TMEA RESULTS

Case Study

Rules of Origin
Challenges in resolving NTBs

The purpose of the EAC Rules of Origin (RoO) is to implement the provisions of Article 14 of the Customs Union Protocol – setting out criteria for distinguishing between goods produced within the EAC and, therefore, eligible for EAC preferential treatment against those produced outside the EAC customs territory that attract duties specified in the Common External Tariff (CET) (EAC, 2006). The EAC Customs Union RoO Rules 2015 are intended to spur intra-EAC trade by being more flexible for the private sector to comply with. However, at present, many NTBs relate to the interpretation of RoO, and challenges have arisen such as the following:

Motor Vehicles

Kenya is the largest motor vehicle assembler and importer in the EAC. It imports car parts from outside the EAC and then assembles cars in Kenya, creating jobs and reducing costs. Through such process, cars satisfy the 'value addition' criterion for the RoO test and are considered as originating from Kenya. However, there have been instances where Kenya has been unable to export cars assembled on its territory to EAC markets under the preferential treatment principles. An illustrative example, filed on the Tripartite online NTB-reporting system in September 2015, is the one of General Motors. General Motors were charged a duty when exporting four vehicles to Tanzania at the Namanga border post, notwithstanding presenting copies of the EAC Certificate of Origin (CoO), the commercial invoice, the import duty assessment document and the import duty payment note. This NTB has recently been considered resolved, yet there are many instances where RoO issues are reported requiring Partner States to go through the EAC Time Bound Programme on Elimination of Identified NTBs mechanism, rather than resolving bilaterally and sometimes with the NTB reoccurring again in the future.

Rice

Over the past ten years, the demand for rice in East Africa has grown rapidly while productivity and production growth have lagged behind thus leading to sizable and growing imports. Over the years, trading of rice produced in, and exported to, Partner States has faced restrictions and impositions of duties due to lack of recognition of RoO, adding to the cost of doing business and resulting in loss of market for farmers and traders. An example is the case of Tanzania, as not long ago, Tanzanian rice was restricted entry into neighbouring EAC markets, based on a claim that the rice was not originating from Tanzania. The EAC conducted an investigation and concluded that the rice did originate from Tanzania and could be exempted from the CET. However, during a surveillance mission in Kahama, the research team witnessed people mixing imported rice from Thailand with local rice! The workers confessed to what they were doing. Flooding the regional market with foreign rice causes price distortion, affects local production and can be subject to criminal sanctions i.e. in Rwanda a trader was recently jailed for two years for importing rice without a Certificate of Origin (CoO). This illustrates the importance of both appropriately designing non-tariff measures but critically the challenges in appropriately implementing them.