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Private sector views of the implementation of the SADC FTA
Part 1

- **INTRODUCTION**

The Southern African Development Community (SADC) counts 14 states as members: Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe (Madagascar is currently suspended). The majority of these countries are part of SADC's trade scheme set out in the Trade Protocol (the Protocol) which came into force in 2000, after being ratified by two thirds of the member states, and which led to the launch of a free trade area (FTA) between the 13 countries that had acceded to the Protocol in 2008.

The Protocol is the legal basis for the FTA, as it gives legal and practical effect to the member's commitments under the SADC Treaty. In the spirit of General Agreement Tariffs and Trade (GATT), the SADC FTA liberalizes "substantially all the trade" with members committed to phase out existing tariffs, harmonise trade procedures and documentation within SADC, define SADC rules of origin (RoO), and remove other barriers to trade.

- **STATUS OF THE IMPLEMENTATION OF THE SADC FREE TRADE AREA**

Tariffs

Under the terms of the Protocol, member states agreed to phase down tariffs and remove non tariff barriers (NTBs) over a twelve year period beginning in 2000. By the time of launching the FTA in 2008, customs duties on 85% of tariff lines had been eliminated for goods originating from SADC Member States and it was agreed that remaining tariff barriers (the 15% of sensitive goods) would be phased down with the goal of virtually all intra-SADC trade being duty free by 2012.

Except for the Seychelles and the Democratic Republic of Congo (DRC), all member states have signed the Protocol and made it applicable to their tariff structures. Angola has signed the protocol and promised to apply it but has yet to submit instruments of accession. The DRC and Angola are not currently implementing it over concern for their relatively weak economies which are still being restored following the end of conflicts in the region. Therefore, strictly speaking, only 11 of the SADC states are fully participating in the FTA. USAID's Southern African Global Competiveness Hub's recent FTA Implementation Audit shows that three countries are also perpetuating delays in the tariff reductions: Malawi still has the same tariff levels as in 2004, Tanzania has sought derogations on sugar and wood products in order to support its local industries and Zimbabwe has requested derogation for the scheduled reductions until 2012-14 due to economic difficulties.

Table 1 below highlights the original tariff phase-down offers for members in terms of tariff lines and not trade volumes. This has significant implications for the extent of liberalisation under the Protocol, as discussed below.

Table 1: SADC Tariff Phase-Down Offers: Differentiated Offer (Percent of Tariff Lines at Zero)

	# Lines	2001	2005	2008	2009	2010	2011	2012	Excluded
SACU	7,802	63.6	94.2	99.2	99.2	99.2	99.2	99.2	0.8
Malawi	5,443	33.4	33.4	85.3	85.3	85.3	85.3	99.7	0.3
Mauritius	5,479	69.7	90.5	90.5	90.5	90.5	90.5	100.0	0.0
Mozambique	5,246	30.1	30.1	94.0	94.0	94.0	94.0	99.6	0.4
Tanzania	6,215	17.5	24.4	86.3	86.3	86.5	86.5	99.3	0.7
Zambia	6,066	54.2	54.2	95.9	95.9	95.9	95.9	100.0	0.0
Zimbabwe	7,167	30.7	70.6	89.8	93.1	93.2	95.0	98.7	1.3

Source: Trade Hub, 2010

The above must be read with caution because there appears to different interpretations of 85% of trade and the exact extent of duty free trade currently taking place under the Protocol is unclear. The 85% benchmark was based on

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the generally accepted interpretation of Article XXIV of the GATT which deems FTAs as compliant with World Trade Organization (WTO) agreements provided, inter alia, that "substantially all trade" is duty free. Some members have adopted a definition of product coverage in terms of a certain percentage of tariff lines using 85% of all harmonized system (HS) tariff lines at the 8 digit level. Others have adopted a definition based on calculations of the percentage of trade carried out under the preferential rules of origin (RoO). Clearly, for the Protocol to meaningfully liberalize trade, the definition must be based upon 85% of intra-SADC trade and not tariff lines. Further complicating the picture, are the remaining goods without agreed RoO, which would have to be subtracted from the duty-free volumes.

In spite of the above, the Trade Hub's 2010 Audit of the Implementation of the SADC Protocol on Trade (2010 Audit), states that compliance with the 2010 tariff phase-downs was generally high. Table 2 provides a summary of the implementation status of specific members. While Mauritius did not phase down tariffs in 2010, it represents only a comparatively small number of tariff lines. Malawi and Zimbabwe are the only Member States significantly lagging.

It should be noted though that tariffs are not applied uniformly in the region as the Protocol takes into account the different levels of development amongst member states and gives special treatment to least developing countries. Thus, it was agreed that the implementation of the Protocol would be governed by an 'offer' approach, designed on the basis of asymmetry that enabled the countries to stagger tariff reductions. For instance, at the start of the negotiations in 2000 it was agreed that South Africa and Botswana, Lesotho, Namibia and Swaziland who make up the South African Customs Union would eliminate their tariffs at a faster pace than other members.

Table 2: 2010 Tariff phase-downs summary

	Implemented?	Notes
SACU	Yes	SACU Tariff Phase Downs were completed in 2008
Malawi	??	As of May 2010, Malawi was still at 2004 tariff reduction levels. However, with the notification of the 2010 budget, Malawi will make progress on implementation but the extent is not clear.
Mauritius	No	
Tanzania	Yes	
Zambia	Yes	Requires confirmation. Not verified.
Zimbabwe	No	Zimbabwe has requested derogation from the Secretariat.

Source: Trade Hub, 2010

Rules of Origin

Rules of origin (RoO) are always an important component of a FTA which by definition does not impose a common external tariff against non-FTA members. RoO are used to prevent trade deflection i.e. imports from non-FTA members entering a high tariff country via a low tariff country. SADC originally agreed to simple, general and consistent RoO similar to those of the neighbouring and overlapping Common Market of Eastern and Southern Africa (COMESA). The initial rules required a change of tariff heading, a minimum of 35% of value added within the region, or a maximum import content of 60% of the value of total inputs. However, these rules were subsequently revised and there are now more restrictive sector and product specific rules, with the change of tariff heading being supplanted by detailed technical process requirements and rules with much higher domestic value added and lower permitted import content.

The main argument for these restrictive rules is that customs administrations in SADC are weak which makes it easier for low cost products from Asia to enter through porous borders then claim tariff preferences when exported to another member state. Flatters counters this argument forcefully by arguing that there is no reason to expect weak customs administrations would be better able to enforce strict rules of origin than less restrictive rules of origin.

Non-tariff barriers and technical barriers to trade

Beyond the progressive elimination of tariffs, the Protocol targets a host of behind-the-border issues, also known as "deep integration" issues, which include the elimination of non-tariff barriers (defined as any barrier to trade other than import or export duties). However, the Protocol also permits the following exceptions to the elimination of NTBs as listed in Article 9:

1. Necessary to protect public morals or to maintain public order;
2. Necessary to protect human, animal or plant life or health;
3. Necessary to secure compliance with laws and regulations which are consistent with the provisions of the WTO;
4. Necessary to protect intellectual property rights, or to prevent deceptive trade practises;
5. Relating to the transfer of gold, silver, precious or semi-precious stones, including precious and strategic metals;

6. Imposed for the protection of national treasures of artistic, historic or archaeological value;
7. Necessary to protect or relive critical shortages of foodstuffs in any exporting Member State;
8. Relating to the conservation of exhaustible natural resources and the environment; or
9. Necessary to ensure compliance with existing obligations under international agreements.

"Although these allow for exception, no specific process of verification is elaborated" which leaves room for mischief. In 2005 SADC began a process of identifying potential NTBs affecting trade in the region with a view to documenting the practise and eliminating agreed trade barriers. Subsidies, voluntary export restraints and sanitary and phyto-sanitary measures imposed for the purpose of obstructing trade are also viewed as NTBs as discussed below.

Customs Cooperation and Trade Facilitation

Other barriers, such as those related to customs and transit policies and procedures, have the potential to affect traders. To facilitate speedy customs clearance of goods at entry points, a single customs administrative document (SADC-CD) was developed and implemented by the Sub-committee on Customs Cooperation. The SADC-CD form replaced a number of others, each designed for different customs (national) regimes. A model customs act was also developed to benchmark and harmonize customs procedures and practice. With most SADC countries being landlocked, a single through customs guarantee bond and a single through customs declaration on the SADC-CD system was developed to facilitate transit traffic.

Research has indicated that it takes 91 days on average to comply with all trading requirements for intra-regional SADC trade, compared with between 53 and 60 days for trade between SADC and other markets outside the regional ambit.

To reduce clearance waiting times, SADC is in the process of developing "one stop" border posts at the border of Mozambique and Zimbabwe (Forbes-Machipanda), South Africa and Mozambique (Lebomba-Ressano Garcia) and Zimbabwe and Zambia (Chirundu). The implementation of the SADC trade facilitation instruments is central to ensuring the flow of trade in the region. While not a specific target of the 2010 Audit, earlier audits have consistently reviewed the implementation issues with these instruments.