CASE STUDY 08

# Non-Tariff Barrier Monitoring Mechanism

## Problem description

The Non-Tariff Barrier (NTB) Monitoring Mechanism allows private sector actors in the Southern African Development Community (SADC) – and further throughout the Tripartite Free Trade Area – to lodge NTB complaints on an online database, which are then forwarded to the country involved for resolution.

NTBs in the SADC region reported on through the Monitoring Mechanism affect products that jointly account for $3.3 billion, or one-fifth, of regional trade.[1] While the online database has been relatively successful at allowing private sector actors to register complaints, the resolution of identified NTBs has been far less effective.

NTBs registered on the database either take too long to be resolved or are not resolved at all. There seem to be different interpretations of what it means to have resolved an NTB, with the SADC Trade Protocol stating that they should be eliminated while some of the reported barriers that are now indicated as being resolved still remain in place. It is not clear what the resolution process involves and it is left to individual member states to determine the timeframes for response and the degree of consultation needed with stakeholders such as the business community.

### Table 1: Examples of NTBs and their coverage of intra-SADC trade

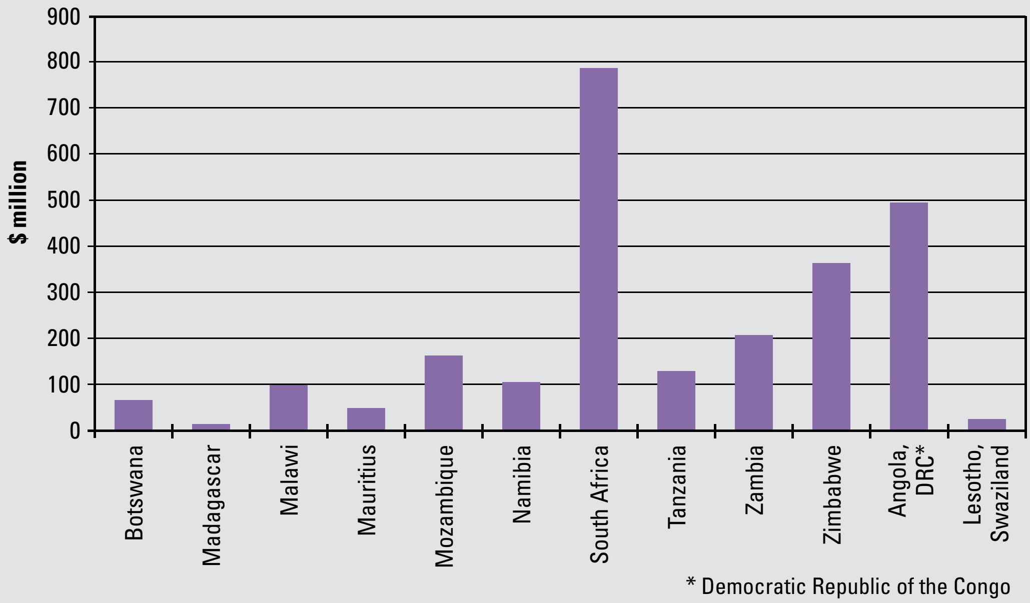
| Barrier | Examples of products affected | Volume if intra-SADC trade potentially affected (% in total) |
|---|---|---|
| **Import bans, quotas and levies** | Wheat, beer, poultry, flour, meat, maize, UHT milk, sugar, eggs, pasta, sorghum, pork, fruit and vegetables, cement | 6.1% |
| **Preferences denied** | Salt, fishmeal, pasta | 0.4% |
| **Import permits and levies** | UHT milk, bread, eggs, sugar, fruit and vegetables, livestock, liquor, cooking oils, maize, oysters | 5.4% |
| **Single marketing channels** | Wheat, meat, dairy, maize, tea, tobacco, sugar | 5.3% |
| **Rules of origin** | Textiles and clothing, semi-trailers, palm oil, soap, cake decorations, rice, curry powder, wheat flour | 3.0% |
| **Export taxes** | Dried beans, live animals, hides, skins, sugar, tobacco, maize, meat, wood, coffee | 4.8% |
| **Standards/SPS/TBT** | Milk, meat, canned tuna, beer, honey, maize, bran, cotton cake, poultry, batteries, sugar, coffee, ostriches | 2.5% |
| **Customs-related** | Wine, electronic equipment, copper concentrate, salt, cosmetics, medicines | 5.2% |

Source: Gillson I & N Charalambides, *Addressing Non-Tariff Barriers on Regional Trade in Southern Africa*, World Bank, 2011, http://siteresources.worldbank.org/INTAFRREGTOPTRADE/Resources/Addressing_NTBs_Southern_Africa.pdf

1 Gillson I & N Charalambides, *Addressing Non-Tariff Barriers on Regional Trade in Southern Africa*, World Bank, 2011, http://siteresources.worldbank.org/INTAFRREGTOPTRADE/Resources/Addressing_NTBs_Southern_Africa.pdf.

The largest number of unresolved complaints has to do with transport-related NTBs. Long-standing NTBs are those that are not resolved within a minimum of 90 days. As of September 2013, there were 39 transport-related long-standing complaints on the system, some of which had been there for over 1 000 days. Well-functioning and inexpensive transport systems are particularly critical in the SADC context since SADC, as a regional economic community (REC), has the highest number of land-locked countries in Africa. The resolution of transport-related NTBs, in just one example, has significant monetary value. Shoprite reports that a cost of $500 is incurred for every day a truck is delayed at a border.[2] The Citrus Growers' Association of South Africa estimates that delays at the Port of Durban cost its members $10.5 million a season.[3] In late 2007, a truck making a round trip from Durban to Gaborone incurred user fees of about ZAR[4] 3,500 ($308.38), adding up to billions of rand paid annually by transporters.[5]

**Figure 1: Estimated change in welfare from intra-SADC NTB reduction**[6]




Source: Vanzetti D, Peters R & C Knebell, *Sand in the Wheels – Non-tariff Measures and Regional Integration in SADC*, (forthcoming, draft of September 2014)

2 *Ibid.*

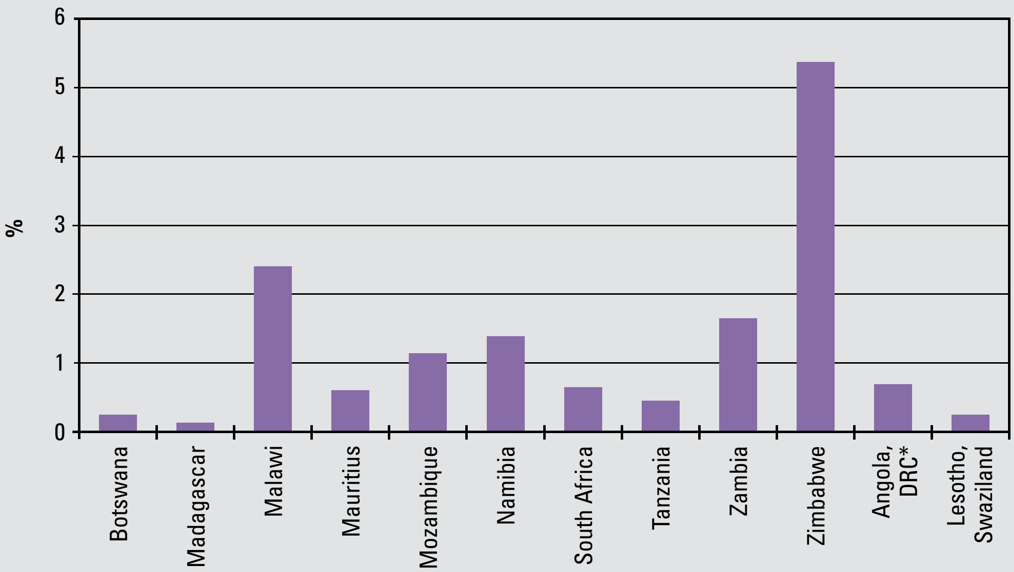
3 *Ibid.*

4 ZAR is the three-letter currency code for the South African rand.

5 Mthembu G, Non-tariff barriers in SADC, Trade Performance Review 2007, 2007, p. 137.

6 Estimated using the GTAP Computable General Equilibrium (CGE) model. Due to limited data availability, the estimates for tariff equivalents of SADC NTBs are based on data for Burkina Faso (2012), Côte d'Ivoire (2012), Egypt (2011), Kenya, Morocco (2011), Madagascar (2011), Mauritius (2011), Senegal (2012), Tunisia (2011), Tanzania (2011), Burundi, Uganda and South Africa, and assume that SADC countries have the same NTBs as the African average.

**Figure 2: Estimated change in GDP from intra-SADC NTB reduction**[7]




* Democratic Republic of the Congo

Source: Vanzetti D, Peters R & C Knebell, *Sand in the Wheels – Non-tariff Measures and Regional Integration in SADC*, (forthcoming, draft of September 2014)

Individual transport companies operating in SADC have voiced the problem with NTBs. The Federation of East and Southern African Road Transport Associations (FESARTA) maintains a large database detailing the unresolved NTBs registered by its members on the Monitoring Mechanism. The NTBs registered range from excessive or duplicated customs charges and burdensome regulations to costly border delays. FESARTA states that for many of its reported NTBs, the system fails to reach a resolution at the point where the private sector and the relevant government authority disagree about the necessity of the NTB. The system currently does not allow for any meaningful engagement between private sector and government actors to discuss the contended issues and come to a resolution.

A number of obstacles are preventing the efficient resolution of identified NTBs. The first is inefficient or non-existent structures. The success of the NTB Monitoring Mechanism is predicated on the creation and efficient operation of each member state's National Focal Point and National Monitoring Committee (NMC), which is tasked with resolving the

7 Estimated using the GTAP CGE model. Due to limited data availability, the estimates for tariff equivalents of SADC NTBs are based on data for Burkina Faso (2012), Ivory Coast (2012), Egypt (2011), Kenya, Morocco (2011), Madagascar (2011), Mauritius (2011), Senegal (2012), Tunisia (2011), Tanzania (2011), Burundi, Uganda and South Africa, and assume that SADC countries have the same NTBs as the African average.

reported NTBs. While NMCs exist on paper in most SADC member states, their ability to facilitate the dialogue necessary to resolve NTBs is often questionable and the overall objective of facilitating trade appears to be overlooked (often in the face of security or revenue concerns). There is also a vast disparity in the existence and efficiency of business membership organisations, such as Chambers of Commerce and Industry, which could apply the necessary pressure on national governments to resolve NTB issues and be active drivers of the NMCs. In some cases the NMC's members (including from the private sector) are not equipped to deal effectively with the NTBs notified on the system and therefore consultation does not involve those directly affected by the barrier.

The second obstacle is the shortage of technical expertise and skills within SADC for dealing with NTB elimination. This is also true for the national structures (usually trade or finance ministries) tasked with the elimination of NTBs at the domestic level. For example, it is important that an issue that is notified on the Monitoring Mechanism is first classified as an NTB. Notification is not enough on its own, as transparency and any possible resolution can only come when there is active interrogation of the NTB.

## Political economy analysis

A political economy analysis of public–private co-operation in SADC focuses on the underlying political economy issues that have prevented identified NTBs from being resolved. The first issue relates to the 'rules of the game' in terms of how regional agreements are governed. While the SADC free trade agreement includes legal provisions on the elimination of NTBs and does not allow for member states to erect new NTBs, there is a preference for co-operative rather than litigious dispute settlement in African RECs. As such, it is entirely up to the offending government whether or not it wants to deal with the reported NTB and there is little legal recourse the private sector or state actors can take if the reported issue is not resolved. Resolution of NTBs therefore relies on political will. Some SADC states may have incentives for purposefully maintaining NTBs, such as protecting local industries or maintaining revenue streams. If the resolution of the NTB requires legislative or regulatory changes, the potential benefit of NTB elimination may not be seen to outweigh the administrative cost.

Secondly, there are structural issues that constrain the power and political influence of private sector actors, particularly small, medium and micro enterprises. These actors, by virtue of their size, do not have the power to influence or apply pressure on state institutions such as trade and finance ministries. As a result they rely on larger national or regional business membership organisations (BMOs) to play this role for them. The inefficiency of these organisations therefore constrains the collective power that smaller private sector actors should have in this process. An NTB can thus be notified but not followed up on due to a lack of capacity in the private sector to do so.

Lastly, there is a governance conflict between formal institutions at national and regional levels. There is no clear definition of the role of the SADC Secretariat in the resolution mechanism for NTBs. The process has been decentralised to the national level and it is not clear how the regional implications of particular NTBs should be dealt with. Formal institutions at the national level are unwilling to relinquish their sovereignty by yielding executive power to regional institutions.

### Box 1: Zambian tanker regulations – NTB530

Zambia requires all foreign tankers either delivering products to Zambia or transiting the country to comply with onerous domestic standards. It is also charging transporters to obtain a permit to certify that the tankers comply with these standards. FESARTA argues that it is unacceptable that Zambia should apply its standards to foreign vehicles. Instead, FESARTA argues that it should accept that foreign vehicles comply with their own countries' standards and have roadworthy certificates to show that they comply. This requirement is affecting the free flow of goods into Zambia and is also costly for logistics companies operating in the country.

FESARTA argues that one cannot change a standard at the drop of a hat and then expect vehicles to comply with this new standard in three months' time. If there is an intention to phase in design changes, it is applied from a point onwards, allowing older vehicles to operate until a type of grandfather clause takes effect or the tanker has reached the end of a determined life. Transporters operating tankers into Zambia cannot be expected to alter the design of their tankers on such short notice. For example, if their country allows a 10 000 litre compartment, they cannot suddenly change this to a 7 000 litre compartment to suit Zambia. It would mean that they would have to stop operating in Zambia. This is against the objectives of trade facilitation, will create monopolies and will increase transport costs.

As such, FESARTA registered this NTB with the Monitoring Mechanism on 10 September 2012. On 14 November 2012, the SADC Secretariat advised that Article 6.5 of the SADC Protocol on Transport addresses the harmonisation of standards in respect of vehicle dimensions and combinations. This process is ongoing and Zambia has been invited to submit its recommendations to the SADC Working Groups addressing this matter through the SADC Secretariat. In the absence of an agreed regional standard, Article 6.3 (5) applies. This states that '[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'. The SADC Secretariat has requested that after conducting its internal consultations, the Zambian government should explain why this article should not apply. In the interim, it has asked Zambia to consider suspending the enforcement of this standard.

Regardless of this request, Zambian authorities are still applying the regulation, significantly raising transport costs for tankers travelling to or through Zambia.

Furthermore, transporters that have complied and paid for the certificates are now being fined by traffic police for not having yellow reflective tape down the sides of the combination, although this is only a prerequisite for Zambian Bureau of Standards certification.

One possible model for resolving such conflicts 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 positions of the regulatory authority and the industry 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. The media can be used as a tool for creating awareness of the issue and applying pressure on the regulatory authority to make its position, and the reasoning behind it, clear.

## The way forward

Strengthening public–private engagement in SADC: Initiatives need to be undertaken to strengthen national and regional apex BMOs in countries where they are weak and to highlight the role they can play in applying pressure on government departments tasked with eliminating NTBs reported through the Monitoring Mechanism. Regional BMOs also need strengthening so that they can play a greater 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.

Capacitating National Focal Points and NMCs: Since the responsibility of resolving NTBs reported via the Monitoring Mechanism ultimately lies with domestic state actors, interaction with individual member states' trade and finance ministries is necessary. While NMCs have received training on the online monitoring mechanism by TradeMark Southern Africa,[8] they have not necessarily been capacitated on how to eliminate the NTBs that the online system identifies.

Where NTBs and their potential remedies have been identified in specific countries, these findings need to be communicated to the relevant state actors. Additional inquiries could be made into why specific state actors are finding it difficult to remedy identified NTBs, by liaising directly with them (as opposed to liaising with the companies lodging the complaints).

Projects such as GIZ ProSPECT will be important in demonstrating the gains (for state actors such as finance and trade ministries) of NTB elimination to generate political momentum in favour of reforms. Where NTBs have been eliminated using the Monitoring Mechanism,

8 TradeMark Southern Africa is a programme to improve the trade performance and competitiveness of the Eastern and Southern African regions, funded by the UK Department for International Development. See http://www.trademarksa.org.

it would be useful to investigate what gains have been made and have these gains made known.

Where perverse incentives or a lack of political buy-in exists, the demonstrable effects of gains made through NTB elimination – even where these gains are small – can contribute to building positive political momentum for reforms. This must be understood in the context of the rapid pace of economic integration in SADC having led to relatively few gains in boosting intra-regional trade, thereby causing suspicion over the value of deepening regional integration. Small success stories that can be shown to have demonstrable benefits to a few countries can be used as positive examples to compel other countries to buy into the NTB elimination process.

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