



COMESA BUSINESS PEOPLE: FREE MOVEMENT – MORE TRADE

FINAL REPORT

***A COMMON PRIVATE SECTOR POSITION ON THE GRADUAL ELIMINATION
OF VISA REQUIREMENTS IN THE COMESA REGION***

Consultancy Report Prepared for the:

COMESA BUSINESS COUNCIL

COMESA SECRETARIAT

LUSAKA, ZAMBIA

Disclaimer

This report was prepared with the financial assistance of the International Trade Centre (ITC). The views expressed herein are those of the responsible consultant, based, in part, on the outcome of dialogue between key stakeholders. Any remaining errors should not therefore be attributed to the ITC or the CBC Coordination office at the COMESA Secretariat.

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Executive summary

1. This report is to assist with the drafting of the COMESA Business Council's (CBC) Policy Proposals on the gradual elimination of Visa requirements within the COMESA region under the framework of the regional Protocol on the free movement of natural persons. It also contextualizes the views and comments of the CBC's Private Sector survey respondents and makes proposals on how the CBC should proceed to influence decisions of policy that have an impact on the cost of doing business.
2. On the liberalization of trade in services within COMESA, efforts have already been undertaken to accelerate the regional services liberalization programme in order to remove impediments that have persistently impaired the free flow of trade and business activities across the region. Some of the adverse measures have included restrictions on market access opportunities firms (e.g. by reserving supply for a public monopoly or through non-recognition of professional qualifications) and measures that have tended to discriminate against providers of services from Member States in markets within the region (for example, through differential tax treatment or local limitations to borrowing opportunities for foreign service firms or persons).
3. As to Mode 4 and Visa Requirements, the COMESA Treaty Establishing the Common Market for Eastern and Southern Africa (Chapter 28, Article 164), Member States agreed to conclude the COMESA Protocol on the free movement of persons, labour, services, the right of establishment and right of residence. This Protocol has to date witnessed only four signatures of Member States and only one ratification passed, meaning that the protocol has effectively not become actionable. Nevertheless, the decision reinforced the urge for the implementation of a specific "Protocol on the Gradual Relaxation and Elimination of Visa Requirements", which is being undertaken by Member States at a subdued level and in varying degrees.
4. On the implementation of the COMESA programme on free movement of persons with a view to the gradual relaxing of controls at borders for citizens of COMESA Member States, significant levels of harmonizing of national laws through the adoption of a COMESA Model Law on Immigration as a point of reference may become necessary.
5. To ensure that the interests of the CBC and the business community including that of other interest groups and organs of the common market are taken into consideration at the highest levels, a questionnaire survey was conducted in order to help discern the extent of the impact of Visa restrictions and controls as potential impediments to regional trade and to provide a basis for the development of a private sector policy proposal on how to address the issue.
6. The results of the survey showed the following:
 - a. Most frequent travels within COMESA were undertaken by businessmen and public officials.
 - b. There are a number of limitations imposed on the free movement and presence of foreign providers of services in many, if not all, COMESA member states. These limitations are various and may differ from country to country.

- c. Many challenges are often faced by potential entrants into Member States and these challenges often include Visa technical conditions and delays in the completion of immigration procedures, lack of uniformity of procedures and physical checks. These together compound the cost of doing business within the region.
 - d. The institution of Visa fees tends to upset the free flow of goods and services and inhibits the free movement of business persons within the region.
 - e. The level of commitment to address the implications of Visa fees for doing business in the region continues to be low, and even the issue of awareness among public and political officials in Member States, in respect of measures needed to resolve the issues and the need for the adoption of related protocols, have remained poor.
 - f. Many member states have yet to graduate out of charging Visa entry fees especially on business persons.
7. **Recommendations:** With the benefit of comments raised by stakeholders to the survey results in particular, a number of recommendations are made. These include both broad and specific recommendations that the membership of the CBC could adopt in order to pursue their objectives of free movement of persons and the removal of Visa fees charged by member states of COMESA, particularly for business persons. Recommendations are enumerated in some detail in the main text of the report below.

1. Introduction

African regional integration has become a critical component for the economic development of the continent, and provides substantial potential for poverty reduction across the population of various regional groupings. Within the spirit of NEPAD's overarching vision, pro-poor economic growth must be led by the private sector, but rooted on increased regional and inter-regional trade. In the meantime, Africa's regional economic communities (RECs) are already making significant strides towards the establishment of functional free trade areas (FTAs), and in some cases, have already progressed towards the formation of customs unions. However, the successes of these efforts at policy and regulatory levels have yet to materialise fully into increased intra-regional trade flows as new opportunities continue to emerge from within regional markets and beyond.

It has been increasingly recognized that the implementation of Africa's various regional integration efforts may in the medium to long term require the establishment of appropriate institutional capacities to guide and support key economic operators and stakeholders' participation in regional integration efforts, including the private sector. That means that the development of regional trade and its promotion among all stakeholders must be advanced and organised in a manner as to conform to the critical priorities and objectives of all RECs, which is to foster the integration of markets for the benefit of the economies and people of the member states of the respective regional organisations.

In the course of the pursuit of regional integration objectives, the traditional link between policy and the regulatory framework on the one hand, and trade development and enterprise support, on the other, may together require the establishment of dedicated institutional middle fields that should include private and public service providers in order to deliver the objectives of regional integration and trade development in the medium to long term. Unfortunately, this middle level platform is often missing or at best ineffective within the structures of regional integration arrangements. This gap is currently being addressed at the level Africa's NEPAD programme for enhancing regional integration in the continent.

NEPAD's continental approach and programmes are designed to facilitate four key outcomes:

- Pan-African networking to help bolster the growth of regional cooperation, trade and economic development efforts in a more coherent fashion;
- REC Secretariats to lead regional trade, development and promotion efforts;

- Regional trade support networks, which should incorporate the efforts of business networks such as the COMESA Business Council (CBC), to engage in policy dialogue, as much as in promoting frameworks of trade support to benefit their trade activities;
- Enhanced enterprise level competitiveness in priority sectors, with special emphasis on women-owned enterprises.

Consistent with NEPAD urge for the necessity of the boosting of Intra-African Trade, deliberations at the African Union (AU) level has led to the approval of the formation of the African Trade Forum and the negotiations of a Continental FTA. Accordingly, COMESA and its counterparts, the EAC and SADC, are in the process of working through a Tripartite Framework partly via a Tripartite Private Sector Work Group, to ensure that their trade and economic integration objectives are met. It is precisely for this reason that the outcomes of COMESA's CBC meeting are likely to feed into the ongoing EAC-SADC- COMESA Tripartite processes. As to efforts towards widening regional markets at the level of the tripartite free trade area between COMESA, SADC and the EAC, the secretariats of the three respective RECs are expected to lead their institutions in injecting momentum towards the achievement of regional integration objectives. Arrangements and processes of realising these objectives would need to involve, at the least, key regional private sector stakeholders (including regional business councils such as the COMESA Business Council- CBC), regional women business networks, sectoral trade associations and their national chapters, and relevant institutions at the country and regional levels.

At the level of COMESA specifically and following the roll-out of the COMESA's PACT II project in June 2009, it was agreed that all regional private sector apex bodies be strengthened. The programme was also designed to help build capacities to enable policy analysts from national private sector apex bodies to effectively dialogue and lobby at various levels and to prepare position papers that can propel the private sector's influence on broad trade policy issues in COMESA Member States. In effect, the CBC, through its current terms of reference, is accordingly expected to ensure that the interests of the business community especially (including that of other interest groups and organs of the COMESA common market) are taken into consideration at policy decision making levels as structures and mechanisms are put in place to monitor the implementation of relevant Articles of the COMESA Treaty.

Additionally, the CBC is required to make recommendations to the relevant COMESA Inter-Governmental Committee and to take part in the key meetings of Technical Committees. This is besides the CBC's expected role of facilitating consultative processes and dialogue among policy makers and

private sector stakeholders in order to advance the regional objective of private sector development. Consistent with these aspirations, the CBC held a meeting/workshop in May 24 and 25 2011 to help the COMESA region's business associations to build capacities on skills and techniques of advocacy and the drafting of position papers. The outcomes of the training were as follows:

- i. An action plan was agreed to develop a CBC position paper on the acceleration of the gradual elimination of VISA Requirements within the COMESA region. Particular emphasis was devoted to the need for a private sector policy position on freeing entry requirements for business persons and the temporary stay of natural persons into the Member States of COMESA region for purposes of conducting trade and supplying services;
- ii. On account of i) above, it was agreed that a questionnaire be designed and circulated to member states to report information about Visa issuance regulations and conditionalities so that implications of these measures on the free movement of natural persons can be discerned. The findings would then be used in drafting a specific private sector policy position paper for submission to the appropriate COMESA policy organs for consideration and possibly the speedy elimination of visa requirements agents within COMESA;
- iii. A Networking Forum of Private Sector Trade Policy Analysts was formed to carry forward the work of private sector interests on relevant issues.

Objective of Report

The objective of this report therefore is to help with the drafting of the COMESA Business Council's (CBC) Policy Proposals on the gradual elimination of Visa requirements within the COMESA region under the framework of the regional Protocol on the free movement of natural persons. The report puts together views and comments of CBC private sector respondents to a questionnaire survey conducted to elicit opinions on how to fast track the implementation of the Protocol on the elimination of existing restriction of the free movement of business agents and service providers with the region. It also makes proposals on how the CBC should proceed to influence decisions of policy that have an impact on the cost of doing business.

The rest of the report is organised as follows: the next section provides a brief discussion of the liberalisation of trade services in the context of modes of supply under GATS and the importance of free movement of business persons between COMESA countries. Section 3 reports on recent COMESA deliberations, Section 4 discusses recent CBC activities and the private sector survey; Section 5 reports the survey findings based on the outcome of country survey results; and Section 6 lays out broad and specific private sector recommendations, a roadmap for the acceleration process and a strategy for the pursuit of objectives.

2. A reflection on the liberalization of trade in services within the COMESA Region (with focus on VISA requirements)

The contribution of the services sector in total trade of goods and services has evidently grown at a faster pace over the years, accounting for an increasingly significant part of total trade for almost all economies. Recent statistics indicate that the services sector, on average, now accounts for about 50-60 percent of the Gross Domestic Product of COMESA. Much of this momentum of growth in services and its contribution to the overall economies of countries around the world has been driven by the liberalisation of trade in services. The liberalization of trade in services essentially involves the removal or reduction of barriers to market access opportunities and discriminatory national treatment across all four modes of supply of services. This is because barriers to trade in services are typically regulatory in nature.

Within COMESA, efforts have already been undertaken to accelerate the regional services liberalization programme in order to remove impediments that have persistently impaired the free flow of trade and business activities across the region. Some of the adverse measures have included restrictions on market access opportunities for foreign firms (e.g. by reserving supply for a public monopoly or through non-recognition of professional qualifications) and measures that have tended to discriminate against foreign providers of services from Member States in markets within the region (for example, through differential tax treatment or local limitations to borrowing opportunities for foreign service firms or persons).

In 2009, COMESA Regulations on Trade in Services to guide the conduct of the liberalization of services within the region were adopted, and in the in the second meeting of the COMESA Committee on Trade

in Services held in May 2010, 13 Member States declared their preferred sectors for immediate liberalisation. The Committee deliberations finally led to an agreement on a phased approach to services liberalisation within the region, to begin with regional negotiations on the liberalisation of four agreed services sub-sectors. The four sub-sectors chosen were: finance, transport, communications and tourism services. These services were chosen for the reason that these were the sectors selected by Member States based on their respective lists submitted to COMESA in light of their importance to infrastructure services and high growth sectors.

Under the General Agreement for Trade in Services, (GATS), there are four modes of supply of services, which reflects the greater need for at least some interaction between the consumer and the producer of services. However, the choice of a mode of supply is often determined by technical feasibility and the various barriers to trade that exist across each mode. The four classified modes of supply are respectively:

- **Mode 1:** Cross-border supply- supply of a service not requiring the physical movement of a supplier or consumer, for example, electronic or physical transactions across borders, such as air transport or maritime transport and trade in financial services.
- **Mode 2:** Consumption abroad- which concerns the movement of the consumer to the country of the supplier. This requires the movement of the consumer to a foreign country for reasons of consumption of a service or indeed provision of service thereof.
- **Mode 3:** Commercial presence- direct investment for the purpose of delivering a service which is then sold in the territory of a member by foreign entities that have established commercial presence (for instance, services such as local telecommunications or electricity).
- **Mode 4:** Free movement of natural persons- this mode of supply reflects or requires the presence of natural persons as signified by the temporary movement of a service producer to provide services. Such services may include business consulting or construction services etc as manifested by the provision of such services through temporary movement of natural persons.

Mode 4 and Visa Requirements

Under the COMESA Treaty Establishing the Common Market for Eastern and Southern Africa (Chapter 28, Article 164), Member States agreed to conclude the COMESA Protocol on the free movement of persons, labour, services, the right of establishment and right of residence. This Protocol has to date witnessed only four signatures of Member States and only one ratification passed, meaning that the protocol has effectively not become actionable. Nevertheless, the decision also effectively led to the urge for the implementation of a specific “Protocol on the Gradual Relaxation and Elimination of Visa Requirements¹” in the region, the implementation of which is being undertaken by Member States at a subdued level and in varying degrees.

3. COMESA Deliberations on Free Movement of Natural Persons and a Model Law on Immigration

Under Article 164 of the COMESA Treaty, Member States are expected to promote the free movement of persons, labour services and the right of establishment, as an integral part of the COMESA integration agenda. This principle formed the basis for COMESA’s agreed Protocols: i) the Protocol on Gradual Relaxation and Eventual Elimination of Visa Requirements which entered into force and is under implementation by Member States in varying degrees; and ii) the Protocol on Movement of Persons, Labour Services and the Right of Establishment and Residence. This protocol is still subject to ratification

¹ *It must however be noted that with respect to Mode 4 provisions for the application of Visa entry requirements as instruments for regulation, the GATS provisions stipulate as follows (quote):*

- *the annex to the agreement on movement of natural persons applies to measures affecting natural persons who are service suppliers of a member state, and natural persons of a member who are employed by a service supplier of a member, in respect of the supply of a service;*
- *the agreement shall not apply to measures affecting natural persons seeking access to the employment market of a member, nor shall it apply to measures relating to citizenship, residence or employment on a permanent basis;*
- *In accordance with the agreement, members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of the commitment;*
- *the agreement shall not prevent a member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.”*

It can, therefore, be inferred from the above provisions of the annex to the GATS agreement on the free movement of natural persons that the sole requirement of visas for the movement of natural persons of certain member states and not for others cannot be regarded as a nullification or indeed impairment of benefits under a specific commitment. It is only an instrument used to manage the orderly movement of persons on temporary terms and for purposes of providing a service that can be defined inexplicably as trade in a service.

by the majority of member States (indications of the status of the implementation of all COMESA protocols are appended below).

During the 4th Meeting of COMESA Ministers responsible for Immigration², the importance of the development and adoption of these two instruments was noted, although member countries expressed caution about the speed of implementation. It was proposed that countries needed to implement the programme on free movement of persons stage by stage, and with a view to gradually relaxing controls at borders for citizens of COMESA Member States, while ensuring national security through the strengthening of controls, management and monitoring at entry points. However, that would require a significant level of harmonizing of national laws through the adoption of a COMESA Model Law on Immigration as a point of reference for the harmonization process.

Two major strands of challenges to the adoption of the two protocols were however identified. These included:

- Macroeconomic constraints (high inflation, unemployment, economic, social, infrastructure and technological constraints); and
- Administrative impediments (judicial and administrative restrictions to movement, bureaucracy, different border policies and procedures).

Nevertheless, a Simplified Common Travel Document, which should carry a COMESA logo, was proposed for institution based on verified best practices, and the features of which document could include the validity of the document to lapse after each trip. It was also suggested that the use of the travel document could be applied on a trial basis until refinements to the document are made to cause its adoption as a legal instrument to facilitate the movement of persons within the COMESA region.

At the same meeting, Ministers implored Member States to ratify and sign off the Protocols on the free movement of persons; encouraged immigration Officials to play a key role in the adoption, ratification and domestication of these Protocols, while implementation measures are put in place in line with regional obligations and commitments of Member States. A task force composed of Burundi, Egypt, Malawi, Swaziland, Zambia and the COMESA Secretariat was appointed to work on the development of

² COMESA, March 2011. "Fourth Meeting of Ministers Responsible for Immigration". 16-17 March, 2011, CS/LEG/MRI/IV/3.

a capacity building programme; and to ensure consistency with the road map for the implementation of the relevant protocols. As to the harmonization of national legislation in line with a proposed COMESA Model Law on the free movement of natural persons, the COMESA Treaty had envisaged a fully integrated and internationally competitive regional community within which goods, services, capital and labour would move freely across national borders. Indeed, COMESA Member States have begun to take steps, including the adoption of a Model Immigration Legislation which Member States could internalize into their own laws.

In substance, this means that the Model legislation would seek to ensure that immigration laws in the sub-region safeguard and respect the fundamental human rights of migrants; encourage tolerance, respect of diversity and solidarity for all; eliminate anarchy and centralism, abuse and corruption in all Member States; treat illegal migrants without complacency while complying with human rights standards, security concerns of states through the introduction of appropriate and harmonized control measures at the entry and exist pints of the Member States' political boundaries; and recognise the notions of refugees and extradition.

The central role of the COMESA Model Law would therefore be aimed at fostering cooperation on immigration matters within COMESA in order to facilitate trade. However, with regard to the need to curb incidences of irregular migration, it was agreed that the role of effective information sharing and regular interaction between immigration representatives at all levels across the region becomes absolutely necessary. This can only be realized through the development of credible cross border trade permits, an integrated database for effective information sharing and the sensitization of agents to raise awareness of migrants' rights and the realization of the cardinal objective of free movement for persons across the COMESA region in its entirety.

4. The CBC Activities and the Survey

The CBC, through its current constitution, ensures that the interests of the business community, including that of other interest groups and organs of the common market are taken into consideration at the highest level of decision making within the hierarchy of COMESA's established Authorities. The CBC monitors the implementation of the relevant Articles of the COMESA Treaty in respect to private sector engagement and participation in the influence of policy at the regional level. The CBC, by virtue

of its mandate as the recognized voice of the Private sector in the COMESA Region, is required to present harmonized recommendations on behalf of the private sector through the COMESA policy organ meetings. In addition, it is expected to facilitate thorough consultative processes in the interest of private sector development.

As a result and over the course of time, the CBC has actually conducted consultations both at national levels and with various agencies in line with the road map for the improvement of free movement of natural persons within the COMESA region. These consultations have cut across the private sectors of member states, governments, immigration offices, cross-border traders and respective associations, SME associations, importers and exporters and investment agencies, among others. The thrust of these consultations was directed towards the development of strategies for advocacy and to build consensus on key issues of importance to the CBC.

In keeping with this role, the CBC held a training session in May 2011 to build the capacity of member national focal points on skills and techniques of drafting position papers. Indeed, some progress is already being made with the assistance of the CBC membership and in collaboration with COMESA PACT II to develop a draft Private Sector Position Paper on the COMESA business community's aspirations for free movement of persons, in a bid to deepen regional integration within the region. This has been possible partly because the membership of the CBC agreed on a survey to be conducted in order to solicit member responses on how best to achieve the objective of influencing a faster resolution the free movement of natural persons within the COMESA region. The CBC platform for policy dialogue could then use the results of the survey and the related policy position to engage intergovernmental committees and governments at the highest levels on the subject of the need for free movement of persons within the region.

Owing to the merits of the COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements (the Visa Protocol), a questionnaire was subsequently designed, circulated and used to survey country positions, arrangements and opinions on Visa entry requirements. The intention of the survey was to discern the impact of Visa restrictions and controls as potential impediments to regional trade and to provide a basis for the development of a private sector policy proposal on how to address the issue.

Below is a discussion of the findings of the survey, which are used to generate definitive proposals and recommendations for the way forward to be pursued by the COMESA Business Council as a vehicle to accelerate the gradual elimination of VISA Requirements in COMESA countries. However, due to paucity of data on account of poor responses, the results and subsequent recommendations should be treated as tentative, subject to further consultations and debate in order to refine the private sector policy proposals.

5. The Survey and its Findings

The survey methodology involved collecting data through a simple but structured questionnaire that required face to face interviews of potential private sector and business persons' respondents, e-mail responses and hand deliveries of completed survey forms. The questions contained in the questionnaire were structured to elicit responses in respect of specific themes and challenges as follows:

- Frequency of travel by business and other public agents within COMESA region;
- Challenges faced at points of exit of a member country;
- Challenges faced at points of entry into a member country;
- How Visa requirements affected businesses;
- The extent of Visa fees charged by various countries on persons of member states;
- The level of political commitment in member states to address the implications of Visa requirements;
- Awareness levels of the adoption by member states of the protocol on the gradual relaxation and elimination of Visa requirements in the COMESA region;
- The general impact of Visa charges and measures on the cost of doing business;
- Member countries that have not graduated out of charging visa fees for member states persons.

The results of the survey are described below:

i) Frequency of travel for business and by business and public officials within COMESA region

For the few countries that responded to this question, the general indication suggested that most travels were undertaken by businessmen and public officials on a relatively high frequency basis. However, such travels would be concentrated towards certain countries of COMESA with whom business dealings may have evolved and grown over time. For instance, Malawi reported having

registered more active travels of businessmen between Malawi and Rwanda and the DRC and this pattern of responses was reflected by other countries.

ii) Limitations on the presence of foreign providers of services

Evidence from responses clearly showed there are a number of limitations imposed on the free movement and presence of foreign providers of services in many, if not all, COMESA member states. These limitations are various and may differ from country to country. Some of these include, among others, limitations in respect of the maximum period of stay or likelihood of renewal for an extended stay for foreign providers of services; a requirement of evidence of work permits with attendant high processing costs; limitations in respect of durations of stay, which varied from country to country, reflecting a clear element of lack of uniformity of cross-border entry regulations and guidelines across COMESA member states.

iii) Challenges faced at points of entry into a member country

One set of challenges that were prominent in the responses concerned difficulties faced by business persons and service providers at country entry points of member states. Some of these challenges applied to visa and other technical conditions and delays used in entry assessments by immigration officials (e.g. a required valid entry visa and proof of yellow fever inoculation; time wasting at border entry visa offices; delays in clearance by immigration officials; the absence of lack thereof of uniformity of immigration procedures; the use of physical checks by border security officials and so on). All the measures together have compound into increasing the costs of conducting business in the COMESA region.

iv) How the institution of Visa requirements affects businesses

It was clear from the responses that the institution of visa requirements for business patrons within COMESA has obviously affected businesses adversely in several ways, including increasing the cost of doing business and inhibiting the free flow of goods and services between countries in the region.

v) The level of Visa fees charged by various countries on persons of member states

For countries that have continued to charge Visa fees on the entry of persons and businessmen from member countries, the level of Visa fees charged tended to range between US\$ 50 to US\$ 100 per entry. In a few cases, other countries charge well over US\$ 100. Mauritius in particular reported to have endured the highest Visa fee charged by a member state of COMESA.

vi) The level of political commitment in member states to address the implications of Visa requirements on regional integration

The one set of responses that didn't seem to have delivered a definitive answer from respondents related to whether there exists any political commitment on the part of member states to address the implications of visa requirements for entry into the COMESA membership. A couple of country reports expressed lack of awareness among the public and certainly political officials in their countries about the need for resolving this issue if trade based on free movement of natural persons can flourish with the region. This indication, in a sense, provided an indictment to suggest that the maintenance of Visa entry require is an inherent setback to the general spirit of regional integration between COMESA member states.

vii) Awareness about the adoption by member states of the protocol on the gradual relaxation and elimination of Visa requirements in the COMESA region

The responses showed that the lack of awareness about the adoption of the protocol on the gradual relaxation and elimination of Visa requirements within the COMESA region is still widespread. It was particularly disappointing to conclude from the responses that a relatively good number of countries in COMESA have not conducted serious awareness programmes among their populations to sensitise them on their obligations to adopt the protocols on free movement of persons the gradual elimination of Visa requirements within COMESA. Only two countries among the respondent countries showed that the awareness levels in their countries were reasonably satisfactory.

viii) Member countries that have not graduated out of charging Visa fees on member states persons

The majority of Member States of COMESA are still tagged to charging Visa fees on COMESA member countries natural persons. Rwanda, Burundi and Zambia were prominently mentioned in this regard.

Stakeholder comments on the findings of the survey

Following the presentation of the draft report for consideration at the Private Sector Dialogue meeting held in November 2011 in Nairobi, stakeholders had the opportunity to provide comments on the findings of the survey. Among the comments raised, the stakeholders in attendance raised the following thoughts, issues and opinions:

- The private sector stakeholders in attendance proposed that their final policy position proposals should be notified by the CBC to the Technical Committee on Trade in Services and the Technical Committee on Legal and Institutional Affairs so that their positions are made known to the policy organs of COMESA.
- It was pointed out the issue of the elimination of VISA fees within COMESA cannot be left to the consideration and decision of country Immigration offices alone since their concerns are typically about security matters. It was therefore suggested that the issue of the elimination of Visa fees across the region be expanded for consideration by the Ministries in charge of Labour, Finance, Trade and Industry, as well as the Customs office. Secondly, it was noted that coordination between the private sector and national trade facilitation agencies (including the customs, revenue authorities and immigration offices) should be effected in order to build synergies and cooperation towards the consideration and resolution of the private sector's concerns on the free movement of persons within COMESA.
- The private sector position paper needs to be adopted as wholly owned by the Private Sector given the rightful weight of the voice of the private sector in shaping the position paper's proposals, and the CBC should be recognised by the fraternity as a private sector focused institution that is entitled to steer the private sector's advocacy initiatives within the region.
- It was proposed that member countries of COMESA should develop well focused national private sector working groups that would steer in-depth consultation on key issues of importance and to secure agreements with governments so as to facilitate private sector involvement in policy and decision making at national levels. Accordingly, it was recommended that national working groups on the elimination of Visa fees be set up in each member state, to work on advocacy basis with National Monitoring Committees on NTBs.
- The Private Sector Policy Position document should recognize the existence of a missing link in the processes of policy formulation in member countries due to the absence and lack of

participation of private sector stakeholders in those processes. In this sense, the private sector's concerns and interests should be used to close the remaining gaps in decision making processes in respect of the proposed elimination of restrictions to the free movement of business persons within the COMESA region.

- Evidence from the survey results showed that most countries business persons are adversely affected by VISA requirements and related restrictions in the course seeking entry into COMESA member states. It was therefore suggested that a core group of the private sector business community in the region be formed to pursue the resolution of the elimination of Visa fees on the basis of a gradual approach and based on an agreed roadmap to also include resolutions on work permits and other related costs of doing business.
- It was proposed that the private sector be afforded some level of training through national working groups to enable the sector to contribute to the development of new laws on the free movement of persons and development of advocacy skills that can facilitate the inclusion of private sector stakeholders in policy decision making.
- Other comments were a little divergent. In the absence of specific laws on the free movement of natural persons, the emphasis of the CBC should not be about the opening of member country borders but specifically one should focus on the movement of business persons and those involved with cross border trade within the region.
- Support was expressed in favour of more consultations within member states to be undertaken in order to develop a region wide position on the gradual elimination of Visa requirements and the free movement of persons. The consultative processes should be coordinated by an expert with the support of additional research on the issues of the status of restrictions on free movement of businesses or persons in the wider sense of all countries.
- It was suggested that while the private sector should continue to push for a comprehensive decision on the gradual elimination of VISA fees for Business Persons, the current effort of the CBC should be directed towards the design of an interim recommendation on eliminating VISA fees amongst reciprocal arrangements. Further to this, VISA fees elimination considerations should for the moment be focussed on the needs of business persons to access markets in the region without undue inhibitions and based on an agreed roadmap.
- In the medium to long term- more consultations should be undertaken to substantiate why certain member countries of COMESA should continue to charge Visa fees and therefore undermine the spirit of reciprocity under COMESA's regional integration arrangement.

6. Broad and Specific Recommendations, and Private Sector Strategy

Based on the above results and comments of stakeholders at the CBC Private Sector Dialogue Meeting held in Nairobi in November 2011, a number of recommendations have been agreed upon on consensual basis (quorum of 80% of member states). The recommendations are made to help chart the way forward towards the realisation of the regional goal of a phased/gradual elimination of restrictions on free movement of business agents and service providers as well as Visa requirements in the region. It is hoped that the recommendations will be taken on board and considered for application by the COMESA Policy organs in order to generate the required momentum for fostering a credible atmosphere for continuous dialogue with COMESA member governments and to bring about a more amenable regime necessary for fostering the free movement of natural and business persons within the region. In the end, the removal of remaining barriers to free movement could generate a critical trigger for a more harmonised regime in which agents and persons can deliver services and trade in more efficient and cost effective ways. The following are both broad and specific recommendations as well as the recommended acceleration processes and a private sector specific strategy for implementation of recommendations:

i) Broad Recommendations:

- The private sector stakeholder membership of the CBC should endeavour to present their policy positions on the free movement of persons and the gradual elimination of Visa fees in the region as a formal notification to the policy organs of COMESA in a manner as to cultivate their participation in the decision making process on these issues of interest to them.
- The level of proactivity on the part of the CBC membership to sustain dialogue with government authorities on the key objective of realising the gradual relaxation and eventual elimination of Visa requirements in the region has been at best minimal. It should become even more necessary for the CBC membership to develop the capacities through which the membership can begin to impact on political and regional decisions on these matters, on the one hand, and to enable it to induce the necessary momentum to cause member governments to resolve issues and remove restrictions on free movement of persons and eliminate Visa requirements particularly for business persons and service providers in the COMESA.

- Efforts must be placed on raising awareness within public and private sector agencies in order to allow the development of concrete proposals for the implementing of the two protocols on the gradual elimination of Visa requirements and free movement of natural persons within the COMESA regions.
- The CBC and the COMESA Secretariat must endure to provide advice to private sector stakeholders so as to enforce advocacy for the transmission of private sector grievances to the COMESA policy organs and respective member governments for discussion and final resolution from time to time. This may include the direct participation in dialogue processes designed for resolving outstanding policy issues of concern to the private sector and businesses.
- The CBC should be duty bound to compel the ratification and implementation of the protocols that have binding implications for conducting trade activities in a more cost effective manner, free from inhibitions to free movement of persons or in particular, businesses that would like to penetrate regional business markets.
- Members of the CBC should be facilitated to compose the official delegations of member states and to participate directly and actively in trade negotiation processes that have a bearing of their trading activities. This should include the voice and views of the private sector on the design of mode 4 guidelines for implementation within the region.
- An elaborate strategy needs to be found to move the processes of the implementation of the Protocols on free movement of persons and particularly the elimination of Visa fees charged on business persons undertaking business activities within the COMESA region. The strategy should be well thought out to encourage a phased approach to achieving the goals of the Protocols, beginning initially with the removal of Visa requirements for business persons. This elaborate process is proposed as follows:
 - The process should be programmed in two phases. The first step is organise private stakeholders to lobby their respective governments to domesticate and implement the Protocol on the elimination of Visa fees for business persons operating in the region. The second phase can then tackle issues relating to the facilitation of the free movement of providers of services within the region.
 - Private business stakeholders should be included in setting the modalities for the implementation of the elimination of Visa fees. This could involve the participation of private business stakeholders in decisions leading to the design of acceptable regional travel documents for use by business persons within the region.

-
- The COMESA authorities should seriously consider the option of instituting a COMESA Travel Document or Passport. This may well be introduced in phases and could begin with one for business persons who are already geared for COMESA market access opportunities. This option is feasible and has been implemented elsewhere, including in the East African Community, where citizens of the region are entitled to apply and use EAC Passports for movement within the region, alongside other national passports. The modalities for the development of a COMESA passport can be easily agreed among Member states, after which its design, features and terms of use can be worked out among COMESA officials in partnership with the CBC and its membership.

ii) Specific Recommendations:

Bearing on the above broad recommendations, coupled with stakeholder inputs of views and suggestions, the following specific recommendations are made with a focus on the interests of the CBC, private sector business agents and other service providers who together have stakes in trading within the COMESA region:

- The element of the importance of the private sector to the success of the regional integration agenda within COMESA should be critically emphasized in decisions to be made on the effective elimination of VISA requirements. This is because the decisions will, in many ways, impact on the Free Movement of Business Persons in the region. It is agreed that a deadline of 2013 should be the timeline within which a region wide decision on the full implementation of the related protocol is concluded.
- The CBC requests member states of COMESA to recognize the roles of the CBC as a Policy Organ representing the interests of its membership and to incorporate the CBC to participate in the working and deliberations of the dedicated COMESA Committee on Trade in Services and Legal and Immigration Affairs.
- The CBC national focal points or associations- should be granted legal recognitions at the level of member country national Ministries charged with coordinating COMESA activities in respective countries. This is to ensure the inclusion of the private sector in national consultation processes and national official delegations that participate in national and regional policy organs deliberations. The COMESA Secretariat should undertake to formalise this proposal by informing the respective country Ministries accordingly.

- Having noted that some member states have functional National Monitoring Committees on NTBs, the membership of the CBC wishes to propose the formation, with immediate effect, of dedicated National Monitoring committees on the Elimination Visas for Free Movement of Business Persons in all member states . The Committees should comprise memberships of Ministries, agencies and key stakeholders concerned with policies and implementation of regulations governing the movement of persons, labour and services in the region.
- The CBC requests that the recommendations of the Private Sector as spelt out in this report be taken on board and considered favourably during the upcoming Tripartite Negotiations on the Protocol on the Gradual Relaxation and Eventual elimination of Visa requirements under the framework of the proposed Tripartite FTA between COMESA, SADC and EAC.
- The CBC should urge member states to ensure a positive resolution is agreed on the effective elimination of Visa requirements for business persons based on the principle reciprocity amongst member states, after due regard for the importance to the private sector of the Free Movement of Business Persons within the region;
- CBC resolves and decides to form a Private Sector Regional Working Group on NTBs. This is done with immediate effect during the Private Sector Dialogue Meeting on Elimination of VISAs in the region, held in Nairobi in November 2011.
- The CBC requests member states to support and implement the Private Sector NTB Committee roadmap on the Gradual Elimination of VISAs for Free Movement of Business Persons as follows:

Roadmap for the Gradual Elimination of Visa Fees in the COMESA Region

Issue	Review Timeline
Letter from COMESA on Private Sector participation in all COMESA organs activities- national and regional level.	January 2012
Prioritization on the Elimination of VISAs for Business persons in the NMCs of NTBs	March 2012
Inclusion/Recognition of CBC as a full member of the TIS Committee	May 2012
Gradual Elimination of VISAs for Free Movement of Business Persons	July 2012
Review of Elimination of VISAs based on Reciprocity	Bi-annual

iii) Recommended acceleration process

- The CBC noted that the Council had adopted a decision to support a Common Business Passport in the COMESA Region. In the interim, the Private Sector proposed the following;
 - In the Short term- with immediate effect; a “Common Business VISA” is issued and accepted by the member states to facilitate the movement of business persons upon entry under an agreed upon and accepted criterion. This movement may be restricted to multiple entries within a certain time frame as agreed upon by the member states. We further propose that the criteria GIVEN should be in general focusing on ; personal data , type of activity you will be carrying out , purpose of your business trip , Formal letter from enterprise- indicating the identity and type of enterprise(s) you will be visiting .
 - In the medium to Long Term ; To establish the COMESA Business Passport.

- The CBC, at the Private Sector Dialogue meeting, formed a Regional Private Sector Working Group on NTBs, comprised of 7 member countries, and with terms of reference to pursue private sector objectives through advocacy and technical expertise. The elected member states to the working group were as follows:
 1. **ETHIOPIA**
 2. **KENYA**
 3. **MADAGASCAR**
 4. **ZIMBABWE**
 5. **SEYCHELLES**
 6. **EGYPT**
 7. **BURUNDI**

- It was further agreed that the Working Groups would use various advocacy delegate compositions to participate in regional forums and meetings. These private sector delegations should comprise of, but not limited to, representatives of private sector Corporates, Associations, Cross Border Traders and SMEs.

The Private Sector Dialogue and Consultative Meeting held in Nairobi to discuss the draft report came up with a precise declaration of the meeting as appended below. The list of attendees is also appended.

Appendix 1.

STATUS OF SIGNATURE AND RATIFICATION OF COMESA LEGAL INSTRUMENTS AS AT 10th APRIL 2010

COMESA* TREATY		4 CUSTOMS BOND GUARANTEE		5 CHARTER ON A REGIME OF MULTINATIONAL INDUSTRIAL ENTERPRISES (MIE)		5 CHARTER FOR THE ESTABLISHMENT OF A METALLURGICAL TECHNOLOGY CENTRE (MTC)		1* AGREEMENT ON PRIVILEGES AND IMMUNITIES TO BE RECOGNIZED AND GRANTED	* PROTOCOL ON THE GRADUAL RELAXATION AND EVENTUAL ELIMINATION OF VISA		* ARTICLES OF ASSOCIATION OF COMMERCIAL BANKS OF PTA		* CHARTER ESTABLISHING THE FEDERATION OF NATIONAL ASSOCIATIONS OF WOMEN IN BUSINESS IN EASTERN AND SOUTHERN AFRICA		2* PTA BANK CHARTER		3* ZEP-RE CHARTER		COMESA COMMON INVESTMENT AREA		
State	Signed	Ratified	Signed	Ratified	Signed	Ratified	Signed	Ratified	Binding on all Member States	Signed	Ratified	Signed	Ratified	Signed	Ratified	Signed	Ratified	Signed	Shares Paid-up	Signed	\ Ratified
																		*			

* Agreement on Privileges and Immunities is binding on all member States
 2* PTA Bank membership also includes China, India, Somalia, Tanzania and the ADB
 4 and 5 – These three Legal Instruments are not yet in force
 * Indicates Legal Instrument in Force
 3*ZEP-Re Membership also includes China and Tanzania

1. Burund i	*	*	*	*			*		*	*	*	*	*	*	*	*	*	*	*		
2. Comor os	*	*	*		*		*		*	*	*			*	*		*	*			
3. D.R. Congo	*	*							*		*							*			
4. Djibout i	*	*		*					*		*						*				
5. Egypt	*	*							*		*						*				
6. Eritrea	*	*							*		*							*	*		
7. Ethiopi a	*	*	*	*	*		*		*		*	*	*	*	*		*				
8. Kenya	*	*	*	*	*		*		*	*	*	*	*	*	*		*	*	*		
9 Libya	*	*									*										
10. Madag ascar	*	*							*		*			*	*				*		
11. Malawi	*	*	*	*	*	*	*		*	*	*	*	*	*	*		*	*			
12. Mauriti us	*	*					*		*	*		*	*	*	*		*				
13. Rwand a	*	*	*	*	*		*		*	*	*	*	*	*	*		*	*	*		

14. Seyche lles	*	*							*												
15. Sudan	*	*	*	*	*		*		*		*	*	*	*	*		*	*	*		
16. Swazila nd	*	*							*	*	*	*	*	*							
17. Ugand a	*	*	*	*	*	*	*		*	*	*	*	*	*		*	*	*			
18. Zambia	*	*	*		*		*		*	*	*	*	*	*		*	*	*			
19. Zimbab we	*	*	*	*	*		*		*	*	*			*	*		*	*	*		

		6 1.1.1 LLPI CHARTER	PROTOCOL FOR ESTABLISHMENT OF THE FUND FOR COOPERATION, COMPENSATION AND DEVELOPMENT	PROTOCOL ON FREE MOVEMENT OF PERSONS, LABOUR, SERVICES, THE RIGHT OF ESTABLISHMENT AND RESIDENCE		
STATE		Signature	Signed	Ratified	Signed	Ratified
1. Burundi		*	*	*	*	*
2. Comoros		*				
3. D.R. Congo						
4. Djibouti		*	*	*		
5. Egypt			*			
6. Eritrea		*				
7. Ethiopia		*	*	*		
8. Kenya		*	*	*	*	
9. Libya						
10. Madagascar						
11. Malawi		*		*		
12. Mauritius			*	*		
13. Rwanda		*	*	*	*	
14. Seychelles				*		
15. Sudan		*	*	*		
16 Swaziland			*			
17. Uganda		*	*			
18. Zambia		*	*	*		
19. Zimbabwe		*	*		*	

Appendix II- Private Sector Declaration

PRIVATE SECTOR DECLARATION ON THE REGIONAL POSITION OF THE COMESA BUSINESS COUNCIL ON THE GRADUAL ELIMINATION OF VISA FEES AND FREE MOVEMENT OF BUSINESS PERSONS IN THE COMESA REGION

Whereas the Founding Member States of COMESA, in their collective wisdom, had created and designated, by Article 18 of its Establishment Treaty, the Consultative Committee of the Business Community to serve as both a link and facilitator of dialogue between the business community and the Common Market;

Whereas COMESA, the largest regional economic community in the Continent and hence one of the most substantial building blocks of Africa's long time goal of the AFRICAN ECONOMIC COMMUNITY, is unwaveringly engaged in the most honourable and yet indispensable process of having to midwife the birth of that Community.

Whereas the COMESA Secretariat had long recognized that the Region's private sector remained the weakest link in the integration chain and had started to take bold steps towards strengthening and engaging it as an irreplaceable partner of Governments in their quest for rapid, equitable and sustainable economic growth and development, seen by Member States as the appropriate and truly necessary chemistry in the process of Africa's economic integration;

Whereas the Secretariat's determination in the above regard has been manifested and continues to be manifested in the strong support and commitment being extended to the COMESA Business Council (CBC) including the recent steps taken by providing the appropriate forum where the voice of the Business Community could be heard by the higher organs of the Regional Economic Community;

Whereas the leaders of business communities in the respective Member States of COMESA had met several times to consider ways by which their roles in the Region's drive for economic integration could be enhanced and reached a common conclusion that while committed to the longer term and ultimate

goal of The Free Movement of Persons, Labour, Services, Right of Establishment and Residence as contained in the Protocol of 2001, has identified The Free Movement of Business Persons and Professionals , nationals of Member States as the quick harvest whose time has come;

NOW THEREFORE strongly appeals to all Member States of COMESA to facilitate the Free Movement for bona fide Business Persons and Professionals subject only to the requirements of the national security interests of each Member State, based on the understanding that national apex business institutions such as Chambers of Commerce would co-operate in vouching for the bona fide status of such Business Persons and Professionals.

The COMESA Business Council (CBC) further makes the following recommendations to the Member states;

- 1) The CBC requests member states to recognize the CBC as a Policy Organ participating in the Committee on Trade in Services.
- 2) The CBC national focal point- should be recognized at the COMESA National Coordinating Ministry- to ensure that the Private Sector is included in the National delegation participating at the National and regional policy organs. COMESA to formalize the process through a Letter from Secretariat to the dedicated Ministry.
- 3) While noting that some member states have National Monitoring Committees on NTBs that are operational, the CBC requests for the Formation of dedicated National Monitoring committees on the Elimination Visas for Free Movement of Business Persons. The Committees should be inclusive of Ministries and key stake holders involved in the movement of persons, labour and services in the region.
- 4) The CBC requests that the recommendations of the Private Sector should be taken into account during the upcoming Tripartite Negotiations on the Protocol on the Gradual Relaxation and Eventual elimination of Visa requirements in the Tripartite FTA.
- 5) CBC urges member states to ensure an effective elimination of Visa requirements for business persons based on reciprocity amongst member states- while noting the Private Sector Focus on Free Movement of Business Persons in the region;
- 6) CBC has resolved to form a Regional Working Group for NTBs. The NTB workgroup will be formed in the present meeting, Private Sector Dialogue on Elimination of VISAs in the region.

The CBC Regional NTB Workgroups is formed of Ethiopia, Kenya, Madagascar, Zimbabwe, Seychelles, Egypt and Burundi. Burundi has been appointed as Chair of the Workgroup.

The objective of the Workgroup is to monitor the progress made upon the agreed recommendations, and also to monitor the progress made in accordance to COMESA implementation framework on the Status Implementation Of Protocol On The Gradual Relaxation Of Visa Requirements; and; the implementation of the roadmap on the Gradual Elimination of VISAs for Free Movement of Business Persons;

- 7) The CBC requests member states to support advocacy efforts of the Private Sector as the workgroup commits to monitor, advocate and provide targeted reports of the advocacy efforts on;

Issue	Review Timeline
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8) Acceleration on the Institutionalisation a Common Travel Document within COMESA Region;

While recalling the decision made by the Council of Ministers in 2008, on the establishment of a Common Travel Document to facilitate movement of Persons within the COMESA Region, it is noted that this decision is still being pursued by the member states;

We the Business Community therefore in the interim, recommend the following

- In the Short term- with immediate effect; a “Common Business VISA” is issued and accepted by the member states to facilitate the movement of business persons upon entry under an agreed

upon and accepted criterion. This movement may be restricted to multiple entries within a certain time frame as agreed upon by the member states. We further propose that the criteria GIVEN should be in general focusing on ; personal data , type of activity you will be carrying out , purpose of your business trip , Formal letter from enterprise- indicating the identity and type of enterprise(s) you will be visiting .

- The private sector- Chambers of Commerce, recognised apex bodies- will vouch for the credibility of the said businesses entrants into the country on temporary basis.
- In the medium to Long Term,; To establish the COMESA Business Passport.

Annex III- List of Participants at the Private Sector Dialogue Meeting, November 2011, Nairobi, Kenya

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