



COMMON POLICY GUIDELINES FOR THE FORMATION OF JOINT BORDER COMMITTEES ALONG THE NORTHERN CORRIDOR

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GLOSSARY

CEO	Chief Executive Officer
CFS	Container Freight Station
COMESA	Common Market of Eastern and Southern Africa
EAC	East African Community
ICD	Inland Container Depot
ICT	Information Communication Technology
JBC	Joint Border Committee
NCTTCA	Northern Corridor Transit and Transport Coordination Authority
NTB	Non-Tariff Barrier
OSBP	One-Stop Border Post
USAID-COMPETE	United States Agency for International Development – Competitiveness and Trade Expansion Program

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I. Background

1. The Northern Corridor Transit and Transport Coordination Authority (NCTTCA) was established to facilitate trade and transport in the region. One of the key objectives of the Northern Corridor Transit and Transport Agreement 2007 is to transform the Northern Corridor into a Development Corridor. This transformation is highly dependent on an efficient trade and transport facilitation system, which includes coordination between government agencies and private sector stakeholders at the border posts to reduce the high costs incurred in handling and transporting goods across borders.
2. In reference to the Northern Corridor Transit and Transport Agreement 2007, the Member States agreed to eliminate non-tariff barriers (NTB's). This view is also supported by Article 75(1)(c) of the Treaty Establishing the EAC and Article 49(1) of the Treaty Establishing COMESA. Some of the NTB's along the Northern Corridor are related to infrastructure, while others are related to border procedures. A formal structure for coordination of the public and private sector stakeholders at borders has been lacking in the region. This situation hampers the prompt movement of goods and is detrimental to achievement of the NTB elimination agenda and other legitimate objectives of the Government Agencies at the border posts such as:
 - i. Protection and prevention of threats to national security;
 - ii. Protection and prevention of loss of revenue through smuggling and improper filing of trade documents;
 - iii. Protection of the health and well-being of the community through preventing illegal entry of medicaments and foodstuffs that may not meet the required standards; and
 - iv. Protection of international trade in endangered species; flora and fauna, which would be detrimental to the agricultural and conservation interests of a country and its trading partners.
3. The border has been defined as "the location where one country's authority over goods and persons ends and another country's authority begins"¹ or "any place at or within a specified limit where the state exercises statutory authority"². Moriarty

¹ Barka 2012

² Moriarty 2008

(2008) emphasises the role of the border in defining the territory of the state as “the primary point at which the state’s agents interrelate with the citizens of other states and demonstrate their state’s ability to govern”.

4. Traditionally, the border was viewed as a physical point or line separating two states. This view is no longer tenable, as it is now possible to exercise national border controls at any point that can be accessed directly from abroad such as an international airport that may be located inland, an automated teller machine or a computer linked by wireless to the internet.³ “Borders are everywhere”, they exist “wherever controls over the mobility of people, goods, services and capital in and out of states or regions are exercised by state and regional agencies and authorized non-state actors”.⁴
5. It is, therefore, possible to delocalize, disperse and move “the border” inside the territory of a state (e.g., by permitting clearance of goods inland to decongest the border) or beyond the territorial limits of a state (by requiring certain procedures to be carried out before the arrival of goods or persons in the territory). Therefore, the concept of the border has changed from being “a wall” to “a flow”, and the key activity for border management is to identify who and what is flowing.⁵ Therefore this necessitates a framework for coordination among the public and private sector stakeholders involved in the handling and clearance of goods at the border stations i.e., Joint Border Committees.
6. Joint Border Committees enhance formal multi-sector collaboration between the key Government Agencies and the Private Sector players involved in the handling and clearance of cargo for the purpose of addressing critical operational challenges at the border stations. With the support of USAID-COMPETE, several Joint Border Committees were formed at the key border stations along the Northern Corridor.
7. The NCTTCA Policy Organs notably during the 35th Meeting of the Executive Committee, the NCTTCA Secretariat was tasked to support the member States to form JBCs at the key border stations along the Northern Corridor where such Committees did not exist. While the establishment of Joint Border Committees has the potential to streamline relationships amongst the public and private sector agencies that operate at the border, this is not possible in the current circumstances where there are no clear formal structures and Terms of Reference to guide their activities and create linkages to higher levels of management for situations which require instituting changes in policies and regulations and for purposes of accountability.⁶

3 Ibid.

4 Marenin 2010 p. 43

5 Ladley and Simmonds 2007 p. 10

6 Northern Corridor Stakeholders Survey Oct. 2012.

8. The NCTTCA Secretariat during its Stakeholders Surveys observed that at the border stations where the JBCs were backed by an institutionalized framework they were operating smoothly, and operational challenges were easily addressed. In view of this, the Executive Committee during its 36th Meeting held in December 2012 tasked the Secretariat to advocate for the institutionalization of JBCs by all the member States in order to support their proper functioning and sustainability and further the Secretariat to assist the member States to set them up.
9. The NCTTCA Secretariat has been collaborating with the Ministry of Trade of the Republic of Kenya and USAID-COMPETE in the institutionalization and formation of JBCs in Kenya. The proposed common policy guideline for the formation and institutionalization of JBCs along the Northern Corridor draws a number of lessons from the Kenya experience.

II. Formation and Terms of Reference for the JBCs along the Northern Corridor

A. Purpose of Joint Border Committees

10. The purpose of Joint Border Committees is to enhance coordination between and among the public and private sector agencies at the border stations to contribute towards improved competitiveness of the economy, increased government revenue and business opportunities for the private sector, reduced cost of doing business and lower barriers to regional and international trade.

B. Objectives for the Institutionalization of the JBCs

11. The objective for the institutionalization of JBCs is to:
 - i. Provide an institutional framework for the efficient and effective management of the border at the national level and bilateral level with the responsible government agencies and private sector stakeholders.
 - ii. Establish the necessary legal and regulatory framework for the efficient and effective management and administration of borders in the country and in the region.
 - iii. Simplify and harmonize formalities, processes and procedures related to the flow of persons and trade into and out of the country through the border in line with relevant national, regional, and international standards.
 - iv. Conduct training and capacity building needs assessment for the efficient and effective management of the border.
 - v. Assess Information, Communication and Technologies (ICT) needs of the border and a reference group for coordinated implementation of trade facilitation ICT projects.
 - vi. Develop targets and indicators for border management (e.g., indicators based on Time, Cost, Simplification and Risk).
 - vii. Conduct border infrastructure needs assessment.
 - viii. Monitoring and evaluation of border performance.

C. JBC Membership and Structure

Membership

12. The membership of the JBC shall comprise heads of station of the following organizations operating at national borders, or if they do not operate an office at the border, an authorized representative:
 - a. Customs Department
 - b. Immigration Department
 - c. Police
 - d. Standards Agencies (Quality, Safety and Health Inspectors such as Bureau of Standards, drugs, veterinary, human, animal, and plant health)
 - e. National Security Intelligence Service
 - f. Transporters' Associations
 - g. Cross-Border Traders' Associations
 - h. Customs Clearing and Forwarding Associations
 - i. National Chamber of Commerce and Industry
 - j. Ministry of Trade – Commerce/Ministry of East African Community Affairs
 - k. Cargo Handlers (Transit Sheds, ICD's, CFS's, Bonded Warehouse and Transit Parking yard operators)
 - l. Local Authorities where the border is located.

Roles and Responsibilities

13. Members of the JBC shall have the following roles and responsibilities:
 - a. Represent respective organizations in the JBC so as to enhance partnership and collaboration between the organizations;
 - b. Consult with other members and inform them of any developments in their respective organizations that may have an impact on matters that are germane to the work of the JBC or individual members;
 - c. Contribute to the work of the JBC through oral or written comments at JBC meetings or written communications to the Chairperson;
 - d. Collaborate with other members by working in partnership, in face-to-face meetings and with relevant stakeholders to achieve the objectives for which the JBC was set up.

Private Sector Representation in JBCs

14. To qualify for participation in the JBC, a private sector organization must:
- a. Be a national organization with a primary interest in the cross-border movement of goods, services and/or people;
 - b. Not solely represent individual company interests.
 - c. Have an active office at the border station where the JBC operates.

Participation of other Persons or Organizations in the JBCs

15. On his or her own volition or upon request, the Chairperson may invite representatives from relevant donor agencies or other national, regional, or international organizations, agencies, or experts to participate in JBC meetings or address specific issues relevant to achieving the objectives of the JBC. Such representatives do not have voting rights.

Designated Chairperson

16. The Head of the Lead Agency at the Border Post shall be the Chairperson of the JBC. The duties and responsibilities of the Chairperson shall be to:
- a. Preside at all meetings of the JBC;
 - b. Lead and manage the business of the JBC; and in doing so, seek to provide appropriate direction and focus to the JBC and its Working Groups and establish a governance culture that upholds the highest standards of integrity and probity;
 - c. Approve the Agenda for each JBC meeting taking into account the suggestions of other members for the inclusion of items on the agenda, and ensure that sufficient time is allowed for discussion of relevant issues;
 - d. Work with the JBC Coordinator and the Secretariat to ensure that the members of the JBC receive accurate, timely and clear information regarding matters within their responsibility, in particular about the progress in implementation of the JBC Work Plan so as to enable the JBC to make sound decisions, monitor effectively, and provide advice relevant to efficient and effective management of the border;
 - e. Ensure that decisions agreed by the JBC are effectively implemented and reporting made to the JBC coordinating Ministry or Government Agency;
 - f. Monitor the performance of the JBC and coordinate the review of its performance annually.

Vice-Chairperson

17. The Vice-Chairperson will be elected from amongst the representatives of the Private Sector appointed to the JBC. The Vice-Chairperson will take the lead in ensuring that decisions of the JBC balance the interests of the government and the private sector and will more specifically:
 - a. Assist the Chairperson in running the business of the JBC including chairing meetings of the JBC in the absence of the Chairperson;
 - b. Keep the Chairperson informed of developments in the private sector that have an impact on the matters to which the JBC has an interest;
 - c. Assist the Chairperson in ensuring that adequate time is provided for discussion of matters in the agenda, reaching consensus and bringing the discussion to a close;
 - d. Assist the Chairperson in identifying items to be included in the agenda for the JBC Meetings.

Working Groups

18. The JBC may set up small Working Groups on an *ad hoc* basis to discuss in-depth technical issues and report back. These groups shall be disbanded once their purpose is achieved. To minimize chances of duplication of effort through unnecessary multiplication of meetings, the JBC shall first determine if any specific work cannot be incorporated into an existing Working Group before setting up any new Working Group.

Reporting

19. The JBC will, through its Chairperson, report to the coordinating Ministry/ Government Agency/National Trade and Transport Facilitation Committee.

Central Coordination Desk

20. The coordinating Ministry or Government Agency will appoint a Coordinator to run a Secretariat for the JBCs at the National level. The Coordinator should be a professional having wide experience in the area of trade facilitation. The functions of the Secretariat will include:
 - a. Preparation and organization of meetings;
 - b. Preparation and dissemination of documents for the meetings;
 - c. Report on meetings and dissemination of meeting results;
 - d. Following up on the implementation of decisions;
 - e. Support the Working Groups established for specific purposes;

- f. Organise studies that may be recommended by the JBCs;
 - g. Provide information on facilitation to members;
 - h. Organise seminars and workshops; and
 - i. Generally promote the activities of the JBCs.
21. If necessary, the functions of the Secretariat may be decentralised to the regional level by tasking the Coordinating Ministry or Agency to undertake the functions at regional level.

D. Term of Office for the Committee Members

Appointment to JBC

22. Appointment to the JBC shall be made by the Chief Executive Officer's of the member institutions for a period of two years and the appointment is specific to a border post. The term of office of a JBC member may be renewed or extended by the appointing authority.

Cessation of Membership

23. Membership in the Committee shall cease if a member;
- a. Is transferred from the border post or
 - b. Resigns, retires or otherwise ceases to be an employee of the appointing authority.

New Appointments to the JBC

24. New appointments to the JBC by the appointing authority following cessation of membership in accordance with *Paragraph 23* above shall be for the unexpired period of service of the member whose membership has ceased, or if the appointing authority so desires, for a new two-year term.

Exceptions on Appointments

25. Notwithstanding the provisions of *Paragraph 23* above, the appointing authority may make an exception for a member who has been transferred from the border to continue representing the organization in the JBC for the purpose of ensuring a smooth transition in case the member in question is required for contributions where he or she has special expertise or other reason provided that the appointing authority applies and the JBC approves the exception.

E. Governance

Convening Meetings

26. Meetings of the JBC shall be convened by the Coordinator in consultation with the Chairperson, or in the absence of the Coordinator, by the Chairperson or the Vice-Chairperson on behalf of the Chairperson.

Notice of Meetings

27. Members shall under usual circumstances be given seven (7) days notice for scheduled meetings, provided that this condition may be disregarded in case of emergency or other situation where an unscheduled meeting may be required.

Agenda

28. The notice of meeting must include an agenda stating the substance of the issues to be considered. The JBC may consider other issues not included on the agenda at the time of the meeting. The agenda may also include any resolutions passed outside of a committee meeting (e.g., through electronic discussions).

First Meeting

29. As soon as possible following appointment of members to the JBC at the border post, the JBC shall hold its first meeting during which the calendar for the JBC meetings during the year shall be considered and approved.

Quorum

30. The quorum for JBC meetings shall be a simple majority of the members specified in *Paragraph 22* above.

Decisions

31. Decisions of the JBC shall be made by consensus. Where a decision is not reached by consensus, the matter will be escalated to the relevant concerned Government agency(s) for redress.

Confirmation of Minutes

32. The minutes of a JBC meeting shall be confirmed during the immediate next JBC meeting. The Chairperson and the Secretary shall endorse the minutes as confirmation that they reflect the true proceedings of the Meeting.

Terms of Reference for Working Groups

33. Working Groups created for a specific purpose shall be provided with Terms of Reference indicating details of the date of establishment; the duration; the mandate and reporting; membership and roles of members; purpose and scope of the Working Group; key deliverables; means of operation; and resources required.

F. Jurisdiction

34. The JBC shall offer support in the jurisdiction over all operational matters related to trade and transport facilitation at the border which include:
- a. Matters pertaining to administration of the Customs Laws and Regulations, Laws and Regulations administered by the Government Agencies working at the border station and any other border-related community or national legislation;
 - b. Implementation of treaties, conventions and international agreements relating to regional and international trade and transport;
 - c. Simplification and harmonization of formalities, processes and procedures related to the flow of persons and goods into and out of the country through the border;
 - d. Monitoring, reporting on and removal of non-tariff barriers to regional trade;
 - e. In collaboration with relevant national, regional, and international organizations, provision of relevant training and capacity building activities to members;
 - f. Spearheading relevant reforms for the efficient and effective management of the border including review of business processes and optimal application of information and communication and other technologies; and
 - g. Contributing to review and use of existing border infrastructure and considering proposals for infrastructure development.
35. The JBC and its members will address and aim at resolving all border operational issues within its jurisdiction. Any remaining issues will be referred to the relevant contact point at the coordinating Ministry/Government Agency. On receiving a referral, the coordinating Ministry/Government Agency will promptly contact the head of the relevant agency or organization and provide details of the issue with a view to resolving the matter.
36. Even though the work of the JBC has an operational focus, the JBC shall make policy recommendations to the coordinating Ministry/Government Agency.

G. Deliverables

37. Meetings of the JBC shall be held monthly or more frequently if necessary.
38. The JBC Coordinator shall be responsible for keeping an accurate record of all meetings of the JBC.
39. The JBC shall make recommendations to other structures on matters that are not resolved at the operational level as provided in Paragraph 35.
40. A member of the JBC shall provide a written response to any issue addressed to his or her organization as soon as possible, but in any case not more than fifteen (15) days after receiving the request. If more time is required, the member should acknowledge receipt of the letter and give the approximate date on which to send the response.
41. The JBC shall make quarterly reports of the performance of the border against agreed Key Performance Indicators.
42. The JBC Coordinator shall, through the Chairperson, make quarterly reports of the activities of the JBC to a designated office in the headquarters through the Permanent Secretary, Ministry of Trade, or the Chief Executive Officer of the JBC coordinating agency.

H. Resources and Budget

43. The coordinating Ministry/Government Agency will provide in-kind, and if possible, financial contribution to the funding of the activities of the JBC through its regular budget or a specific budget line that can be supported. In-kind contributions include but are not limited to provision of office space and accommodation, office equipment, transport, and any other logistical matters that contribute to the proper functioning of the JBC.
44. The JBC Coordinator will draft a budget including costs for office expenses, running meetings, training and capacity building activities and any other relevant issues for consideration and approval of the JBC based on an agreed Work Program. After approval by the JBC, the Coordinator shall forward the budget to the Coordinating Ministry/Government Agency.
45. Development partners and the private sector may provide resources, technical assistance, and capacity building support towards the activities of the JBC through the Ministry of Trade.

46. Expenses directly incurred by members for the purpose of the JBC shall be defrayed out of the JBC budget. Such expenses include costs of transport, subsistence, and accommodation for JBC meetings.

I. Communications

47. JBC communications will emphasize a whole-of-government and inclusive approach for effective and efficient management of the border environment.
48. The JBC will develop a Communications Strategy and Implementation Plan within six months of appointment of its members, for consideration and approval by the Coordinating Ministry/Government Agency.
49. Formal and informal lines of communication will be established and maintained between the agencies represented in the JBC for operational communications, issues identification, dispute resolution and emergency response.
50. JBC members represented at the border shall make and present monthly reports in a format to be specified by the Coordinator. These reports shall provide details of key issues related to trade and transport facilitation at the border, thus ensuring a close link between operational issues and the business transacted at the JBC monthly meeting.
51. The JBC shall maintain a website with information about joint border operations, the requirements of various border agencies, the fees and charges for services provided by relevant government agencies and private sector operators, and border wait times. On a quarterly basis, the JBCs will send to the NCTTCA Secretariat the updated information for uploading on the Secretariats website.
52. The JBC will maintain a dedicated telephone line or lines and secure email where stakeholders can report issues for information or resolution.
53. Twice a year (in the month of September and March), the JBC will meet to consider and approve the Annual Work Plan, budget, and progress in implementation of the Plan respectively among other matters of importance to the business of the JBC. On his or her own volition or upon request, the Chairperson may invite representatives from other JBCs, relevant donor agencies or other national, regional, or international organizations, agencies, or experts to participate in these meetings or address specific issues relevant to achieving the objectives of the JBC.

J. Relationships with other Groups

54. The JBC reports to the Coordinating Ministry/Government Agency.
55. To enhance mutual learning, experience sharing and resolution of issues, the JBC will establish horizontal relationships with other JBCs in neighbouring countries.
56. The JBC will keep itself abreast of developments and where possible participate in meetings with government or donor agencies regarding regional and international trade and transport facilitation in general, and more specifically on OSBP's, and electronic Single Window Systems.

K. Governing Laws and Dispute Resolution Mechanism

57. The JBC will be governed by the National Laws of the country where the border is located.
58. Where a dispute arises between or among the members of the JBC, the first recourse will be to resolve the issues locally through consultations under the overall direction of the Chairperson with the assistance of the JBC Coordinator to find an amicable resolution to the dispute. In the event that an amicable solution is not achieved, the Chairperson will refer the matter to the Chief Executive Officers of the respective organizations whose decision will be accepted as binding on the members in question.

L. Amendments

59. The Terms of Reference for the JBC members may be altered by consensus to better meet the purpose and objectives of the JBC should the need arise.

M. Validation

60. The above proposed common policy guidelines on the formation and institutionalization of JBCs along the Northern Corridor will be discussed and validated by the member States.



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