



**SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
NACALA ROAD CORRIDOR STUDIES
FEASIBILITY STUDY FOR ONE-STOP BORDER POSTS,
DETAILED ENGINEERING DESIGN AND LEGAL FRAMEWORK
FOR OPERATION OF ONE-STOP BORDER POSTS AT
MCHINJI [MALAWI]/MWAMI [ZAMBIA AND CHIPONDE
[MALAWI]/MANDIMBA [MOZAMBIQUE].**

**FEASIBILITY REPORT
VOLUME 3: LEGAL FRAMEWORK**



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CHAPTER ONE

1. A Synopsis of the One Stop Border Post (OSBP) Concept

One Stop Border Post (OSBP) may functionally be defined as a process where persons, vehicles and goods of one country make a single stop to exit one country and enter another. The concept has been tried and tested for instance countries in Western Europe introduced this approach from as far back as the 1960s. A number of OSBPs have been built between USA and Canada and in the developing regions of Asia. There is no single OSBP model. The concept can therefore be adapted to differences in the physical terrain as well as operations and legal requirements that exist between states.

1.1 The legal basis for one stop (single stop) customs Inspection.

The legal force driving the one, single or joint customs control is the collection of International agreements established over the last three decades that relate to the simplification of customs procedures and the harmonization of border controls. The most important is the *International Convention on the Simplification and Harmonization of Customs Procedures* also known as *the Kyoto Convention* which came into force in September 1974 and has been ratified by 62 states. One stop and joint control arrangements have been applied in Western Europe since early 1960s. Within the East Africa Community countries several OSBPs are being constructed namely at Malaba - Kenya /Uganda border, Rusumo-Tanzania/Rwanda border, Akanyaru-Haut-Rwanda/Burundi border, Goma Rwanda/DRC border etc. Within the SADC countries there is the Chirundu osbp between Zambia and Zimbabwe and Lebombo/Ressano Garcia Mozambique and South Africa border. Kyoto

OSBPs aim at reducing the number of stops experienced in a cross border movement by combining the border control activities of adjoining countries at a single location in each direction.

- ❖ Border controls involve, in concept, the performance of various functions by officers from different governmental organizations undertaken in terms of specific authority granted in a State's national laws. It is imperative that those functions are exercised by various officers and the powers they exercise be of necessity authorized in law as they potentially entail limitation or infringement of rights of individuals or corporate entities.
- ❖ The current two border post concept, which is commonly operational at most border posts raises no difficulties in terms of the functions and authorities under which the said governmental organizations and agencies charged with border control functions operate as they are located within territories of each state to which the national laws of that state have inherent application and jurisdiction.

1.1 Definition of OSBP

There is no single definition of what constitutes a one stop border post. International examples highlight the following principal features;

- Offices of both states are relocated in close proximity, necessitating only ‘One Stop’ for border crossings.
- A control zone(or zones) is demarcated within which officers from both states conduct controls in terms of their respective laws.
- The control zone comprises offices, inspection areas and related facilities and is usually located within the national territory of only one state.
- Immigration and import and export formalities are handled as a seamless transaction between the two countries.
- Inspections and searches of cargoes or vehicles are generally conducted in the presence of officers from both states.

1. 3 Rationale for One Stop Border Post

A border post can be defined as the “location where one country’s authority over goods and persons ends and another country’s authority begins”. It is the location where a multitude of government agencies (i.e Revenue Authority, Customs, Immigration, Security, Police, Ministry of Agriculture, Ministry of Health, Bureau of Standards etc) are involved in the various documents and goods controls, the calculation and collection of duties and taxes and immigration. The multiplicity of those agencies operating on both sides of the same border doubles the bureaucracy at border posts which translates into congestion and delays and the attendant escalation of costs of consignments. In Africa border check points have been overstretched in terms of manpower and infrastructure. While they are primarily intended to prevent the entry into the country of undesirable individuals (eg criminals or others who pose threats) and the smuggling of illegal goods, they face a range of obstacles to the free flow of people, services and goods. These can be summarized as the limited infrastructure available, congestion due to increased traffic volumes, delays due to the use of outdated manual procedures, corruption and illegal trading.

In Eastern and Southern Africa, goods are transported through 10 major corridors, one of which is the NACALA corridor. The large number of border posts and road blocks along those corridors and the inefficiency of the procedures are overwhelmingly costly to traders and business in the sub-region.

The customs environment in the Southern and East Africa sub- region is characterized by a lack of coordination among the multiple government agencies on both sides of borders. This raises the common challenge of the duplication of procedures at each border which in turn increases the potential for risk management and fraud. While some countries in the sub-region have entered agreements to standardize customs procedures and coordinate government agencies, limited progress has been achieved in the integration of processes and cooperation between border checkpoints.

The lack of computerized customs management systems results in lengthy and inefficient manual operations carried out by traders and officials at borders. In most cases where customs systems are not harmonized, the different government agencies at borders cannot interact or trade. The

incompatibility of the systems that are tailor made to suit each country's specific needs, together with unreliability of networks, pose additional threats to the cost of trade in the sub-region.

An OSBP is a border post that combines two stops for national border control processing into one and consolidates border control functions in a shared space for exiting one country and entering another. It uses simplified procedures and joint processing wherever appropriate.

OSBP as a tool for co-ordinated border management entails a number of advantages for instance:-

- Simplified documents preparation.
- Promotion of border crossings resulting from harmonization of inspections procedures.
- Reduced border crossing times for transporters and passengers
- Efficient service delivery through shared information and experience.
- Reduced workload owing to sharing of assignments.
- Effective cross border control
- Ensures more effective use of valuable assets and reduced cost.

However, the OSBP concept envisaged for common border controls requires additional legal authority beyond that which is required for the current two-stop border post concept for two main reasons:-

- 1) OSBP entails the performance of border control functions by various officials of one country according to their national laws extraterritorially (outside their territory) in an adjoining country and vice versa.
- 2) A legal mandate will be required for hosting arrangements for the officials of one country operating in adjoining country in terms of their own national laws and vice versa.

The exercise of such functions by the border control officials of one adjoining country within the territory of another country requires the approval and concurrence of the hosting country. Additionally the legal framework in place would provide for the administration and management of wider safety and security functions including the general maintenance of law and order (as distinct from border controls) at such OSBP.

1. 4 The principle of Extraterritorial Application of National Laws

It is an established legal principle of public international law that national laws generally only apply within the territory of the state."The exercise of jurisdiction is limited save by special

international agreement, to the territory of each state so that the state can only exercise it over persons or things within or coming within the territory” (Law of Nations by J.E.S Fawcett pg 54)
The principle of extraterritoriality allows a state to extend the application of specific national laws to a place located outside its own territory with the agreement of the state in which such laws are intended to apply. It is an exception to the common law rule and to that extent, an OSBP law would need to clearly define which national laws apply extraterritorially and where exactly in the territory of the other state such laws apply.

Application of the Principle of Extraterritoriality: In International Law, extraterritoriality exempts certain diplomatic agencies and persons operating in a foreign country from the jurisdiction of the host country. Instead, the agency or individual remains accountable to the laws of the native country.

1.5 The Principle of Hosting arrangements

Ordinarily in terms of the same principle of territorial application of national laws, officials of a state are limited in the exercise of their functions and application of their national laws to the territory of the state. The exercise of such functions and applications of the national laws in the territory of another state of necessity need to be agreed on and authorized by such other state in its own national laws.

The legal question that arises with respect to these two principles of extraterritoriality and hosting arrangements relate to the extent to which current border controls or other applicable laws provide for the application of these principles to enable the effective implementation of the OSBP concept to the common borders of the countries seeking to implement OSBPs.

1.6 Defining borders

The notion of the “border” is central to the concept of statehood and the state sovereignty.(Ref: 1.3 above)The border demarcates the zone in which a state exercise jurisdiction and this includes the development, application and enforcement of policies and laws. It defines states in legal and geographical terms.(Ladley & Simmons 2007,pp 6-11)

The border also connects countries with each other and the effectiveness and smooth operation of these connections are central to the economic and social development of counties.

1.7 Types of Border Posts

(a)Traditional border post:(Two stop border post)In a traditional border operation two sets of activities are performed separately at each border post:

- procedures required to exit a country and
- Procedures required to enter a country.

In a traditional border post, exit procedures are carried out on one side of the border for persons, vehicles and goods leaving the country. Entry procedures are carried out on the other side for persons, vehicles and goods arriving in the country. Activities generally involve immigration, customs and other border control functions depending on the national requirements and laws that

govern border controls. For a person using a border post it involves going through a variety of paperwork, procedures and payments and then driving or walking a few meters and repeating the process on the other side. For passenger buses, the buses stop on one side of the border and the passengers go into the terminal. Luggage and cargo are off loaded and inspected as needed. This takes one to two hours, then the bus is driven to the other side of the border and the same processing is repeated for another one or two hours.

(b) OSBP Models

- (i) Straddle facility-**a single building is constructed on the border so that officers within the building are actually operating on their own territory. This model can be used when a new facility is being built and the land is relatively flat. The advantage is direct access to each national hinterland and the fact that most controls are exercised on national soil with ready access to national police and the courts. Nevertheless, joint inspection and other joint activities still require a legal framework authorizing officers to execute controls in the common control zones(CCZ) within the adjoining state. An example of a straddle facility is at Nemba/Gasenyi on Rwanda/Burundi border and at Lebombo/Ressano Garcia on the South Africa/Mozambique border.
- (ii) Common One Country Facility-** a single shared facility is constructed in one of the border countries to accommodate officers from both countries for carrying out border controls. This also has the advantage of being a single facility. This model requires sufficient trust, cooperation and political good will between the countries to build and operate in only one of the countries. In situations where hostilities between the two countries may flare up any time, this facility may prove inappropriate. In this model, one country will need the authority to carry out controls in the host country and the host country will need a legal framework which allows foreign officers to work in their territory.
- (iii) Juxtaposed Facilities-**Shared facilities are operated in the country of entry in each direction. This facility is generally used where facilities already exist. National law in both countries must enable officers to carry out their laws in a ccz in the adjoining state (extraterritorial jurisdiction) and hosting of foreign officials. In the case of juxtaposed border posts, there are two separate facilities, entailing only one stop for vehicles and pedestrians in each direction. Juxtaposed facilities also encourage cross border cooperation. This is the most common form in use because it can be established in any terrain and does not require either country to give up having a border facility. Where facilities are already in existence, establishing an OSBP requires modification to the buildings. The Chirundu OSBP on the Zambia/Zimbabwe border s an example of a juxtaposed model.

1.8 Types of Border Posts Currently at Mchinji/ Mwami and Chiponde/_Mandimba.

- At the Mchinji/Mwami border post, the existing model is the traditional two stop border post with facilities on both sides of the border in close proximity to the border between the two countries.
- At the Chiponde/Mandimba border, the existing model is the traditional two stop border posts. Both posts are not located at the actual border between the two countries. The Chiponde post is located 1.5 kms from the actual border and the Mandimba post is located 4.5 kms from the actual book.

CHAPTER TWO

2. Examination of the existing border Legislation at Border Posts in Zambia, Malawi and Mozambique.

2.1 Zambia.

In 2009, Zambia passed the One Stop Border Post Act (No 8 of 2009) The date of assent for the same was 31st March, 2009. This Act was passed during the planning and subsequent construction of the Chirundu OSBP as one of the requisite operational pieces of legal documents. The Act provides for **“agreements by the Republic of Zambia with neighboring States on the implementation of one stop border processing arrangements; authorize the application of the laws of Zambia and the laws of the adjoining state in the one stop border post.....”**

Under section 2 of the Act **“Adjoining state”** means neighbouring State with whom the Government enters into an agreement establishing a one stop border post.

Section 3(1) of the Act provides the President may enter into an agreement with any neighbouring state or territory with a view of facilitating trade. The President may delegate these powers to the Minister (section 3 (2)).

Under section 3(3) of the Act provides that an agreement entered into pursuant to subsection (1) **shall** allow for the application of the principles of (a) **extraterritoriality** and (b) **hosting arrangements**.

Section 6(1) of the Act provides for legislation related to one stop border post. The legislation is listed in the Schedule to the Act. In the Schedule twenty (20) different legislations are listed as the basis for border control operations by the institutions specified in the legislation. The Minister may by regulation add or remove any legislation from the schedule (section 6(2)) Currently not all the legislations listed in the Schedule to the Act are being enforced at the borders, At the Mwami*** post the Government agencies operating at the border are:

- Immigration, under the Immigration and Deportation Act. Cap 123
- Health, under the Public Health Act. Cap 295
- The police, under the Police Act. Cap 107.
- The Zambia Revenue Authority under Cap 321
- Drug Enforcement Commission under the Narcotic and Psychotropic Substances Act, Cap 96
- Road Traffic and Safety Authority under Road Traffic Act No 11 of 2002
- Chipata Municipal Council Officials who collect motor vehicle fees from all vehicles entering Zambia as per the Government Act No 22 section 70.

Apart from the above Government agencies there are also several facilitating agencies operating at the border. These are:

- Clearing and Forwarding Agents (CFAS) These are licensed by Customs to provide Clearing and Forwarding of imports and exports on behalf of traders.

2.2 Malawi (Mchinji)

Malawi has not yet passed an OSBP Control Act. According to the USAID Technical Report on Coordinated Border Management (CBM) Mchinji Border Operations Assessment, a total number of 13 agencies were found to operate at Mchinji but from visits made to and a workshop held at the Mwami/Mchinji border by the Consultant's team, the following agencies were found to be operating at Mchinji.

- Immigration
- Malawi Revenue Authority and COMESA
- Health
- Police
- Malawi Bureau of Standards
- National Roads Authority
- Agriculture/veterinary
- Border monitoring
- Clearing Agents
- Insurance
- Bank

Chiponde Border Post ***

- Customs
- Immigration
- Health
- Agriculture/Veterinary
- Police
- Clearing Agents.
- Insurance
- Bank

2.3 Mozambique-Mandimba***

Like Malawi, Mozambique does not have an OSBP Control Act yet. The agencies operating at the Mandimba border are:

- Mozambique Revenue Authority
- Immigration
- Health
- Police
- Agriculture
- Customs
- Insurance
- Border Control
- National Road Administration

*** Information obtained from visits and workshops to and organized by the Consultant's team at the Mchinji/Mwami and Chiponde /Mandimba borders.

N/B:This report does not include analysis of the border control legislation for Malawi and Mozambique as the said legislation has not been availed to facilitate the exercise.

2.4.Roles and responsibilities of the different agencies present at the border posts in Zambia, Malawi and Mozambique

(a) Zambia (Mwami)

- i) **Customs-Zambia Revenue Authority;** Revenue collection and trade facilitation
- ii) **Immigration;** Regulates entry and exit of persons, issuance of visas, permits and border passes.
- iii) **Police/security;** controls security, law and order
- iv) **Drug Enforcement Commission;** controls the importation, exportation, production, possession, sale, distribution and use of narcotic drugs and psychotropic substances.
- v) **Ministry of Agriculture;** Regulates the importation and exportation of agricultural products for the purpose of controlling the spread of plant diseases and regulating sanitary and phyto-sanitary issues.
- vi) **Port Health;** Enforces international health standards, prevention and suppression of diseases and protecting the public against health hazards.
- vii) **Road Transport and Safety Authority/Road Authority;** Enforces vehicle standards, ion and collects road tolls.
- viii) **Clearing and forwarding agents;** Provides the private sector service of transport and clearing goods.
- ix) **Insurance companies;** Sell Third Party Insurance
- x) **Chipata Municipal Council Officers;** Collects fees from all vehicles entering Zambia. Under the Government Act No 22 section 70,all vehicles entering Zambia except Government and diplomatic vehicles are liable to pay Council fees when entering Zambia. Officials from The Municipal Council are strategically placed before the entry gate to the border complex.

(b) Malawi (Mchinji)

- i) **Customs-Malawi Revenue Authority;** Responsible for collecting the duties and taxes on imported goods.
- ii) **COMESA-**Attached to Customs
- iii) **Immigration-**Process and issue visas in accordance with the existing policies.
- iv) **Malawi Police Service-**Controlling movement of people entering and leaving the country in order to uphold the security of the state.
- v) **Bureau of Standards;** Monitors the quality of imports coming into Malawi.

- vi) **National Roads Authority;** Responsible for collecting toll fees on foreign registered vehicles greater than 3000kg. Toll fees are charged differently for different countries. The fees are charged according to the distance travelled in Malawi payable in US dollars.
- vii) **Clearing and Forwarding Agents;** The linking component between the exporter/importer/driver and all border agencies responsible for clearance of goods at the border.
- viii) **Insurance Agent(Prime Insurance);** Sells third party insurance to foreign vehicles entering Malawi and any local cars that need insurance.
- ix) **Agriculture;** Inspects agricultural products, both imports and exports to ensure they are free from pests and diseases.
- x) **Health-**Enforces international health standards, prevention and suppression of diseases and protecting the public against health hazards and fraud in the sale and use of food, drugs, cosmetics and medical devices.
- xi) **Bank-**provides banking facilities for border users.

(c) **Malawi (Chiponde)** Functions performed are the same as those performed at Mchinji although not all the agencies in Mchinji operate at Chiponde.

(d) Mozambique (Mandimba)

- i) **Alfandega-Customs.**
- ii) **Mozambique Revenue Authority;**
- iii) **Migracao-Immigration;**
- iv) **Guarda da Policia-Border Police;**
- v) **Agricuisona-Agriculture;**
- vi) **Posto Guarda Frontera-Border Control;**
- vii) **Fundo De Estrada-National Road Administration**

CHAPTER THREE

3. Examination of some applicable Treaties, Protocols and Agreements.

3. 1 SADC Treaty: This is the founding document for the establishment of the Southern Africa Development Community (SADC) In pursuance of the principles of “Towards a Southern Africa Development Community” a declaration was made by the Heads of State or Government of Southern Africa at Windhoek, Namibia on 17th August, 1992 affirming their commitment to establish a Development Community in the region. The treaty entered into force in 1993 and was amended in 2001 by the Agreement Amending the Treaty of SADC.

The Declaration of the SADC Treaty outline the principles, objectives and general undertakings of The community, membership, institutions, meetings, areas of co-operation and relations with some other states and organizations. It was signed by Malawi, Angola, Botswana Lesotho, Mozambique, Namibia, Swaziland, Tanzania, Zambia and Zimbabwe. 10 out of the current member states.

The Headquarters of SADC are at Gaborone in the Republic of Botswana.

Article 3:

1. SADC shall be an International organization and shall have legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued.

2. In the territory of each Member state, SADC shall pursuant to paragraph I above have such legal capacity as is necessary for the proper exercise of its functions.

Article 5: Objectives

1(h) To strengthen and consolidate the long standing historical, social and cultural affinities and links among the peoples of the Region.

In order to achieve the objectives under article **5(1)** the Member States undertake to inter alia,

Article 5,2 (b) to encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region and to participate fully in the implementation of the programmes and projects of SADC.

Article 6: General Undertakings:

Article 6.1 Member States undertake to adopt adequate measures to promote the achievement of the objectives of SADC and shall refrain from taking any measures likely to jeopardize the sustenance of its principles, the achievement of its objectives and the implementation of the provisions and the implementation of the Treaty.

Article 6.6 Member States shall cooperate with and assist institutions of SADC in the performance of their duties.

Article 9: Institutions

The following Institutions are established by the SADC Treaty:

- (a) The Summit of Heads of State or Government
- (b) The Council of Ministers
- (c) Commissions
- (d) Standing Committee of officials
- (e) The Secretariat
- (f) The Tribunal.

Article 24: Relations with other states, Regional and International Organizations.

Article 24.1: Subject to the provisions of Article 6(1), Member States of SADC shall maintain good working relations and other forms of cooperation and may enter into agreements with other states, regional and International organizations whose objectives are compatible with the objectives of SADC and the provisions of the Treaty.

CHAPTER 13 :Sanctions, Withdrawals and Dissolution

Article 33: Sanctions may be imposed against any Member State that;

- 1(a) persistently fails without good reason to fulfill obligations assumed under the Treaty
 - (b) Implements policies which undermine the principles and objectives of SADC
 - (c) is in arrears for more than one year in the payment of contributions to SADC
2. Sanctions shall be determined by the Summit on case by case basis

Article 34: provides for procedure for withdrawal from the Treaty

3. 2 SADC Protocols

The Protocols are the instruments of implementation of the SADC Treaty and includes any annex, amendment or extension thereof which form an integral part of the protocols. SADC Member States have 26 legally binding protocols.

This report will examine some provisions of the **SADC PROTOCOL ON TRANSPORT, COMMUNICATION AND METEOROLOGY** as being the Protocol which is relevant and impacts on the study herein and which have a direct bearing on the study. The Protocol was passed on 1st January, 1997. The Protocol oversees all aspects of transport, communications and meteorology throughout Southern Africa with the intention of establishing systems for these sectors that function efficiently and productively thereby promoting economic and social development. Through the Protocol Member States agree to strategic goals and policies for an integrated network of transport, communications and meteorology with specific funding sources, regulatory mechanisms, environmental controls and technical standards. The Protocol also outlines an institutional framework for its implementation including breakdown of committees and sub committees, procedures and duties as well as systems for monitoring progress and addressing non-compliance with regulations.

Article 2.1- Scope

The scope of the Protocol comprises the entirety of the transport, communications and meteorology sectors in each Member State and the region, including but not limited to;

(a) all policy, legal, regulatory, institutional, operational, logistical, technical, commercial, administrative, financial, human resources and other issues.

Article 2.2

Member States acknowledge their existing bilateral and multilateral relations;

- (a) With each other and
- (b) With non-member States and groupings of states

Article 2.3: General Objectives

The Member States' general objective is to establish transport, communications and meteorology systems which provide efficient cost effective and fully integrated infrastructure and operations which best meet the needs of customers and promote economic and social development while being environmentally and economically sustainable.

Article 2.4 provides for Strategic Goals under which the Member States undertake to engage all stakeholders in giving effect to the Protocol by promoting several strategic goals namely:

2.4 (a) Integration of regional transport, communications and meteorology networks to be facilitated by the implementation of compatible policies, legislation, rules, standards and procedures.

(b) Elimination or reduction of hindrances and impediments to the movement of persons, goods, equipment and services.

Article 3.2: Integrated Transport Policy

1. Member States agree to develop a harmonized integrated transport policy which includes the:

(a) Establishment of infrastructure, logistical systems and institutional frameworks.

(b) Establishment of appropriate legal and financial frameworks,

(c) Execution of research and technology transfer

(d) Development of effective communication networks which support intra and intermodal synergy and optimal utilization of modes.

(e) application of the principles of equality of treatment of the nationals passengers, service providers of Member States with regard to the provision, access and use of infrastructure and immigration and clearance procedures.

(f) The right of individual Member States to negotiate access and freedom of transit rights consistent with the principles of this Protocol while recognizing that individual needs of Members States may require specific Bilateral arrangements.

Article 3.2 (a) the right of freedom of transit for persons and goods.

Article 3-4 Logistical Systems

Member States shall endeavor and work towards the elimination or reduction of impediments on the movement of persons.

Article 3.4 Member States shall in particular focus on:

a. Harmonization of domestic legislation, including provisions dealing with statutory liability of service providers,

- b. The development of simplified and harmonized documentation which supports the movement of cargoes along the length of the logistical chain including the use of a harmonized nomenclature.
- c. The implementation of state of the art rapid communication information and data processing and exchange facilities to support corridor operations and supplying real time logistical and other information to corridor users.

Article 3.5 Member States shall encourage the adoption of simplified measures falling outside the sectors addressed in this Protocol which may also contribute towards the objectives of this chapter.

- a. Clearance and pre-clearance procedures at borders. ports and dry ports for goods and pre-clearance of freight containers,
- c. Clearance procedures for SADC nationals including immigration and public health measures.

Article 3.6 Member States shall promote the necessary liaison between their various ministries and departments to execute the provisions of this Article.

Article 5.4: Regulatory Mechanism

Member States shall comply with this Chapter by concluding standardized **Bilateral** or **Multilateral Agreements** based on the principle of non-discrimination, reciprocity and **extra territorial jurisdiction** which address the following;

- a-Single SADC carrier permits or licences-Carrier registration
- c-Quota capacity management systems;
- d-Harmonized administrative (including consultative) procedure documentation and fees.
- f-Information management ,including a harmonized format of supporting information systems and exchange of information procedures.
- g-Establishment of joint route management committees on a bilateral or multilateral basis.
- h-Carrier obligations in respect of drivers, vehicle, passengers, manifests, cargo and returned permits or licenses as well as sanctions against carriers in case of contraventions;
- I-harmonized transport law enforcement including carrier identification to facilitate on the road law enforcement such as the utilization of standardized vehicle identification logos.

Article 14.6: Non compliance

Non-compliance issues are to be reported to and investigated by The Southern Africa Transport and Communications Commission-Technical Unit-SATCC-TU established under Article 13.3 of the Protocol.

3. 3 Common Market for East and Southern Africa (COMESA)

The treaty for the establishment of COMESA was signed in **Kampala, Uganda** on **3rd November 1993**. COMESA superseded the Preferential Trade Area for Eastern and Southern Africa and has 19 members including Zambia and Malawi but not Mozambique who withdrew from it in 1997.

The objectives of the Common Market are generally to achieve sustainable growth and development of the partner states within an overall system of economic co-operation through:-

- a) Establishment of a common union and abolition of all non tariff barriers to trade and simplification and harmonization of procedures and documentation.
- b) Facilitation of trade in goods and services for free movement of people.

The **COMESA** strategy borrows heavily from **Kyoto convention** which states that joint development of border infrastructure should aim at the establishment of one stop border control points.

Article 9 obliges partner states to consult each other on the establishment of common border posts and ensure goods are imported and exported through recognized customs offices and routes.

3.4 The Common Market Protocol.

Article 4 of the protocol provides for the easing up of cross-border movement of persons and the eventual adoption of an integrated border management system.

3.5. Zambia/Malawi/Mozambique Growth Triangle.(ZMM-_{GT})

The Zambia, Malawi, Mozambique Triangle (ZMM-GT) was conceived by the UNDP-Zambia in 1999. It was officially launched in Lilongwe in 2000 and was followed by the signing of the Memorandum of Understanding in 2003. It spans an area of around 301,000 square kilometers, including parts of Zambia, Malawi and Mozambique. The Triangle's strategic objective is to compliment and enhance national economic development objectives in the marginalized and economically depressed areas of the three countries which constitute its geographical region.

The objective of the Triangle is to incorporate the border areas encompassing eastern and Mucinga provinces in Zambia, Tete Province in Mozambique and the central and northern regions of Malawi. The philosophy of the "Growth Triangle" is to fast-track the protocols and treaties signed by the leaders. The Growth Triangle is complimentary to the many efforts seeking to transform the sub-region into a dynamic private sector economic area. It compliments efforts that seek to harmonize trade and investment regimes, hence lowering and removal of existing cross-border controls among the countries and implement one stop border posts to help reduce the time business people spend when moving goods across the borders. It is reported that the Growth Triangle concept has facilitated trade through simplified trade regime at the Mwami border post at the border of Zambia and Malawi. The simplified regime allows small cross-border traders to trade between countries without (any) restrictions(comments by His Excellency Michael Chilufya Sata for the Africa-

America Institute's 2012 Africa Business Investor's forum held in New York city on Investment Opportunities in the ZMM-GT).

However since its inception the ZMM-GT implementation faced serious constraints such as funding among other problems prompting the three countries to resuscitate the concept at a re-launch on 29-30 August,2011 at a two day Strategic Planning Workshop held in Lilongwe as a step towards regional integration at a localized level.

It was noted at the re-launch that the Growth Triangle remains an initiative conceived as a strategic response to the need to collectively and optimally harness from a cross-national perspective, the resource endowment of the Growth Trade area to benefit the population within the area and more generally member countries. In attendance were participants drawn from Zambia, Malawi, Mozambique, the Private Sector Forum and development Partners, such as African Development Bank, the World Bank and UNDP.

3. 6 SADC-EAC-COMESA Tripartite Framework.

With overlaps in the membership of the COMESA, EAC and SADC, it has been found prudent for the three Regional Economic Communities (RECs) to co operate and harmonize their programmes in areas of trade and infrastructure development. The Tripartite Framework was established in 2005 and its overriding objective is to contribute to the broader objectives of the African Union (AU) namely accelerating economic integration of the continent and achieving sustainable economic development thereby alleviating poverty and improving quality of life for the people of Eastern and Southern African Region. A framework was agreed upon headed by Secretary Generals of COMESA, EAC and Executive Secretary of SADC to spearhead the harmonization process. Among other things, the initiative intends to reduce border time and improve the transport infrastructure among others. At present the Tripartite Framework has linked Zambia and Zimbabwe through the Chirundu one stop border post. Other projects will facilitate the creation of one stop border posts along the Nacala corridor.

3. 7 East Africa Community (EAC)

The Treaty for the establishment of the EAC was signed in Arusha Tanzania on 30th November, 1999. Members of EAC relate closely to Members of SADC and COMESA on matters of development in the East and Southern Africa.

Parties to the treaty include Kenya, Uganda, Tanzania, Burundi and Rwanda.

Article 7 of the treaty provides for the establishment of an EAC economy with free movement of goods, persons, labour, services, capital and information technology.

Article 104 of the treaty provides for the free movement of persons through eased border crossing, use of common travel documents and common border operating laws.

Article 124 provides for enhanced co-operation in combating cross border crime and mandates joint operations to enhance border security.
corridor.

CHAPTER FOUR

4. Developing a Legal Framework for an OSBP

4.1 Whole Government Approach

The multiplicity of state agencies with a responsibility for or interest in border matters demands that the establishment of an OSBP should proceed with the active involvement of **ALL** role players. The starting point is for the agencies to converge on all the main underpinnings of the OSBP concept such as aims, legal issues, preferred model and mode of operation, process, people and systems. Some of these may need to be fine tuned or revisited as negotiations and more detailed work proceed. Very often these policy and strategy deliberations are managed by inter-agency border coordination structures. Given the sensitivity and complexity of the issues at hand, it is necessary to secure political support by providing regular updates to relevant ministries and requesting political guidance. Strong political involvement at the highest level cascading to all other levels has been cited as one of the biggest contributing factors to the success of the construction and implementation of the Chirundu OSBP.

This approach should then be extended bilaterally to the participating states. It is advisable that sufficient energy be invested upfront to develop a common understanding of the key issues to avoid later misunderstanding.

In addition to developing a common bilateral and national vision and strategy, there is need to closely involve non-governmental stakeholders from the start. These include traders, clearing agents, regular border post users (travelers and transportation service providers) This is essential to secure buy in but also enables stakeholders to contribute to and influence design as well as to prepare for implementation.

4.2 Step by step development of the legal framework

(a) Analysis of Primary Border Legislation

It is imperative that the establishment of an OSBP in any jurisdiction be preceded by a comprehensive analysis of the border controls legislation of the participating states to establish and accomplish the following;

(i) Identification of existing relevant border control legislation

In most African countries, border controls are undertaken by governmental departments and agencies that ordinarily fall into seven primary categories, namely;

- Customs and Revenue Authorities
- Security Agencies
- Agriculture, Animal and Plant Inspection
- Health
- Roads and Transport
- Others including Environment, Standards Bureau etc
- Immigration.

(ii) Perusal of legislation for provisions allowing or limiting the application of the OSBP concept and underlying principles.

Border control legislation in many countries where OSBPs have been or are intended to be established contain some provisions for extra territorial jurisdiction in some of the applicable Acts on limited and specific aspects of border controls. Similarly, there are no or very limited provisions allowing for the hosting of officers of another State in the territory of a state for the performance of official functions in terms of the national laws of that other state. Where the border control legislation does not expressly provide for the application of extra-territorial jurisdiction or hosting arrangements, the said legislation(s) would need to be amended in both legal conception and content individually Act by Act through the laid down procedure of each state or through an all encompassing instrument to give the current legislation the extra territorial jurisdiction so critical to the OSBP concept. Zambia and Zimbabwe took this option for the Chirundu OSBP by enacting OSBP control Acts and incorporating all the applicable border legislations in the respective Acts.

Another way would be to explore the possibility of addressing the deficiencies through the tedious exercise of effecting the requisite changes to each Act by way of subsidiary legislation or by way of an all encompassing instrument of subsidiary legislation. In so doing caution must be exercised to ensure that the respective enabling Acts empower the Minister in charge not only to enact subsidiary legislation but to enact subsidiary legislation to incorporate the principles of extra-territorial jurisdiction and hosting arrangements. In the absence of such power any attempt to introduce the said principles through subsidiary legislation would be ultra vires and null and void ab initio. The enactment of an all encompassing instrument of subsidiary legislation would also have its peculiar legal implications in that the promulgation by one Minister or person, legislation whose purport and effect alters other border control Acts administered by other Ministers may bring into question the legal validity of such legislation. Therefore although this may be an option, it may not be feasible as it would be fraught with insurmountable legal difficulties leaving it open to legal challenges and uncertainties.

From the foregoing it may not be practical or appropriate in the circumstances to seek to address the deficiencies in border control legislation with respect to OSBP operations by way of legislative instruments in most jurisdictions. The simplest and less tedious method would be to leave it to Parliament to pass the appropriate legislation.(Option adopted by Zambia and Zimbabwe for Chirundu OSBP.

4.3 Determination of appropriate Legal Instrument

There is a variety of legal enactments which may be adopted to operationalize the OSBP concept.

(a) Bilateral Agreements-Memorandum of Understanding (MOU) and National Act.

Two adjoining countries are involved and the focus is on establishing an OSBP at a particular border. It entails the negotiation and conclusion between the two countries of a bilateral agreement in which the parameters of establishing such OSBP are spelt out. It also requires that such arrangement be entrenched in the domestic laws of each country by way of an appropriate Act of Parliament with an overriding effect over all border control legislation so as to give legal effect to the provisions of the MOU and the principle of extraterritoriality and hosting arrangements. Zambia and Zimbabwe signed a Bilateral Agreement on 29th August,2007 which was subsequently

domesticated in their respective national laws by passing the Zimbabwe One Stop Border Control Act No of 2007 and Zambia One Stop Border Control Act no 8 of 2009.

The bilateral arrangements need not be called a MOU. They may invariably be called Memorandum of Agreement (MOA) Protocol, Treaty etc. What is critical is that such legal instrument should outline what is considered the key issues to be addressed.

With respect to national legislation, some jurisdictions may also prefer to amend each and every border control related Act and regulations to provide for the principles of extraterritorial application and hosting arrangements. While such an approach can be equally effective in intention, it is considered too tedious and times consuming especially considering that border related Acts are numerous –up to 20 in some jurisdictions. It would take a long time to individually enact the changes in good time through the legislature.

(b) Multilateral arrangements

This is the situation where from a regional perspective it may be considered most appropriate to conclude a multilateral arrangement between a number of countries sharing common borders with each other by way of a common legal instrument and approach to the establishment of OSBPS. Such approach can be at the Regional Economic Community (REC) level.

I. An Act and Regulations

This is an approach most suited for RECs that are structured in such a way that they have a regional legislative assembly that has a mandate to legislate for the REC and such legislation is binding on all countries within that grouping and once ratified, has overriding effect on all domestic legislation to which its provision apply. This is the approach that was used for the EAC as it is structured as envisaged. The East African Legislative Assembly (EALA) passed the East Africa One Stop Border Act on 23rd April, 2013 during the Meeting of the 3rd Assembly in Kigali Rwanda.

This framework entails the enactment of an Act on OSBPs defining the broad principles to be followed by the REC states in implementing OSBPS at mutual border posts. It should specifically entrench the principles of extraterritorial jurisdiction of national laws and hosting arrangements and mandate the RECS appropriate structures to make Regulations covering the detailed operational and administrative parameters and procedure for such OSBPs. Variations to the framework to suit special REC could include a combination of the Act and Protocol or Act and individual bilateral agreements for each border post.

This kind of framework provides a more expeditious and integrated approach to not only harnessing consensus between the REC States, but would also easily give legal effect to the provisions of the Act in the RECs States' jurisdictions. It is most suited to environments where there are existing policy decisions and supportive legislative instruments at REC level mandating the establishment and implementation of OSBPs within the REC as was the case with the EAC region. It is expected to deal with implementation parameters and related issues with greater uniformity due to its prescriptive and binding nature notwithstanding that it could at the same time also be rigid and difficult to inform and refine through practical experiences during implementation. The EAC OSBP Act for instance provides under section 56 that the Act takes precedence over the Partner States' laws with respect to any matter to which the provisions of the Act relate.

II. A REC Protocol and National Acts

This is an approach most suited for RECs that are structured in such a way that they do not have a regional legislative assembly that has a mandate to legislate for the REC and rely on multilateral arrangements such as protocols, treaties, MOUs etc with binding effect on all the REC States within that grouping once it is ratified. It must be noted that such protocols ordinarily have no automatic overriding effect on all domestic legislation of a State and have to be domesticated in order to have any legal effect. This is the approach that would be appropriate for use in Southern Africa Community (SADC) and COMESA. SADC has a SADC Treaty signed in 1992 and SADC Protocols signed in for the implementation of the Treaty. The framework envisages a REC Protocol defining the operational and administrative parameters and procedures for the OSBPs in the region together with individual enabling Acts passed in each of the REC States entrenching the principle of extraterritorial jurisdiction of national laws and hosting arrangements in all national border controls related legislation. It is also a framework which lends itself to various variations with respect to the nature of the multilateral arrangements the REC states want to commit to.

While the framework ensures uniformity of approach at OSBPs in the region through the Protocol, it would be fragmented and cumbersome to procure requisite enabling legislations in all the REC States, especially within the same timeframe because of difference in the legislative processes of the various States.

4.4 Essential elements of any OSBP legal framework

The following essential elements must be addressed in any of the above mentioned legal instruments that are deemed appropriate for the peculiar circumstances of each OSBP implementation environment. This is to ensure that the OSBP concept becomes effective legally as well as procedurally whenever it is implemented. Countries may also need to develop their own individual legislation to ensure all the respective functions and controls in the context of the OSBP are appropriately legally provided for within their national jurisdiction.

In this regard it is essential that whatever legal framework is used, it

- ✓ ***Identifies the border crossing where one-stop procedure will apply.*** This shall include defining the Common Control Zones (CCZs) within which officers from both states will perform controls and which they may circulate freely. It also includes defining the areas set aside for the exclusive use of each State's officers.
- ✓ ***Identifies the border controls to be performed.*** Typically, all envisaged border controls should be undertaken at a one stop facility, but certain controls may be excluded for practical reasons.
- ✓ ***Defines the sequence of controls.*** Usually the procedure of the country of exit are performed before the procedures of the country of entry.
Exceptions may be allowed subject to agreed procedures. Use of delegated authority among border agencies may be considered in an effort to make OSBP operations more efficient.
- ✓ ***Incorporates the principles of extraterritoriality and hosting arrangements and confirms that each States' laws may be applied in a CCZ in the other State in the way as apply in its own territory.*** Location of control zones to know where the extraterritorial authority should apply.
- ✓ ***Defines the powers in the host state and control zones.*** Generally, officers enjoy all the powers that they have within their own State. The agreement must define at which point officers of one State may no longer exercise their powers so that the officers of the host State can undertake their

controls. This is necessary to avoid confusion about which State has jurisdiction at any point in time. It should be made clear that once exit formalities are completed jurisdiction passes to the country of entry.

- ✓ ***Defines jurisdiction in respect of offences committed in CCZ.*** A distinction is usually made between offences committed in terms of border control laws and those committed in terms of general “law and order” laws. In the former case, each State has jurisdiction with respect to offences under its border laws which are detected while its officers are undertaking their controls. Once a State’s officers have completed their controls, they no longer have jurisdiction, except with the agreement of the officers of the other State. With regard to general law and order offences, the accepted approach is that the country in whose territory the offence is committed has jurisdiction. Procedures on how to treat goods which are subject of an offence in the host country detected by guest officers performing exit formalities in terms of warehousing and traffic flows in case the consignment is supposed to be warehoused in the country of export should be made clear in order to avoid confusions.
- ✓ ***Defines the immunities of foreign officers in the host State.*** Generally, the host State would guarantee that they would not prosecute foreign officers for acts performed in the CCZ while they are exercising their functions. Such immunity would however, not extend to general law and order offences that officers of the adjoining State may commit in the host State.
- ✓ ***Specifies measures to facilitate the work of foreign officers in the host State.*** This includes the right to freely enter and exit the host State (subject to the requirement of agreed identification) and the right too freely move any items required for official functions within the control zone without such being regarded as imports or exports including any movement of revenue collected in the control zone. Facilitation measures may also include undertakings by the host State to assist in obtaining utility services such as water, electricity and communication links. Agreement may be necessary with regard to cost sharing arrangements, or States may alternatively agree to provide services to each other for free based on reciprocity for ease of managing OSBP operations.
- ✓ ***Role of Law enforcement*** (e.g. would officers be allowed to carry arms, would there be special exemptions, etc)
- ✓ ***Integrated Border Management (IBM)*** to prevent delays
- ✓ ***Language considerations***-Language differences are not usually a challenge in the establishment of legal frameworks for partnering states who may have different languages, as most instruments can easily be translated. The real challenge would seem to be with various procedure documentation for use at the OSBP which would need to be in multiple languages. Often different languages also bring differences in the border procedures that will need to be addressed during the drafting and review process..

4.5 Recommendation:

Zambia, Malawi and Mozambique are all signatories to the SADC Treaty signed on 17-08-1992 and the SADC Protocols including the Protocol on Transport, Communication and Meteorology passed on 01-01-1997.

Under Article 6.1 of the Treaty, Member States undertake to adopt adequate measures to promote the achievement of the objectives of SADC.

Article 5 of the Protocol on Transport, Communication and Meteorology provides for the Regulatory Mechanism of the Protocol which is the instrument for the implementation of the SADC Treaty.

Article 5.4 provides as follows;

“Member States shall comply with this Chapter by concluding standardized bilateral or multilateral agreements based on the principles on non-discrimination, reciprocity and extra-territorial jurisdiction which address the following”;

- (a) Single SADC carrier permits or licenses
- (b) Carrier registration
- (c) Quota and capacity management systems
- (d) Harmonized administrative (including consultative) procedures, documentation and fees.
- (e) Information management, including format of supporting information systems and exchange of information
- (f) Establishment of joint route management committees on a bilateral or multilateral basis.
- (g) Information management, including a harmonized format of supporting information systems and exchange of information procedures;
- (h) Carrier obligations in respect of drivers, vehicles, passenger manifests, cargo manifests and returned permits or licenses as well as sanctions against carriers in the case of contravention;
- (i) Harmonized transport law enforcement including, carrier identification to facilitate on the road law enforcement such as the utilization of standardized vehicle identification logos.

In the light of the above provisions among others in both the SADC Treaty and the SADC Protocol on Transport, Communication and Meteorology, the consultant is proposing the following two options for consideration by the three countries with a view of adopting the option most convenient to them.

- 1. Bilateral Agreement/MOU/MOA:** Since Zambia already has an OSBP Control Act under which The President of the Republic Of Zambia may enter into agreement with any neighboring State or territory with a view to facilitating trade sec 3(1)

An agreement entered into pursuant to subsection (1) shall allow the following;

- (a) border controls to be undertaken by officers at a place located –
 - (i) In the territory of Zambia; or
 - (ii) Within the territory of one or more adjoining states.
- (b) Officers of the Zambian Government and officers of one or more adjoining States to exercise border controls in accordance with the relevant legislation including the exercise of any powers of arrest, search, seizure and detention of persons and goods.

Malawi and Zambia may enter into a Bilateral agreement for the OSBP at the Mchinji/Mwami border after which Malawi will enact its own OSBP Control Act to domesticate the Bilateral Agreement and list therein all the applicable border control legislations. Zambia and Zimbabwe opted for this for the Chirundu OSBP such that the three legal documents that govern the operation of the Chirundu OSBP are;

- The Zimbabwe One Stop Border posts Control Act No 21 of 2007
- The Zambia One Stop Border Control Act No 8 of 2009 and

- The Bilateral Agreement between the Government of the Republic of Zambia and the Government of the Republic of Zimbabwe concerning the establishment and implementation of an OSBP at Chirundu.

Enabling Acts: The two Acts of Parliament give border control officers the authority to carry out their regional controls throughout the common control zone. Zimbabwe officers are allowed to carry out controls on the Zambian side of the common control zone and vice versa. It also allows hosting arrangements for those foreign officials.

Bilateral Agreement: The Bilateral Agreement covers issues regarding the operations at the border post. Article 2.2. of the Bilateral Agreement defines the objectives of the Agreement as being “to enhance trade facilitation through the efficient movement of goods and people within COMESA and the SADC Regions”

Likewise Malawi may enter into a similar arrangement with Mozambique by entering into a Bilateral Agreement with Mozambique and Mozambique passing an OSBP Act to domesticate the Bilateral Agreement.

2. **A REC Protocol and National Acts;** As already outlined in paragraph 3.1.2 above, this approach is most suited for RECs that are structured in such a way that they do not have a regional legislative assembly that has a mandate to legislate for the REC e.g. East Africa Community Legislative Assembly (EALA). These countries rely on multilateral arrangements such as Protocols, Treaties, and MOUs etc with binding effect on all the REC States within the grouping once ratified. Such Agreements, Protocols etc have to be domesticated in order to have any legal effect.

The frame work envisages a REC Agreement or Protocol defining the operational and administrative parameters and procedures for the OSBPs in the region together with individual enabling Acts passed in each of the REC States entrenching the principles of extraterritorial jurisdiction of national laws and hosting arrangements in all border controls related legislation. This approach may be convenient in that the Agreements or Protocols will apply to any other border post(s) which may be constructed within the Member States in future.

Article 5.4 of the SADC Protocol on Transport, Communication and Meteorology empowers the SADC Member States to enter into any of the above arrangements amongst themselves.

******THE SIGNING OF A BILATERAL OR MULTILATERAL AGREEMENT IS THE FIRST PROCESS TO BE UNDERTAKEN FOLLOWED BY THE ENABLING LEGISLATIONS.**

4.4 Timeframe; It is important to remember and appreciate that whatever option is preferred, the countries will in most cases not move at the same pace in enacting the national laws to domesticate the Agreements or Protocols. The Chirundu OSBP is a case in point. Zimbabwe enacted their OSBP Control Act in 2007 while Zambia passed theirs in 2009, two years later! It is not clear why this kind of gap occurred but one may be tempted to conclude that it may be due to the level of commitment to the project and /or the priority accorded to it. It may also be due to the different Parliamentary procedures in the various countries and their respective Parliamentary calendars. The case of Lebombo/Resano Garcia OSBP between South Africa and Mozambique is another example.

The Bilateral Legal Framework for the said OSBP comprises the Main Agreement and Annexes I,II & III. The Main Agreement was signed in 2007 while the Annexes were signed by South Africa in October 2012 and by Mozambique in June 2013.

Other factors which may contribute to the difficulty in specifying the timeframe is the consideration that the parties may take longer to agree as to content of the Draft Agreement/Protocol and may require more time to reach a consensus. The whole process is mainly determined by the period of negotiation and agreement depending on the needs and level of cooperation between the different states. At a Technical Workshop on OSBP and Integrated Border Management Procedures in East African Community held in Arusha, Tanzania on 9th -11th May,2011,it was observed by the participants that some of the legal challenges facing the Community are that the decision making process in the Community takes a very long time thereby protracting the process of development of Council directives and Regulations. Harmonisation of relevant laws at regional level is also a very lengthy process. It is however imperative that the following success factors among others are adhered to during the process;

- Open involvement of all relevant key stakeholders of the public and private sectors and acceptance by both partnerships.
- Ensuring that as much as practical, the same participants be chosen to see the whole process through or at least those who attend the various workshops and plenary sessions at any stage are fully briefed of the decisions made in previous sessions for continuity purposes.

CHAPTER FIVE

5. The Success Story of the Chirundu OSBP

The Chirundu OSBP is a pilot trade facilitation project under the North South Corridor initiated by COMESA-EAC-SADC Tripartite facilitation following a May 2005 COMESA Council of Ministers decision in Kigali Rwanda. The COMESA Secretariat was directed to establish an OSBP in the region. Chirundu was selected to pioneer the introduction of OSBP concept in the region together with two other border posts namely Kasumbulesa between DRC and Zambia and Malaba/Tororo between Uganda and Kenya. The Chirundu OSBP is Africa's first functioning OSBP and was launched in December, 2009.

5.1 Legal Status

3 legal documents govern the operations of Chirundu OSBP:

- ❖ The Zimbabwe OSBP Control Act No. 21 of 2007
- ❖ The Zambia OSBP Control Act No.8 of 2009
- ❖ The Bilateral Agreement between the Government of the Republic of Zimbabwe and the Government of the Republic of Zambia concerning the establishment and implementation of an OSBP at Chirundu.

5.2 Enabling Acts; The two Acts of Parliament give border control officers the authority to carry out their national controls throughout the common control zone, Zimbabwe officers are allowed to carry out controls Extraterritorially on the Zambian side of the common zone and vice versa. It also allows hosting arrangements for those foreign officials.

5.3 Bilateral Agreement for Chirundu:

The Bilateral Agreement covers issues regarding the operations at Chirundu border post. Article 2.2 of the Bilateral Agreement defines the objective of the Agreement as being "to enhance trade facilitation through the efficient movement of goods and people within the COMESA and SADC regions.

5.4 Logistics

A: The two countries adopted the JUXTAPOSED model of OSBP. Each juxtaposed facility handles traffic going only in one direction on either side of the border. All clearance is done in the importing country starting with exit formalities followed by entry formalities.

B: Broad based stakeholder consultations were undertaken in the preparation for the implementation of the Chirundu OSBP. They involved the COMESA and SADC Secretariats, public and private sectors in both countries. Formation of subcommittees that were focused on specific project deliverables e.g.; Infrastructure, facilities, legislation, procedures and ICT.

C: A Project Manager (PM) was appointed to oversee the implementation of the project. The PM spent some time explaining the benefits of the project to politicians in the key ministries and senior government officials in both countries. This is important because the actual implementation of the OSBP depends on an enabling legal framework which only politicians can deliver.

5.5 Challenges-Lessons learnt

Some of the challenges encountered were:

- (a) Clarification of jurisdiction-who has it, which agency does final check?
- (b) Accommodating the many border agencies involved in the operations at the border performing various control functions under different pieces of legislation ranging in focus on goods, people and security.
- (c) Harmonization of documentation/forms etc.
- (d) Need to build trust between authorities and changing the mindset of border staff and the business to adapt to the new procedures.
- (f) Finding an appropriate ICT package that would address interface issues across the border among the countries.
- (g) Need for solid legal basis.

5.6 Factors for Success

1. The establishment of an OSBP requires solid support and commitment at the highest level of Government of the member states involved-political support/goodwill, solid support and commitment at the highest political levels is essential and there **MUST** be an agreed Memorandum of Understanding or an Agreement of some sort on the OSBP accompanied by a legal framework allowing extraterritorial authority for purposes of implementing an OSBP system.

2. All the border agencies and other key stakeholders including public and private sectors were committed to the success of the project and participated effectively in all related activities. One of the critical success factors was getting the public sector and the private sector agreeing at national level in each country before bringing the two countries together at a bilateral level.

CHAPTER SIX

8. Conclusions

The establishment of one stop border posts provides states with the opportunity to reduce the costs of doing business and improve enforcement at shared borders. The successful implementation of OSBP requires that the initiatives be properly planned and the emphasis placed on the involvement and buy in of stakeholders. It also needs to be recognized that the shift from two stops to one stop arrangements may have a significant impact on officers on both states. Investments in change management and training are essential to ensure that the participating states reap the envisaged benefits. Developments in the WCO and elsewhere on issues such as the mutual recognition of authorized operators and other customs to customs arrangements provide states with the opportunity in moving beyond the traditional one stop arrangement.

The following documents are annexed;

1. A Position Paper and Draft Legislation on Mutual Recognition of Weighbridge Certificates.
2. A draft Bilateral Agreement between Zambia and Malawi
3. A draft Bilateral Agreement between Malawi and Mozambique
4. A Sample of an OSBP Act.

Also annexed for reference and guidance are:

5. The East Africa Community OSBP Act passed by EALA in April 2013.
6. The East African Community Vehicle Load Control Bill, passed by EALA in May 2013.