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## Joint Position Paper Removing Barriers on Free Movement of Workers in the EAC Region

### 1. Introduction

On 30th November 1999, the EAC Partner States signed the Treaty establishing the East African Community. The Treaty in article 5, paragraph 2 states that the EAC Partner States shall undertake to establish among themselves a Customs Union, a Common Market; subsequently a Monetary Union and ultimately a Political Federation. The Common Market Protocol (CMP) which came into force on 1<sup>st</sup> July 2010 holds provisions on free movement of persons, labour, services, capital and goods across the EAC.

The employers and employees of East Africa welcome the integration process as the facilitation of all factors of production to freely move across a common market within the EAC is considered to be a driving force for economic growth and job creation in the region. It is in this spirit that the East African Trade Union Confederation (EATUC) and the East African Employers Organisation (EAEO) and the constituencies of affiliated **national trade union centres and employers' organizations therefore** urge the political decision makers in East Africa to increase the speed of regional integration. Based on the constituencies, EATUC and EAEO have a special interest in the free movement of workers. In this respect it is a major concern that the implementation of this freedom provided for in the Common Market Protocol seems to be dragging feet, much to the detriment of workers and employers. The free movement of workers is equally important to the EAC integration process as free movement of goods and capital. Therefore it was discouraging to see that the free movement of workers was not even considered in the EAC Common Market Scoreboard 2014.

Given the importance of free movement of labour, EATUC and EAEO have embarked on a process to provide joint recommendations to governments of the EAC Partner States in order to speed up this process for the people of East Africa to feel the direct benefit of the regional integration while respecting the need for a time frame with adequate transitional mechanisms.

In this position paper, the EATUC and EAEO are focusing on the second pillar of the Treaty, namely the Common Market Protocol and the strategies aimed at achieving its full implementation with special focus on the issue of existing national work permit regimes as a barrier for the free movement of workers within the EAC

## 2. Background

The EAC Common Market aims to achieve widening and deepening cooperation among the Partner States in the economic and social fields for the benefit of the Partner States. The free mobility of labour is an important component as it not only leads to macro-economic benefits but also is a very tangible benefit of regional integration. In other words, it is a right which the EAC citizens feel directly when looking for new job opportunities. Employers benefit from the free labour mobility by having better chances of matching job requirements with skills and qualifications when recruiting new employees, thus improving productivity and efficiency.

Among the benefits created by free movement of labour are:

- The reallocation of workers across the region permits the exploitation of complementary resources discovered in new places;
- Cross border mobility also leads to a reallocation of competences across sectors equally which makes it possible to increase the use of new technologies and the growth of new industries;
- At the individual level, mobility creates room for improvements in economic circumstances of those whose skills or aspirations are a poor match for the job or location in which they find themselves;
- Free mobility sustains and expands the integration of economic activities within the Community;
- It promotes the common understanding and cooperation among nationals of all Partner States;

Therefore, there are important benefits to be reaped by increasing labour mobility on both an economic and an individual level. In addition, there are gains to be made at the cultural level as cross border movement of workers will be an important means to demonstrate the benefits of regional integration which is still met with scepticism by parts of the populations of the Member States. One of the key challenges for further integration is the lack of popular support and mobilization for the regional integration process. Better opportunities for job-seekers are a very visible benefit for the individual, and working together with other EAC citizens will increase the sense of mutual benefits and diminish myths about other nationalities, thus paving the way for a people centred and market driven integration necessary for the eventual realisation of the vision for having a political federation in EAC

### ➤ **Free movement of labour**

For these reasons the EAC Partner States have already agreed to remove restrictions on movement of labour. Under article 10 of the EAC Common Market Protocol the EAC Partner States guarantee the free movement of workers who are citizens of the other Partner States, within their territories. According to the protocol, EAC Partner States are committed to abolition of discrimination based on nationality in regard to employment, remuneration and other conditions of employment and work. Hence the protocol already provides a number of rights to the citizens of EAC countries. More specifically the protocol entitles citizens of any EAC Partner State to:

- (a)** apply for employment and accept offers of employment actually made;
- (b)** move freely within the territories of the Partner States for the purpose of employment;
- (c)** conclude contracts and take up employment in accordance with the contracts, national laws and administrative actions, without any discrimination;
- (d)** stay in the territory of a Partner State for the purpose of employment in accordance with the national laws and administrative procedures governing the employment of workers of that Partner State;
- (e)** enjoy the freedom of association and collective bargaining for better working conditions in accordance with the national laws of the host Partner State; and
- (f)** enjoy the rights and benefits of social security as accorded to the workers of the host Partner State.

However, the free movement of labour is still restricted by a number of barriers which has yet to be dealt with. These barriers to free movement relates to:

- Procedures for applying for work permits and costs for obtaining the permits
- Portability of social security benefits across borders
- Rights of workers working in another EAC country

### 3. Problem Analysis

Although the EAC Common Market Protocol has been in place for 4 years (since July 2010) following its ratification by all Partner States, the expected benefits for EAC citizens are yet to fully materialise. Partner States have not yet amended (harmonized) their internal work permit procedures to make room for provisions of equal treatment to EAC citizens, as provided for by article 12 of the CMP and the EAC Common Market Regulations on free movement of workers, Annex 2, regulation 6, subsection 9, whereby each country agreed to harmonise its internal labour policies, laws and programmes to facilitate free movement of labour within the Community to provide for equal treatment to EAC

citizens. This has a direct impact on furthering the free movement of workers as most employers are not able to freely access the skilled labour they need to match qualification requirements. Likewise, workers are still not able to compete for the regional job market due to the hassles surrounding the application process and issuance of work permits across the EAC.

This shows that implementation of the Common Market Protocol has been slow indeed. In addition to this, Annex II of the CMP stipulates a transition period which allows for the free movement for different specified professions or within specific sectors for each country. However, the professions mentioned in the Annex are only of a very high educational level (so called white collar workers) and thus excludes the common EAC Citizen (blue collar workers) from benefitting from the free mobility of labour. In addition, the countries have even been slow in implementing free movement within these categories listed in the Annex. The Annex II implementation plan has not been observed and most categories of professions mentioned in the Annex still cannot enjoy the right to move freely to take up employment in neighbouring Partner States. It makes good sense to have a transitional road map towards free movement as it allows the labour market to adapt to new circumstances and job seekers. At the same time it gives the population the opportunity to see the effects and thereby lower the scepticism towards increased competition in the labour market. However, with the slow implementation of Annex II and the fact that it only covers a road map until 2015; now is the time to start thinking of the next phase and draft a road map which gradually will include all professions and sectors in the EAC so all workers will benefit from this opportunity.

This is even more urgent when looking at the actual migration flows between the countries. People have always moved across the borders and a lot of people are working in other EAC states than their home country, albeit without the proper documentation. The high entry barriers in terms of permit fees and procedures drives workers towards less decent informal employment which further increases the informal sector and reduces workers protection. A system allowing workers to move freely would lead to an increase in formal and decent employment resulting in better working conditions and increased tax revenue.

Along the pathway to the full implementation of the CMP, challenges still abound. The process of obtaining work permits still remains as cumbersome and bureaucratic as work permit regimes and categorizations and procedures within Partner States vary. A study carried out by the national member organisations of EATUC and EAEO shows that there still remain significant obstacles for obtaining work permits as each Partner State still operates its own system and regimes. The procedures for obtaining a work permit remain complicated in each country and in more countries the work permit regime seems to be considered a means of immigration control rather than a tool for labour market regulation and integration. Hence, in most cases work permits are issued by Immigration departments under the auspices of Ministries of Home Affairs, rather than by organs and institutions under the auspices of Ministries of Labour.

As a result, there are more than 30 different permit categories across the EAC, with 3 classes being the lowest number per given Partner State while 19 classes of permits is the highest.

In Kenya and Rwanda there has been a declaration of easing the procedures for EAC citizens from other EAC countries. However, while permit fees have been waived other requirements (which may constitute non-tariff) barriers in obtaining work permits have been put in place. In Rwanda, it is only certain professions which can benefit from their free work permit scheme and in Kenya there are requirements of age above

35 years and minimum annual salary revenue of US\$ 24.000 for obtaining certain permits. Therefore, rejection rates are high (allegedly up to 80 %) and the free movement of workers is still not a reality on the ground. In more countries foreign workers inclusive other EAC nationals are only allowed to work, if proof is given by the employer that it is not possible to recruit a citizen from within the partner state itself. No preferential treatment is given to EAC citizens compared to other foreigners and the vision of having a common labour market within the EAC with non-discrimination and equal treatment of all EAC citizens therefore still remains to be made a tangible reality on the ground

#### 4. Current situation for obtaining work permits

The EAC Common Market Protocol is meant to create a common market where the free movement of all factors of production within the EAC are facilitated. This also requires standardization/approximation of work permits regimes in the EAC.

**The employers' organizations and national trade union centres affiliated to EAEO and EATUC** have undertaken a mapping exercise to collect information and data on the work permit regimes in the EAC Partner States. Data has been obtained by the national social partners in close liaison with the relevant national authorities, i.e. Immigrations.

The following facts over current realities and trends are meant to show how varied work permit regimes are in the EAC and to show how urgent action is needed to standardise the processes.

**In the table below the EAC member states are compared in regard to 6 key focus areas concerning the processing and obtaining of work permits:**

1. Work Permit classes. 2. Issuing authority, 3. Equal Treatment to EAC citizens, 4. Processing time, 5. Documents required 6. Fees Charged.

No	KEY ISSUE/COUNTRY	BURUNDI	KENYA	RWANDA	TANZANIA Main land	UGANDA	ZANZIBAR
1	<b>WORK PERMIT CLASSES</b>	3 A-C	11 A-M	19 Classes 36 sub - classes.	3 A-C	10 A-G	3 A-C
2	<b>ISSUING AUTHORITY</b>	Labour Ministry	Government Department	Directorate of Immigration Under the Ministry of home affairs	Labour Ministry And Immigrations.. Under Ministry of .home affairs.	Directorate of Immigration Under the Ministry of .home affairs ...	Labour ministry (And Immigrations Office in the United Republic of Tanzania)
3	<b>PROVISIONS FOR EQUAL TREATMENT OF EAC CITIZENS</b>	6 months gratis pass upon entry but no employment allowed	Free for EAC citizens Conditions of age limit and annual revenues too restricting	Free for EAC citizens But rejection rate too high as certain categories of employees are targeted	None	Free for Rwandans, Kenyans	None
4	<b>REQUIRED DOCUMENTS</b>	Passport Certificates Employment contract Curriculum vitae Burundi ID card for foreigner born in Burundi but kept his nationality of origin.	Passport Certificates Employment contract <b>Employer's</b> registration	Passport Certificates Employment contract	Passport Certificates Employment contract <b>Employer's</b> registration	Entry permit form Passport Covering letter from the Embassy Supporting letter from the Ministry of Foreign affairs	Passport Certificates <b>Employer's</b> registration Employment contract Police clearance Approval of the investment authority
5	<b>PROCESSING TIME as per law / provision</b>	1 month	5 days	5 days	7 days	20 days	14 days
6	<b>ACTUAL PROCESSING TIME</b>	Can take far beyond 1 month (up to 4 months)	Can take far beyond 3 months	Can take far beyond 5 days (Up to-3 months)	Can take far beyond 7 days (up to 6 months)	Can take far beyond 20 days (up to 3 months)	Can take far beyond 14 days (up to 6 months inclusive of obtaining residence permit)

7	<b>FEES : Lowest fees</b>	3% of annual revenues -	Free for EAC citizens	Free for EAC citizens	US\$ 2050	US\$ 200	\$ 300
	<b>Highest fees</b>				US\$ 3000	US\$ 3000 Free for Rwandans, Kenyans	US\$ 1500 (in addition to US\$ 2050 for non-URT-citizens)

The table above shows that instead of contributing to the realization of the full regional integration, as envisaged and provided for by the CMP, greater extent is seen with respect to permit categorizations, fees charged, provisions for equal treatment of EAC citizens, issuing authority and application processing time. The work permits regimes across the EAC region are divided into different classes in each Partner States. Work Permits are classified into A, B, C, D, E up to M, which are further divided into various subclasses to cater for different professions and sectors. Currently the five EAC Partner States table a total of more than 30 work permits classes and categories. However, the work permit classes do not distinguish between the EAC citizens and nationals of other countries outside the EAC and from farther afield. The work permits regimes in Kenya, Uganda, Rwanda and Burundi holds some provisions for preferential treatment to EAC citizens.

The Republic of Burundi possesses a work permit regime of 3 classes (A-C), and so does The United Republic of Tanzania (inclusive of Zanzibar). In Kenya and Uganda both countries counts around 20 permit classes, while Rwanda counts 19 classes and 36 subclasses.

In Burundi the processing and permit fees are charged as 3% of the annual salary revenue of the worker. In Tanzania the permit fees range from US\$ 1500 to US\$ 3500. Kenya and Rwanda have abolished processing fees for EAC citizens. So has declared Uganda as far as Kenyans and Rwandans are concerned( only made provisions for waiving of fees in 2015 national budget ) while the permit fees are ranging from US\$200 to 3000 for other nationals. In Zanzibar the work permit fees range from US\$300 to 1500, but on top of that foreign workers (except people from Tanzania Mainland) are required to obtain a resident permit for The United Republic of Tanzania at an additional cost of more than US\$ 2000, making Zanzibar the most expensive place within EAC to be allowed to work as a non-citizen.

Looking at the information displayed in the table, it is evident that the gaps are still too wide within the permits regimes in the EAC region. Thus, urgent actions need to be taken to ensure that workers and employers deal with somewhat the same applying conditions throughout the EAC. Only in two countries, Rwanda and Kenya, the work permit systems afford equal / preferential treatment to EAC citizens as work permits fees have been abolished. The number of work permit classes to apply for is still high and the fees are exorbitant and unforgiving to semi-skilled and lower skilled workers in particular.

**Below follows a description of the discrepancies between the Common Market Protocol and the situation on the ground.**

**a) WORK PERMIT CLASSES AND PROCEDURES**

The EAC Common Market Protocol Regulations, Annex II, on the free movement of workers stipulates (regulation 6, subsection 9) that ***”the work permit or a special pass issued under these Regulations shall be issued in accordance with the harmonized classification of work permits and forms, fees and procedures as may be approved by the Council”***.

However, work permit classes and other procedures which were supposed to have been harmonized and approved by the EAC Council of Ministers, till today have not been harmonized and implemented by the relevant national authorities as each country still operates its own work permit regime.

**b) ISSUING AUTHORITY**

Regulation 6, Subsection 1 of Common Market Regulations Annex II stipulates that ***”A worker who has a contract of employment of a period of more than ninety days in the territory of another Partner State shall apply to the competent authority for a work permit within fifteen working days from the date of entry into the territory of the host Partner State”***.

The Issuing Authority varies within the Partner States. In Tanzania Mainland and Zanzibar the Ministry of Labour (Labour Commissioner) is responsible for issuing the work permit in close collaboration with Ministry of Home Affairs, Immigrations Services Department, who is responsible for issuance of Residence Permits. In Burundi, a tripartite committee composed of three Ministries (Labour, Public Security and Foreigner Affairs) and Employers and Workers Organizations handles and approves the applications. In Kenya the Ministry of Home Affairs, Department of Immigration Services issues the entry/work permit. In Rwanda the issuing authority is the Directorate General of Immigration and Emigration while in Uganda the issuing authority is the Directorate of Immigration under the Ministry of Internal Affairs. In Rwanda, the different types of permits, inclusive of work permits are issued through a One-Stop Center which also issues many other licenses on the basis of an “Occupations on Demand List” (ODL) and other criteria established in consultation with all the concerned private and public stakeholders. Obviously the Rwanda and Burundi models constitute the best practice to be adapted by other EAC countries to their respective national realities.



### **c) PROCESSING TIME**

Regulation 6, subsection 7 in the Annex II of Common Market Regulations stipulates that **"the competent authority shall, within thirty days of application for a work permit, issue a work permit for an initial period of up to two years which may be renewed upon application"**.

However, the processing time varies within the Partner States but of even more concern is the huge difference between the official processing time as provided for in laws and regulations and the actual processing which most often by far exceeds the official processing time, making it a long and cumbersome process to obtain the permit.

### **d) REQUIRED DOCUMENTS**

Regulation 6, Subsection 2 of Common Market Regulations Annex II also stipulates that **"The application for a work permit shall be supported by a valid common standard travel document or a national identity card, where that Partner State has agreed to use the national identity card as a travel document, the contract of employment and any other document the competent authority may require"**.

The required documents for application of work permits are almost the same within the Partner States although for Uganda apart from those documents mentioned in the regulation, they ask for a covering letter from embassy and supporting letter from the Ministry of Foreign Affairs and in Zanzibar they require police clearance and approval from the investment authority. The requirement for additional documents for clearance and approval makes the application process more cumbersome, slow and bureaucratic.

### **e) FEES CHARGED**

Regulation 6 mentioned above, sub section 9 stipulates that **"the work permit or a special pass issued under these Regulations shall be issued in accordance with the harmonized classification of work permits and forms, fees and procedures as may be approved by the Council"**.

However, the fees and other procedures which were supposed to have been harmonized and approved by the EAC Council of Ministers, till today have not been harmonized, approved and implemented by the national governments and relevant national authorities. Each country still charges its own fees and has various residence /work permit tariffs as per profession and category. The size of the fees in most countries excludes a large proportion of EAC citizens from enjoying the right of free movement, even though the permit fees in most cases are paid for by the employer. High fees however are prohibitive no matter who are supposed to pay.

The EAEO and the EATUC take note that some recent developments hold promises that the harmonization of work permit regimes across the EAC will soon be given the priority needed to make free movement of workers a tangible reality on the ground rather than political visions and provisions on paper in the Common Market Protocol.

Reports from meetings in March 2014 of the National Implementation Committees (NICs) on the EAC Common Market Protocol and of the Regional Monitoring Group on the Implementation of the EAC CMP indicates that the Council of Ministers has adopted harmonized classifications and procedures for issuance of residence and work permits, while harmonization of forms and fees remain outstanding. At the same time it is noted in the Framework for Monitoring and Evaluating the Implementation of the EAC Common Market Protocol (M&E Framework) that no harmonization of work permits, forms, fees and procedures has taken place yet as of 31<sup>st</sup> December 2013. It is therefore noted there is a need to expedite the harmonization of the work permit forms, fees and procedures in the region. In the 20<sup>th</sup> meeting in July 2014 of the Sectoral Council of Ministers responsible for EAC Affairs and Planning it was noted by the Session of Ministers that the signing of the East African Monetary Union (EAMU) Protocol by the Summit places further urgency of ensuring that the Common Market Protocol is implemented given it is a major precondition for the attainment of the EAMU. The Session noted that the Chiefs of Immigration had considered a report from Immigration Experts to review the harmonized work/residence permit fees, forms and procedures within the EAC Common Market Framework. The Session noted the importance for the EAC Secretariat to proceed with the process of harmonisation of residence/work permit regimes and the Sectoral Council directed the Secretariat to convene a multi-sectoral meeting of experts to address the issue of harmonization of work/residence permits for East Africans as guided by the provisions of the EAC Common Market Protocol (EAC/SCMEACP20/Directive 20).

**The EAEO and EATUC welcome any steps taken to implement the CMP provisions on free movement of labour and urge the EAC as well as national Governments across the region to show their commitments and take all necessary steps and measures to mainstream the EAC Regional Integration Programmes and commitments into the national policies, plans, programs and budgets. EAEO and EATUC also urge all relevant regional and national stakeholders from civil society and private sector to continue to lobby and advocate to prod the EAC secretariat and national governments to speed up the process for implementing the provisions of the Common Market Protocol.**

Besides convening the much needed Sectoral Council meetings at the EAC there is a need for the Partner States to adhere to the requirements of the indicators in the M&E Framework by following the data collection guidelines and provide disaggregated data to assist in the monitoring of the Common Market Implementation. When looking at the M&E Framework data (matrix) from March 2014 NIC-meetings and comparing it to data collected by the national employers organizations and trade union centres affiliated to EAEO and EATUC in collaboration with relevant

national authorities, it is obvious that a lot of data is missing or need validation. Up to date statistics are key to developing policies and for securing implementation of a common labour market.

#### 4. EAEO and EATUC joint Recommendations

It is clear that the implementation of the Common Market Protocol, although having registered some progress in certain regards, still have a long way to go before its benefits can be fully enjoyed.

It is against this back drop that the Regional employers and workers apex bodies, the East African Trade Union Confederation EATUC and the East African Employers Organisation EAEO and its constituency of affiliated national employers organisations and trade union centres are recommending the following urgent courses of action to be initiated by the governments of the EAC Partner States as well as the EAC Secretariat, the East African Legislative Assembly and other competent organs of the EAC and subsequently by the EAC Council of Ministers and the Heads of State when meeting in the EAC Summit:

#### ➤ **The EATUC and EAEO are of the joint position that:**

##### **Short- term recommendations**

- i. **Processing time for the handling of work permits** should be shortened, to a maximum of 30 days. First priority should be given to the handling of work permit applications for EAC citizens. If the processing time goes beyond 30 days for EAC citizens the permit should be granted automatically.
- ii. **Required documents for work permit applications** should be standardized and made uniform throughout the EAC region so as to easing the application process and to cultivate the culture on oneness and furthering integration between the five Partner States.
- iii. **A revised version of Annex II of the CMP** should be put in place when the current one expires in 2015. The new Annex should put in place a road map for the gradual implementation of free labour mobility which eventually compromises all sectors and all categories of blue collar workers as well as white collar workers. The new annex on implementation of free movement of workers should be put in place through a tri-partite mechanism at the EAC regional level and should be administered at national level through tripartite forums to gradually extend country lists for professions and sectors allowed the right of free movement based on relevant labour market information. While a transition period allows addressing the challenges and fears in the individual Partner States, the final goal of allowing all workers to enjoy the benefit of free movement across the EAC should be reached within no more than seven years.

- iv. **All special requirements** outside the provisions of the CMP such as requirements of minimum annual salary income level or age limits etc should be removed immediately.
- v. **Simple versions of the CMP documents** should be created and even translated into common local languages in order to raise awareness among the people of East Africa about the benefits of free movement of labour and regional integration in order to address xenophobia and sensitize people on their right to seek for employment across the region.
- vi. **Monitoring and evaluation of progress in implementation of the Common Market Protocol should be improved by Partner State adherence to the requirements and guidelines of the EAC M&E Framework.** Collection and validation of disaggregated data should be improved by inviting **employers'** organizations and national trade unions centers and other relevant stakeholders on board the National Implementation Committees (NICs). Furthermore, the EAC Scorecard should in future include progress on implementation of the CMP provisions on free movement of labour on top of the free movement of services and goods.
- vii. **A centralized data-base should be established at the EAC regional level** to capture information concerning work permit issuance and migration flows within the region as well as in and out of the region based on up-dated statistic information from the Partner States. Up to date statistics are key to developing policies and for securing implementation of a common labour market.

### **Long-term recommendations**

EAO and EATUC vision is that work permits should not be a prerequisite for free movement of workers in the EAC region. However, the following recommendations need to be considered to achieve this vision:

- i. **Work permit classes** should be standardized and come with a comprehensive regional work permit standard regime for Partner States to customize as per their national laws.
- ii. **Issuing authorities of work permits** should be centralized into national One-Stop Centers established per Partner State on tri-partite basis composed of representatives from relevant ministries, **employer's** organizations and trade union centers and other relevant stakeholders. By setting up one issuing authority per country time consumption and delays caused by bureaucratic practices in the processing of permit applications can be avoided to the benefit of employers and workers.

- iii. **Work Permit Fees** should be abolished for EAC citizens in the spirit of oneness and for furthering the regional integration and to institute equal treatment of EAC citizens and even preferential treatment compared to other foreign workers in order to make the benefits of regional integration real and tangible for workers and employers within the region.

Besides recommending actions to be taken in securing easy issuance of work permits for EAC citizens, EATUC and EAEO also recommend that action be taken to secure the portability of social security benefits across borders in the EAC region, for implementing common identity cards to be used as travel documents and for amending national employment policies and labour legislation in a process of gradual approximation and harmonization in order to secure the rights of workers in the EAC region no matter if they reside and work in their country of origin or in another Partner State.

As an overriding recommendation, the EAEO and EATUC recommend and urge the East African Legislative Assembly, the EAC Council of Ministers, the EAC Summit as well as the Heads of State and national Governments and Authorities in the EAC Partner States to fulfil the vision of creating an East African Common Market by implementing the provisions already agreed upon in the Common Market Protocol. This in the first place demands for political leadership and commitment and for availing the budget funds necessary for furthering the EAC integration process, inclusive the realization of the free movement of workers across the region.

To secure progress in implementation of the CMP provisions at national level, EAEO and EATUC is in support of the idea that the EAC should institute a mechanism of sanctions against Partner States that institute Non-Tariff Barriers (NTB Bill).