

DRAFT WORK PROGRAMME

**CEFTA Subcommittee on Non-tariff
Measures**

Montenegro
2016

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INTRODUCTION

The Ministerial Conclusions adopted by the CEFTA Joint Committee meeting in November 2015 were substantially adjusting the mandates of CEFTA Structures in order to respond better to the challenges of the implementation of CEFTA. One of the bigger challenges which the CEFTA Structures have is to produce tangible results in eliminating non-tariff measures which have been encountered in the regional trade.

Thus, the CEFTA Ministers acknowledges the importance of growth conducive to investment in increasing competitiveness of the Region. They have underlined the need to initiate a process to address market access related barriers and distortions of fair conditions of competition affecting foreign trade and investment. In this regard, they agreed to establish a new CEFTA Subcommittee which has the mandate on non-tariff measures that include both technical and non-technical measures.

The Ministerial Conclusions of 2015 put an emphasis on the importance of dispute settlement mechanism under CEFTA and state that such mechanism in CEFTA has not proven its efficiency as desired. Therefore, the Joint Committee instructed the CEFTA Secretariat to consult the relevant international organisations and legal experts in preparing a technical proposal to increase the efficiency of the rules regarding the dispute settlement of CEFTA which might then be incorporated adequately in CEFTA Structures. The Montenegrin Chairmanship aims to provide Subcommittee on NTMs as a platform to discuss the technical proposal for increasing the efficiency of CEFTA Dispute Settlement Mechanism which the Secretariat will prepare. This proposal will be ready and submitted to the Special Joint Committee meeting on dispute settlement as foreseen by the Ministerial Conclusions.

This work programme of Subcommittee on Non-Tariff Measures as established by the Ministerial Decision 1/2015 will therefore include all the priorities and activities as deemed necessary foreseen by the Chairmanship of Montenegro to give a robust start for the functioning of Subcommittee on NTMs in line with the Ministerial conclusions of 2015 and the mandate of the Subcommittee.

This work programme includes the priorities and activities of Subcommittee and its working groups established thereunder In accordance with Decision 1/2015:

- Subcommittee on Non-tariff Measures:
 - Working Group on Technical Measures
 - Working Group on Risk Management
 - Working Group on Electronic Exchange of Information

1. THE SUBCOMMITTEE and ITS WORKING GROUPS AS PART OF CEFTA STRUCTURES

1.1. Mandate of the CEFTA Subcommittee on Non-tariff Measures as determined by the CEFTA Ministerial Decision 1/2015

The following areas have been determined as the main mandate of the CEFTA Subcommittee on Non-tariff Measures which was established by the Joint Committee Decision No 1/2015:

- i. Exchange information on a regular basis through employing CEFTA Transparency Pack tools, in particular CEFTA Market Access Barriers Database, to identify and review complaints in each Party concerning NTMs and propose appropriate procedures to eliminate barriers to trade:
 - a) identify and discuss common problems and make recommendations to deal with them,
 - b) propose which NTBs to eliminate first and timetables for their elimination,
 - c) report to the Committee of Trade Facilitation updating the elimination process,
 - d) propose the CEFTA Joint Committee through Committee of Trade Facilitation possible measures and decisions which might be adopted at the regional level,
 - e) exchange views on a systematic basis on appropriate domestic institutional arrangements to eliminate NTBs in each Party in order to ensure the adoption of best practices;
- ii. Identify unnecessary technical barriers to trade, sanitary and phytosanitary measures, and administrative measures, hereafter referred to as technical measures, and recommend the elimination of in accordance with Article 12.2, 13.2, and Article 14.4. of CEFTA 2006;
- iii. Monitor the elimination process at national level and to report the progress to the Committee of Trade Facilitation:
 - a) establish necessary grounds to initiate negotiations to conclude mutual recognition agreements of technical measures in CEFTA upon the condition that the relevant legislation and their implementation are fully in line with the relevant EU acquis and with the relevant WTO Agreements, and with other relevant international agreements as foreseen by Articles 12.2, and 13.4. of CEFTA 2006;
 - b) identify and recommend the elimination of non-technical measures, and exports related measures provided that those measures are in contradiction with the relevant Articles of CEFTA 2006, and to monitor the elimination process at national level and to report the progress to the Committee of Trade Facilitation.
- iv. Act as the first instance CEFTA Structure to analyse bilateral trade complaints before Special Joint Committee is called according to Article 42 of CEFTA 2006;
- v. Coordinate technical assistance to be provided to CEFTA Parties through regional programmes in the relevant areas under the mandate of the Subcommittee.

The same decision stipulates that the members of the Sub-committee will be senior civil servants responsible for dealing with these issues in respective administrations in particular the Ministries

responsible for trade, the authorities responsible for technical regulations and standards, market surveillance, conformity assessment, sanitary and phytosanitary measures, and customs.

The Sub-committee shall meet as necessary but at least once per year and shall report to the Joint Committee.

1.2. Mandate of the CEFTA Working Group on Technical Measures as determined by the CEFTA Ministerial Decision 1/2015

According to the Decision 1/2015, the main tasks of the Working Group on Technical Measures would be as follows:

- i. to identify and oversee the elimination of unnecessary technical measures or their discriminatory application in accordance with Article 12.2., Article 13.2 and 13.5 of the CEFTA 2006.
- ii. Furthermore, the Working Group will have exploratory talks:
 - a) to initiate negotiations to conclude agreements on harmonisation or mutual recognition agreement of sanitary and phytosanitary measures in accordance with the relevant provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and other relevant international agreement in accordance with Article 12.3. of CEFTA 2006;
 - b) to initiate negotiations to conclude plurilateral agreements on harmonisation of technical regulations and standards, and the mutual recognition of conformity assessment procedures in accordance with the relevant provisions of the WTO Agreement on Technical Barriers to Trade and other relevant international agreements in accordance with CEFTA Article 13.4.
- iii. The Working Group will undertake necessary actions to enhance transparency on all kinds of documents, certificates, permits and formalities imposed on trade by technical agencies for the clearance of goods, and exchange of information about change in those formalities, preferably through using CEFTA Transparency Pack tools.
- iv. Regarding the notification of technical regulation including any mandatory conformity assessment procedures or standard, and notification of SPS measures the Working Group will receive regular reports from notifications done by the CEFTA Parties through using CEFTA Transparency Pack in accordance with Article 12.2 and Article 13.3.b. of CEFTA 2006.
- v. Other functions of the Working Group are as follows:
 - To encourage the implementation of risk analysis based inspections in the area related technical measures in cooperation with CEFTA Working Group on risk management;
 - To make efforts on addressing behind-the-border measures in TBT and SPS;

- To analyse the cases recorded in the CEFTA Market Access Barriers Database uploaded by each CEFTA Party in the areas related to technical measures;
- To report to Subcommittee on NTMs possible ways for the elimination of unnecessary technical barriers to trade, and SPS which restrict access to the market;
- To keep record of the progress in EU alignment of CEFTA Parties in the areas of SPS and TBT, if deem necessary;
- To keep a network of Enquiry points among CEFTA Parties for TBT functioning and updated;
- To create a network of Enquiry points among CEFTA Parties for SPS matters and keeping them updated;
- To coordinate technical assistance in the relevant areas which fall under the mandate of the Working Group.

As defined by the Decision, members of the Working Group are government officials from the authorities in charge of technical measures including technical barriers to trade, and sanitary and phytosanitary measures.

The meetings of the Working Group will be organized at least once a year, preferably before the regular meeting of the CEFTA Subcommittee on NTMs to whom the Working Group shall report.

1.3. Mandate of the CEFTA Working Group on Risk Management determined by the CEFTA Ministerial Decision 1/2015

The specific functions of the Working Group are:

- i. Cooperation in the field of risk management of customs authorities and other governmental authorities involved in clearance of goods:
 - a) To exchange information on the existing or any amendment adopted in the national rules and regulations on risk management, and its implementation;
 - b) To collect and exchange of statistical data regarding the performance of the application of their risk analysis, results of their inspections and of selectivity criteria in the clearance of goods;
 - c) To share best practices in risk management, particularly with regard to its implementation, training of staff, administrative organisation and decision making processes, inter-agency and intra-agency cooperation and coordination, and cross-border cooperation;
 - d) To cooperate, assist each other and exchange views and experiences on legal reform to be adopted by the CEFTA Parties in the context of relevant EU integration process;
 - e) To discuss the implementation of regional or national projects in the field of or which may have a direct impact on customs risks management, in particular EU financed project on Systematic Electronic Exchange of Data (SEED), with an aim to develop common regional positions regarding the issues deemed to increase the relevance, efficiency, effectiveness, and impact of the projects concerned for risk management;

- f) To cooperate and exchange of information for the purpose of seamless implementation of trade facilitation related provisions of CEFTA.
- ii. Explore possibilities for creating and applying joint risk profiles:
 - a) To prepare a work program planning the activities need to be taken to create and apply joint risk profiles for risks which are deemed common throughout the region,
 - b) To discuss common risks in the field of customs, and the most appropriate level of action to cope with those common risks,
 - c) If justified according to the point above, to initiate the preparation process for developing joint profiles,
 - d) In this task, priority to be given on developing non-risk areas on which a number of low risk profiles could be developed with a view to facilitate the regional trade through simplification of procedures and reduce the formalities imposed on trade,
 - e) To encourage the widespread implementation of risk analysis based inspections throughout the CEFTA Region by all governmental authorities involved in clearance of goods.

Members of the Working Group are government officials in charge of risk management of the Customs Authorities, Other Governmental Authorities in charge of clearance of goods of the CEFTA Parties, particularly the one responsible for conformity assessment and inspections for technical regulations and standards, and sanitary and phytosanitary measures.

The meetings of the Working Group will be organized at least once a year, preferably before the regular meeting of the CEFTA Subcommittee on NTMs. The Working Group shall report to the CEFTA Subcommittee on NTMs.

1.4. CEFTA Ministerial Conclusions of 2015 in relation to trade facilitation and Subcommittee on Non-tariff Measures

In the meeting of 26th of November 2015, CEFTA Ministers decided to adjust the CEFTA structures with the aim of responding to the CEFTA priorities and to strengthen the monitoring capacity of CEFTA structures of the implementation of the CEFTA 2006 Agreement, as well as their reporting of implementation results to the CEFTA Joint Committee.

Furthermore, CEFTA Ministers of Trade acknowledged the importance of growth conducive to investment in increasing competitiveness of the Region, a process that needs to be initiated in CEFTA Structures to address market access related barriers and distortions of fair conditions of competition affecting foreign trade and investment is the action in CEFTA in order to merge priorities of trade facilitation and liberalization of services for further to promote investment to stimulate economic growth.

Emphasising the importance of undertaking complementary actions in trade and transport facilitation alongside other instruments foreseen by the Western Balkans Summit to foster further

development of regional value chains, Ministers instructed all the relevant CEFTA Structures to identify barriers and distortions of trade in the Region and propose appropriate instruments for their eventual elimination.

2. OBJECTIVES OF THE CHAIRMANSHIP

Montenegro has identified the following objectives for its Chairmanship of CEFTA Subcommittee on Non-tariff Barriers as follows:

- 1) To enhance transparency in order to identify non-tariff measures (NTMs) substantially affecting the regional trade and to eliminate non-tariff barriers (NTBs) distorting trade between CEFTA Parties;
- 2) To increase the efficiency of dispute settlement mechanism of CEFTA
- 3) To contribute the negotiation process on Additional Protocol 5 on trade facilitation through its working groups

3. PRIORITIES OF THE CHAIRMANSHIP

The Chairmanship of Montenegro has identified objectives for 2016 as follows:

Objective 1: Enhancing Transparency for Identifying NTMs and Eliminating NTBs

Priority 1: Addressing the main trade distortive non-tariff measures

The Subcommittee will collect all the inputs of CEFTA Parties with an aim to compile an exhaustive list of areas regarding non-tariff measures substantially affecting the regional trade. In this regard, the cases recorded in the Market Access Barriers Database, and the findings of GIZ financed Market Access Barriers Project will be used as main information source.

Based on the existing information, it is considered that the substantial non-tariff measures which could be classified under the three main headings:

- 1) Price-control measures, including additional taxes and charges (Chapter F according to Classification of Non-Tariff Measures) and in particular F7 (Internal taxes and charges levied on imports)
- 2) Sanitary and Phytosanitary Measures and Technical Barriers to Trade (Chapters A and B) and in particular A8 Conformity Assessment Related to SPS and B8 Conformity Assessment Related to TBT;

- 3) Pre-shipment Inspection and Other Formalities (Chapter C) and in particular C4 Import monitoring and surveillance requirements and other automatic licensing measures and C9 Other Formalities

Priority 2: To initiate exploratory talks for the extension of mutual recognition of conformity assessment in TBT and SPS, in accordance with the CEFTA Articles 12.2 and 13.3 and upon the condition of EU alignment

The Chair will encourage the relevant technical authorities of CEFTA Parties under the auspices of Ministries responsible for trade to initiate the exploratory talks for mutual recognition of conformity assessment in TBT and SPS conditional upon the full alignment to the relevant EU acquis is reached. This is the methodology which is accepted by CEFTA Parties for the mutual recognition of national AEO programmes and can be applicable for the areas under TBT and SPS.

Objective 2: Increasing Efficiency of CEFTA Dispute Settlement Mechanism

Priority 3: To provide platform for the discussion on technical proposal of CEFTA Secretariat for increasing efficient of CEFTA Dispute Settlement Mechanism

The Chair will put the technical proposal to be prepared by the CEFTA Secretariat in line with the relevant instructions of CEFTA Joint Committee of 2015 into the agenda of CEFTA Subcommittee on NTMs and ensure the comprehensive discussion of CEFTA Parties on the technical proposal before having it submitted to the CEFTA Special Joint Committee meeting.

Objective 3: Contribution to the Negotiations on Additional Protocol 5 through the Working Groups of the Subcommittee

Priority 4: To support the Negotiations on Additional Protocol 5

The Working Groups will be instructed by the Chair in case their technical contribution is required to the negotiations of CEFTA Additional Protocol 5 on Trade Facilitation. In particular, the Working Group on Risk Management is deemed to be instrumental for increasing awareness of TBT and SPS authorities on the importance of risk management, and the Working Group on electronic exchange of information for determining the scope of Maintenance + and SEED + (IT solutions) which are crucial for the implementation of CEFTA Additional Protocol 5.

4. ACTIVITIES OF THE CHAIRMANSHIP

Objective 1: Enhancing Transparency for Identifying NTMs and Eliminating NTBs

Priority 1: Addressing the main trade distortive non-tariff measures

Activity 1: Compilation and Classifying NTMs

The Subcommittee will invite all CEFTA Parties to submit their outstanding bi-lateral trade issues. Once the receipt of all the issues is completed, together with the cases recorded in the Market Access Barriers Database, and the cases identified by the GIZ financed Project on Market Access Barriers, the Secretariat will compile a list of issues, and classify them in accordance with Classification of NTMs.

The list will be submitted to the Subcommittee with a request to decide which areas that the Subcommittee will focus their efforts for preparing its recommendation to eliminate NTBs which are identified as NTBs.

In this regard, the Chair considers that the following would be the main areas where the majority of cases would be classified.

- 1) Price-control measures, including additional taxes and charges (Chapter F according to Classification of Non-Tariff Measures) and in particular F7 (Internal taxes and charges levied on imports)
- 2) Sanitary and Phytosanitary Measures and Technical Barriers to Trade (Chapters A and B) and in particular A8 Conformity Assessment Related to SPS and B8 Conformity Assessment Related to TBT;
- 3) Pre-shipment Inspection and Other Formalities (Chapter C) and in particular C4 Import monitoring and surveillance requirements and other automatic licensing measures and C9 Other Formalities

After agreeing on the list of areas and their classification, the Subcommittee will decide which Working Group will be instructed to work on which areas for the analysis of the cases and the preparation of recommendations how to eliminate them.

In case, one or more areas are not falling under the mandate of any Working Group but the Subcommittee such as the cases related to non-technical measures, the Subcommittee will directly be involved in analysing the cases.

Activity 2: Preparation of the Recommendations for the Elimination of Identified NTBs

Following the confirmation of the compiled list of issues, the Subcommittee on NTMs together with its Working Groups will devote their efforts for elaborating the recommendations for the elimination of NTMs which are identified as NTBs.

In these efforts, the consultation from the relevant international organisations according to their expertise, and the line DGs of the European Commission would be ensured.

The list of recommended actions will be prepared for the approval of the Committee of Trade Facilitation.

Thereafter, such list is to be submitted to the Committee of Trade Facilitation in order to make it part of the monitoring of the implementation of CEFTA.

Activity 3: Involvement of UNCTAD in the functioning of the Market Access Database (MADB)

In 2015, the CEFTA Parties agreed in principle to include UNCTAD in the functioning of the Market Access Barrier Database. In general, UNCTAD could be instrumental to advise CEFTA Parties in selecting the correct classification of cases which they will upload to the Market Access Barriers Database. Furthermore, UNCTAD can advise CEFTA Parties what necessary information and supporting documents need to be provided in order to compose a full-fledged case.

In this regard, the Chair will organise an ad-hoc meeting to agree on the scope of UNCTAD's involvement and instruct thereafter the Secretariat to initiate necessary contractual procedure with UNCTAD to ensure their involvement in the functioning of MADB.

Activity 4: Coordination and communication with GIZ project "Addressing Market Access Barriers in Selected Supply Chains"

In the framework of the GIZ project "Addressing Market Access Barriers in Selected Supply Chains", Subcommittee will take over the list of cases indentified by the Project and validated by the CEFTA Parties. The Subcommittee will include those cases and recommendations into its list of cases/recommendations which are to be submitted to the Committee of Trade Facilitation for monitoring.

Activity 5: CEFTA Management Information System (MIS)

The Working group on Electronic Exchange of Data will directly be in charge of following up the development of the CEFTA MIS and coordinate the signing of the MoUs between national statistical agencies and CEFTA Secretariat.

Priority 2: To initiate exploratory talks for the extension of mutual recognition of conformity assessment in TBT and SPS, in accordance with the CEFTA Articles 12.2 and 13.3 and upon the condition of EU alignment

Activity 6: Initiation of Exploratory Talks for Mutual Recognition of conformity assessment in TBT and SPS

The Chair will encourage the relevant technical authorities of CEFTA Parties under the auspices of Ministries responsible for trade to take into account the methodology developed for Additional Protocol 5 in order to ensure mutual recognition of national programmes upon the condition of the relevant national legislation in line with the EU acquis. Through this methodology, CEFTA Parties will recognise national programmes in case they are in line with the EU acquis. It therefore means that the acquis is to be recognised. Such methodology deemed to be instrumental for extending the

mutual recognition of conformity assessment in TBT and SPS, in case the relevant legislation is in line with the acquis.

The representatives of the European Commission and the experts from the relevant projects are to be invited to the meetings of Working Group on Technical Measures to advise any further technicalities needed for initiating the exploratory talks.

Objective 2: Increasing Efficiency of CEFTA Dispute Settlement Mechanism

Priority 3: To provide platform for the discussion on technical proposal of CEFTA Secretariat for increasing efficient of CEFTA Dispute Settlement Mechanism

Activity 7: Preparation of the technical proposal

As instructed by the CEFTA Joint Committee, the Secretariat will prepare its technical proposal after having consultations with the legal experts of the relevant international organisations. The proposal is to be submitted to the Subcommittee for its endorsement and reference to the Committee of Trade Facilitation. After having all the comments of the CEFTA Parties consolidated into the technical proposal, the proposal will be submitted by the Chair to the Special Joint Committee to be convened for dispute settlement.

Objective 3: Contribution to the Negotiations on Additional Protocol 5 through the Working Groups of the Subcommittee

Priority 4: To support the Negotiations on Additional Protocol 5

Activity 8: Preparation of a Questionnaire by the Working group on Risk Management

The Working group on Risk Management will prepare a Questionnaire in order to collect information about implementation of risk management policies by the national TBT and SPS agencies on strategic objectives, success rates and percentage of frequencies of physical inspections.

Activity 9: Follow up of the actions in the Action Plan falling under the mandate of the Working groups

After the signing of the CEFTA Additional Protocol 5 by mid-2016, an Action Plan (AP) will be accordingly prepared. Activities specified in the AP may require involvement of the relevant working groups which would perform any technical tasks and assignments related to the negotiations, if given by the Committee of Trade Facilitation.

Activity 10: Working group on the Electronic Exchange of Information to contribute to the finalisation of the IT related projects

The Working group on the Electronic Exchange of Information will be included in the process of drafting the Action Fiches for the IT related projects, such as Maintenance + and SEED + projects.

5. EXPECTED RESULTS

The results of the Montenegrin Chairmanship are expected to lead to the following outcomes corresponding to the two objectives mentioned above:

Objective 1: Enhancing Transparency for Identifying NTMs and Eliminating NTBs

- Working on the establishing of monitoring mechanism to follow-up the elimination process of the identified non-tariff barriers.
- NTBs which are expected to be eliminated are identified.
- Awareness and commitment of technical agencies to mutual recognition are increased.

Objective 2: Increasing Efficiency of CEFTA Dispute Settlement Mechanism

- The necessary adjustment in the dispute settlement mechanism of CEFTA is agreed by CEFTA Parties.

Objective 3: Contribution to the Negotiations on Additional Protocol 5 through the Working Groups of the Subcommittee

- Enhanced awareness of Technical Border Agencies on the trade facilitation related areas, to be covered by the Additional Protocol 5 .
- Working on establishment of the IT systems to be fully in consistent with the scope of Additional Protocol 5.

6. RISKS AND ASSUMPTIONS

The Chair foresees that the following issues are out of its control but assumes that any negative development thereon which may endanger the smooth functioning of the Agreement will be prevented by the joint effort of each CEFTA Party.

- Each CEFTA Party remains committed to the CEFTA process and its provisions;
- Coordination with TBT, SPS and Customs Authorities who will attend the meetings of Subcommittee and Working Groups will be made by Ministries responsible for trade on time and with high quality;
- International donors remain committed to support financially the CEFTA.

7. CALENDAR OF EVENTS

The tentative calendar for the year 2016 is as follows:

MEETING/EVENT	DATE	PLACE
1 st Meeting of Subcommittee on NTMs	February 2016	Brussels
1 st Meeting of the Working Group on Technical Measures	June 2016	Podgorica
1 st Meeting of the Working Group on Risk Management	June 2016	Podgorica
1 st Meeting of the Working Group on Electronic Exchange of Information	June 2016	Podgorica
Ad-hoc Technical Meetings on NTMs	March/October 2016	Brussels/CEFTA Parties
2 nd Meeting on Subcommittee on NTMs	June 2016	Podgorica