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**COMMON MARKET FOR EASTERN**
**AND SOUTHERN AFRICA**

Twenty Seventh Meeting of the Trade and Customs Committee
15 –18 August 2011

**Ezulwini, Swaziland**

**REPORT**

**TWENTY SEVENTH MEETING OF THE TRADE AND CUSTOMS COMMITTEE**

**2011 (TM-rmm)**

## Introduction

1. The Twenty Seventh Meeting of the Trade and Customs Committee took place on 15-18 August 2011 in Ezulwini in the Kingdom of Swaziland. The meeting was attended by the following Member States: Burundi, Djibouti, Egypt, Eritrea, Kenya, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe. Representatives of the World Bank, the Commonwealth Secretariat, and Trade Mark Southern Africa, also attended. The list of participants is attached as Annex 17.

## Opening of the meeting *(Agenda Item 1)*

2. To welcome the Guest of Honour and the delegations, Dr Francis Mangeni, the Director of Trade Customs and Monetary Affairs, made a statement on behalf of the Assistant Secretary General for Programs, Mr Stephen Karangizi, in which he welcomed participants, and provided an update on implementation of the Customs Union programs. He urged the meeting to provide recommendations for the way forward on key issues, to assist the implementation of the Customs Union transition period. He ended by wishing the meeting every success.

3. The Meeting was opened by the Principal Secretary of the Ministry of Commerce, Trade and Industry of the Kingdom of Swaziland, Mr Cyril J.M. Kunene. In his statement, he welcomed the delegates to the meeting and to Swaziland, indicating how honoured Swaziland was to host the meeting. He pointed out that the meeting was pregnant with issues for consideration, the main issue being the review of implementation of the transition period for the Customs Union. He recalled the key Customs Union instruments to be domesticated in implementing the transition period, namely, the Common External Tariff, the Customs Management Regulations, and the Common Tariff Nomenclature.

4. The Customs Union builds on the FTA, he said, and will enhance productivity and more efficient allocation of resources, improving competitiveness and assisting the development of value chains. It will strengthen the bond between Member States and strengthen their voice in multilateral and bilateral relations. Investors will take advantage of the larger market. The debt crisis in the Euro zone should make us realise the importance of regional integration, which acted as an insurance policy during the financial crisis. The unification of the region through the Customs Union, the Common Market and the Monetary Union will shield the region. Implementation of the Customs Union will be a clear political statement and a clear signal to the investment community in the region and worldwide of the determination of the region to be a large and single market for trade and investment. Through collaboration with all stakeholders, the region should improve the business environment. He recalled that the key message from stakeholders has been that the region is ready for the Customs Union, since the rate of growth will be much higher than in the FTA, and policy harmonization and coordination will make it much easier for conducting business. Challenges of value chains, competitiveness, infrastructure and trade facilitation, will be addressed in the course of implementing the Customs Union.

5. He pointed out that Swaziland has always upheld the COMESA integration programs, being a founder member of COMESA. The Kingdom has implemented various programs, including CAADP and ASYCUDA. He underscored the importance of the COMESA-EAC-SADC Tripartite, which holds great promise for dealing with the issue of multiple membership and for promoting continental integration. He appealed to the region to implement the outcomes of the Second Tripartite Summit, while ensuring that no faith is lost in implementing the various regional programs. The Tripartite will facilitate a collective strategy for bilateral relations, for

instance the EPA with the EU, as well as the multilateral relations at the WTO. The Summit provided the impetus, and clearly set out the timeframe.

6. He concluded by emphasising that the Heads of State and Government are keen to see the Customs Union which they launched in June 2009 entering into full operation. The outcome of this meeting was therefore critical, he said. Finally, he wished the delegates every success and then declared the meeting officially opened.

**Vote of thanks**

7. Zambia moved a vote of thanks on behalf of the country and on behalf of all the delegates to the Guest of Honour for gracing the meeting with his opening remarks. Zambia thanked the people and Government of Swaziland for the hospitality, and the Secretariat for organising the meeting, and ended by assuring the Guest of Honour that his words of guidance would greatly assist the meeting.

**Election of Officers** *(Agenda Item 2)*

8. The following were elected to preside over the meeting:

| | |
|---|---|
| Swaziland: | Chairperson |
| Malawi: | Vice-chairperson |
| Zimbabwe: | Rapporteur |

**Adoption of Agenda and organisation of work** *(Agenda Item 3)*

9. The meeting considered and adopted the following agenda.

1) Opening of the Meeting
2) Election of Officers
3) Adoption of the Agenda and Organization of Work
4) Macroeconomic Developments and the Fiscal Surveillance System
5) Internal Market
   a. Trade Developments
   b. Update on COMESA Preference Utilization Study
   c. Country reports on participation in the Internal Market
   d. Elimination of Non-Tariff Barriers
   e. The Simplified Trade Regime
   f. Report on Rules of origin
6) Customs Union
   Report of the Third Meeting of the Committee on the Customs Union
7) Report of the Third Meeting of the Committee on Trade in Services
8) The Tripartite Free Trade Area
9) Multilateral Trade Negotiations
   a. WTO Negotiations
   b. The Africa Growth and Opportunity Act (AGOA)
   c. EPA Negotiations
10) Report on the Regional Customs Transit (Bond) Guarantee Scheme
11) The Single Window Initiative
12) PACT II and AAACP
13) Intellectual Property, and Science, Technology and Innovation

  a. Update on the Intellectual Property Programme
     i) Regional IP Policy Guidelines
     ii) Regional Model Law on IP
     iii) Regional production and trade in Pharmaceutical products
  b. Update on the Science, Technology and Innovation Programme

14) Date and venue of next meeting
15) Any Other Business
16) Adoption of the Report
17) Closing of the Meeting

10. The meeting adopted the organisation of work, attached as Annex 1.

**Macroeconomic development and Fiscal Surveillance System** *(Agenda Item 4)*

11. The meeting noted the Report of the First Joint Meeting of Finance Ministers and Central Bank Governors, held on 13 July 2011 in Lusaka Zambia. The meeting specifically noted the following:

a. The name “Multilateral Fiscal Surveillance System” might convey the impression that it indeed is a global multilateral system, rather than a COMESA or a eventually a Tripartite regional system;
b. There is need to place this program and the system within the framework of the Tripartite Arrangement. In this regard, the meeting noted that both EAC and SADC will be requested to consider the application of the fiscal surveillance system at the Tripartite level;
c. It is critical that all relevant ministries, including the COMESA coordinating ministries, be fully involved in the implementation of the fiscal surveillance system and the macroeconomic and fiscal convergence programs at large, and in this regard should receive all the relevant documents and updates; and
d. The macroeconomic and fiscal convergence program is designed to assist the region to cope with both regional and international challenges, and in this regard the program is instrumental in assisting the COMESA and Tripartite regional integration programs.

**Internal market** *(Agenda Item 5)*

**Trade Developments** *(Agenda Item 5 a)* and **Update on Preference Utilisation** *(Agenda Item 5 b)*

12. The meeting received a presentation on trade developments, including trade in food products, as well as a presentation on preference utilisation, as follows.

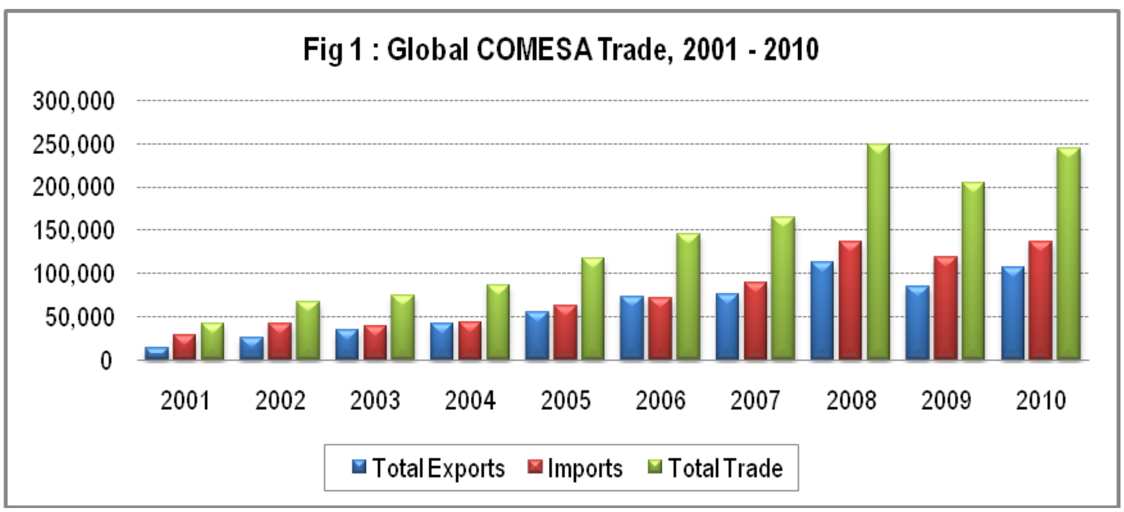
**Global Trade**

13. Global trade for the COMESA countries in 2010 grew by 20% from US$ 204 billion in 2009 to US$ 244 billion in 2010, according to provisional figures available at the Secretariat. Specifically, total exports rose to US$ 107 billion, up from US$ 85 billion the previous year, implying an increase of 26%, while imports on the other hand also registered a growth of 16%, from US$ 119 billion in 2009 to US$ 137 billion in 2010. See Table 1 and Fig 1 below.

***Table 1: Global COMESA Trade, 2000 - 2010, Values in US$ millions***

| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|---|
| Exports | 12,977 | 25,476 | 34,247 | 41,039 | 53,701 | 71,062 | 73,777 | 110,028 | 82,841 | 103,888 |
| Re-exports | 876 | 702 | 1,152 | 1,436 | 2,093 | 1,816 | 2,100 | 2,603 | 2,469 | 3,183 |
| **Total Exports** | **13,853** | **26,179** | **35,399** | **42,475** | **55,794** | **72,878** | **75,877** | **112,631** | **85,310** | **107,071** |
| | | | | | | | | | | |
| Imports | 28,704 | 41,706 | 39,230 | 44,185 | 62,309 | 71,887 | 88,642 | 136,245 | 118,489 | 137,014 |
| **Total Trade** | **42,557** | **67,884** | **74,628** | **86,660** | **118,103** | **144,765** | **164,520** | **248,876** | **203,799** | **244,085** |

*Source: COMSTAT Database and UN COMTRADE Database*




14. At country level, all countries with the exception of Eritrea, Seychelles, Malawi and Uganda, registered positive growths in the levels of their global exports in 2010 over 2009 levels. Countries that greatly contributed to the overall 26% exports growth in the region were Ethiopia, Congo DR, Zambia and Zimbabwe with growth rates of 132%, 88%, 67% and 56% respectively.

15. On the import side, all countries recorded positive growths in levels of their global imports in 2010 over 2009 levels, with the exception of Rwanda and Madagascar which

experienced drops in the levels of their imports. Table 2 below depicts global COMESA trade performance by country, 2008 – 2010 and percentage change in 2010.

***Table 2: Global COMESA Trade by Country, 2009 - 2010, Values in US$ millions***

| | **2008** | | | **2009** | | | **2010** | | | ***% Change (2010)*** | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Country** | **Exports** | **Re-Exports** | **Imports** | **Exports** | **Re-Exports** | **Imports** | **Exports** | **Re-Exports** | **Imports** | **Total Exports** | **Imports** |
| Burundi | 124 | 17 | 313 | 96 | 17 | 342 | 107 | 10 | 398 | *3.7* | *16.4* |
| Comoros | 5 | 0 | 161 | 13 | 0 | 179 | 15 | 0 | 182 | *14.5* | *1.6* |
| Congo DR | 3,287 | 0 | 3,943 | 2,375 | 0 | 3,073 | 4,461 | | 4,015 | *87.8* | *30.7* |
| Djibouti | 101 | 0 | 1,355 | 157 | 206 | 647 | 299 | 699 | 1,402 | *174.6* | *116.6* |
| Egypt | 26,293 | 0 | 52,827 | 23,110 | 0 | 44,964 | 26,665 | | 52,944 | *15.4* | *17.7* |
| Eritrea | 17 | 33 | 286 | 42 | 14 | 262 | 9 | | 380 | *-83.3* | *44.6* |
| Ethiopia | 1,595 | 7 | 8,694 | 1,031 | 27 | 7,875 | 2,409 | 44 | 9,229 | *131.9* | *17.2* |
| Kenya | 4,672 | 1,060 | 12,780 | 4,201 | 813 | 11,388 | 5,088 | 768 | 12,021 | *16.8* | *5.6* |
| Libya | 51,434 | 0 | 16,957 | 29,685 | 0 | 18,727 | 36,511 | | 17,559 | *23.0* | *-6.2* |
| Madagascar | 1,003 | 77 | 1,744 | 1,015 | 0 | 2,565 | 924 | 115 | 2,279 | *2.4* | *-11.1* |
| Malawi | 879 | 0 | 2,243 | 1,291 | 3 | 1,754 | 1,048 | 1 | 2,346 | *-18.9* | *33.7* |
| Mauritius | 1,453 | 587 | 4,689 | 1,428 | 431 | 3,667 | 1,598 | 501 | 4,245 | *12.9* | *15.8* |
| Rwanda | 348 | 52 | 1,173 | 189 | 23 | 1,258 | 202 | 35 | 1,255 | *12.2* | *-0.2* |
| Seychelles | 151 | 95 | 912 | 195 | 51 | 759 | 74 | 1 | 869 | *-69.7* | *14.5* |
| Sudan | 9,468 | 33 | 14,716 | 9,040 | 40 | 8,592 | 11,517 | 12 | 11,875 | *27.0* | *38.2* |
| Swaziland | 1,210 | 26 | 1,189 | 1,305 | 92 | 1,069 | 1,579 | 119 | 1,739 | *21.5* | *62.6* |
| Uganda | 1,496 | 313 | 4,367 | 1,381 | 450 | 4,307 | 1,105 | 427 | 4,550 | *-16.3* | *5.6* |
| Zambia | 4,909 | 189 | 5,060 | 4,095 | 212 | 3,792 | 6,834 | 338 | 5,022 | *66.5* | *32.4* |
| Zimbabwe | 1,581 | 113 | 2,835 | 2,193 | 90 | 3,268 | 3,442 | 113 | 4,706 | *55.7* | *44.0* |
| **Total** | **110,028** | **2,603** | **136,245** | **82,841** | **2,469** | **118,489** | **103,888** | **3,183** | **137,014** | *25.5* | *15.6* |

*Source: COMSTAT Database and UN COMTRADE Database*

16. As regards to the major export markets for COMESA products, the EU still ranked number one with exports worth US$ 43 billion destined to the EU market in 2010, up from US$ 35 billion exported in 2009, representing a 24% increase. (See table 3 below). Exports to the EU were primarily Petroleum oils and oils obtained from bituminous minerals from Libya. Ranked in position two after the EU was China as a major export market for COMESA products with exports from COMESA worth over US$ 17 billion in 2010, a 47% gain over the previous year's levels. These exports were mainly Petroleum oils and oils obtained from bituminous minerals from Sudan and Libya, and Copper and Cobalt from Congo DR and Zambia.

***Table 3: COMESA's Major Export Trade Markets , 2000 - 2010, Values in US$ millions***

| 2010 Rank | Market | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | EU | 5,286 | 4,727 | 13,915 | 17,864 | 22,840 | 29,685 | 38,027 | 38,053 | 55,014 | 34,889 | 43,308 |
| 2 | China | 332 | 1,010 | 832 | 2,116 | 1,932 | 3,462 | 7,000 | 3,079 | 12,180 | 11,659 | 17,141 |
| 3 | COMESA | 1,697 | 1,719 | 2,149 | 2,145 | 2,335 | 3,208 | 2,970 | 4,520 | 6,772 | 6,621 | 9,040 |
| 4 | U.S.A. | 1,132 | 917 | 1,161 | 1,516 | 2,071 | 3,548 | 4,865 | 5,201 | 6,350 | 4,285 | 4,950 |
| 5 | Switzer land | 325 | 277 | 796 | 948 | 1,266 | 1,823 | 3,214 | 3,714 | 5,791 | 3,930 | 4,909 |
| 6 | South Africa | 1,120 | 1,086 | 1,418 | 2,926 | 2,506 | 1,785 | 2,483 | 3,105 | 2,529 | 2,695 | 4,262 |
| 7 | U.A.E. | 174 | 123 | 177 | 272 | 305 | 873 | 1,272 | 859 | 1,586 | 2,104 | 3,105 |
| 8 | Saudi Arabia | 318 | 189 | 400 | 408 | 524 | 764 | 754 | 903 | 1,695 | 1,827 | 1,973 |
| 9 | India | 221 | 323 | 497 | 635 | 548 | 693 | 1,948 | 1,854 | 2,752 | 2,401 | 1,678 |
| 10 | Turkey | 101 | 88 | 773 | 1,142 | 1,649 | 2,161 | 681 | 669 | 1,168 | 1,236 | 1,451 |

*Source: COMSTAT Database and UN COMTRADE Database*

17. On the import side still, the EU was ranked number one as a major source of imports into the COMESA region. Imports from the EU increased from US$ 34 billion in 2009 to over US$ 37 billion in 2010, representing a growth of 10%. Ranked after the EU was China, South Africa and the COMESA region in that order. See table 4 below.

**Table 4: COMESA's Major Import Trade, 2000 - 2010, Values in US$ millions**

| 2010 Rank | Origin | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | EU | 8,806 | 7,748 | 13,027 | 11,627 | 13,667 | 17,358 | 18,845 | 22,470 | 36,498 | 34,053 | 37,434 |
| 2 | China | 1,343 | 1,284 | 1,816 | 2,063 | 2,686 | 4,344 | 5,850 | 7,873 | 12,359 | 12,607 | 15,856 |
| 3 | South Africa | 3,237 | 3,306 | 3,712 | 3,888 | 4,979 | 5,024 | 4,970 | 6,727 | 8,729 | 7,777 | 9,483 |
| 4 | COMESA | 1,419 | 1,718 | 2,218 | 2,173 | 2,223 | 3,046 | 3,757 | 4,554 | 6,932 | 6,110 | 8,337 |
| 5 | U.S.A. | 2,662 | 3,001 | 3,870 | 2,375 | 2,173 | 3,150 | 3,409 | 4,514 | 8,358 | 7,600 | 7,691 |
| 6 | India | 842 | 975 | 1,345 | 1,192 | 1,612 | 2,131 | 2,877 | 3,565 | 6,518 | 5,368 | 6,197 |
| 7 | U.A.E. | 962 | 909 | 885 | 932 | 1,156 | 2,170 | 3,089 | 3,225 | 5,152 | 3,621 | 5,525 |
| 8 | Saudi Arabia | 1,613 | 1,347 | 1,397 | 1,534 | 1,534 | 3,573 | 4,352 | 5,320 | 9,289 | 4,240 | 4,895 |
| 9 | Turkey | 289 | 321 | 627 | 629 | 818 | 1,381 | 1,038 | 1,127 | 2,853 | 5,137 | 4,711 |
| 10 | Japan | 1,173 | 1,092 | 1,590 | 1,371 | 1,614 | 1,949 | 2,620 | 3,223 | 4,721 | 3,808 | 4,484 |

*Source: COMSTAT Database and UN COMTRADE Database*

## Intra COMESA Trade

18. Intra-COMESA trade grew by 37% in 2010 over 2009 levels, from US$ 12.7 billion in 2009 to US$ 17.4 billion in 2010 according to provisional figures available at the Secretariat. Overall, intra-COMESA trade had continued to grow over the period 2003 – 2008, before the plunge to US$ 12.7 billion in 2009. The 37% growth in intra-COMESA trade for 2010 can be attributed in part to registered growths by major players for intra trade in the region i.e. Kenya, Egypt, Zambia, Malawi and Sudan. Table 5 below depicts the intra-COMESA trade trends over the period 2001 – 2010.

***Table 5. Intra-COMESA Trade, 2000 - 2010, Va***

| Flow | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|---|
| Exports | 1,319 | 1,882 | 1,670 | 1,804 | 2,583 | 2,702 | 3,950 | 6,157 | 5,879 | 7,781 |
| RE-Exports | 400 | 267 | 475 | 531 | 625 | 268 | 570 | 614 | 742 | 1,259 |
| **Total Exports** | **1,719** | **2,149** | **2,145** | **2,335** | **3,208** | **2,970** | **4,520** | **6,772** | **6,621** | **9,040** |
| | | | | | | | | | | |
| Imports | **1,718** | **2,218** | **2,173** | **2,223** | **3,046** | **3,757** | **4,554** | **6,932** | **6,110** | **8,337** |
| **Total Trade** | **3,437** | **4,368** | **4,318** | **4,558** | **6,254** | **6,728** | **9,074** | **13,704** | **12,731** | **17,376** |

*Source: COMSTAT Database*

19. In 2010, both Kenya's intra exports and imports grew by 19% and 59% respectively. Zambia's intra-COMESA imports more than doubled from US$ 669 million in 2009 to US$ 1,394 million in 2010, recording a 109% increase. Intra-COMESA exports for Sudan increased by 82% while Malawi's intra-COMESA imports grew by 76% during the period under review. See table 6 below.

20. Zambia's imports of copper ores and concentrates from Congo DR grew by 120% in 2010, from levels of US$ 255 million in 2009 to US$ 560 million in 2010. Zambia's total imports from Congo DR in 2010 amounted to over US$ 1.2 billion, mainly copper and cobalt ores and concentrates, refined copper and cobalt oxides. Egypt's intra-COMESA exports increased by 26% in 2010 over 2009 levels, and were of various products mainly to Libya and Sudan. Egypt's intra-COMESA exports were of various products, mainly to Libya, Sudan and Kenya. Kenya's major intra-export products were tea to Egypt and Sudan (over US$ 260 million) and various products to Uganda worth over US$ 510 million topped by Portland cement (US$ 70 million). Congo DR's intra-COMESA exports in 2010 were mainly copper and cobalt ores and concentrates, refined copper and cobalt oxides to Zambia, worth over US$ 1.07 billion, (over 95% of Congo DR's intra-exports). Zambia's intra-COMESA imports were of course the same products just mentioned above from Congo DR, accounting for over 85% of Zambia's intra-COMESA imports. Libya's intra-COMESA imports were of various products mainly from Egypt. Egypt's major intra-COMESA import products were copper from Zambia (US$ 200 million), tea from Kenya (US$ 184 million) and butanes and propene from Libya (US$ 190 million.

***Table 6 Intra-COMESA Trade by Country, 2009 - 2010, Values in US$ millions***

| Country | 2009 | | | 2010 | | | *% Change (2010)* | | |
|---|---|---|---|---|---|---|---|---|---|
| | **Exports** | **Re-Exports** | **Imports** | **Exports** | **Re-Exports** | **Imports** | **Exports** | **Re-Exports** | **Imports** |
| Burundi | 20.1 | 6.8 | 90.9 | 17.6 | 7.0 | 105.9 | *-12.6* | *3.0* | *16.5* |
| Comoros | 0.9 | 0.0 | 8.5 | 2.4 | | 13.0 | *176.8* | | *53.2* |
| Congo DR | 469.8 | 0.0 | 725.2 | 1,134.3 | | 806.1 | *141.5* | | *11.2* |
| Djibouti | 1.5 | 134.9 | 45.0 | 3.2 | 598.5 | 78.1 | *116.1* | *343.7* | *73.8* |
| Egypt | 1,861.1 | 0.0 | 709.1 | 2,343.7 | | 961.8 | *25.9* | | *35.6* |
| Eritrea | 30.2 | 1.9 | 21.1 | 2.1 | | 155.5 | *-92.9* | *-100.0* | *637.6* |
| Ethiopia | 125.9 | 1.1 | 230.5 | 286.9 | 0.4 | 286.2 | *127.9* | *-60.7* | *24.2* |
| Kenya | 1,249.7 | 180.0 | 316.3 | 1,439.0 | 219.4 | 504.1 | *15.2* | *21.9* | *59.4* |
| Libya | 231.7 | 0.0 | 1,091.3 | 334.8 | | 1,378.3 | *44.5* | | *26.3* |
| Madagascar | 25.0 | 0.0 | 146.8 | 38.9 | 8.1 | 197.3 | *55.5* | | *34.4* |
| Malawi | 164.8 | 0.0 | 132.0 | 215.4 | 0.1 | 231.8 | *30.7* | *217.4* | *75.7* |
| Mauritius | 82.6 | 73.9 | 103.3 | 85.7 | 70.0 | 125.3 | *3.8* | *-5.3* | *21.3* |
| Rwanda | 105.3 | 4.3 | 430.5 | 68.9 | 13.8 | 415.2 | *-34.6* | *217.9* | *-3.6* |
| Seychelles | 8.0 | 0.0 | 52.0 | 2.5 | | 47.0 | *-69.3* | *-100.0* | *-9.7* |
| Sudan | 184.0 | 6.6 | 593.1 | 334.5 | 2.0 | 767.9 | *81.8* | *-70.0* | *29.5* |
| Swaziland | 140.6 | 2.6 | 0.6 | 139.4 | 0.9 | 10.7 | *-0.9* | *-66.1* | *1638.5* |
| Uganda | 493.2 | 223.1 | 578.9 | 487.5 | 225.5 | 586.9 | *-1.2* | *1.1* | *1.4* |
| Zambia | 549.2 | 97.0 | 668.6 | 590.4 | 99.8 | 1,394.2 | *7.5* | *2.8* | *108.5* |
| Zimbabwe | 135.4 | 10.0 | 166.0 | 253.8 | 13.2 | 271.2 | *87.5* | *31.3* | *63.4* |
| **Total** | **5,879.0** | **742.4** | **6,109.5** | **7,781.1** | **1,258.7** | **8,336.6** | | | |

*Source: COMSTAT Database*

21. Regarding intra-COMESA market shares for 2010, Egypt still registered the biggest market share of 26% for intra COMESA exports. Egypt was followed by Kenya, Congo DR, Uganda and Zambia with shares of 18%, 13%, 8% and 8% respectively (see table 7 below).

22. On the import side, Zambia registered the biggest market share of 16.7% in 2010, up from fourth position the previous year. Zambia was closely followed by Libya in second position with an intra-import market share of 16.5%. Egypt and Congo DR ranked in third and fourth positions with shares of 12% and 10% respectively. (See table 7 below).

**Table 7: Intra-COMESA Trade, 2010, Values in US$ millions and % Shares**

| | Exporter | Value | % Share | Importer | Value | % Share |
|---|---|---|---|---|---|---|
| 1 | Egypt | 2,343.7 | *25.9* | Zambia | 1,394.2 | *16.7* |
| 2 | Kenya | 1,658.4 | *18.3* | Libya | 1,378.3 | *16.5* |
| 3 | Congo DR | 1,134.3 | *12.5* | Egypt | 961.8 | *11.5* |
| 4 | Uganda | 713.0 | *7.9* | Congo DR | 806.1 | *9.7* |
| 5 | Zambia | 690.2 | *7.6* | Sudan | 767.9 | *9.2* |
| 6 | Djibouti | 601.7 | *6.7* | Uganda | 586.9 | *7.0* |
| 7 | Sudan | 336.5 | *3.7* | Kenya | 504.1 | *6.0* |
| 8 | Libya | 334.8 | *3.7* | Rwanda | 415.2 | *5.0* |
| 9 | Ethiopia | 287.3 | *3.2* | Ethiopia | 286.2 | *3.4* |
| 10 | Zimbabwe | 267.0 | *3.0* | Zimbabwe | 271.2 | *3.3* |
| 11 | Malawi | 215.6 | *2.4* | Malawi | 231.8 | *2.8* |
| 12 | Mauritius | 155.7 | *1.7* | Madagascar | 197.3 | *2.4* |
| 13 | Swaziland | 140.2 | *1.6* | Eritrea | 155.5 | *1.9* |
| 14 | Rwanda | 82.7 | *0.9* | Mauritius | 125.3 | *1.5* |
| 15 | Madagascar | 47.1 | *0.5* | Burundi | 105.9 | *1.3* |
| 16 | Burundi | 24.6 | *0.3* | Djibouti | 78.1 | *0.9* |
| 17 | Seychelles | 2.5 | *0.0* | Seychelles | 47.0 | *0.6* |
| 18 | Comoros | 2.4 | *0.0* | Comoros | 13.0 | *0.2* |
| 19 | Eritrea | 2.1 | *0.0* | Swaziland | 10.7 | *0.1* |
| | **Total** | **9,039.8** | *100.0* | **Total** | **8,336.6** | *100.0* |

*Source: COMSTAT Database*

23. On the overall, Copper ores and concentrates were the top most traded products in value terms within the COMESA region in 2010. (See table 8 below). Ranked second after the Copper ores and concentrates was black tea, previously ranked number one for four consecutive years. Trailing tea in third position was Portland cement, previously ranked number two in 2009.

| Table 8. Intra-COMESA Top Export Products and Rankings, 2010 - 2006, Values in US$ millions | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | **SITC** | **SITC Product description** | **2010** | **R 10** | **R9** | **R8** | **R7** | **R6** |
| **1** | **2831** | Copper ores & concentrates | 504.5 | 1 | 3 | 2 | 6 | 17 |
| **2** | **07414** | Other black tea (fermented) & other partly fermented tea, | 349.3 | 2 | 1 | 1 | 1 | 1 |
| **3** | **66122** | Portland cement | 280.2 | 3 | 2 | 4 | 2 | 2 |
| **4** | **06111** | Cane sugar, raw, in solid form, not containing added | 272.7 | 4 | 7 | 7 | 12 | 4 |
| **5** | **68212** | Refined copper | 232.7 | 5 | 8 | 3 | 8 | 79 |
| **6** | **3330** | Crude petroleum | 229.1 | 6 | 501 | 987 | 722 | 1,236 |
| **7** | **7812** | Motor vehicles for the transport of persons, n.e.s. | 208.4 | 7 | 18 | 30 | 10 | 23 |
| **8** | **28793** | Cobalt ores & concentrates | 197.6 | 8 | 13 | 569 | 692 | 202 |
| **9** | **04231** | Rice, semi-milled/wholly milled, whether/not polished, glazed, | 189.8 | 9 | 33 | 31 | 11 | 8 |
| **10** | **52255** | Cobalt oxides & hydroxides; commercial cobalt oxides | 160.4 | 10 | 98 | | 2,025 | |
| **11** | **42229** | Palm oil, refined, & its fractions | 148.6 | 11 | 23 | 29 | 25 | 29 |
| **12** | **1212** | Tobacco, wholly/partly stemmed/stripped | 132.1 | 12 | 26 | 17 | 17 | 5 |
| **13** | **06129** | Other beet/cane sugar in solid form, | 129.2 | 13 | 12 | 20 | 13 | 31 |
| **14** | **3346** | Petroleum oils & oils obtained from bituminous minerals (other than | 128.8 | 14 | 4 | 6 | 3 | 3 |
| **15** | **3425** | Butanes, liquefied | 124.7 | 15 | 11 | 26 | 9 | 15 |
| **16** | **1211** | Tobacco, not stemmed/stripped | 112.9 | 16 | 6 | 8 | 14 | 7 |
| **17** | **68251** | Plates, sheets & strip, of a thickness exceeding 0.15 mm, of refined copper | 109.0 | 17 | 5 | 5 | 4 | 1,742 |
| **18** | **1222** | Cigarettes containing tobacco | 90.7 | 18 | 10 | 9 | 7 | 11 |
| **19** | **77312** | Co-axial cable & other co-axial conductors | 79.6 | 19 | 9 | 13 | 144 | 185 |
| **20** | **67133** | Ferrous products obtained by direct reduction of iron ore & other | 79.4 | 20 | 70 | 24 | 2,233 | 587 |

24. The percentage of intra-COMESA trade to total COMESA trade has continued to grow from regional levels of 5% in 2004 to the current 7% in 2010 as depicted in table 9 below. At country level, countries seen to be trading more with the region are Rwanda (33% in 2010), Burundi (25%), Uganda (21%), Zambia (17%) and Kenya (12%).

| ***Table 9. Intra-COMESA Trade as a Percentage of Global COMESA Trade by Country, 2002 - 2010*** | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Country** | **2002** | **2003** | **2004** | **2005** | **2006** | **2007** | **2008** | **2009** | **2010** |
| Burundi | 24 | 22 | 21 | 18 | 17 | 26 | 22 | 26 | 25 |
| Comoros | 2 | 3 | 4 | 3 | 9 | 3 | 5 | 5 | 8 |
| Congo DR | 15 | 16 | 13 | 8 | 12 | 18 | 17 | 22 | 23 |
| Djibouti | 19 | 14 | 6 | 9 | 1 | 8 | 4 | 18 | 28 |
| Egypt | 3 | 3 | 2 | 2 | 2 | 2 | 4 | 4 | 4 |
| Eritrea | 1 | 3 | 1 | 9 | 13 | 5 | 13 | 17 | 41 |
| Ethiopia | 12 | 6 | 4 | 6 | 8 | 5 | 5 | 4 | 5 |
| Kenya | 18 | 15 | 16 | 16 | 12 | 11 | 11 | 11 | 12 |
| Libya | 1 | 1 | 0 | 1 | 1 | 1 | 2 | 3 | 3 |
| Madagascar | 7 | 4 | 5 | 6 | 4 | 5 | 3 | 5 | 7 |
| Malawi | 10 | 13 | 13 | 14 | 13 | 15 | 9 | 10 | 13 |
| Mauritius | 5 | 5 | 4 | 4 | 4 | 5 | 5 | 5 | 4 |
| Rwanda | 24 | 24 | 25 | 32 | 48 | 38 | 40 | 37 | 33 |
| Seychelles | 4 | 2 | 4 | 2 | 2 | 3 | 4 | 6 | 5 |
| Sudan | 10 | 10 | 7 | 5 | 5 | 5 | 4 | 4 | 5 |
| Swaziland | 5 | 4 | 3 | 2 | 5 | 9 | 9 | 6 | 4 |
| Uganda | 28 | 25 | 25 | 28 | 20 | 22 | 20 | 21 | 21 |
| Zambia | 9 | 15 | 13 | 13 | 9 | 12 | 16 | 16 | 17 |
| Zimbabwe | 8 | 3 | 6 | 13 | 5 | 10 | 7 | 6 | 7 |
| Grand Total | 6 | 6 | 5 | 5 | 5 | 6 | 6 | 6 | 7 |

**Discussion**

25. In the discussion, the meeting made the following observations:

a. There has been a substantial increase in intra-COMESA trade, by about $5 billion between 2009 and 2011, which is good trade performance in the COMESA region;
b. However, the increase has been in terms of trade in un-manufactured products like minerals, rather than manufactured goods, which means that little manufacturing is taking place in the region; furthermore, minerals are already zero-rated irrespective of the COMESA FTA;
c. There is huge potential for intra-COMESA trade in agricultural products including trade in major staple food crops as well as livestock products;
d. The level of preference utilisation is low. This may indicate that intra-COMESA trade is actually low; in this regard, there is need for interventions to increase intra-COMESA trade, such as organising annual trade fairs, and taking forward the infrastructure and value chain and value addition programs;

e. Trade under other trade arrangements, such as the Arab League FTA, the EAC Customs Union, and the Indian Ocean Commission trade regime, should be taken into account, which may have implications on the assessment of regional market shares;
f. However, care should be taken to reflect all intra-COMESA trade covering all COMESA Member States irrespective of the other trade arrangements with third countries;
g. Trade data is provided by Member States through their central statistical offices; and
h. Member States need interventions to address low trade levels at the national and regional levels.

**Recommendations**

26. The meeting recommended that:

a. Programs to increase intra-COMESA trade should be up-scaled, through interventions such as annual trade fairs, promotion of value addition and regional value chains, and building of soft and hard infrastructure, and removal of NTBs;
b. The Secretariat should continue work on preference utilisation, in order to better disaggregate the trade data;
c. Work on trade flow analysis, including a comprehensive data base on both industrial and agricultural products and value chains in order to provide better information to stakeholders, should be advanced;
d. Better publicity of trade fairs in the region should be undertaken by Member States and the Secretariat;
e. There is need for COMESA promotion activities at the international and regional levels with a COMESA seal or a regional dimension; at the regional level, the trade fairs should rotate from country to country organised jointly with the Secretariat;
f. Member States are urged to provide relevant data on a timely basis to assist data compilation and analysis.

**Country reports on participation in the internal market** *(Agenda Item 5 c)*

27. The meeting noted the status of efforts by, Congo DR, Ethiopia, Eritrea, and Uganda to join the FTA, as follows:

a. Congo DR has taken the political decision to join the FTA, following the national validation of a comprehensive study on the matter and is in the process of finalising the relevant legal instruments;
b. The Secretariat continues to provide technical assistance to Eritrea and Ethiopia to assist them finalise their decisions to join the FTA;
c. In this regard, a study is underway in Ethiopia to assist the implementation of the political decision to join the FTA;
d. Eritrea is yet to undertake the final 20% tariff reduction to join the FTA, having reached the 80% reduction; and
e. Uganda is waiting for a political decision to finally be made, following a national study that recommended joining the FTA.

28. Swaziland still has a derogation from the COMESA FTA, and requested the Secretariat to organise a national workshop on rules of origin.

29. The meeting noted the efforts by Member States to join the COMESA FTA, with the assistance of the Secretariat.

**Recommendations**

30. The meeting recommended that:

a. There is need for a matrix showing the status on the extent of tariff reduction undertaken so far by the Member States that are not yet in the FTA;
b. The Member States should provide a time table for joining the FTA, unless they will be completing the elimination of customs duties in one step;
c. All the four Member States should participate in the COMESA FTA and in this regard should speedily finalise their internal processes for joining the FTA; and
d. Congo DR is commended for the decision to join the FTA and participate in the internal market.

**Elimination of Non Tariff Barriers** *(Agenda Item 5 d)*

31. The meeting received an update on the situation of NTBs in the region, as follows:

32. With deepened trade liberalization, the COMESA region and indeed the other two Regional Economic Communities (RECs) of EAC and SADC, has continued to experience a proliferation of NTBs that if left unchecked could deprive and erode the very benefits envisaged to accrue from regional integration. This is despite the provisions of Article 49 and 50 of the COMESA Treaty as well as the COMESA Council of Ministers that has steered and guided the process of resolution and elimination of the NTBs through various decisions.

33. COMESA has over the period of trade liberalization processes, developed mechanisms to identify, report and monitor elimination of NTBs including the on-line Reporting and Monitoring mechanism that is now being used by the three RECs in accordance with decisions by those RECs to the effect that strategies geared towards NTB resolution be harmonised at tripartite level.

34. To this end, institutional structures at regional and national levels to address NTBs related matters have been established that include the Focal Points at REC and National levels encompassing officials from both private and public sectors, National Monitoring Committees (NMCs) comprising stakeholder institutions that impact on trade, for effective resolution of NTBs. Many Member States have not yet put these structures in place particularly the establishment of the NMCs.

**Recommendation**

35. Those Member States that have not yet established National Monitoring Committees are urged to do so and give time frames when they would be expected to be up and operational.

**The On-line Reporting and Monitoring Mechanism**

36. It will be recalled that the earlier On-line Reporting and Monitoring Mechanism needed to be revamped and improved to incorporate certain security features. In this regard, the new improved and upgraded web-based mechanism was presented at the COMESA, EAC and SADC Tripartite Non-tariff Barriers (NTBs) Focal Points Online System Orientation and training workshop held in Nairobi, Kenya, 10–11 March 2011. Arising from that, recommendations from the meeting of Focal Points that Private Sector Focal Points be accorded administrators' access into the system, NMC Chairpersons be given Focal Points status, the resolutions status for the NTB reported should be captured in the public window of the system and the NTBs online System Website should be linked to the websites of relevant public and private sector institutions in the Member States, have since been effected to speed up the process of resolving NTBs. However, the linking of relevant institutions to the web-based mechanism is the responsibility of Member States.

**Recommendations**

37. Member states that have not yet linked all relevant institutions that impact on trade to the web-based NTB reporting and monitoring mechanism should do so by 30 September 2011 in order to have optimal utilization of the system.

38. Arising from recommendations of the above meeting, the meeting noted that capacity building on the NTB mechanism has been accomplished in the following Member States: Comoros, Rwanda, Uganda, Malawi and Zimbabwe; and recommended that the rest of the Member States should be covered if possible by December 2011.

**System Utilization by Tripartite Member Countries**

39. Although the system has received more than 400 complaints, only 329 complaints have been recorded between period 2008 /2010 and are being processed by the NTBs structures in member states. However, few reports have come in during period August 2010-June 2011 accounting for only 3.3%. A total of 23 new complaints were registered into the system between December 2010 and April 2011. The low utilization of the system could be attributed to slow take off in sensitization of stakeholders by member states. Reports are expected to increase once the work of the National Monitoring Committees is brought into the main stream of the online system. Chairpersons of the NMCs are encouraged to upload all complaints channeled through national NMCs and Trade facilitation committees responsible for resolution of NTBs in Member States.

**New NTB Reports**

**Kenya/Zambia Palm-based Cooking oil**

40. Kenya reported that since early May 2011, Bidco Oil Refineries-Kenya, a company that produces and exports palm - based cooking oil (among other products) has been denied market access on duty free basis due to non recognition of the COMESA certificate of origin by the Zambia Revenue Authority with the reason that the product does not meet 35% value addition criterion as per COMESA rules of origin.

41. Kenya further reported that authorities including officials of the Zambia Revenue Authority have in the past visited Bidco Oil Refineries, and Kenya Revenue Authority had also in May 2011 done a fresh verification mission on the affected product, and the results sent to ZRA.

It is understood that the two countries are engaging with a view to finding an amicable solution to the issue. The concerned firm is understood to be incurring losses due to loss of market share in Zambia.

42. Meanwhile, the importer has stopped importing palm based cooking oil consignments from Kenya after he was subjected to the MFN rate of 25% instead of 0% that led the importer to incur very heavy losses.

**Kenya/Egypt-White Milled Sugar and Electronics**

43. Kenya raised concerns over originating status of white milled sugar and LG products exported from Egypt to that country and has subsequently requested for facilitation by the Secretariat to carry out verification to ascertain the origin status of the sugar and the electronic goods.

**Zimbabwe /Swaziland – Fridges and Freezers**

44. Zimbabwe Revenue Authority (ZIMRA) had queried the originating status of the fridges and freezers manufactured by one, Palfridge Limited, P.O. Box 424, Matsapha, Swaziland and exported into Zimbabwe under the FTA preferential trade regime. Subsequently, ZIMRA requested for additional information on the manufacturing process carried out in producing the refrigerators that included:

a. Materials imported from outside the member state used in the manufacture of the refrigerators, their respective value and customs tariff codes;
b. Materials of COMESA origin used in the manufacture of the refrigerators, their respective values and customs tariff codes;
c. Import duty if any paid on the importation from COMESA and outside COMESA;
d. Direct labour costs and factory overheads; and
e. Ex-factory cost of the refrigerators.

45. In responding to Zimbabwe, Swaziland went ahead and carried out an audit of the manufacturing process using Synergy Chartered Accountants firm of Swaziland that indicated that the minimum value addition on the fridges and freezers was 35%. However, this was not accepted by Zimbabwe and consequently, it requested for the Joint on the Spot Verification in accordance with Treaty provisions, specifically Administrative Procedure No. 3.11.2.8 of the Protocol on rules of origin. The Joint on the Spot Verification was scheduled to take place on 10-12 August 2011 but did not take place as Zimbabwe was not able to attend.

**Review of reported Non-Tariff barriers as Reported on-line**

46. Notwithstanding the minimal utilisation of the on-line reporting mechanism by Member States, it should be noted that the system has played a cardinal role of monitoring and aiding sustained follow up of NTBs.

**Discussion**

47. On the Kenya/Zambia issue on palm-based cooking oil, the meeting noted that bilateral consultations are still ongoing, with a few outstanding issues on technical information provided by Kenya. Kenya will provide the information sought by Zambia by the end of August 2011.

48. On the Kenya/Egypt issue on white milled sugar and electronics, the meeting noted that bilateral consultations were proceeding. During a bilateral meeting on these issues, in future all corresponded regarding rules of origin will be directed to the institution concerned in Egypt. Kenya will provide more information to enable Egypt to respond before the next policy organs.

49. On the Zimbabwe/Swaziland issue on fridges and freezers, the meeting was informed that a joint on the spot verification mission, which had been facilitated by the Secretariat on 10-12 August 2011, could not proceed as the Zimbabwean experts could not travel due to internal logistical challenges. Zimbabwe and Swaziland will agree on a date for a verification mission.

50. On Zambia's ban on milk and milk products from Kenya, following the Decision of the last Council Meeting, two issues remained outstanding which have not been resolved to date. Zambia promised to respond to Kenya's request of March 2011 on the outstanding issues before end of August 2011.

51. The meeting noted that Egypt has already established the National Monitoring Committee.

***<u>NTBs reported on line</u>***

52. The meeting received a presentation on NTBs that have been reported using the Tripartite NTB On-line Reporting System. The following Member States were reported to have imposed NTBs: Congo DR, Kenya, Malawi, Swaziland, Uganda, Zambia, and Zimbabwe. A copy of the NTBs Matrix, as reported using the system, is attached as Annex 2.

***Discussion***

53. In the discussion, the meeting made the following observations:

a. The fine of E1000 for documents not acquitted within one month is imposed by South African Revenue Services (SARS), and not Swaziland;
b. Issuance of permits in Swaziland is done by different authorities that for the moment may be located in different cities, but internal consultations are on-going to explore the possibility of issuing the permits from one location;
c. Zambia's requirement for mud flaps applies to all users of Zambian roads; and
d. The other Member States did not give any updates on the pending NTBs as reflected on the online NTB system.

54. Furthermore, the meeting noted that the Mauritius/ Madagascar issue on soap has been outstanding for quite some time, notwithstanding the Council Decision that this matter should have been considered resolved. A report was produced following the on-the-spot verification that was facilitated by the Secretariat, where agreement was reached on all the issues. However, the costing of inputs such as labour was to be verified by an independent accountant. It was reported that Madagascar continues to pose difficulties for the importer of the soap, with the result that soap imports into Madagascar from Mauritius have dropped significantly.

55. The meeting noted the need for better systems for addressing NTBs, including, the harmonisation and mutual recognition of technical standards and SPS measures, faster response mechanisms and quick mechanisms by the Secretariat, and putting in place an enforcement system for situations where countries persist in imposing NTBs that should be removed.

56. On dispute settlement, the meeting noted existing mechanisms under the Protocol on Rules of Origin, and various Council Decisions providing that NTB issues should be resolved within 60 days and that the Secretariat should provide technical opinions on reported NTBs and should organise verification missions as requested. However, the meeting called for better mechanisms, including within the framework of the proposed NTB Regulations.

***Recommendations***

57. The meeting recommended that:

a. The programs for mutual recognition of technical standards and SPS measures should be enhanced and harmonisation should be expedited;
b. Information should be provided on standards so far harmonised, with a focus on products that are traded in the region; and
c. The Secretariat will liaise with Madagascar to ensure that the Council Decision is implemented and will keep Mauritius informed.

**COMESA Draft NTB Regulations**

58. It will be recalled that the Draft NTBs Regulations were presented to the 26th Trade and Customs Committee Meeting where Member States gave comments that have been incorporated to enrich the document. Within the tripartite arrangement, the Draft Regulations were presented for discussion at the Second Joint Meeting of Non-Tariff Barriers (NTBS) Focal Points of COMESA, EAC and SADC but no comments have been received so far except from Zimbabwe and Egypt.

59. The meeting recalled that the Council at its 29th Meeting held in Lusaka in December 2010, directed as follows:

> *"213. The Council decided that an effective system for elimination of NTBs should be developed and that in this regard the draft Regulations should be finalised as soon as possible for appropriate decisions by the Policy Organs. In this regard, Member States should submit their comments to the Secretariat by 30 March 2011, that is, six weeks before the next meeting of the Trade and Customs Committee planned for May 2011".*

60. The meeting received a presentation of the Draft NTB Regulations pursuant to the 29th Council Decision of Lusaka 2010, which directed that an effective system of elimination of NTBs should be developed and that in this regard the Draft Regulations should be finalised as soon as possible for appropriate decisions by the policy organs.

61. It was noted that Member States were required to have submitted their comments to the Secretariat by 30 March 2011, that is, six weeks before the next meeting of the Trade and Customs Committee.

***Recommendations***

62. The meeting discussed the Draft NTB Regulations, attached as Annex 3, and agreed to have further consultations on the Draft Regulations and to submit written comments to the Secretariat by 6 September 2011.

**Simplified Trade Regime** (*Agenda Item 5 e)*

63. The meeting received an update on the Simplified Trade Regime (STR) as follows.

64. COMESA continues to facilitate the implementation of the Simplified Trade Regime in a bid to mainstream informal cross-border trade into the ambit of formal trade. Out of the ten pilot Member States, three namely Malawi, Zambia and Zimbabwe are implementing the COMESA STR while Kenya, Uganda and Rwanda are implementing a similar procedure/STR under the East African Community (EAC). In the spirit of the tripartite and since four of the five Partner States of EAC are COMESA Members, COMESA is providing similar support to all the six Member States by assisting Cross Border Traders Associations to establish Trade Information Desks at all borders implementing STR.

65. To-date a total of 12 Trade Information Desks have been established between Malawi, Zambia, Zimbabwe, Uganda, Rwanda and Kenya. Additional desks are operating on Congo DR borders with Burundi, Rwanda and Uganda although they are not yet involved in facilitating STR implementation.

66. It will be recalled that there was need to carry out a review of the STR in the implementing Member States of Malawi, Zambia and Zimbabwe. Findings of the review were

presented to a meeting of Commissioners of Customs as well as CBTA and finally to the Trade and Customs Committee Meeting of November 2010. The main recommendations of this meeting were noted by the Trade and Customs Committee, which recommended that they be endorsed by the Ministers of the STR implementing Member States.

**Progress report on implementation of STR**

67. Implementation of the STR has progressed slowly between Malawi, Zambia and Zimbabwe. The following tables illustrate the average value and number of STR transactions during the past eight months:

**Average Value of STR Transactions**

| **Imports US$** | **2010** | | | | | | **2011** | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Jul | Aug | Sept | Oct | Nov | Dec | Jan | Feb | Mar | **AVG. $** |
| **Chirundu Zambia** | | 40 | 0 | 62.5 | 105 | 0 | 0 | 186.25 | 251 | **80.59** |
| **Kariba Zimbabwe** | 22 | 20.25 | 31 | 133 | 21 | 22.2 | 17 | 117.2 | 18.31 | **44.66** |
| **Mwami** | 225 | 252 | 249 | 292 | 363 | 260 | 299 | 290 | 342 | **285.78** |
| **Livingstone** | 40 | 88 | 267 | 0 | 110 | 0 | 0 | 0 | 164 | **74.33** |

**Number of STR Transactions by Border Point**

| **No.Transactions Exports** | **2010** | | | | | | **2011** | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Jul | Aug | Sept | Oct | Nov | Dec | Jan | Feb | Mar | **AVG.** |
| **Chirundu Zambia** | 0 | 4 | 34 | 26 | 40 | 31 | 41 | 45 | 35 | **28.44** |
| **Chirundu Zimbabwe** | 0 | 1 | 0 | 2 | 1 | 0 | 0 | 4 | 3 | **1.22** |
| **Kariba Zambia** | 5 | 9 | 11 | 30 | 17 | 3 | 6 | 4 | 3 | **9.78** |
| **Kariba Zimbabwe** | 8 | 6 | 3 | 1 | 0 | 2 | 0 | 0 | 0 | **2.22** |
| **Mwami** | 0 | 1 | 0 | 0 | 0 | 0 | 2 | 2 | 10 | **1.67** |
| **Mchinji** | 35 | 52 | 42 | 45 | 98 | 15 | 33 | 17 | 34 | **41.22** |
| **Livingstone** | 256 | 125 | 71 | 92 | 80 | 29 | 31 | 45 | 46 | **86.11** |
| **Victoria Falls** | | | 7 | 0 | 1 | 0 | 0 | 0 | 1 | **1.29** |

68. COMESA continues to support the establishment of TIDs in all borders implementing STR through salaries and office equipment. New TIDs have recently been established in Kenya and Uganda at Malaba and Busia borders.

69. The STR review process continued throughout the implementation period and further analysis was presented and validated by Commissioners of Customs from Malawi, Zambia and Zimbabwe on 29 April 2011.

70. A bilateral meeting between Kenya and Ethiopia was held in order to agree on the modalities for implementing the Simplified Trade Regime as directed by Council. The meeting was successfully held in Kenya on 30 June 2011 to 1 July 2011 where Kenya and Ethiopia agreed to implement a form of ‘border trade’ currently being implemented between Ethiopia and Sudan with amendments as follows:

a. The value for this trade will be a maximum of US$900 per month;
b. The number of trips per trader in any given month will be a maximum of four;
c. Traders will be allowed an additional capital value of 10% when going back to their originating country;
d. The radius/distance under which this type of trade will be conducted will be within 200km; and
e. All traders eligible (residents of the border region) for this ‘border trade’ will be required to carry a license/permit issued by relevant Kenyan and Ethiopian authorities.

71. As for STR implementation by DRC, the Secretariat awaits the particular Member State to gazette tools for STR including the certificate of origin and offer to unilaterally implement the programme by determining the List as well as the rate of duties to be applied. The Secretariat is keen to support this process logistically.

72. A meeting of Ministers responsible for STR in the 10 pilot Member States was held in Lusaka on 12 August 2011 and made the following decisions

**a. Value Threshold of STR**

The value limit for STR be raised from $500 to $1000

**b. The common list of products**

i. The Common list of products should replace the COMESA Certificate of Origin due to the fact that it is evidence that the products listed in the Common List qualify for duty free trade; and
ii. that the Common List be regularly updated by National Working Groups which include border officials to cater for dynamic changes in products to be traded by cross border traders.

**c. STR Documentation**

That the Simplified Customs Document shall be the only single document of the STR to be used by cross border traders.

**d. Standardization of Processing Fee**

That the processing fee be standardized for all STR transactions in the region and for Member States to consider reducing the fee to a maximum of $1.The meeting agreed that those Member States ,such as, Zimbabwe should continue its current practice to clear all consignments both commercial and cross border trade without any charges.

**e. Sanitary and Photo-Sanitary Matters**

That COMESA should convene a meeting of SPS experts in the immediate future to address holistically all SPS issues including products traded under the STR.

**f. Sensitization and Publicity of STR**

i. That Member States should assist national cross border trade associations in sensitizing the cross border traders of the benefits of the STR.Upon request from a Member State the Secretariat shall provide assistance.
ii. 7 Sustainability of the STR Programme and Trade Information Desks

iii. The meeting directed the Secretariat to draw up a strategy for the sustainability of the STR programme; particularly the TID's in consultation with Stake holders. The strategy should be completed within two months taking into account that the funding by the EU will come to an end on 31$^{st}$ December, 2011.

73. The meeting noted the decisions.

**Report of the Twelfth Meeting of the Working Group on Rules of Origin** *(Agenda Item 5f)*

74. The meeting received the Report of the Twelfth Meeting of the Working Group on Rules of Origin, held on 5-6 April 2011 in Lusaka.

***Discussion***

75. The meeting noted that the Meeting of the Working Group on Rules of Origin, which was for all Member States, completed the outstanding chapters regarding Change in Tariff Heading, and welcomed the successful completion of the exercise.

76. The meeting noted, furthermore, that the study on the impact of high food prices that was presented by Mauritius was not meant to be adopted but was meant to be an input for assisting the examination of the impact of the rules of origin on intra-COMESA trade.

77. The meeting considered a proposal that the Secretariat should conduct a study on the impact of rules of origin on intra-COMESA trade. In considering the proposal, the meeting took the view that the study should be de-linked from the exercise on outstanding chapters of the CTH rule by the Working Group, as this exercise has been successfully completed.

78. The meeting considered the prudence of conducting the study soon after the completion of the outstanding chapters of the CTH rule even before the implementation commenced, while two members felt that the study should be undertaken immediately. It was further pointed out that in moving forward, the meeting should be cognisant of the cost associated with studies.

79. The meeting recognised the importance of rules of origin as a key factor in intra-COMESA trade and agreed to continue engaging on this matter in future meetings, and that working documents should be prepared for the agenda item on rules of origin.

***Recommendations***

80. The meeting adopted the Report of the Working Group on Rules of Origin and recommended that:

a. The Council consider adopting the recommendations from the Working Group as endorsed by the Trade and Customs Committee for utilisation by Member States. Annex 4 contains the completed CTH Rules for the chapters that were outstanding; and
b. The Secretariat should undertake some capacity building and training based on needs assessment and on a case by case basis for the stakeholders especially Customs officers.

81. Furthermore, the meeting requested the Secretariat to undertake a new study on the impact of rules of origin on intra-COMESA trade, as well as a study on the Tripartite rules of origin.

**Report of the Third Meeting of the Committee on the Customs Union** *(Agenda Item 6)*

82. The meeting received the Report of the Third Meeting of the Committee on the Customs Union, attached as Annex 5.

83. Following the presentation of the report, the meeting received a power point presentation updating the study on the 5% tariff band on the basis of the discussion that took place in the Third Meeting of the Committee on the Customs Union.

84. The revised study made the following findings:

a. At the regional level, the technical, political and administrative demands of including an additional 5% band to the COMESA CET, were observed to be considerably challenging, particularly given the complication related to significant differences between Egypt and Zimbabwe's 5% tariff band structures and the potential difficulty these would impose on harmonization. The study also noted the extensive progress in harmonizing and aligning the CETs of COMESA and EAC, with the latter CET already in implementation;

b. At the country level, the technical solutions for full tariff alignment to the CET were observed to bear potential net competitiveness gains for all three countries concerned, but also had possible challenges in terms of consumer price increases. Under full alignment, the highest potential tariff revenue loss was observed for Egypt, with an estimated 8% reduction of original tariff revenue;

c. The solutions for partial alignment to the CET at country level were also observed to have net competitiveness gains, but had no challenges regarding consumer price increases. The highest potential revenue loss was for Zimbabwe, with an estimated 1.5% reduction of original tariff revenue.

85. On the basis of the findings, the study made the following recommendations:

a. That concerned Member States should countercheck the partial and full adjustment solutions and in view of the implied competitiveness and consumer price challenges, take decisions as to which, if any, alignment options were feasible to implement;
b. That concerned Member States should to be reminded that the Council Regulations accord them policy space to present alternative solutions if they have such alternative solutions at country level; and
c. That where the partial and full adjustment solutions presented in the study report were not sufficient to address the issue for concerned Countries and where the concerned Countries did not have alternative solutions, the said Countries should be encouraged to draw on Articles 7, 10, 27 and 28 of the Council Regulations governing the Customs Union, which provide additional policy space for resolving the 5% issue.

*Presentation by Malawi*

86. Malawi made an intervention on its reforms in implementing the transition period for the Customs Union. Malawi informed the meeting that out of the 1500 tariff lines that had been aligned, 996 had moved to 0%; and the rest either moved to 10% or 25% tariff band. Furthermore, Malawi informed the meeting that, Schedules II and III are still under preparation and will be finalised before the next policy organs meeting in October 2011. On the implementation of the COMESA CMR, Malawi stated that the domestic regulations are not very different from the COMESA CMR, and as such the Government of Malawi will not have any difficulties in domesticating the COMESA CMR.

*Presentation by Kenya*

87. Kenya made a presentation on the experience of the country in implementing a Customs Union, using the EAC as a case study. The presentation highlighted the following points:

a. The process of arriving at the CET involved definition of sensitive products and categorisation of the bands, taking into account the priorities of the region – this process was similar to the one followed in COMESA;
b. Due to the difference in levels of economic development, a period of five years was given for elimination of internal tariffs, on the basis of a schedule that was attached to the EAC Customs Union Protocol; the internal tariffs have been phased out over the five-year period in accordance with the schedule;
c. Before the EAC CET, the countries had varying tariff structures, with Kenya having some at 100% and Tanzania at 70%, with some specific duties, while Uganda's highest tariff was 15%; Uganda and Tanzania feared loss of revenue and competitiveness;
d. Implementing the CET has improved liberalisation, increased trade, and boosted the industries; tariffs for Uganda increased while tariffs for Kenya reduced;
e. The EAC list of sensitive products has tariffs higher than the 25% CET rate, with the rationale of protecting domestic industries and some agricultural products against competition from imports from third countries;
f. Agreement was reached that the CET would be implemented, subject to a review after five years on the basis of experience in implementation;
g. The review has been undertaken, after five years, and no country has raised any need for a change in the CET structure;
h. The Customs Union has had a positive impact in terms of increased trade among the countries, revenue increased, economic performance improved, tax administration improved in terms of simplification, trade activities grew, and there

is now greater reliance on other taxes through reforms such as income tax, VAT and other internal taxes rather than reliance on customs duties; and

i. Import duty collection increased from Kenya Shillings 24 billion in 2005 to Kenya Shillings 47 billion in 2010.

88. The presentation highlighted the following challenges: sovereignty, NTBs, conflicting interests, harmonisation of exemptions, language, unrecorded informal cross border trade, overlapping membership, and differences in internal taxes. The double taxation issue has been resolved.

89. Regarding the way forward, there is need for agreement on the point of collection and finalisation of the monetary union negotiations.

***Discussion***

90. In the discussion, the meeting made the following observations:

a. Zimbabwe requested for more time to consider the outcome of the study by counterchecking the partial and full adjustment solutions made by the study on the additional 5% band and if need be would consider the options for additional policy space as provided for by the Council Regulations governing the COMESA Customs Union;
b. The meeting appreciated the revised study on the additional 5% tariff band and the new proposals on fall-back options based on the Council Regulations governing the COMESA Customs Union;
c. There was need for a better understanding of the proposals that were made, such as implementation of the partial alignment proposal, and in this regard, the concerned Member States will work closely with the Secretariat;
d. The interface between the COMESA Customs Union and the Tripartite process should be addressed and in this regard there is need for a paper on this issue to assist harmonise the process towards creating the Tripartite Customs Union, while at the same time prioritising alignment among the REC Customs Unions and bearing in mind the history on the issue of the COMESA-SADC merger as well as the ways forward agreed by the Heads of State and Government both within COMESA and the Tripartite;
e. The revised study on the additional 5% tariff band should be circulated to Member States;
f. WTO commitments on tariff bindings should be considered;
g. The study on countries with a substantial number of tariff lines below the CET rates should also be revised, and Egypt and Zimbabwe will be included in the revised study, and the revised study will consider the impact on competitiveness and industrialisation;
h. Some countries requested to be included in the single window and time release studies programs;
i. Egypt and Zimbabwe indicated that they will consult further at home on the revised study and the recommendations; and
j. The Secretariat will continue to assist Member States on Customs Union issues and accession to the WTO.

91. The meeting noted the Report of the Third Meeting of the Committee on the Customs Union, and commended the presentation on the revised study as well as the presentations from Kenya and Malawi.

***Recommendations***

92. The meeting recommended that:

a. The Secretariat should work more closely with the Member States that need assistance in the implementation of the transition period for the Customs Union;

b. COMESA should continue to implement the Council Decisions on the Customs Union;

c. The Secretariat should prepare a paper on the interface between the Tripartite FTA and the Customs Union and the implication of the Customs Union on the Tripartite process.

93. A copy of the Report of the Third Meeting of the Committee on the Customs Union is attached as Annex 5.

**Report of the Third Meeting of the Committee on Trade in Services** *(Agenda Item 7)*

94. The meeting received the Report of the Third Meeting of the Committee on Trade in Services, held on 4-6 May 2011 in Manzini in Swaziland, attached as Annex 6.

***Presentation on the knowledge platform***

95. Arising from the report, in particular the outcomes of the stakeholder workshop held on 3 May 2011 as endorsed by the Committee, a representative of the World Bank made a presentation on the knowledge platform, in which the following points were made:

a. The Bank undertook studies in various countries in Eastern and Southern Africa at the request of the countries, to fill a knowledge gap, in which various findings were made highlighting the importance of services and certain impediments restricting trade in services;
b. Recommendations were made on national and regional level reforms designed to facilitate trade in services;
c. An extensive data collection exercise was launched, including a survey of over 1500 firms; followed by a dissemination exercise in the form of workshops, including the regional workshop jointly organised with COMESA on 3 May 2011 in Manzini in Swaziland;
d. A professional services knowledge platform is now ready to be launched as a joint COMESA-World Bank Program, which will provide a dialogue platform for policy making and implementation; the platform will be complemented with workshops and several face-to-face engagements as Member States may request;
e. Internal approval has been obtained by the World Bank for the joint project, with a start date of July 2011; and
f. The Commonwealth Secretariat is also assisting this program.

96. The meeting welcomed the presentation on the knowledge platform as a joint COMESA-World Bank Program, as well as the demonstration on how to use the platform.

97. Regarding the time frame of 6 August 2011 for submitting the schedules of specific commitments for the COMESA trade in services program, the meeting noted that only three Member States had submitted their schedules. The meeting urged other Member States to submit their schedules.

***Recommendation***

98. The meeting noted the Report of the Third Meeting of the Committee on Trade in Services and urged Member States to submit their schedules of specific commitments.

**The Tripartite Free Trade Area** (*Agenda Item 8)*

99. The meeting received an update on the Tripartite Arrangement, attached as Annex 7.

***Discussion***

100. The meeting made the following observations:

a. COMESA should hold a meeting on the Tripartite in the last quarter of this year 2011;
b. The Secretariat will provide an update to Member States after the meeting of the Tripartite Task Force scheduled for 26 August 2011;
c. Member States should provide comments on the working documents for the Tripartite Trade Negotiations Forum by the 7 October 2011, namely the rules of procedure and the terms of reference;
d. Egypt will be hosting the Third Tripartite Summit in 2013 on behalf of COMESA; and in this regard, the meeting called upon the Member States and the Secretariat to support Egypt in the preparations for that Summit;

***Recommendations***

101. The meeting recommended that:

a. The Secretariat should provide Member States with an update on implementation of the outcome of the Second Tripartite Summit after the meeting of the Tripartite Task Force planned for 26 August 2011;
b. Member States should undertake national consultations on the outcome of the Second Tripartite Summit, in preparation for the negotiations for the Tripartite FTA expected to start in the last quarter of this year 2011; and furthermore, Member States should provide comments on the draft Rules of Procedure and Terms of Reference for the Tripartite Trade Negotiations Forum;
c. COMESA should hold a meeting on the Tripartite in the last quarter of 2011.

**Multilateral Trade Negotiations** (*Agenda Item 9)*

***WTO Negotiations*** (*Agenda Item 9 a)*

102. The meeting received an update on the state of play on WTO Negotiations, and noted that:

a. The Eighth Ministerial Conference is planned for December 2011;
b. The negotiations are still in a stale mate; and
c. The recent proposal for a three-phased approach prioritising the LDC package has not received consensus; the LDC package would include, duty free quota free market access for LDCs, elimination of cotton subsidies, a moratorium on services commitments by LDCs and a waiver allowing better market access for LDC services into developed countries, and expedited accession procedures for LDCs in a manner that does not require them to forego the flexibility provided for LDCs under the WTO Agreement; and

***Recommendation***

103. The meeting recommended that:

a. COMESA should take a position on certain key issues, especially the LDC package, taking into account that extension of AGOA preferences by the US Government to other LDCs will have an adverse impact on African AGOA eligible countries;
b. The positions should be advanced also within the frameworks of the Africa Group, the ACP Group, the LDC Group, and the G90 Group; and
c. COMESA should effectively prepare for the Eighth Ministerial Conference, including through national and regional processes as well as within the framework of the coalitions.

***The Africa Growth and Opportunity Act*** (*Agenda Item 9 b)*

104. The meeting received an update on the Africa Growth and Opportunity Act (AGOA), attached as Annex 8.

***Discussion***

105. In the discussion, the meeting made the following observations:

a. The initiatives of the US Government to extend the third country fabric provision and the AGOA facility as a whole are welcome and should be commended;
b. However, concern was expressed on the low volume of trade under AGOA, and the extension of AGOA preferences to competitive LDCs in Asia and Latin America, among others, which would erode the preferences that the African AGOA eligible countries currently have;
c. The AGOA eligibility criteria were explained to the meeting and as to why some COMESA Member States were not eligible for AGOA; and
d. Upon request for more information on the outcome of the Tenth AGOA Forum, the meeting was informed that the AGOA documents including the Ministerial Communiqué were available from the Secretariat.

***Recommendations***

106. The meeting recommended that:

a. Noting the successful holding of the Tenth AGOA Forum, hosted by the Government of Zambia, and commended the Government of Zambia and the Member States for their active participation, including in terms of preparing a common position to advance in engaging the US Government; the meeting recommended that AGOA and the third country fabric provision be extended; and

b. The US State Department be commended for indicating willingness to extend the AGOA and the third country fabric provision, and urged to advance this initiative in securing the support of the White House and Congress; and in this regard, the meeting requested the Secretariat to continue engaging the various stakeholders that can assist to advance the initiative of extending AGOA and the third country fabric provision

**Update on the Economic Partnership Agreement** (*Agenda item 9 c)*

107. The meeting noted that ESA-EU EPA negotiations that previously had stalled have been now revived. Two joint ESA-EU technical negotiations were held in December 2010 in Harare and in June 2011 in Brussels. The focus has been on outstanding areas where progress can be made (development, trade in goods, agriculture, access, Trade-Related Issues (TRI), services, dispute settlement and final provisions) while contentious issues have been left out for the consideration by senior officials and ministers. Accordingly, considerable progress was made in a number of areas namely on trade facilitation, SPS, TBT, trade in services, agriculture and some trade related issues. A draft consolidated joint draft EPA text serves as the basis of text based negotiations.

108. Key contentious issues that require political guidance include: development benchmarks, MFN, inclusion of export taxes, scope of substantial all trade coverage, special agricultural safeguards to address trade distortion due to EU agricultural subsidies, restrictions related to new EU cumulation proposals, and additional resources for EPA implementation.

109. The EU has introduced new issues namely personal data protection, capital movements and good governance on tax matters while ESA has introduced the issue of carbon trading and reservation clause. It is expected that a further round at technical and senior officials' level will be required in September 2011 followed by an ESA council meeting to be held back to back with COMESA Council in October 2011. A joint ESA-EU ministerial meeting is planned for later in the year. Both ESA and EU would like to conclude these negotiations as soon as possible based on what is mutually agreeable.

110. Due to the ESA geographical position and multiple memberships affecting its membership, ESA Group places special attention to close coordination and harmonization of its negotiations positions with EAC and SADC in the framework of the tripartite FTA framework.

111. The meeting noted the update.

**The Regional Customs Transit Bond Guarantee Scheme** (*Agenda Item 10)*

112. The meeting received the Report of the Fifth Meeting of the Management Committee of the Regional Customs Transit Bond Guarantee Scheme, held on 7-8 July 2011 in Lusaka Zambia, attached as Annex 9.

***Discussion***

113. In the discussion, the meeting made the following observations:

a. Djibouti re-iterates that negotiations and consultations with the private sector are taking place for the establishment of the RCTG. On the other hand, Djibouti highlighted that fact that the legal and financial aspects raised by the establishment of the national surety have not been well-received by the private sector and that an agreement should be concluded by end of 2011. Finally Djibouti requested the Secretariat to continue with its support to the private sector in order to facilitate the establishment of the national surety;

b. Trade Mark East Africa is implementing a program called Automated Secure Electronic Transit which requires cash deposits in the bank to guarantee transit of goods, and in this regard, the meeting called for coordination between COMESA and the EAC as well as the partners involved;

c. Furthermore, the meeting noted the possible complications with the requirement for cash deposits in a bank that would tie up the traders' funds; in this regard, the meeting noted that this matter needed to be looked into;
d. The meeting noted that both Tanzania and Mozambique are participating in the RCTG scheme, though Mozambique was not able to attend the last meeting on the RCTG;
e. There was need to indicate in future reports the statistics on the utilisation of carnets; and
f. The meeting noted that further consultations would be undertaken on the participation of Zambia in the RCTG Carnet scheme along the North-South Corridor, as well as the request to the Secretariat to assist Zambia in this regard.

***Recommendation***

114. The meeting noted the Report and recommended closer collaboration between COMESA and EAC in implementing the RCTG Scheme, and encouraged the Secretariat to continue involving Tanzania and Mozambique in the program.

**The Single Window Proposal** (*Agenda Item 11)*

115. The meeting received a presentation on the proposal for a Single Window Program, attached as Annex 10.

***Discussion***

116. In the discussion, the meeting received an explanation of how the Single Window works, as an online-based system that gives real time information on documentation and regulations on international trade. There is need for political direction and guidance in implementing the Single Window, to ensure that the various agencies work together.

117. The meeting noted that awareness creation will be part of the activities of the Program, to assist Member States better understand how the Single Window operates and to implement it appropriately. Furthermore, the meeting noted that Mauritius will be included in the Program.

***Recommendation***

118. The meeting endorsed the Single Window Program and called for its operationalisation. In this regard, the meeting noted the proposal for a partnership with the Canada International Development Agency.

**Program for Expansion of Africa's Capacity to Trade (PACT II) and AAACP** (*Agenda Item 12)*

119. The meeting received a presentation on the Second Phase of the Program for Expansion of Africa's Capacity to Trade (PACT II) and on the EU- All ACP Agricultural Commodities Program (AAACP), highlighting the activities undertaken under the two programs, as attached at Annexes 11 and 12.

120. In the discussion, the meeting made the following observations:

a. The next Business Forum will be held on 11-12 October 2011 alongside the next Policy Organs' meetings on 4-15 October 2011 in Lilongwe Malawi;

b. In this regard, Member States noted the need for active participation by the private sector in the Forum;
c. There is need to state what the outputs from the AAACP Program have been;
d. The Secretariat should have on the website information on the contacts for private sector institutions under the COMESA Business Council;
e. Under PACT I, the emphasis was on building capacity for trade negotiations; while under PACT II, the emphasis is on commodity value chains, and this is why various commodity chain activities have been undertaken;
f. The main benefits under the PACT II program have been the various sector strategies that have been developed in collaboration with the private sector, for instance:
    i. the cotton-to-clothing sector strategy, which has assisted in the utilisation of the Africa Growth and Opportunity Act;
    ii. the Zambia cassava sector strategy, to assist food security and small scale producers; and
    iii. the leather and leather products sector strategy;
g. Furthermore, marketing activities have been undertaken, for instance, recently to Italy and India, where the private sector on the delegations obtained orders estimated over $10 million;
and
h. There is need for better publicity of the sector strategies.

121. The meeting noted the updates.

**Intellectual property, and Science, Technology and Innovation** (*Agenda Item 13)*

**Update on the Intellectual Property Program** (*Agenda Item 13 a)*

122. The meeting received the following presentations:

a. Update on Guidelines for Developing an Intellectual Property Policy;
b. Update on the development of a Regional Model Law on Intellectual Property; and
c. Update on the COMESA Sector Strategy for Production and Trade in Pharmaceutical Products.

***Discussion***

123. In the discussion, the meeting made the following observations:

a. offices and regulatory institutions; and in this regard the Secretariat will assist in compiling the data base of this information, and Member States can address this bilaterally by sharing information; and
b. Some Member States informed the meeting that they were finalising the review or the preparation of their national intellectual property policy, and welcomed the Guidelines, indicating that the Guidelines will assist the process.

124. The meeting welcomed the intellectual property program and called for timely implementation.

***Recommendations***

125. The meeting noted the Guidelines for Developing an Intellectual Property Policy, attached as Annex 13, and recommended that Member States consider using them in developing or reviewing, as appropriate, their national policies on intellectual property.

126. The meeting noted that work on finalising the Draft Regional Model Law on Intellectual Property was ongoing, and that a meeting of intellectual property experts will be organised for the third quarter of this year 2011, to consider the draft; and recommended that Member States should make arrangements to be represented in the meeting.

127. The meeting welcomed the sector strategy for regional production and trade in pharmaceutical products and recommended that Member States should consider using the strategy as input for national and regional programs for promoting access to life-saving medicine. A copy of the strategy is available from the Secretariat and from the COMESA website. In addition, a copy of the recommendations made by a workshop of intellectual property experts held on 1-5 March 2011 in Kampala in Uganda, are attached as Annex 14.

128. The meeting noted that the African Development Bank is a key partner, and NEPAD, ECA and UNCTAD, and recommended that all the partners be commended.

***Audits of intellectual property assets***

129. The meeting was informed that a key next step will be to take forward work on enforcement of intellectual property rights. In this regard, the meeting noted that it was critical to undertake the exercise, of producing an inventory of intellectual property assets, and of assessing their worth or contribution to the economy, referred to as the intellectual property audit exercise. This information is a good basis for appropriately designing and implementing an enforcement program for intellectual property rights.

130. Member States were urged to undertake audits of their intellectual property assets in collaboration with the Secretariat intellectual property assets.

**Update on the Science Technology and Innovation Program** (*Agenda Item 13 b)*

131. The meeting received a presentation of the Report of the First Meeting of the Committee on Science, Technology and Innovation, attached as Annex 15.

132. The meeting noted the report.

**Date and Venue of next meeting** (*Agenda Item 14)*

133. Rwanda offered to host the next meeting of the Trade and Customs Committee. The dates will be set after consultations.

**Any Other Business** (*Agenda Item 15)*

134. The following matters were considered under this agenda item.

***COMESA Fund***

135. The meeting received guidance on utilising the COMESA Fund. Member States agreed on the need to complete the steps for ratifying the COMESA Fund Protocol, and paying their contribution. In this regard, the meeting was referred to the Report of the First Joint Meeting of the Finance Ministers and Central Bank Governors held in July 2011 in Lusaka.

***Country Reports***

136. The meeting was informed that a template on preparation of country reports has been prepared for purposes of assisting Member States in reporting on their implementation of COMESA programs, in line with the Medium Term Strategic Plan 2011-2015. The meeting was informed, in addition, that national workshops can be organised in Member States to assist the exercise and that the exercise is on-going to cover most of the other Member States.

***Report of the Fifth Meeting of the Committee on Standardization and Quality Assurance***

137. The meeting received a presentation of the Report of the Fifth Meeting of the Committee on Standardization and Quality Assurance held on 11-12 August 2011 in Lusaka Zambia, attached as Annex 16.

138. In the discussion:

a. The meeting called for expedition of work on technical standards and SPS Measures, and for regular updates to the Trade and Customs Committee;
b. Furthermore, the meeting called for the involvement of the Secretariat in mutual recognition arrangements harmonisation of regional standards;
c. For better publicity and utilisation, the regional standards should be posted on the COMESA website; and
d. The regional standards once adopted should be domesticated, implemented and enforced in the national regimes.

139. It was clarified that the mandate for the COMESA standards programs is Articles 112 to 121 of the Treaty establishing COMESA.

140. The website for the COMESA consolidated harmonized standards is http://programmes.comesa.int/index.php?option=com content&view=article&id=34&Itemid=80

141. The meeting noted the report.

***COMESA Business Forum***

142. The meeting received a brief on the COMESA Business Forum planned to take place alongside the Meetings of the Policy Organs planned for 4-15 October 2011 in Lilongwe. The theme for the forum will be *Smart Business Go Green*.

143. A web site has been set up for the forum, namely, www.comesabusinessforum.org.

144. The meeting appealed to Member States to encourage the private sector to participate in the Forum. Good participation should assist to promote intra-COMESA trade, as well as trade with key partners who will participate such as China, EU, USA and the United Arab Emirates.

***Statement by ACTESA***

145. The new Chief Executive of the Alliance for Commodity Trade in Eastern and Southern Africa, Dr Chungu Mwila, made a statement, in which he said he had been in office for just two weeks. He then informed the meeting about the objectives of ACTESA, such as promotion of food security and supporting commodity traders and small scale producers.

***Statement by the Commonwealth Secretariat***

146. The Manager of the EU-funded Hub and Spokes Project of the Commonwealth Secretariat and OIF, Mr Nimrod Waniala, made a statement, in which he introduced himself and informed the meeting about the activities of the project and the Commonwealth Secretariat at large. The Project provides technical assistance in various areas on the basis of requests from Member States of the organisation. The Project supports several regional economic communities in the ACP Group of Countries, including COMESA Secretariat.

147. At the national level, the Project provides Trade Policy Analysts, and at the regional level, Regional Trade Policy Advisors as well as Trade Policy Analysts. He informed the meeting how privileged and honoured he was to have been invited and to attend the meeting, which he said was an eye-opener for him. This, he said, will assist the Project in working better with the Member States and COMESA Secretariat, including in formulating activities for the successor Project planned to start after June 2012.

148. He ended his statement by re-affirming the commitment of the Commonwealth Secretariat and the Project to working closely with the Member States and COMESA Secretariat.

***Statement by TMSA***

149. A representative of Trade Mark Southern Africa, Mr Fudzai Pamacheche, made a statement to the meeting in which he informed the meeting about the activities and the funding of TMSA, a facility assisting to administer the UK DfID funding for the Tripartite Arrangement. He said that TMSA works closely with the Secretariats of COMESA, EAC and SADC in their responsibility of assisting to implement the Tripartite agenda, covering among others, trade, customs, standards, trade facilitation, and infrastructure. In addition, TMSA is assisting a program for supporting LDCs on WTO negotiations, on rules of origin, and on the Enhanced Integrated Framework, among others.

***COP 17***

150. The meeting was informed that the next Conference of the Parties on Climate Change (COP) negotiations will take place in December 2011 in Durban in South Africa. The meeting called upon Member States to participate in the conference.

**Adoption of the Report** (*Agenda item 16)*

151. The meeting adopted the report with modifications.

**Closing of the meeting** (*Agenda item 17)*

152. The meeting commended the Chairperson, Ms Khethiwe Magagula, for chairing the meeting with excellent brilliance and expedition. In turn, the Chairperson graciously thanked all

the delegates for their cooperation and effective participation in the meeting, and commended them on an excellent outcome reflected in the important recommendations made, for consideration by the Intergovernmental Committee at its next meeting in the City of Lilongwe in Malawi this October. She thanked all the staff that supported the meeting, including the Administrative Assistants, the Interpreters and the Translators. Having done this, she wished everyone a safe journey back home and then formally declared the meeting closed, amidst a great applause of contented joy, all the delegates perfectly pleased with the meeting and its outcome.

# Annex 1

## ORGANISATION OF WORK

# Annex 2

## MATRIX OF NTBs REPORTED ON THE ON-LINE SYSTEM

**Distr.**
**LIMITED**

**CS/TCM/TC/XXV/4(c)**
September, 2010

Original: **ENGLISH**

**COMMON MARKET FOR EASTERN**
**AND SOUTHERN AFRICA**

DRAFT

**COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)**

**REGULATIONS ON NON-TARIFF BARRIERS**

(rmm) 2011

## COUNCIL REGULATIONS ON NON TARIFF BARRIERS

**Pursuant to the provisions of Articles 10, 45 and 49 (1) of the Treaty Establishing the Common Market for East and Southern Africa (COMESA), Council hereby makes the Regulations governing Elimination of Non Tariff Barriers as follows:**

### PREAMBLE

**WHEAREAS** the High Contracting Parties signed the Treaty for the Establishment of Common Market for Eastern and Southern Africa on 5 November 1993;

**AND WHEAREAS**

Under the provisions of Article 45 of the Treaty, the Member States undertook to cooperate in trade liberalization and development and to eliminate Customs duties and other charges of equivalent effect imposed on imports in the establishment of a Customs Union and to remove Non Tariff Barriers including quantitative or like restrictions or prohibitions and administrative obstacles to trade among the Member States; and under the provisions of Article 49(1) of the Treaty, the Member States undertook to immediately remove, upon the entry into force of the COMESA Treaty, all the then existing non-tariff barriers to the importation into that Member State of goods originating in the other Member States and thereafter to refrain from imposing any other restrictions or prohibitions.

**RECOGNIZING** the exceptions as provided for in Article 49 (2) of the Treaty that for purposes of protecting an infant industry, a Member State may, provided that it has taken all reasonable steps to overcome the difficulties related to such infant industry, impose for the purposes only of protecting such industry for a specified period to be determined by Council, quantitative or like restrictions or prohibitions on similar goods originating from the other Member States;

**NOTING** the provisions of Article 49 (5) of the Treaty that if a Member State encounters balance-of-payments difficulties, it may, provided it has taken all reasonable steps to overcome the difficulties, impose for the purposes only of overcoming such difficulties for a specified period to be determined by the Council, quantitative or like restrictions or prohibitions on goods originating from the other Member States;

**RECALLING** the decision of the Eleventh Council Meeting held in May 2001, that Member States should implement a Road Map for the elimination of Non Tariff Barriers, obstacles and restrictions;

**RECALLING** the decision of the Seventeenth Council Meeting held in June 2004, that Member States should designate COMESA Enquiry Points/NTBs National Focal Points at Ministries of Foreign Trade or other relevant agencies for the purpose of tracking and monitoring NTBs;

**RECALLING** the decision of the Seventeenth Council of Ministers Meeting held in June 2004, that Member States should use a common form for reporting to the COMESA Enquiry Point or NTBs National Focal Points the NTBs encountered which is designated as the "Form for Reporting NTBs and Other Barriers to Trade in COMESA";

**RECALLING** the decision of the Seventeenth Council of Ministers Meeting held in June, 2004, that a permanent institutional mechanism be established by December 2004 to monitor and address NTBs on a continuous basis;

**RECALLING** the decision of the Twentieth Meeting of Council held in December, 2005, that the Secretariat should develop a trade dispute resolution mechanism, which would operate under an institutional framework;

**RECALLING** the decision of the Twenty First Meeting of Council held in Kigali, Rwanda, in May, 2006, that the Secretariat should put in place a permanent mechanism for expeditious resolution of issues arising from NTBs and Member States should provide advance notification on the introduction of new NTBs which impact on intra-COMESA trade and ensure adherence to Article 49 of the Treaty;

**RECALLING** the decision of the Twenty Second Council held in November, 2006, that Member states should refrain from introducing new NTBs in conformity with the relevant Treaty provisions and Council decisions;

**RECALLING** the decision of the Twenty Third Meeting of the Council of Ministers held in Nairobi, Kenya, in May 2007 that the Secretariat should analyze all NTBs reported to and provide technical opinions on them with recommendation, as appropriate, for immediate removal of such NTBs and should submit a report on their elimination at the next Council Meeting; the Secretariat should undertake country missions to resolve outstanding NTBs in a timely manner; and Member States should provide the Secretariat with trade regulatory requirements for all traded products for dissemination to the business community to assist in identifying NTBs in the course of trading;

**RECALLING** the decision of the Twenty Fourth Council of Ministers meeting held in November 2007,that the Secretariat should finalize the study on a penalty system for NTBs and the impact assessment of prevailing NTBs for submission to the next meeting of the Committee;

**RECALLING** the decision of the Twenty Fourth Council of Ministers meeting held in November 2007, that the work programme on the NTB reporting form, categorization, elimination matrix, and the guide be implemented by Member States;

**RECALLING** the decision of the Joint Meeting of Ministers of Trade, Industry and Finance held in Addis Ababa, Ethiopia, in April 2008, that Member States should use the NTB on line monitoring system for reporting NTBs;

**CONSIDERING** the decision of the Twenty Sixth Meeting of the Council of Ministers held in Victoria Falls, Zimbabwe, in June 2009, that the mechanism for expeditious resolution of NTBs should be operationalised; the National NTB Monitoring Committee (NMC) structures should be formalised in all COMESA Member States for purposes of legitimacy and sustainability of operations; adequate resources need to be sourced by Member States and the Secretariat for the NMCs and National Focal Points (NEPs) to work effectively and consistently;

**NOW THEREFORE, THECOUNCIL ADOPTS THE FOLLOWING REGULATIONS:**

## Article 1

## CITATION

These Regulations may be cited as the COMESA Regulations on Elimination of Non Tariff Barriers.

## Article 2

## INTERPRETATION

1. In these Regulations, except where the context otherwise requires:

"**COMESA**" means the Common Market for Eastern and Southern Africa established by Article 1 of the Treaty;
**"Customs duties"** means import and other charges of equivalent effect levied on goods by reason of their importation on the basis of legislation in the Member States and includes fiscal duties or taxes where such duties or taxes affect the importation of goods but does not include internal duties and taxes such as sales, turnover or consumption taxes, imposed otherwise than in respect of the importation of goods;
**"Customs law of COMESA"** means the Common Market Customs Management Regulations of COMESA adopted by the Council at its Twenty Sixth Meeting;
**"Customs Union"** means the COMESA Customs Union established by Article 45 of the Treaty;
"**Council**" means the Council of Ministers of COMESA established by Article 7 (1) (c) of the Treaty;
**"Days"** means working days in any calendar month;
**"Duty"** means any duty that may be levied under any customs law and includes surtax;
**"Export"** means to take or cause goods to be taken out of the customs territory;
"**Lead Focal Point**" means the Focal Point established under Article 7, and shall be understood consistently with the focal points designated under the Tripartite arrangement;
**"Goods"** includes all wares, articles, merchandise, animals, matter, baggage, stores, materials, currency and includes postal items other than personal correspondence, and where any such goods are sold under the auspices of these Regulations, the proceeds of sale;
**"Import"** means to bring or cause goods to be brought into the customs territory;
**"Import duties"** means customs duties and other charges of equivalent effect levied on goods by reason of their importation;
**"Imported goods"** means goods imported into the customs territory;
**"Intra COMESA trade"** means trade among the Member States;
**"Member States"** means the Member States of COMESA under Article 1 of the Treaty;
**"Non-tariff barriers"** means laws, regulations, administrative and technical requirements other than tariffs adopted by a Member State which impedes or may impede trade;
**"National Monitoring Committee"** means a national committee established in accordance with these Regulations to facilitate the process of eliminating NTBs;
**"Other charges of equivalent effect"** means any tax, surtax, levy or charge imposed on imports and not on like locally produced products but does not include reasonable fees and similar charges for the cost of services rendered;
**"Person"** means a natural or legal person;
"**Protocol on Rules of Origin**" means the COMESA Protocol on Rules of Origin;

**"Publications"** means printed material in hard or soft form;
**"Regulations**" means these Regulations adopted in accordance with Article 10 of the Treaty;
**"Secretariat"** means the Secretariat of COMESA established under Article 7 (1) (g) of the Treaty;
**"Secretary General"** means the Secretary General of COMESA appointed under Article 17 of the Treaty;
**"Tariff"** means any customs duty on imports or exports;
"**Third country"** means a country other than a Member State;
**"Trade and Customs Committee"** means the committee established under Article 15 (1) (k) of the Treaty;
**"Trade data"** means trade related information and statistics on trade;
**"Trade facilitation"** means the co-ordination and rationalization of trade procedures and documents relating to the movement of goods from their place of origin to their destination; and
**"Treaty"** means the Treaty Establishing the Common Market for Eastern and Southern Africa.

2. In these Regulations, a reference to a law or regulation shall be construed as reference to the law or regulation as from time to time amended.

## ELIMINATION OF NON TARIFF BARRIERS

### Article 3

### Prohibition of Non Tariff Barriers

1. In order to promote the objectives of COMESA provided under Article 3 of the Treaty and in accordance with provisions of Articles 4 and 49 of the Treaty, Member States shall eliminate Non Tariff Barriers on intra COMESA trade and in accordance with Article 50 of the Treaty shall not adopt measures that constitute new Non Tariff Barriers.

2. Member States shall not adopt any other non tariff barriers that impede or may have the effect of impeding intra COMESA trade.

3. Without prejudice to the provisions of Chapter Five of the Treaty on the COMESA Court of Justice, these Regulations shall govern the procedures for elimination of Non Tariff Barriers

### Article 4

### Categorisation of Non Tariff Barriers

For purposes of these Regulations, Non Tariff Barriers shall be understood in accordance with the illustrative list of Non Tariff Barriers in Annex 1.

### Article 5

### Institutional structures for elimination of Non Tariff Barriers

1. Each Member State shall establish a National Monitoring Committee and a National Focal Point on Non Tariff Barriers.

2. The Trade and Customs Committee shall report to the Council through the Intergovernmental Committee on Non Tariff Barriers.

3. In accordance with Article 8 of these Regulations, the Secretariat shall provide secretariat services under this Article.

### Article 6

### The National Monitoring Committee

1. The main function of the National Monitoring Committee shall be to coordinate the elimination of reported Non Tariff Barriers through:

   a. defining the process of elimination;
   b. defining mandate and responsibilities;
   c. confirming timeframes for action; and
   d. setting out and implementing possible measures for non-action.

2. The National Monitoring Committee shall include stakeholders from the public and private sectors and shall be in accordance with Annex 2.

3. The major responsibilities of various stakeholders in reporting, monitoring and facilitating the elimination of Non Tariff Barriers shall be as set out in Annex 3.

**Article 7**

**National Focal Point on Non Tariff Barriers**

1. Each Member State shall designate a National Focal Point on Non Tariff Barriers, and the lead Focal Point shall be based in the COMESA Coordinating Ministry.

2. Each Member State shall ensure that the National Focal Point shall effectively coordinate all relevant line ministries and other stakeholders in undertaking its responsibilities under these Regulations.

3. The main functions of National Focal Points on Non Tariff Barriers shall include;

a. Follow-up on implementation of Article 50 of the COMESA Treaty prohibiting new Non Tariff Barriers;

b. Facilitating the immediate removal of Non Tariff Barriers and submitting reports on their elimination to the Secretariat;

c. Tracking and monitoring Non Tariff Barriers affecting intra-COMESA trade;

d. Providing clear guidelines to the business community on reported and possible Non Tariff Barriers;

e. Sensitizing stakeholders on the monitoring and evaluation mechanism and Non Tariff Barriers reporting mechanisms;

f. Facilitating country missions by the Secretariat to resolve outstanding Non Tariff Barriers in a timely manner; and

g. Notifying all trade related regulations to the Secretariat for publication and for use by the business community to assist in identifying Non Tariff Barriers.

**Article 8**

**Responsibilities of the Secretariat**

The Secretariat shall coordinate the elimination of Non Tariff Barriers through:

a. Tracking and monitoring Non Tariff Barriers affecting intra-COMESA trade and updating regional and National Plans for the elimination of Non Tariff Barriers;

b. Providing clear guidelines to the business community;

c. Providing technical opinions on issues relating to Non Tariff Barriers;

d. Creating awareness among stakeholders on the reporting, monitoring and evaluation tools such as the on line system;

e. Providing mediation for resolution of reported NTBs;

f. Initiating immediate action under these Regulations regarding complaints on NTBs with a view to their expeditious resolution; and

g. Undertaking any other functions provided for the Secretariat under these Regulations.

**Article 9**

**Mechanism for identifying, reporting and monitoring of Non Tariff Barriers**

The reporting and monitoring tools for Non Tariff Barriers shall consist of a form for reporting NTBs and the public Web-based Mechanism on Non Tariff Barriers.

**Article 10**

**Form for reporting Non Tariff Barriers**

1. The Form in Annex 4 shall be used for reporting Non Tariff Barriers.

2. National Focal Points shall transmit to the Secretariat copies of the forms reporting any Non Tariff Barriers.

3. The Form shall have the following information:

   a. Details of the reporter;
   b. Product and sector name;
   c. Description of the barriers;
   d. Station of occurrence;
   e. Date; and
   f. Any other information.

**Article 11**

**Online Monitoring Mechanism**

1. The Secretariat shall establish and maintain in collaboration with relevant partners and within the Tripartite framework of the COMESA, the East African Community, and the Southern Africa Development Community, a public web based mechanism for reporting and monitoring of Non Tariff Barriers.

2. The mechanism shall be user-friendly and designed to assist the effective elimination of Non Tariff Barriers.

3. The mechanism shall enhance transparency and easy follow-up of reported and identified Non Tariff Barriers. The mechanism shall be accessible to economic operators, government officials, academic researchers, the Secretariat, and other interested parties.

## Article 12

## Procedures for elimination of Non Tariff Barriers

The procedures for Elimination Non Tariff Barriers shall consist of three phases as follows:

a. Non Tariff Barriers Elimination Plans;
b. The Facilitation of resolution of Non Tariff Barriers, and mediation; and
c. Compensation and suspension of concessions.

## Article 13

## Phase One: Non Tariff Barriers Elimination Plans

1. The National Focal Point, upon receipt of a report, shall coordinate the preparation of a plan for the elimination of the Non Tariff Barrier reported.

2. The plan for elimination of Non Tariff Barriers shall be in format provided in Annex 6 and shall contain the following information: the impact to business, responsible agency for the Non Tariff Barriers elimination, timeframe for elimination, performance benchmarks and means of verification, challenges that may be encountered in the process of elimination, and possible solutions.

3. All concerned parties shall faithfully implement the elimination plans.

## Article 14

## Phase Two: Facilitation of resolution of Non Tariff Barriers

Phase Two proceedings shall be without prejudice to the dispute settlement procedures and the rights and obligations of Member States contained in the Protocol on the COMESA Rules of Origin.

## Article 15

## Stage One: Request and Response on a Specific Non Tariff Barrier

1. Any Member State (the ‘requesting Member’) may initiate Stage One by submitting in writing to another Member (the ‘responding Member’) a request for information regarding a non-tariff barrier. The request shall identify and describe the specific measure at issue and provide a description of the requesting Member State’s concerns regarding the measure's impact on trade.

2. The responding Member State shall provide, within 10 days, a written response containing its comments on the information in the request. Where the responding Member State considers that a response within the 10 days is not possible, it shall inform the requesting Member State of the reasons, and shall advise the period within which it will provide its response.

3. The requesting Member State shall notify its request to the Secretariat at the time when it submits its request, and the Secretariat shall circulate it to all Member States.

4. The responding Member State shall notify its response to the Secretariat, at the time when it responds, and the Secretariat shall circulate the response to all Member States.

5. Following receipt of notice of the request from the requesting Member State, the Secretariat shall convene a meeting with the parties within a period of 15 days to address all relevant issues and resolve the matter.

6. Stage One proceedings shall not exceed a total of 25 days unless otherwise mutually agreed by the parties.

**Article 16**
**Stage Two: Mediation by the Secretary General**

The Secretary General or his or her representative shall serve as mediator at the meeting convened under Article 15(5).

**Article 17**

**Stage Three: Resolution Procedures**

1. Where the matter is not satisfactorily resolved during Stage One or Stage Two, the parties shall proceed to Stage Three.

2. The Secretariat shall notify all Member States of the commencement of Stage Three proceedings within five days.

3. Any other Member State may submit a written request to the Secretariat, within 10 days of the notification from the Secretariat, to participate in these procedures as a third party.

4. Either party may terminate Stage Two proceedings by giving the other party 20 days notice in writing of its intention to do so.

**Article 18**
**Appointment of a Mediator**

1. Where Stage Two proceedings do not result in a mutually agreed solution, the matter shall be referred to the Court for mediation.

2. Upon request by the mediator or the parties, the Secretariat shall appoint two experts agreeable to the parties to assist the mediator. The parties may make suggestions to the Secretariat on the qualifications, experience and competence that the experts should have.

3. The Secretariat shall maintain a list of experts from which the mediators and experts shall be drawn and which shall be notified to all Member States

4. Each Member State may suggest a total of five experts to be on the list. The list shall be annually reviewed.

5. The expenses for the independent mediators and experts shall be borne by the parties.

## Article 19

## Seeking Mutually Agreed Solutions

1. The mediator, in consultation with the parties, shall have full flexibility in organizing and conducting the deliberations under these Regulations, which normally shall take place at the Secretariat headquarters, unless the parties agree on any other place they consider more convenient.

2. The Secretariat shall develop relevant working procedures.

3. Either party may present to the mediator and the other party any information that it deems relevant.

4. The mediator may call upon the Secretariat to provide information or expert opinion on the matter.

5. The mediator shall act in an impartial and transparent manner, and shall clarify the NTB concerned and its possible trade-related impact.

6. In undertaking his or her functions, the mediator shall:

   a. offer advice and propose possible solutions to the matter; and
   b. organize meetings between, and meet individually or jointly with, the parties, in order to facilitate discussion of the matter and to assist in reaching mutually agreed solutions.

7. The mediator may seek assistance where necessary, of relevant experts and stakeholders, after consulting with the parties.

8. All meetings and all information provided during Stage Three proceedings shall be confidential and without prejudice to the rights of any party or any Member State.

9. Stage Three proceedings shall not exceed 30 days from commencement of the proceedings.

10. Pending resolution of the matter, the parties may consider possible interim solutions, especially if the matter relates to perishable goods.

## Article 20

## Implementation of the Solutions

1. Upon termination of Stage Three proceedings by a party or in the event that the parties reach a mutually agreed solution, or at the expiry of the 30 day period for stage Three, the mediator shall issue to the parties, in writing, a draft report, providing:

a. A description of the matter;
b. The procedures followed;
c. A reasoned opinion on the issues arising;
d. Key findings and conclusions;
e. Any mutually agreed solutions reached as the final outcome of these procedures, including possible interim solutions; and
f. Recommendations on sanctions that may apply should the party in breach not implement the solution within 15 days.

2. The mediator shall provide the parties 14 days within which to comment on the draft report. After considering the comments of the parties, the mediator shall submit, in writing, a final factual report to both parties and the Secretariat.

3. If the parties reach a mutually agreed solution, such solution shall be implemented within 15 days from the agreement or delivery of the opinion of the mediator and notice to that effect provided to the Secretariat, which shall immediately notify all the Member States.

4. Where a party cannot implement the solution within the 15 days, the party shall seek the authorisation of the Council for an extension. The request for an extension shall provide a detailed explanation and a full implementation plan. The Council shall deliberate the matter and reach a decision, which the party shall comply with.

## Phase Three: Enforcement

## Article 21

## Non-compliance with Stages Two and Three Solutions

1. Where a party does not fully implement the solutions arrived at during Stages Two and Three proceedings, the other party may seek authorization from the Council to suspend the preferential treatment it accords under the Treaty to the party in breach.

2. The Council after considering the matter may grant authorization on the basis of appropriate terms and conditions taking into account or on the basis of the recommendations of the mediator.

3. The decisions to be made by Council may include recommendations to the Authority for action in accordance with Article 171.

4. [The decisions by Council and recommendations by Council to the Authority may take into account the guidelines in Annex 7.]

## GENERAL PROVISIONS

### Article 22

### Transparency

For transparency, the Secretariat shall provide to Member States, on a regular basis, a status report of notified requests and responses and of ongoing and recently completed proceedings, together with a list of any reports from mediators.

### Article 23

### Technical Assistance

1. Member States may request assistance from the Secretariat to promote their understanding of the use and functioning of these Regulations.

2. Where Stage Two proceedings have not yet commenced the Secretariat may upon request provide technical opinions on these Regulations and reported Non Tariff Barriers.

### Article 23

### Amendment

These Regulations may be amended by the Council.

## **Annex 1 to the NTB Regulations**

### General categorization of Non Tariff Barriers

1. Government Participation in Trade and Restrictive Practices Tolerated by Government
2. Customs and Administrative Entry Procedures
3. Technical Barriers to Trade
4. Sanitary and Phytosanitary Measures
5. Specific Limitations
6. Charges on Imports
7. Other (Procedural Problems)

### Illustrative List of Common Non Tariff Barriers in COMESA

(a) Customs documentation and administrative procedures – these include non standardised systems for imports declaration and payment of applicable duty rates, limited customs working hours, different interpretation of the Rules of Origin and non acceptance of the certificate of origin, application of discriminatory taxes and other charges on imports originating from amongst the three countries, cumbersome procedures for verifying containerised imports, problems in blocking the marketing of counterfeit products, and diversion of transit goods into the region

(b) Immigration procedures – includes non standardised visa fees and procedures for application of work permits, cumbersome and duplicated immigration procedures.

(c) Quality inspection procedures – 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 Tripartite region bearing certification marks issued by the tripartite Standards Bureaus), non-standardised quality inspection and testing procedures and varying procedures for issuing certification marks.

(d) Transiting procedures – Non-harmonised transport policies, laws, Regulations and standards e.g. road user charges, third party (cross border) motor insurance schemes, vehicle overland controls systems, vehicle dimensions and standards, cross border road permits and Prohibitive transit charges.

(e) Road blocks – the most serious NTB under this cluster is that the police officers stop commercial vehicles at various inter country road blocks and at border crossing even where there is no proof that goods being transported are of suspicious nature such as smuggled goods or drugs.

(f) Varying trade Regulations

(g) Duplicated function of agencies involved in verifying quality, quantity and dutiable value of imports and export cargo

(h) Business registration and licensing

(i) Cumbersome import and export licensing/permits

(j) Import and export quotas (except those concerning special sensitive products as may be specified)

(k) Unnecessary import ban/prohibitions

(l) Restrictive charges not being import or export duties

(m) Restrictive single channel marketing

(n) Cumbersome visa requirements

(o) Pre-shipment inspection most of which have been eliminated

(p) National food security restrictions

(q) Changes in road and border tolls

(r) Non-acceptance of certificates and trade documentation

(s) Incorrect tariff classification

## Annex 2 to the NTB Regulations

## Structure of National Monitoring Committees

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

## Annex 3 to the NTB Regulations

### Responsibilities of key stakeholder institutions in reporting, monitoring and facilitating the elimination of Non Tariff Barriers

| Stakeholder Institution | Responsibilities |
|---|---|
| Businesses | Reporting existence of NTBs to their associations or chambers of commerce, and monitoring whether planned/recommended actions are being implemented by line ministries and agencies responsible for enforcement. |
| Business Associations/ Chambers of Commerce/ Clearing & Forwarding Associations | ▪ Receiving NTB complaints from members.<br>▪ Where possible verifying the genuineness of cases reported.<br>▪ Preparing reports on reported cases for the NMC[1] members, line ministry in charge of REC matters and the COMESA Secretariat for information and facilitation of regional discussions/ policy action.<br>▪ Building a database on reported NTBs.<br>▪ Acting as watchdogs on the progress of eliminating NTBs.<br>▪ Following up progress achieved in eliminating or minimizing NTBs at NMC meetings.<br>▪ Inform their members on the progress made in resolving NTBs at national and regional level. |
| Line ministry or agency responsible for enforcing a regulation and taking action on reported NTBs | ▪ To receive NTBs complaints from individual businesses, business associations and chambers of commerce.<br>▪ To verify the genuineness of reported cases, review the justification for the law, regulation or procedure, and whether such laws, regulation or procedure contravenes any COMESA or international requirements (for example WTO agreements)<br>▪ To prepare quarterly reports on NTB cases reported and actions taken, and table them to NMC meetings. |
| NTBs National Monitoring Committees (NMCs) | Each NMC will be the national arm monitoring the progress of eliminating NTBs experienced at the national and COMESA level. It will be Co-Chaired by the Private and Public sector and will be responsible for:<br>▪ Receiving copies of NTB complaints sent to line ministry or agency by business associations, chambers of commerce, and individual businesspeople.<br>▪ Discussing whether actions taken by the line ministry or agency responsible for enforcement are sufficient.<br>▪ Initiating bilateral discussions with counterpart NMC in other COMESA partner states on NTB cases that may be of a cross-border nature, and initiating an elimination process. Where necessary, equivalent agencies responsible for enforcement of trade Regulations will be brought together to negotiate a harmonization process, if the NTB in question is in form of varying trade |

[1] NMC – National Monitoring Committee

| **Stakeholder Institution** | **Responsibilities** |
|---|---|
| | requirements between member states. Bilateral dispute resolution will always be used before any NTB cases are referred to the COMESA Secretariat for policy action.<br>▪ Forward information to COMESA Secretariat on actions taken by line ministry or agency responsible for enforcing an NTB for dissemination to other Partner States NMC.<br>▪ Disseminating information on actions taken on reported cases in other partner states to the business associations and chambers of commerce for onward transmission to the business community.<br>▪ Referring cases to relevant COMESA Secretariat, where no satisfactory solution in form of a planned review, amendment or withdrawal has been proposed by the agency responsible for enforcement within one calendar month from the date of reporting. Such cases will be forwarded to COMESA Secretariat within one calendar month from the date of reporting by the business association/chamber of commerce.<br>▪ Holding an annual regional forum where members can share experiences on the NTBs elimination process, achievements made, challenges faced and necessary initiatives for improving the efficiency of the Monitoring Mechanism. |
| COMESA Secretariat | ▪ Receive quarterly progress reports from NMCs on resolved or unresolved cases.<br>▪ Prepare progress reports on resolved cases for the COMESA Trade and Customs Committee and Co-ordination Committees. The reports will inform the committees regarding resolved cases and guide further action.<br>▪ Initiate dispute resolution by the Arbitration Committee and Court of Justice on cases that have not been resolved at the national, bilateral and regional level discussions.<br>▪ Facilitate an annual verification of actual practices by the COMESA Trade and Customs Committee. |
| COMESA Trade and Customs Committee | As mandated by the COMESA Treaty, the COMESA T&C Committee will<br>▪ Prepare comprehensive implementation programs and prioritise actions to be taken on NTBs<br>▪ Monitor and constantly review implementation programs and actions<br>▪ Submit reports and recommendations to the Co-ordination Committee on implementation of actions related to NTBs<br>▪ Undertake annual verification of actual practices at entry/ exit border stations |
| Co-ordination Committee (Permanent Secretariat | The Permanent Secretaries of ministries responsible for COMESA matters in each partner state will form the NTB Coordination Committee in line with their mandates under the COMESA Treaty. They will chair the NMC in their respective countries and also:<br>Private Sector to co-chair the committee<br>▪ Submit NTB reports and recommendations to the Council of Ministers |

| Stakeholder Institution | Responsibilities |
|---|---|
| | and progress achieved in eliminating NTBs.<br>▪ Implement decisions of the Council of Ministers.<br>▪ Receive and consider reports of the T&C Committee and co-ordinate their activities.<br>▪ Request T&C Committee to investigate specific NTB cases<br>▪ Refer cases that cannot be resolved by the T&C Committee to the Council of Ministers for policy direction and guidance |
| Arbitration Committee and Court of Justice | The Arbitration Committee will handle NTBs disputes that cannot be resolved either on a bilateral basis or by the T&C Committee as mandated by the COMESA Treaty. Any cases that cannot be resolved by the Arbitration Committee will be referred to the COMESA Court of Justice to make the final ruling. |
| Regional business associations/ Chambers of commerce | ▪ Disseminate information on NTBs elimination progress to business people.<br>▪ Undertake an annual Business Climate Index (BCI) Survey, aimed at monitoring whether the business climate within the region is improving, or whether new initiatives are required in dealing with NTBs.<br>▪ Organise regional NMC forums to facilitate sharing of experiences on the NTBs elimination process, achievements made, challenges faced and new initiatives for an efficient Monitoring Mechanism. |

**Annex 4 to the NTB Regulations**

FORM I

**COMPLAINT REPORTING OF NON-TARIFF BARRIERS AND OTHER BARRIERS TO TRADE**

To: COMESA/EAC/SADC National Focal Point

Reporting Country: …………………………….………………….

Imposing Country: ……………………………..………………….

| Details of person reporting | Information on affected product |
|---|---|
| Name……………………………………. | |
| Name of Company/Institution ………………………………………………<br><br>Address:……………………………………<br><br>Telephone No:……..……..……………….<br><br>Fax No: ……………………………………<br><br>E-mail: ………………………………<br><br>Contact Person: …………………………… | Name of product ……………………<br><br>Tariff Code: ………………………………<br><br>Type of service: ………………………….<br><br>Value affected by barrier: US $............................ |
| Description of the Non-Tariff Barrier: | |
| Place of Occurrence | Date of Occurrence: |

Signed:…………………………………

Date: …………………………………

## Reporting Guidelines

| Non Tariff Barrier | Reporting of NTB by Economic Operator |
|---|---|
| **Customs Clearance Procedures:**<br><br>Information on clearing procedures should be made public in all member States through the publication of easy brochures and booklets.<br><br>When a security is demanded to ensure payment of duties and taxes, the security should be equal to the amount of duty and taxes payable. The security should be discharged as soon as the obligations demanded have been fulfilled. | Any procedures adopted for clearance of goods outside those contained in published documentation will constitute an NTB. |
| **Import/Export Regulations:**<br><br>Information and Regulations regarding products subjected to import Regulations and licensing be published. The publications should indicate the procedures and documentation required for the timely issuance of import/export permits. | Any requirement made outside those demanded in the publications will constitute a NTB |

| | |
|---|---|
| **Sanitary and Phytosanitary Measures**<br><br>In the absence of agreed SPS measures, Member states should exchange SPS Regulations, requirements and practices. | Any requirement made outside those demanded in the publications will constitute a NTB |
| **Non-Tariff Fees:**<br><br>Non-Tariff fees shall be published and made available to the public. Examples of such fees include pre-shipment fees, road tolls, warehousing fees and air/marine levies. | Any payment of non-tariff fees demanded outside those required legally will constitute a NTB. |
| **Technical Regulations:**<br><br>National Bureaux of Standards or other Government Agencies dealing with technical requirements and standards will publicise the standards and other requirements.<br><br>Bureaux of Standards should exchange information on their standards pending the harmonization of standards in COMESA-EAC-SADC | Any requirement of practice demanded outside the published technical requirements and standards will constitute a NTB |
| **Transit Fees:**<br><br>Schedule of Transit fees and Transit Requirements should be made available to transit carriers within and outside the member state. Member states shall refrain to demand transit deposits in foreign currencies. | Any requirement or fees demanded outside those published will constitute a NTB.<br><br>Transit fees demanded in foreign currencies will constitute a NTB. |

## Annex 5 to the NTB Regulations

### Reporting and Institutional structure

| **REPORTING PROCESS** | **ELIMINATION PROCESS** |
|---|---|
| Complainant | National NTB Committee |
| National Focal Point | Categorisation Process |
| COMESA Secretariat | NMC develops programme and undertakes elimination steps/process |
| NTB Maintaining Country – All MSs | COMESA Secretariat<br>➢ Monitoring<br>➢ Technical Assistance |
| Resolution Mechanism/Process<br>➢ Bilateral<br>➢ Multilateral<br>○ T&C Committee<br>○ IC<br>○ CM<br>➢ Arbitration<br>➢ Court of Justice | |

## Annex 6 to the NTB Regulations

### NTBs Elimination Plans

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|
| NTB No. | Problem Area | Description of the NTBs | Impact of NTB to businesses | Responsible Ministry/ Department | Possible approach to eliminate NTB | Performance Benchmarks | Means of Verification | Bottlenecks that need to be overcome to eliminate NTB | Likely solutions to overcome the bottlenecks |

## Annex 7 to the NTB Regulations
## Guidelines for Compensation and other Measures

### Guideline 1

### Objective of compensation and other measures

1. The Objective of the compensation and other measures under these Guidelines shall be to compensate the complainant for loss and damage suffered as a result of the imposition, maintenance or non-removal of a non-tariff barrier.

2. These Guidelines shall only be used as the last resort, where the party in breach of the Treaty and the Regulations does not comply with the findings, recommendations or decisions arising from consultations and mediation held under the Regulations.

### Guideline 2

### Computation of Monetary Compensation

1. The computation of monetary compensation shall be done in accordance with these guidelines.

2. The monetary compensation shall be awarded as a daily amount to be incurred by the respondent and to be due to the successful complainant, for the duration of the period when the non tariff barrier is not removed all is maintained inconsistently with the recommendations and decisions made under the Regulations.

### Guideline 3

### Formula for Monetary Compensation

The monetary compensation will be calculated as an amount accruing on a daily basis using the following formula: **DA = BR x αS x n x R,** where:

(a) **DA** is a Daily Amount

(b) **BR is a basic rate**: The basic rate could be a fraction, for example one-twelfth, of the value of imports during the previous year by the non-compliant Member State. This rate shall be revised regularly in line with the cost of living and trade performance within the Common Market;

(c) **αS** is a coefficient for seriousness of the non tariff barrier. This coefficient may take the value of "**1**" if the non tariff barrier is considered to be very serious in the opinion of the mediator or the Council, taking into account the loss and damage as well as the financial amount involved, and any possible advantage that may be gained from the non tariff barrier by the respondent or any beneficiary;

(d) **n is factor taking into account the capacity to pay of the Member State**. This factor may be estimated based on the member's Gross Domestic Product; and

(e) **R is a factor that accounts for repeat occurrence of the non tariff barrier**. It may take the value of "**1**" for a first occurrence and "**2**" for a second occurrence, or any other factor the Council may determine.

**Guideline 4**
**Total Amount of the Monetary Compensation**

1. The total amount of the monetary compensation shall be calculated using the formula in Guideline 3 to establish the daily amount for each of the days during which the non tariff barrier remains in place or is maintained.

2. The duration of the total period for compensation shall be counted from the day the party in breach is required to remove the non tariff barrier, to the day when the non tariff barrier is removed.

**Guideline 5**
**Other Measures**

The Council may make any other appropriate decisions designed to facilitate the expeditious removal of non tariff barriers following the end of proceedings under Stages One, Two or Three; and may make any appropriate recommendations to the Authority for purposes of Action under Article 171 of the Treaty.

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**ACRONYMS**

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## RULES OF ORIGIN FOR CHANGE IN TARIFF HEADING

# Annex 5

## REPORT OF THE THIRD MEETING OF COMMITTEE ON THE CUSTOMS UNION

**Annex 6**

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## PROGRAMME FOR EXPANSION OF AFRICA'S CAPACITY TO TRADE (PACT II)

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## EU-All ACP AGRICULTURAL COMMODITIES PROGRAMME (AAACP)

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