



**COMMUNIQUE ON THE FIRST COMESA
DIPLOMATIC CONFERENCE ON
COMPETITION AND TRADE**

Thursday 19th May – Friday 20th May, 2016

Livingstone, Zambia

The First Diplomatic Conference on Competition and Trade was held on 19 to 20 May 2016 in Livingstone, Zambia under the theme “*Enhancing Competition in the Common Market*”.

The Conference was attended by the following Ambassadors and High Commissioners to Zambia and Permanent Representatives to COMESA and other Plenipotentiaries:

His Excellency Mr. Ragai Tawfik Nasr, Ambassador of the Arab Republic of Egypt to Zambia and Permanent Representative to COMESA

His Excellency Mr. Maher El-Adawy, Ambassador of the Arab Republic of Egypt to Malawi

Her Excellency Mrs. Sophy K. Kombe, High Commissioner of the Republic of Kenya to Zambia and Permanent Representative to COMESA

His Excellency Mr. Hussein Awad Ali, Ambassador of Sudan to Zambia and Permanent Representative to COMESA

Her Excellency Mrs. Salome Mwananshiku, High Commissioner of the Republic of Zambia to Malawi

Her Excellency Mrs. Gertrude Takawira, Ambassador of the Republic of Zimbabwe to Zambia and Permanent Representative to COMESA

His Excellency Dr. Leopold-Auguste Ngomo, African Union Delegate to Southern Africa, SADC and COMESA

Other members of the diplomatic corps in attendance were as follows:

Mr. Georges Berahino, Chargé d’Affaires, Embassy of the Republic of Burundi in Zambia

Mr. Kilongwe Pierre Sadiki, First Secretary, Embassy of the Democratic Republic of Congo in Zambia

Mr. Nawej Jean Pierre Kazang, Administrative Secretary, Embassy of the Democratic Republic of Congo in Zambia

Mr. Tarek Kashwaa, First Secretary – Commercial, Embassy of the Arab Republic of Egypt in Zambia

Mrs. Jane Ndurumo, Commercial Counsellor, High Commission of the Republic of Kenya in Zambia

Mr. Daught Banda, Third Secretary - Consular Trade, High Commission of the Republic of Malawi to Zambia

Ms. Nontombi Makupula, Counsellor – Political, High Commission of the Republic of South Africa in Zambia

Mr. Mussab Ibrahim, First Secretary, Embassy of the Republic of Sudan in Zambia

Mrs. Result Macheke, Counsellor, Embassy of the Republic of Zimbabwe in Malawi

Mr. Robson Muchini, Counsellor, Embassy of the Republic of Zimbabwe in Zambia

The COMESA Secretariat and the COMESA institutions were represented by the following:

His Excellency, Mr. Sindiso Ngwenya, Secretary General of COMESA

Honourable Justice Luke Malaba, Deputy Chief Justice of Zimbabwe and Judge of the COMESA Court of Justice

Mr. Matthews Chikankheni, Board Chairperson of the COMESA Competition Commission

Mr. George Lipimile, Director and CEO of the COMESA Competition Commission

Mr. Argent Chuula, CEO of the Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA)

Mrs. Katherine Ichoya, CEO of the Federation of National Associations of Women in Business in Eastern and Southern Africa (FEMCOM)

Mrs. Mary Gurure, Manager – Legal Services and Compliance, COMESA Competition Commission

Mr. Willard Mwemba, Manager – Mergers and Acquisitions, COMESA Competition Commission

Mr. Benedict Musili Musengele, Senior Research Fellow, COMESA Secretariat

Mr. Joseph Mpunga, Senior Investment Promotion Officer, COMESA Secretariat

Ms. Kudzai Madzivanyika, Policy Officer, COMESA Business Council

Mr. Ali Kamanga, Economist, COMESA Competition Commission

Mr. William Mwanza, Consultant, COMESA Competition Commission

Mrs. Lucy Dziko, Senior Finance Assistant, COMESA Competition Commission

Ms. Angela Minika, Senior Administrative Assistant, COMESA Competition Commission

Mrs. Agnes Chalabesa, Senior Administrative Assistant, COMESA Secretariat

Ms. Muzinge Nampito, Public Relations Assistant, COMESA Secretariat

Mr. Daniel Banda, Corporate Communications Assistant, COMESA Secretariat

The following Representatives of the Government of the Republic of Zambia attended the Conference:

Mr. Chilufya Sampa, Executive Director, Zambia Competition and Consumer Protection Commission

Mrs. Lillian Saili Bwalya, Director – Foreign Trade, Ministry of Commerce, Trade and Industry

Mr. Muyambango Nkwemu, Principal Economist, Ministry of Commerce, Trade and Industry

Ms. Ruth Nandazi, Economist – Consumer Welfare, Ministry of Commerce, Trade and Industry

Introductory Remarks and Opening of the Conference

Having recognised the strategic role that the Diplomatic Community can play in facilitating the effective engagement of their Governments in the implementation of the COMESA Treaty, the Chairperson of the Board of the COMESA Competition Commission, Mr. Matthews Chikankheni, in his opening remarks underscored the objective of the conference as to commence a new working partnership with Ambassadors and High Commissioners Accredited to COMESA on the implementation of COMESA programmes.

In his opening remarks, The Guest of Honour, Southern Province Minister of the Republic of Zambia, Honourable Nathaniel Mubukwanu, welcomed the Ambassadors to Livingstone and thanked the Secretary General of COMESA for hosting the Conference. He underscored the importance of political will in ensuring positive outcomes from COMESA programmes. He further recognised the role of regional economic integration in the strategic economic development of African countries especially the COMESA Member States.

Keynote Address

In his keynote address on **Unveiling the COMESA Common Industrialisation Policy, 2015 – 2020**, His Excellency, Mr. Sindiso Ngwenya, the Secretary General of COMESA highlighted COMESA's on-going efforts in developing a Regional Industrial Policy which is premised on the region's endowment with rich natural resources which continue to be exploited and exported with limited value addition. He further underscored the need for the COMESA Competition Commission to look at the Services Sector as a potential sector that can boost investment and trade competitiveness of the Common Market. He underscored the importance of market connectivity, trade connectivity, people-to-people connectivity and institutional connectivity in the regional integration efforts of COMESA.

Presentation on the Success and Pitfalls in Deepening the Pace of Economic Integration under COMESA

The Ambassadors and High Commissioners noted the challenges that non-tariff barriers (NTBs) continue to pose to trade despite efforts by COMESA to facilitate the free movement of goods and services through the promotion and implementation of COMESA trade related programmes. They also underscored

the importance of peace and security on the African continent as a prerequisite for effective implementation of the COMESA Treaty.

To this end, the Ambassadors and High Commissioners called upon the COMESA Secretariat to develop educational programmes on COMESA targeting various stakeholders including incorporating the programmes in curricula at the various education levels. The Ambassadors and High Commissioners also called upon COMESA to regularly brief the Embassies Accredited to COMESA on the progress on the on-going negotiations regarding the Tripartite Free Trade Area and regional integration programmes which are beneficial to the citizens and business persons in their respective countries.

Presentation on the Regional Imperative for Competition Law and Policy: Dealing with the Regional Market Regulation

The Ambassadors and High Commissioners recognised that the benefit of market integration can only be achieved in a dynamic competitive environment devoid of new market barriers erected in place of those being dismantled. It was appreciated that the COMESA Competition Regulations (the “Regulations”) establish conditions of free and effective competition in the Common Market to ensure that anti-competitive practices do not create new barriers to trade and other forms of protectionism. The Regulations set down minimum standards and allow companies and firms to penetrate the Common Market and establish themselves without barriers or restrictions, thereby facilitating intra-COMESA trade and cooperation.

The Ambassadors and High Commissioners further recognised the need and importance of the Regulations in dealing with cross border anti-competitive practices. It was observed that the national competition legislations have jurisdictional limitations in dealing with anti-competitive practices emanating from outside national borders. Hence, the Regulations will deal with anti-competitive practices with cross-border effects. They also appreciated the benefit of a regional competition law in reducing the cost of doing business in the Common Market since it operates as a “one stop shop” for the notification of cross border transactions hence such transactions no longer need to be notified in each affected COMESA Member State as it previously used to be.

Panel Discussion on Accessing Trade and Investment Opportunities in the Common Market

The Ambassadors and High Commissioners recognised that for the Member States to foster regional integration, they need to have a common development strategy as opposed to individual member states working alone. It was further recognised that for the region to register economic growth, it requires among others: full political commitment in the promotion of women entrepreneurship, full participation of the private sector in the development of industrial policy, and strategic focus on the identification of regional programmes which benefit all Member States.

The Ambassadors and High Commissioners called for enhanced private sector participation in the implementation of the COMESA Treaty and the formulation and implementation of COMESA programmes.

Roundtable Discussion on COMESA in the Global Context: Political, Economic, Demographic and Social Drivers of Growth and Development in COMESA

The Ambassadors and High Commissioners noted that COMESA is well placed to use its trade and investment policies to benefit from global trade and investment opportunities. They further noted the importance of trade facilitation and facilitation of movement of business persons in the promotion of COMESA regional integration. They also called upon the COMESA Secretariat to facilitate issuance of a COMESA business visa which will expedite movement of business persons.

The Ambassadors and High Commissioners recognised that, to further strengthen COMESA's capacity to take advantage of open markets, there is need for structural reforms at national and regional level to include: internal resource mobilisation at domestic level to support COMESA programmes; Regional Economic Communities to harmonise programmes in order to promote continental integration; focusing investment attraction in the global context and capitalising on intra-COMESA investment; frequent advocacy with high quality translation targeting all COMESA Member States; and political will in regional integration.

The Ambassadors and High Commissioners also noted the global market of leather products and the small share currently taken up by COMESA Member States in spite of the huge potential the leather industry poses to the economic

growth of the Common Market, and it being the biggest industry in the Common Market.

Process of Adopting Treaty Laws in COMESA Member States

The Ambassadors and High Commissioners noted the importance of domesticating the COMESA Treaty and related legal instruments so as to ensure that the benefits of regional integration accrue to all the Member States. The Conference also recognised the different legal frameworks and systems under which COMESA Member States may domesticate the COMESA Treaty. Consequently, the pertinent issues that arise for domestication in monist and dualist systems were noted and discussed. The discussions included the question of sovereignty and supremacy of national constitutions, the direct applicability of Treaty Laws, supremacy of regional laws over national laws, lack of technical and financial capacity to undertake necessary processes; lack of political will and lack of a culture of compliance being exhibited by some Member States.

Presentation on the Role of the COMESA Court of Justice in Rules-based Governance of Economic Integration

The Ambassadors and High Commissioners noted a presentation on the landmark case of “*Polytol Paints and Adhesives Manufacturing Ltd v Government of Mauritius*” presided over by the COMESA Court of Justice which brought to bear the supremacy of the COMESA Treaty over national legislations. The Ambassadors and High Commissioners noted the principles emanating from the judgment by the COMESA Court of Justice on the case as follows: (i) failure by COMESA Member States to domesticate COMESA Regulations constitutes a breach of the COMESA Treaty (ii) Member States can be taken to the COMESA Court of Justice by other Member States for breaching the COMESA Treaty by failing to fulfill their obligations under the Treaty, (iii) legal and natural persons have enforceable rights to take the Member State governments to the COMESA Court of Justice in respect of conduct or measures that prejudices them and constitutes a breach of the Treaty obligations, and (iv) Member States cannot use their internal laws as defence for not implementing the COMESA Treaty obligations.

Closing of the Conference

In closing the Conference, the Chairperson of the Board of the COMESA Competition Commission thanked the Ambassadors and High Commissioners for

their attendance and fruitful deliberations. He further summarised the key issues discussed at the conference as follows: (i) the imperative of industrialization for COMESA Member States (ii) the need for COMESA's operations to be within a global context which is evolving rapidly hence the necessity for COMESA to consider the ever-changing dynamics and the opportunities and risks they may present (iii) the importance of building competitive markets for increased investment and trade opportunities in the Common Market (iv) the importance of domesticating the COMESA Treaty to ensure that enforceability of the regional laws at the national level.

The Ambassadors and High Commissioners expressed their appreciation of the Conference and underscored that the Conference provided an appropriate forum for the exchange of ideas and information sharing among the Ambassadors to facilitate the implementation of COMESA programmes in Member States. They further reiterated their readiness to continue engaging the COMESA Secretariat and COMESA institutions in the implementation of the COMESA Treaty and COMESA programmes. To this end they called upon the COMESA Secretariat to hold the Conference annually.

DONE at Livingstone, Zambia on 20 May 2016 in the Arabic, English and French languages; all texts being equally authentic.