceptance of certificates and trade documentation	If the documents are in order then often due to corrupt practises at border posts
Visa requirements	Lack of harmonisation and revenue seeking
Non-acceptance of national Standards	Inability for verification at national level; lack of regional accreditation processes, MRA not in place
Pre-shipment Inspection	Prevent transfer pricing and under-invoicing
Restrictions on transport mode	Protection of local transporters, revenue collection
Incorrect tariff classification	Corruption, revenue collection, lack of suitable training
Poor collection and dissemination of trade data	Inadequate human resources, lack of computerisation

53. The second part of the presentation focused on the results of the survey conducted in Egypt, Eritrea, Kenya, Sudan, Uganda and Tanzania. The detailed results appear in Annex II.

54. Following the presentation by the consultants, discussants Bernard Kagira and Prof. Jasper Okelo made the following observations on the reports.

55. The first discussant appreciated the comprehensive nature of the definition provided for NTBs and observed that starting from such a solid premise would provide a foundation for further work on categorizing and eliminating NTBs.

56. Regarding the classification of NTBs based on the seven WTO category system, he observed that this system would not be suitable for the COMESA region for two primary reasons:

- (a) the WTO classification system is still under negotiation by member States;
- (b) the system contains elements that are controversial, even at WTO level, such as government procurement and elements such as discriminatory pricing could lead to conflicts in negotiations among COMESA member States as the context for such definition might be controversial.

57. He, instead, provided a proposal for a regional NTB classification based on the following seven broad categories:

- (i) SPS measures;
- (ii) Technical Barriers to Trade;
- (iii) Sectoral/product specific trade regulatory requirements (Export/Import quotas etc);
- (iv) Immigration/Consular requirements for cross-border traders;
- (v) Trade facilitation encompassing customs valuation, customs documentation, clearance procedures, Pre-Shipment Inspection, transit issues, Rules of Origin, Safeguards etc.;
- (vi) Trade related administrative NTBs e.g. local government regulations on goods being ferried through local authorities; and
- (vii) Payments – foreign exchange controls etc.

58. He further proposed that on the way forward there was a need to formulate a pragmatic program to address problems related to NTBs.

59. In this regard, he made the following proposals:

- (a) member States should submit notification of NTBs using the 7 band categorization proposed above;
- (b) collation and verification of NTBs with member States in readiness for NTBs implementation program;
- (c) establishment and operationalisation of NTB structures at national and regional level;
- (d) NTB implementation program:
 - (i) Set up 7 task forces along the 7 broad categories of NTBs;
 - (ii) Activities to be undertaken:
 - Harmonization (SPS/TBT)
 - Rationalization (SPS)

- Elimination of sector/product specific NTBs through roundtable negotiations
- Information dissemination of non-tariff trade regulatory requirements

60. The second discussant stressed the need to share the findings of the NTBs surveys with the private sector which should be in the forefront in implementing the programme to eliminate NTBs. The business people should also be involved in authenticating the findings and be informed about the established focal points where experienced NTBs would be reported.

61. He further pointed that the studies had pointed out that there exists a number of NTBs in the region which needed to be analysed with an impact assessment being conducted for each country and an elimination plan developed.

62. Regarding capacity building for the implementation of the elimination programme he proposed that governments and the Secretariat should devise a capacity building for the relevant government officials and the business sector.

63. He reiterated the need to have the private sector lead the reporting process and be the watchdog for the elimination process.

64. In conclusion he stressed the need for political commitment at regional and level for the program to eliminate NTBs to be successful.

Discussions

65. In the discussions that ensued, the following issues were deliberated on:

- NTBs appear in many forms and sometimes may not be quantifiable
- The focus should be to agree on means of measuring impact e.g. time & cost so as to justify attention to be given to reporting, monitoring & elimination process
- EAC has started an annual business climate index survey, aimed at measuring NTBs impact. This approach needs to be adopted by COMESA/SADC

(a) Standards

66. The COMESA programme for harmonization of standards was considered as inadequate. The process of agreeing on regional standards for identified goods instead of starting with ISO or ARSO standards and developing regional standards was identified as a gap that has contributed to lack of progress.

67. Some member States were of the opinion that COMESA should adopt the international standards such as ISO and then use their own standards on those products for which international standards have not been developed.

68. The wider SQMT issues such as capacity building of national standard setting bodies, facilities for testing for conformity assessment etc have not been addressed.

69. In the context of eliminating NTBs of which TBTs can be a major component, it was observed that COMESA has to put in place a robust programme to harmonize standards and have a regional SQMT programme that can provide a platform for regional mutual recognition of standards and testing for conformity to regional technical regulations. Similar action is also required regarding SPS.

(a) Rules of Origin

70. There are two main areas of concern regarding the COMESA Rules of Origin, namely interpretation of the rules of origin provisions and administrative procedures for origin certification.

71. The Egyptian delegation emphasized that Egypt applies 45% value addition and not 35 % as indicated in the Egyptian survey report.

(a) Pre-shipment Inspection and PVOC

72. Concern was raised regarding the continued use of PSI to verify quality, quantity and price of imports in a number of countries.

73. Regarding the PVOC which applies in Kenya, the workshop was advised that Kenya had given its commitment to review application of PVOC to intra-COMESA trade in line with the Council of Ministers decision not to have pre-shipment inspection for intra-COMESA trade.

(b) Balance between necessary Non-Tariff Measures and restrictive NTBs

74. It was noted that some NTMs were necessary on social and economic grounds and governments had a responsibility to use available legal instruments to meet these objectives. In this regard, it was suggested that cost-benefit analysis on some of the borderline NTBs be undertaken to give governments a basis for decision making for their removal. Further to this it was, considered necessary to identify NTBs that are as a result of lack of implementation of Council decisions and on the basis of this analysis prepare timelines for implementation of Treaty provisions and Council decisions.

(c) The need for economic impact assessment of NTBs

75. It was recognized that the surveys had documented commonly occurring NTBs but had not gone on to quantify the cost implications of the NTBs on transaction costs. The workshop was advised that this exercise was outside the scope of the country surveys but the Secretariat was requested to use the raw material from the study to conduct such impact assessment studies for the major NTBs.

(d) Need for task forces for supervising elimination of NTBs

76. To manage the process of eliminating NTBs at national level, it was considered appropriate that task forces be established for each category of NTB.

(e) Anti-corruption mechanisms

77. Suggestions were proposed regarding the classification of NTB's with the category of Agricultural products being renamed SPS and the transport and customs categories being combined to enable a seventh category of other NTB's to be created.

78. Regarding the Institutional mechanism, there were discussions on the reporting and resolution structures provided for under COMESA legal instruments and the responsibilities and composition of national NTB reporting and resolution structures. Essentially it was accepted that national structures would be established in line with national requirements and at regional level most of the reporting collation and coordination of resolution and elimination efforts would be under the dedicated NTB desk.

Recommendations

79. Member States should submit comments on the Country Surveys by 13th July in order to enable finalization of the reports.

80. COMESA should review administrative procedures for origin certificate to ensure that they do not become barriers to intra-COMESA trade.

81. The issue of interpretation of the provisions of the rules of origin should be addressed through capacity building activities by COMESA Secretariat and member States. The administrative issues that have constrained intra-COMESA trade over a number of years should be vigorously addressed by the Secretariat in order to promote intra-COMESA trade.

82. COMESA should put in place a robust programme to harmonize standards, a regional SQMT programme that can provide a platform for regional mutual recognition of standards, and testing for conformity to regional technical regulations.

83. The Secretariat should utilize the survey materials to conduct an impact assessment on the major NTBs, identify those NTBS that require technical interventions prior to elimination from those that require political decisions, and also identify those NTBS that are as a result of lack of implementation of treaty provisions and Council decisions.

Categorisation and Prioritisation (*Agenda item 6*)

84. The consultants presented their proposals for categorization of NTBs and the expected outputs of the Action Plan for eliminating NTBs.

Guiding Principles for NTB Reduction and Elimination

85. 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. These measures only become genuine NTBs when they are implemented in such a manner as to unnecessarily add to costs or inhibit trade, are discriminatory or are applied in an illegitimate manner.

86. In general, apart from the straightforward category of border restrictions (e.g. import or export quotas), some non-tariff barriers can often best be described as the administration (or lack thereof) linked to the implementation of rules, as much as the rules in themselves.

Common NTB Clusters and Categorisation Modalities

87. The Consultants proposed that it would be appropriate to implement the reduction/elimination of the NTBs under the following thematic areas namely:

- (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

Obligatory Notification

88. In accordance with the COMESA Treaty Provisions of Article 50 which requires Members States to notify introduction of NTMs, it was observed that:

- (i) in order to lessen the perception of unfair or arbitrary NTBs, it shall be obligatory for any Member State to first notify the REC Secretariat of any intention to impose a legislative, ministerial or regulatory NTM on any product or service. The notification would include a justification and duration for such an NTM. Such notifications would then be circulated to all Member States and then by the National Focal Point to key stakeholders in the respective country. In addition the provision recognises that under emergency situations, such notification will be made as soon as possible after the issuing of the NTM. Only through

transparency and information sharing will such barriers to trade be understood; and

- (ii) the member State imposing the NTM should simultaneously notify affected member States expeditiously.

Common Institutional Mechanisms

89. In the long run there should be common Institutional Mechanisms to manage NTB's in COMESA, EAC and SADC with the essential elements being a reporting structure initiating the process at national level feeding into regional structures and a national management structure to supervise elimination of reported and identified NTB's.

90. In the ensuing discussions, it was reported that during consultations on existing NTBs, the stakeholders pointed out that they preferred a structured process of reporting, monitoring and eliminating NTBs.

91. The recommended institutional arrangements and responsibilities of various stakeholders that will be involved in the NTB reporting, monitoring and elimination process should be specified and mandated.

92. Such institutional arrangements could involve establishment of the National NTB Task Force¹ whose membership must involve all key stakeholders to ensure ownership and support. The Secretariat should preferably come from the private sector under the chairmanship of the Foreign Trade Ministry.

Technical Assistance Needs and Other Supportive Arrangements

93. It was considered that technical assistance be factored into the implementation process, whose purpose will be to:

- (i) coordinate organisation of national task forces related to NTBs, including the first symposium to discuss national NTB reports and develop/endorse the action plan;
- (ii) follow-up with responsible ministries and agencies on actions being taken on planned NTB elimination process;
- (iii) prepare progress reports for National NTB Committee;
- (iv) support to Secretariat functions on behalf of NMC;
- (v) coordinate organization of regional level forums for NMCs; and
- (vi) assist the COMESA Secretariat to coordinate the regional level reporting, verification, monitoring and arbitration of notified NTBs.

Action Plan Summary of Steps (Agenda item 7)

¹ The NTB Task Force is also referred to as the National Monitoring Committee (MNC) in this report

94. The workshop considered a draft action plan for implementation of a programme and supporting institutional mechanism.

95. The outputs of the Action Plan would comprise of the following;

- (i) Guiding principles to be used commonly for reporting, monitoring and elimination of NTBs within the region
- (ii) Common NTB categorizations and measures of impact to business in each member state.
- (iii) Common institutional mechanisms and approach for reporting, monitoring and eliminating NTBs among member states.

STEP ONE: NTB Identification & Prioritisation

<p>Activity Core NTBs/ Suggested WTO Category Prevalence/Non- transparency</p>	<p>Impact on Trade</p>	<p>Removal/Harmonization Timeline</p>
<p>High Medium Low</p>	<p>High Medium Low</p>	<p>Immediate 0-12 months Medium 1-2 years Long 2-5 years</p>

STEP TWO: Resolution process

96. Notification, circulation and resolution procedure:

- (i) Define Process
- (ii) Mandate Responsibilities
- (iii) Confirm Deadlines
- (iv) Agree Non-action recourse

STEP THREE: Region-wide NTB reduction by trade facilitation on thematic basis

97. The following are the thematic basis:

- (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:
 - Propose institutional mechanism and deadline for operations
 - Define anticipated outcomes

➤ Define resource requirements

Recommendation

98. The technical work programme incorporating the COMESA NTB Report Form, the categorization and elimination matrix and the guide to reporting, monitoring and elimination was recommended for utilization and implementation by all member States.

Annex I

FORM FOR REPORTING NTBS AND OTHER BARRIERS TO TRADE IN COMESA	
To: COMESA National Enquiry Point NTB Monitoring Unit Country	
Company Details	Name
	Address Telephone No. Fax No E-mail: Contact Person:
Product Name:	Tariff Code: Value:
Description of the Non-Tariff Barrier or other Barriers to trade encountered when trading in COMESA (If this space is not adequate, use a different sheet to explain the problem)	
Station of Occurrence:	Date of Occurrence:
Signed:	
Date:	

The above form is proposed to for use in reporting NTBs whenever an economic operator/trader faces a NTB listed overleaf.

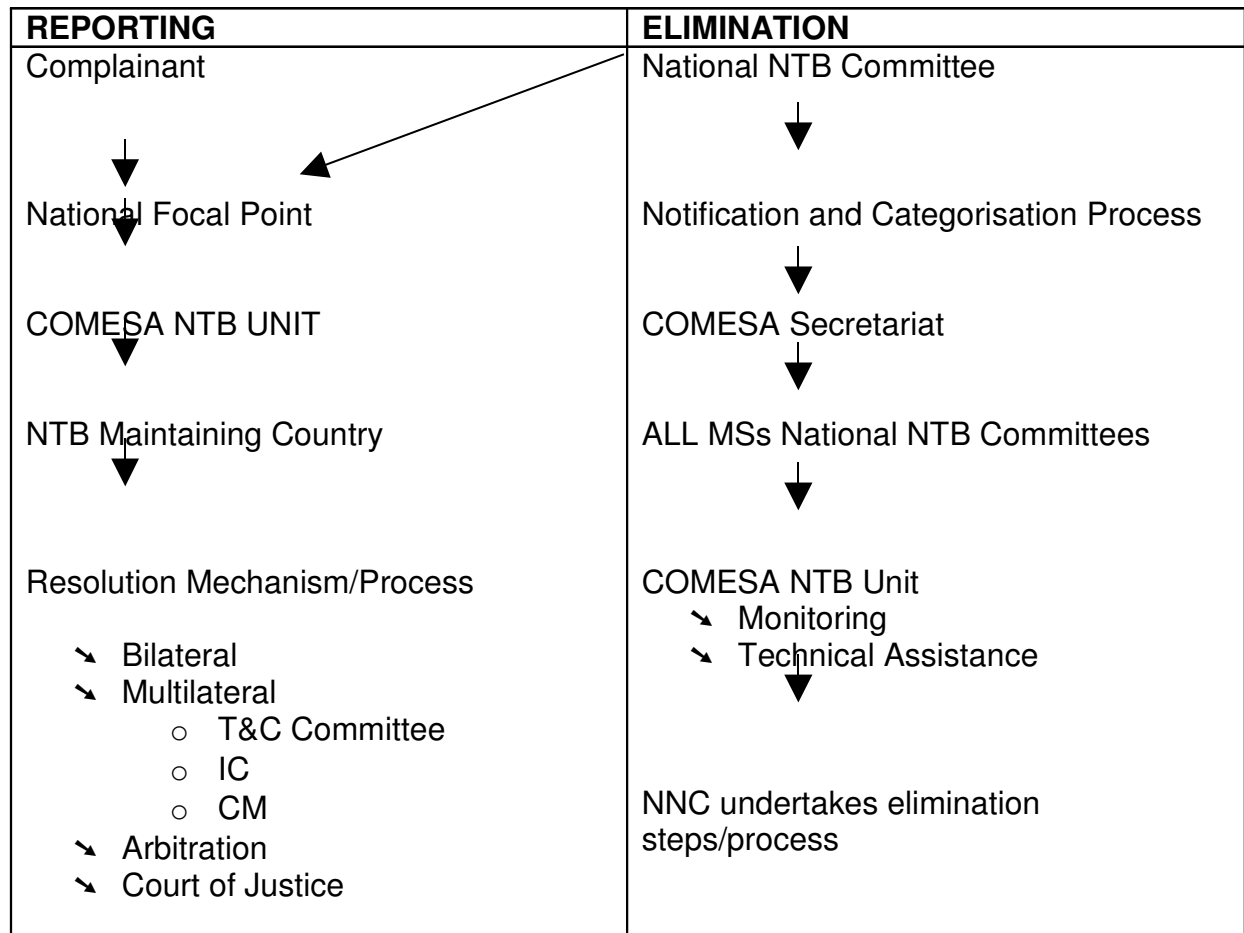
The response time after reporting of an NTB will be a maximum of 3 weeks.

List of Non-Tariff Barriers and Action/s to be undertaken by an Economic Operator for reporting them.

Non Tariff Barrier	Reporting of NTB by Economic Operator
<p>Customs Clearance Procedures:</p> <p>Information on clearing procedures should be made public in all member States through the publication of easy brochures and booklets.</p> <p>When a security is demanded to ensure payment of duties and taxes, the security should be equal to the amount of duty and taxes payable. The security should be discharged as soon as the obligations demanded have been fulfilled.</p>	<p>Any procedure adopted for clearance of goods outside those contained in published documentation will constitute an NTB</p>
<p>Import/ Export Regulations:</p> <p>Information and Regulations regarding products subjected to import regulations and licensing be published. The publications should indicate the procedures and documentation required for the timely issuance of import/export permits.</p>	<p>Any requirement made outside those demanded in the publications will constitute a NTB</p>
<p>Sanitary and Phytosanitary Measures:</p> <p>In the absence of agreed SPS measures, Member states should exchange SPS regulations, requirements and practices.</p>	<p>Any requirement made outside those demanded in the publications will constitute a NTB</p>
<p>Non-Tariff Fees:</p> <p>Non-Tariff fees shall be published and made available to the public. Examples of such fees include pre-shipment fees, road tolls, warehousing fees and air/marine levies.</p>	<p>Any payment of non-tariff fees demanded outside those required legally will constitute a NTB</p>
<p>Technical Regulations:</p> <p>National Bureaux of Standards or other Government Agencies dealing with technical requirements and standards will publicise the standards and other requirements.</p> <p>Bureaux of Standards should exchange information on their standards pending the harmonisation of standards in COMESA.</p>	<p>Any requirement or practice demanded outside the published technical requirements and standards will constitute a NTB</p>
<p>Transit fees:</p> <p>Schedule of Transit fees and Transit Requirements should be made available to transit carriers within and outside the member State. Member States shall refrain to demand transit deposits in foreign hard currencies.</p>	<p>Any requirement or fee demanded outside those published will constitute a NTB.</p> <p>Transit fees demanded in foreign hard currencies will constitute a NTB</p>

Annex II

The Reporting and Institutional Structure for Elimination NTBs



Annex III

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