

TP/TWG-ROO/26/2019/-
REPORT

Adopted Report



COMESA-EAC-SADC TRIPARTITE

TWENTY SIXTH MEETING OF THE TECHNICAL WORKING GROUP
ON RULES OF ORIGIN

HILTON HOTEL

KENYA

16 - 21 SEPTEMBER, 2019

REPORT

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INTRODUCTION

1. The Twenty-Sixth Meeting of the Technical Working Group (TWG) on Rules of Origin (RoO) was held from 16 – 21 September, 2019 in Nairobi, Kenya. The objective of the Meeting was to consider and finalise the draft Manual on the Application of Tripartite FTA Rules of Origin, consider the list rules of origin that should apply to new Heading 96.20 and new subheading 8539.50, the agreed list rules of origin aligned to HS 2017, the Special and Differential (S & D) treatment provisions for Island States and the Paper on Cumulation with African countries that are members to the African Continental Free Trade Area (AfCFTA) but not part of the TFTA.
2. The Meeting was held in parallel with the 10th Meeting of the TWG on Technical Barriers to Trade, Sanitary and Phytosanitary Measures and Non-Tariff Barriers, the 11th Meeting of the TWG on Customs Cooperation, Documentation, Procedures and Transit Instruments and the 3rd Meetings of the TWGs on Trade in Services and Competition Policy, respectively.
3. The Meeting was attended by delegates from the Member/Partner States of the EAC (Burundi, Rwanda, Kenya, South Sudan, Tanzania and Uganda), Egypt, SACU (Botswana, Namibia and South Africa), Madagascar, Zimbabwe and officials from the COMESA Secretariat. The list of participants is attached as *Annex I*.
4. The meeting was chaired by Mr Francis Koluo, Principal Commercial Officer, Ministry of Trade, Industry and Co-operatives of Uganda while Ms Molly Apio Opwonya, Legal Officer, Ministry of Finance, Planning and Economic Development, of Uganda was the Vice-Chair and the Rapporteur was Mrs Mosadinyana G. Nthomiwa, Chief Trade Officer, Ministry of Investment, Trade and Industry of Botswana.

CONFIRMATION OF THE BUREAU (*Agenda item 1*)

5. In accordance with the Rules of Procedure, the Bureau was constituted as follows:

Chairperson	:	Uganda, representing COMESA
Vice-Chairperson	:	Uganda, representing EAC
Rapporteur	:	Botswana, representing SADC

WELCOME AND OPENING REMARKS (*Agenda Item 2*)

6. A joint opening session for the five parallel TWG meetings was held. In his opening remarks, Dr Seth Gor, the Tripartite Capacity Building Programme (TCBP) Coordinator welcomed the delegates to the meetings on behalf of the Tripartite Task Force. He informed the delegates that in addition, a meeting of the Tripartite Sub-Committee on Resource Mobilisation would be held on the margins of the five TWG meetings. Dr Gor also informed the delegates that the TWG meetings were building on the achievements of the last meetings held in August 2019 in Zanzibar, United Republic of Tanzania.

7. Dr Gor informed the delegates that the TTF was aware that the change of dates of the meetings had caused some inconveniences to the delegates but the changes were caused by circumstances beyond the TTF's control. He further indicated that the TWGs were an important part of the Tripartite process and urged the TWGs to finalise their work. Further, he informed delegates that the TWGs had done well so far and hoped that, in particular, the TWGs on Customs Cooperation, TBTs, SPS and NTBs, Competition Policy and Rules of Origin would finalise the Guidelines, Procedures, draft Protocol on Competition Policy and Rules of Origin Manual, respectively, for submission to higher Tripartite policy organs in preparation for the impending Tripartite Summit planned for January 2020.

8. Dr Gor observed that Rwanda's recent ratification of the Tripartite FTA Agreement had brought the number of countries that had ratified to five (5) and hoped that the remaining nine (9) Member States ratifications that are required for the Agreement to enter into force could be secured before the deadline of September 2019 set by the 8th Meeting of the Tripartite Sectoral Ministerial Committee (TSMC). He further observed that there were a number of Tripartite Member/Partner States that were at various stages of ratification and urged them to do so by the set deadline as this would facilitate the holding of the Fourth Tripartite Summit planned for January 2020.

9. Mrs Helen Kenani, Assistant Director of Trade, Ministry of Industry, Trade and Cooperatives welcomed the delegates to Nairobi, Kenya. She informed the delegates that the 7th and 8th Meetings of the TSMC had tasked the TTF to conclude work on the operationalisation of the Tripartite Free Trade Area and hoped that the fourteen instruments of ratification required for the TFTA Agreement to enter into force could be achieved by December 2019. Mrs Kenani urged the delegates to finish the outstanding work and expressed hope that substantive work would be achieved for submission to higher Tripartite policy organs in order for the planned Summit to be held in January 2020. Furthermore, she urged the delegates to have a common approach during AfCFTA negotiations. In conclusion, she wished the delegates fruitful deliberations.

10. At the breakout session of the TWG meeting on RoO, the Chairperson, Mr Francis Koluo welcomed the delegates to the meeting and thanked the Government of Kenya for hosting the meeting. He urged the meeting to finalise the draft Rules of origin Manual to facilitate implementation of the Tripartite FTA. He then wished the meeting fruitful deliberations.

ADOPTION OF AGENDA AND ORGANISATION OF WORK (*Agenda item 3*)

11. The meeting adopted the following agenda:

1. Constitution of the Bureau (*Agenda item 1*)
2. Welcome and Opening Remarks (*Agenda item 2*)
3. Adoption of the Agenda (*Agenda item 3*)

4. Consideration of the Draft Manual on the Application of Tripartite FTA Rules of Origin (*Agenda item 4*)
5. Consideration of list rules of origin that should apply to new HS Heading 96.20 and new subheading 8539.50 arising from the alignment of the agreed list rules of origin from HS 2012 to HS 2017 (*Agenda item 5*)
6. Consideration of agreed list rules of origin aligned to HS 2017 (*Agenda item 6*)
7. Consideration of the revised Island States Joint Proposal on Special and Differential treatment on fisheries for Island States with regard to Article 6(2) on the definition of "their vessels" and "their factory ships" (*Agenda item 7*)
8. Consideration of the Paper on Cumulation with African countries that are members to the AfCFTA but not part of the TFTA (*Agenda item 8*)
9. Any other business (*Agenda item 9*)
10. Date and venue of next Meeting (*Agenda item 10*)

CONSIDERATION OF THE DRAFT MANUAL ON THE APPLICATION OF TRIPARTITE FTA RULES OF ORIGIN (*Agenda Item 4*)

12. The TWG considered and agreed on all the issues that had remained outstanding from the 25th Meeting of the TWG on Rules of Origin. In particular, the meeting concluded on the examples in paragraphs 2.10 on Split Consignments and 2.17 on Territoriality. The meeting also discussed and agreed on the calculation of the ex-works price in paragraph 2.5.3. In discussing the calculation of the value of non-originating materials, Egypt reiterated its reservation on the valuation of the materials based on the Free on Board (FOB) value raised during the 25th Meeting.

13. The meeting also considered and agreed on the Dispute Settlement Procedures in paragraph 3.6, the Terms and Abbreviations used in the Manual, among others.

14. The final draft Manual considered and revised by the TWG is hereto attached as ***Annex II***.

CONCLUSION

15. The meeting agreed to submit the final draft Manual on the Application of TFTA Rules to the TTNF for consideration.

CONSIDERATION OF LIST RULES OF ORIGIN THAT SHOULD APPLY TO NEW HS HEADING 96.20 AND NEW SUBHEADING 8539.50 ARISING FROM THE

ALIGNMENT OF THE AGREED LIST RULES OF ORIGIN FROM HS 2012 TO HS 2017 (*Agenda item 5*)

16. The Tripartite Task Force (TTF) made a brief presentation on the possible list rules of origin that should apply to new heading 96.20 and new subheading 8539.50. The meeting considered and agreed on a Change of tariff heading (CTH) rule with a value of non-originating materials (VNOM) rule with a threshold of 60% as an alternative to apply to the new heading and new subheading, respectively.

CONCLUSION

17. The meeting agreed that a CTH or VNOM with a threshold of 60% should apply to new heading 96.20 and new subheading 8539.50.

CONSIDERATION OF AGREED LIST RULES OF ORIGIN ALIGNED TO HS 2017 (*Agenda item 6*)

18. The TTF made a presentation on the matrix of agreed list rules aligned from the Harmonized System (HS) 2012 version to the HS 2017 version. The meeting considered the aligned list rules from Chapters 1 to 97 and agreed that the TTF should circulate the aligned list rules to Member/Partner States to consider and submit their comments by 5th October 2019. This will allow the TTF to finalise the matrix before its submission to the TTNF for consideration.

CONCLUSION

19. The meeting:

- i. requested the TTF to circulate the aligned list rules to Member/Partner States; and
- ii. agreed that Member/Partner States submit their comments to the TTF by 5th October 2019.

CONSIDERATION OF THE REVISED ISLAND STATES JOINT PROPOSAL ON SPECIAL AND DIFFERENTIAL TREATMENT ON FISHERIES FOR ISLAND STATES WITH REGARD TO ARTICLE 6(2) ON THE DEFINITION OF "THEIR VESSELS" AND "THEIR FACTORY SHIPS" (*Agenda item 7*)

20. The TTF gave an update on the progress regarding the negotiations on the revised Island States Joint Proposal. Following the decision of the 25th Meeting of the TWG on Rules of Origin held in Zanzibar, United Republic of Tanzania Member/Partner States were requested to consult and submit their comments on the revised Joint proposal to the TTF by 31st August 2019. Madagascar, on behalf of the Island States reported that the Island States had made a decision to adopt the position they are advancing on the definition of "their vessels" and "their factory ships" under the AfCFTA Rules of Origin to apply to the TFTA, thus discarding their initial proposal. The following



is the Island States proposal at the AfCFTA under Article 5(2) of the AfCFTA Rules of Origin:

"2. The terms "their vessels" and "their factory ships" in paragraph 1(h) and 1(i) shall apply only to vessels, leased vessels, bare boat and factory ships which are registered in a State Party in accordance with the national laws of a State Party and carry the flag of the State Party and, in addition, meet one of the following conditions:

(a) at least, 50 per centum of the officers of the vessel or factory ship are nationals of the State Party or State Parties; or

(b) at least, 40 per centum of the crew of the vessel or factory ship are nationals of the State Party or State Parties; or

(c) at least, 50/51] per centum of the equity holding in respect of the vessel or factory ship are held by nationals of the State Party or State Parties or institutions, agency, enterprise or corporation of the government of the State Party or State Parties.

21. In discussions that followed, the meeting noted that all the African Union Member States, except Mauritius, had agreed on this proposal and that Namibia had agreed to the proposal on condition that the 40% threshold in subparagraph (b) on the crew be maintained for 10 years after which it would automatically be set at 50%.

22. The meeting also noted that the above proposal has not yet been concluded at the AfCFTA and this means that the proposed position of the Island States can only be considered at the TFTA once the matter is concluded at the AfCFTA.

CONCLUSION

23. The meeting:

- i. noted that Island States submitted a new proposal based on their position on the definition of "their vessels" and "their factory ships" that they have adopted at the AfCFTA to apply under the Tripartite FTA; and
- ii. agreed to escalate the Island States proposal for consideration and guidance of the TTNF.

CONSIDERATION OF THE PAPER ON CUMULATION WITH AFRICAN COUNTRIES THAT ARE MEMBERS TO THE AFCFTA BUT NOT PART OF THE TFTA (Agenda item 8)

24. The meeting received a presentation by the TTF on the paper highlighting the different aspects on the issue, including; Proposals to amend the relevant provisions of Annex IV on Tripartite Rules of Origin to allow for the possibility of Tripartite Member/Partner States cumulating with other AfCFTA States Parties, the structure of



the AfCFTA and Tripartite Rules of Origin in respect to cumulation, the different types of cumulation applicable and proposals to amend the different provisions of Annex IV on TFTA RoO, among others.

25. In consideration of the paper, the meeting recalled the decision of the 17th Meeting of the TTNF directing the TWG to explore developing provisions allowing the Tripartite Member/Partner States to cumulate with members of the AfCFTA that are not parties to the TFTA. In dealing with the matter the meeting further recalled the decision of the 25th Meeting held in Zanzibar, United Republic of Tanzania directing the TTF to develop a paper to guide its discussions and make a decision on the matter. In this regard the TTF duly developed and circulated the draft paper for comments by Member/Partner States. The paper is herewith attached as *Annex III*.

26. In response to the TTF presentation, Member/Partner States in principle appreciated the need for the principle of cumulation, however the meeting provided the following initial comments for consideration:

- a) the need for administrative cooperation frame work to operationalize the proposed cumulation provisions;
- b) the need to underscore the existing differences in the AfCFTA and TFTA Rules of Origin including the cumulation provisions;
- c) that with extended cumulation there is no need for having the same Rules of Origin framework with third parties;
- d) need to underscore the negative effects of limiting cumulation to only the TFTA region
- e) the need to first allow the TFTA to come into force before attempting to introduce other additional issues including cumulation with third parties;
- f) the need to provide separately for the different types of cumulation (i.e. Cumulation within the Tripartite and Cumulation with third parties)
- g) the need to evaluate the implementation of the cumulation provisions under the COMESA, EAC and SADC Rules of Origin
- h) the need for the TTF to review the paper taking into account the above comments and providing examples on the proposed cumulation for members' appreciation, among others.

27. In view of the above observations, the meeting agreed that;

- i. Member/Partner States be given time to undertake national consultations on the matter and provide their comments before the next TWG meeting and
- ii. In the meantime, the TTF to review the paper taking into consideration the above initial comments by the Member Partner States and circulate for consideration of member/Partner States before the next meeting of the TWG.

CONCLUSION

28. The meeting:

- i. noted the paper from the TTF and agreed that the paper be enhanced with the inputs provided; and
- ii. That the revised paper be circulated to Member/Partner States to provide comments before the next TWG Meeting.

ANY OTHER BUSINESS (*Agenda item 9*)

29. There were no issues discussed under this Agenda item.

DATE AND VENUE OF NEXT MEETING (*Agenda item 10*)

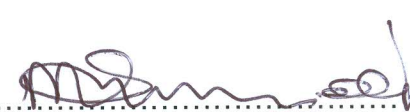
30. The date and venue of the next meeting of the TWG will be communicated by the Tripartite Task Force.

ADOPTION AND CLOSING OF THE MEETING (*Agenda Item 11*)

31. The report was adopted and signed by the Bureau.


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Mr. Francis Koluo
Uganda
(COMESA)


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Ms. Molly Apio Opwonya
Uganda
(EAC)


.....
Ms. Mosadinyana G. Nthomiwa
Botswana
(SADC)

LIST OF PARTICIPANTS

26TH RULES OF ORIGIN

16-21 SEPTEMBER 2019: NAIROBI, KENYA

BOTSWANA

Ms. Dikeledi Motlaleng, Principal Customs Officer, Botswana United Revenue Authority, Private Bag 0013, Gaborone, Tel: +267 363 9617, Email: dmotlaleng@burs.org.bw; deekmot22@gmail.com

Mrs. Mosadinyana G. Nthomiwa, Chief Trade Officer, Ministry of Investment, Trade and Industry, Private Bag 0073, Gaborone, Tel: +267 368 5300, Fax: +267 318 8380, Email: mnthomiwa@gov.bw; mmampale@gmail.com

Mrs Gofaone Maupo, , Ministry of Investment, Trade and Industry, Private Bag 0073, Gaborone, Tel: +267 399 5250, Email: gmaupo@gov.bw; maupo@gmail.com

BURUNDI

Mr. Nankama Prudent, Head of Post Clearing Audit, OBR (Burundi Revenue Authority), Bujumbura, Tel: +257 796 63672, +257 611 11777, Email: prudent.nankama@obr.gov.bi; prudentnankana@gmail.com

EGYPT

Mr. Ehab Fathy, Head of ROO Department, Ministry of Trade and Industry, Tel: +201 216 02126, Email: e.fathy@tas.gov.eg

KENYA

Mr. Peter Merengo, Trade Development Officer, State Department for Trade, P.O. Box 30430-00100, Nairobi, Tel: +254 718 503203, Email: merengopeter@gmail.com

Mr. Roy Nyangena, Deputy Director - Industries, Ministry of Trade and Cooperatives, P.O. Box 30418, Nairobi, Tel: +254 721 541533, Email: royateka@yahoo.com

Ms. Juddy Wewa, Supervisor - Tariff, Kenya Revenue Authority, P.O. Box 48240-00100, Nairobi, Tel: +254 724 311375, Email: Judith.wewa@kra.go.ke

Mr. Joseah K. Rotich, Assistant Director of Trade, State Department of Trade, P.O. Box 431030-00100, Nairobi, Tel: +254 728 947842, Email: jkmrotich@gmail.com

Mr. Jeremiah G. Waweru, Supervisor - Rules of Origin, Kenya Revenue Authority, P.O. Box 48240-00100, Nairobi, Tel: +254 725 282116, Email: jeremiah.waweru@kra.go.ke

Ms. Alice Mwololo, Economist, National Treasury & Planning, P.O. Box 30007-00100, Nairobi, Tel: +254 722 723979, Email: mwololoalice@gmail.com

Ms. Lilian Odhek, Senior Policy Advocacy Officer, Kenya Investment Authority, P. O. Box 55074 - 00200 Nairobi, Kenya, Tel: +254 702 981419, Email: Lilian.odhek@invest.go.ke

MADAGASCAR

Soloaina Ratsisalovaninatoro, ZLET Responsible, Customs Malagasy, Tel: +261 345 096872, Email: sridouane_mg@yahoo.fr; mainkanava@gmail.com

NAMIBIA

Ms. Hileni Nehemia, Agro-Business Analyst, Ministry of Agriculture, Water and Forestry, Private Bag 13184, Windhoek, Tel: +264 612 087707, Fax: +264 612 087767, Email: hileni.nehemia@gmail.com

Mr. Mesag Mulunga, Director of Planning and Business Development, Ministry of Agriculture, Water and Forestry, Private Bag 13184, Windhoek, Tel: +264 612 087766, Fax: +264 612 087767, Email: Mesag.Mulunga@mawf.gov.na; mulungam@gmail.com

SOUTH AFRICA

Ms. Duduzile Mpyana, Deputy Director: Market Access, Department of Trade and Industry, 77 Mentjies Street, Sunnyside, Pretoria, 0001, Tel: +271 239 43678, Email: DMpyana@thedti.gov.za; duduzile.mpyana@gmail.com

SUDAN

Amb. Hussein Awad Ali, Head of Sudan Delegation, Sudan Embassy - Lusaka, Zambia, Tel: +260 955 566 077; Email: sudanemblsk@gmail.com

Mr. Saeed Abd Allah Saeed, Director of Rules of Origin, Sudan Customs, Tel: +249 012395 8055, +249912368905, Email: saeed68905@gmail.com

TANZANIA

Mr. Amedeus Arbogast Mzee, Economist, Ministry of Foreign Affairs and EAC, P.O. Box 2933, Dodoma, Tel: +255 756 919183, Email: amedeus.swai@gmail.com

Mr. Aminel Lewis Malisa, Senior Customs Officer, Tanzania Revenue Authority, P.O. Box 9053, Dar-es-Salaam, Tel: +255 757 667365, Email: amalisa@tra.go.tz

UGANDA

Mr. Koluo Francis, Principal, Ministry of Trade, Industry and Cooperatives, P.O. Box 7103, Kampala, Tel: +256 772 467131, Email: fkoluo@gmail.com

Ms. Molly Apio Opwonya, Legal Officer, Ministry of Finance, Planning and Economic Development, P.O. Box 8417, Kampala, Tel: +256 782 166 110/ +56 414 707 422, Email: molly.apio@finance.go.ug

ZIMBABWE

Mr. Douglas Muzimba, Principal Economist, Ministry of Finance and Economic Development, Private Bag CY 7705, Causeway, Harare, Tel: +263 242 794571/8, Email: +263 242 250614/6, Email: dmzeetad@gmail.com

COMESA SECRETARIAT

Mr. Timothy Chisembwere, Rules of Origin Expert, COMESA Secretariat, P.O. Box 30051, Lusaka, Zambia, Tel: +260 211 225 793, Email: tchisembwere@comesa.int

SACU SECRETARIAT

Ms. Mpho Masupha, Policy Development Coordinator, SACU, Crn Julius Nyerere & Feld Street, Windhoek, Tel: +264 612 968000, Email: Mpho.Masupha@sacu.int