

Report and Decisions: 17th Meeting of the COMESA Council of Ministers Report, 4-5 June 2004, Nile International Conference Centre, Kampala, Uganda

A. INTRODUCTION

1. The Seventeenth Meeting of the Council of Ministers was held from 4th to 5th June 2004 at the Nile International Conference Centre, Kampala, Uganda.

B. ATTENDANCE, OPENING OF THE MEETING, ADOPTION OF THE AGENDA AND ORGANISATION OF WORK

Attendance

2. The meeting was attended by delegates from Burundi, Comoros, DR Congo, Djibouti, Egypt, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. The Great People's Libyan Socialist Jamahiriya attended as an observer. The meeting was also attended by the following COMESA institutions: COMESA Clearing House; COMESA Court of Justice; COMESA Leather and Leather Products Institute; COMESA Metallurgical Industries Association; PTA Bank; and PTA Reinsurance Company. The following co-operating institutions and regional organisations also attended: CEN-SAD; European Commission; IGAD; International Civil Aviation Organisation; SEATINI; TTCA Northern Corridor; UNECA; USAID/REDSO; WHO; and the World Meteorological Organisation; ARSO; and ACBF. The list of participants is at Annex VIII.

3. The meeting noted with concern that the African Union, despite being invited, was not in attendance. It was stated that Regional Economic Communities, as building blocs, should be in all policy meetings of the AU and the AU should also attend policy meetings of the RECs.

Opening of the Meeting (*Agenda item 1*)

4. The meeting was officially opened by the Right Honourable Henry Kajura, Third Deputy Prime Minister of the Republic of Uganda. He welcomed the participants to Uganda and said that Uganda was proud to host the Policy Organ meetings.

5. The Right Honourable Kajura said that COMESA had launched its FTA in October 2000 on schedule and was confident that COMESA would launch the Customs Union on schedule. He said that there was a need to maintain the momentum of integration and spoke of the global trend in building and strengthening regional trading blocks and the logic of this.

6. Right Honourable Kajura spoke of the need for COMESA countries to undertake policy reforms and institute measures necessary to encourage greater investment and said that it was gratifying to note progress made in establishing the COMESA Common Investment Area. He also spoke of the need for efficient infrastructure, including transport, telecommunications and energy infrastructure, if trade and integration was to be promoted. He said that the twin problems of poverty and unemployment could be solved by creating jobs in agriculture, industry and the associated agro-industries, manufacturing and service sub-sectors.

7. The Right Honourable Kajura closed by talking of events at the multilateral level and negotiations with the EU and the need for the Ministers to provide leadership to the region in these negotiations.

8. The Secretary General of COMESA, Mr. Erastus J. O. Mwencha made a statement before the Minister's address. He said that it was an honour and a pleasure to come back to Uganda ten years after the signing of the COMESA Treaty, which also took place in Uganda. The theme for the summit was "Deepening Regional Integration through a Customs Union". The Customs Union would create a huge economic bloc and deepen integration through that harmonisation of laws, procedures and regulations. He outlined the growth in the FTA, both in membership and volumes and values inter-COMESA traded goods.

9. The Secretary General said that the Customs Union would level the playing field by applying uniform procedures and tariffs on goods imported from third countries. The creation of a Customs Union would send a signal to the rest of the world on the intentions of COMESA to create a trading bloc conducive to investment.

10. The Secretary General spoke of the COMESA Business Summit which would be held at the same time as the COMESA Summit. This should give COMESA the opportunity to market itself as an ideal investment destination. The Secretary General also reported on the contribution the COMESA Institutions, including the PTA Bank, ZEP-Re, the Africa Trade Insurance Agency, the COMESA Clearing House and the Leather and Leather Products Institute were making to the regional integration process. He then outlined a number of COMESA programmes which were to be reported on during the Council meeting.

11. The Secretary General closed by highlighting the world trend in consolidating and strengthening regional trading blocs, developments in trade negotiations the region and member States are involved in, and the support provided to COMESA by its co-operating partners.

Vote of Thanks

12. The Head of Delegation of Egypt, Honourable Dr. Youssef Boutros Ghali, Minister of Foreign Trade of the Arab Republic of Egypt, gave the Vote of Thanks. He said that he had been tasked by his colleagues to express their gratitude, and his, for Uganda's hospitality and for hosting the meeting. He said that he had taken the advice of his hosts and visited the source of the Nile and put his hand in the water and felt the heart-beat of 200m Africans. He said the waters of the Nile took its source in the bosom of Africa and flows 6,400km to the Mediterranean at Alexandria.

13. Honourable Boutros Ghali said that he had listened attentively to the Right Honourable Kajura's address and welcomed the blueprint provided. He said that Africa had been called upon to redefine itself and to stamp an African persona on the world scene and realise its true economic potential. He closed by saying that it was through gatherings such as the COMESA Policy Organs meetings that Africa would be able to define its identity and establish itself as an economic power.

Election of the Bureau (*Agenda item 2*)

14. The following Bureau was elected:

Chair : Uganda

Rapporteur : Sudan

15. The Secretary General explained that the position of Vice Chair would be announced once internal consultations had been finalised.

Adoption of the Agenda and Organisation of Work (*Agenda item 3*)

16. The Committee adopted the following agenda:

1. Opening of the Meeting
2. Election of the Bureau
3. Adoption of Agenda and Organisation of Work
4. Report of the Chairman of Council on the activities of the Bureau 2003-2004
5. Report of the First Meeting of the Ministers of Home Affairs
6. Report of the Eighth Meeting of the Ministers of Justice and Attorneys-General
7. Report on the Seventeenth Meeting of the Intergovernmental Committee on sectoral matters covering:
 - i. Trade Liberalisation
 - ii. Customs Co-operation
 - iii. Trade Related Issues
 - iv. Transport and Communications
 - v. Industry and Energy
 - vi. Monetary Affairs
 - vii. Agriculture
 - viii. Economic and Social Development
 - ix. Report of COMESA Institutions
 - COMESA Court of Justice
 - Leather and Leather Products Institute
 - PTA Bank
 - ZEP-RE
 - ATI
8. Report of the Bureau of Council (Closed Session)

9. Report of the Seventeenth Meeting of the Committee on Administrative and Budgetary Matters (Closed Session)

10. Any Other Business

11. Adoption of the Report and Closure of the Meeting

17. The meeting adopted the following working hours of work:

Morning : 0900 - 1300 hours

Afternoon : 1500 - 1800 hours

Report of the Chairman of Council on the Activities of the Bureau 2003-4 (*Agenda item 4*)

18. The outgoing Chairman of Council, Honourable Abdel Hamid Kasha, Minister of Foreign Trade of Sudan, thanked the outgoing Bureau and congratulated the new Chairman on his election. He said that the Bureau had undertaken a number of activities during its period of tenure, including consultations with the United Republic of Tanzania regarding her eventual return to the COMESA family; mounting missions to the non-FTA members; a COMESA mission to Bandung, Indonesia to consolidate relations with the Asian group; and consultations with the People's Republic of China.

19. He spoke of the various alternative points of views on the Customs Union and hoped that there would be some convergence of views.

20. On EPA negotiations, he noted that these were on track and commended the ESA EPA countries for their cohesion in the face of external pressures in terms of configuration.

21. He reported that the Sudanese Government signed the Host Agreement of the Court of Justice on 26th January, 2004 and secured a building to host the Court and acquired suitable residential premises for the Registrar of the Court of Justice.

22. The Honourable Minister also acknowledged the help and support of COMESA member States and IGAD member States in arriving at the long sought peace in Sudan and hoped that the advent of peace would bring security and economic development to Sudan.

C. ACCOUNT OF PROCEEDINGS

Consideration of the Report of the First Meeting of the Ministers of Home Affairs (*Agenda item 5*)

23. The Chairperson of the First Meeting of the Ministers of Home Affairs, Honourable Lt. General Ronnie Shikapwasha, Minister of Home Affairs of the Republic of Zambia, presented the report as contained in document number COM/MHA/I/2. The meeting discussed the report as follows:

(a) Implementation of the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements

24. Council noted that the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements, was binding on all the Member States as it was adopted under the PTA Treaty and continued under the COMESA Treaty. The meeting observed that the Protocol was being implemented partially or not at all by most member States. The

status of its implementation is as indicated in Annex I. Council further took note of an additional report by Sudan that they were implementing the Protocol and were processing approval for preparation to sign the Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Residence. Council took note of the country reports on Implementation of the Visa Protocol.

Decisions

25. Council decided that:
- i. member States should accelerate implementation of the Protocol on Visa Relaxation and Eventual Elimination of Visas and complete implementation by the end of 2004;
 - ii. the Protocol be implemented on a reciprocal basis as this will enhance its implementation; and
 - iii. the earlier decisions of the Council of Ministers in recognition of the unique case of small island States, should continue to apply.

(b) Preparations for signing of the Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence

26. The meeting recalled that the Fifth Summit of the COMESA Authority held on 19 May, 2000 in Mauritius agreed to open for signature the Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence which is provided for under Article 164 of the COMESA Treaty. The Tenth Meeting of the Council of Ministers held in Lusaka, Zambia on 7-8 December, 2000 also agreed that Member States finalise consultations at national level so that the Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence is signed by the member States at the next Summit of the COMESA Authority.

27. Council further noted progress made by other regional organisations in the area of Free Movement mainly the East African Community, Economic Community of West African States (ECOWAS) and the European Union (EU).

(c) Decisions of the Authority on Implementation of the Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence

28. The meeting recalled that the Council of Ministers at their Fifth Meeting held on 25-27 June 1998, in Kinshasa, Democratic Republic of Congo, agreed that the implementation of the Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence would accelerate the process of integration by removing any barriers that were a hindrance to the free movement of goods. The Member States also agreed that the removal of hindrances to movement of persons would provide a competitive edge for enterprises in the sub-region and attract foreign direct investment.

29. Council also recalled their previous decisions that the Protocol should be implemented progressively in five stages.

30. While there has been considerable progress in the gradual removal of Visa requirements following the holding of the meeting of the COMESA Chief Immigration Officers in October 1998, Council is yet to consider and adopt the details for implementation

of the programmes under Article 9 (Movement of Labour), Article 11 (Right of Establishment) and Article 12 (Right of Residence).

31. Council noted that the Protocol was adopted in such a way that member States would be responsible for negotiating the specific details of implementation of each area on a gradual basis. The meeting further noted that the Protocol was discussed and approved by the first two meetings of the Chief Immigration Officers and adopted by the COMESA Summit on the recommendation of the COMESA Ministers of Justice and Attorneys-General and Council.

32. Council noted that similar free movement agreements existing under the EU and ECOWAS have been strengthened to meet new challenges such as terrorism.

Decisions

33. Council decided that the Protocol attached as Annex II be opened for signing by the Member States that have completed national consultations at the next COMESA Summit to be held in Kampala, Uganda on 7 June, 2004. Member States that have not completed national consultations should endeavour to do so within a specific timeframe.

34. Council further decided that the implementation timetable of the Protocol be revised to adopt the following:

STAGE I: PART II - Articles 3 to 8

Objective: Gradual Removal of Visa Requirements and co-operation in the prevention and fight against crime.

Period: On-going and up to the year 2004.

STAGE II: PART III - Article 9

Objective: Enhancing Movement of skilled labour

Period: 2004 - 2008

STAGE III: PART IV - Article 10

Objective: Movement of services

Period: 2004 - 2006: Programme to be adopted by Council

STAGE IV: PART V - Article 11

Objective: Right of Establishment

Period: From 2005 - 2010: Programme to be adopted by Council progressively

STAGE V: PART VI - Article 12

Objective: Right of Residence

Period: 2014 (20 years from the date of entry of COMESA Treaty)

35. Council further decided that the Secretariat should consider starting negotiations to adopt a Protocol on co-operation in the prevention of international crime and terrorism.

d. Consideration of the Study Report on Immigration Practices in COMESA

36. Council noted that the Study Report on Immigration Practices in COMESA is intended to achieve the following objectives:

- i. to identify the common challenges faced by the immigration authorities of the Member States; and
- ii. to provide a basis for the harmonisation of immigration laws and practices of Member States.

Decisions

37. Council decided that:

- i. Member States that are covered by the study should send their comments to the Secretariat by the end of 2004; and
- ii. the report be tabled for consideration at the next meeting

(e) Model Law on Immigration

38. Council recalled that their Fourteenth Meeting held in November 2002 decided, *inter-alia*, that "a model law on immigration be prepared for adoption by the policy organs to assist Member States to harmonise their laws with the COMESA Protocols and decisions". Council noted that since the Model Law was not received well in advance, there was no sufficient time for consultations at national level to generate comments on the Model.

Decisions

39. Council decided that:

- i. Member States should therefore take the model legislation for national consultations and send their comments to the Secretariat before the end of June 2004; and
- ii. A Steering Committee is set up composed of the Bureau of the Committee of the Chief Immigration Officers and Egypt to review the Model Law and submit a revised edition to the next meeting of Chief Immigration Officers.

(f) Co-operation between COMESA and the International Organisation for Migration

40. Council took note of ongoing co-operation between COMESA and the IOM and joint programmes as adopted by the Ministers of Home Affairs.

Decisions

41. Council decided that:

- i. a consultative group to be meeting bi-annually, comprising of COMESA Secretariat, a yearly appointed representative of the governments of

COMESA (representing the Chairman of the Sector for Migration), and IOM is established; and

- ii. the pilot project should assess the possibility of having shared facilities and utilities (communication systems, water and electricity), which would go a long way in reducing the cost of business as well as facilitating easy movement of persons through border posts.

Consideration of the Report of the Eighth Meeting of the Ministers of Justice and Attorneys-General (*Agenda item 6*)

42. The Chairperson of the Eighth Meeting of the Ministers of Justice and Attorneys-General, Honourable Mrs. Edda Mukabagwiza, Minister of Justice of the Republic of Rwanda, presented the report of their meeting. The Council considered the report and took decisions accordingly.

(a) Proposed Amendments to the COMESA Treaty in Relation to the COMESA Court of Justice

43. The meeting recalled that the COMESA Court of Justice was formally established in 1998 at the Third Summit of the COMESA Authority held in Kinshasa, Democratic Republic of Congo with the appointment of seven Judges. The term of office of the seven Judges expired on 28 June 2003.

44. The Seventh Summit of the COMESA Authority held in Addis Ababa, Ethiopia on 23 May 2002 agreed that Chapter Five of the Treaty be amended to include an appellate system in the set-up of the Court. The Seventh Summit further agreed that procedure for amendment of the Treaty contained in Article 190 of the Treaty be followed.

45. Council noted that the revised Draft Amendments were circulated by the Secretariat to all the Member States in July 2003. Comments were received from four Member States. It was agreed that many of the comments from the Member States could be incorporated in the Rules of Court.

Decisions

46. Council decided that:

- i. the Amendments as contained in Annex III be adopted;
- ii. the final text of Chapter V of the Treaty will appear as contained in Annex IV be adopted;
- iii. the proposed amendment on extending the jurisdiction for the Appellate Division to points of fact could be submitted to the Secretariat for subsequent circulation and comment by all the Member States in accordance with Article 190 of the Treaty; and
- iv. the Secretariat should propose ways in which COMESA could utilise alternative dispute resolution.

(b) Report on the Filling of Vacancies and Hosting of the COMESA Court of Justice

47. Council noted that the term of office for the seven judges of COMESA Court of Justice expired on 28th June 2003 and that as from 29th June 2003 there have been no serving judges on the Court of Justice.

Decisions

48. Council decided that the system adopted in 1997/98 for filling of vacancies on the Court of Justice shall be as follows:

- i. after the Amendment of the Treaty regarding the Court becomes effective, the Secretariat would immediately after the Ninth Summit of the COMESA Authority invite Member States to nominate qualifying persons to the COMESA Court of Justice;
- ii. the next meeting of the Ministers of Justice and Attorneys-General to be held in March 2005 would elect the Judges of the Court of Justice, pursuant to the powers delegated to them by the Second Summit of the Authority;
- iii. the names of the judges elected by the Ministers of Justice and Attorneys-General would be submitted to the Council of Ministers in May 2005 and Authority in May 2005 for appointment; and
- iv. the judges would be sworn in at the Tenth Summit of the COMESA Authority to be held in May 2005.

49. Council further decided that:

- i. Member States be urged to expedite the submission of nominees to the Secretariat when requested; and
- ii. Member States should endeavour to meet the time deadlines set by the meetings of the Ministers of Justice and Attorneys-General and the COMESA policy organs.

(c) Hosting of the Court of Justice

50. Council recalled that the Eighth Summit of the COMESA Authority decided that the Permanent Seat of the Court should be Khartoum, Sudan. The Host Agreement for the Court of Justice was signed by the Minister of Justice of the Sudan and the Secretary General of COMESA on the 26th January 2004 in Khartoum, Sudan.

51. In accordance with previous commitments, the Government of Sudan is to provide the following, among others elaborated in the Agreement:

- i. a temporary building to the Court (a suitable building has been identified which is to be renovated by the Government);
- ii. accommodation for the Registrar of the Court (already identified); and
- iii. suitable plot of land where the Government will construct the permanent building for the Court.

52. Council further noted that the Government of Sudan was in constant consultations with the Registrar of the Court on rehabilitation of the buildings for the Court.

The Registrar had been invited by the Government of Sudan to visit Khartoum in the second week of April 2004 to monitor the progress.

Decision

53. Council decided that the process for rehabilitation of the buildings for the Court be accelerated, so that the Court can relocate to the Sudan as soon as possible.

(d) COMESA Public Procurement Reform Programme

Decisions

54. Council decided that:

- i. Member States that have not yet started the legislative reform of Public Procurement be urged to do so as soon as possible; and
- ii. Member States that have already embarked on the legislative reform of Public Procurement be urged to accelerate the process.

(e) Draft Regulations on Implementation of the COMESA Customs Union

55. Council recalled that Article 45 of the COMESA Treaty provides that “there shall be progressively established in the course of a transitional period of ten years from the entry into force of this Treaty, a Customs Union among the Member States”. The COMESA Treaty came into force on 8th December 1994 and the effective date for the Customs Union would be 8th December 2004.

56. Council further noted that the Draft Regulations were therefore prepared to buttress the work being done in defining and planning for the launch of the Customs Union. The Regulations will provide the Legal and Administrative Structure for the operations of the Customs Union.

57. Mauritius reported that they were holding internal consultations on the Draft Regulations and would be sending their comments to the Secretariat in the near future.

Decisions

58. Council decided that:

- i. consideration of the Draft Regulations on Implementation of the Customs Union be deferred to the next meeting of the Committee on Legal Affairs;
- ii. the Legal Experts should be involved in the relevant meetings for preparations for launch of the COMESA Customs Union;
- iii. the Member States should submit their comments on the Draft to the Secretariat for consolidation and subsequent discussion; and
- iv. a joint meeting of Legal Experts and Trade and Customs Experts be convened to finalise the Draft Regulations.

(f) Draft Investment Framework Agreement for the COMESA Common Investment Area

59. Council noted that the Draft Investment Framework Agreement was circulated to all the Member States for comment. The Meetings of the National Investment Authorities had also discussed the Draft Investment Agreement and comments thereon which had been incorporated in the latest draft circulated.

Decisions

60. Council decided as follows:

- i. National Focal Points on the COMESA Common Investment Area should involve Government Legal Experts in the ongoing consultations on the CCIA;
- ii. the Working Group set up to consider the Draft Investment Agreement on the COMESA Common Investment Area (CCIA) should be given time to complete its work and submit its report to Member States for consideration and consultations before the meeting of Legal Experts;
- iii. Member States should be encouraged to complete their national consultations and submit their comments to the Secretariat for the finalisation of the draft to be considered by the COMESA Legal Experts;
- iv. the Secretariat should make a follow up on national consultations and comments on the draft Agreement, so as to have the draft Agreement ready for consideration by the Legal Experts.

(i) Signature and Ratification of COMESA Legal Instruments

61. Council reviewed the Status of Signature and Ratification of COMESA Legal Instruments as indicated at Annex V.

Decisions

62. Council decided that:

- i. the Member States are urged to sign and ratify the legal instruments where they have not done so;
- ii. the Ministers of Justice and Attorneys-General should facilitate the Signature, by the Heads of State at the Ninth Summit, of the Protocol on Free Movement of Persons, Labour, Services, and the Right of Establishment and Residence;
- iii. Member States are urged to accelerate the ratification of the Protocol for Establishment of the Fund for Co-operation, Compensation and Development; and
- iv. that the Secretariat should endeavour to publish all the Legal Instruments in one consolidated volume and circulate them to the Member States.

Report of the Seventeenth Meeting of the Intergovernmental Committee on Sectoral Matters
(*Agenda item 7*)

Strategic Focus I: Trade Liberalisation

Operations of the Free Trade Area

63. Council noted that intra-COMESA trade had continued to grow in 2003. Total intra-COMESA trade increased by 15% to reach US\$ 5.3 billion in 2003 from US\$4.5 billion in 2002.
64. Intra-trade among the FTA countries rose from US\$2.1 billion in 2002 to US\$ 2.6 billion in 2003, a growth of 20% compared to a growth of 39% in 2002 over 2001.
65. The total trade of the COMESA member States reached US\$87.7 billion in 2003 from a level of US\$64 billion in 2002.
66. Council noted that some member States requested Kenya to remove the registration requirement for importers of sugar by the Kenya Sugar Board, as the requirement was considered a non-tariff barrier. Council noted that Kenya had informed IC that the registration was administered in a non-discriminatory manner and no applicant had been refused registration. Council further noted that Kenya's sugar policy was under review to be in line with other COMESA member States.
67. Council noted with satisfaction that Burundi and Rwanda became a part of the FTA in January 2004.
68. Council noted that Namibia had ceased to be a member of COMESA after the expiry of her notice of withdrawal on 15th May 2004 and that the COMESA Secretariat had consequently advised all member States to withdraw their tariff concessions to Namibia with effect from the date of expiry of Namibia's notice of withdrawal.

Decisions

69. Council decided that:
- i. Customs authorities should communicate directly between themselves to resolve issues involving incorrect completion of certificates of origin;
 - ii. The Working Group of Experts on the Rules of Origin should examine the issue of security for originating imported goods within COMESA and examine other means to authenticate Certificates of Origin, including their electronic validation; and
 - iii. Member States should submit to the Secretariat by end August, 2004 their local taxes and charges of equivalent effect, including excise duties, applicable on imported and locally produced goods for study by the Secretariat to examine compliance with National Treatment rule enshrined in Article 57 of the COMESA Treaty.

New membership: Presentation by Member States not yet in the FTA

70. Council took note of the reports of States not yet in the FTA and, in particular, noted the following:
- i. DR Congo expressed commitment to participate in COMESA's trade liberalisation programmes. Studies regarding her participation in the FTA were on-going and she would give a time frame as soon as consultations were completed;

- ii. Uganda expressed commitment to join the FTA after national consultations were finalised, which should be in the next six months;
- iii. Ethiopia has finalised her study on the impact of the COMESA FTA on its economy and a policy decision on the issue is expected in the foreseeable future; and
- iv. Swaziland, pursuant to Authority decision, had approached her SACU partner States to seek concurrence to allow her to participate in the FTA. In response, South Africa had indicated that she would like to have bilateral discussions with Swaziland. Botswana had indicated that she would undertake a study of the impact on her economy of Swaziland's membership of COMESA. Following discussions which were held at senior officials level, Swaziland now intended to hold discussions with SACU member States at ministerial level.

71. Council noted that the status of tariff reductions by the non-FTA member States was as follows:

- i. 80% tariff reduction: Comoros, Eritrea and Uganda
- ii. 10% tariff reduction: Ethiopia
- iii. No tariff reduction: Angola, DR Congo, Seychelles and Swaziland (under derogation)

72. Council noted that a COMESA special envoy had visited Tanzania and held consultations on the issue of Tanzania's rejoining of COMESA and would report to the Authority of Heads of State and Government on the outcome of the visit.

Decisions

73. Council decided that:

- i. the derogation to Swaziland is extended for a further period of one year to enable her to conclude negotiations with her SACU partner member States; and
- ii. Other member States not yet in the FTA should join the FTA by December, 2004.

Rules of Origin: Workings and Processes Leading to a Change in Tariff Heading

74. Council noted the need to give member States additional time to finalise national consultations on the proposed workings and processes leading to a Change in Tariff Heading (CTH) for the implementation of the Rules of Origin in COMESA. Council also noted that the CTH rule would be in addition to the other Rules of Origin.

75. Council noted that Rules of Origin were critical for the successful operations of the Free Trade Area and stressed the need to agree on a holistic set of Rules of Origin at the earliest possible date. Council further noted that Rules of Origin should not be used as a protectionist instrument but should, rather, be used as a developmental tool. Rules of Origin requirements should not result in a situation where COMESA countries are relegated to "screwdriver" economies. Rules of Origin should, therefore, encourage development in industrial production and not simple processing.

Decision

76. Council decided that member States should complete their national consultations on the proposed workings and processes in particular Headings 11.01, 11.02, 15.07, 15.08, 15.10, 84.22, 84.39 to 84.42, 84.76-84.79, 85.09, 85.10, 85.12 and 85.16 and Chapters 50, 51, 53, 54 and 55, and those related headings, by August 2004 and submit them to the Secretariat for consolidation and circulation to all member States one month before the next meeting of the Trade and Customs Committee.

Mechanisms for monitoring Non-Tariff Barriers

77. Council noted the categories of NTBs that had a major impact on the movement of intra-COMESA trade, namely:

- i) Customs Clearance Procedures;
- ii) Import Regulations;
- iii. Sanitary and Phytosanitary Measures;
- iv. Non-Tariff Fees;
- v. Technical Regulations; and
- vi. Transit Fees.

78. Council recalled that it had adopted a schedule for the elimination of NTBs in 2001 and had agreed on the need for member States to expedite the elimination of identified NTBs. Council also took note that the Agricultural Institutional Strengthening and Regional Integration Project to be funded by the ADB would have a capacity building component on SPS measures that would assist the region to harmonise SPS provisions to facilitate trade.

79. Council underlined the need for having a permanent institutional mechanism for monitoring and addressing NTBs on a continuous basis.

Decisions

80. Council decided that:
- i. member States should provide clear guidelines to the business community on the areas identified as NTBs;
 - ii. member States should facilitate access to information including the electronic transmission of information to the business community;
 - iii. member States should designate a COMESA Enquiry Point in the Ministry of Foreign Trade or other Agency designated by member States for the

purpose of tracking and monitoring non-tariff barriers affecting intra-COMESA trade;

- iv. a common form be used by importers and exporters for reporting to a COMESA Enquiry Point NTBs that are encountered;
- v. Directors of Customs should be invited to examine the simplification of the clearance process at their next meeting;
- vi. the Trade and Customs Committee should monitor the effectiveness of the NTB monitoring and tracking system; and
- vii. A permanent institutional mechanism be established by December 2004 to monitor and address NTBs on a continuous basis.

Status report on the post Cancun Doha Development Agenda and WTO multilateral negotiations

81. Council noted that the Ministers of Trade of the member States of the African Union met in Kigali, Rwanda, on 27 and 28 May, 2004 to consider a number of issues of critical importance to the development of Africa, including a review of the state of play and examination of the possibility of making progress in the WTO Doha Work programme.

82. The Honourable Minister from Rwanda briefed the meeting on the outcome of the meeting of African Ministers of Trade in Kigali. He said that the African Trade Ministers had agreed that the post-Cancun African strategy needed to be more flexible if Africa was to achieve its objectives. It was also agreed that although there was a deadlock in WTO negotiations, there was consensus that WTO members were willing to move forward and African Ministers of Trade were committed to engage constructively in these negotiations in a continued positive manner. The Minister also stated that trade, investment and development should be seen in the context of efforts to alleviate poverty. The Trade Ministers also emphasised the need for Africa to speak as a bloc and the consequent need to find ways for the G20 and G90 to reach a consensus.

83. Issues contained in the Kigali Consensus included Agriculture; the Sectoral Initiative on Cotton; Non-Agricultural Market Access; Singapore Issues; TRIPS Issues; Services; WTO Rules; Working Groups on Trade and Transfer of Technology and on Trade, Debt and Finance; Trade and Environment; Dispute Settlement Understanding; Special and Differential Treatment; Implementation Issues. LDCs; Commodity Issues; Small Economies; Coherence; Accession; Observer Status; and Technical Co-operation.

84. It was stated that the Kigali Consensus welcomed the emerging consensus to drop from the Work Programme the issues relating to trade and investment, trade and competition policy and transparency in government procurement.

85. Council stressed the point that unless there were time-bound and specific measures adopted for the removal of export subsidies, destruction of COMESA markets would continue to take place.

86. Council also noted that, although the WTO community had received informal proposals from the EC, there was still a need for the US Administration to present proposals on issues of concern to developing countries, such as on the discipline of food aid and a position that would allow progress on the cotton issue to be made.

87. On a related issue, the EU's letter of 9th May 2004 made proposals exempting reciprocity and this had possible implications on the EPA negotiations.

88. Council also observed that since the collapse of talks at Cancun, the methods which have been used to revive the process have been informal and not done in Geneva. The purpose of the July 2004 meeting in Geneva was to harvest the fruits of these informal talks.

89. Council further noted that the COMESA Secretariat was financing the preparation of a manual/handbook on WTO jurisprudence and had entered into discussions with representatives of its member States in Geneva on how best to support their activities and, as a consequence, had agreed to explore the possibility of supporting COMESA member States, through the African Union office in Geneva, with technical assistance and other resources.

Decision

90. Council embraced the Kigali Declaration and Kigali Consensus which appear in Annexes VI and VII, and stressed the need for a continued flexible and pragmatic approach to the WTO negotiations.

The ACP/EU Economic Partnership Agreement Negotiations

91. Council noted the activities which had taken place since the launch of the ESA EPA negotiations in Mauritius on 7th February 2004 and which included:

- i. The ESA Council of Ministers adoption of a Joint ESA-EC Roadmap; ESA EPA Negotiating Guidelines; ESA-EPA Negotiating Roadmap and ESA-EPA Roadmap;
- ii. The establishment of National Development and Trade Policy Forums in most ESA EPA countries;
- iii. The implementation of Impact Assessment Studies in most ESA-EPA countries;
- iv. The holding of the first Regional Negotiating Forum (RNF) meeting in Mombasa, Kenya, which made a number of recommendations; and
- v. A working group meeting on the ocean fisheries sector in Mahé Seychelles that agreed to prepare a draft Regional Fisheries Framework Agreement, which includes the feasibility of establishing a West Indian Ocean Fisheries Forum Agency, with similar functions to that of the Pacific FFA and which would protect the specific interests of its developing country members.

92. Council also noted that the following preparatory work was underway:

- i. Development Issues - design of an adjustment facility; study to develop a methodology for the cancellation of ESA external debts and examine issues of domestic debt; developing and implementing a mechanism for addressing vulnerability to mineral export dependency; and creation of an Infrastructural Investment Fund;
- ii. Market Access - study on Market Access Issues, Contingent Protection and Agriculture; Study on Rules of Origin;

- iii. Services - four studies on establishing baseline information on the services sectors; mode IV; lessons to be learned from agreements between EU and Mexico-Jordan-Lebanon; and the development of COMESA Air Transport Competition Regulations and adoption of Air Transport Services Negotiation Procedures with the EU; and
 - iv. Trade-Related Issues - study on how to assist ESA countries in the preparation of patent laws and adoption of other necessary measures in implementing their rights and obligations under the TRIPs Agreement.
93. Council further noted:-
- i. the urgent need for each ESA country to create its National Development and Trade Policy Forum (NDTPF) and to complete the Impact Assessment Studies, in order to avoid a delay in making adequate preparations for EPA negotiations;
 - ii. the possibility of delays in the preparations being made for EPA negotiations as a result of recently introduced EDF9 procedures;
 - iii. progress made by the Secretariat in negotiations with the EC to finance activities of the NDTPF;
 - iv. the outcome of the meeting between the EC (DG Trade) and the six ESA Lead Ambassadors on the establishment of the Regional Preparatory Task Force;
 - v. the need for Rwanda and Mauritius to agree on which of them will take the lead at Ministerial level on Market Access issues; and
 - vi. the need for the Secretariat to complete its brief on the issue of Chief Negotiator or Chief Technical Advisor once all inputs from concerned countries have been received.

Strategic Focus II: Customs Union

94. Council noted the progress regarding the work being undertaken in preparation for the COMESA Customs Union.

95. Council further noted that member States still had a number of concerns regarding the feasibility of meeting the timetable laid down in Articles 45 and 47 of the Treaty to have Customs Union established by 8th December 2004. Council, in particular, noted that the following areas were still to be comprehensively studied:

- i. Determination of CET rates: Council noted the need for more national consultations and studies on CET. It further suggested that the CET could be established by agreeing on rates for less contentious categories first, namely rates for capital goods, raw materials and intermediate goods and those for final goods later. Council observed that a 3-band CET structure was too narrow, and would lead to vertical integration of industries. A wider band structure would permit horizontal integration and would be more appropriate for countries of the region;

- ii. Industrial policy/Industry competitiveness and policy space: Council noted that issues of industrial policy, industry competitiveness and trade policy space could be addressed as part of the national consultations and studies;
- iii. WTO bindings: Council noted that the Secretariat had undertaken to provide information on the WTO re-negotiations process and timeframes for Member States that may have to re-negotiate their tariff bindings with other WTO members;
- iv. On-going regional/multilateral trade: Council proposed that bilateral trade arrangements, in addition to multilateral negotiations, should also be considered under this category and that these issues be highlighted and included in the national consultations;
- v. The Customs Union and national sovereignty: Council noted that the question of determining trade policy in a Customs Union is a regional issue and that further work was required on how to deal with future trade relations, taking into account the existence of other customs unions in the region like the East African Community and SACU and other regional groupings including the Southern African Development Community;
- vi. The Customs Union and relations with IMF and World Bank: Council noted that commitments with the IMF and the World Bank must be taken into account as COMESA moves into a Customs Union;
- vii. FTA membership: Council observed that for the region to progress further in its integration process, it was essential that all member countries become part of the FTA. Taking account of the national specificities, including the different levels of development and the various economic, political and administrative peculiarities in Member States, which had not yet joined the FTA, Council directed the Secretariat to consult with the countries and assist them address the constraints to enable them to fulfil their obligations;
- viii. Non-tariff barriers: Council expressed concern that in spite of assurances and work so far undertaken, including the liberalisation of trade, non-tariff barriers still existed in COMESA;
- ix. Supply-side support measures and Asymmetry in COMESA's Integration agenda: Council noted the need to adopt measures that have a positive effect on the supply-side. It was also pointed out that countries in COMESA were at different levels of development;
- x. Harmonisation of Exemption/Incentive Regimes: Council agreed that exemptions and incentive regimes in the various Member States should be harmonised; and
- xi. Goods of economic importance: Council noted that member States needed to finalise the identification of goods of economic importance.

96. Council pointed out that the COMESA Fund, or other acceptable mechanism to assist weaker economies in COMESA to adjust to the adverse effects of a higher level of trade liberalisation, should be in place before a Customs Union is implemented. In addition, a study on alternative sources of revenue for countries whose revenue from trade taxes

would be adversely affected by the implementation of the Customs Union should be conducted.

97. Council underscored the fact that there was full commitment from member States to move towards a Customs Union; what was in question was the timing of implementation. There was a need to move with caution and COMESA should not launch a Customs Union if it was not ready, as a region, to do so. Although the principle of variable geometry was raised, if only a few countries launched the Customs Union this would weaken the effect of the Customs Union. The desired outcome was a strong Customs Union drawing its membership from all the COMESA countries, with an equitable distribution of benefits.

98. The non-participation of 8 COMESA members in the FTA, almost four years after its launch, was of major concern and a comprehensive programme involving the concerned member States and the Secretariat should be developed and implemented to get all COMESA member States to participate in the FTA. Council further observed that increasing FTA participation, elimination of non-tariff barriers and building capacity on trade issues in member States would result in immediate benefits to member States whereas the Customs Union, though the long-term objective of regional integration, would only yield economic benefits in the long-term.

99. The launch date for the Customs Union would be decided on after completion of the studies being carried out by the member States and the Secretariat addressing, *inter alia*, issues related to the CET structure and rates, customs procedures and legislation and the administrative framework for the Customs Union. In this regard, Council agreed that a proposal on a Customs Union timetable would be submitted to the next Authority meetings for consideration. Council also recommended that countries could commence on a programme of rationalising tariffs on a regional or sub-regional level as such harmonised external tariffs would provide a useful base for a COMESA CET.

Decisions

100. Council decided that:

- i. all the studies in paragraph 95 be undertaken and completed by 30th September, 2004;
- ii. member States should undertake national consultations and impact assessment studies, using the following CET rates by category:

capital goods - 0%, 5%;

raw materials - 0%, 5%;

intermediate goods - 0%, 10%, 15%

final goods - 20%, 25%, 30%, 40%

- iii. recommendations on an initial CET structure and revised road map for implementation of a COMESA Customs Union be submitted to Council at its meeting in December 2004.
- iv. a study to examine alternative revenue sources to compensate for losses as a result of reductions in trade taxes should be carried out; and

- v. a date for launching of the Customs Union will be decided upon at the next Summit in 2005.

Strategic Focus III: Trade Related Issues

a. Competition Policy

101. Council noted that Article 55 of the Treaty prohibits anti-competitive behaviour and that there was an urgent need for Regional Competition Regulations and Rules to regulate competition in the region. Council also noted that COMESA competition rules and regulations had been developed, involving stakeholders in member States, including the private sector and consumer associations, and in collaboration with international agencies such as the Department for International Development of the UK Government, the European Commission, the WTO and the Organisation for Economic Development and Co-operation.

102. Council further noted that the Regulations were approved by Ministers of Justice and Attorneys-General at their Seventh Meeting and by the Trade and Customs Committee at its 14th meeting in April 2004.

103. Mauritius reported that, after consultations, it was still not in a position to agree to the implementation of the Competition Regulations and Rules and she was of the view that it was premature for the region to move on this issue, given the lack of preparedness of the region, quoting the words of the Council of Ministers of November 2003. Mauritius explained that, in spite of having passed a Competition Law, it was experiencing a lot of difficulty in finalising the Regulations and putting in place the institutional mechanism. It also raised the issue of coherence in the position of the region and that in WTO and EPA negotiations and the issue of the regional institutional arrangements. More importantly, Mauritius said it was not prepared to abide with the Regional Competition Laws and Regulations as long as it had not put in place its own national structures on competition and gained experience in the administration of this complex subject.

104. The Zambian delegation concurred with the views of Mauritius and further stated that it would abide by what was agreed in Dakar at the LDC meeting and so was not in support of the dealing with regional competition at this time.

105. In response to these concerns the COMESA Secretariat pointed out that Article 55 of the COMESA Treaty made binding provisions on competition policy. In cases of regional anti-competitive practices there is no regime which protected member States. It was further pointed out that there had been a number of cases in which companies in the region, mainly companies with their headquarters outside the region, had engaged in anti-competitive practices which had endangered, or at least weakened the COMESA FTA.

106. The Secretariat also pointed out that a regional competition policy only strengthens regional integration, which is why it was included in the COMESA Treaty, and should not be seen as compromising the African Union and G90 position on Singapore Issues taken at the multilateral level. A number of other regional integration organisations were also facing similar problems on regional anti-competitive behaviour, including EAC and SADC, and they had adopted legal provisions similar to Article 55 of the COMESA Treaty as their own provision on competition policy.

107. Council noted that the programme on competition policy was also building regional capacity and that this type of capacity building was more appropriate than importing capacity.

108. Council noted the difficulties encountered by some member States in putting national structures in place to monitor and implement national competition policies. Council further observed that the difficulties which would be encountered at the regional level should not be under-estimated.

Decisions

109. Council decided that, in view of the extensive consultations with stakeholders and the awareness activities undertaken in the member States in the formulation of the regional competition regulations, a framework for regional co-operation be developed.

(b) Public Procurement

110. Council noted that, based on its previous decisions to reform the region's public procurement processes, the COMESA Secretariat was implementing, with support from the African Development Bank, the COMESA Public Procurement Reform Project.

Decisions

111. Council decided the following:

- i. the UNCITRAL Model Law be used by the member States still undertaking legislative reform, taking account of the COMESA directives;
- ii. the Secretariat should undertake consultations with the AfDB on the use of the AfDB Standard Bidding documents, taking account of the laws on copyright;
- iii. the Procurement Agencies in COMESA should co-operate in the exchange of their experiences, information and best practices;
- iv. the COMESA Secretariat should develop a successor project, to be supported by an appropriate donor, which should include capacity building needs and development of training models and operational syllabi; and which should ensure that the structures put in place in the first project are maintained; and
- v. member States consider the Draft Regulations, with the explanatory memorandum prepared by the Secretariat, at national level and submit comments to the Secretariat.

(c) Standards

112. Council noted that the Committee on Standardisation and Quality Assurance, comprising representatives of member States National Standards Bureaux, and which reports directly to IC, was developing regional standards and testing methods, which were based on internationally accepted standards, for a number of products traded in the region. Twenty draft regional standards were in the process of being voted on by member States and a further 80 were at the drafting stage. It was hoped that some 100 standards would be ready for adoption as COMESA regional standards by year end.

113. Council noted that, although the process of preparing regional standards had been delayed in COMESA, the Committee on Standardisation and Quality Assurance was now working hard to get these standards prepared. The Committee was concentrating on preparing standards of goods most frequently traded between member States. Council was informed that the Committee was aware of work on standards carried out by regional

bodies, particularly SADC, and was liaising closely with other regional organisations on this issue to ensure a harmonised approach and a minimum amount of duplication.

Strategic Focus IV: Transport and Communications

a. Civil Aviation

Liberalisation of Air Transport

114. Council noted the improvement of air transport services in the twelve member States implementing Phase 1 of the COMESA Legal Notice No. 2 of 1999. Council also noted the opening of air space to COMESA airlines by Djibouti in line with Legal Notice Number 2.

COMESA Air Transport Competition Regulations

115. Council noted that the Secretariat had prepared ToRs and project funding proposals for the review of the proposed Air Transport Competition Regulations and for the drafting of the implementing rules and guidelines for consideration by the stakeholders and the DCAs.

116. Council also took note of the fact that the work of the Air Transport Regulatory Board (ATRB) had been hampered by lack of funds to support its operations and countries represented on the ATRB may need to fund the expenses of their representatives on the Board.

CNS/ATM Systems Implementation

117. Council noted that the Working Group on the COMESA CNS/ATM Systems had not been able to complete its report due to financial constraints but consolidation of the work already carried out would be undertaken by a consultant and be presented to the CNS/ATM Steering Committee.

(b) Surface Transport

Road Transport

118. Council took note of the need to provide the Secretariat with updates of the on-going rehabilitation and construction projects of the regional inter-state road infrastructure network. Council also took note of the project to rehabilitate 320km of the Mombasa highway in Kenya, with funding of US\$190m coming from the World Bank.

Railways

119. Council took note of progress made in the concessioning of railways in various countries in the region and of developments in RailTracker. Kenya gave an update of the status of concessioning of the Kenya Railways, stating that concessioning had reached a critical stage and that an investment conference was to be convened on 11th June 2004, to be followed by advertising for concessionaires by August 2004. Djibouti reported that it had launched the bidding process for the concession of the Ethio-Djibouti railways, whilst Sudan stated that it had concessioned sections of its national railway network.

(c) Maritime and Inland Water Transport

Ports

120. Council noted the status of port reforms, concessioning of cargo handling and other services for the various ports in the region. Djibouti reported on the progress being made on the construction and development of the port, to be managed by a private company. The importance of the port as a gateway to COMESA was also emphasised.

Shipping

121. Council took note of fact that the Secretariat was collecting information on the active shipping lines in the subregion in order to identify their capacities, route networks, frequencies of service and the constraints they face to provide region-wide shipping services.

Inland Water Transport

122. Council was notified of the programme to customise the Mwanza Model Safety Regulations in member States and programmes in navigation.

(d) Communications

The COMTEL Project

123. Council noted progress made in the implementation of the COMTEL Project and the decision by the COMTEL Interim Board to select a Strategic Equity Partner (SEP), this being the Anderberg/Ericsson Consortium, to invest in COMTEL.

124. Council noted that the Secretariat had been collaborating with the NEPAD e-Africa Commission to promote and mobilise financial resources for COMTEL. The Secretariat had submitted a project funding proposal for completion of project development and due diligence to DBSA and AfDB and discussions on the funding were ongoing.

Decision

125. Council urged member States to ensure that the NTOs participate in the COMTEL project and they actively facilitate the due diligence exercise that shall be undertaken by the Secretariat and the Consortium in the next six months.

Harmonisation of ICT Policy and Regulatory Framework

126. Council took note of the activities of ARICEA, including regulatory agencies that had joined the Association, and of the fact that the European Development Fund (EDF) Committee had now approved an ICT Support Programme for Euro 21 million, submitted by the COMESA Secretariat. The ICT Support Programme Financing Agreement was now ready for signature and it was expected that the Programme would start to be implemented in the last quarter of 2004.

Postal Services

127. Council was informed that the Secretariat had secured funding through the Universal Postal Union (UPU) to prepare a policy and regulatory harmonisation project for postal services in COMESA. The study would take three months and the report would be submitted to the Transport and Communications Committee in October 2004.

(e) Infrastructure Programmes

COMESA Infrastructure Investment Programme

128. Council noted the fact that a draft financing proposal for the COMESA Infrastructure Priority Investment Programme had been submitted to the EDF and discussions were taking place between the Secretariat and the European Commission.

The NEPAD Initiative

129. Council noted that the Secretariat was collaborating with the NEPAD Secretariat and AfDB in resource mobilisation and promotion of Infrastructure projects in the NEPAD STAP.

(f) Trade and Transport Facilitation

Road Transit Facilitation Instruments

130. Council noted the negative impact that non-tariff barriers (multiplicity of controls on transit routes, different operating hours at boarder posts and handling of transit cargo at ports) had on the transportation of goods to and from landlocked member States.

131. Council further noted that implementation of the COMESA approved road transport facilitation instruments continued for some member States and included the COMESA Carrier License, COMESA Transit Plates, Harmonised Road User Charges, Harmonised Axle Load Limits and the Yellow Card.

132. Council noted that five member States, namely: Ethiopia, Kenya, Malawi, Uganda and Zimbabwe, had ratified the Customs Bond Guarantee Agreement. Council further noted that Rwanda and Burundi would soon be submitting the instrument of ratification to their Cabinets. In Sudan the Agreement has been submitted to Cabinet for ratification. In Zambia and Djibouti national stakeholders' consultations were still being held and the position on ratification would be made known as soon as the consultations were completed. In Egypt the RCBG scheme was under study. DR Congo will submit a progress report on ratification to the Council of Ministers meeting.

Decisions

133. Council decided that:
- i. Member States, together with the Secretariat, should, after a review of implementation of existing transit traffic facilitation, develop a comprehensive programme to address all transit problems affecting landlocked member States;
 - ii. Member States that have not yet ratified the Customs Bond Agreement do so as soon as possible; and
 - iii. Member States who have ratified the RCBG Agreement should facilitate the establishment of National Sureties.

Pilot Projects on One Stop Border Post

134. Council took note of the on-going work in Chirundu on the Zambia-Zimbabwe border, in Kasumbalesa on the Zambia-DR Congo border and in Malaba/Tororo on the Kenya-Uganda border on establishing model one-stop border posts. For the Dar-es-Salaam Corridor where Malawi, DR Congo, Tanzania and Zambia are participating, the stakeholders have already signed the Constitution of the Corridor Management Committee and the MoUs for the operations of the systems have been finalised for signature by the member States.

Meteorology

135. Council noted the efforts by the Secretariat to enhance meteorological operations in COMESA through a joint programme with WMO to prepare a strategic development plan for meteorology.

Strategic Focus V: Industry and Energy

(a) PROINVEST Support to COMESA Countries

136. The Committee noted that PROINVEST had recently approved a programme in support of the COMESA Business Council and that work had started on a diagnostic study which will lead to capacity building programmes in the second phase of the programme, the ultimate objective of which is to establish a forum through which the private sector can fully participate in the development, elaboration, and implementation of economic policy in the COMESA region.

137. Council also noted that PROINVEST had approved a proposal to build capacity in three Investment Promotion Agencies in the East African Community.

(b) Status of AGOA in COMESA

138. Council noted that during the AGOA Forum held in Washington, DC in December 2003, in addition to the AGOA III issues, the COMESA Secretariat continued to lobby for country eligibility and re-classification of Mauritius under the third-country fabric provisions; the creation of an holistic plan to boost US-Africa agricultural trade by addressing the Pest Risk Assessment process; and that, under the Trade and Investment Framework Agreement (TIFA), a mechanism be found whereby the US government would notify the COMESA Secretariat in advance of a member State's non-compliance with the AGOA provisions.

139. Council also took note of the pro-active work of the "AGOA Linkages in COMESA" (ALINC) through its provision of support to 126 Track A companies from the COMESA region, provision of Technical Assistance to companies in Rwanda, Uganda, Ethiopia, Mauritius, Madagascar, Malawi, Kenya and Djibouti and sponsoring of companies to selected industry meetings and shows in the United States.

140. Council also took note of the AGOA Acceleration Act which is before Congress and that, whereas most of the issues raised by the COMESA Secretariat, on behalf of some COMESA member States, were included in the draft Bill, the request for derogation of Mauritius under the third country fabric provision had been left out.

141. Council noted Zimbabwe's concerns that AGOA was not a COMESA programme, and such a preferential arrangement between the USA and some selected African States should not be part of the COMESA agenda due to its non-inclusive nature, despite the fact that participating countries may benefit at the bilateral level.

(c) The COMESA Common Investment Area (CCIA)

142. Council noted that a Roadmap for the implementation of the CCIA and a CCIA Strategy Paper have been developed, which provide the basis for updating the Draft Investment Framework Agreement. Council also noted that National Technical Working Groups (TWGs), comprising both private and public sector members have also been established.

Decision

143. Council approved the CCIA Implementation Roadmap and the CCIA Strategy Paper.

(d) Harmonisation of Drug Registration in COMESA

144. Council took note of the fact that the programme on harmonisation of drug registration is now being implemented.

(e) Regional Investment Agency

145. Council noted that the COMESA Secretariat and the General Authority of Free Zones and Investment (GAFI) had signed a Memorandum of Understanding which had resulted in the RIA Unit officially opening in Cairo Egypt. As the Treaty did not provide for the legal existence of the Regional Investment Agency, the Secretariat will prepare the necessary instruments for Council and Authority decision on the legal status of RIA and the funding mechanism.

Decision

146. Council decided that the operations of the RIA Unit be overseen by a Management Board comprising the following Investment Promotion Agencies:

- i. Board of Investment - Mauritius
- ii. Ethiopia Investment Commission
- iii. Zambia Investment Centre
- iv. GAFI- Egypt
- v. Malawi Investment Promotion Agency
- vi. Kenya Investment Promotion Centre
- vii. Rwanda Investment Promotion Agency

viii. Zimbabwe Investment Centre

(f) Study on Firm Strategies under Trade Liberalisation

147. Council noted that the study which looks at value-adding in tea, coffee fruits, and other selected products and which focuses on identifying scope for inter- and intra-firm linkages to enhance productivity, efficiency and economies of scale for corporate bodies or industries in an effort to make them export driven and competitive, was being completed.

(g) Energy Programme

148. Council took note of the fact that the Secretariat is developing an energy programme for inclusion in the COMESA Work Programme and that member States are expected to facilitate the data collection exercise being undertaken by the Secretariat.

Strategic Focus VI: Monetary Affairs

a. Harmonisation of Bank Supervision and Regulation

149. Council noted the request to ADB for financial assistance for implementation of the Action Plan for Harmonisation of Bank Supervision and Regulation in the region and the fact that ADB had indicated their willingness in principle to finance this project.

(b) Monetary and Fiscal Policy Harmonisation Programme

150. Council noted that the Task Force on Monetary Co-operation agreed on its work programme and timetable for undertaking a review of the macro-economic convergence and exchange rate mechanism for COMESA.

(c) Regional Dimension of Poverty reduction

151. Council noted that the COMESA Secretariat, with the assistance of UNECA was undertaking a comparative study of the various PRSPs being implemented by member States, focusing on the preparation, strategies, implementation and outcomes of the PRSPs with a view to formulating a regional programme on poverty reduction strategies. The report is being finalised and would be discussed by stakeholders at a workshop to be held during the year.

(d) Macro-based Economic Policy Analysis and Training Project for COMESA member countries

152. Council took note of the efforts the Secretariat was making to secure funding to implement the capacity building programme on macro-economic policy analysis and that UNECA had agreed to sponsor some of the training courses.

(e) Modernisation of the Domestic Payment System

153. Council noted the efforts being made by the Secretariat to secure funding to modernise domestic payments systems of non-SADC COMESA member States.

(f) Value Added Taxation in COMESA

154. Council noted that the COMESA Secretariat was in the process of recruiting a Tax Policy Advisor to assist to develop and implement a programme on tax policy

harmonisation. Council noted that this would not include attempts to harmonise VAT but rather would promote the sharing of experiences in implementation of VAT.

Strategic Focus VII: Agriculture

(a) Strengthening Food Security and Agricultural Trade Information in COMESA Region

155. Council noted that the agricultural sector was very important in ensuring food security and suggested that the following activities were needed:

- i. Improvement of marketing systems so that countries with surplus food can market this surplus (need to improve transport infrastructure);
- ii. research on drought-resistant crops;
- iii. implementation of irrigation systems to ensure food security;
- iv. improvement of the production of traditional staple crops;
- v. introduction of a system for the storage of crops at the household level; and
- vi. implementation of afforestation programmes.

156. Council noted that Zimbabwe had developed its own irrigation programmes and had built large dams and installed irrigation systems using their own technology, which will improve food security not only of the country but for the region as well.

157. Council noted that the outputs of the on-going study on strengthening food security and agricultural trade information in COMESA will include identification of critical factors needed to establish a well functioning and successful agricultural MIS in the COMESA region and an Action Plan on the implementation of a COMESA Management Information System, which will feed into the Agricultural Marketing Promotion and Regional Integration Project.

(b) COMESA Agricultural Marketing Promotion and Regional Integration Project

158. Council noted the main components of the project as including:

- i. establishment of a COMESA-wide Food and Agricultural Marketing Information System;
- i. strengthening of agricultural marketing institutions;
- ii. sanitary and phytosanitary measures and food safety, standards improvement and harmonisation; and
- iii. strengthening of sanitary and phytosanitary institutions.

159. Council took note that member States had a number of obligations, including financing some of the components of the project and identification of a senior person to represent each country on the Steering Committee. The Secretariat requested member States that had not submitted information on members of the Steering committee to do so as soon as possible. Council further noted that ADB will facilitate the recruitment of three

experts who will implement the project and be based in Lusaka, Zambia. The project will be discussed at the next meeting of Ministers of Agriculture scheduled for August 2004.

(c) Project on Sustainable Rice Production Development

160. Council noted that the final report on this Project, containing case studies of Angola, Madagascar, Malawi, Sudan and Zambia has been completed and that the COMESA Secretariat and the Africa Rice Production Centre signed a Memorandum of Understanding (MoU) in December 2003. Countries that were identified as potential rice producers were Angola, Kenya, Madagascar, Malawi, Uganda, Sudan and Zambia. A huge potential for lowland and rainfed rice cultivation in the COMESA region was also identified. The findings of the study were in the process of being distributed to member States and would be considered by the Ministers of Agriculture to be held during the second half of 2004.

(d) Regional Agricultural Trade Expansion Support Programme (RATES)

161. Council noted that RATES focuses on developing commodity-specific regional trade initiatives through private sector/public sector alliances and partnerships. Key interventions include, promoting market access and addressing policy, regulatory, market information and general procedural and facilitation constraints related to trade in agricultural commodities at regional level. The current focus is on coffee, cotton and textiles, dairy and dairy products, livestock and maize. In the maize sector, a "Maize without Borders Strategy", has been defined. In the cotton and textiles sectors and the dairy sector in-depth studies are being undertaken.

162. A real-time virtual market place that provides information on market opportunities in maize and beans is available at: www.tradeafrica.biz.

163. A similar trade information system for cotton and textiles is under development and will be accessible at www.cottonafrica.com during 2004.

164. Trade promotion missions have been organised and the second World Wildest Coffee Conference and Exhibition www.worldswildestcoffee.com will be held in Livingstone, Zambia in March 2005.

165. The implementation of the "Maize without Borders" concept is in progress.

166. Council also noted that the design of an Agricultural Trade Policy Monitoring System was in progress and was expected to become operational, with a web interface, during 2004.

167. Council noted that there was a need to also trade other crops produced in the region and introduce "without border" programmes in other crops.

(e) Fisheries Development

168. Council noted the progress made in implementing the project on the Production and Marketing of Value-added Fishery Products and the fact that the project has been extended for one year, with remaining activities to be implemented by January 2005.

Strategic Focus VIII: Economic and Social Development

(a) Progress Report on the COMESA Fund

Adjustment Facility

169. Council noted that the Adjustment Facility is designed on a needs assessment basis. If a country has implemented an agreed series of liberalisation measures as part of the COMESA integration programme the country will be considered eligible for budgetary support. The level of budgetary support which could be provided will depend on what adjustments will need to be made to implement the COMESA liberalisation programme and the short-term financing gap there will be as a result of the implementation of the liberalisation measures and which can not be covered from the budget. It is assumed that the needs of poorer countries will be greater than those of the more well-off countries so the bias is to the LDCs and small island states.

170. Council also noted that COMESA Secretariat has prepared a draft financing proposal, which needs the prior approval of the IRCC before it is sent to the EC. The draft financing proposal is based on the assumption that countries need to apply for budgetary support under the Adjustment Facility.

171. Council expressed concerns about the conditions included in the proposal, in particular the requirement that, to qualify for support under the Adjustment Facility, countries should preferably follow a macro-economic reform or adjustment programme negotiated with and monitored by the IMF/World Bank and/or have an ongoing macro-economic support programme with the EC, involving indirect or direct budget support.

172. Council noted that the Adjustment Facility is designed to utilise the Euro 50m allocated to budgetary support in the EDF9 RIP, hence the need for specific conditionalities. However, the concern of member States regarding these conditionalities have been noted by the Secretariat and it was stated that as more donors are brought into the scheme, the conditionalities will change accordingly. The Secretariat committed itself to making every effort to keep conditionalities as unrestrictive as possible and in the best interests of member States.

Decision

173. Council decided that the financing proposal for the component of the Adjustment Facility to be financed under the EDF9 should be redesigned to take account of the concerns of the member States and then be re-submitted to Council for their consideration.

(b) Information and Networking

174. Council noted the activities of the 2004 work programme aimed at improving communications with member States, the development of information systems which assist in programme implementation and management, and capacity building initiatives. Council also noted that new network equipment is being installed in the Secretariat.

175. Council also noted that the Secretariat activities in IT include training, upgrading of the physical networking and communications infrastructure and development of useful information systems and databases. To guarantee full participation of member States in the IT work programme it is proposed that a committee of IT experts with a wide representation from the member States be formed to fully discuss IT issues which would contribute to the fulfilment of the organisation's mandate as specified in the COMESA Treaty.

Decision

176. Council decided that the Secretariat should convene the Committee on Information and Networking to implement Article 139 of the Treaty, which will report to IC and which will review work programmes of the Information and Networking Division and which should include the development of an information policy, including common operating standards and a methodology of linking the Secretariat with member States.

(c) Library Services

177. Council noted that the Library continues to document the `history' of the institution while acquiring and documenting information resources that enhance the operations of all COMESA programmes. Documents and reports covering all the projects done in the past, and those that are been implemented are now documented using the international coding system that enables users to easily access them.

Decision

178. Council decided that member States systematically supply the depository library with relevant documentation.

(d) Technical Co-operation and Resource Mobilisation

179. Council took note of the report of Technical Co-operation and Resource Mobilisation and expressed appreciation for the high level of support provided to COMESA by co-operating partners.

(f) COMESA Advocacy and Information

180. Council noted that the Secretariat has developed video documentaries and radio and TV adverts, issued press releases, publishes a monthly electronic newsletter in both English and French called "COMESA Trends and Opportunities/Le Courier du COMESA", and publishes *ad hoc* reports and other documents.

(g) Strategic Planning and Research

181. Council took note of the activities under Strategic Planning and Research and in particular the outreach activities funded by the Canadian government and the FES which are being undertaken in member States. The first outreach activities have been undertaken in Madagascar, Mauritius, Seychelles and Comoros and similar outreach activities will be carried to cover the rest of COMESA during 2004.

(h) Gender Affairs

182. Council took note of the progress being made on the gender affairs programme, particularly the increase in the number of women in positions of political authority at the national level and implementing of the gender mainstreaming activities. Council also noted that, despite this progress, there is still a need to pay more attention to ensuring equal gender opportunities

183. Council also noted the proposal to extend the COMESA Gender Policy Strategic Action Plan into a five year plan.

(i) HIV/AIDS

184. Council noted that the Secretariat has established a collaborative partnership with the Regional Project for HIV and Development in Sub-Sahara Africa based in Pretoria.

(j) Consolidated Implementation Plan for 2004

185. Council noted the Consolidated Implementation Plan.

186. Council further noted the decision of Council regarding the directive to the Secretariat to work out a ranking system which would indicate at a glance the status of implementation of COMESA programmes by member States. Council noted that the Secretariat had prepared a working document on the ranking system which will be refined in consultation with member States in the next few months and that a finalised version would be submitted to the next policy organ meetings for consideration.

Reports by the COMESA Institutions

(a) COMESA Leather and Leather Products Institute

187. Council took note of the report of LLPI and the fact that it has submitted four more projects for financing. The projects which it had prepared for financing now amount to seven and include:

- i. Capacity Building and Rehabilitation of the Leather Industry in Burundi, Congo DR., Madagascar, Malawi and Rwanda;
- ii. Study on Rehabilitation, Modernisation and Establishment of Tanning Units in Burundi, Rwanda and Uganda;
- iii. Capacity Building of the Leather Industry in Burundi, Rwanda, Uganda and Zambia;
- iv. Sub-Regional Training Programmes in Leather Footwear Technology and Pattern Cutting;
- v. Sub-Regional Training Programme on Leather Goods and Leather Garment;
- vi. Regional Hides and Skins Grading and Pricing in Burundi, Rwanda, Sudan and Uganda; and
- vii. Workshop on Control of Skin Diseases (Mange, Lice and Keds) on Sheep and Goats for Improvement of Skins in Eritrea, Ethiopia, Kenya and Sudan.

188. Council noted the progress made in implementing the Project Adding Value to African Leather (AVAL) including purchase of equipment, holding of various training sessions, and the on-going process of recruitment of international experts required for the implementation of the project.

(b) PTA Bank

189. Council noted that the PTA Bank's main objective remains to be the Development Finance Institution that assists the integration of trade and development activities in the COMESA region.

190. Council further noted that the Bank's activities for the period 2003 to date have involved the following:

- i. Interventions: The Bank has approved facilities worth US\$145.5m, comprising US\$84.6m in project finance and US\$60.9m in trade finance, mainly for operators in the private sector. Cumulative disbursements to both project and trade finance amounted to US\$1bn. The main sectors of intervention have been in manufacturing, infrastructure, agribusiness and tourism for project finance; and agricultural inputs, petroleum imports, tobacco and cotton exports for trade finance.
- ii. Membership: The Bank continues to seek to attract COMESA countries not yet members, and non-COMESA countries, to increase the capital base and capacity to mobilise resources.
- iii. Resource Mobilisation: The Bank has been able to establish relationships with international banks and export credit agencies to bolster its financial resources for on-lending. These resources have been to the advantage of the Bank's clients.

191. The Burundi delegation observed that the Board of Governors of PTA Bank should not delay the return of the Bank to its permanent Headquarters, since the Authority of Heads of State and Government, the supreme organ of COMESA, had already decided that the Bank should return to Bujumbura at its 7th and 8th Summits held in Addis Ababa in 2002 and in Khartoum in 2003, respectively. Burundi recommended that the decisions relating to the return of PTA Bank to Bujumbura, be implemented to the letter and spirit of the Authority decisions by the end of August 2004.

192. Council noted that the PTA Bank's Board of Governors will meet in June 2004 and will review the issue of relocating the Bank to its permanent headquarters.

(c) COMESAMIA

193. Council noted the following activities of COMESAMIA:

- i) in partnership with various companies, COMESAMIA has been involved in the evaluation of iron-ore resources;
- ii. the database of foundries in COMESA is being up-dated;
- iii. the data obtained under the project for up-grading the iron and steel industries is being used to produce a maintenance manual and an e-maintenance programme; and
- iv. a dialogue with Indian iron and steel companies has been initiated with a view to increase investments.

194. Council noted the request from COMESAMIA to the Secretariat for mobilisation of funding.

(d) PTA Re-insurance Company (ZEP-Re)

195. Council noted the progress report by ZEP-Re which highlighted the following:-

- i. premiums written in 2003 grew by 65% to US\$25.6m compared to US\$15.5m in 2002, and the profit grew to US\$1.8m;
- ii. the Company also increased its business sphere to 49 countries, covering 267 companies, as compared to 35 countries, covering 180 companies, in 2002;
- iii. US\$6.8m was paid out in claims in the year 2003 enabling the insurance companies in the region stay in business; and
- iv. the overall growth of the Company was over 50%, with share capital growing from US\$9m in the previous year to US\$10m as at the end of 2003;

196. Council further noted that, in addition to managing the COMESA Yellow Card Reinsurance Pool, ZEP-Re has also taken up management of the Tanzanian National Reinsurance Company as a Strategic Investor. ZEP-Re is also consulting with the Ugandan Insurance Association on the formation of a Uganda Reinsurance Company and has also invested in the African Trade Insurance Agency (ATI).

197. Council noted that the construction of ZEP-Re's new Headquarters building was near completion at a total project cost of US \$5 million in Nairobi, Kenya.

Decision

198. Council decided that member States of COMESA that have not joined ZEP-Re should do so as soon as possible.

(e) COMESA Clearing House

199. Council noted the report on the activities of the COMESA Clearing House and the work that was being carried out in the context of putting into operation of the Regional Payment and Settlement System (REPSS) as approved by Council at its Sixteenth Meeting, held on 2-3 December 2003 in Lusaka.

200. Council noted that the detailed business processes, system operations and procedures to implement REPSS, designed for the use of national currencies in intra-regional trade and payments as well as other commercial transactions, had been completed and that according to the Action Plan, REPSS was expected to be operational by early 2005.

201. Council noted that, in order to provide legal certainty to the rights and obligations of all member country participants, a legal issues study will be carried out and its findings submitted to the Committee of International Payments Experts from Central Banks.

202. Council noted that the Bureau of Governors had approved the following tasks that will be undertaken during the next phase of implementation of REPSS:

- i. development of an Information Sheet for Commercial Banks on REPSS features;
- ii. finalisation of the Request for Proposal (RFP) Document and issuance of RFP upon approval by EU;
- iii. receipt of vendor proposals and preparation of shortlist;
- iv. approval of selected vendor or software developer by the Bureau;

- v. evaluation of system and installation of proof of concept;
- vi. selection of the most preferred solution - off shelf or develop;
- vii. presentation of solution;
- viii. presentation of implementation plan;
- ix. approval of most preferred solution and implementation plan;
- x. preparation of marketing/communication plan;
- xi. finalisation of Bilateral Agreements & Standards & Procedures for REPSS; and
- xii. System Go Live.

Decision

203. Council decided that work on the Regional Payment and Settlement System (REPSS) should continue as approved by the Bureau of Central Bank Governors.

(f) COMESA Court of Justice

204. The Registrar of the COMESA Court of Justice presented the Court's progress report following the March 2003 Authority decision to locate the Seat of the Court in Khartoum, Sudan and Council noted the following:

- i. The Host Agreement was signed by Sudan on 26th January 2004 and this will come into effect 30 days after the Host Agreement has been ratified by Sudan;
- ii. A building had been identified by the Sudanese Authorities for use by the Court but renovations and alterations were required and these have not been completed;
- iii. USAID had been requested to assist with the financing of an ICT network and communications system for the Court;
- iv. An account with a local bank had been opened;
- v. A study on the organisational structure of the Court, including human resource requirements and staff terms and conditions of service, was being prepared, which may have budgetary implications; and
- vi. The proposed amendments to the Treaty will have budgetary implications as they will divide the Court into a First Instance Division and an Appellant Division which will increase the number of Judges from 7 to 12.

205. Council noted that Sudan had identified a suitable plot of land on which the Court could be built and was waiting for details to be sent in an official manner on modifications required to the temporary building housing the COMESA Court of Justice. Council also noted that the residence for the President would be identified once the President was appointed.

Decisions

206. Council decided that:
- i. the current situation where there are no judges should be addressed immediately as recommended under Agenda item 5 so as to allow pending cases to be heard;
 - ii. Member States be urged to meet their commitments to the Court, particularly with regard to budgetary contributions;
 - iii. the publicity seminars of the Court be intensified at regional level as well as at national level; and
 - iv. the Chairperson of the meeting of the Ministers of Justice and Attorneys-General should present their report to the Council of Ministers and all Member States should include Government Legal Advisors in their delegations to the policy organs meetings in view of the many legal issues that COMESA is dealing with.

g. Africa Trade Insurance Agency

207. Council noted that ATI had expanded its products and underwrote its first policy in 2003. Since then ATI had increased the number of insurance policies and had so far underwritten 7 policies totalling US \$80 million spread across all the risks that it covers.

208. Council also noted that ATI had issued policies in Burundi, Kenya, Tanzania and Uganda, and firm orders for insurance had been received for transactions in Malawi and Zambia, while a number of enquiries were being handled for transactions in Rwanda and other member countries.

209. Council further noted that ATI had increased its membership to ten with the joining of Djibouti. The membership of ATI now included: Burundi, Djibouti, Eritrea, Kenya, Madagascar, Malawi, Rwanda, Tanzania, Uganda and Zambia. DR Congo was in the process of joining ATI soon.

210. Council decided as follows:
- i. COMESA countries which had not joined ATI were urged to consider doing so; and
 - ii. COMESA countries were urged to promote ATI in their respective countries and to support ATI's marketing efforts in their countries, and to create awareness among the private sector organisations of the existence of ATI and its role in securing trade and investments in the region.

Report of the Bureau (*Agenda item 8*)

211. Council considered the report of the meeting of the Bureau of Council held on 3rd June 2004 as contained in document number COM/CB/VIII/2. The report of the Council on closed session issues is contained in a separate document number COM/CM/CL/XVII/3(a).

Report of the Seventeenth Meeting of the Committee on Administrative and Budgetary Matters (*Agenda item 9*)

212. Council considered the report of the Seventeenth Meeting of the Committee on Administrative and Budgetary Matters contained in document No. COM/IC/XVII/5(a). The report of the Council is contained in a separate document No. COM/CM/XVII/3(b).

Any Other Business (Agenda item 10)

213. The heads of delegation of the European Commission (EC), United States of America Agency for International Development/Regional Economic Development Services Office for East and Southern Africa (USAID/REDSO/ESA), World Health Organisation (WHO) and the African Regional Standards Organisation (ARSO) gave statements. The EC representative commended COMESA for their continued progress in regional integration. He further highlighted the support of the EC to COMESA under the regional indicative programmes of individual member States. He highlighted the challenges faced by COMESA member States, which included conflicts and need to continue the negotiations of the Economic Partnership Agreement. The USAID/REDSO/ESA representative, Dr. Gerald Cashion, informed Council that USAID/REDSO/ESA was glad to be supporting COMESA since COMESA was actively pursuing a focused developmental programme that would assist the member States. He highlighted the areas of support to COMESA which included institutional strengthening, trade and peace and security. Finally he hoped that the first Business Summit would be a success.

214. The representative of the World Health Organisation reported on the recently concluded WHO Health Assembly which identified the challenges in Africa of Aids/HIV. The representative of ARSO reported that ARSO would continue to cooperate with COMESA in the development of standards which were important in the development of an African Common Market.

Adoption of the Report and Closure of the Meeting (Agenda item 11)

215. Council adopted the report with amendments.

216. Dr. Youssef Boutros Ghali, Minister of Foreign Trade of the Arab Republic of Egypt thanked the Chairman for the able manner in which he had steered the deliberations of Council.

217. In closing the meeting the Chairman thanked all members of Council for their contributions and cooperation they had given him.