A SURVEY OF NON-TARIFF BARRIERS THAT AFFECT KENYAN IMPORTS AND EXPORTS WITHIN EAC AND COMESA COUNTRIES

Final report

Research and report prepared by

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EXEUTIVE SUMMARY

Analysis of Kenya's trade with EAC and COMESA countries over the period 2001 to 2005 shows that the country has to a large extent exploited the export opportunities arising out of her membership to both EAC and COMESA regional trading blocs. Under the two trading blocs, preferential tariffs apply, which under COMESA are given through membership of the Free Trade Area. Under the EAC Customs Union, Kenya is allowed to export most items to Tanzania and Uganda at zero import duty and at ten percent for selected items. In this respect, Kenya's exports grew from USD 1.54 Billion in 2001 to 2.68 Billion in 2005, and the region's share of her export markets represented an average of 57% of total exports over the period 2001 to 2005 which is quite significant. The country's sister partners within the EAC region took the bulk of exports to COMESA, with Uganda taking an average of 41% over the period 2001-05 and Tanzania taking an average 19% of the market share. The region however has not become a significant source of Kenya's import requirements despite the duty free trade arrangements allowed under the EAC Customs Union and COMESA Free Trade Area. In this respect, the region only managed to capture an average of 4% market share to Kenya's total imports during the period 2001 to 2005.

During the 2005/06 EAC NTBs consultations, it was found out that a number of NTBs affect the ability of Kenyan businesses to export and import, which have been reaffirmed in the consultations leading to this report. The major export related NTBs fall under Government Participation in Trade and Restrictive Practices Tolerated by Governments; Customs and Administrative Entry Procedures; Sanitary and Phytosanitary Measures; Technical Barriers to Trade and other distribution related obstacles that hinder access to EA/COMESA markets. Regarding import trade, the major NTBs fall under Customs documentation and administrative procedures, Transiting procedures, and Technical barriers to trade.

The procedures for reporting existence, monitoring and elimination of the above NTBs involve the Governments, agencies responsible for enforcing trade related regulations, and the business community. Consultations show that both the Government and private sector prefer a structured approach to dealing these trade obstacles, which should also involve the EAC and COMESA Secretariats since most of them are beyond the border type of NTBs. Also, an effective approach to dealing with NTBs needs to be established at both the national and regional level, including an institutional structure in each country to steer the process. During consultations in Kenya, both the Government and private sector have reaffirmed their preference for the Ministry of Trade and Industry (MOTI) to be the coordinating ministry for NTBs issues as agreed during the 2005/06 EAC NTBS survey. This Ministry however should be supported by the Ministry for EAC and Regional Cooperation regarding EA NTBs.

The major challenges regarding implementation of the NTBs monitoring mechanism in Kenya revolve around building capacity of the NTBs secretariat at the coordinating ministry to support the role of National Monitoring Committee, Setting benchmarks for the Committee including clear terms of reference; Categorization of 'core' and 'non-core' NTBs in order to design a prioritized elimination mechanism; and Integrating application of the NTBs reporting, monitoring and elimination mechanism within the secretariats of associations whose members trade in goods and services.

The major trade facilitation issues in Kenya relate to improving the efficiency of the Railway transport system so that it can provide competitive transport for exports and imports; Improving the condition of Roads which currently contribute significantly to cost of transport; Improving the clearance of goods at entry and exit points by various agencies, and Improving the efficiency of handling cargo at the Port of Mombasa.

Regarding new NTBs since the 2005/06 EAC NTBs survey, they almost remain the same. However, the survey has identified additional NTBs for exports and imports within the COMESA region. These NTBs need to be addressed in a structured manner, and trade stakeholders have therefore confirmed the validity of the proposed EAC reporting, monitoring and elimination mechanism. A key issue of concern to the business community is that the mechanism needs to be applied without further delay, and that any reported NTB cases should be resolved within one month, failure to which they should be referred to the respective Trade Remedies Committee (either COMESA or EAC) as agreed during the design of the EAC monitoring and elimination mechanism.

The current consultations have also reaffirmed the template that was proposed during the EAC 2005/06 NTBs survey for reporting, monitoring and facilitating NTBs elimination process. The detailed action plan that was proposed during the EAC NTBs survey has been validated during the current consultations and forms part of this report.

Regarding harmonization of procedures for transit traffic between countries in the region, Kenya has implemented all the COMESA schemes aimed at facilitating cross-border trade, which are also being used within the EAC region. These include the Harmonized road transit charges system; COMESA Carrier’s License; Harmonized Axle Loading and Maximum Vehicle Weight; COMESA Yellow Card; and elements of the Advance Cargo Information System. Kenya also affirms its commitment to implement the proposed COMESA Bond Guarantee scheme and the COMESA Customs Declaration Document (CD-COM)

Like her sister EAC partners, the analysis of NTBs that affect Kenya’s trade within EAC/COMESA countries shows that the major recommended actions revolve around four main areas:

- Need for Partner States within EAC and COMESA to consolidate and demonstrate their political and technical goodwill to implement aspirations of the EAC and COMESA Treaties, so that decisions passed at Council levels are respected and domesticated through timely amendments of national laws, regulations and practices;
- Need for Partner States need to ensure that the legal and regulatory framework governing the integration process is properly enshrined in their national laws, clearly understood and complied with by all agencies responsible for enforcement of trade regulatory and administrative requirements.
- Need to build capacity at the coordinating ministry and business associations so as to enable the NTBs Monitoring Committee to play its role of facilitate reporting, monitoring and elimination of NTBs. An effective secretariat capacity will also help to kick-start application of NTBs monitoring and elimination mechanism without further delay.

- Need to h**armonise transit traffic procedures between EAC and COMESA.** Kenya should also be in the forefront of implementing the proposed COMESA Bond Guarantee scheme Advance Cargo Information System and lobbying other members to implement the planned transit traffic programs, especially because it has a lot to gain if transit procedures were harmonized within the region. This is indicated by the fact that COMESA is the country's principal export market, which needs to be safeguarded by ensuring that transportation within the region is made more efficient and cost effective through harmonized transit procedures.

1.0 INTRODUCTION

1.1 Overview

This assignment was commissioned by the Regional Trade Facilitation Programme (RTFP) on behalf of the COMESA/EAC and SADC Secretariats with an objective of identifying and analysing the nature and scope of Non-tariff barriers (NTBs) that hamper intra-regional trade within the member countries. A total of twenty-five countries which are members of COMESA[1], SADC[2] and/or EAC[3] are being surveyed in this respect, Uganda included. All the 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, and the result is expected to be the adoption of a single NTB monitoring and elimination mechanism for the region.

The survey is divided into two parts, one for SADC and/or EAC[4] countries that were surveyed in 2004 and 2005/06 respectively, and one for COMESA[5] countries that have not been surveyed before. The survey for EAC and SADC countries is updating and validating the 2004 and 2005/06 NTB inventories while the survey for COMESA is compiling complete inventories for 11 COMESA countries that have not been surveyed before. This report should therefore be read as an update for the Kenya 2005/06 NTBs survey, which a review of the COMESA harmonised transit documentation and other related trade facilitation instruments.

1.2 Background to the EAC and COMESA NTBs survey

The 2005/06 survey for EAC countries (Tanzania, Kenya and Uganda) identified a number of NTBs which were categorised under the following clusters:

(a) Customs documentation and administrative procedures, which include un-standardised systems for imports declaration and payment of applicable duty rates, limited customs working hours, different interpretation of the COMESA Rules of Origin[6], application of discriminatory taxes and other charges on imports originating from amongst the three countries, cumbersome procedures for verifying containerized imports, problems in blocking the marketing of counterfeit products, and diversion of transit goods into the region
(b) Immigration procedures, which include un-standardised visa fees and procedures for application of work permits, cumbersome and duplicated immigration procedures.

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[1] Common Market for Eastern and Southern African countries
[2] Southern African Development Community
[3] Eastern African Community
[4] Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe, Kenya and Uganda
[5] Burundi, Comoros, DR Congo, Djibouti, Egypt, Eritrea, Ethiopia, Madagascar, Rwanda, Seychelles and Sudan
[3] Where products are not wholly produced in the EAC and an EAC rule of origin has not yet been agreed, COMESA rules of origin are used in the interim.

(c) Quality inspection procedures, which include delays in inspection of commercial vehicles, cumbersome and costly quality inspection procedures, unnecessary quality inspections (including of products certified by accredited laboratories and of imports originating from the EAC bearing certification marks issued by the three East African Standards Bureaus), un-standardised quality inspection and testing procedures and varying procedures for issuing certification marks.

(d) Transiting procedures, including cumbersome, un-standardised and costly transport and other procedures for transit traffic.

Regarding COMESA, the existence of NTBs that hinder intra-COMESA trade is an issue that was taken up as far back as 1984 in Article 49 of the COMESA Treaty, which provides for the elimination of existing and non-imposition of new NTBs. The member States have recognised the importance of reducing trade related obstacles that hinder intra-COMESA trade and market access for products. They have also agreed to implement a common operational strategy for dealing with NTBs, which however should compromise legitimate demands for better protection of health, safety and the environment and that should not jeopardise efforts of national market regulatory regimes. In this respect, the members have already reached consensus on the need for developing and implementing an NTBs monitoring and elimination instrument, to be administered at the national level. The application of this instrument, however, has been constrained by the lack of consensus over the national trade laws, regulations, practices and procedures that are to be categorised as NTBs.

1.3 Scope of Work and tasks for the survey

The objective of the study for EAC countries aims at updating the inventory of NTBs that hinder intra-EAC trade identified in the 2005/06 survey. The specific tasks of the survey are to:

1. Prepare patterns of intra-COMESA and intra-EAC trade using the most recent trade data, identify each country's exports and imports and the main traded commodities for the last 5 years for which data is available at HS[7] 2 digit level (either 2002-2006 or 2001-2005 if 2006 data is not yet available).
2. Identify the scope and nature of NTBs that affect intra-EAC and COMESA trade utilising a standardised inventory approach under the WTO categorisation of NTBs.
3. Undertake consultations on the template form for reporting NTBs as proposed during the 2005/06 EAC NTBs survey consultations.
4. Undertake consultations with the private sector representative organisations and the public sector on the proposal that they designate a National NTBs Committee as the focal point for reporting, monitoring and facilitating elimination of NTBs, which will also liaise closely with EAC and COMESA Secretariats.
5. Highlight those NTBs in the inventory which have been introduced since the 2005 EAC NTBs study.
6. Assess the importance of each NTB in terms of its impact on intra- EAC and intra-COMESA trade, and on traders, such as the cost of the additional time incurred to ensure

[7] Harmonised System data

compliance, lost market opportunities, and prevalence of specific NTBs at EAC and COMESA country exit and entry points

7. Assess NTBs that are identified with particular transport and transit modes, including air freight, sea freight, road freight, and other cross-border traffic services.
8. Review the status of implementation of the COMESA harmonised transit documentation and other related trade facilitation instruments, including the Harmonised Road Transit Charges, COMESA Carrier's License, Harmonised Axle Load and Maximum Vehicle Weight specifications, and the COMESA Yellow Card.
9. Identify EAC and COMESA enforcement agencies and laws, regulations, practices, and requirements in each country of study and in the importing/ exporting countries with which traders must comply.

1.4 Methodology for undertaking the survey

In Kenya, the survey included a detailed analysis of export and import data between 2001 and 2005, including EAC/COMESA destination countries, trends and major products traded. It also reviewed available literature on existence and impact of NTBs, which include the 2005/06 NTBs survey report, the 2004 Business Climate Index survey report, the PVOC program, the SIMBA System and the planned Community Based System which aims at electronic data sharing between agencies involved in imports and exports clearance. Consultations were also held with relevant representatives of the private and public sector, which included the Kenya Association of Manufacturers, Kenya National Chamber of Commerce and Industry, Kenya International Freight Forwarders and Warehousing Association, Ministry of Trade and Industry, Customs and Excise Department, Kenya Bureau of Standards, Pest Control Products Board, and Kenya Plant Health Inspectorate Service. A number of businesspeople were also consulted during the design of the EAC NTBs monitoring mechanism. The current consultations entered around validation and update of NTBs identified during the 2005/06 survey, template for reporting NTBs, Focal point for coordinating reporting, monitoring and facilitating NTBs elimination, membership to the National NTBs Monitoring Committee and its capacity to coordinate work on NTBs. The report has also used the WTO NTB codes to categorise identified NTBs into a standardised inventory.

This report has tried as much as possible to answer all the terms of reference as highlighted above under the scope of work and tasks for the survey.

2.0 OVERVIEW OF KENYA TRADE WITH COMESA COUNTRIES

2.1 EXPORT TRADE

2.1.1 Kenya's export trends to EAC/COMESA region

The COMESA region has increasingly become the major market for Kenya's exports, whose value grew from USD 1.54 Billion in 2001, to USD 1.7 Billion in 2002, 1.8 Billion in 2003, 2.06 Billion in 2004 and to 2.68 Billion in 2005. The region therefore took the lion's share of Kenya's exports during the period, representing 56% between 2001 and 2003, growing to 58% in 2004, and dropping slightly again to 56% in 2005. This was an average of 57% market share over the period 2001 to 2005. The country's sister partners within the EAC region took the bulk of exports to COMESA, with Uganda taking an average of 41% over the period 2001-05 and Tanzania taking an average 19% of the market share. Export trends to the EAC/COMESA region are shown in Table 1 below.

Table 1: Kenya's exports to EAC/SCOMESA countries between 2001 and 2005 (USD 000)

COMESA destination country	2001	2002	2003	2004	2005	Total 2001-05	Country market share
Uganda	382,187	405,707	402,782	479,175	587,634	2,257,485	40.8%
Tanzania	171,895	183,924	191,598	231,717	274,676	1,053,811	19.0%
Egypt	90,597	87,573	71,615	89,443	122,079	461,307	8.3%
DRC	54,525	64,213	70,492	101,261	136,919	427,410	7.7%
Rwanda	44,731	55,945	78,953	80,035	100,461	360,127	6.5%
Sudan	31,137	36,555	57,507	72,077	93,543	290,818	5.3%
Burundi	23,490	23,318	36,145	38,426	51,125	172,504	3.1%
Ethiopia	27,396	25,689	21,336	28,676	34,827	137,924	2.5%
Zambia	5,165	21,996	21,617	30,416	37,312	116,506	2.1%
Malawi	4,778	9,830	9,974	14,655	19,657	58,894	1.1%
Djibouti	10,735	6,111	4,969	6,776	9,332	37,924	0.7%
Eritrea	6,042	5,594	5,394	2,645	13,935	33,609	0.6%
Mauritius	4,322	2,119	9,766	7,859	7,050	31,114	0.6%
Madagascar	3,264	8,510	6,223	3,630	5,615	27,242	0.5%
Comoros	4,512	3,533	4,039	4,721	7,099	23,904	0.4%
Zimbabwe	2,319	5,740	3,174	2,297	3,702	17,231	0.3%
Seychelles	2,705	3,180	2,611	2,551	3,177	14,224	0.3%
Angola	391	839	3,413	1,550	1,726	7,920	0.1%
Swaziland	112	38	950	45	130	1,276	0.0%
Namibia	32	20	292	259	128	730	0.0%

COMESA destination country	2001	2002	2003	2004	2005	Total 2001-05	Country market share
Total to COMESA	**870,334**	**950,436**	**1,002,849**	**1,198,213**	**1,510,127**	**5,531,959**	**100%**
Total exports	**1,544,962**	**1,704,202**	**1,795,495**	**2,056,478**	**2,675,304**	**9,776,441**	
COMESA share	**56%**	**56%**	**56%**	**58%**	**56%**	**57%**	**57%**

Source: 2006 Kenya Economic Survey and Abstract

2.1.2 Major export products to EAC/COMESA region

Kenya's ten leading exports to the EAC/COMESA during the period 2001-2005 were Tea which took 17%; Articles of iron and steel which took 6.5%; and Essential oils, perfumery, soap and polishing preparations which took 6% of Kenya's exports to EAC/COMESA. Other products in the category of ten major exports were Petroleum products, Paper and paperboard, Salt and Cement; Textile yarn, fabrics and garments; Cigarettes; Glass and glassware; and un-milled maize. Table 2 below shows the market shares of the ten leading exports to the region between 2001 and 2005.

Table 2: Kenya's leading exports to EAC/COMESA countries between 2001 and 2005 (USD 000)

HS Chapter	Chapter description	2001	2002	2003	2004	2005	Total 2001-05	Export share to COMESA
09	Tea, coffee (specific export - tea)	88,232	100,436	84,848	99,880	144,957	518,353	17%
72,73	Iron and steel; Articles of iron or steel	6,501	38,991	29,623	50,397	67,127	192,640	6.5%
33 &34	Essential oils…perfumery, cosmetics or toilet preparations; Soap. washing, polishing or scouring preparations	103	30,173	35,906	38,218	73,682	178,082	6.0%
27	Mineral fuels, mineral oils and products of their distillation; bituminous substances	4,084	32,156	3,504	15,067	85,044	139,855	4.7%
48	Paper and paperboard, articles of paper and paperboard	2,297	23,183	24,106	37,848	34,258	121,692	4.1%
25	Salt, sulphur, earths and stone, plastering materials, lime and cement	1,315	22,974	29,253	28,289	34,618	116,449	3.9%
50-63	Textile and textile articles (specific exports - yarn, fabrics, garments)	4231.883	18875.11	15236.853	19680.579	26356.312	84380.73778	2.8%
24	Tobacco and manufactured tobacco substitutes (specific export - cigarettes)	6,486	10,890	11,172	10,249	9,400	48,197	1.6%
70	Glass and glassware	341	5,250	4,328	8,507	14,606	33,031	1.1%
10	Cereals (specific export - un-milled maize)	0	18,879	1,388	2,093	3,476	25,837	0.9%
Total for 10 leading exports to EA/COMESA		**113,591**	**301,808**	**239,364**	**310,229**	**493,524**	**1,458,516**	**49.0%**
All other commodities		**49,839**	**272,841**	**318,409**	**374,445**	**502,201**	**1,517,735**	**51.0%**
Total to COMESA		**163,430**	**574,649**	**557,773**	**684,674**	**995,725**	**2,976,251**	**100.0%**

Source: 2006 Kenya Statistical Abstract

2.2 IMPORTS TRADE

2.2.1 Trends of imports from EAC/COMESA countries

The EAC/COMESA region has not become a significant source of Kenya's import requirements despite the fact that the country is a member of COMESA's Free Trade Area (FTA) countries which allows for duty free trade among member countries, while the rest on non-FTA members also trade under preferential tariff arrangements. Within the EAC, a Customs Union exists from January 2005, under which Tanzania and Uganda an export to Kenya at zero tariff rates. However this has not helped to increase procurements of raw materials from the region. This scenario is shown by the fact that the EAC/COMESA region only managed to capture an average of 4% market share to Kenya's total imports during the period 2001 to 2005, despite these preferential market arrangements. The leading import markets were Egypt which took an average of 34% of imports from EAC/COMESA region, followed by Swaziland at an average of 15.5% and Tanzania at 11%. Trends of imports from EA/COMESA region are shown in Table 3 below

Table 3: Kenya's imports from EAC/ COMESA countries between 2001 and 2005 (USD 000)

COMESA source country	2001	2002	2003	2004	2005	Total 2001-05	Export share to EAC/COMESA
Egypt	41,451	37,166	63,770	83,092	85,476	310,954	33.9%
Swaziland	11,272	26,325	22,977	43,189	38,774	142,536	15.5%
Tanzania	7,440	10,411	17,962	25,978	39,629	101,419	11.0%
Zimbabwe	14,691	19,595	19,610	6,184	4,476	64,556	7.0%
Uganda	8,695	8,618	13,628	13,041	19,188	63,169	6.9%
Malawi	12,113	12,000	14,742	8,368	5,952	53,175	5.8%
Mauritius	7,219	5,689	6,428	16,144	13,334	48,813	5.3%
Zambia	12,187	4,340	5,116	8,336	11,167	41,146	4.5%
DRC	9,697	5,589	754	5,355	12,500	33,895	3.7%
Sudan	13,103	3,294	7,438	3,028	2,995	29,858	3.3%
Eritrea	51	5	41	14	12,544	12,655	1.4%
Namibia	4,223	1,177	993	302	219	6,914	0.8%
Ethiopia	786	147	204	1,328	885	3,349	0.4%
Rwanda	35	75	62	211	1,581	1,964	0.2%
Djibouti	48	0	0	9	1,559	1,616	0.2%
Burundi	862	10	32	37	528	1,468	0.2%
Angola	64	315	11	0	141	532	0.1%
Madagascar	65	197	2	9	28	301	0.0%
Seychelles	37	105	3	44	3	192	0.0%
Comoros	8	0	0	0	0	8	0.0%
Total to EAC & COMESA	**144,046**	**135,056**	**173,772**	**214,670**	**250,978**	**918,522**	**100%**
Total imports USD 000)	**3,690,941**	**3,342,542**	**3,701,655**	**4,713,693**	**5,949,448**	**21,398,279**	**4%**
EAC & COMESA share	**4%**	**4%**	**5%**	**5%**	**4%**	**4%**	

Source: 2006 Kenya Economic Survey and Abstract

2.2.1 Leading imports from EAC/COMESA

The ten major imports from EAC/COMESA region during the period 2001 to 2005 were Tobacco and tobacco substitutes; Aircraft parts; Paper and paperboard; Articles of iron and steel; Plastics articles; Passenger cars; Copper articles; Animal feeds; Articles of wood; and Raw hides and skins. An interesting finding is that non of the ten major imports took a major market share, since combined they took only an average of 27.7% of total imports from EAC/COMESA during the period 2001-05 as shown in Table 4 below.

Table 4: Ten major imports from EAC and OMESA countries between 2001 and 2005 (USD 000)

HS chapter	Chapter description	2001	2002	2003	2004	2005	Total 2001-05	Country share of Kenya imports from EAC/COMESA
24	Tobacco and manufactured tobacco substitutes	5,251	8,669	6,699	15,342	34,428	70,388	7.8%
88	Aircraft, spacecraft and parts thereof (specific import - aircraft engines and parts)	4,732	11,874	17,091	127	4,089	37,914	4.2%
48	Paper and paperboard	1,156	3,674	10,449	9,281	8,701	33,262	3.7%
72,73	Iron and steel; Articles of iron and steels	6,030	6,989	1,994	8,901	5,402	29,316	3.3%
39	Plastics and articles thereof	738	542	1,059	1,819	1,020	5,179	0.6%
87	Vehicles other than railway or tramway rolling-stock (specific import - passenger motor cars)	1,008	934	874	1,247	485	4,548	0.5%
74	Copper and articles thereof	413	3,964	75	64	32	4,548	0.5%
23	Residues and waste from food industries; prepared animal fodder	1,281	732	810	1,105	176	4,105	0.5%
44	Wood and articles of wood (specific import - railway sleepers)	18	39	201	1,406	1,382	3,046	0.3%
41	Raw hides and skins	83	170	275	540	1,832	2,900	0.3%

HS chapter	Chapter description	2001	2002	2003	2004	2005	Total 2001-05	Country share of Kenya imports from EAC/COMESA
Total for 10 major imports from EA/COMESA		**20,711**	**37,588**	**39,527**	**39,833**	**57,547**	**195,206**	**21.7%**
All other commodities		**123,299**	**91,828**	**132,452**	**172,552**	**182,938**	**703,068**	**78.3%**
Total from COMESA		**144,010**	**129,416**	**171,979**	**212,385**	**240,485**	**898,274**	

Source: 2006 Kenya Statistical Abstract

3.0 NTB MEASURES DIRETLY AFFECTING EXPORTS

3.1 SUMMARY INVENTORY OF NTBS THAT AFFECT EXPORTS

During the 2005/06 EAC NTBs consultations, it was found out that a number of NTBs affect the ability of Kenyan businesses to export. These NTBs still exist as confirmed in the current consultations, which fall under the following clusters.

3.1.1 Customs documentation and administrative procedures

NTBS reported under this cluster include market access problems to Ethiopia due to shipping requirements; accessing Rwanda, Sudan, Egypt and Zambia due to rules of origin and non-recognition on certificate of origin; access to Tanzanian market due to application of discriminatory domestic and border taxes; and unfair competition from counterfeits products that bear trade marks of EAC manufactured products.

3.1.2 Transiting procedures

The major problem experienced under this cluster is on difficulties of transiting through Uganda en-route to Rwanda, Burundi and DRC; too many weighbridge stations along the major transport routes, and varying requirements among the EAC and COMESA countries.

3.1.3 Quality standards inspection procedures and Sanitary and Phytosanitary Measures

Problems experienced include under this category include varying procedures for issuance of certification marks, inspection and testing among EAC and COMESA Standards Bureaus, varying weighbridge specifications; SPS measures on milk in Malawi; and duplicated and cumbersome export inspection and certification procedures in Kenya which involve many government bodies.

3.1.4 Immigration procedures

Major problems under this cluster include requirements for work permits within EAC/ COMESA and lack of EA passports to facilitate business travel within the region.

3.1.5 Police roadblocks

The major problem experienced under this cluster is that police officers often stop commercial vehicles at numerous road blocks while officially, they are only supposed to stop vehicles based on more than 52% proof that goods being transported are suspicious. The roadblocks become a source of bribes and lost business time.

3.1.6 Business registration and licensing

Under this cluster businesses complain of cumbersome procedures in registering a new business within EAC countries and obtaining business licenses. This often forces businesses to employ local agents thus incurring unnecessary costs to chase business registration and licensing in order to save on cost and time

3.2 EXPORT NTB INVENTORIES UNDER THE WTO CATEGORIZATIONS

The NTBs applicable on Kenyan exports to EAC COMESA markets can be categorized under the WTO NTB Categorisation given in Table 5 below.

TABLE 5: WTO CATEGORIZATION CODES ON NTBS APPLICABLE TO KENYAN EXPORTS

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	**Problem Area**	**Description of the most severe NTBs**	**Impact of NTB to businesses and trade**	**Responsibility & Source of NTB**
Part 1	**Government Participation in Trade and Restrictive Practices Tolerated by Governments**				
	D E	Restrictive practices tolerated by governments State trading, government monopoly practices	Kenyan exporters face problems of accessing the Ethiopian market due to requirement that goods exported to Ethiopia should be transported through the National Shipping lines. Ethiopian however insists that it encourages use of its national shipping lines but that this is not mandatory.	Exporters are not given a choice over the most competitive shipping lines. Ethiopian shipping lines may have taken advantage of the procedure to inflate charges on cargo transported to the country.	Ethiopia Government
	E	Other *Business registration and licensing*	Registering a new business within EAC countries and obtaining a business license are cumbersome procedures. 13% of all businesses polled in 2005 EAC Business Climate Index responded that registration in another EA country takes more than 2 weeks	Companies are forced to employ local agents thus incurring unnecessary costs to chase business registration and licensing in order to save on cost and time involved. Distribution and sale of goods across the borders is made difficult by the requirement to open new companies instead of cross-border recognition of businesses operating within EAC	EAC Registrars of companies Local authorities
PART II	**Customs and Administrative Entry Procedures**				
	G	Customs formalities	Limited customs open hours (*daylight hours*) for verifying documents and clearing import cargo is a hindrance to faster movement of goods across borders, and mainly affects perishable products	Lost business time during clearance of goods at borders High cost of corruption in efforts to clear especially perishable products before close of day business at border crossings	Kenya Customs Department
	G	Customs formalities	Selected exports face problems of accessing Tanzanian market, due to application of discriminatory domestic taxes. Examples include: o A higher rate of excise duty on imported cigarettes that do not have a 75% local content. o An import license required on Kenyan originating tea	Inability to penetrate Tanzanian market by cigarette and tea manufacturers. For example, KETEPA, a tea manufacture, has had problems in accessing Tanzania market from 1998, when it had managed to capture a two-container load market per week, worth about Ksh. 5-6 million (*and which was just a small percentage of the potential market*)	Tanzania Revenue Authority
Part II	D	Consular	Tanzania has recently increased the	Cost of doing business in Tanzania by East Africans is very high since	Immigration

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	**Problem Area**	**Description of the most severe NTBs**	**Impact of NTB to businesses and trade**	**Responsibility & Source of NTB**
		formalities & documentation	single business entry charge from USD 50 to USD 100 to business people entering Tanzania.	the visa fee is payable per entry.	Department Tanzania
	F	Rules of Origin	Kenyan exporters of galvanised sheets have faced market access to Rwanda, Egypt and Sudan. In this respect, Rwanda has refused to recognise the certificate of origin on argument that it needs to undertake a verification mission to Kenya to determine whether the Rules of Origin on the product are adherence to. Egypt has also refused to recognize the certificate of origin on reasons that the required 35% value addition has not been achieved. Sudan on the other hand argues that Customs Tariff Headings are used to classify imports rather than the 35% value addition criteria. and palm based cooking oils Kenyan exporters of palm based cooking oil have also faced market access to Zambia on doubts over the manufacturing process	Kenyan exporters of the products in question have incurred costs in manufacturing the said products after placement or orders by importers. Failure to sell into intended markets translates to lost business opportunities, opportunity costs and tying up of working capital. Additionally, there are costs incurred in delivery of the products to the point of entry and shipping/ transporting them back to the manufacturing plants to seek for new markets.	Kenya Customs, KEBS[8], KEPHIS[9], PCPB[10], MOA[11], MOLD[12], Fisheries Dept, MOTI[13], KNCCI[14], KAM[15]
	G	Customs formalities	Uganda insists on use of closed body trucks or sealable tarpaulins for transit cargo passing through Uganda aimed at guarding against dumping into Ugandan market Uganda insists that the procedure conforms with the Kyoto	Extra cost of using closed trucks and/or sealable tarpaulins. The does not promote the spirit of either EAC or COMESA integration, since there should have been prior discussions and consensus among EAC and/or COMESA members on a harmonised procedure before its introduction by any state.	Uganda Customs and Police Department

[8] Kenya Bureau of Standards
[9] Kenya Plant Health Inspectorate Service
[10] Pest Control Products Board
[11] Ministry of Agriculture
[12] Ministry of Livestock Development
[13] Ministry of Trade and Industry
[14] Kenya National Chamber of Commerce and Industry
[15] Kenya Association of Manufacturers

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	**Problem Area**	**Description of the most severe NTBs**	**Impact of NTB to businesses and trade**	**Responsibility & Source of NTB**
			convention on the international transit of goods under the WCO[16] and the East African Community Customs Management Act of 2004		
	F	Rules of origin	All Kenyan exporters to Malawi face problems over application of the Malawi pre-shipment inspection program, which has a contract up to June, 2007. The PSI has a requirement that the Certificate of Origin on imports must be accompanied by a FORM 18, which itself requires that an exporter has to justify a value addition of 51%. This is contrary to the COMESA value addition requirement of 35%	The value addition requirement of 51% is too high for COMESA manufacturers whose raw material imports constitute a big percentage to final product. While the FORM 18 value addition criteria contradict the COMESA value addition criteria, it also discourages intra-COMESA trade and integration process.	Malawi Customs Department
Part II	G	Customs formalities	Exportation is made cumbersome by numerous export documents, which number 11, compared to Africa's most successful economies, namely Mauritius and South Africa at 5 each. Even within the EAC, Tanzania is more competitive on ease of exporting with just 3 export documents. Some of the documents sited by KAM that are required for an export include the certificate of origin, commercial invoice, bill of landing, customs export declaration form, export permit/ license, packing list, shipping note, preferential certificate and technical standard/ health certificate	The numerous export documents translate to lost business time. In this respect, it takes an average of 25 days to obtain all export documents for a single export consignment in Kenya, compared to best performers like Denmark at an average of 5 days. A key Kenyan competitor for export markets within Africa is Mauritius in which export documentation takes an average of 16 days. The lengthy time taken to complete export documentation translates to a long period before an exporter can fulfil an order, and may in the end mean a lost business opportunity.	Customs, KEPHIS, PCPB, KPA, MOTI, KCCI, KAM, Veterinary Department, MOLD
Part IV	**Sanitary and Phytosanitary Measures**				
	B	SPS measures including chemical residue limits, disease	Kenyan exporters of beef and poultry have been denied market access in Uganda due to a Government ban on the products which is related to unspecified animal diseases.	The import ban by Ugandan Government leads to loss of identified market opportunities.	Uganda Veterinary Services Department, Ministry of

[16] WCO – World Customs Organisation

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses and trade	Responsibility & Source of NTB
		freedom, specified product treatment			Agriculture
Part III	**Technical Barriers to Trade**				
	C	Testing, certification & other conformity assessment	Weighing scales at each weighbridge stations are too few and slow, which results into long queues, slow weighing of vehicle GVM and axle loads and consequent delays in delivery of cargo to point of destination. Transporters also suspect that weighing scales are faulty since varying weights could be recorded in different stations. The process is also suspected to be deliberately delayed so as to exhort bribes.	19% of all businesses view weighbridges as a major obstacle to efficient movement of goods on Kenyan roads, especially along the Northern Corridor en-route to destinations like for exports to Uganda, DRC, Congo, Rwanda, and Burundi. al	Department of Weighbridges, Ministry of Roads
	C	Testing, certification & other conformity assessment	EAC and COMESA Standards Bureaus have varying procedures for issuance of certification marks, inspection and testing. This makes it difficult to carry out cross border trade.	Businesses have to face different inspection and testing procedures before getting a certification mark, which means even if one understands the procedures in one country, one has to spend extra time and money to understand and comply with procedures of the other two countries, yet EAC is supposed to be one Customs union where similar procedures should apply.	EAC & COMESA Standards Bureaux
Part VI	E	Border tax adjustments	Before Oct 2006, Tanzania used to charge USD 200 per annum or US$ 20 per entry on sales vehicles entering Tanzania and a USD 5 fuel tax per vehicle. These charges were not applicable in Kenya.	The charges applied by Tanzania made penetration of Tanzanian market more difficult compared to Uganda and Kenya. While the charge has been removed, businessmen fear that other border taxes could in future be introduced in other names to compensate for the revenue loss to TRA[17], thus end up with the same impact of making market penetration difficult.	Customs Department Tanzania
	C & D	Distribution constraints Business practices or restrictions in the market	Counterfeits products that bear trade marks of EAC manufactured products, which mostly originate from China, and also from EAC countries, are sold widely in Uganda, and also to some extent in Kenya and Tanzania.	Selling of counterfeits take away the market share of EAC manufactured products, and dents the corporate image of EAC manufacturers in consumers' mind, since the counterfeits are of poor quality[18].	EAC Customs Departments
Part III	B	Testing,	Export inspection, and certification	A lot of time is spent in export/ import inspection process, certification	Kenya

[17] Tanzania Revenue Authority

[18] *Some of the products most affected products by counterfeits are bic pens manufactured by HACO Industries, and batteries manufactured by Eveready Batteries Ltd.*

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses and trade	Responsibility & Source of NTB
		certification and other conformity assessment	procedures involve many government bodies which do not collaborate, resulting to duplication of effort. Also, many of the inspection bodies have not established laboratories at major entry and exit points and production areas[19], which means an exporter has to travel to Nairobi to obtain an export certification and approval, which also includes issuance of the certificate of origin[20]	and issuance of certificates of origin by business people. In addition to time spent in these processes, substantial cost is incurred in travel accommodation in Nairobi and sometimes in hiring transport for PCPB inspectors for horticultural produce.	Customs, KEBS, KEPHIS, PCPB, MOA, MOLD, Fisheries Dept, MOTI, KNCCI, KAM
	B	Testing, certification and conformity assessment	EAC and COMESA countries have varying import requirements, which makes cross border trade a frustrating exercise since quality certificates marks are not mutually recognised by relevant bodies.	Businesses have to face different inspection and testing procedures before getting a certification mark, which means even if one understands the procedures in one country, one has to spend extra time and money to understand and comply with procedures of the other EAC and COMESA countries, which makes exportation a frustrating exercise.	Inspection bodies among EAC and COMESA countries
Part VII	**Other**				
	C & D	Distribution constraints Business practices or restrictions in the market	Counterfeits products that bear trade marks of EAC manufactured products, which mostly originate from China, and also from EAC countries, are sold widely in Uganda, and also to some extent in Kenya and Tanzania.	Selling of counterfeits take away the market share of EAC manufactured products, and dents the corporate image of EAC manufacturers in consumers' mind, since the counterfeits are of poor quality[21].	EAC Customs Departments
	C & D	Distribution constraints Business practices or restrictions in	Diversion of transit goods into the domestic market, on which VAT and import duties have not been paid.	Diversion of transit goods into the domestic market results into unfair competition with locally manufactured goods on which duty (*including IDF fee*) and VAT have been paid[22].	EAC Customs and Police Departments

[19] A case in point of lack of inspection facilities at production areas relates to PCPB, KEPHIS, Fisheries Department and Customs. Exporters of horticulture and fish have to travel to Nairobi for inspection results and approval for each export consignment, which adds onto cost and time of exportation. While NTBs relate more to exportation to markets outside COMESA region, they are also relevant to NTBs monitoring and elimination.

[20] Certificates of origin are issued by either Kenya National Chamber of Commerce and Industry for exports to COMESA, Ministry of Trade for exports to Asia and Europe, and Kenya Association of Manufacturers for exports to USA under AGOA facility.

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	**Problem Area**	**Description of the most severe NTBs**	**Impact of NTB to businesses and trade**	**Responsibility & Source of NTB**
Part VII		the market			
	E	Other *Immigration requirements and procedures*	Uganda and Tanzania requires work permits for Kenyan employees of Kenyan companies that have branches in either of the two countries.	Companies spend a lot of time and incur substantial costs following up their employees' work permits applications. Many companies are interested in opening distribution outlets to be run by their own personnel but not new manufacturing plants. The cumbersome procedures involved in securing work permits force such companies to employ locals who do not have the required skills, which eventually compromise on companies' efficiency and product quality.	Immigration Departments in Tanzania and Uganda
	E	Other *Immigration requirements and procedures*	Many East Africans do not yet have an East African passport, while even for those who have it, the Immigration Departments still insist on stamping it at every exit or entry	Many people (*especially small business people*) cross borders through undesignated routes, which is illegal, and could attract substantial costs if one is arrested as an immigrant	Immigration Departments in the three East African countries
	E	Other *Immigration requirements and procedures*	Most exit/ entry points have introduced computerised scanning of passports, but immigration exit and entry forms are still in use	A lot of unnecessary time is spent queuing for scanning and passport stamp at exit and entry points – on average, 29% of all border crossings take more than 1hour.	Immigration Departments in the three East African countries
	C	Distribution constraints	Police officers stop commercial vehicles at various road blocks while officially, they are only supposed to stop vehicles based on more than 52% proof that goods being transported are suspicious (*e.g. that vehicle exceeds allowed axle load, goods are smuggled, vehicle is carrying drugs or other dangerous products like arms, documentation does not conform to goods being transported, etc*)	Road blocks are a source of rent-seeking opportunities while precious time is wasted on pretence that verification of goods is being done. On average, 19% of all businesses view road blocks as a major obstacle to free movement of goods	Police Department
Part VII	C	Distribution constraints Business	While Uganda and Kenya use the harmonised COMESA[23] axle load specifications, Tanzania uses is at a higher legal limit[24], which also exceeds	Kenyan transit trucks that use Ugandan roads (*e.g. en-route Rwanda, Burundi, DRC*) always face the danger of exceeding the GVM and consequent financial penalties[27].	Ministry of Roads the three EA countries

[21] *Some of the products most affected products by counterfeits are bic pens manufactured by HACO Industries, and batteries manufactured by Eveready Batteries Ltd.*
[22] *Diversion of transit goods into the domestic market is an illegal practice.*
[23] *COMESA – Common Market for Eastern and Southern African countries. The COMESA axle load legal limit for Tandem (double) axle is 16 tones, same as SADC.*
[24] *Tanzania's axle load limits are at 18 tonnes for double axle, while for Uganda and Kenya, the limits are at 16 tonnes.*

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses and trade	Responsibility & Source of NTB
	D	restrictions or restrictions in the market	the load specifications under SADC[25]. Further, the specified maximum Gross Vehicle Mass (GVM) for commercial vehicles differs among the three EA countries[26], which limits the ability to undertake transit traffic within the region.		

[25] *SADC – Southern Africa Development Cooperation*

[26] *The GVM in Kenya is 54 tones, in Uganda it is 46 tones, while in Tanzania, it is 56 tones. GVM refers to the combined weight of goods and cargo.*

[27] *The fee for overloaded vehicles is aimed at recovering the cost of damages to the roads and bridges and is paid on the spot to the Weighbridges Department. The fee covers exceeding the legal limit on axles and gross vehicle mass, and is based on the excess weight on each axle. The overloaded vehicle is detained until the fee has been paid. Further, if a vehicle bypasses a weighbridge station, whether overloaded r not, the owner of the vehicle has to pay a bypassing fee. Any overloaded vehicle has to offload the excess weight, even after paying the overloading fee.*

Table 6: Specific Official Regulations Affecting Exports

WTO Inventory category	Product Group	Government Controlling Agency	Regulatory Procedure
Part 1 D&E	All products	Ethiopia Customs	Requirement that goods exported to Ethiopia should be transported through the National Shipping lines.
Part II G	All products	EAC/COMESA Customs business hours	Customs offices at borders are only open from 8 am to 5 pm
Part II G	Tea, cigarettes	Tanzania Customs	Excise duty on imported cigarettes that do not have a 75% local content. Import license required on Kenyan originating tea
Part II D	All products	Tanzania Immigration Department	Business visa fee of US$ 50 to business people entering Tanzania
Part II F	Galvanized iron sheets Palm based cooking oil	Rwanda, Egypt, Sudan and Zambia Customs Departments	Application of certificate of origin Application of rules of origin
Part II G	All products	Uganda customs	Transit traffic to be conducted in closed body trucks
Part II F Part IV A	All products	Malawi Customs	Application of rules of origin and pre-shipment inspection
Part III C	All products	EAC and COMESA Standards Bureaus	Issuance of quality certification marks, inspection and testing procedures
Part IV B	Beef and poultry	Uganda Veterinary Services Department	Import ban
Part III C	All products	Kenya Weighbridge Department	Weighing for conformity to axle load and gross vehicle mass specifications
Part III C	All products	EAC Weighbridge Department	Conformity to national axle load and gross vehicle mass specifications
Part VI E	All products	Tanzania Customs	Before Oct 2006, Tanzania used to charge USD 200 per annum or US$ 20 per entry on sales vehicles entering Tanzania and a USD 5 fuel tax per vehicle.
Part III C	All products	EAC Customs EAC Bureaus of Standards	Prevention of sale of counterfeit products that bear trade marks of EAC manufactured products. Lack of prevention of unscrupulous business practices
Part II C	All products	Kenya Customs	Prevention of sale of transit and export oriented goods into the domestic market
Part II G Part III B&C Part IV B&C	All products	Kenya Customs, KEBS, KEPHIS, PCPB, MOA, MOLD, Fisheries Dept, MOTI, KNCCI, KAM	Testing & exports certification, issuance of certificate of origin
Part VII E	All products	EAC Immigration Departments	EAC cross border employment requirements
Part VII E	All products	EAC Immigration Departments	Border crossing immigration procedures
Part VII E	All products	EAC Immigration Departments	Border crossing immigration procedures

WTO Inventory category	Product Group	Government Controlling Agency	Regulatory Procedure
Part VII E	All products	EAC Registrars of Companies	Cross border registration of business
Part VII C	All products	Kenya Police	Police inspection procedures

4.0 NTB MEASURES DIRETLY AFFECTING IMPORTS

4.1 INVENTORY OF NTBS THAT AFFECT IMPORTS

During the 2005/06 EAC NTBs consultations, it was found out that a number of NTBs affect the ability of Kenyan businesses to import, which have been reaffirmed in the current consultations. These NTBs fall under the following clusters.

4.1.1 Customs documentation and administrative procedures

The major problems sited include imports clearance under the SIMBA system, numerous documentation for an import consignment, limited customs hours at entry points, long lead time before application of EAC harmonised duty and tax rates, and the cumbersome process of physical verification where customs rejects declared import value.

4.1.2 Quality inspection and certification procedures

The problems under this cluster related to application of the Pre-shipment Verification of Conformity (PVOC) program, involvement of too many bodies in import inspection and certification procedures without collaboration, lack of testing laboratories for inspection bodies at major entry and exit points, and varying import requirements among EAC/COMESA countries.

4.1.3 Other importation NTBs

Other problems related to importation include inefficiencies of handling imports by KPA and port charges.

4.2 WTO CATEGORIZATION OF NTBS

Table 7 below enumerates obstacles on importation under the WTO categorizations of NTBs.

Table 7: WTO CATEGORIZATION CODES ON NTB APPLICABLE TO KENYAN IMPORTS

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	**Problem Area**	**Description of the most severe NTBs**	**Impact of NTB to businesses and trade**	**Responsibility /Source of NTB**
Part II	**Customs and Administrative Entry Procedures**				
	C	Customs classification	The Customs Reforms Modernisation Programme (CRM)[28], introduced from 1st July 2005, had initially increased the time and cost of clearing imports, escalated confusion on procedures required to clear imports, and led to shortages of raw materials in Kenyan manufacturing plants. While these were initial problems, the lack of consultation with the private sector, especially clearing and forwarding companies on how the system would operate was a major huddle in integrating the system among users. The private sector is generally sceptical about such systems which are introduced without proper consultations, which end up making imports clearance costly and time consuming to comply with. Also, the SIMBA system has not yet automated the entire process of imports declaration. Once a clearing agent lodges an import declaration, a customs declaration officer examines it and decides on the next step, i.e. whether the declaration is correct and approved, incorrect, has incomplete submission or whether goods need to be examined. This means a risk management module which is actually available within the system has not been implemented to allow for automated processing of an import declaration. Although the system has now eliminated the need for paper work to trigger processing of an import, the lack of implementing the risk management module is	Licensed clearing & forwarding companies pay Ksh. 15,000 for training to use system, compliance & for the access code (*online declaration of customs coding and dutiable value*). In addition, an annual access fee of Ksh. 15,000 is payable by registered users. The system had resulted to clogging of the Mombasa Port[29], thereby increasing demurrage charges and delays in procuring of raw materials. As per World Bank benchmarks, it takes an average of 8.3 days to clear customs. There is no operational manual on how the system operates, which has resulted into corruption. Between July and mid August, the system used to break down at least once per week since it wasn't able to take up a lot of load, which was making it impossible to declare and clear imports on time Banks are not connected to the system, to enable importers to pay online. Lack of electronic submission of import documents is an avenue for corruption.	Customs Department (KRA[30]) – Ministry of Finance

[28] *CRM system is also referred to as SIMBA 2005.*
[29] *In the past, using the manual system, about 500 containers were cleared per day at the Mombasa Port, but with introduction of the Simba system on 1st July 2005, only about 200 containers are cleared per day.*
[30] *KRA – Kenya Revenue Authority*

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	**Problem Area**	**Description of the most severe NTBs**	**Impact of NTB to businesses and trade**	**Responsibility /Source of NTB**
			an avenue for corruption. The system also has legal problems since legislation has not been amended to allow for electronic submission of import documents, such as certificates of origin, security bond and import declaration form, bill of landing, and packing list.		
Part II	C D	Customs classification Customs formalities Import inspections and approvals	There are far too many documents related to a single import consignment. The key documents include an Import Declaration Form, Shipping Manifest, Single Entry Document referred to as C63, Airway Bill or Bill of Landing, Certificate of Origin, Customs Bond, Pre-shipment Inspection certificate. While it may seem that these documents are few in number, most must have other supporting documents, which are determined by the trade transaction and nature of an import. A typical import requires a total of 52 different documents to enable it to be cleared and released to the importer or his forwarding agent.	In Kenya, clearing an import is a cumbersome process, which on average takes 45 days, compared Mauritius 16 days. Within EAC Tanzania performs better than Kenya at an average of 39 days according to World Bank Doing Business 2007. Also other many of Kenya's competitor's for COMESA market perform much better, with China at 22 days, Egypt at 25 days and South Africa at 34 days. The implication of lengthy time taken to clear an import is that a Kenyan manufacturer is unable to access raw materials required to process an order on time, resulting to preference by major international buyers to procure from the better performing countries with assured times for delivery after placement of an order.	Kenya Customs, KPA[31], KRC[32], KEBS[33], Port Health, KEPHIS[34], PCPB[35], MOA[36], MOLD[37], Fisheries Dept, MOH[38], Narcotics Police, Clearing & Forwarding agents
	G	Customs formalities	The limited customs open hours for verifying documents and clearing cargo is a hindrance to faster movement of goods across borders.	The opening of customs border offices only from 8 am to 5 pm translates to lost business time to clear goods at borders. Also, a lot of cost is incurred to bribe customs officials to clear goods	Kenya Customs Department

[31] Kenya Ports Authority, which provides port handling services at the port
[32] Kenya Railways Corporation, for movement of imports out of the port
[33] Kenya Bureau of Standards, which inspects imports on conformity to Kenya standards
[34] Kenya Plant Health Inspectorate Service, which inspects plants and certifies phytosanitory requirements for imports and exports
[35] Pest Control Products Board, which undertakes assessment of safety, quality and efficacy of pesticides and likely impact to crops if applied in farming.
[36] Ministry of Agriculture, which approves and issues import permits for any plant imports
[37] Ministry of Livestock Development, which approves and issues permits for any animal imports
[38] Ministry of Health, which inspects imports of food and drugs on health requirements Kenya Plant Health Inspectorate –

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	**Problem Area**	**Description of the most severe NTBs**	**Impact of NTB to businesses and trade**	**Responsibility /Source of NTB**
				especially on Fridays so that they don't stay at borders during weekends, in order to save on 2 days and avoid loss through theft.	Other inspection authorities (KEBS, KEPHIS, MOH)
Part II	D	Consular formalities and documentation	Customs officers at border crossings in most cases continue applying national taxes, duties, regulations and procedures long after relevant rules are harmonised by EAC Council of Ministers (*for example after harmonisation of EAC CET*[39])	Varying taxes and import regulations among EAC states, resulting into unequal level of competition among the EAC businesses in local markets.	EA Customs Departments
	D	Customs formalities	Off-loading and re-loading containers for 100% verification of imports where customs doubts value and container content, or where other inspection agencies doubt content and other product specifications, leads to lost business time and inability to fit goods in original package (*e.g. 2nd hand clothing & tyres*)	1. Lost business time during 100% verification, and consequent demurrage charges while awaiting verification. 2. Inability to repackage goods in original package may increase repackaging costs.	Customs Department, other inspection agencies
Part III	**Technical Barriers to Trade**				
	B C	Technical regulations and standards Testing and certification arrangements	On 1st July 2005, the Pre-shipment Programme which used to undertake post-shipment quality inspection on Kenyan imports was phased out. The KEBS thereafter introduced a new import inspection referred to as the Pre-Shipment Verification of Conformity PVOC). Under the program, imports are only allowed into the country if accompanied by a quality inspection certificate from an internationally accredited	The new KEBs requirement did not advice importers on which are the internationally accredited laboratories in import originating countries, which was initially a major impediment to imports especially by small scale businesses that do not have resources and contacts in imports originating countries. The effect was felt on declining imports, including raw materials, since importers would hesitate to import products that could thereafter be rejected on arrival at Kenyan ports of entry and the consequent cost of returning such consignments to country of origin or destroying them. This PVOC costs on inspection, testing, audit, and certification means	KEBS

[39] *CET – EAC Common External Tariff*

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	**Problem Area**	**Description of the most severe NTBs**	**Impact of NTB to businesses and trade**	**Responsibility /Source of NTB**
			laboratory. For PVOC details refer to footnote[40]. The program requires imports to: o undergo physical inspection prior to shipment, o Sampled inspection, testing and analysis to be done in accredited laboratories, o undergo audit of product processes, o show documentary check of conformity with Kenyan standards regulations and o Assessment of conformity to standards Problems that have been pointed out by imports include: o All costs of the quality inspection, testing, audit of manufacturing process and certification are met by the importer. The standard inspection fee is 0.475% of import value, payable to SGS or Intertek, or a minimum of USD 180 even for very small consignments, o Lack of competition for issuance of the Certificate of Conformity – question is why just 2 companies to operate the program, o Absence of office of inspection in some	an additional cost to the normal Import Declaration Fee (IDF) of 2.75% on value of the import, which was not waived although the post-shipment inspection program itself was phased out. There are delays in inspection and issuance of CoC, translating to delays in procuring raw materials and consequently to delayed production schedules. Small consignments are overcharged, since they may be or small value than the minimum inspection fee of USD 180.	

[40] PVOC is applied to specific goods at the respective exporting countries, to ensure their compliance with the applicable Kenyan Technical Regulations and Mandatory Standards or approved equivalents. It aims at offering necessary protection in safety, health and environmental matters to Kenya's consumers. Further, KEBS has appointed
Société Générale de Surveillance S.A. (SGS) and Intertek to operate the program on its behalf, depending on the country of supply. The Certificate of Conformity (CoC) is a mandatory Customs Clearance document in Kenya, and consignments arriving at Kenyan Ports without this document are denied entry into the country. In exceptional cases, specific consignments may be allowed to undergo destination inspections after receiving the appropriate application from importers. Such consignments are subject to a penalty of 15% of the CIF value of the goods plus 15% bond and the testing and inspection costs. All other expenses incurred at destination will be borne solely by the importer.

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	**Problem Area**	**Description of the most severe NTBs**	**Impact of NTB to businesses and trade**	**Responsibility /Source of NTB**
			countries – SGS/ Intertek do not have offices in some countries, o Delays in carrying out inspections, while no penalties are enforced to contractors		
Part III	B C	Technical regulations and standards Testing and certification arrangements	Import inspection, and certification procedures involve many government bodies[41] which do not collaborate, resulting to duplication of effort. Also, many of the inspection bodies have not established laboratories at major entry and exit points. EAC countries also have varying import requirements, which makes cross border trade a frustrating exercise since quality certificates marks are not mutually recognised by relevant bodies.	A lot of time is spent in the import and export inspection process by business people	Customs, KEBS, KEPHIS, PCPB, MOA, MOLD, Equivalent bodies in Uganda and Tanzania
Part VII	**Other:**				
	E	Other Port handling inefficiencies	Delays in port handling operations. While a port equipment modernization initiative is underway, most importers still complain of delays in clearance of imports. This is due to clogging since the equipment used to offload ships, move cargo within the port and load cargo into containers is old and obsolete. Also, most of the infrastructure facilities are out-dated, currently operating at an average of about 40% of expected capacity. This has contributed to reduced productivity of the port	The slow operations at the port reduce efficiency in clearing imports. The old and inefficient equipment used to offload ships, move cargo within the port and load cargo onto containers result to wasted man hours - for example in 2003, a total of 6007 hours were lost due to problems related to the equipment and other operational bottlenecks. Such lost man hours translate to lengthy time for accessing an import and consequently to inability to fulfil production schedules and delivery by a Kenyan manufacturer. The inefficient port operations have also resulted to low port productivity, estimated at an average 10 moves/crane per hour, equivalent to 40%	KPA

[41] *The quality inspection bodies in Kenya include Customs, KEBS, KEPHIS, PCPB, MOA, and MOLD.*

- *Customs – verification of import coding, quantity and dutiable value, and control of prohibited and restricted exports*
- *KEBS – Kenya Bureau of Standards – undertakes sampled inspection on quality requirements*
- *KEPHIS – Kenya Plant Health Inspectorate – undertakes sampled inspection and certification of phytosanitory requirements for imports and exports*
- *PCPB - Pest Control Products Board - undertakes assessment of safety, quality and efficacy of pesticides and likely impact to crops if applied in farming.*
- *MOA – Ministry of Agriculture - approves and issues import permit permits for any plant imports*
- *MOLD – Ministry of Livestock Development - approves and issues permits for any animal imports*

INVENTORY CATEGORY	DESCRIPTION				
	WTO Inventory Code	**Problem Area**	**Description of the most severe NTBs**	**Impact of NTB to businesses and trade**	**Responsibility /Source of NTB**
			Another factor contributing to delays at the port is the manual tracking card system used for tracking containers. The failure of this system has created a room for rent seeking since consignees or their forwarding agents opt to track the containers themselves.	productivity at Dar es Salaam and 30% at Gulf Ports respectively. The average port dwell time for a heavy-laden container vessel is about 14 days, contributing to an estimated extra cost of about USD13, 000 per day per ship for major shipping lines (World Bank, 2005). These costs are passed on to the importer in form of surcharges to compensate for slow turn-around-time.	
Part VI	B	Other Surcharges, port taxes	Port charges for import clearance are considered high, which include: o Surcharge by shipping lines at USD 12.5 per day after 4 days of arrival for a 20ft container, o KPA handling charge of USD 150 for a 20ft container and USD 180 for a 40ft container, o KPA Small trade levy of USD 3 for a 20ft container and USD 6 for a 40 ft container, o KPA Stripping levy of USD 75 per container. In addition to these charges, most clearing and forwarding agents make small facilitation payments to speed up the process of about Ksh.100 to 500 for each step required to move a container within the terminal.	The port charges increase the cost of importation and ultimately the cost of goods manufactured in Kenya.	KPA, shipping lines, clearing and forwarding agents

Table 8: Specific Official Regulations Affecting Imports

WTO Inventory category	Product Group	Government Controlling Agency	Regulatory Procedure
WTO Inventory Category	All products	Kenya Customs	Imports classification under green, yellow and red channels and subsequent payment of duty
Part II C	All products	Kenya Customs	Documentation and approvals of an import
Part II C	All products	Kenya Customs	Customs operational hours
Part II F	All products	Kenya Customs	Verification of imports where necessary
Part II G	All products	Kenya Bureau of Standards	Pre-shipment verification of conformity to Kenyan standards
Part II D	All products	Kenya Customs, KEBS, KEPHIS, Port Health, KPA, Narcotics Police, MOLD Veterinary Dept, MOA, MOH	Import inspection and certification procedures
Part II D	All products	KPA	Port handling procedures
Part III B&C	All products	KPA, Clearing and Forwarding Agents, Shipping lines	Port charges, surcharges, clearing and other facilitation fees

5.0 KEY ISSUES FROM INTERVIEWS AND DESK RESEARCH

5.1 FOCAL POINT FOR NTBS REPORTING

In the course of current NTB consultations, there was general agreement among representatives of the business community (KAM[42], KNCCI[43] & KIFWA[44]) that the EAC NTBs Reporting Mechanism is till valid. Also the business community talks of a super mechanism for monitoring and facilitating the NTBs elimination process. This is probably because the EAC mechanism has not yet been implemented while it had created a lot of optimism and hope that finally there were efforts to address problems experienced in intra-EAC trade and the general import and export trade. There was also general concern that the set up of the National NTBs Monitoring Mechanism has been delayed, which is expected to play a key role in resolving NTBs at the national and regional level. The business community would like to see a situation where trade disputes between countries of the EA and COMESA region are taken for to the respective Remedies Committee for dispute settlement if they cannot be resolved within one month, as this was the consensus reached during the design of the EAC NTBs monitoring and elimination mechanism. It is also important to give a feedback to businesses regarding issues that have been resolved either at the national or regional levels so that they are regularly updated on importation and exportation regulations and requirements within the region.

The business community also supports the institutional mechanism agreed during the 2005/06 EAC NTBs consultations for reporting and facilitating elimination of NTBs, which needs to be applied without further delay. At the time of endorsing the EAC mechanism in early 2006, it had been agreed that the EAC ministries responsible for EAC matters would coordinate its application. In Kenya, it was agreed that the Ministry for EA and Regional Cooperation would be the focal point Ministry for coordinating reporting, monitoring and facilitating elimination of NTB. However, the Ministry has not yet called for an initial meeting to kick-start the process. For COMESA NTBs, the Ministry of Trade and Industry has already established itself as the Focal Point for reporting NTBs and is using the COMESA standards form for collecting relevant information from the business community, especially through KAM. The EAC institutional mechanism for reporting, monitoring and facilitating NTBs elimination however needs to be synchronized with the one for COMESA, while the Ministries of EARC and MOTI needs to harmonise their approaches so as to build synergies and maximize their capacities.

The EAC NTBs institutional structure that was agreed under the EAC NTBs Monitoring Mechanism, and which needs to be adopted by COMESA is given under chart 1 below.

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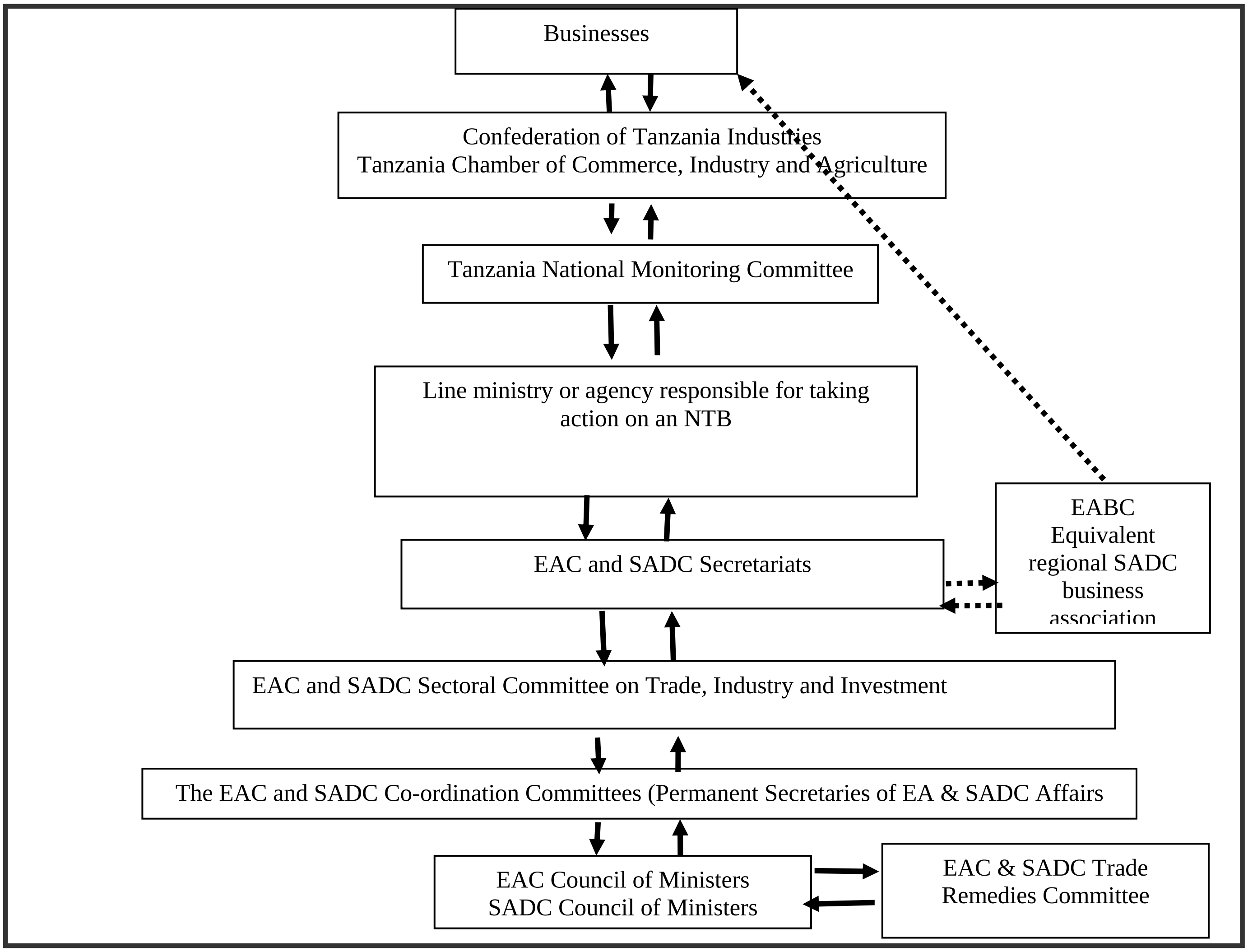
[42] Kenya Association of Manufacturers
[43] Kenya National Chamber of Commerce and Industry
[44] Kenya Freight Forwarders and Warehousing Association

Chart 1 Institutional framework for reporting, facilitating elimination and feedback on NTBs



NTBs reporting flow **NTBs feedback flow to businesses**

5.2 INSTITUTIONAL RESPONSIBILITIES FOR REPORTING NTBS AND MONITORING THEIR ELIMINATION

5.2.1 Businesses

Responsibilities of businesses will be to identify existence of NTBs and report to their membership business associations, chambers of commerce, transporters associations, or clearing and forwarding associations. They will also monitor whether actions planned by line ministries and agencies responsible for enforcement are being implemented.

5.3.2 KAM, KNCCI, KIFWA

The responsibilities of KAM, KNCCI and KIFWA will be to:

a. Receive NTB complaints from their members.
b. Where possible verify the genuineness of cases reported (e.g. by drivers), and whether applied regulations, procedures and practices are backed by law.
c. Prepare reports on reported cases and forward them to the NMC members, line ministry in charge of EAC and COMESA matters, and the EAC and COMESA secretariat for action and elimination.
d. Built a database on reported NTBs.
e. Act as watchdogs on the progress of eliminating NTBs.
f. Follow-up on progress achieved in eliminating or minimizing NTBs at NMC meetings.
g. Inform their members on the progress made to resolve NTBs at national and regional level.

5.2.3 Line ministry or agency responsible for enforcing an NTB

The responsibilities of the line ministry or agency responsible for enforcing an NTB will be to:

a. Receive NTBs complaints from individual businesses, KAM, KNCCI and KIFWA.
b. Verify the genuineness of reported cases, review the justification for the enforcing the applicable law, regulation or procedure, and whether such laws, regulation or procedure contravenes any EAC, COMESA or international requirements (for example WTO agreements).
c. Prepare quarterly reports on reported NTBs, actions taken, and table them to NMC meetings.

5.2.4 National Monitoring Committees on NTBs (NMCs)

The NMC will be the national Focal Point of the EAC/COMESA Trade Industry and Investment Committees (TICC). It will only focus on NTBs that hinder the free flow of trade in goods and services, and persons that accompany such goods within the EAC and COMESA Partner States. It will act as the watchdog in monitoring the progress of eliminating NTBs experienced at the national, EAC and COMESA levels. It will hold quarterly meetings to receive such reports and make necessary decisions, and will be hosted by the line ministry in charge of EAC and/or COMESA matters. Its functions will be coordinated b a secretariat, including quarterly meetings, verification of NTB cases, monitoring progress of rectifying NTBs and reporting to EAC/COMESA secretariats. The specific Terms of Reference for the NMC will be to:

a. Receive copies of NTB cases that have been sent by KAM, KNCCI, KIFWA and individual business people to the line ministry or agency responsible for enforcing a Non-Tariff-Measure (NTM) that ends up as an NTB.
b. Receive a plan for rectifying such an NTM including the proposed timeframe.
c. Monitor progress of implementing proposed NTB actions.
d. Discuss whether actions taken by the line ministry or agency responsible for enforcement are sufficient.
e. Initiate bilateral discussions with counterpart NMCs in the other two EA and COMESA Partner States regarding NTB cases that are of a cross-border nature, and initiate an elimination process. Where necessary, equivalent agencies (*such as Bureaus of Standards, Customs, etc*) responsible for enforcing trade regulations will be brought together to negotiate a harmonization process, if the NTB in question is in form of varying trade requirements between EAC and COMESA states. Bilateral dispute resolution will always be used before any NTB cases are referred to the EAC and COMESA Secretariats for policy action.
f. Forward reports to the EAC and COMESA Secretariats on national actions taken by line ministry or agency responsible for taking an NTB action for information and onward dissemination to other relevant NMCs.
g. Disseminate information to KAM, KNCCI and KIFWA for feedback to the business community on actions taken on reported NTBs.
h. Refer cases to EAC and COMESA Secretariats, where no satisfactory solution in form of a planned review, amendment or withdrawal has been proposed by the agency responsible for enforcing an NTB within one calendar month from the date of reporting. The Secretariats will thereafter initiate a dispute resolution process through the respective Trade, Industry and Investment Committees (TIIC). NTB cases that cannot be resolved by the TIICs will be forwarded to the Trade Remedies Committees for dispute resolution.
i. Hold an annual regional forum where members can share experiences on the NTBs elimination process, review achievements made, challenges faced and necessary initiatives for improving the efficiency of the Monitoring Mechanism.

5.2.5 EAC and COMESA Secretariats

The EAC and COMESA Secretariats will:

a. Receive quarterly progress reports from NMCs on resolved and unresolved cases.
b. Prepare progress reports for the TIICs and Co-ordination Committees for information on resolved cases.
c. Monitor actual practices at major exit/ entry points.
d. Initiate dispute resolution by the respective TIICs and Trade Remedies Committee on cases that have not been resolved at the national level or through bilateral discussions at the regional level.
e. Facilitate an annual verification of actual practices by TIICs.

5.2.6 The Trade, Industry and Investment Committee

This is a key Committee in the cross-border NTBs elimination process. Its responsibilities will be to:

a. Prepare a comprehensive implementation program and priorities relevant to cross-border NTBs elimination.
b. Monitor and constantly review implementation of planned NTBs elimination process.
c. Submit reports and recommendations to the Co-ordination Committee on implementation of NTBs.
d. Undertake annual verification of actual practices at border points where NTBs are practiced.

5.2.7 The Co-ordination Committee

The Co-ordination Committees (Permanent Secretaries level) will be involved in monitoring progress of NTBs elimination as part of its mandate on trade promotion under the EAC and SADC Treaties. Its specific responsibilities will include:

a. Submitting reports and recommendations to the Council of Ministers regarding implementation NTBs elimination.
b. Coordinating implementation of NTB decisions made by the Council.
c. Directing investigations on specific NTB cases that remain unresolved.
d. Referring any cases that cannot be resolved by the respective TIIC to the Council of Ministers for policy guidance. If resolutions cannot be agreed at the council’s level, the cases will be forwarded to the EAC and/or COMESA Trade Remedies Committee (EACTR), whose decisions on trade disputes will be final.

5.2.8 East African Business Council and COMESA Chamber of Commerce and Industry

The responsibilities of EABC and COMESA Chamber of Commerce and Industry will be to:

a. Disseminate information on NTBs elimination progress to business people through their websites.
b. Undertake an annual Business Climate Index (BCI) Survey for the region. The results will indicate whether the business climate is improving and whether new initiatives are required to deal with NTBs.
c. Convene a regional NMC forum annually so as to share experiences on NTBs elimination process.

5.3 MEMBERSHIP TO NTB NATIONAL MONITORING COMMITTEE - THE NTBS FOCAL POINT

Under the EAC NTBs Monitoring Mechanism, it had been agreed that heads of key institutions involved in trade matters would constitute membership of the National Monitoring Committees. In the case of Kenya, membership is constituted of persons listed under Table 10 below. This membership is still valid and should also be adopted to facilitate NTBs reporting and elimination for intra-COMESA trade.

Table 10: Membership of Uganda NTBs Monitoring Committee

No	Member and institution	No	Member and institution
1	**Kenya**	11	Commissioner of Police
2	Permanent Secretary Ministry of Trade and Industry	12	Chief Executive Kenya Plants Health Inspection Services (KEPHIS)
3	Permanent Secretary Ministry of East African and Regional Cooperation	13	Chief Executive Pest Control Board
4	Commissioner General Kenya Revenue Authority	14	Chief Executive Kenya Association of Manufacturers
5	Commissioner of Customs and Excise	15	Chief Executive Kenya International Freight and Warehousing Association
6	Commissioner of Domestic Taxes	16	Chief Executive Kenya National Chamber of Commerce and Industry
7	Head of Weighbridges Department	17	Chief Executive Export Promotion Council
8	Managing Director Kenya Bureau of Standards	18	Managing Director of a manufacturing company with substantial exports to the other 2 EAC countries
9	Chief Executive Kenya Ports Authority	19	Town Clerk of relevant local authority
10	Chief Executive Kenya Railways Corporation	20	Permanent Secretary Ministry of Finance

5.4 CHALLENGES ON HANDLING NTB ISSUES

There are still challenges to be overcome, including:

5.4.1 Building capacity of the NTBs secretariat at the coordinating ministry. The NTB reporting, monitoring and elimination mechanism will only work effectively if it is coordinated at the national level. In this respect, self-reporting by businesses to EAC or COMESA secretariats should be discouraged so that there is prior verification on the validity of all reported cases at the national level before they are referred to the regional levels. As recommended in 2005/06, an EAC annual verification is also recommended, while the capacity of the coordinating Ministry needs to be built up so that a proper focus on NTB issues is established.

5.4.2 Setting benchmarks of the Committee including clear terms of reference. This should be a key focus of the Committee during its initial meetings to ensure that clear actions are identified and timeframes for taking action are set.

5.4.3 Categorization of 'core' and 'non-core' NTBs in order to design a prioritized elimination mechanism. Core NTBs for Kenya are those related to customs, port operations, quality inspection and exportation, while non-core NTBs include police roadblocks, weighbridge specifications, business licensing and registration. The 2005 NTBs survey for EAC countries reported on a number of core and non-core NTBs and proposed solutions for the various agencies to work towards their elimination. Although various agencies like Customs Department and KPA have initiated improvement programs (for example the CRM program of Customs, KPA's Waterfront system, and the Community Based System program aimed at establishing an electronic data exchange and integration of clearance processes among various agencies (*like KPA, KPA, KEBS, KEPHIS, Port Health, Narcotics Police and others*), it is not clear whether any agencies has ever referred to the mechanism to initiate such improvement and to eliminate any of the identified NTBs. However, it is clear from the business associations that businesses have never used the mechanism in identifying and reporting NTBs. The challenge is for the coordinating ministry to integrate the mechanism within activities of the trade stakeholders both within the public and private sector. The WTO inventory approach on NTBs categorization will also it easier to adopt a standardized approach in categorizing and reporting on NTBs at both the EAC and COMESA levels.

5.4.4 Integrating application of the NTBs reporting, monitoring and elimination mechanism within the secretariats of associations whose members trade in goods and services. Most associations have a weak secretariat capacity which is already overstretched with operational and membership issues, and which cannot therefore be relied upon to fully focus on NTBs issues and report effectively to the National NTB Committee. This means the capacity of such associations need to be built up by injecting the necessary technical assistance, since the associations are key to effective reporting and monitoring NTBs being faced on intra-regional trade. Close liaison also needs to be established with the East African Business Council which was mandated to disseminate results of progress achieved in eliminating NTBs to the business community and to undertake an annual business climate index survey.

5.5 MAJOR TRADE FACILITATION ISSUES

Railway transport provides a key challenge to Kenya's ability to undertake efficient export and import businesses. This is because Mombasa port is overcrowded, which leaves little room for faster access to imports and required speed in delivery of exports to overseas customers. While it was expected that the concession of Uganda and Kenya Railway would increase speed and efficiency, thereby encouraging increased use of rail transport so as to reduce cost of transportation from the current average of USD 760-1,000 for a 20ft container from Mombasa to Nairobi (*which is very high considering that it is about 70% of the cost transport from Europe to Mombasa*), this has not yet been realized, since there was no private sector involvement in determining performance benchmarks for the concession agreement. Being a monopoly, the concessionaire has a free hand in determining the freight costs. In view of this bottleneck, the private sector[45] proposes that there is need for both the Uganda and Kenya Governments to review the rail service concession agreement so as to prevent abuse of market power.

Regarding road transport, the poor condition of the Kenya section of the Northern Corridor is a major concern to exports and importers. There are various reasons for the poor condition of this road, including Poor legal and legislative framework, Road planning deficiencies, and Poor governance. These bottlenecks lead to non observance of axle load limits, limited investments in the sector, misallocation of resources for road development, poor rehabilitation and poor maintenance of finances. Some sections of the Northern Corridor are especially in poor condition, which cause delays transport. Bad roads also lead to high fuel consumption and consequently to high transport costs and maintenance costs. The numerous police roadblocks whose purpose is given by police as the need to ensure security, but which transporters allege are a source of bribery and target especially commercial vehicles since private vehicles are just waved through without any time loss. There are also long queues at weigh-bridges which further contribute to transport delays and unpredictable procedures which are key concerns to the both the Ugandan and Kenyan business community. All these deficiencies contribute to transport delays and increased costs. A good example of their impact is the high cost of transporting a 20 feet container along the Northern corridor from Mombasa to Nairobi, which averages USD 760 - 1,000 for a distance of 485 Km, or between 58%-77% the cost of transporting the same container from Europe to Mombasa. An additional impact of the poor condition of the road is that it leads to high truck maintenance cost, which is an issue of concern to freight companies. The factors in maintenance include wearing out of tyres and fuel costs due to slow trucks, which combined contribute to an average 60% of a truck's running costs according to World Bank 2005 figures.

All the above constraints have contributed to high transport costs, long transit times, high vehicle maintenance costs, high freight charges, transport delays, and road carnage. On overall, this reduces competitiveness of export and import products. Reducing transport and trade facilitation costs would therefore increase the competitiveness of Kenya's production.

[45] Kenya International Freight Forwarders Association (KIFWA)

5.6 NEW NTBS SINCE THE EAC 2005/2006 SURVEY

The last NTB survey of 2005/2006 identified a number of NTBs that have a direct effect on export and import trade. From the current consultations, some of the NTBs have been partially addressed, for example the application of the SIMBA system, which however still have major bottlenecks of making import process an electronic process. However, the PVOC program bottlenecks have not been addressed. Also, exports to other COMESA countries like Egypt, Sudan, Rwanda, Zambia and Malawi face additional NTBs in addition to those identified for the EA countries, as enumerated under the WTO NTBs categorization matrix above.

5.7 TEMPLATE FOR NTBS ELIMINATION

Consultations with the business community through their umbrella organisations (KAM, KNCCI, KIFWA) show that a structured approach to reporting, monitoring and facilitating elimination of NTBs is still preferred as was the case in 2005/06. For NTBs that cannot be resolved at the national level, they should be referred to the regional organs to initiate the elimination process. The business community is very keen to see an early resolution of NTB cases that have already been reported. In this respect, it proposes that any NTB cases that are not resolved within one month should be referred to the respective Trade Remedies Committee (either COMESA or EAC), since this issue was agreed during the design of the EAC monitoring and elimination mechanism. Also, the business community should be given a satisfactory feedback mechanism of NTBs that have been resolved so that they are regularly updated on importation and exportation regulations and requirements.

The EAC NTBs reporting, monitoring and elimination mechanism that was endorsed in early 2006 was therefore found to be viable and relevant, and should be applied within EAC without delay. The same format should also be used to report NTBs applicable on Kenyan exports and imports within COMESA region.

The tabulation of the Kenya NTBs reporting, monitoring and elimination mechanism as updated during the current consultations is given in Table 9 below.

TABLE 9 KENYA NTB[46] MONITORING AND ELIMINATION PLAN

An update on the status of those NTBs that existed at the launching of the EAC NTB Monitoring Plan as well as NTBs that have evolved since 2005.

1	2	3	4	5	6	7	8	9	10
NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
C	Customs documentation and administrative procedures	The Customs Reforms Modernisation Programme (CRM)[47], introduced from 1st July 2005, had initially increased the time and cost of clearing imports, escalated confusion on procedures required to clear imports, and led to shortages of raw materials in Kenyan manufacturing plants. While these were initial problems, the lack of consultation with the private sector, especially clearing and forwarding companies on how the system would operate was a major huddle in integrating the system among users. The private sector is generally sceptical about such systems which are introduced without	Licensed clearing & forwarding companies pay Ksh. 15,000 for training to use system, compliance & for the access code (*online declaration of customs coding and dutiable value*). In addition, an annual access fee of Ksh. 15,000 is payable by registered users. The system had resulted to clogging of the Mombasa Port[48], thereby increasing demurrage charges and delays in procuring of raw materials. As per World Bank benchmarks, it takes an average of 8.3 days to clear customs. There is no operational manual on how the system operates, which has resulted into corruption. Between July and mid August, the system used to break down at least once per week since it	Customs Department (KRA[49]) – Ministry of Finance	Publish an operations manual for Simba system. Establish a green channel to fast-truck clearance of raw materials when the system breaks down. Establish online connection with all major banks to facilitate efficient payment of applicable duty. Speed up training of personnel for clearing and forwarding agents that have paid to use system Ensure that the current fall-back position is efficiently maintained so that declaration and clearance of imports continues without interruption should the main server ever breaks down[50]. Establish a monitoring committee of Customs and	An operational manual in place by mid 2006 Imports without queries are cleared through customs within 2 days compared to current 8.3 days. Target Latvia's 1.2 days, the best case country in the world[51]. Imports declaration & duty payment completed	Annual reports by Customs on average clearance time for all imports	Resistance by customs to publish Simba system operations manual due to lack of financial resources. Lack of financial resources to train clearing and forwarding agents on compliance to Simba system. Resistance by Customs to introduce a green channel for imported raw materials, on argument that system should not favour certain imports. Some customs officers may still classify some imports under the yellow and red channels, which require physical	Sufficient Government resource allocations to enable publication of operations manual and efficient training on use of Simba system. Efficient imports clearance within 2 days without complaints

[46] The most severe NTBs for Kenya were categorized in the BCI report of May 2005

[47] *CRM system is also referred to as SIMBA 2005.*

[48] *In the past, using the manual system, about 500 containers were cleared per day at the Mombasa Port, but with introduction of the Simba system on 1st July 2005, only about 200 containers were initially cleared per day.*

[49] *KRA – Kenya Revenue Authority*

[50] *The Simba system currently has a reliable fall-back, since the main server is backed by a mirror server and a second server which is based outside Times Towers, to ensure that if it breaks down, data on imports is not lost.*

[51] *Comparisons on average number of days to clear customs for various countries of the world are given in the World Development 2005 report of the World Bank.*

1	2	3	4	5	6	7	8	9	10
NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
		proper consultations, which end up making imports clearance costly and time consuming to comply with. Also, the SIMBA system has not yet automated the entire process of imports declaration. Once a clearing agent lodges an import declaration, a customs declaration officer examines it and decides on the next step, i.e. whether the declaration is correct and approved, incorrect, has incomplete submission or whether goods need to be examined. This means a risk management module which is actually available within the system has not been implemented to allow for automated processing of an import declaration. Although the system has now eliminated the need for paper work to trigger processing of an import, the lack of implementing the risk management module is an avenue for corruption. The system also has legal problems since legislation has not been amended to allow	wasn't able to take up a lot of load, which was making it impossible to declare and clear imports on time Banks are not connected to the system, to enable importers to pay online. Lack of electronic submission of import documents is an avenue for corruption.		stakeholders to regularly check and ensure system is working efficiently.	electronically without manual processes by end 2007.		verification, so that they can continue with rent-seeking practices.	

1	2	3	4	5	6	7	8	9	10
NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
		for electronic submission of import documents, such as certificates of origin, security bond and import declaration form, bill of landing, and packing list.							
Part II C&D	Customs documentation and administrative procedures	There are far too many documents related to a single import consignment. The key documents include an Import Declaration Form, Shipping Manifest, Single Entry Document referred to as C63, Airway Bill or Bill of Landing, Certificate of Origin, Customs Bond, Pre-shipment Inspection certificate. While it may seem that these documents are few in number, most must have other supporting documents, which are determined by the trade transaction and nature of an import. A typical import requires a total of 52 different documents to enable it to be cleared and released to the importer or his forwarding agent.	In Kenya, clearing an import is a cumbersome process, which on average takes 45 days, compared Mauritius 16 days. Within EAC Tanzania performs better than Kenya at an average of 39 days according to World Bank Doing Business 2007. Also other many of Kenya's competitor's for COMESA market perform much better, with China at 22 days, Egypt at 25 days and South Africa at 34 days. The implication of lengthy time taken to clear an import is that a Kenyan manufacturer is unable to access raw materials required to process an order on time, resulting to preference by major international buyers to procure from the better performing countries with assured times for delivery after placement of an order.	Kenya Customs, KPA, KRC, KEBS, Port Health, KEPHIS, PCPB, MOA, MOLD, Fisheries Dept, MOH, Narcotics Police, Clearing & Forwarding agents	Urgently implement the proposed Community Based System (CBS), which aims at establishing an electronic data exchange and integration of clearance processes among various agencies (*like KPA, KPA, KEBS, KEPHIS, Port Health, Narcotics Police and others*)	All agencies involved in clearing imports use an electronic system of data exchange which will reduce clearance time from current 45 days to 2 days and 8 hours by end 2007	Monthly feedback to NM by Clearing and Forwarding Agents through KIFWA on procedures in imports clearance	The cost of CBS system is quite high, estimated at USD 3.223 to set up.	An electronic data system used by all agencies at Mombasa port which reduces clearance time to 2 days and 8 hours

1	2	3	4	5	6	7	8	9	10
NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
Part II G	Customs documentation and administrative procedures Customs documentation and administrative procedures	Limited customs open hours (*daylight hours*) for verifying documents and clearing import cargo is a hindrance to faster movement of goods across borders, and mainly affects perishable products	The opening of customs border offices only from 8 am to 5 pm translates to lost business time to clear goods at borders. Also, a lot of cost is incurred to bribe customs officials to clear goods especially on Fridays so that they don't stay at borders during weekends, in order to save on 2 days and avoid loss through theft.	Customs Department	Increase operating hours from current 12 to 24 at border crossings that have justifiable trade volume, by operating through shifts	Major border crossings open 24 hours per day by mid 2006	Monthly reports by Customs on operating time at border points and volume of trade transacted	Lack of "service attitude" by customs officers Insufficient number of customs officers might hinder implementation	Customs officers to have a service oriented approach to business issues. Sufficient Government budget allocation for customs operations at major border crossings.
Part II B& C	Customs valuation & classification of imports	Customs officers at border crossings in most cases continue applying national taxes, duties, regulations and procedures long after relevant rules are harmonised by EAC Council of Ministers (*for example after harmonisation of EAC CET*[52] *in Jan 2005*)	Varying taxes and import regulations among EAC states, resulting into unequal level of competition among the EAC businesses in local markets.	EA Customs Departments	Publish an EAC gazette to enable domestication of customs regulations immediately they are harmonised, and communicate with border customs officials. The Council[53] to establish a minimum period during which harmonised regulations should be domesticated after publication of an EAC Gazette.	Direction by EAC Council of Ministers on issuance of EAC Gazette	Report of Council meeting reflecting on minimum period for issuance of EAC Gazette notice after a Council decision	Insufficient financial resources among partner states may hinder publication of EAC Gazette once customs laws are harmonised.	Sufficient budget are allocation for EAC matters.
Part VI E	Border taxes	Selected exports face problems of accessing Tanzanian market, due to application of discriminatory domestic taxes. Examples include: o A higher rate of excise	Inability to penetrate Tanzanian market by cigarette and tea manufacturers. For example, KETEPA has been unable to sell tea in Tanzania from 1998, where it had managed to capture a two-container load market per week, worth about Ksh. 5-6	Tanzania Revenue Authority	1. Harmonise domestic taxes and import regulations among EAC countries. 2. Agree to treat EAC originating raw materials as local content.	Acceptance of this proposal by Council during 1st quarter 2006.	Report of Council meeting in 1st quarter 2006 reflecting decision to harmonise	1. Fear of loss of tax revenue after harmonisation of domestic taxes. 2. Resistance by Tanzanian tobacco producers on treatment of EAC	1. Need to Sensitise producers that EAC is now one customs territory,

[52] *CET – EAC Common External Tariff*
[53] *Council means EAC Council of Ministers*

1	2	3	4	5	6	7	8	9	10
NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
		duty on imported cigarettes that do not have a 75% local content. o An import license required on Kenyan originating tea	million (*and which was just a small percentage of the potential market*)				domestic taxes, import regulations & local content.	raw materials as local content. 3. Fear of loss of market share by Tanzanian tea producers.	where taxes and import regulations should apply equally on goods produced within the region. 2. Tanzania Government needs to explore areas where revenue lost from harmonised excise duty could be recovered, e.g. efficient collection of other taxes like VAT.
Part	Customs	5. Off-loading and re-	3. Lost business time during	Kenya	Introduce scanners to reduce	Only	Monthly	Lack of financial	Council to

1	2	3	4	5	6	7	8	9	10
NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
II C,D& G	documentation and administrative procedures	loading containers for 100% verification of imports where customs doubts value and container content, or where other inspection agencies doubt content and other product specifications leads to lost business time and inability to fit goods in original package (*e.g. 2nd hand clothing & tyres*)	100% verification, and consequent demurrage charges while awaiting verification. 4. Inability to repackage goods in original package may increase repackaging costs.	Customs Department, other inspection agencies	need for offloading, reloading and 100% verification of containerised goods. Establish a one-stop business centre for all major border crossings using the Mombasa model where all agencies involved in verifying imports and exports work under one roof, to ensure verification is carried out once. The operations of the business centre should also be extended to accommodate other agencies from the neighbouring EAC state that shares a border with Kenya, so that exports from one partner state, which become imports in the other state, are cleared under the same roof.	scanners used to verify imports at major entry points by end of 2006. All agencies involved in imports/ exports clearance working under one roof at major border crossings by end 2006. The alternative is to mandate and capacitate customs to deal with all issues related to trade[54]	reports by Customs on verification done and method used.	resources to introduce scanners at major entry points. Lack of an EAC law that allows neighbouring countries to operate under one roof. Insufficient resources to build one business centre for the EAC states that share a border crossing.	spearhead enactment of a legislation that allows EAC agencies at border crossings to operate under one roof. EAC Governments to allocate sufficient resources as part of customs modernisation programmes (*for commonly shared buildings*).
Part VI E	Customs border charges	Before Oct 2006, Tanzania used to charge USD 200 per annum or US$ 20 per entry on sales vehicles entering Tanzania and a USD 5 fuel tax per vehicle. These charges were not applicable in Kenya.	The charges applied by Tanzania makes penetration of Tanzanian market more difficult compared to Uganda and Kenya.	Customs Department Tanzania	Harmonise EAC cross-border transport charges	Harmonised cross border charges within EAC	Report of Council reflecting decision to harmonise cross-border transport charges	Fear of loss of revenue by Tanzania Customs Department	Tanzania Government needs to explore areas where revenue lost from harmonised transport charges could be recovered,

[54] *Trade issues would include customs coding, dutiable value, standards, sanitary and phytosanitary, weights and measures, and intellectual property rights like patenting and piracy.*

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
									e.g. efficient collection of other taxes like VAT.
Part VII D	Unscrupulous business practices	Counterfeits products that bear trade marks of EAC manufactured products, which mostly originate from China, and also from EAC countries, are sold widely in Uganda, and also to some extent in Kenya and Tanzania.	Selling of counterfeits take away the market share of EAC manufactured products, and dents the corporate image of EAC manufacturers in consumers' mind, since the counterfeits are of poor quality[55].	EAC Customs Departments	Gazette the proposed "EAC Counterfeit Bill 2005" Gazette EA experts responsible for prosecuting culprits of counterfeit cases. Prepare and implement a crash training programme for EAC counterfeits prosecutors[56].	Finalisation of the EAC Counterfeits Bill.	An EAC Anti-Counterfeit Bill published and enacted.	The EAC does not yet have an extra-territorial jurisdiction law, to facilitate joint customs operations, including prosecutions of culprits beyond the borders of one partner state. There could be resistance to conclude and enforce the proposed EAC counterfeit bill, since it is alleged that some government officials, including Ministers, are involved in counterfeit trade.	The an operational EAC counterfeits law
Part VII D	Unscrupulous business practices	Diversion of transit goods into the domestic market, on which VAT and import duties have not been paid.	Diversion of transit goods into the domestic market results into unfair competition with locally manufactured goods on which duty (*including IDF fee*) and VAT have been paid[57].	EAC Customs and Police Departments	Vigorously enforce the current laws against diversion of transit trade into the domestic markets. EAC partner states need to introduce a harmonised tracking system for all exports to ensure they cross borders.	Diversion of transit goods into the domestic market eliminated and minimal complaints from genuine manufacturers	Quarterly reports by Customs and police departments to Council on diversion cases netted and measures taken. Harmonised tracking	Lack of seriousness by customs and police officers to enforce current laws on diversion of transit trade due to fear of loss of rent-seeking opportunities. Lack of sufficient funds to introduce tracking system on all major transit routes by	The Council need to agree on a harmonised system for dealing with diversion of transit goods into the EAC markets.

[55] *Some of the products most affected products by counterfeits are bic pens manufactured by HACO Industries, and batteries manufactured by Eveready Batteries Ltd.*
[56] *The contents of the training programme on counterfeits would such topics as what are counterfeits, intellectual property, piracy, and procedures of prosecuting culprits.*
[57] *Diversion of transit goods into the domestic market is an illegal practice.*

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
							system for EAC countries operational before end of 2006.	EAC governments	
Part 1 D&E	Unfair Government participation in trade	Kenyan exporters face problems of accessing the Ethiopian market due to requirement that goods exported to Ethiopia should be transported through the National Shipping lines. Ethiopian however insists that it encourages use of its national shipping lines but that this is not mandatory.	Exporters are not given a choice over the most competitive shipping lines. Ethiopian shipping lines may have taken advantage of the procedure to inflate charges on cargo transported to the country.	Ethiopia Government	Allow competitive procurement of shipping lines by exporters. Sine Ethiopia Government says that encouraging use of national shipping lines is not a mandatory requirement it should issue a legal notice to correct impression created amongst exporters.	A legal notice clarifying that all shipping lines are allowed to transport goods to Ethiopia	Legal notice published and circulated amongst COMESA countries	Shipping lines could resist issuance of Legal Notice for fear of lost business opportunities	Legal notice would encourage competition among shipping lines and reduce cost of transport to Ethiopia
Part II F	Erroneous use of rules of origin	Kenyan exporters of galvanised sheets have faced market access to Rwanda, Egypt and Sudan. In this respect, Rwanda has refused to recognise the certificate of origin on argument that it	Kenyan exporters of the products in question have incurred costs in manufacturing the said products after placement or orders by importers. Failure to sell into intended markets translates to lost business opportunities, opportunity costs and tying up of	Kenya Customs, KEBS[58], KEPHIS[59], PCPB[60], MOA[61], MOLD[62], Fisheries Dept, MOTI[63],					

[58] Kenya Bureau of Standards
[59] Kenya Plant Health Inspectorate Service
[60] Pest Control Products Board
[61] Ministry of Agriculture
[62] Ministry of Livestock Development

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
		needs to undertake a verification mission to Kenya to determine whether the Rules of Origin on the product are adherence to. Egypt has also refused to recognize the certificate of origin on reasons that the required 35% value addition has not been achieved. Sudan on the other hand argues that Customs Tariff Headings are used to classify imports rather than the 35% value addition criteria. and palm based cooking oils Kenyan exporters of palm based cooking oil have also faced market access to Zambia on doubts over the manufacturing process	working capital. Additionally, there are costs incurred in delivery of the products to the point of entry and shipping/ transporting them back to the manufacturing plants to seek for new markets.	KNCCI[64], KAM[65]					
Part II F	Erroneous use of rules	All Kenyan exporters to Malawi face	The value addition requirement of 51% is too	Malawi Customs					

[63] Ministry of Trade and Industry
[64] Kenya National Chamber of Commerce and Industry
[65] Kenya Association of Manufacturers

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
	of origin	problems over application of the Malawi pre-shipment inspection program, which has a contract up to June, 2007. The PSI has a requirement that the Certificate of Origin on imports must be accompanied by a FORM 18, which itself requires that an exporter has to justify a value addition of 51%. This is contrary to the COMESA value addition requirement of 35%	high for COMESA manufacturers whose raw material imports constitute a big percentage to final product. While the FORM 18 value addition criteria contradict the COMESA value addition criteria, it also discourages intra-COMESA trade and integration process.	Department					
Part II G	Cumbersome export documentation	Exportation is made cumbersome by numerous export documents, which number 11, compared to Africa's most successful economies, namely Mauritius and South Africa at 5 each. Even within the EAC, Tanzania is more competitive on ease of exporting with just 3 export documents. Some of the documents sited by KAM that are	The numerous export documents translate to lost business time. In this respect, it takes an average of 25 days to obtain all export documents for a single export consignment in Kenya, compared to best performers like Denmark at an average of 5 days. A key Kenyan competitor for export markets within Africa is Mauritius in which export documentation takes an average of 16 days. The lengthy time taken to complete export documentation translates to	Customs, KEPHIS, PCPB, KPA, MOTI, KCCI, KAM, Veterinary Department, MOLD					

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
		required for an export include the certificate of origin, commercial invoice, bill of landing, customs export declaration form, export permit/ license, packing list, shipping note, preferential certificate and technical standard/ health certificate	a long period before an exporter can fulfil an order, and may in the end mean a lost business opportunity.						
Part IV B	Cumbersome SPS requirements	Kenyan exporters of beef and poultry have been denied market access in Uganda due to a Government ban on the products which is related to unspecified animal diseases.	The import ban by Ugandan Government leads to loss of identified market opportunities.	Uganda Veterinary Services Department, Ministry of Agriculture	COMESA countries should pass a Council resolution requiring members to give prior notification before introduction of bans and other market entry requirements	A COMESA council resolution regarding prior notification on market entry requirements before introduction by any member	Minutes of Council meeting resolution	Some members might continue introducing new market entry requirements in complete disregard of Council resolution	Members respect for the Council resolution on prior notice to introduction of market entry requirements
Part VII E	Immigration procedures at border crossings	Tanzania has recently increased the single business entry charge from USD 50 to USD 100 to business people entering Tanzania.	Cost of doing business in Tanzania by East Africans is very high since the visa fee is payable per entry.	Immigration Department Tanzania	Tanzania should remove the business visa fee for East Africans. Tanzania should implement the Council's decision to give a six-month visitors' pass to holders of the East African passport by stamping the passport accordingly.	Immediate implementation of issuance of 6-months visitors' passes to EAC passport holders.	Monthly reports by Immigration Departments on number of East Africans having a 6-months visitors pass	Immigration officials could resist implementation due to fear of loss of opportunities for corruption.	Harmonised Business entry charges and procedures within EAC
		Uganda and Tanzania requires work permits for Kenyan employees of Kenyan companies	Companies spend a lot of time and incur substantial costs following up their employees' work permits applications.	Immigration Departments in Tanzania and Uganda	Allow free movement of factors of production especially labour, even before the Common Market comes	Immediate harmonisation of entry/ work permits, since	Monthly reports by Immigration Departments	Pressure by local people in Uganda and Tanzania on their Governments to resist	Working and travel within EAC undertaken

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
		that have branches in either of the two countries.	Failure to secure the work permits mean that companies may sometimes be forced to employ locals who do not have the required skills, which eventually compromises on companies' efficiency and product quality.		into operation, in the spirit of East African Community. Further, Harmonize entry/work permits within EAC	the target date of July 2005 has already passed.	on number of work permits issued.	issuance of work permits to Kenyans, based on fear of loss of employment opportunities.	without facing immigration difficulties
		Many East Africans do not yet have an East African passport, while even for those who have it, the Immigration Departments still insist on stamping it at every exit or entry	Many people (*especially small business people*) cross borders through undesignated routes, which is illegal, and could attract substantial costs if one is arrested as an immigrant	EAC Immigration Departments	Immigration Departments should speed up issuance of the EA passport by simplifying the application procedures, minimising application fees, decentralising issuance to major urban areas, and sensitising the citizens on the passport's existence. Further, the requirement to stamp the passport at every entry/ exit should be removed, by respecting the Council's decision to issue an automatic 6 months multiple entry visas and pass without delay. In the long run, EA partner states should accept the national identity card as a valid document for crossing borders, once issuance of identity cards in Uganda and Tanzania is completed.	Number of illegal immigrants reduced to bare minimum by end of 2007.	Monthly reports by Immigration Departments on number of EA passport holders.	Time to re-design new application forms for an East African passport	EAC issuance of EAC passports to EA citizens
		Most exit/ entry points have introduced computerised scanning of passports, but immigration exit and entry forms are still in use	A lot of unnecessary time is spent queuing for scanning and passport stamp at exit and entry points – on average, 29% of all border crossings take more than 1hour.	Immigration Departments in the three East African countries	At the border points where computerised scanning of passports has been introduced, the need for entry and exit forms should be removed, since this is a duplicated function. Information accessed from the scanned passport should give immigration the required data on travellers.	East Africans spend not more than 15 minutes to cross borders.	2006/07 BCI[66] Survey report by EABC on time taken and procedures for crossing borders	Resistance by Immigration Department to phase out exit & entry forms	EAC citizens cross borders are treated like nationals

[66] Business Climate Index

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
Part VII C	Business registration & licensing procedures	Registering a new business and obtaining a business license are cumbersome procedures	Potential businesspeople spend a lot of time and incur substantial cost travelling to Nairobi to register business names and limited companies. For 19% of all new registrations, the process of searching for a business name, applying for registration and obtaining a registration certificate takes more than 2 weeks. For limited companies, there are substantial costs associated with drawing of memorandum and articles of association since the process can only be done by a legal practitioner. Before 2006 budget, distribution and sale of goods in Kenya was very cumbersome and expensive, since the Single Business Permit (*payable at Ksh. 80,000 in Nairobi*) covered only production and distribution/ sales in the jurisdiction of the local authority issuing the license. In addition, all local authorities charged a Ksh. 6,000 fee on sales vehicles that bear a brand name, while Transport Licensing Board (TLB) charges 1,500 per annum and KRA Ksh. 2,400 p.a. advance tax per sales van and Ksh. 2,100 p.a. road license per sales van.	Registrar of companies Local authorities KRA[67]	Introduce online business names search and registration of business name so as to remove current requirement that involves travel to Nairobi to undertake the process (*there are no other registration centres apart from Nairobi*). Maintain the Single Business Permit fees structure as per 2006/07 budget on production, sales, distribution and related business activities. Introduce payment of other business licenses and charges road licenses under one body, and decentralise payment system to all urban areas of the country.	Online process of business name search and registration Payment for all business licenses and charges under one body[68].	Annual reports by Registrar of Companies on registered businesses. A new Act on business licenses and charges	Resistance by officials at Registrar of Societies who would lose rent-seeking opportunities Insufficient resources for computerisation of business registration Resistance by local authorities not to introduce new charges to replace revenue lost through harmonisation of business licenses and charges	Sufficient GOK budget allocation business registration reforms Substantial reduction in time taken to register new businesses, number and cost of business licenses

[67] Kenya Revenue Authority
[68] *The harmonised business license should operate like the TLB, which is payable one per annum to KRA, and which allows company vehicles to operate in any part of the country without additional charges.*

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
		Registration of a new business in another EA country is cumbersome	For 13% of all businesses, registration in another EA country takes more than 2 weeks	EAC Registrars of Companies	Harmonise and introduce online registration of businesses within from East Africa, using Tanzania's BRELA[69] model	Time to register EAC businesses reduced from current average of over 2 weeks to 1 Harmonised business registration and related annual returns within EAC.	Report of the decision by Council to harmonise and computerise business registration procedures	Requirement to harmonise business registration might be resisted on justification of national interest and fear of lost rent-seeking opportunities. Lack of funds to establish an electronic process could derail the process	Resource allocations to computerise business registration processes by the EA governments Efficient process of business registration within EAC
Part III B&C	Varying quality standards procedures	EAC and COMESA Standards Bureaus have varying procedures for issuance of certification marks, inspection and testing. This makes it difficult to carry out cross border trade.	Businesses face different inspection and testing procedures before getting a certification mark within the region, which means even if one understands the procedures in one country, one has to spend extra time and money to understand and comply with procedures of the other countries. For EAC which has a Customs union, such procedures should be similar.	EAC, COMESA and SADC Standards Bureaus	Implement fully the EAC SQMT protocol, and the May 2005 COMESA decision to harmonise 206 standards. Further, establish coordination in harmonisation of standards within COMESA and SADC region.	Standardised procedures for testing, inspection and issuance of quality certification markets within EAC, COMESA and SADC	Minutes of Council decision for each regional body on decision to harmonise testing, inspection and certification procedures	Financial costs related to harmonisation program Resistance by national standards bureaus to harmonise standards due to national pride	Harmonised procedures on testing, inspection and certification within EA, COMESA & SADC countries
Part VII E	Cumbersome inspection procedures on	Police officers stop commercial vehicles at various road blocks	Road blocks are a source of rent-seeking opportunities while precious time is wasted	Kenyan Police Department	Introduce scanners at major road blocks, and tracking system for transit vehicles.	Use of scanners at police	Daily records on vehicles	Lack of resources to introduce scanners at road blocks and	1. M aximum of 30 minutes

[69] BRELA – Business Registration and Licensing Authority. BRELA has established an efficient system of business registration, trade / service marks and patents, under business registration forms and registration for business names can be made online. However, payment of a business certificates online is hampered by existence of the Evidence Act which needs to be reviewed to allow electronically generated documents to be admissible in court as evidence.

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
	imports and distribution of goods in domestic market	while officially, they are only supposed to stop vehicles based on more than 52% proof that goods being transported are suspicious (*e.g. that vehicle exceeds allowed axle load, goods are smuggled, vehicle is carrying drugs or other dangerous products like arms, documentation does not conform to goods being transported, etc*)	on pretence that verification of goods is being done. On average, 19% of all businesses view road blocks as a major obstacle to free movement of goods		Introduce heavy financial and other penalties for transporters involved in trade malpractices (*e.g. withdrawal of driving license*). Introduce clearly laid down procedures on which checks are undertaken at border points and road blocks for commercial vehicles and inform businesspeople accordingly. Give clear instructions to police to spend less time when checking vehicles carrying transit goods. Also, transport drivers to demand receipts whenever approached by police for any form of payment.	roadblocks and vehicle tracking system for transit trucks on major highways. Maximum of 30 minutes spent on checking commercial transit cargo, from current average of about two hours.	inspections at roadblocks	tracking system for transit traffic. Resistance by police to implement scanners and tracking system due to fear of loss of bribery opportunities. Police checks are often justified for security reasons.	spent at roadblocks on major highways
Part II A Part VII E	Weighbridge requirements and procedures	The number of weighing scales at each weighbridge stations is too few and slow, which results into long queues, slow weighing of vehicle GVM and axle loads and consequent delays in delivery of cargo to point of destination. Transporters also suspect that weighing is deliberately delayed so as to exhort bribes.	19% of all businesses view weighbridges as a major obstacle to efficient movement of goods on Kenyan roads especially along the Northern Corridor en-route to destinations like for exports to Uganda, DRC, Congo, Rwanda, and Burundi. al	Kenya Department of Weighbridges, Ministry of Roads	Increase number of weighing scales at each weighbridge station. In the long run, introduce computerised electronic weighbridges so as to hasten the speed of the weighing process, and facilitate monitoring from a central point. This development would also introduce transparency by enabling transporters to also see the axle loads readings on their trucks. EAC and COMESA countries should harmonise axle loads and GVM on transit vehicles.	Zero complaints on time spent at weighbridge stations and harmonised axle loads within EAC and COMESA countries	Daily records of number of transport vehicles passing through weighbridge stations, & number of computerised weighbridges at each station. Harmonised EAC axle load limits and GVM for trucks	Financial constraints to procure additional weighbridge scales, and facilitate introduction of computerised electronic weighbridges. Weighbridge operators could resist introduction of new procedures and computerised system due to fear of lost rent-seeking opportunities. Delays before EAC &COMESA countries	Sufficient budgetary allocation for computerised weighbridges. Efficient crossings at weighbridge stations

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
					Install weighbridges at entry points so that commercial transit vehicles are checked only once in the transit country.			agree whether to harmonise axle load limits & GVM under COMESA or SADC specifications.	
Part II A Part VII E	Weighbridge requirements and procedures	While Uganda and Kenya use the harmonised COMESA[70] axle load specifications, Tanzania uses is at a higher legal limit[71], which also exceeds the load specifications under SADC[72]. Further, the specified maximum Gross Vehicle Mass (GVM) for commercial vehicles differs among the three EA countries[73], which limits the ability to undertake transit traffic within the region.	Kenyan transit trucks that use Ugandan roads (*e.g. en-route Rwanda*, *Burundi*, *DRC*) always face the danger of exceeding the GVM and consequent financial penalties[74].	Ministry of Roads the three EA countries	Harmonise axle load and transport vehicle specifications and procedures for weighing among EA countries, either under COMESA or SADC. Also, introduce electronic weighbridges so as to save on time spent at the weighbridge stations.	Council decision to harmonise axle load, GVM and weighing procedures, either under COMESA or SADC specifications by 2nd quarter 2006. Electronic weighbridges introduced at major stations by end 2006	Report of Council meeting during 2nd quarter 2006	Department of Roads in the three countries may have ideological differences on whether to use COMESA or SADC specifications and procedures Lack of resources to install electronic weighbridges	Accurate weighbridge scale readings Sufficient budgetary allocation for electronic weighbridges Efficient crossing through weighbridges
Part IIIB &C	Costly and cumbersome pre-shipment quality inspection procedures	From 1st July 2005, after the phase out of Pre-shipment Programme, the Kenya Bureau of Standards introduced a new import inspection procedure that is	The new KEBs requirement did not advice importers on which are the internationally accredited laboratories in import originating countries, which was initially a major impediment to imports especially by small scale businesses that do not have	KEBS	KEBS should open up PVOC to other inspection bodies without limiting the contract to 2 companies so that all exporting countries are served equally. KEBS should review the PSI fees from current 0.475% of	A revised PVOC legislation by end 2007, which should be prepared in consultation	A new PVOC legislation incorporating all proposals for review.	Resistance by KEBS to publish new import inspection procedures on assumption that they are easy and inexpensive to comply with	Easy to comply with import inspection procedures

[70] *COMESA – Common Market for Eastern and Southern African countries. The COMESA axle load legal limit for Tandem (double) axle is 16 tones, same as SADC.*

[71] *Tanzania's axle load limits are at 18 tonnes for double axle, while for Uganda and Kenya, the limits are at 16 tonnes.*

[72] *SADC – Southern Africa Development Cooperation*

[73] *Kenya has implemented the COMESA GVM specification of 54 tones, while Uganda has not and is still at 46 tones limit; and Tanzania, is at a higher limit of 56 tones. GVM refers to the combined weight of truck and cargo.*

[74] *The fee for overloaded vehicles is aimed at recovering the cost of damages to the roads and bridges and is paid on the spot to the Weighbridges Department. The fee covers exceeding the legal limit on axles and gross vehicle mass, and is based on the excess weight on each axle. The overloaded vehicle is detained until the fee has been paid. Further, if a vehicle bypasses a weighbridge station, whether overloaded r not, the owner of the vehicle has to pay a bypassing fee. Any overloaded vehicle has to offload the excess weight, even after paying the overloading fee.*

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
		difficult and expensive to implement by businesses, since it requires that imports will only be allowed into the country if accompanied by a quality inspection certificate from an internationally accredited laboratory.	resources and contacts in imports originating countries. The effect was felt on declining imports, including raw materials, since importers would hesitate to import products that could thereafter be rejected on arrival at Kenyan ports of entry and the consequent cost of returning such consignments to country of origin or destroying them. This PVOC costs on inspection, testing, audit, and certification means an additional cost to the normal Import Declaration Fee (IDF) of 2.75% on value of the import, which was not waived although the post-shipment inspection program itself was phased out. There are delays in inspection and issuance of CoC, translating to delays in procuring raw materials and consequently to delayed production schedules. Small consignments are overcharged, since they may be or small value than the minimum inspection fee of USD 180.		import value or minimum USD 180. Foreign manufacturers with ISO certification should not be required to go through a manufacturing audit process. Imports from EA and COMESA region should be waived from PVOC requirements. Waive the IDF fee on imports	with private sector stakeholders through KAM			
Part III A, B,	Import and export inspection requirements	Import and export inspection, and certification procedures involve many government bodies[75] which do not	A lot of time is spent in the import and export inspection process by business people	Customs, KEBS, KEPHIS, PCPB, MOA,	All inspection bodies should operate in one office so as to undertake inspection requirements at once.	A publication on import and export regulations that are	A new publication on import requirements into Kenya	Resistance by import agencies to operate in one office at border points.	Efficient inspection procedures Sufficient

[75] *The quality inspection bodies in Kenya include Customs, KEBS, KEPHIS, PCPB, MOA, and MOLD.*
- *Customs – verification of import coding, quantity and dutiable value, and control of prohibited and restricted exports*
- *KEBS – Kenya Bureau of Standards – undertakes sampled inspection on quality requirements*

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
		collaborate, resulting to duplication of effort. Also, many of the inspection bodies have not established laboratories at major entry and exit points. EAC countries also have varying import requirements, which makes cross border trade a frustrating exercise since quality certificates marks are not mutually recognised by relevant bodies.		MOLD, Equivalent bodies in Uganda and Tanzania	Introduce scanners at all major import entry and export exit points Inspection and diagnostic laboratories need to be established at all production and border entry points. Identify possible areas of harmonisation amongst EAC countries, so as to facilitate harmonisation of import and export inspection procedures and requirements, including technical information, procedures/ steps, and administrative fees for registration of certified products. Undertake interactive attachments amongst similar inspection agencies on implementation and harmonisation procedures so as to solidify and entrench the integration process. Undertake adequate training for inspectors on assessment of documents for registration, development of required quality assessment data, etc.	applied by all inspection bodies. Harmonised EAC import procedures	and responsible agencies. Report of the Council meeting reflecting decision to harmonise EA inspection procedures.	Lack of sufficient resources to establish diagnostic and inspection laboratories at major production and entry/ exit points. Lack of sufficient financial resources to facilitate an EAC continuous process of discussions regarding areas to harmonise, documents to harmonise documents, regular monitoring and implementation of harmonised procedures. Varying technical capacity among EAC inspection equivalent bodies. Some technical areas may be difficult to harmonise, e.g. for pesticides, due to varying climatic conditions.	resource allocation by central governments to facilitate establishment of appropriate laboratory facilities Harmonised trade facilitation procedures within EAC countries

- *KEPHIS – Kenya Plant Health Inspectorate – undertakes sampled inspection and certification of phytosanitory requirements for imports and exports*
- *PCPB - Pest Control Products Board - undertakes assessment of safety, quality and efficacy of pesticides and likely impact to crops if applied in farming.*
- *MOA – Ministry of Agriculture - approves and issues import permit permits for any plant imports*
- *MOLD – Ministry of Livestock Development - approves and issues permits for any animal imports*

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NTB Inventory under WTO codes	Problem Area	Description of the most severe NTBs	Impact of NTB to businesses	Responsible Ministry/ Department	Possible approach to eliminate NTB	Performance Benchmarks	Means of Verification	Constraints	Success factor
Part II D	Varying trade requirements among EAC states	Uganda insists on use of closed body trucks or sealable tarpaulins for transit cargo passing through Uganda aimed at guarding against dumping into Ugandan market Uganda insists that the procedure conforms with the Kyoto convention on the international transit of goods under the WCO[76] and the East African Community Customs Management Act of 2004	Extra cost of using closed trucks and/or sealable tarpaulins. This does not promote the spirit of either EAC or COMESA integration, since there should have been prior discussions and consensus among EAC and/or COMESA members on a harmonised procedure before its introduction by any state.	Uganda Customs and Police Department	Introduce tracking system on transit cargo	Tracking system is used to monitor transit cargo instead of police escorts by end of 2006	Daily records on transit traffic by Police Department and method used to track movement of trucks	Cost of introducing tracking system	Sufficient budgetary allocation by Ugandan Government to enable use of tracking system on transit traffic Easy transit through Uganda en-route to DRC, Rwanda and Burundi

Source: Consultations with Kenyan stakeholders between August and December 2005, and in March 2007

[76] WCO – World Customs Organisation

6.0 ASSESSMENT OF PROCEDURES FOR HARMONIZATION OF TRANSIT TRAFFIC BETWEEN COUNTRIES IN THE REGION

Kenya has implemented all COMESA schemes aimed at facilitating cross-border trade, which have are also being used within EAC region. These schemes include.

6.1 Harmonized road transit charges system.

The system requires that heavy goods trucks with more than three axles pay a charge of US$10 per 100km while trucks with up to three axles pay US$6 per 100km. Buses with a capacity of more than 25 passengers pay US$5 per 100km.

6.2 COMESA Carrier's License

This license allows commercial goods vehicles to transport goods throughout all COMESA member states with only one license.

6.3 Harmonized Axle Loading and Maximum Vehicle Weight

This scheme aims at preserving road infrastructure by limiting the load on freight vehicles. COMESA has harmonised the axle load at 16 tonnes for double axle and Gross vehicle Mass (GVM) specifications at a maximum of 54 tonnes.

6.4 COMESA Yellow Card

The COMESA Yellow Card is a motor vehicle insurance scheme which covers third-party liabilities and medical expenses of road accident victims caused by a foreign motorist from the OMESA region. A yellow card issued in one COMESA country is valid in all other member countries and is mostly applicable along the Northern Corridor route.

6.5 Advance Cargo Information System

This is a computer based system consisting of Port Tracker, Road Tracker, Lake and Rail Tracker. To-date, only Kenya, Uganda, Tanzania and Zambia has installed the Rail Tracker. Kenya and Tanzania have also installed some components of the Port Tracker at Mombasa and Dar es Salaam respectively.

Kenya has also agreed to ratify the following COMESA programs when they come into force:

6.6 COMESA Bond Guarantee scheme

The COMESA bond will be a unique bond accepted by all the member countries for transit traffic. The objective is to reduce the cost associated with nationally executed customs bond guarantees for transit traffic. Since current bonds are country specific, implementation of this scheme will mean that transport operators do not have to get a new bond whenever their trucks cross borders.

6.6 COMESA Customs Declaration Document (CD-COM)

This is a system of declaration which will be used on processes related to imports, exports and good on transit. It aims aim at reducing the need for creation of new documentation at every border point for goods on transit. It will reduce the cost and delays experienced by business operators and facilitate information sharing between customs. The CD-COM is compliant with the widely accepted standards (UN keys and ASYCUDA). It is being partially used on the northern corridor.

7.0 RECOMMENDED ACTION PLAN ON MONITORING AND ELIMINATION OF NTBS

The following recommendations emerge from the analysis on NTB monitoring and elimination consultations in Uganda.

7.1 Need for goodwill and commitment by member states

Partner States within EAC and COMESA need to consolidate and demonstrate their political and technical goodwill to implement aspirations of the EAC and COMESA Treaties, so that decisions passed at Council levels are respected and domesticated through timely amendments of national laws, regulations and practices. Any intended introduction of laws, regulations and practices that may have an impact on trade need to be discussed by all member states, and consensus reached before they are enforced. For EAC countries, they need to recognize that with the coming into force of the Customs Union, they have lost their sovereignty on trade issues, which is the same case regarding application of COMESA preferential trade agreements, including the Free Trade Area. This recognition is important so that policy makers do no delay implementation of actions that hinder rather than promote inter-regional trade. Goodwill and commitment will also minimize the time often lost during protracted discussions on trade issues and subsequent delays in implementation of agreed actions.

7.2 Legal and Regulatory Framework

Partner States need to ensure that the legal and regulatory framework governing the integration process is properly enshrined in their national laws, and clearly understood and complied with by all agencies responsible for enforcement of trade regulatory and administrative requirements. This is important so that such agencies do not introduce laws, regulations, practices and procedures that may contradict aspirations of the EAC and COMESA Treaties before they are notified in advance, discussed and agreed by member states.

7.3 Capacity for monitoring and facilitating NTBs elimination

While the EAC endorsed its NTBs monitoring and elimination mechanism early in 2006, its application has been hampered by lack of capacity by the coordinating Ministry of EACRC. This is because while the MEACRC may have the goodwill to apply the mechanism, its staffing capacity is only sufficient to deal with daily operational issues, which leaves little room to handle cross-border and behind-border obstacles in a structured manner as proposed under the NTBs monitoring and elimination mechanism. The same case of the need for capacity building applies to business associations (KAM, KNCCI, KIFWA), which have been tasked with reporting existence of NTBs. It is therefore imperative that the partner states source for technical assistance from development partners to enable them to kick-start application of the mechanism. This initiative could be facilitated by EAC and COMESA Secretariats.

7.4 Harmonisation of regional transit traffic schemes

Kenya should be in the forefront of implementing the proposed COMESA Bond Guarantee scheme Advance Cargo Information System and lobbying other members to implement the planned transit traffic programs. This is because Kenya has a lot to gain if transit procedures were harmonized within the region, especially because COMESA is the country's principal export market, which took an average of 57% of the country's total exports during the period 2001 to 2005. This market needs to be safeguarded by ensuring that transportation is made more efficient and cost effective through harmonized transit procedures. Also, harmonization of transit traffic procedures and schemes would minimize duplication of effort and maximize use of scarce personnel and financial resources by responsible agencies.