

COMESA Rules of Origin Activity

Final Report

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I. THE TEAM'S SCOPE OF WORK

The ARD/Checchi Team's scope of work was founded on the realization by the COMESA Secretariat and other key stakeholders that the existing regime on Rules of Origin may not be sufficiently conducive to fostering the growth of intra-COMESA trade: the existence of a preferential tariff for COMESA goods meeting certain criteria of origin does not yet play a significant role in promoting regional economic integration.

Because the existing regime appeared difficult to understand and apply, a complete revision of the COMESA Rules of Origin appeared necessary. The Team's work had several objectives:

- to review the current rules and related manual for their implementation;
- to look at work underway related to Rules of Origin within international bodies such as the World Customs Organization (WCO) in Brussels and the World Trade Organization (WTO) in Geneva, so as to propose new rules for COMESA that would be congruent with the prevailing international trends;
- to learn about how another trading bloc (MERCOSUR) has dealt with the issue of Rules of Origin and to determine whether there are transferable lessons from which COMESA could benefit;
- to visit a representative sample of COMESA countries in order to learn firsthand from relevant players both in government and the private sector their level of knowledge, impressions, opinions, criticism, and/or recommendations regarding the rules;
- to conduct Business Surveys in a number of COMESA countries in order to gather meaningful data on the way companies work with the existing rules and what problems or obstacles, if any, they face;
- to devise a monitoring and evaluation model that would allow the COMESA Secretariat staff and COMESA countries to have:
 - reliable, "real time" data regarding intra-COMESA trade conducted under the rules, as compared to other intra-COMESA trade and non-COMESA trade;
 - a methodology for evaluating such data so that the source of bottlenecks and/or other problems could be easily identified and addressed;
- to propose a publicity and awareness program aimed at spreading knowledge about the COMESA preferential system, its substance and all procedures involved. The purpose of this program was to have more companies that are eligible for COMESA preferences understand the advantages of the rules, with the end result of increased trade at lower costs in products originating from within the region.

A. Organization of Work

A total of five specialists were tasked to execute this scope of work. Four specialists (Paolo Liebl von Schirach, Richard Duncan, Carlos Calcopietro, and David Craven) were from the United States, and one (Trevor Simumba) was from Zambia. The consultants were supported by a Lusaka-based subcontractor, IMCS, which provided office space and other logistical support to the Team and conducted a regional business survey. Three team members, the Team Leader Paolo Liebl von Schirach, David Craven, and Trevor Simumba, were involved in the review of the rules and in the field visits in various COMESA countries. On their way to Africa, the Team Leader and David Craven visited the headquarters of the WCO in Brussels and of the WTO in Geneva for consultations.

The Monitoring and Evaluation Specialist, Richard Duncan, examined the existing systems at the COMESA headquarters and proposed changes in order to devise a more effective system. He also visited with stakeholders in Zambia itself and accompanied the other experts in some of the field trips. The objective was to gather information on existing systems and capabilities regarding data retrieval, collection, and dissemination from a sample of countries, including some with more modern systems and others with less sophisticated ones. The Monitoring and Evaluation expert visited Zambia, Zimbabwe, Malawi, and Madagascar.

The fifth member, Carlos Calcopietro, visited the headquarters of the MERCOSUR in Montevideo, Uruguay, and visited with stakeholders in Argentina--a key Member Country. He conveyed his report to the Team Leader so that its findings could be integrated into the Team's recommendations.

At the very beginning of the project, the most daunting challenge appeared to be the very tight timetable for accomplishing all of the mission's objectives. In fact, the Team was supposed to begin work at the beginning of September with the visits in Europe, complete all the field work, and produce drafts for circulation and comments and then a final draft--all by early November 1998. On November 4, a scheduled COMESA Trade and Customs Committee Meeting was supposed to convene, discuss, and take action on the Team's recommendations. This tight timetable presented some significant logistical problems in view of the amount of travel required to perform the various field visits and the need to have adequate advance preparation for each trip. A further unexpected logistical complication came about after the tragic bombing incidents affecting U.S. embassies in Tanzania and Kenya. These incidents caused travel restrictions for U.S. nationals in those and other COMESA countries, which resulted in some unexpected program changes later on.

B. Execution

Taking into account the existing project deadlines, the ARD/Checchi created a travel schedule that would allow visits to the maximum number of countries within the pre-established time frame.

The consultations with both WTO and WCO in early September yielded important results. The meetings reinforced the Team's understanding that Rules of Origin are always contentious issues

and that, given a choice--especially in an environment dominated by emerging economies--simple, straightforward rules that would require only a modicum of effort to be enforced would be preferable. As the primary object of COMESA is to strengthen economic ties among its members, easy to use and to administer rules appeared to be the best choice. In addition, although fully cognizant that WTO and WCO have been working only on non-preferential rules, the Team noted that the Harmonized System (HS) Code is becoming the standard yardstick for all international economic transactions, whether among developed or developing countries. The Team thus felt that Rules of Origin based on the HS Code would be beneficial at different levels. In this respect, the consultations in Europe proved to be very significant in providing orientation for the work to come.

After the stopover in Europe, the Team gathered in Lusaka and had its first organizational meeting with representatives of the COMESA Secretariat on September 14, 1998, at COMESA's headquarters in Lusaka. The Team was informed for the first time of some important changes required by COMESA. First, the crucial meeting of the Trade and Customs Committee (around which most of the work organization had been done) had been moved to a new, yet-to-be-determined date, most likely in the new year. The Team was also informed at this time that Egypt was about to become a member of COMESA and thus a field visit to Egypt (not included in the initial scope of work) would be mandatory. The Team, in turn, explained to the COMESA staff the travel restrictions due to the above-mentioned bombing incidents. The Secretariat insisted, however, that without those field trips, the Team's final recommendation would carry less weight.

During this period, USAID CTO Marcia Musisi-Nkambwe was on a different assignment in the United States, but by keeping in close contact with her, with other relevant parties at USAID/RCSA, and with the ARD/Checchi home office, the Team was able to deal with unexpected developments. Thanks to the cooperation of all parties involved, and in particular to the flexibility of USAID/RCSA in quickly processing changes to the initial work order, all issues were resolved to the satisfaction of COMESA. The need to address those unexpected developments, however, required some readjustments in the work program.

One component that could not be altered in light of the most significant program change (i.e., the moving of the date for the Trade and Customs Committee Meeting) was the planned field trips. Most travel programs and complex itineraries for the Team had had to be finalized back in the U.S. prior to the Team's departure for Africa. The Team was already on the ground when the need for changes became apparent, thus it was not opportune to completely reschedule the Team's travel schedule.

Initial difficulties notwithstanding, all of the activities contemplated in the Scope of Work--as later amended to include COMESA's wishes--were accomplished, although the time line clearly had to be altered. The major changes included the switching of Team members who would make the visits to some of the restricted countries and the addition of the Egypt visit in November. The Team visited Zambia, Zimbabwe, Malawi, Namibia, Swaziland, Ethiopia, Kenya, Uganda, Tanzania, Madagascar, Seychelles, Comoros, Mauritius, and Egypt.

The visit to MERCOSUR (Uruguay and Argentina) was successfully completed and the Team member's report was received in Lusaka.

The Team Leader provided a preliminary mission report (after the initial round of field trips) to USAID/RCSA staff in Gaborone on October 22 and 23.

The Monitoring and Evaluation Program initial draft was successfully completed by the end of October.

The first drafts of the basic documents, the Protocol and the Manual, were presented to the COMESA Secretariat on November 5 and 9 with the understanding that reactions and comments would be discussed in person with the Team Leader upon his return to Lusaka from Egypt on November 23. At the time of the first presentation, it appeared that the Secretariat both understood and approved the general direction of the Team's recommendations.

Upon consultations with and approval by USAID/RCSA, it was also decided that a Team member would stop in Geneva for further consultations with the WTO on his way back to the U.S. The purpose of this visit was to present, to the same relevant WTO staff persons who had been consulted back in September and to the U.S. Delegation to WTO, the Team's findings on Rules of Origin within COMESA and its chosen approach for the drafting of new rules. The Team, and the persons they met at WTO, felt it would be important to receive further input from WTO prior to finalizing the Team's work. The second visit to Geneva took place in early November. The Team member who went for these consultations was satisfied overall that WTO did not have any objections as to the general direction undertaken.

The Team Leader received a report on the WTO visit and was able to convey the encouraging outcome of this additional round of WTO consultations to the COMESA Secretariat staff on November 23.

The Team Leader met with representatives of USAID/RCSA in Gaborone, Botswana on November 25 for an extensive Exit Session and debriefing on the mission, indicating also what the thrust of the Team's recommendation was.

Upon returning to the U.S., the Team Leader discussed with the other members the reactions of the COMESA Secretariat to the first draft of all project documents. Based on written communications from Lusaka, it appeared that only marginal changes were required. Following COMESA's requests, the Team provided a second draft of all project documents that were sent to Lusaka before Christmas. At the request of the Secretariat, the Team also produced an additional project document that described the results of the country visits. A Final Draft of all documents, produced upon receiving further reactions from COMESA, was produced by the end of February and sent by the Team Leader to ARD/Checchi for final editing. Further comments were received from COMESA and the final deliverables were again edited to respond to these comments; they were then forwarded to our local subcontractor, IMCS, for copying and remittance to the COMESA Secretariat. All final copies of the deliverables were submitted by IMCS to the COMESA Secretariat on April 9.

One notes that in the same period, the Team was waiting to hear from the Secretariat as to the date on which the COMESA Trade and Customs Committee would convene so that proper planning could be made to present to this key Committee the Team's recommendations. The Committee would then decide whether to support the changes as presented or another course of action. Initially COMESA informed the Team that the meeting (which according to the initial Scope of Work should have taken place on November 4, 1998) would convene March 29-31. Later on, this date was changed again to April 19-21. It was decided that the Team Leader would go to present the findings and recommendations to the delegates.

The Team was not made aware that COMESA had created a very large agenda for this April 19-21 meeting and that the time allocated for the Team's presentation would be rather short. All this notwithstanding, the recommendations were presented. The initial reactions from the delegates were cautiously positive with the exception of one Member Country that manifested strong doubts as to the substance of many recommendations. The delegates indicated that they would need to study the reports in depth before making recommendations to their respective governments as to whether or not they should endorse the changes envisaged.

At the time of the writing of this Final Report the issue is still pending.

II. FINDINGS AND RECOMMENDATIONS

A. Background

Extensive consultations with the COMESA Secretariat, many country visits, and the early results of the Business Survey convinced the Team that the application of Rules of Origin cannot be treated as a freestanding issue. Rather, it must be considered within the context of the way COMESA is perceived and viewed within the Region. It soon became apparent that COMESA as an institution has a very low profile among stakeholders in the Member Countries. This factor affects the level of attention paid to COMESA's activities, directives, and actions--including anything that pertains to any Rules of Origin regime.

Sophisticated knowledge about COMESA appears to be limited to key government officials who issue and verify Certificates of Origin, and some firms that actively trade using the COMESA tariff. Overall, throughout the Region, the Team found that few companies fully understand COMESA's role as an International Regional Organization aiming to create closer ties among the countries in the Region. Likewise, few considered the COMESA tariff as a factor in their economic strategies and decisions. In most cases it was a matter of scant or complete lack of information about COMESA's purposes and functions, including the existence of the Rules. Few companies indicated that their country's membership in COMESA affected the way they conducted their business one way or the other. Others indicated that there were other factors influencing business decisions that would normally take precedence over any evaluation of the advantages provided by any kind of preferential regime. By and large, respondents cited lack of good roads as a key impediment to trade within the Region. Island countries indicated that sea communications with the African mainland are infrequent and very expensive, making it at times easier and cheaper to trade with Europe than with Africa. Others mentioned difficulties represented by the high cost of communication as another key impediment. Many cited lack of knowledge about market conditions in other countries as a disincentive in exploring further opportunities within the Region.

In the cases where enterprises knew about COMESA and the existence of the Rules, many companies expressed concern as to their "in house" ability to make the calculations that would determine whether or not a product would qualify under the existing Rules. Others indicated that the added-value barrier (as per current COMESA's Rules) had been set too high and thus their goods could not qualify. Many expressed concern about the lengthy procedures necessary to secure Certificates of Origin in their countries. Finally, the few who do trade under the Rules, complained about the lack of certainty provided by the regime inasmuch as receiving countries, on occasion, would block shipments based on their subjective evaluation that the goods involved would not qualify for the preferential tariff.

With this important background information in mind, the Team's orientation was to devise Rules and procedures that would be easy to understand and administer, and that would reinforce faith in the regime, especially in the case of disputes.

B. Salient Recommendations

1. The Rules of Origin

The Team's initial and basic recommendation was for COMESA to abandon its current rules (value added and materials) and embrace instead a rule based on the principle of change in tariff subheading. The reason is simple. The current rules require "in house" accounting capabilities that only the larger and most sophisticated producers already have. They also produce results that are at times unpredictable and in some cases inequitable inasmuch as currency fluctuations and thus the costs of imported components could easily change the equation for some producers, whereby a product would qualify one day and not a month later. Likewise, due to different conditions and costs, the same exact process would satisfy the origin criteria in one country but not in another.

The principle of change in tariff subheading would instead provide a number of advantages at the same time. First of all, as it is based on the Harmonized System, it would force all stakeholders, governments, and companies alike to familiarize themselves with the HS Code, which is the universally accepted reference for international trade. Secondly, it would create objective, easy-to-understand criteria that could be uniformly applied and verified everywhere without complex calculations (and verifications thereof). Furthermore, as the Team learned during the consultations in Europe with both WCO and WTO, the general orientation of these international bodies is to create rules (albeit applicable initially only to non-preferential trade) largely based on the above-referenced principle. Adoption of a similar rule would automatically align COMESA with the prevailing international trend. Finally, by adopting a rule based on change in tariff subheading, COMESA would create a significant but not excessively high barrier for products to qualify under the preferential regime. This recommendation was based on a simple economic reality. Many of the COMESA products that currently benefit from the preferential tariff belong to the "wholly obtained" category. Such products, by definition, would qualify under any possible rule.

Few manufacturing enterprises within the Region can create products without relying on at least some imported components. These are the companies that have or may have difficulty in qualifying under the present value added or materials rule. If COMESA's goal is to encourage those that are already involved in partial transformation to trade more within the region, then the barriers should not be too high--hence the recommendation that a change in tariff subheading should suffice to confer origin.

By the same token, in order to create a uniformly dependable regime, the Team advised removing the clause that essentially exempts certain products from any significant qualification requirement to the extent that they are listed as goods of national importance. A strict regime that would allow large exceptions at the same time would undermine the objective of having rules in the first place.

2. *Master Certificates*

In order to simplify certification procedures (which can be at times quite lengthy and burdensome), the Team recommended that certain categories of significant volume producers could apply for and obtain from the Issuing Authorities a Master Certificate that would in turn allow the company to issue its own Dependent Certificates. The only additional requirement would be to reconcile the certificate periodically. The advantages of this new procedure are many. It would save time and allow for better verification while simultaneously forcing the producers to reconcile the initial figures declared in terms of their production run with the amount of goods actually shipped.

3. *COMESA Mark of Origin*

This represents an innovative principle. Under this approach, large producers typically specialized in producing large quantities of small, low-price items could apply for and receive a "COMESA Mark of Origin." This would help the activities of the many thousands who are involved daily in informal cross-border trade. These small entrepreneurs do not have the time or the opportunity to apply for and obtain a Certificate of Origin for the relatively small amount of goods that they carry. The result is that they end up paying full duty even for goods that should benefit from the preferential rate.

4. *Deference Principle*

This principle is aimed at reinforcing confidence in the system by doing away with unilateral actions on the part of receiving countries that would question the COMESA origin of a particular shipment. Assuming no fraudulent activity (such as forgery of Certificates), an individual shipment should be accepted. If the receiving country has substantive doubts about those goods, then it can initiate a dispute procedure, beginning with informing the issuing authorities that no more shipments will be allowed in.

5. *Dispute Settlement Procedures*

The need to create certainty and confidence in the system is behind our recommendation for the creation of a comprehensive dispute settlement procedure based on arbitration. The acceptance of this procedure should reassure those who have expressed concern as to the lack of a recognized, accepted system for solving problems under the current regime.

III. PROBLEMS ENCOUNTERED IN EXECUTING THE SCOPE OF WORK

The Rules of Origin project was straightforward in its substance, but quite complex in its execution, as it entailed a great deal of travel and meetings within the Region, in addition to the writing, discussion, and finalization of several documents in close coordination with COMESA's Secretariat staff. The most significant obstacles encountered had to do with advanced planning and logistical coordination including communication from COMESA's Secretariat prior to the mission's inception. As indicated above, ARD/Checchi and the Team struggled to create a work plan that would satisfy COMESA's request to have the work concluded by the time the Trade and Customs Committee would meet in early November 1998.

When COMESA changed the date, no information as to this crucial change (affecting the production timetable of all deliverables as well as the schedule to perform the field trips) was given either to USAID/RCSA or to ARD/Checchi. Requests for additional changes to the Scope of Work, such as the need to include Egypt in the list of countries to be visited, were also not clarified in advance.

Furthermore, it became evident upon the beginning of consultations with the Secretariat's staff in Lusaka, that COMESA has limited communications and access to the Member Countries and could not provide adequate support for the Consultants who were going to perform the field visits. COMESA promised that it would alert in a timely fashion its "designated counterparts" in each country (typically a Ministry or a government agency). This way they could be involved in the preparation of the visits and contribute in creating an agenda. Instead, it became obvious that, for the most part, these designated, official counterparts do not have ongoing contacts and interactions with COMESA's Secretariat. In fact, in most instances, the Team was not provided with names of counterparts, but with names of Ministries and /or branches thereof. In some cases, even that information was not current--phone and fax numbers were incorrect, and COMESA was unaware that certain Ministries had ceased to exist following governmental reorganizations.

While this affected the Team's work in the execution of this particular mission on Rules of Origin, it is also an indication of the tenuous relationships and level of interaction between COMESA and its Member Countries at the working level. The field trips confirmed this to be the case. All individuals encountered were helpful and courteous. However, it was obvious that most of them had received little or no advance information from COMESA as to these forthcoming trips, and few of those designated as "contact persons" were even vaguely acquainted with the nature of the mission.

All this notwithstanding, relying in part on prior regional experience, personal initiative, and the help of some individuals who were kind enough to provide leads that generated appointments, the Team was able to accomplish the expected results. In the end, the Team was satisfied that it had met with a representative sample of stakeholders both in government and the private sector in each country visited.

On a different level, the Team could ascertain that, in many cases, COMESA's small staff is stretched to the maximum. All individuals with whom the Team interacted for this project were kind and willing to cooperate. However, there were severe constraints as to their availability, since they had to attend to other equally urgent business. In addition, it was apparent that certain deficiencies exist in the overall professional competence of the Institution. An example of this is a document that reported average tariff rates for COMESA countries. Upon further verification, those figures turned out to be, in most cases, wrong.

Again, while COMESA, with the help of other donors, is working to set up a computerized network for the centralization of trade statistics, the work on the Monitoring and Evaluation Program indicated that there is patchwork implementation of these various programs. These systems, at the moment, cannot provide the information required. Hence the difficulty in implementing, under current conditions, a viable Evaluation Program on Rules of Origin.

Another problem occurred at the end of the mission. COMESA's inability to determine a new date for the canceled Trade and Customs Committee Meeting caused uncertainty for the Team. Clearly the objective was to be able to participate, but for a few months, there was no information and thus no possibility to plan. Finally when the April 19-21 date became definite, the Secretariat did not convey to the Team that it had prepared a large agenda and that only a short period of time could be allocated to discuss the various findings and recommendations stemming from the Rules of Origin Project. Again, while the Team Leader was urged to arrive in Lusaka ahead of the official meeting to strategize on the presentation, the COMESA staff person who was to meet with the Team Leader was abroad on a different mission.

On a more substantive note, as indicated above, throughout the duration of the project, the Secretariat's staff seemed to agree in full with the thrust of the Team's approach and recommendations. However, when the last draft was submitted for final approval, the Secretariat raised novel objections that to some extent modified the substance of the proposed recommendations. The main change had to do with the basic rule. The Team had recommended the complete abandonment of the old rules. COMESA instead indicated that it would keep the old ones and add the principle of tariff change as an additional rule, making it, however, more stringent than what had been recommended. While the Team was pleased that all other recommendations previously accepted were still welcomed, there was some surprise as to this last-minute change that had not been anticipated during the various iterations leading to the finalization of all documents.

Despite these difficulties, the Team is satisfied that at least a new rule based on the prevailing international standards has been accepted by the Secretariat and that many other procedural changes have also been endorsed by the Secretariat with the explicit recommendation made through a COMESA document presented at the April Trade and Customs Committee Meeting.

IV. LESSONS LEARNED

The first general consideration is that COMESA is a comprehensive, functioning Regional Institution. A great deal of work has been done to get it established. However, it is obvious that a great deal more needs to be done for it to be fully recognized as an important factor in the Region's economic integration and higher degree of political cooperation. The Rules of Origin issue is an example of how little the institution is known. The degree of ignorance on a subject that clearly can have economic impact for countries and companies is in itself an illustration of the daunting task of making COMESA, its institutions and purposes better known within as well as outside the Region. While there is this large cluster of countries ostensibly committed to the lofty goal of creating a Free Trade Area and a Common Market, by and large the world has no idea that COMESA even exists.

The main lesson learned through the execution of this mission is that extra advance work time should be allocated for all projects requiring numerous visits to Member Countries and/or convening any type of regional meeting. What may appear to be a reasonable amount of preparation time elsewhere turns out to be inadequate in the Region. One should also not underestimate the high cost of communications in the Region and sometimes the actual impossibility to communicate in order to make, confirm, or change a date for a meeting. All these logistical complexities tend to slow down the execution of any such multifaceted project.

V. RECOMMENDATIONS FOR FOLLOW-ON WORK

The Team firmly believes that this project has been important and that the recommendations, if implemented, can make a significant difference. However, we are under no illusion that this is going to be simple. As recommended in the Final Project Documents, the Team believes in the need for a sustained--perhaps multi-year--effort aimed at publicizing the new Rules of Origin regime and sensitizing all relevant stakeholders as to the benefits of being part of a Free Trade Area. The issue of Rules of Origin cuts across many key areas, from basic business decisions to the establishment or change of administrative and enforcement procedures within countries, to the ability of Member Countries to understand each other's needs and issues and fully cooperate whenever possible.

Such a program would be beneficial at different levels. It would provide dedicated training where necessary. It would raise awareness about COMESA. It would allow business people to understand the workings of a preferential system. Hopefully it would help officials understand how they can redefine for themselves a role as trade and economic integration promoters.

If one looks at this daunting challenge and relates this to the scarce means currently at the disposal of the Secretariat, one realizes the enormity of the challenge.

A Three-Day Workshop in Lusaka

It was mentioned above that, due to the constraints of a heavily packed agenda, it was not possible to discuss at great length the project findings and recommendations during the Trade and Customs Committee Meeting held in April.

Since the Member Countries are now discussing the project documents and the merits of the recommendations, it would be highly beneficial to hold a dedicated three-day workshop in Lusaka with the objective of systematically going over the whole project.

Participants at this workshop should include some of the officials who participated at the COMESA Meeting since they already know something about the suggested changes, but would no doubt benefit from more in-depth presentations and discussions. Private sector participation is also recommended, so that the business community within the Region becomes more closely acquainted with the issues at hand.

It would be important to hold this workshop soon, before the next Trade and Customs Committee Meeting is convened. This workshop no doubt would spread awareness about the shortcomings of the present regime while publicizing how the recommended changes could be beneficial for all concerned. Assuming success of such an endeavor, this formula could be repeated elsewhere in the Region with the goal of involving the largest number of participants.

Further steps will be discussed following the workshop.