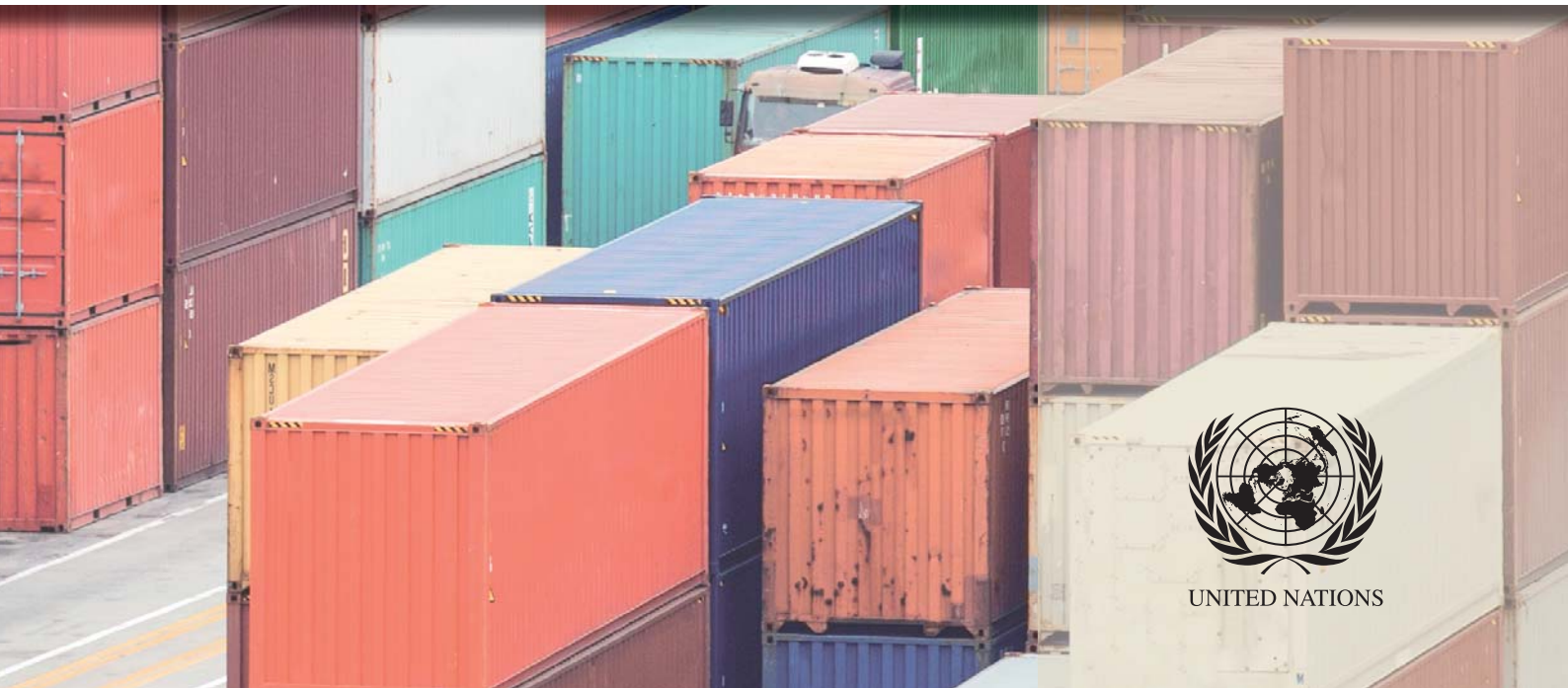
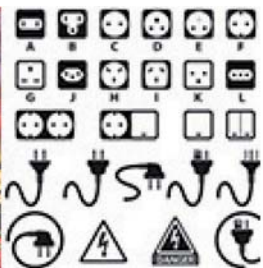




Non-Tariff Measures and Regional Integration in the Southern African Development Community





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ABSTRACT

This note provides an overview of the state of play of the political process on non-tariff measure (NTM) policies in the Southern African Development Community (SADC). We analyse the legal setup and respective challenges affecting the implementation of SADC agreements with respect to NTMs. On the one hand, we look at systematic and coherent policy design regarding sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT), harmonization and mutual recognition. On the other hand, we analyse commitments, institutional structures, mechanisms and support needed to eliminate policies and procedures that economic operators report as non-tariff barriers.

We also present a non-technical summary of methodologies to assess the regulatory distance between members of a free trade agreement and the potential greater economic benefits from reducing NTMs. Our analysis indicates that “deep” regional integration regarding NTMs may bring about significant increases in welfare and employment for all member States.

Considering the member-driven nature of SADC, the note also contains a discussion of the potential way forward in promoting NTM-related integration in SADC in the short- to the long-term.

Keywords: Southern African Development Community, non-tariff measures, regional integration

JEL Classification: F13, F15

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The study benefited greatly from comments from participants of the UNCTAD-Southern African Development Community-GIZ Workshop on Non-Tariff Measures "Deep" Regional Integration – SADC and Tripartite Dimension, held in Gaborone, Botswana, on 12 August 2014. The SADC secretariat and GIZ also provided in-depth comments on an earlier version of the note.

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1. INTRODUCTION

This note provides an overview of the state of play of the political process on NTM policies in the SADC region and presents a non-technical summary of methodologies to assess the regulatory distance between members of a free trade agreement and the potential greater economic benefits from reducing NTMs. The note also contains a discussion of the potential way forward in the SADC region on NTMs. It was prepared under a joint project of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and the United Nations Conference on Trade and Development (UNCTAD), Assessment of NTM's Potential for Regional Integration in SADC Region.

The purpose of the project was to develop a strategy and to conduct preparatory work to support deep regional integration by systematically addressing non-tariff measures (NTMs).

This note is based on three papers that were prepared under the project. Erasmus and Viljoen (2014) provide an analysis of the state of play of the political process on NTM policies in the SADC region and identify stumbling blocks for implementation. Cadot et al. (2015) develop quantitative and qualitative methodologies to assess the regulatory distance between members of a free trade agreement and to identify potential areas of deep regional integration in merchandise trade with respect to NTMs; they also quantify the ad valorem price effects of NTMs and develop a methodology to identify particularly harmful NTBs. Vanzetti et al. (forthcoming) assess the potential greater economic benefits from realizing deep integration.

The UNCTAD-SADC-GIZ Workshop on Non-Tariff Measures "Deep" Regional Integration on 12 August 2014 in Gaborone, Botswana, aimed to validate the studies and to contribute to the development of a strategy to support the political process of harmonizing or reducing NTMs in the SADC region.

1.1. NTMS IN GLOBAL TRADE AND REGIONAL INTEGRATION

The ability to gain market access depends increasingly on compliance with trade regulatory measures such as sanitary requirements and goods standards.¹ Tariffs have been substantially reduced unilaterally and in regional and multilateral negotiations in recent decades. The use of NTMs, however, to regulate trade has been increasing, both in terms of countries adopting these measures and in their variety (UNCTAD, 2013).

Many NTMs have primarily non-trade objectives such as the protection of public health or the environment while affecting trade de facto through procedural requirements. Evidence suggests that NTMs have important restrictive and distortionary effects on international trade. They can unintentionally be discriminatory against smaller producers and poorer countries. The average overall trade restrictiveness, which includes both tariffs and NTMs, has been estimated to be two to three times higher than the tariff-only restrictiveness (Kee et al., 2009).

Little progress has been made in addressing NTMs at the multilateral level; at the regional level, however, substantial efforts are made to address them. About 60 per cent and 67 per cent of regional trade agreements include measures on technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures, respectively (Baccini et al., 2011). However, few of the respective provisions go beyond the core principles of the World Trade Organization (WTO) TBT and SPS agreements (Peters et al., 2013). Going beyond these principles appears politically and practically difficult. The experience of the European Union (EU) and the Association of South-East Asian Nations shows that the process of regional integration is very long-drawn-out and resource intensive, requires steadfast commitment

¹ Non-tariff measures (NTMs) are policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both (UNCTAD, 2010). Examples of NTMs are sanitary and phytosanitary measures (for instance, the prohibition of imports of dairy products from countries where satisfactory sanitary conditions have not been verified) and technical barriers to trade (for instance, labelling and packaging requirements).

throughout to deal with complex political decisions, and tends to be integrally related to overall plans to establish a single internal market in the regions. Successful Regional Trade Agreements (RTAs) have been using a mixture of outlawing certain measures and following the mutual recognition principle for others.

Although it appears that there are hardly any successful examples of regional economic communities in developing countries of significant NTM reduction, new evidence suggests that RTAs have a significant positive effect on trade owing to their NTM treatment (see chapter 5).

1.2. SADC AND TRIPARTITE AMBITIONS

SADC and the Tripartite of SADC, the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC), aim at addressing NTMs and at going beyond corresponding WTO provisions.

The SADC Treaty is the founding instrument of SADC. This is the umbrella legal instrument of the organization and entered into force on 30 September 1993. It is intended as an international organization with legal personality and the “capacity and power to enter into contract, acquire, own or dispose of immovable property and to sue and be sued”.² SADC comprises several areas of interstate cooperation; its legal arrangements extend beyond trade in goods and consist of a large number of protocols.³ In terms of Article 22 of this Treaty, “Member States shall conclude such Protocols as may be necessary in each area of cooperation, which shall spell out the objectives and scope of, and institutional mechanisms for, co-operation and

integration.” These protocols bind only those SADC States which have become Parties to a specific protocol. SADC is not a “single undertaking”.

The SADC Protocol on Trade (2005), as amended, envisages the establishment of a free trade area in the SADC region by 2008. Its objectives are to liberalize intraregional trade in goods and services; forbid discrimination, ensure efficient production; promote foreign investment; and enhance the economic development, diversification and industrialization of the region.⁴ The SADC objectives have been extended to include the pursuit of economic integration through the legal and trade policies and disciplines typically associated with a free trade area.⁵ This Protocol has been expanded by several annexes,⁶ which are an integral part of the Protocol. Angola, the Democratic Republic of the Congo and Seychelles have not acceded to the Protocol on Trade and are trading with the rest of the SADC member States on the basis of most favoured nation.

The Tripartite arrangement is anchored on the three pillars of market integration and industrial and infrastructure development. A main objective of the Market Integration Pillar is the establishment of a Tripartite free trade area (TFTA).⁷

The first phase of negotiations concerns trade in goods, focusing on tariff liberalization, rules of origin, standards, SPS, TBT, customs

² Article 3 of the SADC Treaty.

³ The SADC website lists the Protocols on: Combating Illicit Drug Trafficking; the Control of Firearms, Ammunition and Other Related Materials; Culture, Information and Sport; Gender and Development; Education and Training; Energy; Extradition; the Facilitation of Movement of Persons; Fisheries; Forestry; Health; Immunities and Privileges; Legal Affairs; Mining; Mutual Legal Assistance in Criminal Matters; Politics, Defence and Security Cooperation; Shared Watercourses; Tourism; Trade; Transport, Communications and Meteorology; Tribunal and its Rules (now suspended); Wildlife Conservation and Law Enforcement; Finance and Investment; and Trade in Services.

⁴ The original Protocol on Trade was signed on 24 August 1996. It entered into force on 25 January 2000.

⁵ Article 2(5) of the Protocol on Trade confirms that one of its objectives is to “establish a Free Trade Area in the SADC Region”.

⁶ Annex I on rules of origin; annex II on customs cooperation; annex III on simplification and harmonization of trade documentation and procedures; annex IV on transit trade and transit facilities; annex V on trade development; and annex VI on disputes settlement. annex IV includes the appendices on the SADC transit document; regulations relating to technical conditions applicable to means of transport other than porters and pack animals which may be accepted for transport of goods within the community under customs seal; certificate of approval of means of transport, certified declaration of examination of contents of means of SADC transport; and SADC market transit plates.

⁷ African Development Fund, COMESA-EAC-SADC Tripartite Capacity Building Programme, 2013, *Appraisal Report*.

management and procedures, trade facilitation, elimination of non-tariff barriers, trade remedies and dispute settlement. The deadline for the first phase of June 2014 will not be met. A second phase of negotiations about trade in services, investment, competition policy and intellectual property rights is foreseen. Negotiations are expected to continue in July and thereafter.

2. GENERAL SYSTEMIC CONSIDERATIONS AND CHALLENGES FOR THE SADC INTEGRATION MODEL

It is important to clarify the specific nature of SADC as a legal arrangement. This will assist subsequent efforts to design interventions aimed at the improvement of its practical functioning.

2.1. THE DOMESTIC APPLICATION OF TRADE AGREEMENTS

A proper understanding of SADC requires recognition of the fact that the implementation formula for obligations in the SADC legal instruments is a “decentralized” one. The member States have to give effect to their obligations through their own efforts. In this they are often hampered by bottlenecks in technical capacity and resources.

Furthermore, the SADC agreements do not contain a binding obligation to “domesticate” the relevant SADC instruments and to make them part of the national legal system. Article 6 of the SADC Treaty (amended version) contains the members States’ *General Undertakings* and essentially leaves it to national governments to “*adopt adequate measures to promote the achievement of the objectives of SADC*”.

SADC does not have the equivalent of the European Commission with its supranational powers. The danger is, of course, that such a decentralized approach can easily become uncoordinated, fragmented and ineffective. This, in a nutshell, is the implementation dilemma in SADC.

It is often claimed that the “domestication” of international and regional agreements will make implementation challenges less onerous. However, such legal domestication does not guarantee effective implementation and enforcement when local institutional building blocks are weak.

Trade agreements are not self-executing; their provisions have to be made part of the law of the land in order to ensure implementation and compliance. However, this does not always require full-scale incorporation of treaties, which can take a long time and involve cumbersome parliamentary procedures. Tariffs, standards and SPS measures are, for example, implemented by national executive bodies acting in terms of national laws. In SADC this is the basic model. These national organs should be empowered to do what is necessary; officials should be informed about regional norms and what is expected in terms of outcomes.

2.2. OVERLAPPING MEMBERSHIP AND TRIPARTITE

Most SADC member States are also members of other regional economic communities (RECs), as illustrated in table 1. This results in legal uncertainty and difficulties with regard to the implementation of obligations and programmes in the same area of integration. Overlap of membership creates conflicts, particularly in the harmonization of policies, such as SPS and TBT, within the RECs.

The TFTA has been envisaged in order to pursue the general benefits of liberalized trade more widely in Africa and to deal with the problems of overlapping membership. This objective includes eliminating non-tariff barriers (NTBs) applicable to intraregional trade within the broader eastern and southern African region. However, the TFTA does not yet exist as a formally established arrangement with its own agreement. To the extent that these three RECs are in the meantime cooperating in addressing NTBs (while also negotiating the TFTA), it does not yet happen as part of a binding agreement.

Table 1. Membership of SADC member States

SADC member	Accession to SADC Trade Protocol	WTO member	Membership of other regional economic communities
Angola	No	Yes	ECCAS
Botswana	Yes	Yes	-
Democratic Republic of the Congo	No	Yes	COMESA
Lesotho	Yes	Yes	-
Madagascar	Yes	Yes	COMESA
Malawi	Yes	Yes	COMESA
Mauritius	Yes	Yes	COMESA
Mozambique	Yes	Yes	-
Namibia	Yes	Yes	-
Seychelles	No	Acceding	COMESA
South Africa	Yes	Yes	-
Swaziland	Yes	Yes	COMESA
United Republic of Tanzania	Yes	Yes	EAC
Zambia	Yes	Yes	COMESA
Zimbabwe	Yes	Yes	COMESA

2.3. INTERIM CONCLUSION: A MEMBER-DRIVEN COMMUNITY NEEDS STRONG POLITICAL WILL AT THE MEMBER STATE LEVEL

In the current SADC setting, member States need a better understanding about the mutual benefits of regional integration and, in particular, benefits of addressing NTMs. This could increase their individual motivation to driven “domestication” and implement provisions with the necessary resource allocation and political drive. Informing policymakers’ constituents, consumers and the private sector is instrumental in this endeavour.

In the Tripartite negotiations, countries can give themselves a stronger and harmonized legal framework. Again, awareness about the benefits of integration could motivate member States to give up certain aspects of sovereignty in favour of a rules-based system that would benefit them all.

3. COHERENT POLICY DESIGN IN SPS AND TBT

3.1. SADC COMMITMENTS: REINFORCING BEST PRACTICES FROM WTO AGREEMENTS

The annexes to the SADC Protocol on Trade relating to SPS measures and TBTs were adopted in 2008 and the process of domestication is currently under way. In July 2014 the Committee of Ministers Responsible for Trade (CMT) also adopted amended SPS and TBT annexes to the Protocol on Trade. In specific areas, these revised instruments have made some significant changes to the instruments that were adopted in 2008.

The SADC SPS and TBT annexes read like sophisticated instruments taken from the best international examples. They are summarized briefly below.

Annex VIII requires SADC countries to harmonize SPS measures where appropriate, taking

into account international standards, guidelines or recommendations. Member States must recognize the equivalence of each other's SPS measures; ensure SPS measures are based on risk assessments; and adopt SPS measures that suit the characteristics of the area from which the import product originates.

This annex also requires member States to establish and operationalize three institutions responsible for the implementation of the annex:

- National Enquiry Points (NEPs) in each member State, to be responsible for providing information about SPS legislation, regulations and procedures to the public;
- National SPS committees, which must include the NEPs.
- The SADC SPS Coordinating Committee, a regional body consisting of representatives of the national SPS committees which is responsible for overseeing the regional implementation of the annex and reports to the SADC Trade Negotiating Forum.

In terms of the revised SPS annex, some of the most significant additions include provisions that bilateral or regional recognition of equivalence agreements should be based on the guidelines developed by the WTO SPS Committee and international standard-setting bodies; equivalent risk assessment guidelines that are adopted and used should be based on those developed by international institutions where appropriate; members shall notify SPS measures and information to WTO and the SADC secretariat simultaneously; the functions of the SADC SPS Coordinating Committee are clearly defined within the annex; and the trade ministries in each member State are required to develop regulations for the implementation of the annex in consultation with the ministries of agriculture, fisheries and health. In terms of appendix A, provisions are set out to promote the transparency of SPS regulations in member States. These provisions require member States to ensure that there is a time lag of at least six months between the publication of SPS regulations and the entry into force thereof.

The TBT annex to the Protocol on Trade aims to establish a common technical regulations framework to guide the development, adoption, implementation and maintenance of technical regulations in SADC through the harmonization of standards, technical regulations and conformity assessment procedures among member countries. Member States must ensure that technical regulations are based on objective evidence; national standards reflect international or regional standards where possible; follow international best practices; use international conformity assessment schemes where they exist; and put appropriate measures in place to ensure that suppliers meet the applicable technical regulations.

The amended TBT annex will supersede the 2008 annex once it has been adopted by SADC members. The most significant additions to the existing TBT annex as set out in the new text are:

- (a) Member States are required to base all national standards on either relevant international standards or negotiated bilateral or regional standards (adopted as national standards);
- (b) Deviations from any national standard based on scientific evidence must be notified to SADC Cooperation in Standardization (SADCSTAN);
- (c) The functions of all the SADC TBT structures (SADC Technical Regulations Liaison Committee, SADC TBT Stakeholder Committee, SADC Cooperation in Accreditation (SADCA), SADC Accreditation Service (SADCAS), SADC Cooperation in Legal Metrology, SADC Cooperation in Measurement and Traceability, SADCSTAN and the SADC Standardisation, Quality Assurance, Accreditation and Metrology Expert Group) are fully described, defined and expanded in the revised annex.

There are numerous obligations in the Draft Tripartite Agreement similar to those in the SADC instruments. The TFTA does not propose a radically new approach for dealing with SPS and technical barriers to intraregional trade, and this has never been the expectation.

3.2. IMPLEMENTATION OF COMMITMENTS AND STATUS OF HARMONIZATION

3.2.1. Sanitary and Phytosanitary measures

According to a 2010 Southern African Trade Hub (SATH) audit of the implementation of the SPS annex, the rate of implementation by the SADC member States is slow owing to the required domestication process of each individual member State and the need for them to align the SPS annex with their domestic legislation. The essential systemic obstacles are discussed in chapter 2 of this paper.

All SADC members have notified SPS NEPs, except Seychelles. However, transparency remains an issue as only five countries' NEPs have websites, as illustrated in table 2. The table also shows that 10 member States notified SPS measures to WTO, but with low numbers of notifications their comprehensiveness remains questionable and

measures imposed before the NEPs were set up are not notified.

The regional SADC SPS Coordinating Committee was launched in July 2011 with an ambitious work plan that envisages the identification of technical problems related to SPS matters that can form the basis for joint SPS projects, the development of a cooperation and coordination mechanism and the establishment of a regional expert working group on SPS matters.

SADC member States are at the beginning of their harmonization efforts. This entails the targeting of specific SPS measures and standards for the harmonization of legal frameworks and regulations and standards. Regional guidelines for the regulation of food safety, crop protection products, veterinary medicines and the management of SPS matters are under development. The harmonization of SPS measures, standards, quality control, accreditation and metrology provisions of member States with those in internationally accepted instruments within SADC and the Tripartite region is work in progress.

Table 2. SPS and TBT notification and coordination mechanism in place

SADC member	SPS NEP	SPS measures notified to WTO	SPS National committees	TBT NEP	TBT measures notified to WTO	TBT measures publishing notified	TBT Code of Good Practice accepted
Angola	Yes	No	Yes	No	No	No	No
Botswana	Yes + website	Yes	Yes	Yes	Yes	Paper-based	Yes
Democratic Republic of the Congo	Yes	No	-	No	Yes	Paper-based	No
Lesotho	Yes	No	Yes	Yes	No	No	No
Madagascar	Yes	Yes	Yes	Yes	No	No	No
Malawi	Yes + website	Yes	Yes	Yes	No	Paper-based	Yes
Mauritius	Yes	Yes	Yes	Yes	Yes	Paper-based	Yes
Mozambique	Yes	Yes	Yes	Yes	Yes	No	Yes
Namibia	Yes	No	Yes	Yes + website	No	Paper-based	Yes
Seychelles	No	No	Yes	No	No	No	No
South Africa	Yes + website	Yes	Yes	Yes + website	Yes	Online	Yes
Swaziland	Yes	Yes	Yes	Yes	Yes	No	Yes
United Republic of Tanzania	Yes + website	Yes	Yes	Yes + website	Yes	Paper-based	Yes
Zambia	Yes + website	Yes	Yes	Yes	Yes	Paper-based	Yes
Zimbabwe	Yes	Yes	Yes	Yes	No	Paper-based	Yes

3.2.2. Technical Barriers to Trade

In accordance with their obligations under the WTO TBT Agreement and the SADC TBT annex to the Protocol on Trade, all member States, except Angola, the Democratic Republic of the Congo and Seychelles, have notified the existence of NEPs for TBT matters. Only 10 SADC member States have notified the existence of mandatory standards via the WTO notification mechanism (table 2).

According to their WTO notifications the majority of SADC member States' national standardization bodies have accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards, which is contained in the TBT Agreement (table 2).

Botswana, the Democratic Republic of the Congo, Malawi, Mauritius, Namibia, South Africa, the United Republic of Tanzania, Zambia and Zimbabwe have all notified the publications in which they publish TBT measures. However, South Africa is the only country that has notified that the publications are electronically available. Online publishing is an important step to increasing transparency, which is urgently needed in the region.

3.2.3. Accreditation and mutual recognition

The ability to export depends not only on complying with foreign SPS and TBT requirements, but also on demonstrating such compliance through conformity assessment. Studies have shown that obtaining certificates of compliance is a major hurdle for exporters in SADC.⁸ For certificates to be recognized by the importing country's authorities, the issuing laboratory needs to be accredited for the specific standard. Since mandatory SPS and TBT requirements in SADC are mostly based on international standards, accreditation of facilities for these standards has an export-enabling effect for regional trade and beyond for many developing markets. For the EU and other developed markets, additional and often stricter requirements are mandated. Thus, accrediting facilities calls for specific cost-benefit analyses.

Accredited facilities are a bottleneck for exporters; and accreditation bodies are a bottleneck for certification facilities. SADCA is a cooperation of accreditation bodies in SADC that has been established under the TBT annex to the SADC Protocol on Trade to coordinate SADC accreditation projects, facilitate capacity-building in the region and establish a mutual recognition agreement (MRA) in the region. In order to establish a SADC MRA, in March 2013 SADCA established and operationalized MRA and technical committees, which are in the process of drafting their terms of reference and workplans for approval by the SADCA General Assembly. The only fully operational and resourced accreditation bodies in Africa are in South Africa and Mauritius.

Providing accreditation services to SADC member States, SADCAS is a multi-economy accreditation body based in Botswana and established in terms of Articles 10(1) and 10(2) of the SADC Memorandum of Understanding on Cooperation in Standardization, Quality Assurance, Accreditation and Metrology. SADCAS is recognized by the SADC Council of Ministers as a subsidiary organization of SADC with the relationship between SADCAS and SADC formalized through a memorandum of understanding on general cooperation.

SADCAS is responsible for the accreditation of laboratories, certification and inspection bodies to relevant international standards. The SADCAS Memorandum of Association allows SADCAS to expand its scope of work as required. Currently the Board of Directors is composed of individuals from a range of SADC member States, including South Africa, Botswana, the Democratic Republic of the Congo, Zimbabwe, Mozambique and Lesotho. By 31 March 2013 SADCAS had issued 24 accreditation certificates to 16 accredited facilities in member States and conducted 51 training courses on accreditation standards in various member States, including Malawi, Mozambique, Swaziland and Zambia.

According to the SADCA Annual Report for 2013/2014, SADCAS is funded by the Norwegian Government through the Norwegian Agency for Development Cooperation and the SADC Committee of Ministers of Trade. The Annual Report also states

⁸ See International Trade Centre company surveys on non-tariff measure in Malawi, Madagascar and Mauritius, available at <http://www.intracen.org/publications/ntm/Malawi>

that the specific functions of the SADCA Secretariat and Regional Coordinator function are currently supported by the South African Department of Trade and Industry, while projects on quality infrastructure in SADC in the areas of standardization, quality assurance, accreditation and metrology (SQAM) are being supported by the Physikalisch-Technische Bundesanstalt in Germany. The United Nations Industrial Development Organization (UNIDO) is currently undertaking SQAM-related projects in Mozambique, Malawi, Swaziland and Zambia to assist these countries with their compliance with international standards.

3.3. ADDRESSING THE LACK OF TRANSPARENCY OF NTM REGULATION

Transparency is a fundamental driver and necessary condition for the harmonization of NTM policies. It enables monitoring of implementation, facilitates cooperation between countries' policymaking bodies, provides an essential basis for further research and empowers public- and private-sector engagement.

While SADC members, like all other WTO members, are obligated to notify changes of certain NTMs to WTO, there are two key shortcomings. Firstly, compliance with the notification requirements is low in many countries. Secondly, only changes need to be notified and certain NTM measure types are not required to be notified; there is no comprehensive stock of all active NTM regulations. In fact, section 3.2 of this paper has shown that the implementation of notification and transparency obligations under SADC and WTO provisions leaves much to be desired.

3.3.1. Sustainable UNCTAD data collection together with local partners

In 1994, UNCTAD began to systematically collect and classify NTMs in order to enhance transparency. It developed UNCTAD TRAINS (Trade Analysis and Information System) a comprehensive database of information on NTMs. In 2006, a new approach to keep up with the increasing use and complexity of NTMs was developed by UNCTAD in cooperation with a Group of Eminent Persons on Non-Tariff Barriers and a Multi-Agency Support

Team (MAST).⁹ Measures include a comprehensive revision of UNCTAD's previous NTM classification; the revised version is known as the UNCTAD MAST NTM classification. This classification comprises all NTMs and has been widely adopted, including by regional and international organizations, including WTO and Tripartite institutions.

Using the UNCTAD-MAST NTM classification, data on NTMs are collected worldwide to develop a comprehensive database of comparable data. UNCTAD coordinates the international effort on official NTM data. The information is publicly available, for example, through the World Integrated Trade Solution system (WITS)¹⁰. Currently, for SADC, only data for an earlier version of the UNCTAD MAST classification and four SADC members are available.

Within the Transparency in Trade initiative,¹¹ the African Development Bank (AfDB) and UNCTAD classify and collect NTM data in Africa and build capacity in African countries with respect to NTMs. The data will be useful for streamlining NTMs unilaterally, for regional integration processes in Africa with a view to increasing intraregional trade and export competitiveness, since the approach allows comparing NTMs and their potential for mutual recognition and harmonization with those of trading partners outside of Africa such as ASEAN, China, the EU and the United States of America.

3.3.2. Capacity-building on NTMs with regional partners

UNCTAD is also working with the AfDB in the COMESA-EAC-SADC Tripartite Capacity Building Programme (TCBP) of the African Development Fund.

⁹ The following organizations are members of the MAST: Food and Agriculture Organization, International Monetary Fund, International Trade Centre, Organization for Economic Co-Operation and Development, UNCTAD (Chair), United Nations Industrial Development Organization, World Bank, WTO. For more information see <www.unctad.org/ntm>.

¹⁰ Available at: wits.worldbank.org

¹¹ A joint multi-year programme launched and implemented by UNCTAD, the World Bank, the International Trade Centre and the African Development Bank.

It is envisaged that focal points in SADC NEPs and NTB, as well as, to the extent possible, other relevant government institutions, should be involved from the early stages of the data collection and training process. This is in order to ensure ownership and strengthening of institutional capacity corresponding to the country's specific needs.¹² The COMESA, EAC and SADC secretariats as well as technical cooperation organizations such as GIZ play an important role in the capacity-building and data collection activities. Sustainability can be achieved only if the regional structures support the activities. This approach supports the technical work and can contribute to strengthening the political will to address NTMs to achieve deep regional economic integration.

The associated capacity-building contributes to a better understanding of NTMs in general and of their impact on consumers, producers and trade. This contributes to higher capacity for trade negotiations and their implementation, including obligations under WTO such as notification of SPS, TBT and contingent changes in trade-protective measures. The better understanding of NTMs can also contribute to coherent NTM and development policy strategies.

Furthermore, there is a lack in understanding of how SPS and TBT measures can become NTBs within the SADC and Tripartite region. This is partly owing to a lack of documented practical examples about the burdens and costs of a lack of transparency, risk assessments, documentation requirements, multiple inspections, uncertainty at borders, etc. The clients of the TCBP, namely REC member States and secretariats, should propose specific interventions to demonstrate how and why certain measures are costly and burdensome for traders. Good practices should be developed by showing how SPS and TBT measures can be utilized effectively to protect consumers and the environment in a less burdensome and costly manner. This should include training on relevant international standards.

3.4. AN INNOVATIVE APPROACH: BENCHMARKING REGULATORY DISTANCE

Having systematic data on NTMs allows the regulatory coherence and distance between SADC members to be assessed. Cadot et al. (2015) develop two approaches that can immediately be applied to the SADC and Tripartite regions once the necessary data have been collected. The first is called "distance in regulatory structure" as it is based on the typology of collected data. For the second approach, at the "distance in regulatory stringency", the full details of regulatory texts are evaluated. A non-technical summary of the study is provided below.

3.4.1. Distance in regulatory structure

The collected data provide detailed information about the affected products of measures (at six digits of the Harmonized System, or HS-6) and NTMs classified into 122 distinct measure types according to the international UNCTAD-MAST nomenclature. While this is very detailed, it still represents a slight aggregation compared with the almost limitless complexity of NTMs. The distance in regulatory structure can be mapped as shown in table 3.

From this starting point, the similarity of regulations, the "regulatory distance", between countries can be assessed. In the example in table 3, countries A and B apply maximum residue limits (MRL) of contaminants to the product. Furthermore, both countries use an inspection procedure for the conformity assessment of the MRL. Thus far, the regulatory structure would appear to be similar - or, in other words, the regulatory distance is short. However, country B also requires an SPS certificate as an additional conformity assessment procedure. In this regard, the regulatory framework of countries A and B diverges and the regulatory distance increases. Furthermore, this way of evaluating the data also highlights the potential duplication of conformity assessments, which may indicate unnecessary obstacles to trade. Finally, country C takes a completely different regulatory approach by applying a discretionary non-automatic licence. This is a form of quantitative restriction, whereas countries A and B chose technical SPS measures

¹² UNCTAD has recently developed an online training course on NTMs to increase the coverage. See www.unctad.org/ntm for more information.

Table 3. Example of NTM data mapping to illustrate the distance in regulatory structure

NTMs (with measure code) for product at HS-6 level	Country A	Country B	Country C
A21: Maximum residue limit	1	1	0
A81: SPS inspection	1	1	0
A83: SPS certificate	0	1	0
E11: Non-automatic licence	0	0	1

to regulate the import of the product. Therefore, the regulatory distance is great between country C and countries A and B.

While the example focuses on a specific product and a comparison of three countries, the approach is highly flexible. The regulatory distance can easily be aggregated to the sector level or across all goods. Comparisons can be made between two or more countries, or even between entire RECs. The assessment can also focus on specific groups of NTMs, such as SPS or TBT.

As such, the tool can serve as a benchmark of regulatory harmonization. It allows the identification of priority sectors or countries where integration is lagging, and “best practice” sectors or country pairs where integration is advanced.

Cadot et al. (2015) apply the methodology using existing data for other countries (mainly Latin American countries, as well as some African and Asian countries, China, Japan and the European Union) and show that the distance in regulatory structure is on average significantly shorter between countries that are members of a free trade agreement. The effect is particularly high in countries that are members of the Latin America Integration Association. Owing to the low number of data collected for SADC countries (Madagascar, Mauritius, Namibia and the United Republic of Tanzania), the measured effect is not statistically significant, but goes in the same direction.

Since the use of this method is limited to data-based analysis at the level of detail provided by the UNCTAD-MAST NTM classification, it can only assess the structure of regulatory frameworks and not the full complexities of NTMs. SPS and

TBT measures in particular have a crucial deeper, technical dimension.

3.4.2. Distance in regulatory stringency

At a more fine-grained level, which Cadot et al. (2015) call the distance in regulatory stringency, regulatory distance looks at the specific details of comparable NTMs. For instance, the MRL applied by countries A and B in the example in table 3 may differ substantially across the two countries. The maximum level of permitted chemicals may be different and the number and type of restricted substances/toxins may vary. The stringency of the same measure type (in this case MRL, code A21) may be much higher in one of the countries. In this context, it also has to be considered that, if the two countries have exactly the same MRLs and also apply this measure to domestic production, even stringent MRLs can have a negligible impact on cross-border trade.

The distance in regulatory structure can be directly calculated from UNCTAD NTM data. The distance in regulatory stringency, however, requires case-study analysis of full-text regulatory documents. It is therefore a rather work-intensive analysis that can be performed only for a very specific product and a limited number of countries. Nevertheless, the starting point is the UNCTAD NTM data and the documents containing the detailed regulations, which are available in the extended UNCTAD NTM database upon request.

In a systematic analysis of the regulatory distance in SADC, the distance in regulatory stringency could be analysed for priority products once the NTM data have been collected.

4. ELIMINATING NTBS: COMMITMENTS AND IMPLEMENTATION

NTBs are policy measures or procedures that have been reported as barriers in the SADC or Tripartite complaint systems, and measures that have a proven and known restrictive impact, such as quantitative restrictions.

SPS and TBTs are usually imposed for reasons such as the protection of human, animal or plant health, which cannot normally be eliminated. However, related procedural obstacles related to their implementation can turn out to be NTBs.

4.1. SADC COMMITMENTS TO THE ELIMINATION OF NTBS

The first reference in the SADC Protocol on Trade to the elimination of NTBs is provided by Article 3 (see Box 1).

Box 1: Article 3 of the SADC Protocol on Trade

“1. The process and modalities for the phased elimination of tariffs **and non-tariff barriers** shall be determined by the Committee of Ministers responsible for trade matters (CMT) having due regard to the following:

[...]

(c) That Member States which consider they may be or have been adversely affected, by removal of tariffs and non-tariff barriers (NTBs) to trade may, upon application to CMT, be granted a grace period to afford them additional time for the elimination of tariffs and (NTBs). CMT shall elaborate appropriate criteria for the consideration of such applications.

[...]

(e) The process and the method of eliminating barriers to intra-SADC trade, and the criteria of listing products for special consideration, shall be negotiated in the context of the Trade Negotiating Forum (TNF).”

While these original derogations undermined a rules-based trade arrangement, the

CMT has recognized the importance of revising these provisions. At the 24th CMT meeting, held on 30 November 2012, concrete criteria for applications for grace periods under Article 3(1)(c) of the Protocol on Trade were agreed upon as an annex X to the Protocol. Notably, it also provides for an “independent assessment” to be undertaken or facilitated by the SADC secretariat if another member State objects to granting the grace period.

Furthermore, CMT agreed to recommend to the SADC Council that the reference to NTBs in Article 3(1)(c) be removed. Removing this reference would be a milestone towards eliminating NTBs in the region.

Article 6 then calls on member States to adopt policies and implement measures necessary to eliminate NTBs applicable to intra-SADC trade. They have to refrain from imposing any new NTBs. Member States must adopt a time frame for eliminating barriers to intra-SADC trade within eight years after the Protocol entered into force.

According to Articles 7 and 8 of the Protocol, member countries are not allowed to apply any new quantitative restrictions on imports or exports. The Protocol allows for general exceptions for measures to protect human, animal or plant life or health and for food security reasons. Further specific exceptions are certain tariff-rate quotas and when export restrictions are needed for the prevention of eroded prohibitions or restrictions applied to exports outside SADC.

Annex III details that member countries are required to ensure cooperation in customs matters, simplify and harmonize trade documentation and procedures, and have to provide for freedom of transit within SADC.

There are structures responsible for the implementation of the SADC Protocol on Trade, such as the aforementioned CMT. The Trade Negotiating Forum is responsible for inter alia the establishment of a regional framework to phase out tariffs and NTBs applicable to intra-SADC trade. The Sector Coordinating Unit is responsible for the coordination of the day-to-day operations in the implementation of the Protocol. It will work with private-sector stakeholders and identify areas of research and priority areas regarding intra-SADC trade.

The Draft Tripartite Agreement also aims at eliminating NTBs and harmonizing customs procedures and trade facilitation measures among partner countries. The proposed commitments are very similar to the existing SADC agreements. The Draft Tripartite Agreement recognizes the existing mechanisms for the reporting, monitoring and elimination of NTBs in the three RECs and aims to blend these individual mechanisms into a single arrangement.

4.2. WEAKNESSES IN ENFORCEMENT: DISPUTE SETTLEMENT AND A NEW TRIBUNAL

In the event that member States disagree on the existence of impediments to intra-SADC trade, recourse to the dispute settlement provisions of the Protocol on Trade may be had.¹³ Annex VI to the Protocol on Trade provides for a panel procedure for the settlement of trade disputes between the State Parties, including NTBs, SPS and TBTs. A SADC Tribunal would exercise appellate jurisdiction with regard to annex VI disputes. Disputes between States have never been brought to the Tribunal; however, it was suspended in 2010 after controversial disputes between State and private parties.

A new protocol for a new SADC Tribunal has just been negotiated and now awaits ratification by the member States. This new protocol will take away the standing (*locus standi*) of private parties (Article 35). They will no longer be able to bring applications to this forum for the enforcement of their rights. In future only inter-State disputes will be possible. Furthermore, Article 44 of the new protocol specifies that the SADC Summit retains the final say regarding the enforcement and execution of tribunal decisions. The SADC Summit consists of heads of State and Government of the member States and takes decisions by consensus. The implication is that NTB-related disputes are unlikely to be resolved through litigation involving the new tribunal.

Despite the deficiencies of the new tribunal, annex VI to the Protocol on Trade provides for a

panel procedure that has untested potential to settle NTM-related disputes. It also offers a better chance of being used by governments since it is already in place.

When it was originally drafted, annex VI copied the WTO procedure and therefore provides for panels as well as appellate jurisdiction. The latter involved recourse to the SADC Tribunal. While annex VI is intended to be in force as part of the SADC Protocol on Trade, certain outstanding preparatory measures need to be addressed in order for panels to be invoked. This will involve a new registrar of the tribunal, who will have to identify panellists.

Even though it has been designed as a more traditional dispute settlement mechanism for inter-State disputes, there are aspects which merit consideration for the purpose of settling NTM-related disputes in an informal or even voluntary manner. This includes the provisions on mediation, consultation, and the involvement of experts. Thus, exploring an ad hoc use of annex VI would be an interesting option to resolve NTM-related disputes in SADC.

4.3. IMPLEMENTATION OF THE RESOLUTION MECHANISM AND STAKEHOLDER INVOLVEMENT

The SADC complaint mechanism was put in place in 2004. It provides for a complaints procedure and for certain information to be supplied when lodging a complaint.

Using the SADC NTB reporting mechanism, a notification of an NTB would be sent to the national focal point of the country of origin of the economic operator or trader who faced the NTB. A notification would then be sent to the country where the NTB was encountered through the national focal point, with the SADC secretariat copied into the correspondence. If no response is received from the country in which the NTB was encountered within two weeks, the national focal point would need to notify the secretariat accordingly. The secretariat would then follow up with the country where the NTB was encountered. If no resolution is achieved, the secretariat would need to submit the issue to the Sub-Committee on Trade Facilitation

¹³ Article 32 of the Trade Protocol states that the "rules and procedures of annex VI shall apply to the settlement of disputes between Member States concerning their rights and obligations under this Protocol".

for resolution.¹⁴ If the complaint cannot be resolved through bilateral consultations among the affected member countries, the case is referred to the NTB Task Team for further consultations. If the matter remains unresolved, an expert can be appointed to resolve it through arbitration. The SADC dispute settlement mechanism could be utilized in the final analysis. However, this has never been the case and the SADC Tribunal has been suspended since 2010.

4.3.1. SADC and Tripartite online mechanism

The TFTA provides for combining the three approaches in the EAC, COMESA and SADC on how to address NTBs. The Tripartite NTB online reporting mechanism was created and piloted in COMESA in 2008. This mechanism has since been expanded to govern the elimination of NTBs in all three RECs, as a harmonized regional approach to the elimination of NTBs in the Tripartite.¹⁵ Once the TFTA agreement is concluded there should be a proper legal foundation in place for its operations.

The Tripartite NTB online reporting mechanism is a web-based system which allows all interested parties to report any NTB they have encountered in the region. The resolution and elimination of a reported barrier is then monitored. A lodged complaint goes to the system administrator who forwards it to the national focal points who then forward it to the relevant national monitoring committees for resolution and following up. The system focuses on eight categories of NTBs: government participation in trade and restrictive practices tolerated by governments; customs administrative entry procedures; TBTs; SPS measures; specific limitations; charges on imports; other procedural problems; and transport, clearing and forwarding.

The online NTBs mechanism has created awareness of the challenges posed by NTBs. However, there are numerous cases of NTBs that persist despite having been addressed through the mechanism and by national monitoring committees (NMCs). Such cases usually occur when the NTB refers to actual policies rather than procedural obstacles and if the regulatory agencies maintain their standpoint and defend the measure. As a result of the derogations of the Protocol on Trade and the lack of enforcement and dispute resolution mechanisms, such situations remain without consequences and resolution. Therefore, the system may currently be viewed only as a system for lodging complaints. Many private-sector participants have been deterred from using the system because of its inability to provide adequate elimination of NTBs in the region.

4.3.2. National NTB focal points

Each member State has to appoint a total of five focal points to administer the NTBs in the online system. The focal points have mainly been appointed from chambers of commerce or relevant industry associations, revenue authorities and ministries of transport, agriculture and trade. The number of focal points is expected to reduce bottlenecks and time lags. The respective trade ministry is the overall coordinator responsible for the resolution mechanism.

Financial constraints, especially insufficient budgetary allocations, have resulted in the inability of member States to appoint dedicated focal point officers in the trade ministries to deal with NTB issues. Focal point officers tend to have too many duties and find it hard to dedicate enough time to their work as an NTB focal point. Furthermore, the level of seniority of the focal point officers has turned out to be a crucial factor in whether an NTB gets resolved properly and in a timely manner.

This lack of allocated resources in the ministries jeopardizes their role of coordinator of NTB focal points. It can lead to a misassignment of the responsible focal point who has to follow up on specific NTB complaints. This can once again cause delays in resolution, especially if complaints are not being sent to NMCs, if the resolution is not being followed up or if there is duplication in the complaints sent to NMCs.

¹⁴ SADC/CMT/19/2007/8[C]; SADC, 2007, Draft record of the 19th SADC Committee of Ministers of Trade and Industry Meeting (Maseru, Lesotho).

¹⁵ The Tripartite NTB online Reporting, Monitoring and Eliminating Mechanism forms part of the Tripartite Comprehensive Trade and Transport Facilitation Programme. It has been launched as part of the Trade Mark Southern Africa initiative funded by DFID. This financial support is running out in October 2014; as matters presently stand.

There is also strong demand for training focal point officers on classification and assignment of NTBs to the right domestic institutions/focal points. However, high staff turnovers in focal points and NTB units undermine institutional capacity development, which calls for more sustainable staff management commitments and capacity-building.

4.3.3. National monitoring committees

The SADC secretariat has indicated that all SADC member States have established NMCs or have nominated existing national structures to deal with the elimination of NTBs. The NMCs are any institutions that have the responsibility of facilitating the removal of NTBs. These generally comprise government departments, local authorities, key exporters and importers, with representation at senior level. The trade ministries in the member countries usually act as the secretariats of the NMCs.

Although the necessary focal points and NMCs have been appointed, the functioning of these institutions has been identified as being problematic.

NMCs meet irregularly and are often operating without the necessary physical infrastructure, training and implementation strategies. To enable NMCs to fulfil their mandate, they need training on technical expertise to assess NTMs and to develop national strategies and policies.

In order to address NTBs in the long-run, support should be provided for regular meetings

among NMC members to discuss long-standing NTBs in order to devise strategies on how these can be addressed.

The establishment of regional monitoring committees could cater for those countries with severe capacity constraints. In such instances it may be valuable to determine whether regional NMCs might be more effective in addressing NTB issues. However, such regional NMCs would require the necessary mandate to enable them to address NTB issues that fall outside their national capabilities.

4.3.4. NTB elimination matrices in Tripartite RECs

Although member States had agreed to draw up a regional time-bound NTB elimination matrix, SADC has not developed a regional elimination matrix; the RECs require technical support with drafting their matrices. This could create an opportunity for international partners to assist the development of an efficient and effective matrix to eliminate NTBs as they arise.

EAC is the only REC which has developed a time-bound elimination matrix. The matrix is regularly updated, indicating resolved, unresolved and new NTBs. However, member States have indicated that there is a lack of adherence to the specific time frames by EAC members, especially in the case of regulatory or policy NTBs.

Currently only six countries in the Tripartite have drafted national NTB elimination strategies. Table 4 provides an overview of the status of implementation and availability of information.

Table 4. Implementation and public availability of NTB elimination matrices

Country	REC	Status of elimination matrix	Availability of information about matrix
Botswana	SADC	Drafted	Not publicly available
Malawi	SADC+COMESA	Implementation phase	Not publicly available
Zambia	SADC+COMESA	Implementation phase	Not publicly available
Zimbabwe	SADC+COMESA	Implementation phase	Not publicly available
Rwanda	EAC+COMESA	Implementation phase	Fully publicly available
Uganda	EAC+COMESA	Implementation phase	Overview publicly available

Some lessons can be learned from how these matters have been approached in these countries. The national response strategy for the elimination of NTBs in Uganda falls under the Ministry of Trade. The strategy aims to consolidate all aspects of NTB elimination in the country through four key strategies: the establishment of an information exchange facility; the development and implementation of an NTB elimination communication and advocacy strategy; institutional coordination for the elimination of NTBs; and the realignment of national laws and policies.

Among other components of the strategy, interesting points taken from the Rwandan strategy is the redesign of the NMC organization to involve senior managers with more decision-making power, prioritizing NTB research and the establishment of a bilateral dispute resolution mechanism.

In order for SADC and Tripartite countries to fulfil their obligations in terms of national NTB elimination strategies, support is needed both for those countries that have drafted their strategies and for the numerous member countries that still need to develop these strategies. In the case of the latter in particular, technical expertise is required to assist countries to draft a relevant, effective and efficient domestic policy to ensure the elimination of NTBs in the region in the long run.

4.4. A NEW MONITORING, EVALUATION AND REPORTING SYSTEM

A new monitoring, evaluation and reporting (MRE) system is being proposed for the SADC Protocol on Trade. Once it is fully endorsed by the Committee of Senior Officials and CMT, it will involve an increased role for the secretariat.

The SADC secretariat, in cooperation with GIZ and SATH, has developed technical guidelines, procedures and a matrix of indicators for all parts of the Protocol on Trade and its annexes. The matrix of indicators is largely based on the SATH trade audit methodology.

Monitoring requires a baseline status against which progress is monitored. Baseline assessments need to be undertaken for the SPS and TBT annexes to the Protocol on Trade, as no

status information is available for these annexes from the SATH trade audits. For annexes where such information is available through the trade audits, the 2012 data are transferred into the matrix of indicators as the baseline status. The final overall scoring system is developed once the baseline assessment has been completed.

In the first year of the implementation of the MRE, considerable facilitation and coordination will be needed to support member States and SADC structures. Initially, support is to be targeted at the SADC committees and subcommittees. These will validate the baseline assessment, update the status of the regional obligations and develop implementation plans for the regional obligations. Subsequently, SADC member States will receive technical support to enable them to engage in the first monitoring round, update the baseline information and develop national implementation plans. This requires a particular focus on establishing or strengthening the coordination between government structures for successful monitoring and integrated planning.

A self-reporting feature will be used from the second year of implementation. From that point forward, implementation of the system should become a regular feature of the national and regional trade agenda. The secretariat will prepare a mid-term implementation report two years into the implementation of the system, using the annual progress reports. The first evaluation of the MRE system will be undertaken at the end of the third year of implementation.

The possibility of empowering the secretariat offers major additional benefits to enhance rules-based governance and transparency. Considerable technical capacity-building, financial and human resources will be required to ensure optimal implementation.

4.5. APPROACHES TO SUPPORT NTB ELIMINATION

4.5.1. SAIIA-GIZ project background

The Economic Diplomacy Programme at the South African Institute of International Affairs

(SAIIA) is currently engaged in a GIZ-initiated project “Regional Business Barriers: Unlocking Economic Potential in Southern Africa”. It aims to firstly, identify case studies, and secondly, advance practical remedies for the barriers to trade which are preventing regional economic integration in the SADC region. A central feature of the research concerns the involvement with and focus on the private sector.

One of the case studies concerns the Tripartite NTB online reporting mechanism. SAIIA has been working extensively with the Federation of East and Southern African Road Transport Associations (FESARTA) to identify the private sector’s experience of reporting NTBs through the NTB monitoring mechanism. FESARTA has identified one particular NTB, registered as NTB530 on the NTB online reporting website, as being unresolved for a long period of time and requiring urgent attention. Through partnering with FESARTA and GIZ, SAIIA has developed a simple model for NTB resolution in SADC which is focused on creating direct dialogue between State and private-sector actors on reported NTBs.

4.5.2. Case study: *Zambian tanker regulations (NTB530)*

Zambia mandates all foreign tankers delivering products to the country, or transiting through it, to comply with its domestic requirements. Furthermore, it is charging transporters for a permit to certify that the tankers comply with the requirements. FESARTA argues that it is unacceptable that Zambia does not recognize certificates of roadworthiness from other SADC member States. In addition, it points out that the regulation was implemented abruptly and without an appropriate phase-in. FESARTA concludes that this requirement is affecting the free flow of goods into Zambia and is making it costly for logistics companies to operate within the country.

FESARTA registered this NTB on the online reporting website on 10 September 2012. On 14 November 2012, the SADC secretariat advised that Article 6.3, paragraph 5 of the SADC Protocol on Transport, Communications and Meteorology provide that in the absence of an agreed regional standard, “A Member State shall recognize the

roadworthy certification and/or vehicle fitness certification issued in another Member State in respect of a vehicle registered in such State for the purpose of the free movement of such vehicle within its territory...”.

This process is ongoing and Zambia has been invited to submit its recommendations to the SADC working groups and explain why the SADC Protocol on Transport, Communications and Meteorology Articles should not apply. In the interim, the SADC secretariat has requested Zambia to consider suspending the enforcement of the above-mentioned requirement. However, Zambian authorities are still applying the regulations. Furthermore, transporters that have complied and paid for the certificates were reportedly being fined by Traffic Police for not having yellow reflective tape down the sides of the vehicle combination – despite this being a prerequisite for Zambia Bureau of Standards certification. Responses from the Zambian NMC have not included the reasoning behind the application of these regulations, but maintain that the regulations are valid and do not constitute an unfair NTB. FESARTA suspects that the motivation for not removing this NTB is in order to collect revenue through the required permit.

4.5.3. Model for NTB resolution

SAIIA believes that the best model for NTB resolution in SADC in cases where the Tripartite NTB online reporting mechanism has reached stalemate status is to create a forum for facilitated dialogue where private-sector and government actors can discuss the issue and reach an amicable solution. This must involve establishing the regulatory authority and the industry position on the issue beforehand so that each party is aware of the other’s position, allowing the forum to facilitate robust discussion and find a solution. Currently, the Tripartite NTB online reporting mechanism makes no provision for such a forum to take place when there is disagreement between the regulatory authority and the private sector regarding the appropriateness of an NTB.

In the case of NTB530, the first step will be to approach the Zambian regulatory authority, using GIZ contacts in the region, in order to establish the rationale behind the tanker regulations. At the same

time, FESARTA is drafting the industry's position on the issue to present the private sector's motivation for having the NTB removed. Once each stakeholder's position has been identified, the respective positions will be circulated among the interested parties so that each is aware of the other's stance. For direct interaction, the next step is to host a dialogue in Zambia between the regulatory authority and the private sector (represented by FESARTA), facilitated by representatives of the SADC secretariat.

A crucial component of this model is the use of the media in highlighting the importance of NTB elimination to economic development in the region and to apply pressure on the relevant government authority to take steps towards NTB elimination. This tactic would include inviting local journalists to attend the dialogue to report on the proceedings and the outcome. SAIIA has also been experimenting with the use of social media platforms, in particular Twitter, as a tool for creating public interest in the dismantling of trade barriers in SADC.

Central to the success of this model is the engagement of regional business organizations, which are able to distil the private sector's interest into a central platform, making the representation of the private sector in these dialogues easier and more direct.

This role of regional business organizations is particularly important for micro, small and medium-sized enterprises experiencing NTBs in SADC. These actors, by virtue of their size, do not have the power to address State institutions, such as trade and finance ministries. They would, therefore, rely on larger national or regional business membership organizations to play this role for them. The inefficiency of some of these organizations therefore constrains the collective power that smaller private-sector actors should have in this process. The result is that an NTB can be notified but not followed up on owing to a lack of capacity in the private sector. Initiatives need to be undertaken to strengthen national and regional apex business membership organizations in countries where they are weak and in highlighting the role they can play in the elimination of reported NTBs through the Tripartite mechanism. Regional business membership organizations also require strengthening so that they can play a more significant role in encouraging member States to

make NTB elimination a priority. The role of SADC structures in encouraging member States to resolve reported NTBs should also be highlighted.

4.6. NTBS AND PROCEDURAL BARRIERS: A CALL FOR SYSTEMATIC BORDER MANAGEMENT REFORM

4.6.1. Importance of customs and border procedures among NTBs

Based on the complaints submitted to the NTB online reporting mechanism, the WTO *World Trade Report 2012* suggests that customs procedures are among the most important trade barriers in Southern and Eastern Africa. While acknowledging that the reporting mechanism may be biased and not representative, this calls for a systematic approach of addressing border management issues rather than only resolving individually reported NTBs.

"Customs and administrative entry procedures" were cited in 41 per cent of complaints and "Other procedural problems" were mentioned in another 24 per cent of cases, for a combined total of 65 per cent. SPS and TBT measures were only responsible for 7 per cent and 5 per cent of complaints, respectively, for a total of 12 per cent. This combined share is the same as the share for "Specific limitations", a category that includes quantitative restrictions and prohibitions.

4.6.2. Taking advantage of the Trade Facilitation Agreement

The high cost of doing business in many African countries is directly linked to trade facilitation issues such as delays at border posts, roadblocks and checkpoints, corruption and cumbersome border procedures and documentation requirements. Standards regimes are often characterized by an overreliance on mandatory inspection procedures and certifications.

The WTO Trade Facilitation Agreement (TFA) adopted at the Bali Ministerial Conference in December 2013 will boost the multilateral efforts to address these challenges and should in fact be considered when designing interventions to

assist developing countries anywhere. The newly launched WTO TFA Facility will assist SADC and its member States in coordinating needs assessments and technical assistance to comply with the Agreement.¹⁶ It is strongly suggested that SADC will reap the full benefits of the TFA to boost intraregional and interregional trade.

4.6.3. Customs procedures harmonization in SADC

The harmonization of transport and customs provisions and programmes within SADC is still ongoing. The SADC Model Customs Act, adopted by the Committee of Ministers in 2008 as the benchmark model law for the harmonization of customs law and procedures within SADC, is under review. The SADC members also developed and agreed upon a Customs Declaration, a Transit Control Form and simplified procedures for risk analysis to facilitate intraregional trade.

In accordance with the Model Customs Act, the Sub-Committee on Customs Cooperation (SCCC) was created. It consists of heads of customs from SADC members. The mandate includes the implementation and interpretation of trade policies and the development of instruments that will facilitate the harmonization of customs laws and operations. Although the SCCC has had various meetings, the decisions are often only documented and lack any implementation and follow-up owing to the lack of an enforcement mechanism to ensure implementation by the member States.

In 2011 the SATH completed an audit of the implementation of the regional SADC customs instruments (table 5).

The exchange of information regarding customs matters are normally communicated through the websites of the national customs authorities. While all SADC members, except Namibia, have dedicated customs websites, there is no central database. A draft regional policy on the exchange of information was initiated but never completed. The TFA obliges members to

publish online all customs procedures, which offers an opportunity to obtain support through the TFA Facility.

The SATH Audit identified various challenges within the area of customs information and harmonization in SADC. These include multiple memberships of different RECs, complicating countries' ability to implement the Model Customs Act; the lack of technical expertise to align the Model Customs Act with domestic customs legislation; the lack of capacity to implement the instruments; the incompatibility of countries' customs systems with the SADC Customs Declaration; and the absence of national legislation to enable countries to use the SADC Transit Control Form.

Member States have also indicated that they require implementation guidelines and modalities to be developed by the SADC secretariat for regional provisions. They require capacity-building in areas such as valuation, transit and risk management, bonded warehouses, audit procedures and excise management.

Specific instruments such as cross-border road user charges, harmonization of vehicle standards, etc., are in different stages of agreement at the technical level and with regard to ministerial approval, implementation and domestication.

As of March 2013 Botswana, the Democratic Republic of the Congo, Lesotho, Mauritius, Malawi, Mozambique, South Africa, Swaziland, the United Republic of Tanzania and Zambia have established formal or regular forums for discussions related to customs matters with the private sector. Angola and Zimbabwe have discussions on an ad hoc basis. The SADC secretariat has apparently engaged the private sector through technical committees and working groups regarding specific customs issues. These consultations take place on an ad hoc basis due to the lack of funding by donors to enable the secretariat to formalize a regional customs private-sector forum.

¹⁶ News on the WTO Trade Facilitation Agreement Facility can be found at <http://www.wto.org/english/news_e/news14_e/fac_22jul14_e.htm>.

Table 5. Status of implementation of regional SADC customs instruments (2011)

SADC member	Alignment of domestic legislation with SADC Model Customs Act	Use of SADC Customs Declaration	Use of SADC Transit Control Form	SADC simplified procedures for post clearance audits and pre-clearance	Customs risk management procedures in place
Angola	No	Yes	Yes	Yes	Yes
Botswana	No	Yes	No	Yes	No
Democratic Republic of the Congo	No	Yes	Yes	Yes	Yes
Lesotho	Yes	Yes	No	No	No
Madagascar	No	Yes	No	Yes	Yes
Malawi	No	No	No	Yes	Yes
Mauritius	Yes	No	No	Yes	Yes
Mozambique	Yes	No	No	Yes	Yes
Namibia	No	Yes	No	Yes	Yes
Seychelles	No	Yes	No	Yes	Yes
South Africa	No	Yes	No	Yes	Yes
Swaziland	No	No	No	No	No
United Republic of Tanzania	No	No	No	Yes	Yes
Zambia	No	Yes	Yes	Yes	Yes
Zimbabwe	No	No	No	Yes	Yes

Source: Southern Africa Trade Hub Audit 2011.

4.6.3.1. The SADC Transit Management System

The SADC Transit Management System (TMS) was adopted in 2009 as an instrument to harmonize and standardize procedures for goods in transit across the region. It includes transit procedures and the regional transit bond guarantee system (RTBG).

The Customs Audit Report of 2011 indicated that member States were not using the SADC TMS and called for a review of the system. In September 2011 the findings of the final evaluation report of the COMESA TMS and the SADC TMS were presented. According to the 2011 review, both systems were non-operational after the initial pilot phase. This was

mainly owing to unclear implementation guidelines and mandates, surety and liability concerns related to the RTBG system, lack of interconnectivity in transit information management, unawareness of the status of the system and the failure to incorporate the system into national legislation. One of the main recommendations from the review was that SADC and COMESA should adopt the regional data exchange and management information system (SADCOM) to enable interconnectivity of transit data and information. The 2012 SATH Audit of the implementation of the SADC Protocol on Trade found that the SADC TMS and RTBG were still not fully operational and domestication has been slow, which could partly be attributed to overlapping membership and incompatible domestic legislation. According to the report, the SADC TMS and RTBG

need to be developed in cooperation with COMESA and EAC to create a joint tripartite system. The review of the SADC and COMESA systems have resulted in the Draft SADC ICT Strategy, which also proposes a harmonized solution of regional TMS by combining various elements in the different TMS systems developed by SADC and COMESA. This draft strategy was approved by the Sub-Committee on Customs Cooperation in May 2013 and the RECs are currently in the process of aligning their systems with each other.

4.6.3.2. Data exchange and interconnectivity amongst SADC Customs Administrations

Interconnectivity between the different customs information systems is aimed at ensuring efficient and effective accounting for goods and revenue; simplified and efficient declaration of goods; production of reliable trade data; and better risk management and customs enforcement.

SADC member States are still utilizing different computer systems to process operations. Eight member States use ASYCUDA (automated system for customs data), two use TIMS (trade information management system) one has adopted CMS (content management system) and one the CAPE system. This prevents compatibility. Interconnectivity and data exchange are encouraged and implemented at the national level in line with the World Customs Organization interconnectivity framework. The piloting of interconnectivity and data exchange is scheduled for December 2014.

5. ESTIMATING THE BENEFITS OF REGULATORY CONVERGENCE TO CREATE AWARENESS AND FOSTER POLITICAL WILL

Deep regional economic integration requires addressing NTMs and needs strong political support from all involved States. Harmonizing NTMs and eliminating barriers is challenging and depends on the development and implementation of appropriate procedures and mechanisms. Addressing NTMs that are needed to protect human, animal or plant life, or the environment, may be even more challenging if different approaches and objectives exist within the region. For example, one cannot easily find a compromise for two different treatment requirements for the elimination of plant and animal pests. However, with adequate political support it is possible to make substantial progress, as some regions such as the European Union have demonstrated and as evidence put forward by Cadot et al. (2015) suggests. Assessing and communicating the potential gains from addressing NTMs in SADC can increase the political support needed to move the agenda ahead.

Quantitative assessments have to be interpreted with care and this also needs to be communicated clearly. First, models are based on assumptions that simplify the reality. Second, modelling the effects of addressing NTMs is particularly challenging compared with, for instance, tariff reduction simulations; and third, no comprehensive data about NTMs are available for the SADC region. The results below are therefore only indicative.

Regional trade liberalization has generally been associated with welfare gains for participating countries. Such countries are expected to benefit from increased intraregional trade while the trade diversion can have a negative effect on non-participating countries.¹⁷ Furthermore, it has been

¹⁷ Trade theory is ambiguous on this; participating countries can be worse off. Likewise, regional integration is not always negative for non-participating countries. Higher growth, for instance, in the integrating region can also make non-participating countries better off.

argued that in SADC a relatively large share of intraregional trade is in more sophisticated products (Mashayekhi et al., 2012), which could mean that regional integration in SADC could have a positive impact on structural change in SADC.

SADC member countries have been successful in reducing tariffs since 2000, but intraregional trade has not increased as expected. One likely reason is that significant NTMs remain. According to Kalaba and Kirsten (2012), the most common regulatory NTMs in SADC are SPS restrictions, certification procedures, quantity control measures, technical regulations, government procurement, investment restrictions and intellectual property rights.

5.1. MODELS AND ASSUMPTIONS

In order to assess the effects of trade liberalization and regional integration on trade, welfare, employment, government revenue, etc., computable general equilibrium trade models have been used. The results of these models have to be analysed with care since they cannot provide unambiguous numerical measures of the value of liberalization. Using such models, however, is very useful to get an order of magnitude and to better understand the channels of the impact of trade policy changes. Assessing the effects of NTM reduction requires a quantification of the costs of compliance and the trade barrier effect.

Owing to the scarcity of data on NTMs for the SADC region, region-specific ad valorem equivalents (AVEs) cannot be calculated. For indicative statistics and as a test for the developed methodology, Cadot et al. (2015) use data from a few African countries¹⁸ to estimate average AVEs for SPS, TBT and other measures for Africa (figure 1). Total AVEs range from 8.8 per cent on textile and clothing to 21.7 per cent on machinery.

¹⁸ Available data used for the estimation is for Burkina Faso (2012), Côte d'Ivoire (2012), Egypt (2011), Kenya, Morocco (2011), Madagascar (2011), Mauritius (2011), Senegal (2012), Tunisia (2011) and the United Republic of Tanzania (2011). Additionally, outdated data from Burundi, Uganda and South Africa were used to increase the number of observations.

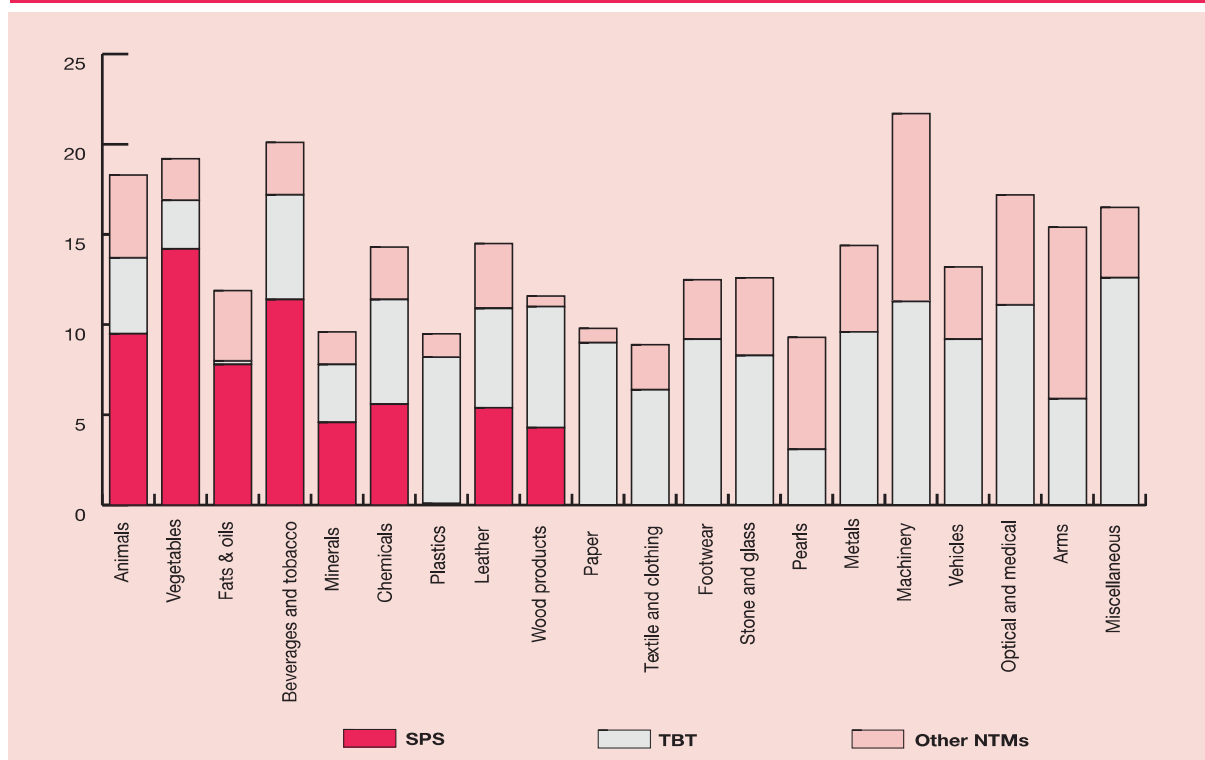
In the absence of region-specific data, Vanzetti et al. (forthcoming) assume that SADC countries have similar NTMs to the average in Africa. Thus, the quantitative assessment here is preliminary and should be repeated once specific NTM data for SADC are available. The effects of reducing these barriers between SADC members are assessed using a global general equilibrium model GTAP 9.

The SPS and TBT NTMs are treated as cost-shifting with no rent attached. The costs of compliance can be reduced through harmonization or mutual recognition of regional regulations and the use of international standards. The costs cannot in general be fully eliminated since requirements to ensure, for example, safe food add to the costs of production. Based on the assumptions from other regional integration analyses, Vanzetti et al. (forthcoming) assume that about half of the costs of compliance can be reduced through regional integration. These are modelled as a productivity shift. It is assumed that all countries, including those outside of SADC, benefit from reduced costs of compliance when trading with SADC countries.¹⁹ This would be the case if, for example, international standards were to be applied rather than regional standards developed and implemented.

The other NTMs (top bar in figure 1) are treated as tariff equivalents. Here, it is assumed that only SADC members mutually benefit from reduced costs since countries outside of SADC may not benefit from, for example, coordinated trade procedures or simplified rules of origin. This implies that rents previously captured by the importer are transferred to consumers through lower prices. This is the source of the efficiency gains. Based on assumptions from other regional integration analyses, AVEs are reduced by half on a bilateral basis. This reflects again the assumption that not all burdensome NTMs can be eliminated.

¹⁹ Vanzetti et al. (forthcoming) run different scenarios in which the costs of compliance and tariff equivalents are reduced either bilaterally or multilaterally or mixed as reported here.

Figure 1. NTM ad valorem equivalents for Africa, by industry (per cent)



Source: Cadot et al. (2015).

5.2. RESULTS

The potential gains for SADC countries depend to a great extent on the assumption that, in the case of SPS and TBTs, all countries benefit from lower costs of compliance in SADC countries. Lower costs of compliance for both SADC members and trading partners outside of SADC reduce the import costs of SADC countries. This has a beneficial effect on importers of intermediate goods and consumers. If only SADC members benefit from lower costs of compliance with SPS and TBT measures, total gains are only a quarter of the gains in the scenario discussed here (see Vanzetti et al., forthcoming).

For individual countries, the potential gains depend on the initial trade flows and the magnitude and scope for removing the NTBs. For example, a large share of Zimbabwe's trade (31 per cent) is with South Africa, and it exports the products that attract the higher NTMs. Angola exports a great deal of oil to South Africa. Zambia exports metals (copper) and maize, whereas Mozambique has

mineral (aluminium, natural gas) exports. Animal and vegetable products tend to be exposed to greater NTMs because of SPS restrictions, which account for a large number of the individual restrictions in SADC.

In absolute terms, larger countries tend to have most of the gains (figure 2). In relative terms, however, the picture is quite different: Zimbabwe, Zambia and Malawi have the highest welfare gains of about 3 to 7 per cent of their gross domestic product (figure 3). The potential gains in bilateral trade in the region are up to 30 per cent for some countries, although the increases in national trade to all destinations are around 1 to 5 per cent.

The gains from addressing NTMs in SADC appear to be considerable. No country is worse off from the reforms. Overall, the welfare gains for the SADC economies amount to US\$ 12,126 million. The large gains stem from removing SPS and TBT barriers on imports from the whole world. If it is assumed that NTM reduction benefits are bilateral,

Figure 2. Change in welfare from reduction of NTBs in SADC (millions of United States dollars)

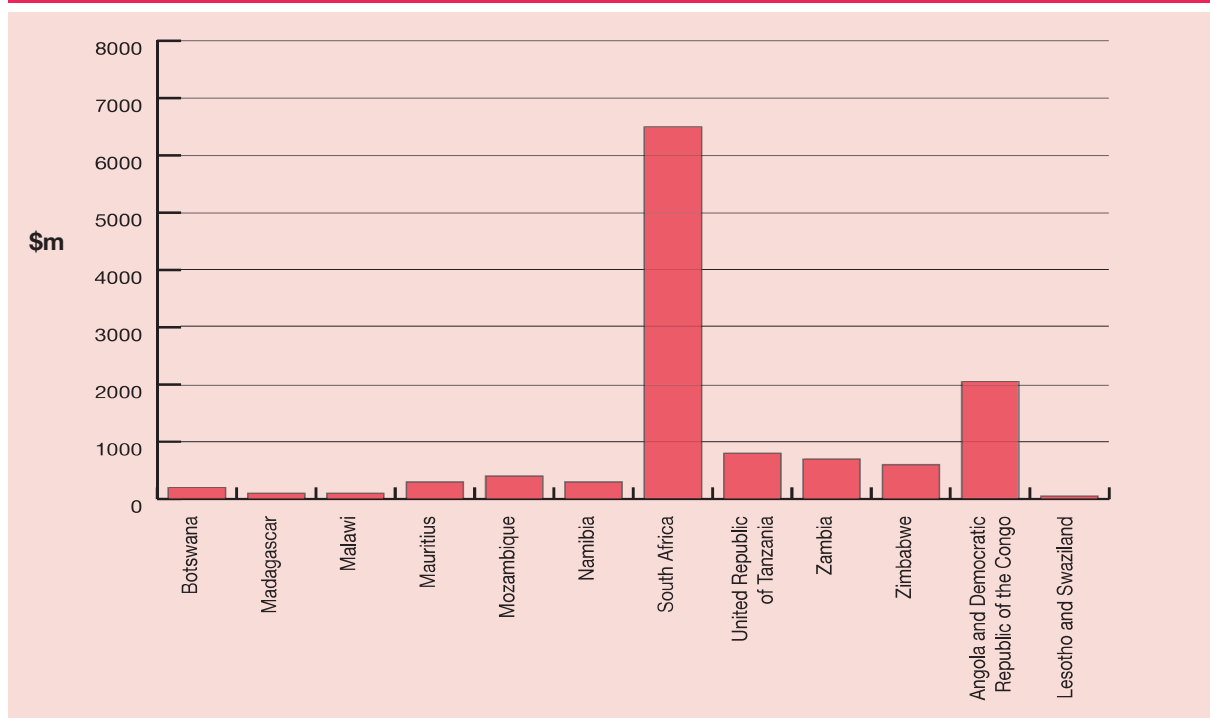
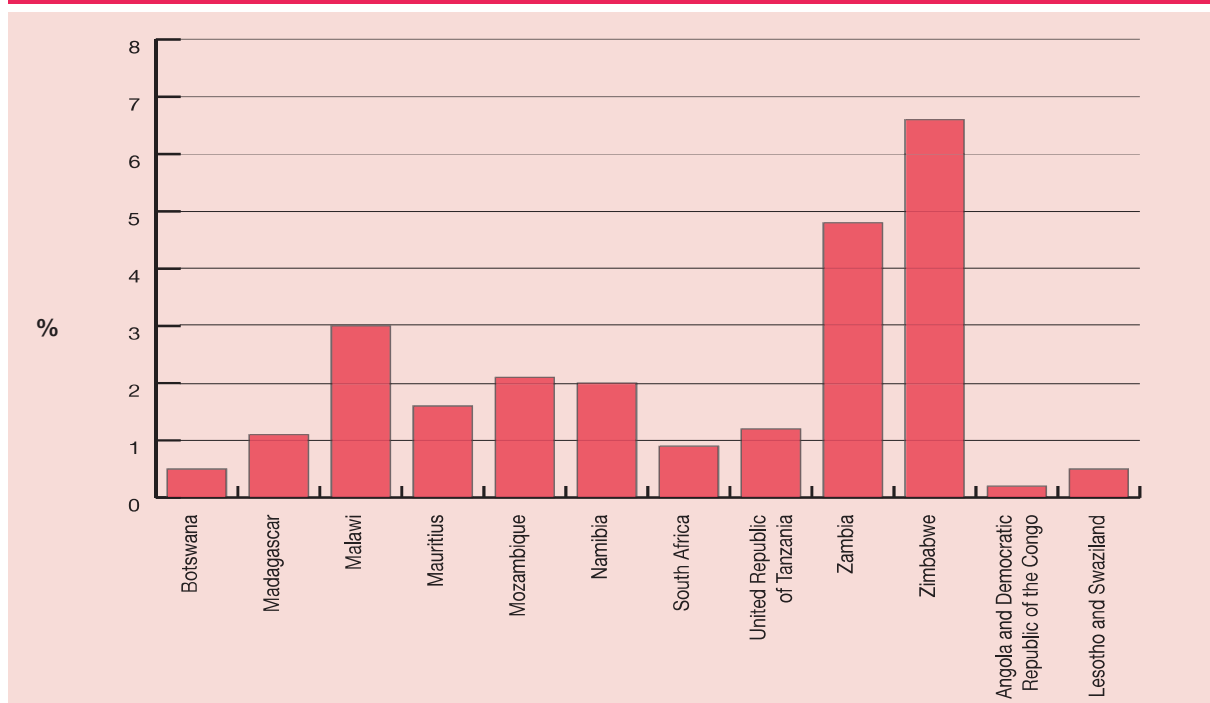


Figure 3. Change in GDP from reduction of NTBs in SADC (per cent)

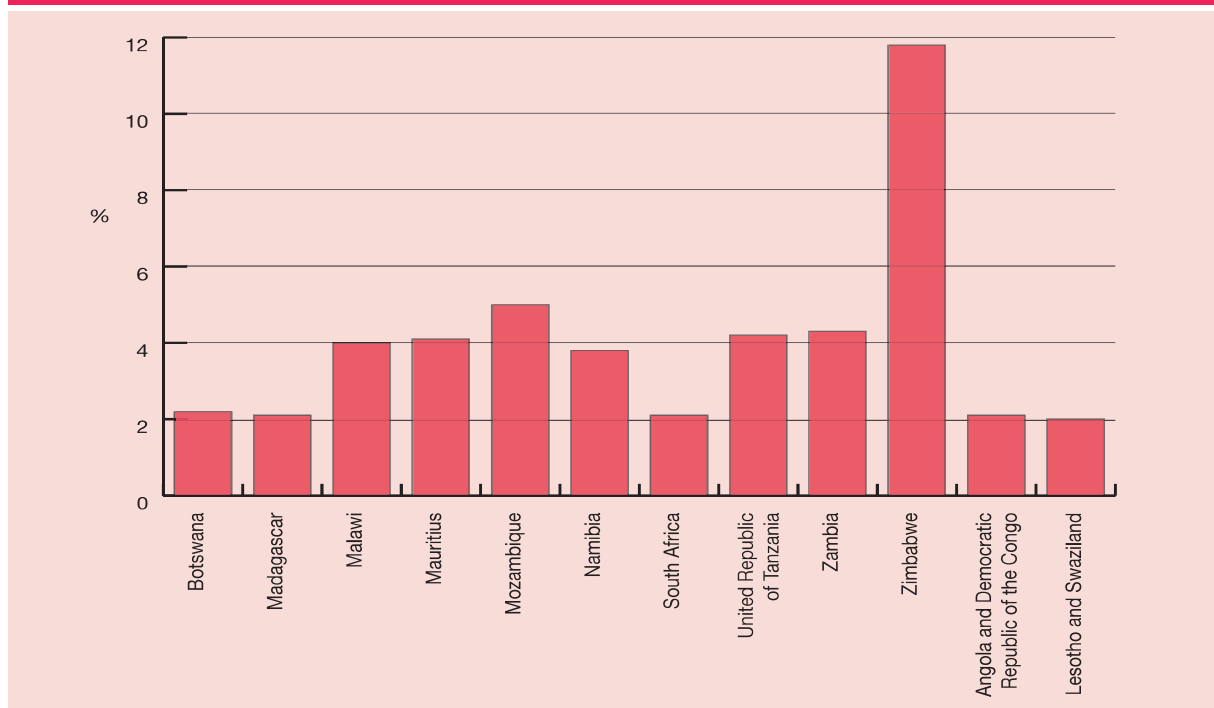


Source: Vanzetti et al. (forthcoming) (GTAP simulation).

so that barriers to trade are reduced only to SADC exporters, the gains are much lower, with a total of about US\$ 3,205 million.

The estimated changes in the rates of employment of unskilled labour are positive in all countries, ranging from 2 to 12 per cent (figure 4).

Figure 4. Increase in employment rates through reduction of NTBs in SADC (per cent)



Source: Vanzetti et al (forthcoming) (GTAP simulation).

The greatest change is in Zimbabwe owing to its large share of trade with South Africa. Countries that are less influenced by what happens within SADC, such as Madagascar, experience lower employment effects. The quantity of employment of skilled labour is assumed to be fixed. However, real wages are estimated to rise by between 1.7 and 8 per cent. Thus, employment effects could be significant if NTMs could be successfully addressed in SADC.

Several limitations apply to the estimates. Apart from the limitations of such computable general equilibrium models, here in particular average continent-wide AVEs have been used which may not reflect the state of implementation in SADC.

In order to overcome the limitations based on lack of available data and, related to this, lack of region-specific analysis of NTMs and their effects on trade and development, it should be made a priority to collect those data and to start assessing the effects of addressing NTMs.

6. A STRATEGIC AND COORDINATED WAY FORWARD

The SADC States have committed themselves to an approach where agreements do not contain a binding obligation to “domesticate” the relevant SADC instruments. Therefore, for the foreseeable future, all interventions and support need to take a bottom-up approach and address the member-driven nature of SADC with such weaknesses as domestication of SADC agreements and dispute settlement.

Regional integration through such a bottom-up approach appears possible as the experience from other regions such as the voluntary and non-binding forum of the Asia-Pacific Economic Cooperation shows. However, it needs the sustained engagement by top government officials from every member. Such engagement depends on strong political will.

The SADC region has made significant efforts to address NTMs. For example, the annexes to the SADC Protocol on Trade relating to SPS measures and TBTs were adopted in 2008 and in July 2014 the Committee of Ministers Responsible for Trade adopted amended SPS and TBT annexes to the Protocol on Trade. The new SADC SPS and TBT annexes read like sophisticated instruments taken from the best international examples. Furthermore, all SADC members except one have notified SPS and most have notified TBT National Enquiry Points. A regional SADC SPS Coordinating Committee was launched in July 2011. SADC member States are also at the beginning of their harmonization efforts. Regional guidelines for the regulation of food safety, crop protection products, veterinary medicines and the management of SPS matters are under development.

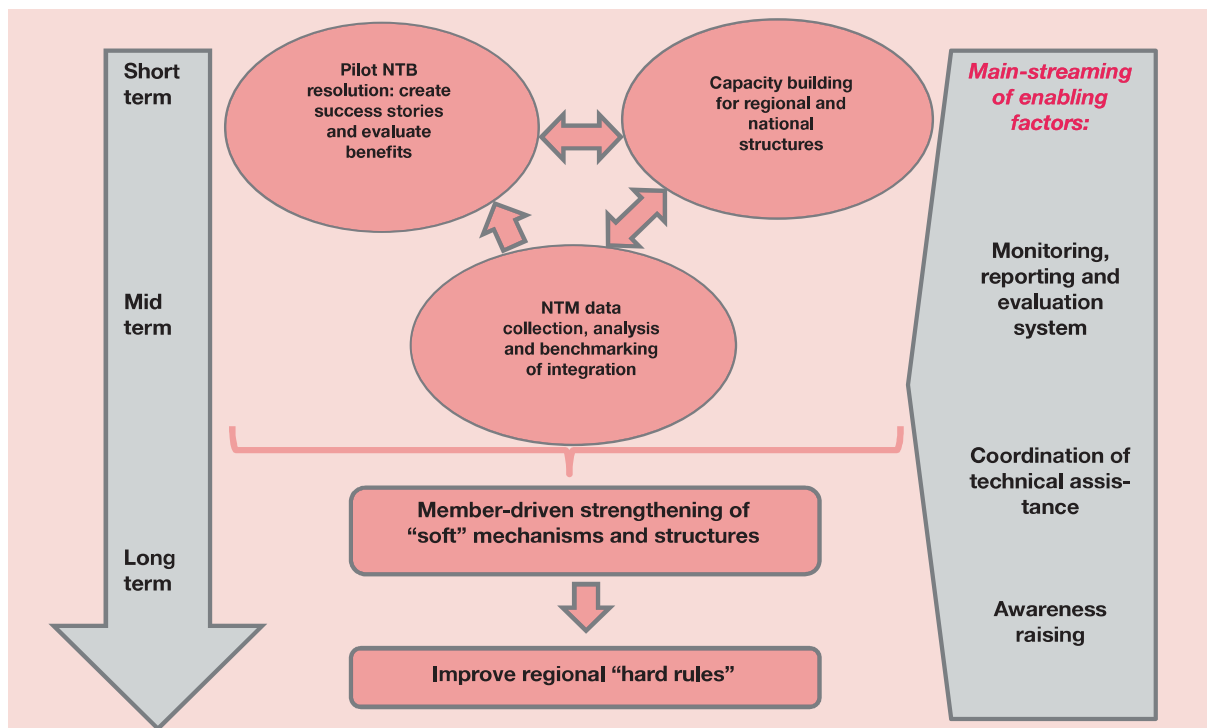
States’ adherence to their commitments (section 4.4). The increased transparency with regard to the implementation of SADC provisions will contribute to “soft” enforcement. The revised SPS and TBT annexes provide for more and better defined coordination between, and also within, member States (section 3.1).

Procedures for derogations and grace periods for the elimination of NTBs in accordance with Article 3(1)(c) of the Protocol on Trade have been specified in the new annex X to the Protocol. The new annex also envisages the “independent assessment” of disputes conducted or facilitated by the SADC secretariat. Another milestone would be the complete removal of the reference to NTBs in Article 3(1)(c). CMT has proposed this to the SADC Council (section 4.1).

SADC is further forging ahead. SADC legal foundations are expanding and offer improving prospects for dealing with NTM-related matters. The new MRE is likely to strengthen member

However, further efforts are required to achieve the ambitious objective of a common market in SADC.

Figure 5. Strategy for deep regional integration in SADC regarding NTMs



Source: Authors’ illustration based on UNCTAD-SADC-GIZ Workshop on Non-Tariff Measures “Deep” Regional Integration, 12 August 2014, Gaborone, Botswana.

6.1. THE SHORT TERM: CREATING SUCCESS STORIES AND BUILDING CAPACITY

In addressing specific NTBs with the private sector, pilot interventions and support by GIZ and SAIIA (section 4.5), crucial precedents are created. Publicizing successful NTB resolution cases, highlighting the monitoring and evaluation of benefits, can generate more public interest and act as a stepping stone for subsequent initiatives.

In this context, it is important to recognize that consumers and downstream producers in value chains often pay the price for NTBs. In less competitive markets, exporters or importers of the goods can pass on the cost to the consumer. Therefore, involving consumer groups and downstream producers in the resolution of NTBs is a promising avenue that should be explored.

The next step could be to try an intergovernmental route. Dispute settlement and mediation through the ad hoc use of annex VI to the SADC Protocol on Trade fall into this category (section 4.2).

Further initiatives could target the improvement of the institutions within member States that deal with NTM-related domestic measures in a SADC compliant manner. This requires strengthening the availability of domestic technical capacity and the domestication of the relevant SADC legal instruments. Such initiatives will require well-targeted proposals on law reforms and prioritized capacity-building interventions within specific SADC member States.

6.2. THE MEDIUM TERM: IMPROVING TRANSPARENCY AND ANALYSIS

In the medium term, UNCTAD, AfDB and the SADC secretariat will make a leap forward in creating transparency through the envisaged major data collection project on NTMs. This process will provide capacity-building and require the close involvement of the member States' local structures, such as NTB focal points, SPS and TBT enquiry points, and regional coordination structures.

UNCTAD and AfDB will then contribute a tailored NTM data analysis to assess regulatory distance as a benchmark across sectors and countries, and for the prioritization of subsequent harmonization efforts.

The showcased methodologies (section 5) to measure the AVEs of NTMs and the computation of the welfare benefits of regional integration regarding NTMs will be reproduced with more precise data for SADC. Member States' ownership and political will can be fostered through analytical results such as those indicating that the gains from integrating NTM policies may be in the order of magnitude of several per cent of their gross domestic product and employment. This type of analysis would also promote a more systematic harmonization of NTMs, particularly SPS and TBT, and beyond the ad hoc approach of resolving reported NTBs.

The results should then be communicated to member States at higher levels in order to motivate the strengthening of existing structures dealing with SPS, TBT and NTBs. A dissemination strategy should reach the higher political level of the member States through specific intergovernmental events that could be organized by COMESA, EAC, SADC, AfDB, the United Nations Economic Commission for Africa and/or UNCTAD. Insights should also be disseminated through indirect channels, such as news articles and other publications and in other meetings such as side events. The private sector and also the general public should be targeted systematically to enable them to encourage their own governments to proceed with necessary reforms.

Furthermore, the results of these analyses should feed back into GIZ and SAIIA efforts in resolving long-standing NTBs. A joint project should be envisaged where UNCTAD analysis and GIZ/SAIIA on-the-ground support focus on a specific NTB that hinders the development of a potential regional value chain. This can draw attention to the common misconception that eliminating NTBs just means granting market access to foreign competitors; it also means reducing domestic prices for consumers and strengthening the domestic processing industry.

6.3. THE LONG TERM: STRENGTHENING RULES AND THE TRIPARTITE

In the long term, more comprehensive rules can be envisaged for the SADC protocols and annexes, and the admission of private parties to the SADC Tribunal.

The Tripartite already represents a venue to address such long-term considerations. Since the strategy for the Tripartite region has not yet been finalized, it may provide room for support in order to ensure effective addressing of NTMs in the region. This is particularly important for the African integration process since the Tripartite has been identified as a building block.

The Tripartite Trade Negotiation Forum (TTNF) has been established and has had various meetings to discuss issues, including the work of the technical working group on TBT, SPS and NTBs. The work done by the technical working group on TBTs, SPS and NTBs has resulted in a draft annex on NTBs, which was produced in January 2014. However, the TTNF is yet to adopt this annex owing to outstanding matters pertaining to dispute resolution. At its ninth meeting, which was held at the end of January 2014 and was attended by 19 of the 26 Tripartite countries, the TTNF requested the technical working group on dispute settlement to fast-track their work and convene a meeting of REC legal experts to complete the remaining matters on the dispute settlement provisions.

REFERENCES

- Baccini L, Dür A, Elsig M and Milewicz K (2011). The Design of Preferential Trade Agreements: A New Dataset in the Making. WTO Staff Working Paper ERSD-2011-10.
- Cadot O, Asprilla A, Gourdon J, Knebel C and Peters R (2015). Deep regional integration and non-tariff measures: A methodology for data analysis. UNCTAD and GIZ, UNCTAD/ITCD/TAB/71.
- Erasmus G and Viljoen W (2014). Assessment of the Impact of NTMs on Regional Integration in SADC: The current state of play and needs assessment. Mimeo TRALAC.
- Kalaba M and Kirsten J (2012). Estimating the Quantity Effects of Non-tariff Measures on SADC Meat and Milk Trade. Department of Agricultural Economics, Extension and Rural Development, University of Pretoria. Available at:
<http://web.up.ac.za/sitefiles/file/48/2052/2012%20Working%20Papers/NTM%20on%20Intra-Meat%20Trade~2Oct12.pdf>
- Kee HL, Nicita A and Olarreaga M (2009). Estimating trade restrictiveness indices. *Economic Journal*, vol. 119, p. 172–199.
- Mashayekhi M, Peters R and Vanzetti D (2012). Regional Integration and Employment Effects in SADC. Chapter 13 in *Policy Priorities for International Trade and Jobs*, Lippoldt D (ed.), OECD.
- Peters R, Mashayekhi M and Ito T (2013). Legal Aspects of Trade in Agriculture: WTO Agreement on Agriculture and Preferential Trade Agreements. In *Shared Harvest: Agriculture, Trade and Employment*. Cheong D, Jansen M and Peters R (eds.). ILO and UNCTAD.
- Southern Africa Trade Hub (2011). Audit of the Implementation of Regional SADC Customs Instruments and International Conventions. Technical Report. Available at:
http://www.sadc.int/files/5413/7415/0039/Customs_Audit_2011.pdf
- UNCTAD (2010). Non-Tariff Measures: Evidence from Selected Developing Countries and Future Research Agenda. United Nations, UNCTAD/DITC/TAB/2009/3.
- UNCTAD (2013). Non-Tariff Measures to Trade: Economic and Policy Issues for Developing Countries. United Nations, UNCTAD/DITC/TAB/2012/1.
- Vanzetti D, Peters R and Knebel C (forthcoming), Sand in the Wheels: Non-Tariff Measures and Regional Integration in SADC. UNCTAD and GIZ.
- WTO (2012). World Trade Report 2012. WTO, Geneva.
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