



Policy Proposals Towards Development of Policy Framework on Anti-Illicit Trade for the COMESA Region

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Abstract

This study on policy proposals towards development of an anti-illicit trade framework in the COMESA Region was directed towards: a) Assessing the current environment and determining the requirements for establishing an effective policy framework on anti-illicit trade; b) Developing an appropriate policy framework on Anti-Illicit Trade for the COMESA region; c) Developing appropriate institutional arrangements to support the policy framework on anti-illicit trade; and d) Developing an implementation plan for policy framework on anti-illicit trade.

This study, which incorporates evidence from desk review, a series of virtual field missions, and stakeholder engagement, provides policy proposals for the development of a framework on anti-illicit trade for the COMESA region. These proposals highlight measures of preventing and counteracting illicit trade in the COMESA region through regional and national coordination and cooperation. Some of these measures include: improving the national legal framework, enhancing the COMESA legal framework, and strengthening coordination and cooperation among COMESA Member States.

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List of Abbreviations

Abbreviation Meaning

ACA	Anti-Counterfeit Agency
AfDB	African Development Bank
ARSO	African Organisation for Standardisation
CBC	COMESA Business Council
COMESA	Common Market for Eastern and Southern Africa
FCTC	Framework Convention on Tobacco Control
FOB	Free on Board
FTA	Free Trade Area
FTZ	Free Trade Zones
GDP	Gross Domestic Product
IPRs	Intellectual Property Rights
OECD	Organization for Economic Co-operation and Development
TIEA	Tax Information Exchange Agreements
TOR	Terms of Reference
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TWG	Technical Working Group
UIDs	Unique Identifier Codes
UNCAC	United Nations Convention against Corruption
UNTOC	United Nations Convention against Transnational Organised Crime
VAT	Value Added Tax
WCO	World Customs Organization
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Foreword

Research has shown that illicit trade is a global menace that negatively affects both the public and private sectors within the COMESA region. It undermines the concept of a free and open marketplace, which is fundamental to improving competitiveness, increasing investments, generating jobs, and ultimately contributing to the economic growth of COMESA Member States.



According to a 2016 report titled 'Illicit trade in natural resources in Africa - A forthcoming report from the African Natural Resources Centre', the wider economic impact of illicit trade is estimated at US\$120 billion per annum, which is 5% of Africa's Gross Domestic Product (GDP). The loss in tax revenue is about US\$3.6 billion, while an estimated 24 million jobs are lost, which is about 6% of overall employment in Africa. By curbing illicit trade, Africa could potentially create more jobs.

Illicit trade has been at the centre of discussions on development in Africa for a long time, particularly due to the wide consensus on its negative impacts on government revenue, sales and profits of the firms, investments, employment, public health, safety and security, and the economy at large. It undermines the ability of governments to collect important sources of revenue to run key public services such as health, safety, and security.

In the COMESA region, counterfeits and imports of sub-standard products are prevalent and pose high risks, including revenue losses in the local industry due to unfair competition, damage to human health and safety, loss of government revenue, stifling of creativity and innovation, and loss of trade and investment competitiveness. Networks of counterfeit trade undermine creativity, innovation and competitiveness, and hamper investment in the research, and the development of new products and ideas. The adverse effects on industry competitiveness often lead to company shutdowns due to the influx of cheap substandard products. The illegal competition caused by illicit trade reduces sales and employment opportunities, and disincentivises investment.

In 2015, the COMESA Business Council (CBC) commissioned its first study on illicit trade. The study entitled "Promoting Manufacturing Competitiveness in COMESA", was a comprehensive review of the situation across COMESA. It provided the baseline and measures to be implemented in the COMESA region. As a follow up to the study, CBC, with the support of Africa RISE, commissioned a study on the policy proposals for development of an anti-illicit trade framework in the COMESA region. The study advanced policy proposals for development of a policy framework on anti-illicit trade.

The global threat presented by illicit trade underscores the relevance of effective and integrated legal frameworks and compliance mechanisms that ensure effective participation of COMESA countries in addressing illicit trade.

Mr. Marday Venkatasamy

President
COMESA Business Council (CBC)

Policy Framework on Anti-Illicit Trade for the COMESA Region

Executive Summary

There is a high prevalence of counterfeits, imports of sub-standard products, and locally manufactured or smuggled “duty not paid” products in the COMESA region. These illicit products pose numerous risks such as: revenue losses to local industry due to unfair competition, danger to human health and safety, loss of government revenue, stifling of creativity and innovation, and loss of trade and investment competitiveness. Networks of counterfeit trade undermine creativity, innovation and competitiveness, and hamper investment in the research and development of new products and ideas. The adverse effects on industry competitiveness often leads to company shutdowns due to the influx of cheap substandard products. The illegal competition caused by illicit trade reduces sales and employment opportunities, and disincentivises investments.

COMESA Business Council (CBC) commissioned the first study on illicit trade in 2015. It was a comprehensive review of the situation across COMESA, which provided a baseline and measures to be implemented in each COMESA Member State. The study recommended the establishment of a regional framework for combating illicit trade in COMESA region.

As a follow up to this study, CBC with the support of European Union’s Africa Reform for Investment and Sustainable Economies (EU Africa RISE), commissioned another study whose objective was to develop policy proposals towards the development of a policy framework on Anti-Illicit Trade in in the COMESA region. The study, which was undertaken in Ethiopia, Kenya, Mauritius, Uganda and Zambia, focused on four main areas:

- (a) Assessment of the current environment and determining the requirements for establishing an effective Policy Framework on Anti-Illicit Trade;
- (b) Developing an appropriate Policy Framework on Anti-Illicit Trade for the COMESA region;
- (c) Developing appropriate institutional arrangements to support the Policy Framework on Anti-Illicit Trade; and
- (d) Develop an implementation plan for the Policy Framework on Anti-Illicit Trade.

The Study noted that most of the COMESA Member States have legislations for combating illicit trade. Some Member States such as Kenya have specialised agencies for fighting illicit trade (Anti-Counterfeit Authority). However, since there are differences in excise regimes and products’ standards among the Member States, and most of the efforts in the fight against illicit trade are concentrated at national as opposed to regional level pose a serious challenge in the fight against illicit trade.

In addition, the study raised a number of concerns in the fight against illicit trade, including: capacity issues; weak collaboration/coordination at both national and regional levels; lack of clear track and trace systems for both locally manufactured and imported goods; and low fines for offenders, which are not deterrent enough. Others are: lack of harmonised regimes to address illicit trade; none utilisation of existing legislation to fight against the vice; porous borders; inadequate enforcement of Intellectual Property Rights (IPRs); weak capacity to prosecute cases; and low consumer awareness on illicit trade.

The study further established that most Member States use different agencies to fight illicit trade. The agencies which enforce illicit trade laws in different countries are: Bureau of Standards, Task Forces, IPR Institutions, National Police, Revenue Authorities, Weight and Measures departments, Departments of Agriculture, Seeds (Plant Health) Inspectorate, Department of Public Prosecution, and Consumer protection institutions.

As indicated above, it was noted that most of the efforts in the fight against illicit trade are concentrated at the national levels but not harmonised with at the regional level, hence the need for a study on the development of regional framework on Anti-illicit Trade for COMESA. The framework will provide measures on the prevention and counteracting of illicit trade within COMESA region, through regional and national coordination and cooperation.

The key elements of the policy framework include: putting into place effective sanctions; use of ancillary legislation; improving national legal frameworks; developing a regional legal framework; putting into place a mechanism for coordination and cooperation at national and regional level; improvements in the screening of imports; enforcement of IPR laws; harmonisation of excise regimes; development of database and sharing of information; and conducting educational campaigns.

The study made several policy proposals to facilitate the development of the policy framework on anti-illicit trade for COMESA region, including:

- (a) Establishment of a Technical Working Group (TWG) on illicit trade under COMESA to be reporting to the Trade and Customs Committee;
- (b) Adoption of a harmonised approach in the fight against illicit trade, in areas such as legal framework on illicit trade, excise regimes, product standards and IPR;
- (c) Setting up a coordination and cooperation mechanism for the enforcement of legislation on the cross border illicit trade activities;
- (d) Establishing a regional information sharing mechanism and database;
- (e) Adopting, ratifying and implementing International Treaties, such as the Protocol to Eliminate Illicit Trade in Tobacco products;
- (f) Developing a regional track and trace system for products within COMESA region affected by illicit trade;
- (g) Review of national legislation to enhance the current sanctions and make them punitive to the offenders;
- (h) Ensuring that illicit trade offences attract both criminal and civil sanctions;
- (i) Ensuring that sanctions are not only enforced to manufacturers and importers, but also to the distributors and retailers;
- (j) Ensuring that Member States use ancillary legislations;
- (k) Building capacity on illicit trade among the law enforcement agents and private sector players;
- (l) Adopting multi-agencies approach in the fight against illicit trade, which should include private sector; and
- (m) Organising educational campaigns to create more awareness among the consumers.

The study proposes an institutional arrangement to support the policy framework on illegal trade in COMESA region. The successful implementation of this policy framework will depend on an effective, coordinated and functioning institutional arrangement at both regional and national levels complemented by strong political will and commitment by the different stakeholders. It is proposed that at the regional

level, oversight of the policy implementation will be undertaken by the Council of Ministers, through the Committee on Trade and Customs. However, at the national level, this oversight will be done by the National Multi-Agencies Committee, chaired by either the Office of the President or the Prime Minister's Office.

The study also proposes an implementation plan for policy proposals towards the development of a policy framework on Anti Illicit Trade in COMESA region. The plan will provide several policy measures to be implemented in the Member States' respective timeframes and responsible institutions. Finally, the study stresses the need to develop monitoring and evaluation tools and mechanisms, which will provide feedback on the policy proposals and support programmes towards meeting the objective. This will assist with the timely response to any issues that may arise.

“

... a high prevalence of counterfeits, imports of sub-standard products, and locally manufactured or smuggled “duty not paid” products in the COMESA region...pose numerous risks such as: revenue losses to local industry due to unfair competition, danger to human health and safety. ”

1. Background

The Common Market for Eastern and Southern Africa (COMESA) is the largest regional economic community in Africa. It is comprised of 21 Member States, which cover about two thirds of the African continent, with a population of approximately 583 million people, a gross domestic product of \$805 billion, and an annual import and export trade of about \$324 billion.

There is high prevalence of counterfeits, imports of sub-standard products, and locally manufactured or smuggled “duty not paid” products within the COMESA region. These pose high risks in terms of revenue losses to local industry due to unfair competition, danger to human health and safety, government revenue loss, stifling of creativity and innovation, and loss of trade and investment competitiveness. Networks of counterfeit trade undermine creativity, innovation and competitiveness, and hamper investment in the research and development of new products and ideas. This has adverse effects on the competitiveness of industry, often leading to company shutdowns due to the influx of cheap substandard products. The illegal competition occasioned by illicit trade reduces sales and employment opportunities, and disincentivises investments.

In 2015, COMESA Business Council (CBC) commissioned its first study on illicit trade entitled “Promoting manufacturing competitiveness in COMESA: Towards the establishment of A Framework for combating Illicit Trade in COMESA”. This was the first step towards the establishment of a framework on anti-illicit trade in COMESA. The study provided a comprehensive review of the situation across the COMESA region, which provided a baseline and measures to be implemented in each COMESA Member State. This formed the basis for the development of an Anti-Illicit Trade Policy Framework for the COMESA region.

As a follow up to this research, the CBC with support from EU Africa RISE commissioned another study on the development of an Anti-Illicit Trade Framework in the COMESA Region. The objective was to develop policy proposals towards the development of a policy framework on anti-illicit trade, and an implementation plan for this framework across the COMESA region.

The study focused on the following four main stages:

- a. Assessing the current environment and determining the requirements for establishing an effective policy framework on anti-illicit trade;
- b. Developing an appropriate policy framework on anti-illicit trade for the COMESA region;
- c. Developing appropriate institutional arrangements to support the policy framework on anti-illicit trade; and
- d. Developing an implementation plan for the policy framework on anti-illicit trade.

2. Definition of Illicit Trade and its Impact

Illicit trade is a global menace that negatively affects both the public and private sectors within the COMESA region and globally. It undermines the concept of a free and open marketplace, which is fundamental to improving competitiveness, increasing investment, generating jobs, and ultimately contributing to the COMESA Member States’ economic growth. . In addition, illicit trade weakens fiscal policy decisions and regulations that have been implemented to protect consumers.

Although there is no official definition, the World Health Organization (WHO) defines illicit trade as any practice or conduct that is prohibited by law, which relates to the production, shipment, receipt, possession, distribution, and sale or purchase of illegitimate goods, including any practice or conduct intended to facilitate such activity.

Illicit trade is categorised under seven broad areas:

- **Smuggling** – This refers to the illegal trading of products across borders. Typically, this is done in breach of laws prohibiting importation/exportation, and without payment of applicable taxes and duties (customs or excise)
- **Counterfeiting** – Counterfeiting is the fraudulent imitation of a trusted brand and product, including a trademark. These goods are deliberately made to look genuine through imitation of the original brands, without the permission of the owners of the brands, trademarks, and patents or industrial designs.
- **Piracy** – Piracy refers to an unauthorised duplication of copyrighted content.
- **Substandard goods** – Substandard goods are portrayed to appear as if they adhere to a specific standard, but they are actually inferior since they do not conform to the specified standard.
- **Transit fraud** – This refers to the illegal entering of a product into a market, through which the product was only meant to pass
- **Trade in prohibited or restricted products** – This refers to goods whose importation is banned (prohibited), or which require authorisation (or adherence to some conditions) before being imported (restricted goods).
- **Undeclared local production** – This is the instance where a product is manufactured and sold in the same country, although its production is not declared, and hence excise tax is not paid. Such undeclared local production can either occur in registered and approved production facilities, or through illegal covert operations.

Illicit trade has elicited many discussions on development in Africa for a long time, particularly due to the wide consensus on its negative impacts. It undermines the ability of governments to collect revenue, which is crucial for the provision of key public services such as health, safety and security. The African Development Bank (AfDB) estimates the wider economic impact of illicit trade to be at about US\$120 billion per annum, which is 5% of Africa's GDP, while the tax revenue loss is approximately US\$3.6 billion. Additionally, an estimated 24 million jobs are lost annually, which is about 6% of the overall employment in Africa. By curbing these illicit activities, Africa could potentially create 25 million more jobs.

3. Regional Situational Analysis for Selected COMESA Member States

3.1. Existing Frameworks to Counter Illicit Trade in COMESA Member States – Current Legislation

The study assessed the national legislative and regulatory frameworks within each of the selected COMESA Member States. The following pieces of legislation and regulation are indicative of what is relevant to illicit trade in the different countries.



3.1.1. Ethiopia

Ethiopia has several legislations and regulations that can assist in addressing illicit trade. These include:

- Coffee Marketing and Quality Control Proclamation: Through this proclamation, Ethiopia has highly regulated the processing and transacting in coffee, using inspection, licensing, certification, a transaction platform, and end-receipt confirmation.
- Seed proclamation: This proclamation specifies the approved seed standards (set by the Ethiopian Standards Agency). In order to produce seeds, producers require a certificate of competence and must establish an internal seed quality control system. Distributors also need certificates of competence. Ethiopia relies on both regional authorities and laboratories to ensure the quality of seeds. Importation of seeds requires import permits, which are only given on condition that prior verification of the seeds has been done. Additionally, importers require a certificate of competence. All holders of certificates of competence must keep detailed records of all seeds produced, processed and distributed or imported, and keep samples for testing for at least one year. Sanctions for violations are imprisonment of up to 10 years or a fine of up to 50,000 Birr (US\$ 1,000).
- Trade practice and consumer protection proclamation: This proclamation establishes the Trade Practice and Consumer Protection Authority. In the current context, it prohibits false advertising of goods in respect of: the nature, components and quantity, the source, weight, volume, method of manufacturing, date of manufacturing, expiry date, and how they are used, the manufacturer or the supplier of the goods, and any trademarks. Enforcement is based on businesses bringing an application to the Authority which then adjudicates the matter and may impose administrative (such as the discontinuance of business or the cancelling of business licence) and civil sanctions (which could include the seizure and selling of the seized goods). It may also impose very severe fines and imprisonment.
- Proclamation to establish quality and standards authority: This allows the Authority to formulate and approve Ethiopian standards, including providing licences to persons for a quality mark or certificate of conformity. The Authority may also close factories or business operations where products do not conform to the standards. Officers are appointed to enforce the relevant standards. A corrupt officer who takes bribes risks a fine not exceeding three times the value of the gift and imprisonment of not less than 15 years.
- Proclamation to provide for food, medicine and healthcare administration and control: This permits the setting of standards for food quality, production and importation. It also applies to tobacco products, whereby one is required to have special permit to import, export or wholesale tobacco products. Depending on the type of violation, the sanctions range from insignificant to a maximum fine of 50,000 Birr (US\$ 1,000), and/or imprisonment of not more than three years.
- Trademark registration and protection proclamation: This proclamation provides for intellectual property protection, and it not only allows for civil sanctions against offenders, but also includes the possibility of imprisonment for a minimum of five years and a maximum of 10 years.
- Customs: The aim of the customs framework is mostly to address certain forms of illicit trade, such as prohibited products. Customs officials have powers to inspect and seize goods. The penalties for prohibited goods are not prohibitive. Offenders are mostly fined the full value of the goods or 100,000 Birr (US\$ 2,000), whichever is higher.



3.1.2. Kenya

Kenya has a well-developed legislative and regulatory framework that can be utilised to combat illicit trade. Some of the key legislations include:

- Anti-counterfeit Act: This Act only addresses one form of illicit trade – counterfeiting. It established the Kenyan Anti-Counterfeit Authority (ACA), which besides combating trade in counterfeit products, also enlightens consumers to develop training programmes to combat counterfeiting, coordinate with other national, regional and international organisations, and conduct studies.
- The ACA inspectors enforce the Anti-Counterfeit Act. These inspectors have the powers to enter and inspect premises, terminate the manufacturing of counterfeit products, seize and detain counterfeit products, and question and demand information from persons suspected of dealing in counterfeit products. They have similar powers with customs officials under the East African Community Customs Management Act.
- The Anti-counterfeit Act covers various offences related to counterfeiting. It also creates sanctions for violations of the Anti-Counterfeit Act. The sanctions differ depending on whether one is a first or subsequent offender. A first conviction carries either a maximum of five years imprisonment or a fine equal to, and not less than three times the prevailing retail price of the counterfeit products. For subsequent convictions, the offender may face a maximum of 15 years imprisonment or a fine equal to, and not less than five times the prevailing retail price of the counterfeit products.
- Seeds and Plant Varieties Act: This Act controls the sale and importation of seeds. It also establishes a Tribunal to hear proceedings and appeals. It appoints officers who have the powers of inspection and enforcing the Act. They are empowered to seize seeds. The Act also spells out penalties for law violators. This is, however, limited to Kshs. 20, 000 (approximately US\$ 200), or a maximum imprisonment of six months, or both.
- The Standards Act: This Act allows for standardisation in industry and commerce. It also allows for the testing of commodities to ensure compliance with any set standards. Inspectors are appointed who have wide ranging powers to inspect, require a person to provide information, or seize and detain products suspected of not meeting the relevant standards, with the eventual destruction of the goods, if they are definitively found not to have met the standards. It also stipulates punishments for violations. First time offenders face a maximum period of 12 - month imprisonment or maximum fine of Kshs. 1 million (US\$ 8,500) or both. For a subsequent conviction, the penalties are maximum imprisonment of three years, a fine, or both.
- Trademark Act and Copyright Act: Both these Acts provide for protection of the relevant Intellectual Property Rights (IPRs) as well as incorporating the TRIPS and the WIPO Copyright Treaty. They are both dependent on the intellectual property owners for enforcement, which is of a civil nature.
- Narcotic Drugs and Psychotropic Substances Control Act: The Act creates penalties not only for trading in these products but also for manufacturing, cultivation and possession. The penalties are severe because of the consequences of these drugs, starting with a 10-20 years imprisonment for possession, and a minimum fine of at least Kshs. 500,000 or three times the value (whichever is higher) for trafficking, and a possibility of life imprisonment. In addition, the usage of these products attracts severe consequences. The offender's land may also be forfeited if these products are cultivated or manufactured on it.
- Customs and Excise Acts (including the East African Community Customs Management Act): The Acts provide for the manner in which goods are cleared to enter into Kenya, as well as how excise duties are levied. For excise duty, unlicensed producers get a penalty of twice the amount of excise that would have been payable. The same penalty applies for imported goods whose excise duty is not paid.

- Consumer Protection Act: This Act ensures that a false representation is not made about a product. The penalty for the offence is a fine not exceeding Kshs. 1 million, and/or a maximum of three years imprisonment.



3.1.3. Mauritius

- Basmati rice control of sale regulations: Akin to the Ethiopia coffee proclamation, Mauritius employs stringent control on basmati rice. It may only be imported, distributed or sold if certified in the country of origin by specified authorities. The certificate must state the:
 - Full name and address of the exporter;
 - Full name and address of the consignee;
 - Country and place of cultivation;
 - FOB value in US dollars;
 - Number and date of invoice;
 - Marks and numbers, including the reference and number of batch;
 - Description of rice, including information on its variety;
 - Number and kind of packages, including the number and weight of packages; the gross weight, in kilogrammes; and
 - Net weight, in kilogrammes.

Every importer or distributor must keep a record of every purchase, sale, or delivery of basmati rice for a period of one year from the transaction and must produce the certificate as well as a record which states the description and weight of the basmati rice, the full name and address of the person from whom the basmati rice was purchased or received or to whom the basmati rice was sold or delivered, the date of sale, purchase, delivery or receipt of the basmati rice and the price paid or payable in respect of the basmati rice at the request of an authorised officer.

- Fair Trading Act: The Act protects the consumer against providing misleading information on goods. The Act empowers authorised officers to seize and detain goods. Contravention is limited to a fine of 50,000 rupees (about US\$ 1,000), and a maximum one-year imprisonment.
- Protection against Unfair Practices (industrial property rights) Act: This Act defines numerous unfair practices, such as misleading the public on the manufacturing process, or the quality or characteristics of a product. The offence attracts a maximum fine of 250,000 rupees (US\$ 6,000) and a maximum of five years imprisonment. Owners of IPRs may register with the Mauritius Revenue Authority. This allows the owner to apply for border protection (clearance of the goods is only if confirmed that they are not counterfeit), although customs may also enforce protection without application. This can be done online (interface public-members) where owners and customs interact and where information may be shared to identify counterfeit goods.
- Customs Act: Mauritius, unlike many other COMESA Member States, has only a few border posts through which goods may enter into the country. Mauritius employs strict entry requirements, and will even hold an importer liable for the cost of examining a consignment. Both corrupt customs officials and their conspirators are subjected to severe consequences.
- Seeds Act: Cultivation of and dealing in seeds requires registration. Seed inspectors may inspect seeds (at cultivation or dealing). The Authority must also certify all seeds produced in Mauritius (which is a comprehensive process). In addition, all seeds' importers must provide a sample to the Authority for testing within 30 days of importation.



3.1.4. Uganda

- **Narcotic Drugs and Psychotropic Substances (Control) Act:** This Act provides severe sanctions for possession, trafficking, cultivation and manufacture. It also includes forfeiture of land if it is used for these prohibited drugs. The Act further provides for international cooperation, although this is mostly subject to a treaty or other arrangement entered into between Uganda and another state.
- **Trademarks Act:** The Trademarks Act provides protection to intellectual property owners. The remedies are civil in nature, besides the potential forfeiture of illicit goods.
- **Excise Duty Act:** This Act provides for the levying of excise duties on excisable products. In terms of control, it is possible for a licensed premises to have an officer stationed there to ensure adherence to the Act. It is also an offence to violate the Act, which stipulates either a fine not exceeding Ushs 1.44 million (about US\$ 12,000) or a minimum of three years imprisonment.
- **Seeds and Plants Act:** The Seeds and Plants Act deals with seed standards and licensing of seed merchants, dealers and seed conditioners (which clean, treat or otherwise condition seeds). The licensed seed merchants or dealers are not subject to significant restrictions, although they cannot sell unapproved seeds. The Act also caters for seed sampling, field inspection and laboratory testing. Both locally produced and imported seeds need to undergo testing before release.



3.1.5. Zambia

- **National Technical Regulation:** This Act stipulates that a commodity must adhere to a specified technical regulation. When such commodities are imported, a foreign test report and certification is required. This will only be accepted if an agreement on mutual recognition, has been negotiated between the regulatory agency and the conformity assessment provider in the foreign country or the regulatory agency is of the opinion that the foreign conformity assessment service provider's technical competency has been adequately demonstrated through accreditation, and that the risk of accepting the test reports and certification unilaterally is acceptable.
- **Food Safety Act:** It prohibits deceptive labelling and selling foods that are not compliant with the relevant food standards. Imported food must also conform to the Act, although it is possible to import the food and correct any non-conformity once imported. Offences carry severe penalties.
- **Customs and Excise Act:** This Act contains the usual provisions, as well as severe penalties for non-compliance.
- **Compulsory Standards Act:** It creates an Agency that inspects goods, which are subject to compulsory standards. It is not permitted to supply non-conforming products, although as with locally produced goods, suppliers are given an opportunity to bring the goods into conformity with the Act. Local producers may be ordered to cease further production until conformity is achieved. Imported products must either return to their origin or be confiscated, destroyed or re-worked.
- **Competition and Consumer Protection Act:** Misleading the consumer in any way is prohibited and the perpetrator may be liable to pay the Commission a fine not exceeding 10% of the offender's or enterprise's annual turnover or 150,000 penalty units.

3.1.6. Observations on the Legal Framework

All Member States have legislations that could be used to combat illicit trade. These laws are administered by various agencies, which include:

- Bureaus of Standards
- Intellectual Property Commissions/Institutes
- National Police Forces
- Revenue Authorities
- Weights and Measurement Departments
- Departments of Agriculture
- Seed (Plant Health) Inspectorates
- Departments of Public Prosecutions
- Consumer Protection Commissions

For instance, in Kenya, a specialist agency - the Anti-Counterfeit Authority - cooperates with numerous stakeholders. This has resulted in the effective control of counterfeit trade. Zambia is in the process of furthering its illicit trade taskforce (which also envisages private sector and government collaboration). Although these advances are welcome, there is need for a more integrated enforcement framework involving not only governmental departments, but also the private sector. It is crucial to introduce formal cooperation between the COMESA Member States, in order to jointly address illicit trade in the region.

Despite the intention of the legislative frameworks to disincentivise illicit trade, the sanctions imposed are often an insufficient deterrent for illicit traders. The sanctions that are stipulated majorly remain theoretical, as a result of corruption, lack of political goodwill, and the fact that illicit traders are able to influence the litigation process.

Lack of harmonisation of laws among the COMESA Member States undermines efforts aimed at countering illicit trade. Conflicting excise regimes create huge incentives for illicit traders. Differences in standards of numerous products make it difficult for businesses to comply with them, as well as for relevant national authorities to monitor, inspect and enforce national standards.

The legal frameworks do not create an effective track and trace enforcement mechanism for locally produced and imported goods. This also applies in transit trade where the content is not efficiently monitored via electronic means (e.g., electronic tracking of trucks, cargo and its documentation). For most COMESA Member States, the Free Trade Zones (FTZs) are regulated in the same way as national border posts, and therefore do not seem to introduce additional risk of illicit trade.

3.2. Existing Frameworks to Counter Illicit Trade in COMESA Member States – Stakeholder Engagement

Extensive stakeholder consultations were undertaken during the study. These consultations were held remotely and covered each of the five chosen Member States, as well as all the sectors. Stakeholders included government departments, regional organisations, business associations, and the private sector. The following themes were identified:

3.2.1. Source of Illicit Trade

All stakeholders confirmed that illicit trade originates from both locally manufactured illicit products and imports. A large number of stakeholders opined that more often than not, the illicit traders are powerful illegal organisations operating in multiple COMESA Member States. Furthermore, their operations are not limited to only one sector, but typically extend to multiple sectors, many of which are focal points for this study. Often the organisations and individuals are known (some are well-known brands owned by registered companies but, because of their political and economic clout as well as corruption, they operate with impunity). These companies normally claim to be the victims of counterfeit goods (i.e. the illicit goods do not originate from them).

3.2.2. Standards

The COMESA Member States have different standards across the multiple sectors. Some countries require local manufacturers to register with the relevant authorities. Once registered, the manufacturing facility is inspected to ensure that it is able to comply with the standards relevant to its production. These registered entities are also periodically re-inspected. In terms of imported products, typically an importer needs to apply for pre-approval before importing a consignment. A few Member States require the relevant authority in the exporting nation to certify that a certain standard has been complied with. None of the Member States employ an effective track and trace system for goods subject to standards. Mostly the consignments are inspected on arrival (although this cannot occur for all consignments). In addition, importers can apply for approval for a number of consignments that are set to arrive within a set period (for instance six months or a year). In such instances, random inspections will be conducted, depending on the enforcement capacity.

COMESA Member States have in some cases also adopted harmonised standards, which are agreed upon and adopted by the African Organisation for Standardisation (ARSO). However, these harmonised standards are voluntary and not all Member States have adopted all of them. Additionally, the ARSO does not have any regulatory powers and can therefore not force any member state either to adopt or ensure the adopted standard is enforced.

Although it is generally estimated that illicit trade accounts for approximately 30% of the market, there was scanty information about the manufacturers and importers who trade in illicit goods. It was projected that the vast majority of the illicit goods are imported by unknown parties. This generally occurs via porous borders, and typically in limited (small) quantities. All stakeholders also confirmed that goods entering via border posts and couriers are not inspected. The authorities were blamed for not being organised to assist with inspections in the market (other than what has been detailed herein).

Generally, none of the stakeholders could recall any of the perpetrators ever being prosecuted. This is not surprising because most of the legislations have minimal sanctions for non-compliance. A majority of the authorities indicated that they still have to work with public prosecutors to capacitate individuals to prosecute the violations of standards. In addition, the framework polices the legal market as opposed to the illegal market, making it difficult to determine the persons/entities that have contravened the legislation, since they are either not known in the country, or located in other nations. Additionally, if a product is non-compliant, the importer/manufacturer is given the opportunity to achieve compliance. The product is either detained and disposed of, or in the case of imports, may be returned to the country of origin, if all efforts aimed at attaining compliance fail.

3.2.3. Governmental Coordination

Apart from Mauritius, none of the Member States utilise a single window (or centralised point), whereby all relevant governmental departments are able to view information on possible illicit trade. In Mauritius, the department sharing information must authorise the other departments to use it. Furthermore, it is not possible for the private sector to cooperate in this single-window, which makes it less effective. Among the other Member States, there are some instances of information sharing between customs and revenue authorities, with the relevant departments entering into formal memorandums of understanding. In some of the countries, this cooperation also extends to drug enforcement agencies and the police force, with the same being extended to anti-corruption in Zambia. Kenya is the only country that has a formal agency set up to deal with illicit trade, although it only deals with counterfeit goods. In Zambia, progress has been made towards setting up a task force on illicit trade although much more still needs to be done to formalise any authority and action plan. In Ethiopia, examples were found where one government department usurped the efforts of another in combating illicit trade, because of turf wars.

Most stakeholders advocated for a single-window to be complemented by the implementation of a risk management approach to both inspections and prosecution. Almost all stakeholders were in favour of a formal mechanism through which COMESA Member States can co-operate, since none of them were aware of any formal cooperation mechanism currently in place. Stakeholders advocated for the ratification of international instruments, such as the Anti-counterfeit Trade Agreement and the Framework Convention on Tobacco Control (FCTC) Protocol, to fast-track cooperation among COMESA Member States. It was proposed that the Member States adopt a harmonised approach to combating illicit trade, since any differences would present opportunities that could be exploited by illicit traders.

In a majority of the countries, there is no formal cooperation between the private sector and any government department. However, Kenya and Uganda present examples of formal cooperation between the private sector and the relevant revenue authority. This cooperation extends to information sharing, assisting with seizures, joint training of officials, and undertaking joint educational campaigns on the pitfalls of illicit trade. It is only in Kenya where there is formal cooperation between different government departments, although this is only on counterfeit trade.

Stakeholders expressed dissatisfaction that no formal cooperation exists between different COMESA Member States, with the only collaboration relating to the facilitation of trade via the one-stop border posts. However, this does not extend to addressing illicit trade.

3.2.4. Inspections

All Member States indicated that they have insufficient capacity to conduct inspections, in relation to both customs inspections and inspections in the market to ensure conformity. The lack of capacity extends to both the equipment used and the people to conduct these inspections. Within the context of standards, Member States do not have enough laboratories to assist with inspections. All stakeholders were of the view that customs officials are not properly capacitated to identify instances of illicit trade, since individuals currently involved in conducting inspections lack capacity. Another issue was that inspections never occur in rural areas. As a result of this, the kind of illicit trade that is prevalent in these areas, and the extent to which products from rural areas make their way to urban areas is unknown.

It is only in Zambia where the stakeholders reported that customs maintains a list of products, which are often subject to illicit trade. Due to the inability of custom officials to identify whether or not a certain product is indeed illicit, they may notify the Bureau of Standards or Sanitary or Phytosanitary officials, as the case may be, to assess the product's status. This assessment rarely falls on the ambit of customs officials.

Besides Ethiopia, stakeholders in all the COMESA Member States were of the opinion that FTZs do not pose any additional risk of illicit trade since the controls are similar, if not better than at national border posts. In Ethiopia, stakeholders expressed strong views that third-party FTZs present a significant source of illicit trade. It is therefore possible for illicit goods from FTZs outside the COMESA region to enter into the territories of the Member States. Stakeholders claimed that there is little control in place within the FTZs.

The highest incidence of detecting illicit trade among all the COMESA Member States comes from the manufacturers in the private sector who, often employ private entities to assist in the identification of illicit goods in their markets.

3.2.5. Prosecution

Prosecution of illicit traders is almost non-existent save for illicit traders who have been found guilty of counterfeiting in Kenya following several prosecutions by the anti-counterfeiting authority. Ethiopia has an anti-illicit task force, which has limitations on what it can do since it is private sector-driven, and therefore needs governmental assistance and enforcement. Apart from Kenya, in most instances where prosecution was considered, the matter ended with the payment of a fine which is not deterrent enough.

Stakeholders were of the view that the major impediment to prosecution is a lack of political will to take legal action against certain illicit traders. In addition, corruption was rampant in the prosecution system while the general legal system has many loopholes, which illicit traders exploit. Other than Kenya, none of the Member States has prosecutors who are specifically equipped to prosecute illicit trade cases of counterfeiting. However, on the downside, the prosecution process is lengthy and complex, which often leads to fatigue, either from the prosecution or legal market.

Although it was established that some Member States have counterfeit units in the police force, this is not the norm. Only a few of the countries claimed that there is sufficient cooperation from the police force in addressing illicit trade. While legislation exists in some of the Member States, this is normally not aimed specifically at illicit trade, and may in fact be used to uncover illicit trade. None of the Member States were found to have used such legislation for illicit trade purposes. Examples hereof include legislation aimed at the prevention of organised crime and income tax legislation allowing for lifestyle audits. No instance of reliance on these was found from both the desk review and the stakeholders. Stakeholders averred that such ancillary legislation is not relied on due to political interference and lack of political-goodwill.

Stakeholders called for an integrated enforcement mechanism. This was due to the fact that one cannot rely only on prosecutors, although cooperation is needed with both the private sector and several government departments. In addition to the foregoing, Kenya uses alternative dispute resolution, which has been proven to deliver favourable results, and prevented some of the pitfalls associated with prosecution in the context of illicit trade. In such instances, the offending goods are destroyed and conditions for settlement are negotiated (for example, requiring an undertaking not to import illicit goods).

Lack of enforcement and prosecution is still a major impediment in the war against illicit trade. A majority of the stakeholders were in favour of the destruction of goods as soon as they are confirmed to be illicit, followed by immediate prosecution. Also, forfeiture should not stop at the illicit goods, but should be extended to any equipment or premises used in the production, warehousing, or transportation of the illicit goods. Some stakeholders also proposed punishment of the end retailer owing to the region's porous borders, the political connections of some businesses and individuals who cannot be prosecuted,

and that inspections cannot be done on most consignments. Such punishment would not necessarily take the force of prosecution, but the goods in question could be seized, which might discourage the retailers from stocking such products.

3.2.6. Excise

The excise regimes of the Member States differ quite substantially, both in terms of the rates of excise duty applied, and the manner in which they are audited and enforced. All stakeholders opined that weaknesses in audit and enforcement capabilities in certain Member States are enablers of illicit trade (i.e. goods are produced and exported from countries with low levels of audit and legal compliance). In addition, high excise levels incentivised individuals to engage in illicit trade.

The enforcement of excise regimes varies across the COMESA region, with some countries relying on declaration of production and importation, while others use excise duty stamps. Uganda and Kenya use excise duty stamps for certain sectors. Alcohol manufacturers use digital codes on products, while other sectors such as tobacco manufacturers utilise paper tax stamps, which have pre-printed unique codes on them. However, stakeholders in the tobacco industry noted that the systems in Uganda and Kenya are not track and trace systems as required by the FCTC Protocol. In relation to this, tobacco and alcohol industry stakeholders in Kenya and Uganda noted that the system is not functional, and that the levels of illicit trade in and between these two markets (despite them having the same solution provider) has increased from the time the solution was implemented.

In addition, the paper excise stamps are easily counterfeited and the authorities cannot rely on the presence of an excise stamp as a definitive proof of a product being genuine. Often, other markets are more effective in identifying illicit products through different ways including the manufacturer's details, the warning label, and the price. This is due to the fact that the biggest form of illicit trade in excisable products is smuggling. However, these identifiers are exclusively used by the private sector to identify illicit products, and alert the relevant authorities on the same. The authorities themselves are not capacitated to utilise these identifiers to recognise illicit products. The net result is that currently, the enforcement of excise duty via the usage of excise stamps are mostly used only as an authentication tool for tax administration. This unnecessarily increases costs for the legal market and creates further incentives for illicit traders due to the additional price differential that these stamps create. Stakeholders indicated that if enforcement is not improved, the revenue authorities should do away with all measures, and instead only rely on declared production and auditing of the manufacturers/importers. The digital Unique Identifier codes (UIDs) have numerous benefits, such as tracking and tracing the products, distribution of information across the region in real time, and sharing of the cost burden in implementing a regional system as opposed to a national one.

Stakeholders also cited instances when illicit goods are seized. According to the legal framework, these products should be seized and secured while the legal process runs its course through the courts. However, in practice, the products are usually neither secured nor destroyed, and often find their way back into the market.

Stakeholders were in favour of introducing production counters where appropriate, which would make it impossible to produce and supply, without counting every single good produced. This data should be sent electronically by the manufacturers/importers to the revenue authorities on a daily basis. Furthermore, they opined that the government would effectively trace and know when products are illicit if all businesses in the value chain - from producer through distributor and wholesaler - are licensed, and are all compelled to record sales to their customers.

3.2.7. Corruption

A majority of the stakeholders expressed the view that corruption is a major issue in combating illicit trade. Corruption affects the effective functioning of customs, conformity inspections, and the protection of IPRs. This extends not only to the individual civil servant level, but also much higher echelons in the chain of command.

3.2.8. Transit Trade

All stakeholders decried the high levels of illicit trade occurring via transit trade. Depending on the market, the largest source is either locally manufactured goods destined for export that remain in the manufacturing country or pure transit goods, which are never destined for the transit country. None of the stakeholders, except one in Kenya, claimed that any member state or sector is subject to effective tracking and tracing of trucks and their cargo. In Kenya, electronic tracking of trucks occurs, which facilitates monitoring of unauthorised stopping. However, it falls short of digitally sealing and ensuring that the cargo reaches its final destination. This, combined with corruption among the customs officials, creates conducive environment for illicit traders. Stakeholders were in favour of introducing a tracking system, whereby cargo is sealed and traced digitally. None of the legal frameworks provides for destination searches to ensure the goods have successfully transited. Kenya has supply chain legislation for excisable goods but none of the controls have been implemented.

3.2.9. Anti-illicit Trade Campaigns

Some of the stakeholders reported efforts by both the private sector and specific government departments, to run public educational campaigns on the pitfalls of illicit trade. However, none of them was satisfied with the outcome of these campaign. They all advocated for continued and increased efforts on this front.

4. International Best Practice to Counter Illicit Trade

Numerous studies and frameworks were consulted to determine the international best practices in countering illicit trade. The desk review revealed that although such best practices exist, in most cases, they are sector specific. As such, this information is presented here in a general manner that is not specific to a certain sector or product. The following best practices were identified:

4.1. Enhancing Effectiveness of Sanctions

Illicit traders seek for opportunities, which have high rewards and low risks, implying that illicit traders respond to changes in the risk-reward structure. The risk-reward structure is typically influenced by the risk of interception, the severity of the sanctions, and the extent to which the sanctions are applied. In order to effect change, it is not sufficient only to increase the sanctions that may be imposed at a national level. An integrated approach is needed to ensure that the severe sanctions can in fact be enforced. Of further importance is the fact that there must be international cooperation (or in this case COMESA region-wide cooperation) towards ascertaining that once an illicit good has been found in a market as a result of importation, the perpetrator may be prosecuted in its market of origin. T

The success in using sanctions as a deterrent is therefore dependent on:

- The severity of the sanctions that may be available;
- The ability of any relevant authority to enforce the legislation it is tasked to uphold ; and
- The capacity to investigate, prosecute and, if necessary, cooperate with foreign authorities, as well as strengthening and expanding the use of existing international treaties to counter illicit trade.

4.2. Improving the Legal Framework to Combat Illicit Trade

It is recommended that any improvement to the legal framework should be done from both national and international perspectives. The approach aimed at improving the international legal framework rests on three pillars. The first pillar is that of adopting, ratifying and implementing the existing international treaties, which apply to illicit trade in a specific sector (for example the FCTC Protocol for tobacco products or Article 61 of TRIPS – which provides Member States with the option of imposing sanctions for counterfeit trade) as well as other international treaties with legal principles that may apply to a broader range of illicit activities, such as the United Nations Convention Against Corruption (UNCAC), United Nations Convention against Transnational Organised Crime (UNTOC), or the Tax Information Exchange Agreements (TIEA).

In addition, COMESA Member States could consider enhancing prosecution of illicit trade crimes in the countries. Together, these international measures could enhance effectiveness in prosecutions, and increase the possible sanctions that may be imposed on those engaged in illicit trade, thus paralysing funding of illicit trade. The second pillar is that of harmonising the COMESA Member States' approaches to illicit trade. Besides the enforcement of the legislation on illicit trade, this pillar advocates for the harmonisation of legislation, which closes down the opportunities for illicit trade. These include: licensing and registration, standards, excise duty enforcement, recognition of IPRs, tracking and tracing production, distribution, destination arrival, sales, licensing, registration, and export country certification.

The third pillar is that of formal coordination as outlined below. In terms of improving the national legal framework, the following has been done in terms of best practice:

- Sanctions for illicit trade should be increased to deter those engaging in illicit trade;
- Sanctions should include both civil and criminal liability;
- Sanctions should not only be enforced against manufacturers and importers, but also distributors and retailers;
- Ancillary legislation, such as that aimed at corruption, tax evasion and money laundering, should be applied to illicit trade;
- Consideration should be given to the seizure and forfeiture of any illicit products, as well as any vessels used in transporting them, equipment used in manufacturing, and land used in any part of the value chain, as well as any other assets (such as the proceeds of illicit trade). This could be combined with a reverse burden of proof from the relevant authorities to the alleged illicit traders;
- Regulations on FTZs should attract investment, which should not be done at the expense of border control, or any internal controls as it may relate to illicit trade;
- Enforcement mechanisms should allow for multi-department and private sector collaboration;
- Policies and programmes should be developed to punish and deter illicit trade. This allows for swifter action to be taken than the amendment of laws, promulgation of new laws, or the negotiation and adoption of international treaties. In essence, it allows for the allocation of resources towards combating illicit trade and the alignment and cooperation of enforcement authorities to ensure effective enforcement.

4.3. Improving Coordination

The strengthening of cooperation between governmental departments and the private sector leads to improved information sharing, a single platform for either the government or the private sector to pursue a complaint of illicit trade, increased identification of illicit trade, and enforcement of legislation.

Improved international coordination has many similar benefits to those between national government departments and the private sector coordination. In addition, it assists in detecting and preventing the production of illicit goods for export, harmonising approaches to illicit trade, and facilitating prosecution of exporters where an importing Member State has no jurisdiction. This is even more important if ancillary legislation will be deployed in combating illicit trade, since international cooperation is often needed to follow the financial flows of illicit trade. Essential to international coordination is that Member States should seek to harmonise their legal frameworks as set out above.

4.4. Eliminating the Risk of Illicit Trade in Free Trade Zones

Generally, FTZs are designed to have less stringent legal and regulatory compliance conditions. This could lead to increased risk in the incidences of illicit trade. In this regard it is recommended to:

- Improve supervision within FTZs - This can be achieved by expanding information and production requirements, imposing sanctions for violations of the Free Trade Area (FTA), enhancing security screening, and maintaining an adequate number of officials (from several governmental departments, such as customs, standards, intellectual property, etc.) to monitor adherence to rules associated with illicit trade;
- Enhance the formal responsibilities of zone operators - This creates an incentive to monitor and ensure compliance, and could create formal liability for violations that occur in the FTA; and
- Streamline customs procedures so as to not create unnecessary burdens, but to ensure that goods rightfully enter the customs territory.

4.5. Improving the Screening of Imports

Improving the screening of imports is dependent on:

- Developing a suitable risk-based approach to screening;
- Committing sufficient resources for screening (both equipment and personnel);
- Creating liability for courier and postal intermediaries for transporting the goods of known illicit traders; and
- Engaging e-commerce platforms, and creating liability for the same for trading in illicit goods.

4.6. Improving the Enforcement of Intellectual Property Rights

Intellectual property rights (IPRs) are generally plagued by weak enforcement of laws, low risk of detection, and low sanctions (mostly civil in nature). As such, the risk is generally very low, while the reward is high, since counterfeiting is mostly very profitable. Towards ensuring improved enforcement of IPRs, the best practices include:

- Reviewing whether there is adequate enforcement - Such a review would also need to consider the level of resources committed to enforcement systems, as well as the tools available to both government and the IPR holders in enforcing them. Importantly, consideration should also be given to international cooperation on this front, since counterfeit goods are often imported;

- Reviewing the deterrents to counterfeiting - This not only extends to the usual and potential civil liability but also to any governmental (i.e. Criminal) sanctions that/could apply;
- Reviewing the methods through which the private sector or a member of the public could cooperate in detection and reporting of counterfeit products;
- Ensuring that international treaties on IPRs are acceded to, ratified, and effectively implemented;
- Examining the extent to which any public educational campaigns may raise awareness of counterfeiting, the negative effects thereof, and encouragement to try and ensure that genuine products are bought.

5. Existing Frameworks to Counter Illicit Trade in COMESA Member States – Gap Analysis

Having conducted a desk review and stakeholder consultations on the current legislative framework, it is necessary to undertake an analysis to identify the gaps between the current legislative framework and international best practice.

5.1. Sanctions for Illicit Trade

From the desk review and the stakeholder engagements, it was observed that:

- Generally, the sanctions imposed by the legislative framework are not severe enough to act as deterrents of illicit trade;
- In the case of counterfeiting, in very limited instances were sanctions found to be of criminal nature. It is mostly left to the intellectual property owners to pursue claims for civil liability;
- No formal cooperation exists among COMESA Member States to help with enforcing sanctions;
- Little cooperation exists between the relevant national authorities to assist with prosecution;
- There is a lack of enforcement;
- Political will to prosecute illicit trade appears to be lacking. Corruption makes this more problematic, coupled with a time-consuming court processes, which may be exploited by wealthy illicit traders.

5.2. Use of Ancillary Legislation

Although ancillary legislation exists, this is not being utilised in combating illicit trade in most instances. COMESA Member States would benefit from utilising existing ancillary legislation in this way, which would help uncover illicit traders. It could also act as a further deterrent in instances where the ancillary legislation allows for the same, thus:

- The seizure and forfeiture of the illicit goods, equipment used in manufacturing, concealing and transporting illicit trade as well as any assets, such as proceeds from illicit trade or land on which the illicit goods are found, stored or manufactured;
- Lifestyle audits, proceeds of organised crime, corruption and money laundering legislation may be used both to uncover illicit trade, and prosecute illicit traders; and
- A reversal of the burden of proof from the relevant authorities to the alleged illicit traders.

5.3. Legal Framework

The following gaps were identified from an international legal framework perspective:

- Only a few incidences were found where the existing international treaties were adopted to counter illicit trade;
 - No cooperation exists among the COMESA Member States in combating illicit trade;
 - There is no harmonised response to combating illicit trade;
 - Little harmonisation on legislation addressing illicit trade exists; and
 - No cooperation exists in enforcing illicit trade legislation.
- In terms of national legal frameworks, the gaps identified under sanctions should be noted as they represent gaps in the legal framework. In addition, the following gaps have been identified:
- Enforcement mechanisms are authority (i.e. Legislation) specific, and prosecution does not collaborate with other authorities. The private sector has little involvement in enforcement other than in cases where civil possibilities exist; and
 - Other than Kenya (and to a limited extent, Zambia), no policy or programme exists to combat illicit trade.

It appears that, the Member States included in this study have FTZs, which allow for certain investment incentives. However, the goods produced or entering into these zones are subjected to the usual customs and other controls, which all locally manufactured or other imported goods have to adhere to. As such, it does not seem to introduce a greater incidence of illicit trade.

5.4. Coordination

There is a huge gap in both national coordination and regional (COMESA) coordination. Little cooperation exists at a national level between different national authorities that are tasked with combating illicit trade. There is also minimal coordination between the private sector and the relevant authorities. In only one instance was an authority set up to coordinate efforts against illicit trade, albeit limited to one form of illicit trade - counterfeits. No example of the use of a single window of information sharing could be found.

International cooperation was limited in some instances to facilitating trade. Other than that, there was no formal cooperation on a COMESA or other regional or neighbouring Member State level. Little evidence of informal cooperation could be found.

5.5. Screening of Imports

A number of gaps were identified in the screening of imports. Perhaps, the most notable one is that COMESA Member States mostly have porous borders, which the desk review of the customs legislation and stakeholder interviews, revealed that a large portion of illicit trade enters into the countries through them. It was further established that small parcels entering via postal or courier intermediaries are rarely checked. In a few instances, imports are only screened by sample, which is sometimes done after importation. In these instances, it appears easy to provide the correct sample, which may not correlate with what has in fact been imported. Few or no inspections are undertaken at the retail level, especially in rural areas where illicit trade seems to be more prominent.

5.6. Enforcing Intellectual Property Rights

The following gaps were identified in enforcing IPRs:

- Violations of IPRs are mostly left to the private sector to pursue from a civil perspective. Few legal frameworks provide for criminal liability (these are mostly in respect of illegally registering a trademark as opposed to counterfeiting). Criminal sanctions are typically not severe, with few instances of authorities pursuing criminal convictions;
- Little to no international cooperation exists in enforcing IPRs;
- Mostly, it seems quite cumbersome for the private sector to pursue any civil remedy. Where criminal sanctions exist, they suffer from a similar cumbersome procedure;
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) seems to have been ratified and implemented, where appropriate, but few chose the criminal sanctions route; and
- Public educational campaigns seemed to be scattered, one-off, uncoordinated and infrequent.

6. Policy Proposals towards Development of a Policy Framework on Anti-Illicit Trade for COMESA

6.1. Purpose of the Policy Framework

The purpose of this policy framework is to provide principles and long-term goals that will form the basis for making future legislation, rules, programmes and guidance, and to give overall direction to planning and development in COMESA Member States' efforts to combat illicit trade.

6.2. Objectives of the Policy Framework

The objectives of the policy framework are:

- (a) To establish an effective policy framework on anti-illicit trade;
- (b) To develop institutional arrangements to support implementation of the policy framework on anti-illicit trade for COMESA region;
- (c) To develop an implementation action plan to guide the implementation of the policy framework on anti-illicit trade for the COMESA region.

6.3 Guiding Principles for the Policy Framework

The policy will be guided by the following principles:

- (a) National and regional cooperation and collaboration;
- (b) Sharing of information by COMESA Member States;
- (c) Sanctions to be both criminal and civil in nature at both national and regional level;
- (d) Measures to apply across the value chain in the specified industries;
- (e) Political goodwill by Member States.

6.4 The Key Pillars of the Policy Framework

There are two main pillars for the Policy Framework:

- (a) National framework for anti-illicit trade
- (b) Regional framework for anti-illicit trade

6.4.1 National Framework for Anti-illicit Trade

a) Political Goodwill

One of the most important measures in the fight against illicit trade is political goodwill. It is critical to obtain and maintain governmental support for this initiative.

The support does not only extend to adopting illicit trade initiatives, such as national legislation, international treaties, harmonising legislation, and programmes to combat illicit trade. It is also crucial that this support extends to other efforts, which are necessary when holistically combating illicit trade.

These efforts include support for:

- Prosecution of illicit traders;
- Sanctioning, with the aim eventually eliminating, corruption; and
- Utilising ancillary legislation to identify, deter and prosecute illicit traders.

This support is foundational and affects all other initiatives.

b) Enhancing sanctions

Sanctions may act as a deterrents to illicit trade if the assumption that illicit traders seek out opportunities where the risks are low and the rewards are high holds true. The following are key principles in adopting an improved sanctions regime:

- The severity of the sanctions should, in themselves, be deterrents. Insignificant fines (in relation to the value or profitability of the goods), and maximum imprisonment of a short duration are not considered adequate to warrant abstaining from illicit trading activities;
- Relevant authorities (dependent of the nature of the illicit trade) must be empowered and capacitated to enforce the legislation they are tasked to uphold;
- Prosecuting teams must have the capacity to investigate and prosecute. In this respect, caution should be taken to ensure that political interference, corruption and other influences do not interfere with the prosecution process;
- National prosecution teams and relevant authorities must cooperate with foreign authorities. They should strengthen and expand the use of existing international treaties to counter illicit trade. This leads to the increased detection of illicit trade and its sources, as well as enhancing prosecution success to deter crimes;
- In terms of counterfeiting, national sanctions should be expanded to ensure that not only counterfeit traders are civilly liable to IPR owners, but also face criminal sanctions for engaging in illicit trade;
- The improved sanctions should not only be enforced against manufacturers and importers, but ought to be extended to distributors and retailers.

c) The use of ancillary legislation

Many Member States have ancillary legislation while some are in the process of adopting the same. These pieces of legislation should be used in the fight against illicit trade. They should serve two main purposes. The first is in uncovering illicit trade and illicit traders. In this respect the ancillary legislation that caters for lifestyle audits, proceeds of crime, corruption, and money laundering related crimes, could be effectively used to uncover illicit trade and traders.

The second is that increased reliance on the ancillary legislation will act as a further deterrent to illicit traders. The ancillary legislation should be used for seizure and forfeiture of illicit goods, equipment used in manufacturing, concealing, and transporting illicit trade as well as any assets, including proceeds from illicit trade or land on which the illicit goods are found, stored or manufactured. Where possible, a key driver in enhancing the deterrent nature of the use of ancillary legislation would be to reverse the burden of proof from the relevant authorities to the alleged illicit traders.

6.4.2 Improving the Screening of Imports

COMESA Member States must develop an appropriate risk-based strategy for screening of imports arriving at known border posts. Member States should also allocate sufficient resources to ensure that a risk-based approach can be implemented. This will require addressing the number and capacity of the inspectors and the equipment used. It will be important to ensure that the main border posts prioritise the implementation of the risk-based approach, which should be expanded to other entry points over time.

Inspectors should be capacitated to identify illicit trade. In this regard, it is not only customs officials who are inspectors, but also the inspectors of all other national authorities who are tasked with enforcing legislation relevant to illicit trade. Collaboration is necessary to prevent the duplication of skills and efforts. If this is not feasible, customs officials should be capacitated to identify potential issues and call on officials from other national authorities to assist. A key principle in capacitating all officials would be to consult with the relevant private sector participants to gain insight into identification techniques. In terms of addressing small parcels arriving via postal and courier intermediaries, Member States should alert these intermediaries of the sanctions that may be imposed against them, coupled with random inspections at distribution centres. In the event that e-commerce sites are utilised, Member States must make use of take-down notices to ensure consumers do not have access to them. Reliance for information hereon would be through the single window.

a) Regulating Free Trade Zones

The regulations on FTZs should attract investment, although this should not be done at the expense of border control or any internal controls as they may relate to illicit trade. The key principle that needs to be adhered to in designing any new FTZs, modifying any free trade zone's legal framework, or implementing any such framework, is that control should remain. The FTZ may therefore be designed to attract investment and increase use of these areas. However, the same control needs to be exercised when goods are released from the zone.

In this regard, the usual customs, excise, inspections, standards and other related illicit trade control should remain in place. There are numerous recommendations aimed to assist governments and policy makers in regulating FTZs, in order to reduce and deter illicit trade conducted through these zones. Member States should consider modifying the existing regulatory frameworks and/or introducing new ones based on the World Customs Organizations (WCOs) Revised Kyoto Convention (Specific Annex D) and the Organization for Economic Co-operation and Development (OECD) Code of Conduct for Clean FTZs.

b) Enforcing Intellectual Property Rights

Member States should improve their enforcement of IPRs. This can be done by developing a programme that can address the following:

- Developing an action plan for enforcement;
- Introducing further deterrents to counterfeiting by imposing criminal sanctions against it;
- Developing the methods through which the private sector and members of the public can cooperate in detecting and reporting of counterfeit products;
- Ensuring that international treaties on IPRs are acceded to, ratified and effectively implemented;
- Examining the extent to which any public educational campaigns may raise awareness on counterfeiting and its negative effects, and encouraging consumers to buy genuine products.

c) National Educational Campaigns on Illicit Trade

Some stakeholders reported efforts, either by the private sector or specific government departments, to run campaigns to educate consumers on the pitfalls of illicit trade. None of the stakeholders was satisfied with the outcome of these campaigns. They all advocated for continued and increased efforts on this front.

In an attempt to stifle demand, Member States should develop and implement frequent educational campaigns aimed at the end-consumer.

6.4.3 Regional Framework for the Fight against Illicit Trade

a) Political Goodwill

Political good-will at regional level is critical to the success in the fight against illicit trade. This is because Member States will not only have to pursue anti-illicit trade initiatives at national level, but will also have to do so at regional level. Importantly, this support must be maintained, as initiatives to counter illicit trade will have to evolve continuously as the methods employed by illicit traders keep changing to adapt to the initiatives that are employed to combat their activities. Member States will need to support each other's efforts in order to succeed.

b) Adoption of International Treaties

International treaties should be adopted, ratified and implemented. These international treaties are typically either sector-specific, such as the FCTC Protocol for Tobacco Products or Article 61 of TRIPS, or are of broad application, which legal principles may apply to a broader range of illicit activities. Examples of the latter include the UNCAC of the UNTOC. In addition, COMESA Member States could consider enhancing prosecution of illicit trade crimes in their territories.

c) Harmonisation of Policies and Legislation

In this regard, harmonisation should include both the enforcement of the legislation specifically concerning illicit trade and harmonisation of the legislation, which if not dealt with, may create incentives or opportunities for illicit trade. This includes topics such as standards, registration and licensing, excise duty enforcement, recognition of IPRs, tracking and tracing production, distribution, destination arrival, sales, and licensing.

d) Improving Coordination and Cooperation

A key principle of enforcement of anti-illicit trade legislation, and the identification of illicit trade is increased coordination and cooperation. This should be developed in three areas:

- Between different national authorities (or governmental departments);
- Between national authorities and the private sector; and
- Between different COMESA member state authorities.

The use of a single window for information sharing should be a key principle in the design of any improved coordination and cooperation. This will let all actors' access information in real time, allowing them to further coordinate efforts as agreed. In designing such a single window, the actors should be cognisant of the need to rely on authorities tasked with enforcing the ancillary legislation, since this is typically used either to identify illicit trade and traders or to effectively enforce action against any cross-border illicit trading activities. Such authorities should also have access to the single window and contribute to the information sharing.

It is furthermore important that, as a key principle in improving international coordination and cooperation, COMESA Member States should seek to harmonise their legal frameworks.

e) Excise Enforcement

A guiding principle is that there should be a COMESA region-wide excise enforcement framework, which has a minimum level of compliance and enforcement provisions for Member States to follow in order to prevent illicit manufacturing and distribution through COMESA. In particular, this should address licencing and registration of all manufacturers and importers, as well as the establishment of a multi-departmental "illicit trade task force". In addition, Member States must be cognisant of the fact that unreasonably increasing excise incidence on products, against the backdrop of stretch consumer affordability, will ultimately create an incentive for illicit traders.

In terms of enforcement, the following should be guiding principles:

- Eliminating physical (paper) excise stamps in favour of digital unique identification codes (these are not paper-based with pre-printed codes but printed directly on the packaging), which would also enable volume and tax verification;
- Ensuring that production counters at legitimate excise manufacturing facilities are immediately implemented;
- Licensing all businesses in the value chain from producer, through distributor, to wholesaler. This, coupled with the instance that each entity in the value chain should issue unique codes to their customers, will allow government to effectively trace excisable products, and know when products are illicit;
- Retailers should all be VAT-registered, enabling them to report on sales of products, which are subject to excise duty.

f) Transit Trade

In order to combat illicit transit trade, the following principles should be adhered to:

- Implementing electronic tracking of trucks and their documentation, which allows for the monitoring of unauthorised stops;
- Digitally sealing and ensuring that all cargo reach their final destination, even with authorised stops; and
- Ensuring inspection of cargo at the point of destination.

g) Improving Cross Border Screening

Member States will need to increase their surveillance because of the porous borders in COMESA region. Addressing the issue of porous borders requires bilateral efforts and collaboration in order to overcome the challenges of illicit trade. It is therefore not possible to screen all imports at these borders. Accordingly, reliance should be placed on random inspections, which should be conducted jointly by border agencies of different Member States.

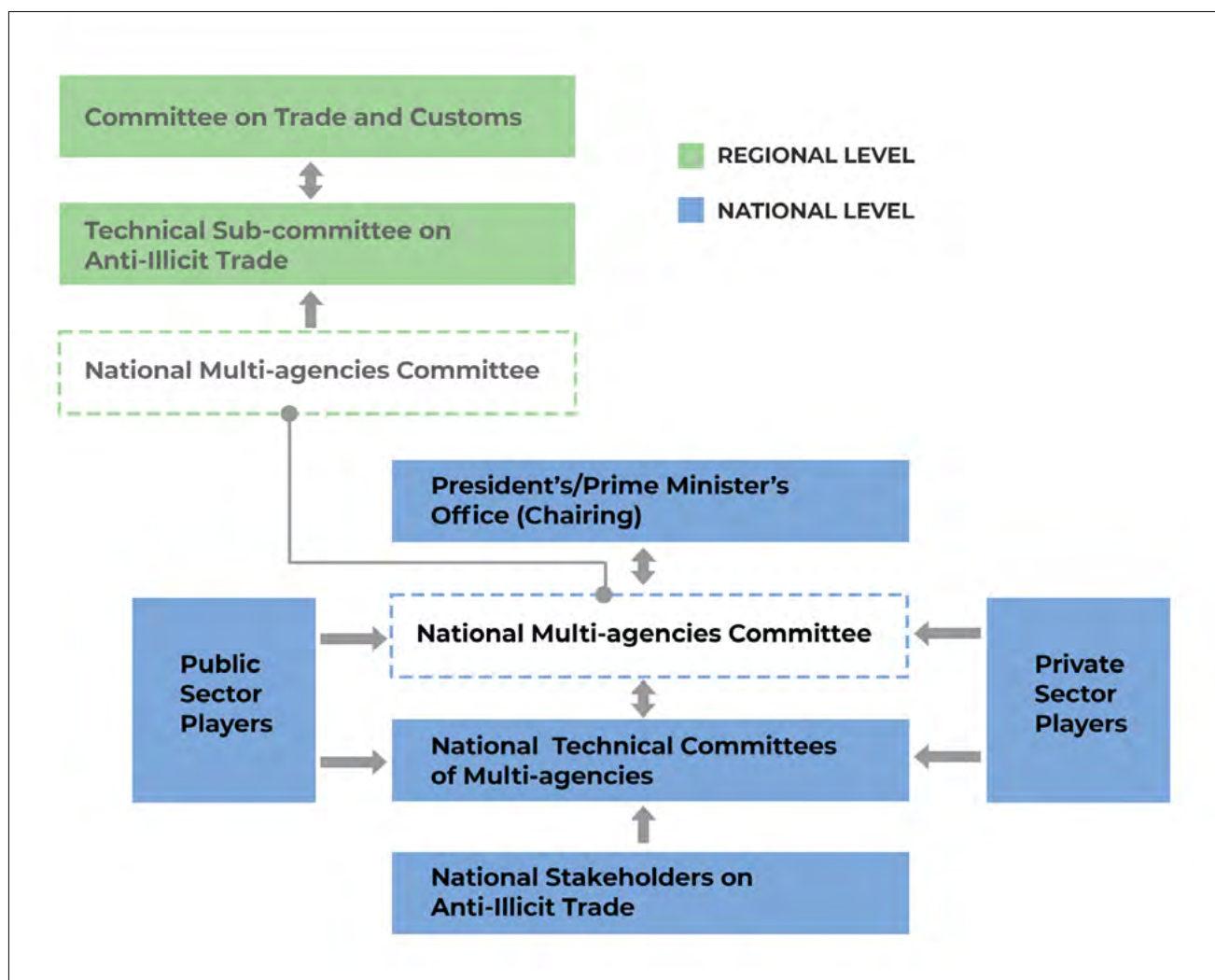
h) Regional Educational Campaigns on Illicit Trade

Some stakeholders reported efforts, either by the private sector or specific government departments, to run campaigns to educate consumers on the pitfalls of illicit trade. None of the stakeholders was satisfied with the outcome of any these campaigns. They all advocated for continued and increased efforts on this front.

In an attempt to stifle demand, Member States should develop and implement frequent educational campaigns aimed at the end-consumer, with the intention of raising awareness of the different forms of illicit trade and the damage it causes.

7. Institutional arrangement to support the Anti-Illicit Trade Policy Framework

Figure 1: Institutional Arrangement



The successful implementation of this policy framework will largely depend on an effective, coordinated and functioning institutional arrangement that is characterised by strong political will and commitment by the stakeholders involved. This section sets out the institutional arrangements that will facilitate

implementation of the policy framework. This arrangement has been designed to take into consideration factors that will facilitate implementation of anti-illicit trade in COMESA.

The institutional arrangement will be at both regional and national levels. At the regional level, it is proposed that oversight of the implementation of the policy will be undertaken by the Council of Ministers through the Committee on Trade and Customs. However, at the national level, the oversight of policy will be done by the National Multi-Agencies Committee, chaired by either the Office of the President or the Prime Minister's Office. The National Multi-Agencies Committee will be supported by National Multi-Agencies Technical Committees.

Committee on Trade and Customs

At regional level, the oversight will be provided by the Council of Ministers through the Committee on Trade and Customs. This committee will be responsible for developing programmes and monitoring the implementation of the programmes in COMESA.

In principle, the Policy Framework on Anti-Illicit Trade in the COMESA region should be driven and coordinated by the COMESA Secretariat in partnership with the COMESA Business Council, in collaboration with COMESA Member States.

National Multi Agencies Committee

At national level, the oversight will be provided by the national Multi-Agencies Committee, to be chaired by the Office of the President or Prime Minister's Office, and drawing participation from national stakeholders.

National Technical Committee

Technical oversight of the implementation of the policy framework will be provided by a technical committee with specific skills and expertise in relevant areas. The technical committee will be linked to the National Multi-Agencies Committee and will drive implementation of the key technical components. The technical committee will be responsible for providing a succinct quarterly report to the Multi-Agencies Committee in advance of its meetings.

To accomplish the desired change, implementation will heavily rely on working with the key stakeholders identified above. Regulators and policymakers are expected to take a leading role in bringing about the changes in rules and policy frameworks. Some of the policy proposals will be implemented directly with regulators. Increasing their capacity will ensure its long-term effectiveness in providing direction and oversight in the regional payments market.

8. Implementation plan for Anti-Illicit Trade Policy Framework

8.1. Implementation Matrix

The following implementation matrix will be used to guide the implementation of the policy proposals towards development of Anti-Illicit Trade Policy Framework. Please note that the timings indicated are indicative.

Table 1: Implementation Matrix

Policy Pillars	Policy Measures	Timeframe	Organisations Responsible / Involved
Pillar 1 Area: National Framework for Anti-Illicit Trade			
Policy Area 1.1: Sanctions	<ul style="list-style-type: none"> Member States to review national legislation to enhance the current sanctions to make them punitive to the offenders. 	24 months	IPR Agencies, Attorney General chambers, Customs Authorities, Courts, Private sector
	<ul style="list-style-type: none"> Member States are urged to use an integrated approach to ensure that the sanctions are being enforced at national levels. There should be formal cooperation among the COMESA Member States to assist in enforcement of the sanctions 	12 months	
	<ul style="list-style-type: none"> Member States are urged to ensure that illicit trade offences attract both criminal and civil sanctions. 	24 months	
	<ul style="list-style-type: none"> Member States are urged to ensure that sanctions are enforced not only to manufacturers and importers but also distributors and retailers. 	6 Months	
Policy Area 1.2: use of ancillary legislation	<ul style="list-style-type: none"> Member States are urged to ensure that they make use of ancillary legislation such as lifestyle audit, Anti Money Laundering and proceeds of crime, Corruption to uncover illicit trade and traders and to act as further deterrent to illicit traders 	6 months	IPR Agencies, Attorney General chambers, Courts, Ministry of Finance, Anti-corruption and Ethics Agencies, Private sector
	<ul style="list-style-type: none"> Member States are further urged to make use of ancillary legislation for seizure and forfeiture of illicit goods, equipment used in the manufacturing, concealing and transporting illicit goods and recovering the assets from the proceeds of illicit trade. 	6 months	

Policy Area 1.3: Enforcement mechanism	<ul style="list-style-type: none"> • Member States are urged to establish enforcement mechanism through legislation at national level • Member States are urged to establish programs aimed at combating illicit trade • Member States are urged to adopt multi-Agencies approach in the fight against illicit trade, which should include private sector. • Member States are urged to intensify screening of import at the point of entry through the leadership of customs authority • Member States are urged to put in place measures to control duty sales from special economic zones. 	<p>12 months</p> <p>12 months</p> <p>12 months</p> <p>6 months</p> <p>12months</p>	<p>IPR Enforcement Agencies, Attorney General chambers, Courts, Customs, Anti-corruption and Ethics Agencies, National Police, Private sector</p>
Policy Area 1.4: Track and trace system	<ul style="list-style-type: none"> • Member States are urged to develop a regional track and trace system for products in COMESA region affected by Illicit Trade. 	<p>12 months</p>	<p>IPR Enforcement Agencies, Attorney General chambers, Courts, Customs, National Police, Private sector</p>
Policy Area 1.5: Education and Awareness creation	<ul style="list-style-type: none"> • Member States are urged to pursue coordinated public education campaign on illicit trade. • Member States are urged to establish national information sharing mechanism and national database 	<p>6 months</p> <p>6 months</p>	<p>IPR Enforcement Agencies, Attorney General chambers, Courts, Customs, Consumers Organisations, Business Associations</p>
Policy Area 1.6: Capacity Building	<ul style="list-style-type: none"> • Member States are urged to build capacity on illicit trade among the law enforcement agents and private sector players 	<p>12 months</p>	<p>IPR Enforcement Agencies, Attorney General chambers, Courts, Customs, National Police, Private sector</p>
Policy Area 1.7: Corruption	<ul style="list-style-type: none"> • Stakeholders in the Member States to be trained on the Regional Code on Anti-corruption Compliance. 	<p>12 months</p>	<p>COMESA Business Council</p>
Policy Area 1.8: Institutional arrangement	<ul style="list-style-type: none"> • Member States are urged to establish national Multi Agencies Committee to be chaired by Office of President or Prime Minister Office and drawing participation from national stakeholders. 	<p>12 months</p>	<p>Office of President /Prime Minister office, IPR Enforcement Agencies, Attorney General chambers, Private sector</p>

Policy 2 Area: Regional Framework for Anti-Illicit Trade			
Policy Area 2.1: International Treaties	<ul style="list-style-type: none"> • COMESA members states are urged to adopt, ratify and implement international treaty such as Protocol to eliminate illicit trade in Tobacco products. 	24 months	COMESA Member States, COMESA Secretariat, COMESA Business Council
Policy Area 2.2: Harmonisation of approaches	<ul style="list-style-type: none"> • COMESA Member States to harmonize approach to illicit trade including legal framework on illicit trade, excise enforcement regimes, product standards and IPR. 	24 months	COMESA Member States, COMESA Secretariat, COMESA Business Council
Policy Area 2.3: Coordination and cooperation	<ul style="list-style-type: none"> • COMESA Member States to set up coordination and cooperation mechanism in enforcement of legislation on illicit trade on the cross border illicit trade activities. 	12 months	COMESA Member States, COMESA Secretariat, COMESA Business Council
Policy Area 2.4: Track and trace system	<ul style="list-style-type: none"> • COMESA Member States are urged to develop a regional track and trace system for products in COMESA region affected by illicit trade. 	24 months	COMESA Member States, COMESA Secretariat, COMESA Business Council
Policy Area 2.5: Information sharing	<ul style="list-style-type: none"> • COMESA Member States to establish regional information sharing mechanism and regional database. 	12 months	COMESA Member States, COMESA Secretariat, COMESA Business Council
Policy Area 2.6: Institutional arrangement	<ul style="list-style-type: none"> • COMESA Member States to establish Technical Work Group (TWG) on illicit trade under COMESA to be reporting to Committee on Trade and Customs. 	6 months	COMESA Member States, COMESA Secretariat,

8.2. Monitoring and Evaluation

Monitoring and evaluation mechanisms are important tools in implementation and giving feedback to the policy proposals and support programmes towards their objective. This helps the policy makers to respond in a timely manner to any issues that may arise. Activities have been defined for each policy area and clear results chain will be defined to show how each activity will deliver an outcome. The policy will be intentional in continually tracking key lessons and making the necessary adjustments as and when needed. Flexibility will be necessary with the addition or removal of activities based on results to ensure that the projects remain dynamic and relevant to the market.

Annexes

Annex 1: Terms of Reference (TOR)

Study on the development of Anti Illicit Trade Framework in COMESA Region

1. Objectives of this study

Several years have passed since the original study on illicit trade. CBC required an updated and comprehensive review of the situation across COMESA. This is required to provide a baseline and determine what actions and additional measures and/or institutions will be needed in each COMESA member state. It was decided that the review shall be limited to the representative sample of member states that were analysed in the first study. The member states in the first study were Ethiopia, Kenya, Mauritius, Sudan and Zambia. Due to the current political climate in Sudan and the difficulties in consulting stakeholders there, Uganda was selected as a substitute. This study also, like its predecessor, focuses on four key sectors in order to determine the baseline. These are:

- Food and beverages
- Seeds
- Electric and electronic goods
- Tobacco.

This baseline forms a basis for development of an anti-illicit trade policy framework for the COMESA region and the development of appropriate institutional arrangements to support the policy framework. In addition, an implementation plan for the policy framework is required.

2. Expected outcomes

This study undertakes a comprehensive review and analysis of the existing legislative, regulatory and policy framework in five of the COMESA member states. This is supplemented with stakeholder interviews in order to accurately assess the actual situation in each of the states. Regard is also had to international best practice, the practical context in COMESA, and the regional and bilateral dimensions. This provides for the development of a contextually appropriate policy framework on Anti-Illicit Trade, the development of appropriate institutional arrangements to support this policy, and the development on an implementation plan for the policy framework.

3. Approach to the Study

3.1 Methodology – Introduction

The assignment was implemented through a desk review and a series of virtual field missions and stakeholder engagements. The aim was to:

- Assess the current environment and determine the requirements for establishing an effective policy framework on Anti-Illicit Trade, through:
 - reviewing the existing legislative, policy and regulatory frameworks in the selected COMESA Member States;
 - comparing the selected COMESA Member States' frameworks against international best practices and identifying gaps;
 - examining the enforcement and coordinating mechanism for illicit trade in the selected COMESA Member States and determining the gaps;
 - analysing the effects of illicit trade on selected sectors, namely food and beverages, electronic and electrical goods, seeds and tobacco in the selected Member States;
 - examining the regional and national dimension of illicit trade and the integration of the two

- dimensions;
- Develop a policy framework on anti-illicit trade based on the key elements identified that will address the issues of illicit trade in the COMESA region.
 - Address the institutional arrangement by:
 - assessing and determining an appropriate institutional arrangement to support the proposed policy framework on Anti-Illicit Trade for the COMESA region;
 - developing institutional arrangements to support implementation of policy framework on Anti Illicit Trade for the COMESA region;
 - describing the role of the key stakeholders in the institutional arrangement and relationships between the stakeholders.
 - Develop and implementation plan to guide the implementation of the policy framework on Anti-Illicit Trade for the COMESA region.

3.2 Methodology – Desk review

The first step was to review the earlier study¹ so as to be able to build on the earlier work. The desk review also entailed a review of relevant documents, literature and reports related to illicit trade at national, regional and international levels. Also included were reviews of Anti-Illicit Trade frameworks and implementation plans that have been implemented and other international treaties relevant or related to illicit trade.

National and regional (within COMESA) strategies and policies, as well as legislation and regulations, relevant or related to illicit trade were also reviewed.

3.3 Methodology – Stakeholder engagements

The aim of the virtual field missions and stakeholder engagements was to gain insights for the design of the Anti-Illicit Trade framework and implementation plan. As such, target stakeholders for the consultations were:

- business within the identified sectors;
- manufacturer/processor associations within the identified sectors;
- customs authorities;
- revenue authorities;
- bureaus of standards;
- the African Organisation for Standardisation or ARSO (the five selected Member States are members of the ARSO)
- law enforcement organisations;
- border management authorities;
- intellectual property right enforcement authorities such as the Anti-Counterfeit Agency;
- intelligence agencies;
- judiciary or legal practitioners;
- Plant Health Authorities (Seeds);
- COMESA's Trade and Customs Division; and
- Cross Border Associations.

The stakeholder engagements were conducted as interviews, with key questions being provided ahead of the interviews themselves. Questions were specific to different sectors and stakeholders. The aim of these engagements was to exchange information and views so as to:

- understand the effects of illicit trade on the selected sectors;
- examine enforcement and coordination mechanisms for combating illicit trade;
- exploring the regional and national dimensions of illicit trade and the integration of the two

¹ *Promoting manufacturing competitiveness in COMESA – Towards the establishment of A Framework for combating Illicit Trade in COMESA.*

dimensions;

- understanding national and regional frameworks and any possible gaps they may have compared to international best practice.

The following is an indicative list of questions:

- Give an indication of the share of illicit trade in your market.
- What impact does illicit trade have on your sector?
- What types of products are trade illicitly?
- What is the origin of the illicit trade?
- Do you know how the illicit trade enters the market?
- Do you know how the authorities in the country of production allow the goods to be exported?
- Are the products capable of being uniquely identified (either at production or on sale/export)?
- How are the illicit products sold to wholesalers, distributions end-consumers?
- Is licensing a requirement to import/sell the illicit goods?
- Do you have any legislation (including treaties) in place that combats illicit trade or protects consumers?
- What capabilities do you have to detect illicit trade?
- What enforcement mechanisms exist to combat illicit trade?
- Please elaborate if authorities are empowered to conduct searches and if they may confiscate illicit trade or transportation means used in carrying out illicit trade.
- What are the sanctions/penalties if found guilty of participating illicit trade?
- Do different governmental departments collaborate to combat illicit trade?
- Is there any strategy or policy for combating illicit trade?
- What do you believe are the main reasons why illicit trade is not stopped or minimized?
- What role does intelligence play in gathering, analysing and disseminating of intelligence related to illicit trade?
- Do different COMESA Member States cooperate to combat illicit trade?
- Do the prosecutors and the judiciary ensure that illicit traders are taken to task?

3.4 Methodology – Draft report

The information and insights gained during the desk review and the stakeholder engagements was collated into a draft report with the following output and structure:

- an assessment of the current environment and the requirements for establishing an effective policy framework on Anti-Illicit Trade;
- a policy framework on Anti-Illicit Trade for the COMESA region;
- institutional arrangement to support implementation of the policy framework and a description of the roles of the key stakeholders in the institutional arrangement and the relationships between them;
- an implementation plan for the policy framework on Anti-Illicit Trade for COMESA region.

3.5 Methodology – Presentation of draft report

The draft report was presented to stakeholders for validation and to solicit additional inputs from stakeholders. The received inputs have been incorporated into the final report.

3.6 Methodology – Final report

This final report has been drafted after the presentation of the draft report, incorporating inputs received. Its structure is identical to that of the draft report as described above.

