



Regional Trade Facilitation Programme

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ANNEX A

SURVEY OF NON-TARIFF BARRIERS EXPERIENCED IN the SADC, COMESA and EAC Regions

Terms of Reference

1. Objective of Survey

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

Inventories of NTBs that existed in fourteen countries¹ that are members of SADC and/or EAC were compiled during 2004 and 2005. The RTFP is providing support to update these inventories, which will be done concurrently with surveys to compile complete inventories for 11 COMESA² countries that are not members of either SADC or EAC and have not been surveyed before.

The study will thus be divided into two main groups:

Group One:

- SADC and EAC Countries (excluding DRC) which would require updates and re-verification of the 2004 and 2005 studies. In addition, a review of the COMESA harmonised transit documentation and other related trade facilitation instruments will be done for those countries which are also members of COMESA.

Group Two:

- All other non-SADC/EAC COMESA countries plus DRC but excluding Libya (11 in total) which require a full NTB study.

The project implementation will be undertaken by two sets of consultants and the work is split between them as follows:

- Simon Ihiga - Group One: The three EAC countries (Kenya, Uganda, Tanzania)

¹ Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe, Kenya and Uganda

² Burundi, Comoros, DR Congo, Djibouti, Egypt, Eritrea, Ethiopia, Madagascar, Rwanda, Seychelles and Sudan



- Simon Ihiga - Group Two: three COMESA countries, namely Egypt, Eritrea and Sudan
- Imani Development - Group One: SADC countries excluding Tanzania and DRC
- Imani Development - Group Two: COMESA countries excluding Egypt, Eritrea, Kenya, Uganda and Sudan, and including DRC.

In undertaking the assignment the consultants shall liaise closely so as to ensure that the surveys are carried out uniformly and similar data is collected. In this regard the same questionnaire will be used for all national surveys.

2. TOR for Group One

2.1 Background

The following countries will be covered:

Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe, Kenya and Uganda.

The SADC Protocol on Trade provides for the attainment of a Free Trade Area (FTA) in 2008 through the elimination of tariff barriers to trade. Whilst the process to eliminate tariffs is in progress and predictable, the success of the FTA to a large extent also hinges on an equally systematic process to eliminate the non-tariff barriers to trade which proliferate the region. Article 6 of the Protocol on Trade briefly alludes to non-tariff barriers (NTBs) as follows:

Except as provided for in this Protocol, Member States shall, in relation to intra-SADC trade:

- Adopt policies and implement measures to eliminate all existing forms of NTBs.*
- Refrain from imposing any new NTBs.*

The 2004 Inventory Report on NTBs in SADC countries defines NTBs as “any regulations to trade other than a tariff or other discretionary policies that restrict international trade”. It groups NTBs into three broad categories as follows:

- Health, safety and environment NTBs: these barriers include exports bans, restrictive SPS requirements, standards and conformance requirements;
- Trade policy NTBs: these barriers include broader policy measures including public export assistance, export taxes, import licenses, import quotas, production subsidies, state trading and import monopolies, tax concessions, trade remedy practices (such as anti-dumping, safeguard and countervailing measures);
- Administrative NTBs: these barriers include customs clearance delays, lack of transparency and consistency in customs procedures, overly bureaucratic and often arbitrary processing and documentation requirements for consignments, high freight and transport charges, and generally, services that are not user-friendly;

while the EAC study of 2005 identified similar categories of NTBs including:

- Customs documentation and administrative procedures – these include unstandardised systems for imports declaration and payment of applicable duty rates, limited customs working hours, different interpretation of the COMESA Rules of Origin³, application of discriminatory taxes and other charges on imports originating from amongst the three countries, cumbersome procedures for verifying

³ Where products are not wholly produced in the EAC and an EAC rule of origin has not yet been agreed, COMESA rules of origin are used in the interim.



containerized imports, problems in blocking the marketing of counterfeit products, and diversion of transit goods into the region

- (b) Immigration procedures - includes unstandardised 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 EAC bearing certification marks issued by the three East African Standards Bureaus), unstandardised quality inspection and testing procedures and varying procedures for issuing certification marks.
- (d) Transiting procedures – cumbersome, unstandardised and costly

2.2 Scope of Work

The objective of this study is to update the inventory of NTBs of the types listed above which impinge on intra-SADC and intra-EAC trade. The study will also follow-up on the recommendations for their removal as proposed in the SADC Regional Workshop on NTBs held in November 2006 in South Africa.

The following tasks are to be undertaken:

1. Update (using available data) patterns of intra-SADC and intra-EAC trade, with identification of country exports and imports and the main traded commodities.
2. Update the inventory of NTBs applied to intra-SADC and EAC trade utilising the WTO inventory for categorising non-tariff barriers as the basis for notifications of NTBs (See Annex I).
3. Undertake consultations on the proposed template form for reporting NTBs (See Annex II).
4. Undertake consultations with the key private sector representative organisations on the proposal that they designate a focal point on NTBs who would be able to channel all reports on NTBs to their National SADC Committee with a copy to SADC Secretariat.
5. Undertake similar consultations with the private sector representatives in the EAC countries on appropriate reporting mechanisms to the EAC structures.
6. Highlight those NTBs in the inventory which have been introduced since previous reviews undertaken in 2004 for SADC and 2005 for EAC.
7. Assess the importance of each NTB in terms of its impact on intra-SADC and EAC trade as a whole and where possible by individual MS in line with the Reporting Form (See Annex II).
8. Assess NTBs that are identified with particular transport and transit modes – air freight; sea freight, road freight; cross-border traffic etc. In some cases it may be appropriate to identify NTBs in relation to specific border posts. Review any procedures in place for harmonization of transit traffic between MSs.

2.3 Interview Programme

Surveys and interviews are to be conducted with relevant large retailers, importers, exporters, cross-border traders, transport companies, freight forwarders, other business people engaged in intra-SADC and EAC trade, Chambers of Commerce and Industry, customs services, trade ministries, and other government agencies. A standardised questionnaire and approach will be agreed upon prior to field work commencing.



2.4 Timings

The draft country reports will be submitted in electronic format to the Secretariats of COMESA, EAC and SADC and copied to the RTFP PMU on or before 23rd March 2007. An outline report format will be sent to each consultant to standardize the approach. Standardized questionnaire, tables and matrix formats will be used extensively to ensure a common reporting format. Final country reports together with a summary synthesis report will be prepared incorporating comments of the SADC and EAC Secretariats and RTFP PMU as appropriate. The final reports should be provided on or before 23rd April 2007.

3. TOR for Group Two

3.1 Background

The following countries will be covered:

Burundi, Comoros, Djibouti, Egypt, Eritrea, Ethiopia, Madagascar, Rwanda, Seychelles, Sudan and DRC.

Even as the continued existence of NTBs hinders intra-COMESA trade, this issue was taken up as far back as 1984 in Article 49 of the COMESA Treaty, which provides for the elimination of existing and non-imposition of new NTBs. The member States have also recognised the importance of reducing technical barriers to trade and preventing the emergence of new ones so as to facilitate intra-COMESA trade and market access for products, thereby enhancing exports and generating employment. In this respect, the member States have agreed to implement a common, comprehensive, coherent and operational external strategy regarding NTBs, whose implementation should not be to the detriment of legitimate demands for better protection of health, safety and the environment and that should not put national market regulatory regimes in jeopardy.

The member States have already reached consensus on an NTBs monitoring and elimination instrument, to be administered at the national level. The application of this instrument, however, has been constrained by the lack of consensus over the national trade laws, regulations, practices and procedures that are to be categorised as NTBs.

3.2 Scope of Work

The main objectives of the survey are to identify and analyse the nature and scope of NTBs that constrain intra-COMESA trade and thus the ability of member States to reap maximum gains from the large market size under the trading bloc.

The following tasks are to be undertaken:

- Prepare (using available data) patterns of intra-COMESA trade, with identification of country exports and imports and the main traded commodities for the last 5 years.
- Identify the enforcement agencies and laws, regulations, practices, and requirements in the exporting and importing country with which exporters and importers must comply.
- Identify the scope and nature of NTBs that affect intra-COMESA trade utilising a standardised inventory approach using the WTO categorisation of NTBs (See Annex I).
- Identify the products and markets most affected by the NTBs.
- Document exporters' and importers concerns regarding the impact of the NTBs that are practiced on products intended for trade within the region.
- Assess the impact that NTBs have had on traders, such as the cost of the additional time incurred to ensure compliance, lost market opportunities, and prevalence of specific NTBs at COMESA country exit and entry points.



- Assess how producers, exporters and traders have responded to the challenges posed by NTBs.
- Ascertain whether COMESA harmonised transit procedures are implemented by national enforcement agencies. Such procedures include the Harmonised Road Transit Charges, COMESA Carrier's License, Harmonised Axle Load and Maximum Vehicle Weight specifications, and the COMESA Yellow Card.
- Undertake consultations on the proposed template form for reporting NTBs (See Annex II).
- Identify the measures required to facilitate the implementation of the COMESA NTBs monitoring and elimination instrument as well as recommend a process for NTB elimination (or at least the sharp reduction in their incidence).

3.3 Interview Programme

Undertake a literature review of documented cases whereby NTBs have been experienced by businesspeople engaging in intra-COMESA trade.

Undertake a survey and interviews with national trade policy makers, heads of agencies responsible for enforcing trade related requirements, business associations, clearing and forwarding associations, transporters and representatives of key businesses that engage in substantial trade within the region. A standardised questionnaire and approach will be agreed upon prior to field work commencing.

3.4 Timings

The draft national reports will be submitted in electronic format to COMESA Secretariat and copied to the RTFP PMU on or before 30 April 2007. An outline report format will be sent to each consultant to standardize the approach. Standardized questionnaire, tables and matrix formats will be used extensively to ensure a common reporting format.

A full synthesis report combining the inventories of all COMESA, EAC and SADC member states will be submitted in electronic format to the respective Secretariats and copied to the RTFP PMU on or before 11 May 2007 for comment. A final report including the country reports for all COMESA, EAC and SADC Member States and a synthesis report will be prepared incorporating comments of the Secretariats and the RTFP PMU as appropriate. The final report should be provided on or before 31 May 2007.

4. Consultancy Resources:

Imani Development Team

- Project Director, Keith Atkinson of Imani Development will manage the entire study, to ensure quality control and standardisation and depth of analysis. Consolidate country reports into synthesis reports.
- Regional Consultants (two) will oversee a sub-group of national consultants in countries allocated to Imani as shown in Section 1 of this TOR, undertake a short briefing, monitoring and research visit to most countries. (Also to be national consultant for the two respective countries in which they live).
- National Consultants (17) to undertake the primary research, administer questionnaire and face-to-face interviews, draft country report

Simon Ihiga Team

- National reports that will be produced by this team will feed into the consolidated report that will be prepared by Imani Development.
- The Regional Consultant (also a National Consultant for Kenya) will oversee a group of national consultants in countries allocated to his team as shown in Section 1 of this TOR, undertake a short briefing, monitoring and research visit to most countries;



- National Consultants (5) to undertake the primary research, administer questionnaire and face-to-face interviews, draft country report

5. Budget:

6. Reporting:

All national and synthesis reports to be produced in readable CD format using Word and Excel.



ANNEX I: WTO INVENTORY OF NON-TARIFF MEASURES

PARTS SECTIONS	&	DESCRIPTION
Part I A B C D E		<u>Government Participation in Trade and Restrictive Practices Tolerated by Governments</u> Government aids, including subsidies and tax benefits Countervailing duties Government procurement Restrictive practices tolerated by governments State trading, government monopoly practices, etc.
Part II A B C D E F G H I		<u>Customs and Administrative Entry Procedures</u> Anti-dumping duties Customs valuation Customs classification Consular formalities and documentation Samples Rules of origin Customs formalities Import licensing Pre-shipment inspection
Part III A B C		<u>Technical Barriers to Trade</u> General Technical regulations and standards Testing and certification arrangements
Part IV A B C		<u>Sanitary and Phytosanitary Measures</u> General SPS measures including chemical residue limits, disease freedom, specified product treatment, etc. Testing, certification and other conformity assessment



PARTS & SECTIONS	DESCRIPTION
Part V A B C D E F G H I J K L	<u>Specific Limitations</u> Quantitative restrictions Embargoes and other restrictions of similar effect Screen-time quotas and other mixing regulations Exchange controls Discrimination resulting from bilateral agreements Discriminatory sourcing Export restraints Measures to regulate domestic prices Tariff quotas Export taxes Requirements concerning marking, labelling and packaging Others
Part VI A B C D E	<u>Charges on Imports</u> Prior import deposits Surcharges, port taxes, statistical taxes, etc. Discriminatory film taxes, use taxes, etc. Discriminatory credit restrictions Border tax adjustments
Part VII A B C D E	<u>Other</u> Intellectual property issues Safeguard measures, emergency actions Distribution constraints Business practices or restrictions in the market Other



ANNEX II: PROPOSED TEMPLATE FOR MONITORING AND ELIMINATING NTBs AT NATIONAL LEVEL.

Name of Country: _____

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

