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Virtual meeting

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**PROPOSED MODALITIES FOR THE RE-ALLOCATION OF UNUTILIZED BROWN SUGAR QUOTAS UNDER KENYA SUGAR-SAFEGUARD MEASURES**

*Theme: “COMESA Towards Digital Economic Integration”*

**PROPOSED MODALITIES FOR THE RE-ALLOCATION OF UNUTILIZED BROWN SUGAR QUOTAS UNDER KENYA SUGAR-SAFEGUARD MEASURES**

1. **Background information**

The Council of Ministers at their 38th meeting held in Lusaka, Zambia on 14-15 July 2018 established the Kenya Sugar Safeguard Sub-Committee. The Inaugural meeting of the Sub-Committee was held on 13-14 November 2018 at the COMESA Secretariat. The main objectives of the meeting were to inaugurate the sub-committee and recall the Council decisions made on the Kenya sugar safeguard and their implementation.

The meeting recalled that Kenya sought and was granted a safeguard on sugar in 2002 as the Kenya sugar sector could not compete with the other sugar producing COMESA Member States following the commencement of the Free Trade Area. Directive No. 1 of 2007 set out the terms and conditions of the safeguard. Somme of the conditions were but not limited to the following:

* ***The safeguard should continue as a Tariff Rate Quota (TRQ).***
* ***Sugar types (domestic and industrial) under HS Heading 1701 should be amalgamated into a single figure for the quota.***
* ***The size of the quota should be increased while the tariff rate applied on above quota imports of COMESA sugar should be lowered in each successive year as shown in the table below;***

Table: Quota size and above quota tariff

|  |  |  |
| --- | --- | --- |
| **Year** | **Size of Quota (Metric Tons )** | **Tariff Rate above quota imports in %** |
| 2008/09 | 220,000 | 100 |
| 2009/10 | 260,000 | 70 |
| 2010/11 | 300,000 | 40 |
| 2011/12 | 340,000 | 10 |
| 1st March 2012 | No quota | 0 |

* ***A framework for administering and monitoring the implementation of the safeguard and for liaison with the COMESA Policy organs should be established.***
* ***Kenya to submit periodic performance reports to Council through the Secretary General on all measures, activities, and improvements on the sugar sector competitiveness at least twice in each year.***

In 2015 Council underscored the importance of having a system that benefits all sugar exporting Member States and promotes intra-COMESA trade and supported the idea of Member States being given priority in bridging sugar deficit in Kenya.

The thirty fifth Council agreed to include the following parameters in the formula for sugar quota allocation:

SP = Sugar Production.

SC = Sugar Consumption.

SS = Sugar Surplus (SP Minus SC); and

ST = Intra-COMESA sugar trade.

The Council noted that to promote intra-COMESA trade and local production of sugar it was important to give more weight to surplus sugar production in the formula for allocating quotas. Council agreed on the formula and requested that the adopted formula be reviewed again after a period of two years. The council decisions read “The ***formula for allocating sugar quotas should be: 70% for Sugar Surplus and 30% for Intra COMESA Trade, subject to review after two years and Kenya be requested to redistribute un-used quotas”. While the formular is***

SQ=-0.3 ST+0.7SS.

1. **Proposed modalities for un-used quotas of brown sugar**

As per one of the above stated decisions, the Council of Ministers has entrusted the Sugar Sub-Committee with full confidence and consideration for administering and monitoring the implementation of the safeguard and to deliver on its mandate. Following a set of Council decisions that have continuously extended the safeguards to Kenya including the latest 41st Council of Ministers meeting that granted a two (2) year extension of the Kenya sugar safeguard beginning March 2021- February 2023 based on the provisions of Article 61(2) of the Treaty, the 4th Kenya Sugar Sub-Committee Meeting held in April 2021, made recommendations among others that:

* ***Member States to submit to the Secretariat proposals on modalities to reallocate the unutilized quotas by 16th of May 2021.***
* ***The Secretariat be urged, based on the submitted proposals by the Member States, to prepare the draft modalities for reallocation of unutilized quota and circulate to Member States for comments / consideration in preparation for the extra-ordinary meeting by 1st of June 2021.***
* ***In collaboration with Member States, the Secretariat to convene an extra-ordinary meeting to discuss the proposed modalities.***

It is against this background that the following draft modalities have been developed by the Secretariat based on the submissions received from Member States for consideration by the 2nd Extra-ordinary meeting of the Kenya Sugar Safeguard Sub-Committee:

1. The quota year for COMESA tariff-rate brown sugar quotas runs from 1st January to 31st December of each year.
2. [COMESA FTA Member States and Member States under derogation be given the priority in Kenya brown sugar import quotas]
3. [COMESA Member States under sanctions will not be eligible for the quota allocations and reallocations.]
4. [Country quotas will be based on the latest available ISO statistics, while the Kenyan forecast deficit will be as determined by Kenya. Moreover, Kenya brown sugar quota allocations / reallocation be based on the disaggregated figures of deficit of the brown sugar only as per the council decisions issued in that regard, and accordingly the market for white refined sugar will be open to COMESA and non-COMESA exporters without quota restrictions.]
5. Calculation of sugar surplus within the quota allocation formula (70%) be based on brown sugar surplus figures only based on the template that will be provided by the secretariat to member states to report statistics on brown sugar as per the council 39th council of minister decision held in November 2018.
6. These quotas will be calculated by the COMESA Secretariat as per the adopted formula and advised to Member States before 31st December of each year for the following year.
7. Kenya will issue import permits, to the extent possible, strictly in accordance with the country quotas and will be strictly controlled and managed by Kenya and the exporting country to avoid any country oversupplies that may impact on the allotted quotas of other member states. In the same spirit, for the purpose of transparency, effectiveness and efficiency, Kenya will develop and maintain an online system for issuing import licenses, in accordance with the decision of 41st meeting Council an online system to be developed should be interfaced with other systems to enable the Member States accessing the information of status of utilization of allocated quota and issuance the pre-shipment approval letter.
8. The modalities will take cognizance of any existing bilateral and regional trading arrangements among the Member States.
9. Quota holders shall devise mechanisms to ensure that supplies are within the quota limits. In order to effect the re-calculation, countries must submit to Kenya and copy to the Secretariat, the following information on quota reallocation in a the template provided by the Secretariat by 31st August every year no later than 5th September of each year:
10. Initial quota allocated;
11. Quota utilization up to [30th August];
12. Planned quota utilization for the remainder of the year from September to 31st December;
13. Unutilized quota returned for re-allocation to countries with supply capacity;
14. Country capacity to supply brown sugar to Kenya over the remaining quota period (September to 31st December) more than the country’s remaining quota balance for the same period;
15. By 20th September of each year, Kenya will submit to the COMESA Secretariat the status report of quota utilization as at end of August including notification of any adjustments to its deficit forecast. The unutilized quotas together with the adjustments to the deficit forecast if any will determine the quota reallocations and be notified to Member States by 30th September of each year; and
16. The Secretariat to provide Member States with a template on brown sugar production consumption and surplus data needed for calculation of quota allocation and re-allocation by 31st August every year.
17. Member States will be subject to a penalty of 15% reduction of their annual allocation in the following year should their supply during the fiscal year is less than 80% of their adjusted allocated figure provided that:

a) For countries not supplying the requested information by the required deadline date (10th September) it will be assumed that they will supply their quota in full; b) Countries not meeting their supply estimations as established by the COMESA Secretariat in accordance with the modalities set out above; and

c) Should the information supplied by countries not be aligned with ISO figures on brown sugar if available, ISO figures will be regarded as correct.

1. Country re-allocations will be calculated pro rata for countries using the same formula and data used to establish the annual country quotas for any given year.