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by Mark Pearson

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by Mark Pearson[1]

1 Background and Introduction

1. Africa accounts for less that 2.5% of world trade and non-oil exports have been about 1% since 1992 - half of their 1980 value. The level of intra-African trade is also low - 10%, compared to about 40% in North America and about 60% in Western Europe. In addition, Africa has the highest export product concentration of any continent, coupled with a high export market concentration, reflecting continued reliance on primary commodity exports mainly to the European Union, United States of America and China.

2. Africa also ranks low on trade policy and facilitation performance, with seven African countries listed in the bottom ten most restrictive trade regimes. In general, and compared to other countries, African countries have performed poorly in terms of logistics. Markets remain fragmented and borders are difficult to cross, which prevents the emergence of regionally integrated industries and supply chains.

3. In the COMESA-EAC-SADC Tripartite region the costs of transport, in particular road transport (which accounts for about 95% of the volume of cargo transported in the region), is directly related to the time taken for the journey. The typical charge for a stationary truck is between US$200 to US$400 a day. Therefore, if a truck takes 3 days to clear a border (which is not excessive in the COMESA-EAC-SADC region) the transporter will pass on an additional cost of between US$600 to US$1,200 for the cost of the truck sitting idle at the border to the importer. This will, in turn, be passed on to the importer's client and ultimately, to the consumer.

4. Similarly, it costs US$5,000 to US$8,000 to ship a 20ft container from Durban to Lusaka, compared to the costs of US$1,500 to ship the same container from Japan to Durban. This means that a producer that relies on imported components for his

[1] Mark Pearson is Programme Director of TradeMark Southern Africa, a DFID financed programme that supports the COMESA-EAC-SADC Tripartite in the design and implementation of the Tripartite FTA, trade facilitation programmes and improving regional trade infrastructure.

manufacturing business that is based in Lusaka would need to absorb this extra transport cost compared to his competitor near the port. It is often more economical to export a raw material, or a semi-processed raw material (such as copper concentrate as opposed to copper wire or sugar as opposed to confectionary) than to import the materials needed to process the material and to then export the processed good.

5. Until the underlying causes of these high costs of transport are addressed African countries will remain high-cost producers, with no major direct investments taking place in non-mineral sectors, restricted economic growth opportunities and slow progress made in poverty alleviation. In an effort to address these challenges and to improve market access for producers and traders in the Eastern and Southern Africa region the Member States of the three Regional Economic Organisations of the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC) launched the COMESA-EAC-SADC Tripartite Free Trade Area on 12th June 2011. The Tripartite Free Trade Area aims to reduce tariffs imposed on goods originating in the region and traded in the region. However, in additional to tariff barriers, the region's producers and traders also face a number of non-tariff barriers and high cross-border trade and transport costs. An integral part of the Tripartite Free Trade Area is the design and implementation of a programme that is aimed at improving trade and transport measures and reducing non-tariff barriers to trade. The aim of this paper is to describe the main components of the Tripartite trade facilitation and non-tariff barrier programmes and put these programmes into a regional and a multilateral context.

2 Brief Description of the COMESA-EAC-SADC Tripartite

6. The COMESA-EAC-SADC Tripartite was created in 2006 to assist in the process of harmonising programmes and policies within and between the three Regional Economic Communities of COMESA, EAC and SADC and to advance the establishment of the African Economic Community.

7. The Tripartite structures comprise: the Summit of Heads of State and Government, the Council of Ministers (supported by sectoral Ministerial committees) Senior Officials and the Tripartite Task Force. Day-to-day management of Tripartite activities is done by the Tripartite Task Force (TTF) which is made up of the Secretary Generals of COMESA and

EAC and the Executive Secretary of SADC, supported by a sub-committee on trade and a sub-committee on infrastructure.

8. The three main pillars of the Tripartite strategy, as contained in the Vision and Strategy document that was endorsed at the second Tripartite Summit in June 2011 are:

i) Market Integration - Market Integration concerns the removal of tariff and non-tariff barriers and implementation of trade facilitation measures, all of which are essential for the establishment of a well-functioning Tripartite FTA by the 26 member States (which will increase to 27 when South Sudan becomes a member).

ii) Infrastructure Development - Infrastructure Development concentrates on improving the region's infrastructure so as to improve the efficiency of the internal trade and transport network (road, rail, water and air and including ICT and energy).

iii) Industrial Development - The intention is to develop industrial development and supply side programmes that can take advantage of improvements in market integration and infrastructure development.

9. The two main components of the Market Integration pillar are:

i) The design, negotiation and implementation of the Tripartite Free Trade Area or "Grand" FTA. The decision to develop a Tripartite FTA Roadmap and to roll out this Tripartite FTA was endorsed by Heads of State and Government at their first Tripartite Summit held in Kampala in October 2008. Since this decision was taken the Tripartite, led by the Trade Sub-Committee, has prepared a Draft FTA Roadmap and a Draft Agreement establishing the Tripartite FTA and the second Tripartite Summit launched the negotiations for the Tripartite FTA on 12th June 2011.

ii) The removal of non-tariff barriers and improving trade facilitation programmes to reduce the costs of cross-border trade so as to improve the competitiveness of the region.

10. This paper provides a description and discussion of the activities and results of the Tripartite programmes aimed at the removal of non-tariff barriers and improving the effectiveness of trade facilitation measures.

3 Comprehensive Tripartite Trade and Transport Facilitation Programme (CTTTFP)

11. The economic integration agenda being implemented at the level of the three Regional Economic Communities of COMESA, EAC and SADC has prioritised programmes addressing trade and transport facilitation challenges with the aim of lowering costs of doing business and improving the competitiveness of products from the eastern and southern African region. Such programmes encompass regulatory and policy reforms encouraging the adoption of international instruments and best practices; national and regional capacity building programmes to facilitate cross-border movements; and enhancement of infrastructure facilities at border posts to improve efficiency of cross-border movements.

12. While COMESA, EAC and SADC have had some successes in facilitating trade through such programmes, there have been challenges of limited implementation at national level and the requirements to implement different programmes and different instruments in countries that belong to more than one Regional Economic Community. There is also a multiplicity of International Cooperating Partners active in the field of transport and trade facilitation and there is a need for the Tripartite Task Force to provide guidance and leadership so as to ensure harmonisation of the programmes of Regional Economic Communities and International Cooperation Partners so that they complement each other rather than compete against each other.

13. To address these challenges the COMESA-EAC-SADC Tripartite has launched the Comprehensive Trade and Transport Facilitation Programme (CTTTFP) which is a series of initiatives from different Regional Economic Communities that have been brought together into one large integrated trade facilitation programme that includes:

i) The NTB Monitoring, Reporting and Removal System

ii) Border and Customs procedures (one-stop border posts; Integrated Border Management, regional customs bond, transit management);

iii) Immigration procedures;

iv) Transport procedures (regional 3rd party insurance, vehicle standards and regulation, self-regulation of transporters, overload control, harmonised road user charges, regional corridor management systems; and

v) The establishment of the Joint Competition Authority linked to air transport liberalisation.

14. The objectives to be addressed through the CTTTFP are to:

i) Increase trade and promote economic growth in Eastern and Southern Africa by supporting improvements in policies and in the regional regulatory and economic environment;

ii) Reduce high costs of trading in the region and help the national administrations, working through the RECs, to address barriers to trade and growth;

iii) Reduce transit times and transaction costs along the principal corridors in eastern and Southern Africa through better infrastructure, faster border crossings and harmonised trade and transit regulations; and

iv) Improve aid effectiveness by coordinating donor funding for priority Aid-for-Trade programmes.

3.1 NTB Monitoring, Reporting and Removal System (NTB Mechanism)

15. It has been empirically demonstrated that the removal of tariff and non-tariff barriers between countries can lead to trade expansion. Intra-Tripartite export trade grew by over 250 per cent between 2000 and 2008, arguably, as a result of liberalisation of trade within each Regional Economic Community. The removal of existing non-tariff barriers (NTBs) will lead to increased levels of regional trade and, as such, identification, removal and monitoring of NTBs is a priority area for policy harmonisation and coordination under the COMESA-EAC-SADC Tripartite framework.

16. Legal instruments of the three Regional Economic Communities 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. Article 10(1) of the Tripartite Agreement

calls on Tripartite member States to eliminate all existing NTBs to trade with other member States and not impose any new ones. Nevertheless, and although the COMESA, EAC and SADC Free Trade Areas have removed duties on substantially all goods traded within their territories, trade remains restricted by the existence of non-tariff barriers.

17. There are obvious challenges faced in removing NTBs within the regional trading arrangements that relate to gaps in the regional legal framework and in regional policy implementation at the national level, as member States weigh the costs of implementation against immediate gains and delay putting in place legislation necessary to facilitate implementation of regional commitments to address NTBs.

18. The main objective of the NTB monitoring, reporting and removal programme is to remove all NTBs, or at least the main NTBs[2], that are restricting trade, these being describes as:

i) Customs documentation and administrative procedures – these include non-standardised systems for imports declaration and payment of applicable duty rates; non-acceptance of certificates and trade documentation; incorrect tariff classification; limited and uncoordinated customs working hours; different interpretation of the Rules of Origin and non-acceptance of certificates of origin; application of discriminatory taxes and other charges on imports originating from member States; and cumbersome procedures for verifying containerised imports.

ii) Immigration procedures – including non-standardised visa fees; and cumbersome and duplicated immigration procedures.

iii) Quality inspection procedures – delays in inspection of commercial vehicles; cumbersome and costly quality inspection procedures; unnecessary quality inspections (including of products certified by internationally accredited laboratories); non-standardised quality inspection and testing procedures; and varying procedures for issuing certification marks.

[2] Most NTBs faced in the Tripartite region fall within the import measures sub-categories A,E,F,I,L,M and O of the UNCTAD/World Bank categorisation

iv) Transiting procedures – Non-harmonised transport policies, laws, regulations and standards including 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.

v) Road blocks – stopping of commercial vehicles at various inter-country road blocks even where there is no proof that goods being transported are of a suspicious nature, such as smuggled goods or drugs.

19. COMESA, EAC and SADC have, in the past, developed different mechanisms to identify report and monitor elimination of NTBs and resolve disputes. These mechanisms have, to a great extent, identified all the common NTBs encountered in the region and the frequency at which they occur and attempted to facilitate resolution of the same through resolution at the Council of Ministers level and other consultative processes. The existing mechanisms that are in place were the starting points for the design of the on-line (web-based at (www.tradebarriers.org) Tripartite NTB Monitoring, Removal and Reporting Mechanism (NTB Mechanism) and the process for elimination is also based on existing mechanisms.

20. The NTB Mechanism establishes a common framework for the systematic elimination of NTBs within the Tripartite FTA arrangements. It is a repository of all reported NTBs (in English, French and Portuguese), allowing information disseminating to all stakeholders (researchers, traders, exporters, importers, policy makers/administrators etc.) and more importantly, an interactive process for monitoring resolution of barriers by Tripartite member States. It enhances transparency and easy follow-up of reported and identified NTBs. The mechanism is accessible to economic operators, government functionaries, secretariat experts, academic researchers and other interested parties and is administered by TradeMark Southern Africa, COMESA, and SADC NTB Units and National NTB focal points that have been allocated access passwords providing different levels of access into the system according to their responsibilities.

21. At national level, National Monitoring Committees (NMCs) have been established with public and private sector participation that are tasked with defining the process of elimination; defining mandates and responsibilities at the national level; outlining the time

periods for the various stages of elimination and removal of NTBs; and resolving reported NTBs.

Box 1 - The Tripartite NTB Mechanism in Action

The following are some of the NTBs addressed by the NTB system and which are reported on the NTB website at www.tradebarriers.org:

- In December 2010 a Zambia transporter carrying goods worth US$570 000 was subjected to a four day delay at a faulty electronic weigh bridge at the Victoria Falls weighbridge on the Zimbabwe side as well as receiving a heavy penalty for being overloaded. Interventions by the NTB national focal points from Zimbabwe and Zambia facilitated recalibration of the weighbridge in March 2011 by the relevant Ministry (NMC member) and since then no complaints have been received.
- Exports of plastics from Kenya to Tanzania have been stopped because Tanzania imposes a 25% duty on these goods as Tanzania does not accept that these imports originate in Kenya. At their NTB online system sensitisation workshop held on 30th August 2011 the private sector reported that this as a NTB and which has cost Kenya an estimated Ksh60m in annual duty payments since 2009. The report, logged onto the online system on 30th August, triggered action from NTB national focal points in that they are organising a verification mission.
- The Zambezi River Authority and the Ministry of Transport (Zimbabwe) imposed a 3 ton gross vehicle mass limit on vehicles crossing the Kariba dam wall. This forced cross-border buses, and so small-scale cross-border traders between Zambia and Zimbabwe, to use the more expensive Chirundu border crossing. NMC consultations facilitated a meeting between the Zambezi River Authority and other concerned parties which revealed that the engineer's specifications for the dam wall accommodated an 11 ton gross vehicle mass. Based on these findings the maxim gross vehicle mass was adjusted and buses of up to 11 tons are now allowed to cross the dam wall, thus resolving the NTB.
- In February 2010 transporters complained that Kenya weighbridges were not accurately calibrated and this resulted in transporters being subject to demands for informal payments before they could proceed on their journeys. This was reported as a NTB and at the NMC meeting held in Nairobi on 29th August 2011 Kenya reported that the weighbridges had been automated so that axle loads are now recorded online.

22. The mechanism takes into account the regional dynamics in play with regards to various instruments put in place by COMESA, EAC and SADC to address the NTBs in the region. A structured consultative process involving, when necessary, country missions by the Tripartite Secretariat (NTBs Unit) and or appointed Facilitator to resolve outstanding NTBs in a timely manner are an integral part of the mechanism.

3.2 Border and Customs Procedures

3.2.1 One-Stop Border Posts

23. A number of Tripartite countries have fully embraced the One Stop Border Post (OSBP) concept and aim to convert most, if not all, of their border posts to OSBPs[3].

24. A OSBP implies that goods and passenger vehicles only stop once at the border and exit from one country and enter another country at the same time. This results in a reduction in time and costs involved in border crossings.

25. The rationale for the establishment of OSBPs is clear in terms of both enforcement and economic benefits. The main benefits of a OSBP are derived from the fact that border authorities from two countries perform joint controls with resulting benefits such as:

i) Better resource utilisation through a reduction in the duplication caused by dealing with two identical sets of agencies by having juxtaposed, or straddling, or common facilities for authorities on either side, with each facility handling traffic going in only one direction on either side of the border;

ii) Improved enforcement efficiencies through co-operation; and

iii) Sharing of intelligence, improved communication and sharing of ideas, information and experiences that can result in more effectively combatting fraud.

26. There are four core elements involved in implementation of an OSBP:

i) Legal Framework (done nationally although EAC is working on a regional framework);

ii) Design of procedures and traffic flows for the whole common control zone;

iii) Information and communication technologies (ICT); and

iv) Design of physical facilities as a common integrated facility by the two countries concerned.

[3] Given that conversion of a border post into a OSBP takes significant amounts of finance to make infrastructure adjustments, requires changes in border procedures (and so change management strategies) and assumes that the appropriate legislation and ICT infrastructure is in place, the implementation of a OSBP is not the optimal economic or financial solution at all border posts, especially for borders with low traffic volumes.

27. It is essential that the implementation of a one stop border post involves all four of the above key elements and the four elements are integrated. The legal framework provides border officers with the jurisdiction to apply their national laws within the territory of the adjoining state. The legal framework also establishes the agreement between countries on the operational practices of the OSBP. ICT is essential to the operation of an OSBP as all agencies need consistent connections to other agencies in the Common Control Zone as well as to their national headquarters. Physical facilities need to be designed according to the planned procedures to allow for a logical and smooth movement of vehicles, persons and documents at the border post.

28. The benefits for border agencies and traders in establishing one stop border posts can be further enhanced by combining such arrangements with other international coordinated border management arrangements. These include the exchange of data and intelligence and the mutual recognition of Authorised Economic Operators (AEOs).

Box 2 – Chirundu One Stop Border Post

Chirundu, the main border between Zambia and Zimbabwe, was officially opened as a one stop border post in December 2009. Some of the major success factors of the Chirundu OSBP include:

- Very strong political support from the two governments;
- Private sector support (importers, agents and transporters);
- The establishment of four result oriented Sub Committees (procedures sub-committee, legal sub-committee, ICT sub-committee and facilities sub-committee);
- An approved programme of work by the joint steering committee;
- The completion and signing of the Bilateral Agreement and the Legal Framework;
- The adoption of clear and agreed Procedures; and
- A successfully implemented change management programme.

The results achieved to-date have been:

- The granting of extra territorial authority to government agencies which is exercised in both territories within the Common Control Zone
- Infrastructure upgrading and modifications to make the OSBP operational;
- Negotiated OSBP procedures acceptable to both government agencies and the private sector;
- Both passengers and commercial traffic stops only once to complete border formalities for both countries in one facility;
- Waiting times for commercial traffic have been reduced from 3-5 days to same-day clearances

and often to a few hours; and

- Clearance times for passengers on buses (76 seater) have been reduced from about six hours to less than two hours

Owing to the fact that clearance times are now faster more truck drivers are using Chirundu as their preferred point of entry into, and point of exit out of, Zambia. Despite this increase in traffic volumes the border agencies are still able to clear all trucks arriving at the border in the same day.

29. The Tripartite Task Force, the agencies it works with and the Tripartite countries have gained a large amount of experience[4] when it comes to design and implementation of OSBPs. Lessons learned at a regional level include:

i) It would be a much more simple exercise to operate a One-Stop Border Post if it was designed as such from the on-set instead of having to modify physical infrastructure after it has been built and to adjust procedures to take account of the limitations of the physical infrastructure. This has implications for the coordination of the process of designing an OSBP. In Chirundu sub-committees dealing with ICT, Facilities, Procedures and Legal were established but these should be established even before the design work on a OSBP starts. In Chirundu a coordination committee with members from both sides of the border continue to meet regularly to administer the OSBP.

ii) The work of the sub-committees needs to be guided by a work programme with a realistic budget from the set-up of the sub-committees. This budget can be financed by the countries concerned, the Regional Organisations or the donors or a combination of these but it is essential that the budget is available to the sub-committees in a timely and non-bureaucratic manner to allow them to meet at regular intervals.

iii) Strong political drivers at the highest levels are essential and there must be an agreed Memorandum of Understanding or agreement of some sort on the proposed OSBP. This must be accompanied by a legal framework allowing extraterritorial authority for purposes of implementing an OSBP system.

[4] The EAC has recently produced the OSBP Source Book, with support from JICA, which addresses the concept and critical issues of OSBPs and uses case studies to illustrate these issues.

iv) Consultative meetings at national level are required before convening a stakeholder meeting involving both countries. The national steering committee meetings enabled the public sector and the private sector in each country to deal with their internal issues and bridge their gap before engaging each other at a bilateral level.

v) The process of introducing a one stop border post should also be accompanied by a change management process and failure to adequately address this issue with the seriousness it deserves could lead to poor or non-implementation of the border as an one stop border post.

vi) The Steering Committee responsible for the implementation of the one stop border post needs to to sign off on the procedures, preferably by putting these in the Memorandum of Understanding that has allowed the establishment of the OSBP, and to comply with these procedures. Failure to comply with agreed procedures will delay implementation and necessitate multiple design and works contracts to be awarded.

vii) It is important to involve the private sector in the design of the OSBP, and in the sub-committees, from the very start of the process.

viii) The importance of having effective and efficient ICT in the implementation of a OSBP (and in all trade and transport facilitation measures) cannot be over-emphasised. ICT is important for a multitude of modern customs operations including customs automation; cargo tracking; pre-arrival clearance; risk analysis; the electronic submission of documents; information management; terminal operations; and electronic single windows. The importance of ICT in the functions of other border agencies, such as immigration, is equally important. Not only do efficient ICT systems enable faster processing times, increased revenue collection, reduced red tape and increased capacity and efficiency but it also allows new and innovative systems to be introduced that are not possible without efficient ICT systems.

30. There are a number of challenges to be overcome when establishing a one-stop border post including managing change at the border itself and in managing expectations of all stakeholders. Implementing a OSBP involves a radical change in the operations of customs and immigration especially. Customs and Immigration officers need to physically relocate to the other side of the border and so work in a different country. The officials

usually see no reason to make these changes as clearing goods and passengers more quickly have no direct benefits for them.

Box 3 – Kasumbalesa Border Post

Kasumbalesa border post is a very busy border post between Zambia and DR Congo. The Zambians concessioned the infrastructure for the border post to an Israeli-controlled company (ZipBCC) in 2010 and in 2011 the border post physically moved to operate from the new concessioned site. The new infrastructure includes a new building from which the Zambian border agencies operate and a new parking hard-stand where trucks and other vehicles park while the process of clearing the border is transacted. The new buildings have significantly improved the working conditions for border agency officials.

In order for the concessionaire to recoup his capital outlay and to pay for maintenance he charges each vehicle a fee to enter and exit the border facility and all vehicles crossing the border are obliged to pay this fee. The charge for trucks is US$19 per axle (meaning that a 7-axle interlink will pay US$133 on entering DR Congo and on exiting DR Congo at Kasumbalesa).

The same concessionaire has recently (2011) been awarded the concession for the infra-structure on the DR Congo side of the Kasumbalesa border post and construction of the new buildings is nearing completion.

If both border posts had been awarded to the concessionaire at the same time it may have been practical to have established a one-stop border post at Kasumbalesa. But this has not happened and the concessionaire will administer the two borders separately and charge for vehicles crossing the border twice.

31. One of the major challenges faced in implementing one stop border posts, at least in the southern African sub-region of the Tripartite, is the propensity of Tripartite countries to concession border infrastructure as private concessions on a build-operate-transfer basis over a 20-25 year period. Concessioning of infrastructure at border posts is taking place in Zambia (with Kasumbalesa and Nakonde already concessioned and plans for the concessioning of 4 more border posts being finalised), Zimbabwe (with the infrastructure on the Zimbabwean side of Beitbridge concessioned) and Tanzania (with plans for the concessioning of Tunduma at an advanced stage). This has the effect of allowing infrastructure to be improved at the border post and this is, in itself, a major advantage. However, to-date, the design and construction of this concessioned infrastructure has not been done as part of a plan to implement a one-stop border post. The process that has been followed is a national one so it is not possible to arrive at a one-stop border post solution following this methodology as at least two of the four core elements involved in

implementation of an OSBP (these being the design of procedures and traffic flows for the whole common control zone which straddles two countries; and the design of physical facilities as a common integrated facility by the two countries concerned) are not being addressed.

32. Therefore, despite countries in the region committing themselves to a policy of implementing one-stop border posts to reduce the costs of cross-border transactions, this policy is often not being implemented in practice. The concessioning of infrastructure at borders has no doubt improved the work environment for border officials and users alike but these improvements have not necessarily improved the efficiencies of the borders in terms of crossing times. These infrastructure improvements will also not automatically result in a reduction of border transaction costs[5]. The implications are that although infrastructure has been improved, because these improvements have not been done in conjunction with improvements in border processes this improved infrastructure will be of limited value to the countries concerned in terms of improving the business environment and reducing the costs of doing business. Concessioning borders in the way it is being done at present in the Tripartite region will have limited trade facilitation benefits and an alternative model should be explored.

3.2.2 Integrated Border Management (IBM) Systems.

33. In the Tripartite region most customs agencies are part of Revenue Authorities, which reflects the fact that trade taxes collected by customs agencies are an important source of revenue for the national governments and also for the region. Although all governments in the region have reduced the levels of duties over the last 10 to 15 years, both as part of a regional effort to get national trade taxes in line with proposed common external tariffs[6] of COMESA and EAC (SADC has not set a common external tariff) and as a unilateral effort, there are a number of governments in the Tripartite region that still derive around one

[5] The concessionaire at Kasumbalesa charges US$133 for a 7-axle truck to enter the border facility. Effectively the same concessionaire will operate on the DR Congo side of Kasumbalesa and at Tunduma and Nakonde. One assumes that he will levy similar fees at all these borders, meaning that a trucker will pay US$1,064 in border fees alone on a return journey from Dar es Salaam to Lubumbashi. There is an argument that what is paid in border fees will be saved in time taken waiting at borders, which can be as high as US$200 to US$400 per day. However, as has been shown, improving infrastructure without addressing border processes will not necessarily allow any savings in time to be made.

[6] The COMESA and EAC common external tariffs are similar at 0% for raw materials and capital goods, 10% for intermediate goods and 25% for finished goods.

quarter of their total tax revenue from trade taxes. It is, therefore, clear that trade tax revenue is an important source of revenue to the region so Tripartite customs systems need to be efficient in ensuring maximum compliance with the minimum amount of trade disruption.

34. All Tripartite Member States at least endorse the aims and objectives of the World Customs Organisation's Revised Kyoto Convention of 1999, which aims to provide customs administrations with a modern set of uniform principles for simple, effective and predictable customs procedures that also achieve effective customs control[7]. The Revised Kyoto Convention, coupled with the Istanbul Convention (governing temporary admission of goods), the Arusha Declaration (a non-binding instrument which provides basic principles to promote integrity and combat corruption within customs administrations), the Nairobi and Johannesburg Conventions (enabling customs administrations to afford each other mutual assistance, on a reciprocal basis, with a view to preventing, investigating, and repressing customs offences) and the SAFE Framework of Standards (a non-binding instrument that contains supply chain security and facilitation standards for goods being traded internationally[8], address the requirements of both the trade and customs administrations.

35. The texts of these Conventions and Frameworks incorporate modern methodologies to provide a balance between the customs functions of control and revenue collection with that of trade facilitation and ensure that customs are able to carry out their responsibilities more efficiently and effectively, and are able to facilitate the international movement of goods while ensuring full compliance with national laws.

36. Tripartite countries that have signed the Revised Kyoto Convention are Botswana, Lesotho, Mauritius, Namibia, South Africa, Uganda, Zambia and Zimbabwe. It is not clear why other countries in the Tripartite have not acceded to the Convention as, by and large, all of these countries subscribe to the principles and guidelines of the World Customs

[7] The revision of the Kyoto Convention was considered necessary as a result of the radical changes in trade, transport and administrative techniques since the Convention had originally been adopted in 1974. An additional reason was that the Convention had not significantly resulted in the harmonisation and simplification of customs procedures world-wide.

[8] The SAFE framework enables integrated supply chain management for all modes of transport, strengthens networking arrangements between customs administrations to improve their capability to detect high-risk consignments, promotes cooperation between customs and the business community through the Authorised Economic Operator (AEO) concept, and champions the seamless movement of goods through secure international trade supply chains.

Organisation conventions and other instruments. There is, however, an issue as to how well even the countries that have acceded to the Conventions actually implement the provisions of the Conventions or follow the WCO guidelines. In assessing the level of conformity in implementing the Revised Kyoto Convention, Justin Zake[9] states that "*From the available information and experience of FAD* [Fiscal Affairs Department of the IMF] *field missions to some Anglophone African countries, accession by some of the countries appears to be more of a formality than intent to implement the convention's provisions*"

37. In order to assist countries to improve the overall performance of customs administrations and meet the growing expectations of society, business and governments the WCO has introduced the Customs Reform and Modernisation (CRM) Programme. The CRM Programme is a collection of management tools available to customs administrations to assist them to better understand the requirements of their changing external and internal environment, and to develop self-assessment abilities and skills to implement a comprehensive and sustainable organisational improvement and change programme. In the Tripartite region the CRM Programme has been implemented in Uganda and is currently under implementation in Mauritius, Namibia, South Africa and in SADC on a regional basis.

Box 4 – Integrated Border Management (IBM)

State interests at the border include protection of national security, enforcement of immigration requirements, enforcement of import and export restrictions and prohibitions, collection of revenue, recording cross-border statistics, and enforcement of International Health Regulations.

The responsibility for protecting these interests is vested in several state agencies. They include Police, Security, Customs, Immigration, those responsible for Sanitary and Phyto-sanitary regulations, and the bureau for standards.

Generally, each border management agency carries out its own border management policies and strategies and each agency's border office minds its own processes although initiatives such as single windows and one-stop border posts have resulted in increased cooperation among border agencies.

Some countries, like those of the European Union and of the Western Balkans, have developed a holistic and coordinated approach to border management. This approach, called Integrated Border Management (IBM), focuses on coordination and cooperation between all actors involved in border management, and in improving a number of key management areas (KMAs) which are critical in border management. By improving communication, information exchange and mutual assistance of and between the different border agencies, the state border can be managed more successfully.

[9] Justin Zake - Customs Administration Reform and Modernization in Anglophone Africa – Early 1990s to Mid-2010.

There are three pillars in the IBM approach:

i) Intra-Agency co-operation;

ii) Inter-Agency co-operation; and

iii) International Cooperation

For each of the three pillars there are 6 Key Management Areas, these being:

i) Legal and Regulatory Framework;

ii) Institutional Framework;

iii) Procedures for Co-operation

iv) Human Resources and Training

v) Communication and Information Exchange; and

vi) Infrastructure and Equipment

Typically, the border management agencies in the Tripartite region that need to co-operation within an IBM framework include: Immigration; Customs; Bureau of Standards; Environment Management Agency; Health, Food Safety and International Health Regulations Enforcement Agencies; Police, border control and security; Road Transport and Safety Agency (RTSA); Vehicle Examination Department (VED); and Drug Enforcement Commission (DEC).

38. In addition to the efforts of the WCO to assist its Members to reform and modernise customs administrations, the Tripartite Task Force has embarked on an Integrated Border Management (IBM) Programme to assist countries to improve the efficiency of movement of goods across borders. The IBM concept, which, in the Tripartite region, is supported by a number of donor-funded programmes is a multi-agency approach that encompasses the entire transport and supply chain. The ultimate aim is to do as much of the clearing process "behind the border" as possible and for all border agencies to work together to minimise the disruption to movement of goods and people.

39. The Treaties and Protocols of COMESA, EAC and SADC have a number of provisions that support trade facilitation and cooperation between government agencies but these do not provide the strategic vision that is now required to implement IBM. Therefore, the Tripartite Task Force has formed a technical committee to develop a clearly articulated Integrated Border Management policy and implementation strategy. In developing this IBM policy and implementation strategy there is a recognised need to clarify roles and establish mechanisms for coordinating the implementation at the regional and national levels which may require the COMESA, EAC and SADC Secretariats to make adjustments to facilitate a collaborative approach in the implementation of the programme and for member States to

designate lead (or coordinating) agencies to interface with the Tripartite Task Force in the development and implementation of the programme.

Box 5 - Integrated Border Management in the Tripartite Region

Kenya is in the process of introducing the National Single Window System whereby registered clearing agents, on behalf of their clients, complete all customs documentation and scan all supporting documentation either on entry at Mombasa port or, if possible, before the goods arrive. The authorised agent sends these electronically to a central processing location in Nairobi. At the central processing location well-trained officers assess the declarations and determine what taxes and duties need to be paid. They then deduct these taxes and duties from the bank account of the authorising agent and concurrently notify the port authorities, transporters and local customs offices of the release of the goods.

South Africa has also recently announced a similar system.

The benefits of this system are:

- The opportunity for fraud and corruption is minimised as there is no contact between the importer and the tax assessor;
- Staffing at the point of entry is minimised so the amount of infrastructure (housing and office accommodation) that is required at the border is reduced; and
- Fewer but better trained staff is required to assess imports.

With the improved communication systems that are being installed in the Tripartite region, especially the rapid expansion of fibre optic cable links, these improved border management systems will no doubt be introduced throughout the region and so improve trade facilitation in the Tripartite region and reduce cross-border transaction costs.

The processes to be followed at the regional level in the development and roll-out of IBM strategies would be broadly as follows:

i) Prepare a policy statement on IBM for consideration by the Tripartite Sectoral Committee of Ministers of Trade. The policy statement will briefly describe the IBM concept and its importance in the implementation of regional integration agenda and total cross-border efficiency.

ii) Develop IBM guidelines to be used by member States. The international best practice on this are considered to be the EU Guidelines and SADC guidelines which can be used to promote the concept in the Tripartite region.

iii) Promote implementation by member States by holding sensitising workshops for relevant stakeholders on the IBM concept, facilitating the establishment of project implementation structures and undertaking the initial scoping/gap analyses that would facilitate the development of national IBM programmes.

iv) Assisting member States with securing technical assistance to implement IBM and for capacity building at national level and coordinating this capacity building at the Tripartite level.

v) Monitoring and issuing periodic reports on progress in the implementation of IBM in the region

40. The processes to be followed at the national level in the development and roll-out of IBM strategies would be broadly as follows:

i) Adoption of a policy statement by the government that will briefly describe the concept of IBM and its importance in enhancing border efficiency, cross-border facilitation, and national efforts to implement regional and international instruments.

ii) Carrying out a situation or gap analysis to determine the extent of IBM in the country.

iii) Appointment of a National IBM coordinator or coordinating Ministry or Agency with a small secretariat.

iv) Establishment of a National IBM Steering Committee, a National Strategy Implementation Committee and specialised working groups as necessary.

v) Development of a national IBM strategy to implement the recommendations of the situation analysis.

vi) Implementation of the strategy by all border agencies.

41. Although the IBM system is useful and valid in-country, the challenge for the region is to roll out such a system regionally. If the Tripartite Free Trade Area is to deliver maximum benefits in terms of realising sustained levels of high economic growth the delivery of efficient business and administrative processes becomes more critical in the pursuit of economic success. Efficient and transparent documentation, statutory approvals and trade facilitation are vital to international trade and can be improved with a higher degree of automation. There are a number of examples that the Tripartite region can use as examples of implementation of national (or a single customs territory such as the European Union)

IBM systems and single windows[10] but there are few, if any multi-national single window systems in operation. The challenge for the Tripartite is to develop the multi-national single window concept (which is referred to in Chirundu as the Community Platform) and to then get consensus from the many border agencies in the many countries the multi-national single window would need to operate in and to then roll out this system[11].

Box 6 – Development of a National IBM system

TMSA, with the Tripartite Task Force, has been working with the Government of Zimbabwe to design and implement an Improved Border Management programme. This has involved:

i) An assessment of the status of compliance of Zimbabwe's legislative and operational systems to the principles of IBM;

ii) Ascertaining and documenting areas that need to be addressed for Zimbabwe's legislative and operational system to conform to the principles of IBM;

iii) Proposing a broad strategy for the adoption of IBM by Zimbabwe; and

iv) Ascertaining how feasible it is to streamline the number and roles of border agencies at the border posts including simplification of systems, processes and procedures.

3.2.3 Regional Customs Bond

42. A regional customs bond guarantee would eliminate the avoidable administrative and financial costs that are associated with the current practice of nationally executed customs bond guarantees for transit traffic. At present transporters in the Tripartite region transiting through a country to get to another country need to take out a customs bond at least equal to the duty which would be payable on their cargo. When they prove that the cargo has actually left that customs territory, the bond is released. However, the process of releasing bonds takes time so large amounts of money are tied up in the system of national bonds. This, plus the fact that it costs money and takes time to issue a bond, means that the cost of transport is higher than it need be if a system were found that would replace the national bond system.

[10] The Single Window concept enables important stakeholders within the supply chain to access comprehensive and detailed information that will reduce the time needed to facilitate the trade process. With less time spent on processing a single transaction, more transactions can be managed with the same amount of time.

[11] In East Africa, because Kenya uses SIMBA and the 4 other EAC members use ASYCUDA as their customs management systems, there is an interface between the customs management systems called the Revenue Authorities Digital Data Exchange (RADDEx) but this is not a Single Window.

43. Both SADC and COMESA have designed and piloted regional customs bond guarantee systems that allow transporters to take out a single bond covering the entire trip. There are both slight and fundamental differences between the two systems and the challenge is to implement a harmonised system so that the end result is a single regional customs bond system. If one country along a transport route operates a different bond guarantee system to that operated by its neighbours then the benefits of the regional system are greatly reduced.

44. There are, however, a number of challenges in implementing a regional customs bond, one of which is the local employment created by using national bonds. At the border between Zambia and Tanzania (for example) there are over 250 registered clearing agents, most of them being "brief-case" companies with no fixed company address. These agents make a living by assisting mainly transporters of goods in transit from the Tanzanian port of Dar es Salaam to DR Congo to obtain a customs bond through Zambia. A regional customs bond guarantee system would significantly reduce the demand for the services these national agents provide but, at the same time, would be beneficial for the regional economy by assisting to reduce costs of transport and transit.

45. The Tripartite Task Force has launched a study that is assessing the various customs bond schemes being used in the region with the objective of making a recommendation on a solution to the use of the most appropriate customs bond to use as a region and to discuss this recommendation in a workshop in October 2011.

3.2.4 Regional Transit Management System.

46. Within the Tripartite region, and because many of the Tripartite countries are land-locked, management of goods in transit is an important trade facilitation instrument which, if not implemented appropriately, results in excessive delays for transporters and losses to governments as goods in transit get diverted to customers that are in countries which ostensibly the goods are supposed to be transiting through.

47. The Regional Economic Organisations each have their own transit management regimes and they all work in a similar fashion in that all transit goods and means of transport are presented to the Customs office of commencement together with duly completed

transit control documents supported by appropriate bonds as necessary for examination and affixing of Customs seals. The office of commencement decides whether means of transport to be used provides enough safeguards to ensure Customs security and whether the shipment may be made under cover of the relevant transit control documents. The means of transport, together with the respective transit control documents are then usually inspected en-route and customs officers satisfy themselves that the seals are intact (and check the seals affixed by the customs authorities of other States) and may also affix additional seals of their own. On arrival at the customs office of destination, the transit control document should be discharged, assuming the seals are intact, and this will allow the customs bond to be released.

48. Computerised customs management systems have transit modules in-built into the system. For example, ASYCUDA ++ has a module for the management of transit procedures (the MODTRS module) that handles three transit documents, namely the T1, the TIR carnet and the First Identification Procedure (FIP). It is usable for all types of transit as defined in the Kyoto Convention covering the movements from the border office of entry to an inland office (import transit); a border office of entry to a border office of exit (through transit); an inland office to a border office of exit (export transit); and an inland office to another inland office (internal transit).

49. The MODTRS system (and other transit management modules) is technically designed to cover the international transit operations (data exchange of messages between countries) but the system itself, including the legal and regulatory requirements, needs still to be designed and the necessary communications hardware needs to be in place before a regional system can be implemented. This is something that the Tripartite is actively working on.

3.3 Immigration Procedures

50. To-date, the situation as regards computerised immigration systems in the Tripartite region is very varied by country. There are some countries that have a partially computerised system (meaning that the Immigration Headquarters may have a computerised system but this may not cover all immigration activities and may not cover land borders); some countries have more than one system in operation, with these two systems not

communicating with each other[12]; and some countries have sophisticated and integrated computerised systems.

51. The Tripartite is currently working with one country on a computerised immigration system that could be used as a standard for other countries that will need to up-grade and modernise their systems.

52. In addition, the community platforms, or single window systems, being designed will assist to improve the performance of immigration systems and improve trade facilitation.

3.4 Transport Procedures

53. It is often though that the Tripartite region has a liberal transport regime when, in actual fact, there are very few rules and regulations that specifically address the transport sector and in particular the road transport sector. The result of this lack of specific transport rules and regulations is that other government agencies and bodies develop their own rules and regulations that affect the transport sector. An example of this is in East Africa where Revenue Authorities register and license trucks in terms of whether they can carry cross-border freight or whether they can only operate nationally. This legislation is in place for customs purposes but affects the operational efficiency and costs of the region's transport fleet.

54. The Tripartite is addressing market liberalisation of the transport sector by carrying out work on carriage of international road freight; introduction of international regulatory mechanisms; and regional harmonisation of road traffic legislation. The process being followed to achieve a market liberalisation in the transport sector draws on work being done in other areas of the Comprehensive Trade and Transport Facilitation Programme and is being undertaken in five phases:

i) Phase 1: An assessment of current regime of bilateral transport agreements (already completed).

[12] For example, some countries operate a system at their airports (PISCES) which is designed primarily to monitor travellers who may be considered to be a security risk. This system could be considered to be part of the global "war on terror" and does not link to the HQ database that will contain information on what type of authority the traveller has to enter the country, such as whether s/he is a resident, a tourist, a temporary resident on a work permit, etc.

ii) Phase 2: Development of Harmonisation Proposals: National and regional legal and institutional arrangements necessary for harmonisation will be defined and described. The investigation shall include an assessment of the preconditions for granting of a permit/licence in the territory of one State to the territory of the other State and in transit across the territory en route to another country. The proposals to be made should also clarify, as relevant, any institutional management arrangements necessary, especially at regional level.

iii) Phase 3: Development of Draft Competition Regulations: Competition regulations for cross-border road transport that will ensure equitable cross-border road transport opportunities while boosting regional development and reducing the cost of road transport services across the region will be developed. The regulations shall include but not be limited to the following:

a. harmonised transit charges systems;

b. harmonised arrangements for transportation by road of dangerous and abnormal goods;

c. harmonised vehicle operation reforms covering regional vehicle standards, roadworthiness, mass and loading laws, oversize and over-mass vehicles and road rules;

d. a regional heavy vehicle registration scheme;

e. a regional driver licensing scheme; and

f. a consistent and equitable approach to compliance and enforcement with road transport laws.

iv) Phase 4: Revision and updating of the SADC Draft Multilateral Agreement developed in 2002 and the EAC Agreement on Road Transport: Existing agreements at the Regional Economic Community level, which are now out-dated, will be reviewed with a view to achieving the following:

a. Allow the unimpeded flow by road of freight and passengers in the region;

b. Liberalise market access progressively in respect of cross-border road freight transport;

c. Introduce regulated competition in respect of cross-border passenger road transport;

d. Reduce operational constraints for the cross-border road transport industry as a whole; and

e. Enhance and strengthen the capacity of the public sector in support of its strategic planning, enabling and monitoring functions.

v) Phase 5: Development of an Implementation Plan: Building on the results of the above steps, develop an implementation plan. That will result in the preparation and adoption of a Tripartite multilateral road transport agreement and to start implementation of this agreement by 2013.

3.4.1 3rd Party Vehicle Insurance.

55. The Tripartite region has three different third party vehicle liability insurance schemes, these being:

i) Cash payments at the border: these are country-based and they follow the laws and regulations of the country where payment is collected. For example, in Mozambique, payment applies to foreign vehicles only and covers third party vehicle and property damage.

ii) The fuel levy system: this involves indirect payments for third party insurance, made whenever there is a purchase of fuel. As foreign vehicles refuel in a foreign country they are automatically covered. The scheme covers injury to third parties and does not cover property damage. The fuel levy is operational in the SACU states, namely, Botswana, Lesotho, Namibia, South Africa and Swaziland.

iii) The COMESA Yellow Card. In 1985 the Preferential Trade Area (PTA), predecessor of COMESA, established a motor vehicle third party insurance system, called the Yellow Card, after noting problems with the cash payment system then in use in its member countries. A network of National Bureaux, one in each country, administers the scheme. Each National Bureau is responsible for: issuance of Yellow Cards; handling settlement claims arising from accidents involving foreign vehicles insured under the scheme; and reimbursing claims paid on its behalf by other National Bureaux.

56. COMESA and SADC established a Working Group (later re-formed as Task Team in 2002) on the harmonisation of third party vehicle insurance schemes. The Task Team, after a review of the status of the systems in place, resolved that the Yellow Card Scheme would offer a sound basis for an effective instrument to facilitate cross-border movement of vehicles, goods and persons and to enhance trade and transport development in the region and that there would be considerable benefits to the COMESA and SADC regions should the Yellow Card Scheme and the Fuel Levy system be harmonised. Consequently, the Task Team has recommended that the two systems be interfaced as follows:

i) Countries using the fuel levy should issue Yellow Cards to motorists travelling to non-fuel levy countries;

ii) Foreign motorists travelling from non-fuel levy countries to fuel levy countries should be excluded from the fuel levy system and instead should carry Yellow Cards;

iii) Cash System countries should adopt the Yellow Card Scheme; and

iv) The current operations of the Yellow Card System should be reviewed to respond to the issues raised by the States during the National Workshops.

57. In order to implement these recommendations the Tripartite Task Force has endorsed a work plan that, once implemented, should produce an interface between the three systems through the development of:

i) a framework for harmonisation of third party insurance including the legal and institutional reforms that are necessary for the implementation of regionally harmonised arrangements for motor vehicle third party liability insurance;

ii) a system for interfacing the existing motor vehicle third party liability insurance system and the Yellow Card System; and

iii) an implementation plan for harmonised framework, clearly showing responsibilities and timeframes.

3.4.2 Vehicle Standards and Regulation

58. The Tripartite Task Force and member States are in the process of developing harmonised standards for fitness of vehicles. After the initial working group meeting in April 2011 it has transpired that there are a number of other smaller studies that are required, such as smoke emissions, vehicle registration standards, training of examiners, bus overloading, etc. The EAC is carrying out studies on vehicle standards and regulations and the outcomes of this work will feed into the Tripartite programme.

3.4.3 Self-Regulation of Transporters.

59. Many of the region's transport delays can be attributed to bureaucratic delays caused by the need to check on compliance (such as customs inspections, weighing trucks, document checks at police road blocks, etc.). One way to reduce these delays would be to introduce a transporter accreditation system in which a transporter undertakes to comply with a specified package of regulations. In doing so the transporter will be exempt from the usual compliance checks. There would, however, be a system of spot checks which would also apply to accredited transporters and if an accredited transporter was caught contravening the regulations he would face severe penalties and lose his accredited status.

60. Such a system of self-regulation for transporters is being developed and this will be piloted on the North South Corridor. The pilot is based on the Road Transport Management System (RTMS) which is a South African industry-led, voluntary self-regulation scheme that encourages consignees, consignors and transport operators engaged in the road logistics value chain to implement a vehicle management system that preserves road infrastructure, improves road safety and increases the productivity of the logistics value chain.

3.4.4 Overload Control

61. Given the high costs of transport in the Tripartite region it is not difficult to understand the economic attractiveness of overloading vehicles to reduce the unit cost of transport to an importer. However, vehicle overloading not only significantly accelerates the

rate of deterioration of road pavements but, when coupled with inadequate funding for road maintenance, it contributes significantly to poor road conditions and high transport costs[13].

62. The cost associated with vehicle overloading can be avoided through effective control measures. The challenge is to harmonise these control measures throughout the Tripartite region as, at present, there are different regulations on axle load limits, axle combinations, gross vehicle mass (GVM) and vehicle dimensions in the Tripartite region and these adversely affect the costs of regional transport and so the costs of doing business in the region.

63. COMESA, EAC and SADC each have similar regulations as regards axle loads, gross vehicle mass and vehicle dimensions but there are some countries in the region that have either, in the recent past, adjusted their rules and regulations so that they are not in conformity to the recommendations of the Regional Economic Organisations or these rules and regulations have not ever been aligned to regional norms.

64. The economic consequences of arbitrary national decisions on trade facilitation measures can be very high and can make industries in neighbouring countries uncompetitive, meaning closing down of industry, losses of jobs and higher levels of poverty. Therefore, if there is to be a change in regulation on axle loads, GVM or axle combinations, this change should take account of all the scientific, technical and economic data necessary to show that the economic costs of higher GVMs and various axle combinations (in terms of road safety and the damage being done to the road pavement) are higher that the economic costs (in terms of the effects of the higher costs of imported and exported goods on the regional economy).

65. The Tripartite Task Force commissioned the Centre for Scientific and Industrial Research (CSIR) in South Africa, a leading research institution in Africa on pavement design and loading, to analyse eleven vehicle combinations and five pavement structures using their "*mePADS*" programme to determine the road wear caused by different vehicle combinations. This analysis gives details of the payload efficiency of 11 vehicle combinations. The graph at Figure 1 shows the road wear caused by the various vehicle combinations to

[13] "The indicative cost of overloading in East and Southern Africa has been estimated at more than US$4 billion per annum. This exceeds the amounts being spent on road rehabilitation. Therefore, unless the problem is tackled head on, it will negate the expected benefits from the huge amounts of resources that countries and donors are investing into improved road infrastructure across the continent". Mike Pinard 2010.

transport one tonne of payload for one km. The values in the graph are in US cents and are the average per vehicle over the five pavements and for wet and dry climatic conditions. The graph clearly illustrates that the longer vehicles are more payload effective and also confirm that it is a misconception that 56-tonne interlinks do more road damage than 56-ton truck and trailer combinations.

66. The Tripartite/CSIR study was followed by a study on Overload Control undertaken by the EAC, with inputs from the COMESA-EAC-SADC Tripartite. This EAC report was presented at an EAC/Tripartite meeting of Permanent Secretaries, officials and technical experts held in Nairobi on 17-19 August 2011. At this meeting the following, *inter alia*, was agreed:

i) Overload fines, fees and charges should be de-criminalised and fees should be set according to the costs of road damage;

ii) Regional axle load limits should be set at 10t (single), 18t (tandem) and 24t (tridem), with a tolerance of 5%;

iii) A 56 tonne GVM standard on seven axles with no quadruple axle units allowed and no tolerance;

iv) Interlinks would be allowed on defined corridors of the Regional Road Network without extra permits with the length limited to 22m;

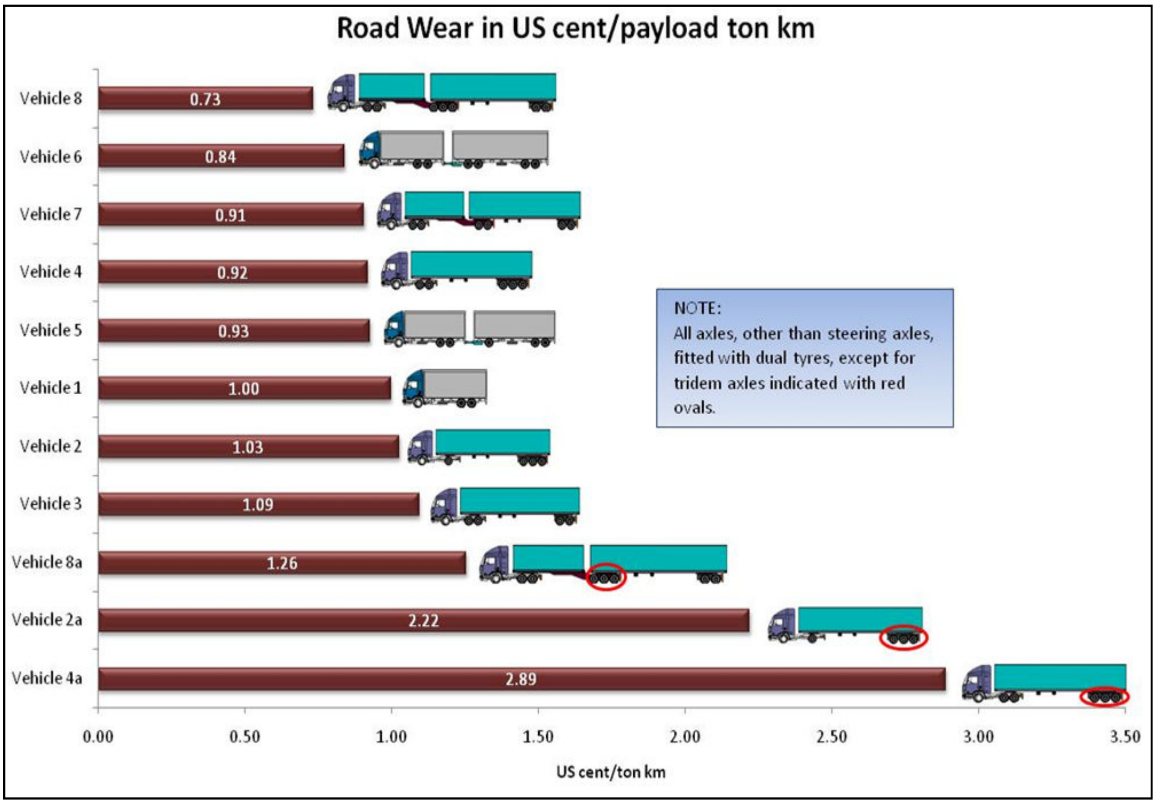
v) A bridge formula;

vi) Vehicle dimensions would be discussed further and based on the Tripartite study being carried out;

vii) Mass limits for super-single tyres would be limited to 8.5t for 385/65R22.5 tyres provided weighbridge software can be programmes to detect different tyre widths; and

viii) Self-regulation should be promoted.

Figure I – Road Wear caused by Various Combinations of Vehicles on Road Pavements



67. The Permanent Secretaries stressed the need for strict enforcement of overload control measures and directed the respective technical experts to effect these changes. A rapid process will be undertaken to develop a road map and subsequent steps to assure that agreements are effected within the conditions highlighted. This issue can now be brought to the attention of the Ministers to harmonise these aspects and make the regional transport system more efficient.

3.4.5 Harmonised Road User Charges

68. Efforts are underway to harmonise cross-border road user charges in the Eastern and Southern Africa region. COMESA and EAC are to review the 2007 SADC Road User Charges study findings and recommendations with a view to examining whether these recommendations could be extended to cover all Tripartite member States.

3.4.6 Regional Corridor Management Systems

69. A number of the Tripartite region's corridors have their own management structures that are usually established through a Memorandum of Understanding between the countries the corridor transits through. However, not all corridors have their own management structures; the functions and responsibilities of existing management structures and different; and there is no formal linkages between the corridor management structures and the Secretariats of the Regional Organisations. The Tripartite will assist to develop a regional corridor management system that will involve clustering corridors geographically.

3.5 Joint Competition Authority

70. The need for joint Competition Authority for air transport in Africa was first recognised in the 1990's when African airlines started to face increasing competition from European airlines. In response African States started to cooperate a lot more effectively in the area of air transport rules and regulations. This, in turn led to the development and adoption of the Yamoussoukro Decision (YD) of 1999 on the liberalisation of air transport services, which entered into force in 2000 after the requisite ratifications.

71. It is recognised eastern and southern African States that their dual memberships by the COMESA, EAC and SADC is an impediment to the effective implementation of the YD and, as such the member States of COMESA, EAC and SADC agreed on a common framework for the joint implementation of YD. This led to the development of the Competition Regulations which were adopted by the Ministers in 2004. The Competition Regulations provide for the establishment of the Joint Competition Authority (JCA) to oversee the implementation of the Competition Regulations. Guidelines, Provisions and Procedures for Implementing the Competition Regulations that were developed and adopted in 2007 by COMESA, EAC and SADC and the First COMESA-EAC-SADC Tripartite Summit of 2008 launched the JCA and also decided that the JCA Secretariat would be hosted at the SADC Secretariat and that COMESA would be chair of the JCA.

72. The Tripartite Task Force has proposed to operationalise the JCA through the implementation of a Roadmap that involves the review and evaluation of existing relevant

documents on air transport and air transport liberalisation. This roadmap is being implemented and involves the development of:

i) the legal and institutional framework to give effect and mandate to the JCA;

ii) the organisational and management structure for the JCA Secretariat;

iii) the business plan and budget;

iv) sustainable mechanisms for funding the JCA ;and

v) an Air Services Agreement (ASA) template for the implementation of the YD in the Tripartite region.

3.6 Linkages between the Tripartite Regional Trade Facilitation and the WTO Trade Facilitation Programme

73. Negotiations on trade facilitation in the WTO in Geneva, Switzerland, started in 2004 and were based on a revision of the General Agreement on Tariffs and Trade (GATT) Articles V (Freedom of Transit), VIII (Fees and Formalities Connected with Importation and Exportation), and X (Publication and Administration of Trade Regulations). For a number of reasons, including the fact that developing countries and Least Developed Countries do not want to make legally binding commitments in trade facilitation that will open them to incurring penalties for non-compliance, progress in the negotiations has been difficult.

74. In December 2009, the WTO Negotiating Group on Trade Facilitation (NGTF) issued a draft consolidated negotiating text. The consolidated text reflected the progress made in the negotiations since 2004. Although it contained multiple square brackets, which indicate non-agreed language, it was widely expected that delegations would only have to "clean up" the text and replace the bracketed text with agreed language. However, this has not happened and WTO Members have begun diverging over various details of the proposed rules, such as their structure and negotiations on principles have been re-opened. There is also disagreement on the legal status conferred to the rules in that the language being used is mainly "best endeavour" language, which means that the rules considered to be non-mandatory.

75. Although developing countries and LDCs are well aware of the need to implement trade facilitation measures they have shown a great deal of reticence in agreeing to binding rules on trade facilitation in the WTO, partly owing to their concerns about their capacity to implement the new obligations. When the trade facilitation negotiations were launched, many developing countries were in full support of the negotiations in the expectation that their implementation needs would be addressed. This expectation was partly based on the agreement of the developed countries to assist developing countries and LDCs to build their capacity in trade facilitation. For example, paragraph 6 of Annex E (on Trade Facilitation) of the WTO Ministerial Declaration of Hong Kong (2005) states that:

"To bring the negotiations to a successful conclusion, special attention needs to be paid to support for technical assistance and capacity building that will allow developing counties and LDCs to participate effectively in the negotiations, and to technical assistance and capacity building to implement the results of the negotiations that is precise, effective and operational, and reflects the trade facilitation needs and priorities of developing countries and LDCs. Recognizing the valuable assistance already being provided in this area, the Negotiating Group recommends that Members, in particular developed ones, continue to intensify their support in a comprehensive manner and on a long-term and sustainable basis, backed by secure funding."

76. WTO Members have attempted to draft special and differential treatment (S&DT) provisions, which use the concept of graduation coupled with access to technical assistance, meaning that if developing countries require capacity building to comply with the proposed provisions of the trade facilitation text they would be provided with a longer time period and would have access to adequate technical assistance to undertake necessary reforms before being subject to compliance with the rule. However, developing countries remain unconvinced of this approach and of the lack of guarantees of technical assistance delivery[14] so remain insistent of the use of "best endeavour" language as a means to include flexibility into the draft text.

[14] Despite this lack of guarantee UNCTAD report that technical assistance funds dedicated to trade facilitation increased from $28.4 million in 2002 to $239.84 million in 2008, with an increasing proportion assigned to LDCs

77. Despite the stalling of the negotiations on trade facilitation in the WTO, Member States of the Tripartite remain fully committed to developing and implementing trade facilitation measures regionally and fully recognise the positive impacts trade facilitation measures can have on trade and trade-led economic growth.

78. The Tripartite is proactively developing new trade facilitation measures, harmonising trade facilitation measures across COMESA, EAC and SADC and building capacity in the region to implement trade facilitation measures. Although the gap between the positions taken in the WTO negotiations by Tripartite WTO members and the measures being implemented in the region is widening, the referencing of Tripartite trade facilitation measures to the provisions of the WCO, WTO and other international bodies ensures that there is little danger of developing conflicting trade facilitation measures. This suggests that regional trade facilitation efforts not only contribute to regional integration, but may also be conducive to the convergence of trade and customs procedures worldwide.

3.7 Conclusion

79. The economic integration agenda being implemented by the COMESA-EAC-SADC Tripartite has prioritised programmes addressing trade and transport facilitation challenges with the aim of lowering costs of doing business and improving the competitiveness of products from the eastern and southern African region. Significant progress has already been made in design and implementation of the trade facilitation programmes and the benefits of these programmes are being realised. The longer-term success of the Tripartite trade and transport facilitation programmes will depend on the political, administrative and technical commitment of the Tripartite member States to design and implement the full Comprehensive Trade and Transport Facilitation Programme; on establishing the appropriate institutional and coordination structures at regional and national level; and obtaining the necessary technical and financial support for the design and implementation of the programme. To-date all of these conditions for success are largely in place. There are a few issues that need to be addressed, such as the method of concessioning infrastructure facilities at border posts but, by and large, progress in implementing trade and transport facilitation programmes in the Tripartite region is progressing well.

80. The benefit (and also challenge) of the WTO trade facilitation negotiated text is that it implies a precise and obligatory commitment that is legally binding and enforceable. Although the COMESA-EAC-SADC Tripartite is not able to offer that legally binding regime as yet, the work being done by the Tripartite and its Member States, supported by international organisations and bilateral donors, is of major importance to the harmonisation, strengthening, improvement and development of new trade facilitation measures that will go a long way to making the Tripartite Free Trade Area a more competitive business environment.

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- TradeMark Southern Africa - www.trademarksa.org
- UNCTAD – www.unctad.org

Unpublished documents from the Tripartite Task Force, the Infrastructure Sub-Committee of the Tripartite Task Force and TradeMark Southern Africa.

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