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**REPORT OF THE 2<sup>ND</sup> MEETING OF THE COMESA, EAC AND SADC  
TRIPARTITE NON-TARIFF BARRIERS (NTBS) FOCAL POINTS**

**11<sup>th</sup> to 12<sup>th</sup> November 2010**

**Nairobi, Kenya**

## **REPORT OF THE 2<sup>ND</sup> MEETING OF THE COMESA, EAC AND SADC TRIPARTITE NTBs FOCAL POINTS HELD IN NAIROBI, KENYA, 11<sup>TH</sup> – 12<sup>TH</sup> NOVEMBER 2010**

### **1.0 OPENING AND WELCOME**

- 1.1 The meeting was opened by the Permanent Secretary in the Ministry of Trade Kenya Eng. Abdulrazaq Adan Ali, CBS. In his opening speech he welcomed delegates to Nairobi, Kenya and to the 2<sup>nd</sup> meeting of the Tripartite non-tariff barriers (NTBs) Focal Points. He commended progress with regard to the Tripartite NTBs elimination efforts towards harmonization of the different regional programmes for the elimination of NTBs in COMESA, EAC and SADC. He outlined the expectations of the meeting which included review of the progress so far made towards implementing the recommendations of the 1st Joint meeting of the three regional groups held in Johannesburg, South Africa in March, 2009 and supported by the Ministers on the harmonization of the various NTBs strategies.
- 1.2 He expressed the expectation that the common approach on the NTBs elimination processes will be uniformly applied by all the three regional groups. He also added that the participants converging in Nairobi for the two days were together united through a common vision of promoting a trading environment free from the absolute negative influence of NTBs. He commended the International Trade Centre (ITC) for participating in the meeting and for their presentation which would highlight the multilateral efforts aimed at the eradication of NTBs.
- 1.3 He noted that through the Tripartite framework of collaboration involving the three Regional Economic Communities (RECs), an agreement has been reached in regard to the establishment of a Tripartite Free Trade Area (FTA) by January 2012. A draft Agreement containing fourteen annexes, including one on NTBs as well as a road map for achieving the Tripartite FTA are currently under consideration by the Tripartite Member States. The three Secretariats have elaborated on the annex on NTBs and as a result developed the mechanism for the elimination of NTBs within the Tripartite framework.
- 1.4 He highlighted the expected outcomes of the meeting as follows;
- Harmonization of NTBs elimination programmes in COMESA, EAC and SADC based on the proposals of the technical officials of the three Regional blocs;
  - Programme for harmonization of the Mechanism for the elimination of NTBs within the Tripartite framework;

- Consideration of the online NTBs reporting and monitoring system including a programme for Joint capacity building by the three RECs on the online system; and
  - Networking arrangements between the NTBs focal points of the three RECs for future collaboration on NTBs matters.
- 1.5 He further emphasized importance of collectively endeavoring to comprehensively address other priority issues, such as the constraints that are inherent in the NTBs institutions.
- 1.6 He thanked all the cooperating partners and the donors in particular the DFID funded TradeMark Southern Africa and its predecessor, the Regional Trade Facilitation Project; as well TradeMark East Africa for their support.
- 1.7 Mr Gerald Ajumbo representative of the EAC, the current chair of the Tripartite arrangement made welcome remarks on behalf of all the three RECs.

## **1.8 Attendance**

The meeting was attended by 63 delegates from the following 23 Tripartite countries: Botswana, Burundi, Comoros, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. Representatives from, International Trade Centre (ITC), TradeMark East Africa and TradeMark Southern Africa also attended the meeting.

The list of participants is appended as Annex I.

## **2.0 ELECTION OF BUREAU**

Kenya was elected chair of the meeting. South Africa and the Democratic Republic of Congo were elected deputy chair and *rapporteur* respectively.

## **3.0 ADOPTION OF THE AGENDA AND ORGANISATION OF WORK**

The meeting adopted the following agenda for the meeting.

1. Registration
2. Opening and Welcome
3. Election of Bureau
4. Adoption of Agenda and Organisation of Work

5. Adoption of the report of the 1<sup>st</sup> Joint COMESA-EAC-SADC NTBS Focal Points Meeting held in Johannesburg RSA; 9-10 March 2009
6. Institutional Arrangements for the Implementation of the Reporting, Monitoring and Eliminating Mechanism
  - i. National Monitoring Committees national and regional structures- Presentation by EAC Secretariat
  - ii. Operations of the NMCs experience by EAC Country-Kenya
  - iii. COMESA-EAC & SADC NMCs terms of reference
7. Progress report on the elimination of the online non-tariff barriers by member states
8. Presentation and discussion on the New NTBs Website
9. Consideration of the draft Mechanism for the Elimination of Non-Tariff Barriers within the Tripartite Arrangements of COMESA, EAC and SADC
10. Overview of ITC on-going programme on Non-tariff Measures in Eastern & Southern Africa including an update on WTO negotiations on NTBs'
11. A O B

#### **4.0 ADOPTION OF THE REPORT OF THE 1<sup>ST</sup> JOINT COMESA-EAC-SADC NTBS FOCAL POINTS MEETING HELD IN JOHANNESBURG RSA; 9-10 MARCH 2009**

4.1 The report was adopted without changes.

#### **5.0 INSTITUTIONAL ARRANGEMENTS FOR THE IMPLEMENTATION OF THE REPORTING, MONITORING AND ELIMINATING MECHANISM**

The meeting noted the provisions of the COMESA, EAC and SADC Trade Agreements that provide for elimination of Non-Tariff Barriers, and further prohibit the introduction of new ones.

The meeting recalled the three individual RECs' efforts to reduce and eventually eliminate all barriers to trade, to increase intra-regional, trade, and that over the period of trade liberalization processes, the RECs have developed different mechanisms to identify, report and monitor eliminate of NTBs as well as resolve disputes arising from the application of the mechanisms. Due to dual membership between the RECs by some of the Member States, the three RECs are working towards harmonizing the various strategies.

The meeting also recalled that the Tripartite Summit of COMESA, EAC and SADC held in Kampala, Uganda in October, 2008 directed the three Secretariats to pursue cooperation and harmonization of projects and programmes in key sectoral areas as a basis for the eventual establishment of a Tripartite FTA with the ultimate goal of establishing a Customs Union. Among the priority areas for policy harmonization and coordination, is the identification, removal and monitoring of NTBs. The legal instruments of the three RECs namely; Articles 49 and 50 of the COMESA Treaty, Articles 75 (5) of the East African Community Treaty and Article 6 of the SADC Protocol on Trade, provide for the elimination of Non-Tariff Barriers, and further prohibit the introduction of new ones. In addition, the policy organs of the various RECs have guided the process of NTBs elimination on track through a number of decisions. However, proliferation of NTBs continues unabated in the three RECs.

The meeting further recalled that following the Tripartite Summit decisions, the NTBs Focal Points from the three regional organizations met in March, 2009 in Johannesburg, South Africa and recommended that the Secretariats, should embark on the process of rationalizing and harmonizing the different NTBs reporting, elimination and monitoring procedures in order to develop a unified strategy that could be commonly applied by all the three RECs. The meeting noted that the technical officials of the three RECs have held two working sessions whose agenda was to rationalize and develop harmonized documentation, processes and procedures, specifically on the following:

- i. Institutional Structures, terms of reference (TORs) and responsibilities for the National Enquiry Point (NEPS) / National Focal Points and the National Monitoring Committees (NMCs) (Stakeholders and responsibilities);
- ii. Format for NTBs Elimination Plans (Matrices);
- iii. NTBs reporting and monitoring (The Form for reporting/monitoring of NTBs and the Online Web based system); and
- iv. Elimination and reduction process and procedures

## **5.1 National Monitoring Committees and Regional Structures- Presentation**

5.1.1 In appreciating the presentation from the representative of the EAC Secretariat, detailing the structures and operations of National Monitoring Committee (NMCs) the meeting underscored the importance and relevance of NMCs in advancing the regional NTBs monitoring and elimination agenda. The composition of NMCs includes senior representatives from government and its institutions, private sector, and civil society. The meeting was informed that all

EAC partner states, 5 COMESA and 1 SADC Member States had established NMCs. Kenya, Egypt, Burundi and Tanzania shared their experiences on the establishment and operations of the NTBs structures in their countries particularly the NMCs. The meeting was informed that, in Burundi NMCs have been appointed by the highest office resulting in expeditious and successful resolution of NTBs, and that 18 NTBs were resolved within a period of two weeks. The meeting appreciated the experiences from other Member States and reiterated the recommendations of the 1<sup>st</sup> meeting held in Johannesburg urging Member States to establish NMCs as a matter of urgency.

5.1.2 The meeting took note that the WTO /UNCTAD definitions and categorisation of NTBs are incorporated in the online monitoring mechanism as per the recommendation of the last joint COMESA, EAC, SADC meeting held in Johannesburg in 2009. The meeting also noted the improvements on suggested structure of NMCs, NTBs Complaint reporting form 1, Reporting and Institutional structures for NTBs and the harmonised NTBs elimination Plans/ Matrices template.

5.1.3 The meeting further took note of capacity constraints in Member states and directed the Secretariats of COMESA, EAC and SADC to facilitate resource mobilisation towards that cause.

5.1.4 The meeting adopted the harmonised Tripartite Plan/matrix for elimination of Non-tariff Barriers to Trade as amended. (**Document TRPT/NTB/11/2010/2**).

## **6.0 PROGRESS REPORT ON THE ELIMINATION OF THE ONLINE NON-TARIFF BARRIERS BY MEMBER STATES**

### **6.1 Reports by Secretariats**

6.1.1 The COMESA, EAC and SADC Secretariats presented status reports on the elimination of NTBs in the respective RECs.

#### **COMESA**

6.1.2 A representative of the COMESA Secretariat, Mr Geoffrey Osoro, Senior Trade Policy Expert enumerated progress made through the COMESA Customs and Trade Committee, bilateral consultations and the NTBs structures with regard to resolution of NTBs and indicated that some of the NTBs still reflecting in the system had long been resolved. However, Member states had to submit notifications for circulation in order for the cases to be closed and archived. He reported that COMESA had developed draft regulations for the elimination of NTBs which contained provisions for a penalty system. The draft regulations were under consideration by the Member States. He reported that COMESA, EAC and

SADC were undertaking joint capacity building programmes on the online NTBs Reporting and Monitoring systems.

6.1.3 In the discussion that followed, it was pointed out that upon completion of the NTB impact studies, it is also important to determine the net economic and financial benefits of the removal of NTBs on trade flows, contribution to national economy and business growth.

6.1.4 The meeting urged COMESA Secretariat to facilitate establishment of NMCs in Member States and seek alternative funding for this process.

### **EAC Secretariat**

6.1.5 A representative from the EAC Secretariat, Mr Gerald Ajumbo, Principal Trade Officer in the EAC Secretariat briefed the meeting on the progress with regards to implementation of the EAC mechanism, focussing on the structures at both national and regional level, their functionality and relevance. He pointed out the deficiencies of the system which mainly included the slow pace of resolution of reported NTBs, recurrence of NTBs and difficulties in implementation resulting from inadequate capacity and resources to sustain the mechanism. He alluded to the decisions by the EAC Council to adopt the Online NTBs reporting and monitoring mechanism and indicated that EAC was ready to implement the online mechanism. The meeting took note of this development and that EAC with facilitation from TMEA would embark on a programme to assist EAC partner states implement the mechanism.

6.1.6 TMEA confirmed their preparedness to support the programme.

### **SADC Secretariat**

6.1.7 Ms Lisebo Mositsi, Programme Officer, Regional Trade representing SADC Secretariat gave a detailed account of progress made with regard to implementation of the online system and indicated that SADC was already implementing recommendations from the 1<sup>st</sup> Joint COMESA, EAC, SADC meeting held in Johannesburg. It was also reported that trainings on the online system have been conducted in all SADC FTA and one non FTA member states. The meeting observed that SADC Secretariat was yet to commission an NTB Impact Study for the SADC Region as per the recommendations of the Johannesburg meeting. With regard to NTBs elimination matrices, it was reported that the meeting of the SADC Sub Committee on Trade Facilitation held in April 2010 had considered progress reports on resolution of online reported NTBs and directed Member States to expedite the elimination process.

6.1.8 The meeting urged the SADC Secretariat to commission the SADC NTBs Impact Study as soon as possible.

## **6.2 Reports by Member States**

- 6.2.1 The meeting received progress reports from COMESA, EAC and SADC Member States on the resolution of online reported NTBs and NTBs being resolved through the respective mechanisms and also noted that progress with regard to resolution of online and other non-tariff barriers to trade has been slow.
- 6.2.2 Following progress reports from Member States, the meeting noted that, a number of NTBs on the online system had been resolved. Necessary documentary evidence would be provided to the secretariats for circulation where this had not been done. The meeting further expressed concern over difficulties in verifying some of the complaints which did not have adequate information making it impossible to trace and follow up on the complaints.
- 6.2.3 The meeting noted that landlocked countries more often suffered NTBs relating to transit which raise their cost of doing business and therefore special consideration should be given in this regard.
- 6.2.4 The meeting also noted that at their meeting in April 2010, in Gaborone, the SADC Trade Negotiating Forum took a decision to exclude NTBs reported for which a Member State is both a complainant and an imposing country.
- 6.2.5 The meeting therefore:
- i. Noted progress reports with regard to resolved cases and agreed that these be archived in the online system for reference purposes;
  - ii. Agreed to delete all complaints with no adequate information from the system;
  - iii. Urged Member States to expedite resolution of the remaining NTBs;
  - iv. Urged Member States with resolved issues to provide documentary evidence to enable closure of the complaints; and
  - v. Agreed that Member States submit revised NTBs elimination matrices to the Secretariats by 12<sup>th</sup> of December 2010 (4 weeks from date of meeting).

## **7.0 PRESENTATION AND DISCUSSION ON THE NEW NTBS WEBSITE**

- 7.1 The meeting recalled that the 1<sup>st</sup> Joint COMESA, EAC and SADC NTBs meeting held in Johannesburg made recommendations for the improvements to the NTBs Online Reporting and Monitoring Mechanism. Various policy meetings also made additional recommendations to improve the system in order to accommodate stakeholder requirements. The meeting was informed that all the proposed improvements including definitions and categorisations of NTBs according to WTO and UNCTAD had been incorporated into the new website.

**7.2** The new improved and upgraded website with additional features was presented to the meeting. In the discussion, Member States noted the need for a sustained capacity building programme and agreed that the enhanced web based online system be recommended for use by the three RECs taking cognizance of the need for further enhancement, broadening of functionality and any other necessary future improvements based on emerging demands.

**7.3** Further recommendations were made as follows:

- The website will be hosted in the three RECs Secretariats;
- The meeting urged Member States to publicise and promote usage of the online mechanism and requested the Secretariats to render support in that regard;
- A training programme should be developed by the three RECs in order to enhance the usage of the online system by the Member States;
- That the system should remain open for further improvements to address needs of Member states;
- That special attention be given to ensure security of the system;
- That system to be limited to Tripartite countries only therefore all third party countries to be removed from 'reporting country' window; and
- The meeting further took note of the promotional material developed to create awareness in Member States and recommended further capacity building activities in Member states.

## **8.0 CONSIDERATION OF THE DRAFT MECHANISM FOR THE ELIMINATION OF NON-TARIFF BARRIERS WITHIN THE TRIPARTITE ARRANGEMENTS OF COMESA, EAC AND SADC**

**8.1** The meeting recalled that the 1<sup>st</sup> Joint COMESA, EAC and SADC NTBs Meeting held in Johannesburg agreed to develop strategies for collaboration among the three RECs for the elimination NTBs pursuant to the decisions of the tripartite summit of October, 2008 and in addition, provide guiding timeframes for the harmonization of NTBs elimination programmes. The meeting requested the three Secretariats to draft harmonized NTBs elimination programmes including the operational modalities that will be commonly applied by all the three RECs, thus alleviating the difficulties arising from the implementation of differing strategies, instruments and mechanisms faced by member states belonging to more than one of the three RECs.

**8.2** The meeting considered the draft Mechanism for the Elimination of Non-Tariff Barriers within the COMESA, EAC and SADC FTAs. The draft Mechanism may be used to inform the process of development of the NTBs Annex to the Draft Tripartite FTA Agreement.

**8.3** The meeting recommended that the draft Mechanism be circulated to the Tripartite Member States for consultations and submission of comments by 15<sup>th</sup> December 2010.

**9.0** **OVERVIEW OF ITC ON-GOING PROGRAMME ON NON-TARIFF MEASURES IN EASTERN & SOUTHERN AFRICA INCLUDING AN UPDATE ON WTO NEGOTIATIONS ON NTBS'**

**9.1** Ms Poonam Mohun, Non-tariff Measures (NTM) Trade Analyst at the ITC made a presentation on ITC's programme on NTMs. As NTMs are increasingly becoming major impediments to international trade and market access, the ITC aims to increase transparency and understanding about NTMs in order to facilitate trade in the long run. In this context, ITC is helping developing and least developed (LDCs) countries (such as Member States in COMESA, EAC, SADC) to better understand the obstacles to trade experienced by their business sectors when complying with non-tariff measures.

**9.2** ITC has started implementing company surveys on NTMs in 2010 in a number of countries in the region, including Malawi, Rwanda and Kenya. ITC's survey identifies at, sector and partner country-level the predominant obstacles the business sector faces when complying with NTMs. At the end of the survey, ITC organizes a one day workshop in the country in close collaboration with local partners, to discuss the survey results with key stakeholders, including representatives of various Ministries, the private sector, trade support institutions, government agencies, and academics. The objective is to provide an in-depth analysis of the survey results, which identifies the need for concrete actions in key export and import sectors of the concerned country.

**9.3** ITC in collaboration with other international partners (including UNCTAD and World Bank) has developed a classification system of NTMs, providing clear and concise definitions of NTMs. The official data collection mechanism (work being undertaken in parallel with the surveys) relies on national official documents, often drawn from different national sources, e.g. Ministry of Agriculture, National Standard Bureau etc. The collection and classification of official NTM data from major importing countries (e.g. EU) has also been initiated. At the same time, work is on-going in some countries in the region in this regard (e.g. Malawi & Rwanda). The data will be disseminated through a web application that will provide free access to NTM regulations, by country and product (to be available early 2011).

**9.4** Countries interested in having the surveys (fully funded by DFID) done in their countries, are invited to make a written request to ITC.

**9.5** Ms Mohun made a second presentation on NTBs in the World Trade Organisation (WTO) negotiations. She focused mainly on the WTO non-agricultural market access (NAMA) negotiations where NTBs discussion were held, drawing attention to the Horizontal Mechanism co-sponsored by Africa Group and List Developed Countries (LDCs) in Geneva.

**9.6** The meeting took note of the presentation and the discussion that followed.

**10.0** **ANY OTHER BUSINESS**

No items were introduced under this item.

**11.0** **DATE AND VENUE OF THE NEXT MEETING**

The Tripartite NTBs meeting will be held annually. The next meeting in 2011 will be convened by COMESA.

**COMESA, EAC, SADC**

12<sup>th</sup> November 2010