SOUTHERN AFRICA TRADE HUB

Technical Report:

2011 Audit of the Implementation of the SADC Protocol on Trade

USAID Southern Africa Trade Hub

Submitted by:
AECOM International Development

Submitted to:
SADC Secretariat
USAID/Southern Africa

August 2011

USAID Contract No. 674-C-00-10-00075-00

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

PO Box 602090 ● Plot 50668, Tholo Park, Fairgrounds ● Gaborone, Botswana ● Phone (267) 390 0884 ● Fax (267) 390 1027 ● info@satradehub.org

www.satradehub.org

USAID FROM THE AMERICAN PEOPLE | SOUTHERN AFRICA

TABLE OF CONTENTS

ACRONYMS

ACP	African, Caribbean and Pacific Group of States
ARM	Agricultural Raw Materials
CET	Common External Tariff
CMT	Committee of Ministers Responsible for Trade
COMESA	Common Market for Eastern and Southern Africa
COMSTAT	COMESA Statistics Database
COMTRADE	United Nations Commodity Trade Statistics Database
COO	Certificate of Origin
DRC	Democratic Republic of the Congo
EAC	East African Community
EFTA	European Free Trade Area
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
EU	European Union
FTA	Free Trade Area
FOB	Freight on Board
GATT	General Agreement on Tariffs and Trade
HS	Harmonized System of Classification
IOC	Indian Ocean Commission
MCCI	Mauritius Chamber of Commerce and Industry
MERCOSUR	Southern Common Market
MFN	Most Favored Nation
MoU	Memorandum of Understanding
NTB	Non-Tariff Barrier
PTA	Preferential Trade Agreement
REC	Regional Economic Community
RISDP	Regional Indicative Strategic Development Plan
ROO	Rules of Origin
SACU	Southern Africa Customs Union
SADC	Southern African Development Community
SARS	South African Revenue Service
SATH	Southern Africa Trade Hub
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TDCA	Trade, Development and Cooperation Agreement
TIFI	Trade, Industry, Finance and Investment
TIPS	Trade and Industrial Policy Strategies
TMCM	Trade Monitoring and Compliance Mechanism
TNF	Trade Negotiating Forum
TRA	Tanzania Revenue Authority
UHT	Ultra High Temperature
SATH	Southern Africa Trade Hub
UN	United Nations
US	United States
USAID	United States Agency for International Development
WTO	World Trade Organization

EXECUTIVE SUMMARY

The 2011 Audit of the Implementation of the Southern African Development Community (SADC) Protocol on Trade is the fifth such audit carried out by the United States (US) Agency for International Development (USAID) Southern Africa Trade Hub. While the 2007 audit was comprehensive, the following audits have been updates on the 2007 study with each update focusing on different issues selected by the SADC Secretariat. For the 2011 Audit, the SADC Secretariat requested that the Trade Hub focus on three areas:

1. **Implementation of the 2011 Tariff Phase Downs:** Generally, compliance with the 2011 Tariff Phase Downs was high. The table below provides a summary of the implementation status for individual Member States. Malawi significantly lags in implementation and Zimbabwe and Tanzania have been granted derogations by the Committee of Ministers Responsible for Trade (CMT).

Summary of 2011 Tariff Phase Downs

	Implemented?	*Method*	*Notes*
SACU	Yes	South Africa Revenue Service (SARS) Website	SACU Tariff Phase Downs were completed in 2008
Malawi	Partial?	Malawi Revenue Authority website and submissions by Malawi	While Malawi has phased down some SADC duties throughout the course of the last year, as of April 2011, Malawi was still at 2004/2005 tariff reduction levels.
Mauritius	Yes - Imminent	Country Visit	During the country visit to Mauritius in April 2011, the Mauritius Revenue Authority advised that the 2011 tariff phase downs were prepared and were to be gazetted in May/June.
Mozambique[1]	Yes	Mozambique Revenue Authority	Block approval of SADC tariff phase downs.
Tanzania	Yes	Country Visit	Block approval of SADC tariff phase downs. Derogation requested for sugar and specific categories of paper.
Zambia	Yes	SADC Secretariat	Block approval from 2008 through 2012 gazetted through SI 103 of 2008.
Zimbabwe	No	Country notification	Zimbabwe has requested and received a derogation on tariff phase downs.

[1] According to the Revenue Authority website, as of this writing, Mozambique is at its 2010 tariff phase down levels. However, in accordance with the block phase down schedule, the changes to the customs tariff traditionally takes place in the second half of the calendar year.

As a companion analysis to the 2011 Audit, the SADC Secretariat commissioned a study on the economic impact of the derogations granted with a particular focus on the smaller SADC economies. The analysis demonstrates that the shares of SADC exports for the goods to the countries granted derogation are a comparatively small proportion of total SADC exports in these categories. Additionally, as the derogations are time limited, any effects are likely to be transient.

2. **Non-Tariff Barriers (NTBs):** Article 6 of the SADC Protocol on Trade requires Member States to adopt policies and implement measures to eliminate NTBs. NTBs have been widely cited as a significant constraint to intra-SADC trade which have increased in importance as tariff barriers have declined. Currently, all SADC Member States participate in the Tripartite Online NTB Monitoring Mechanism (www.tradebarriers.org). As part of the 2011 Audit, the SADC Secretariat requested that SATH follow up on documentation for the "resolved" complaints in system.

   While progress has been made in further development of the system and the resolution of NTBs through the online mechanism over the course of the last year, some concerns remain particularly with the prioritization of NTBs, the clarification of exceptions to the elimination of such measures and the development of national level mechanisms to address the elimination of NTBs systematically.

3. **Third Party Preferential Trade Agreements**: The SADC Protocol on Trade has set principles to which Member States must adhere when they enter into trade relations both among themselves and with third parties. As part of the 2011 Audit, the SADC Secretariat requested an examination of such preferential trade agreements to assess compliance with the obligations outlined in the Protocol.

   All SADC Member States participate in one or more agreements either with other SADC Member States or third countries. The discussion details potential concerns with regards to tariff liberalization and Rules of Origin (ROO). As the former is likely of small concern given the impending completion of SADC tariff phase downs, ROO are perhaps the central issue. Under the terms of many of the agreements, ROO are more favorable than those prevailing under the SADC agreement and as such could be considered a violation of the Most Favored Nation (MFN) principle enshrined in the Protocol.

Throughout the year, significant progress has been made in addressing not only Free Trade Area (FTA) issues but SADC's broader vision of regional integration. Intra-SADC trade has recovered significantly since the 2009 economic crisis and shows substantial expansion during the period of implementation of the SADC FTA. ROO continue to be discussed in the SADC context most specifically in the Experts Working Group on Textiles and Clothing. There has been substantial progress on the development and implementation of the monitoring mechanism for NTBs as well as on the enhancement of trade facilitation initiatives within SADC. On SADC's broader integration agenda, Member States are preparing to actively negotiate under the Tripartite FTA.

1. Introduction

2011 marks the penultimate year of the implementation of the Southern African Development Community (SADC) Protocol on Trade.[2] Under the terms of the Protocol, Member States agreed to phase down tariff and non-tariff barriers (NTBs) over a twelve year period beginning in 2000. In August 2008, the SADC Free Trade Area (FTA) was launched with 85% of intra-SADC trade attaining duty free status. During the period 2008-2012, remaining tariff barriers are being phased down with the goal of virtually all intra-SADC trade being duty free.[3] Tariff phase downs however represent only one portion of the objectives of the Protocol and work has been undertaken across the entire spectrum of barriers to trade including NTBs, customs cooperation and trade facilitation.

Currently, twelve SADC Member States participate in the Protocol on Trade: South Africa, Botswana, Lesotho, Namibia, Swaziland, Madagascar, Malawi, Mauritius, Mozambique, Tanzania, Zambia and Zimbabwe.[4] While Angola is a signatory of the Protocol on Trade, it has yet to submit instruments of accession. The Democratic Republic of the Congo (DRC) and the Seychelles have yet to sign the Protocol.

During 2010/2011, SADC Member States have moved forward on broader initiatives for regional integration. While the linear intra-SADC integration program envisioned by the Regional Indicative Strategic Development Plan (RISDP) with the progressive establishment of a customs union, common market and full economic union has been delayed, Member States have continued to work towards a revised strategy and timeline for implementation.[5] More significantly, SADC Member States have begun to move towards active negotiations on the Tripartite FTA which would encompass SADC, the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC) with the 2nd Tripartite Summit Meeting held in South Africa in June 2011.

In 2007, under the Memorandum of Understanding (MoU) signed between the United States (US) Government and the SADC Secretariat, SADC requested that the US Agency for International Development (USAID) Southern Africa Trade Hub (SATH) carry out a series of reviews and audits designed to assess progress against the commitments and obligations of Member States under the Protocol on Trade and to propose remedial measures where necessary.[6]

---

[2] The phase down period for tariff barriers will be complete in January 2012 except for the case of Mozambique who will complete phase downs in 2015 for imports from South Africa.

[3] The exception to duty free status is the Category E or excluded goods which were negotiated as part of the initial agreement.

[4] Although Madagascar is currently under suspension from SADC, it is still eligible for the benefits of the Protocol on Trade. Due to the suspension, Madagascar was not examined for the purposes of the 2011 Audit. For the remainder of this document, "Member States" will refer to those Member States participating in the FTA.

[5] A formal review of the RISDP is underway and should be completed later this year.

[6] In September 2010, USAID/Southern Africa launched the new Southern Africa Trade Hub project which represents a continuation of previous work under the former Southern Africa Global Competitiveness Hub as well as an expansion of the program. For further information on the project, please see www.satradehub.org.

The 2011 Audit of the Implementation of the SADC Protocol on Trade is the fifth such audit carried out by the Trade Hub. While the 2007 audit was comprehensive, the following audits have been updates on the 2007 study each focusing on different issues selected by the SADC Secretariat as well as a subset of Member States. For the 2011 Audit, the SADC Secretariat requested that the Trade Hub focus on three major areas:

1. **Implementation of the 2011 Tariff Phase Downs:** In accordance with the terms of the Protocol on Trade, each year Member States are required to implement their annual tariff phase downs on January 1 and to notify the Secretariat of this action. As part of the current audit, the tariff phase downs for 2011 were verified through country visits and/or desk based research.

2. **NTBs:** Article 6 of the SADC Protocol on Trade requires Member States to *"adopt policies and implement measures to eliminate all existing forms of NTBs"* and *"refrain from imposing any new NTBs"*. NTBs have been widely cited as a significant constraint to intra-SADC trade which has increased in importance as tariff barriers have declined. Currently, all SADC Member States participate in the Tripartite Online NTB Monitoring Mechanism (www.tradebarriers.org). As part of the 2011 Audit, the SADC Secretariat requested that SATH follow up on documentation for the "resolved" complaints in system. Additionally, the SATH team surveyed Member States during the course of the country visits to ascertain what measures or institutions are addressing NTBs nationally.

3. **Third Party Preferential Trade Agreements**: The SADC Protocol on Trade has set principles to which Member States must adhere when they enter into trade relations both among themselves and with third parties. As part of the 2011 Audit, the SADC Secretariat requested an examination of such preferential trade agreements to assess compliance with the obligations outlined in the Protocol.

Additionally, the 2011 Audit will update the status on the implementation of the revised Rules of Origin (ROO), the status of the 2010 Action Plan and provide recommendations for the upcoming year and the 2012 Audit.

1.1 Methodology

The 2011 Audit of the Implementation of the Protocol on Trade (2011 Audit) was carried out with a combination of desk research and country visits.

Country Visits: While the 2007 Audit entailed visits to all Member States, in 2011, country visits were undertaken for five countries during April-May 2011: Botswana, Lesotho, Mauritius, Namibia and Tanzania.

As part of each country visit, meetings were conducted with the relevant government agencies including the Ministry of Trade, Ministry of Finance and the Revenue Authority. Additionally, meetings were sought with representatives of the private sector – both individual businesses and chambers of commerce – to ascertain their experiences with the Protocol on Trade.

Desk Research: Desk research consisted of a review of available literature and internet based activities to verify the implementation and review outstanding issues. As in previous years, one difficulty of this exercise was the lack of comprehensive trade data for analysis. Member States do not currently report trade statistics to the

SADC Secretariat. The most current data available on the Trade and Industrial Policy Strategies (TIPS) Trade Database is for 2006. The data which was available was obtained from the United Nations (UN) Commodity Trade Statistics Database (COMTRADE) but coverage of SADC Member States was not complete and the data is problematic in several areas.

In addition, the SATH team reviewed the previous reports, audits and reviews carried out by the Trade Hub and other organizations. The recommendations arising from previous audits have been examined and comments incorporated.

1.2 Structure of the report

This report is structured as follows. Section 2 provides an overview of the current trends in intra-SADC trade and a general discussion of prevailing economic conditions. Sections 3 and 4 review the current status of tariff phase downs and Member States' progress towards the elimination of NTBs respectively. Section 5 provides an update on the implementation of the Revised ROO. Section 6 provides an overview of issues raised during the course of the country visits. Section 7 describes the compliance with Third Party Agreements entered into by Member States with their obligations under the SADC Protocol on Trade. Finally, Section 8 concludes.

2. Trends in intra-SADC trade

Eleven years into the implementation of the SADC Protocol on Trade, what has been the impact on intra-SADC trade? While the initial years of implementation involved only modest tariff phase downs, the period from 2005-2008 witnessed substantial movement – measured as the percent of tariff lines duty free – culminating in the launch of the FTA in 2008. Using data publicly available from COMTRADE, the following outlines the overall trade performance of SADC countries in recent years.

BOX 1: INTRA-SADC TRADE DATA

The availability of trade statistics is key not only to measuring the impact of the SADC FTA on Member States but for informing policy decisions affecting the operation of the FTA. Additionally, for those countries considering accession to the FTA, the availability of reliable trade data is highly important as they give direction to the potential benefits that joining the FTA could bring. However, there is a lack of comprehensive, cohesive trade data which can be used to track the impact of the Protocol on Trade.

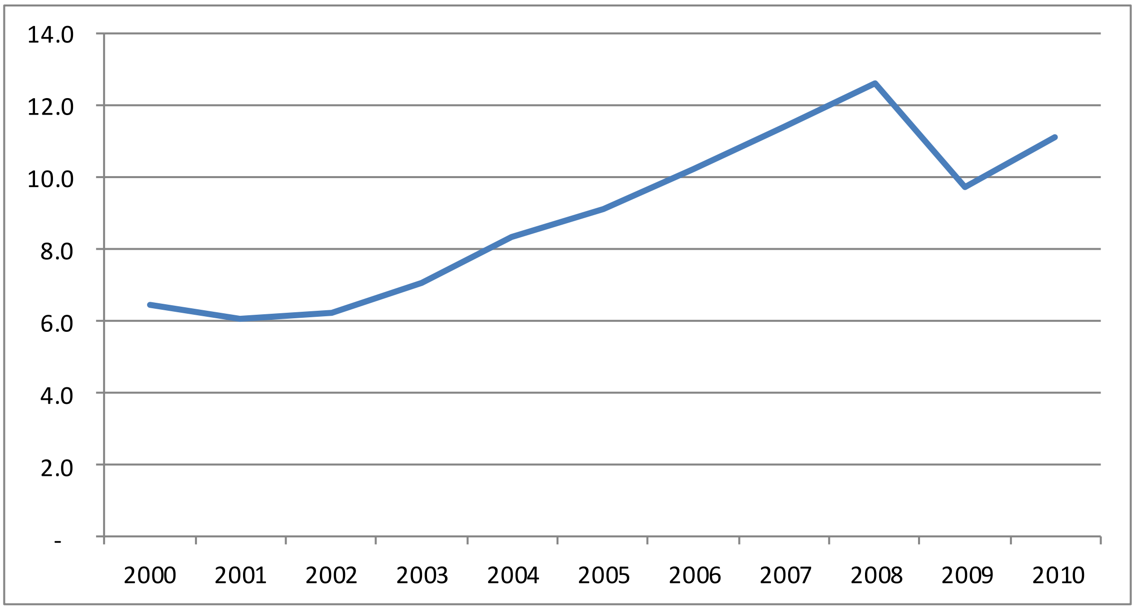
For some time, TIPS, an independent, non-profit economic research institution based in South Africa, maintained a comprehensive intra-SADC trade database but this was discontinued in 2006. COMTRADE is the dataset with the widest coverage of SADC Member States with country submitted data. Additionally, the COMESA Statistics Database (COMSTAT) provides some supporting data for those SADC Member States with overlapping membership in COMESA.

For most SADC Member States, COMTRADE provides fairly comprehensive data through 2009. However, even 2009 data is not available for some countries and others, including Lesotho, have not reported to COMTRADE for some years. Furthermore, the data has substantial inconsistencies which create problems for aggregation.

2.1 Global Trends

Figure 1 presents the trends in World Trade in constant US dollars over the period 2000-2010. After nearly doubling between 2000-2008, world trade experienced a sharp decline with the onset of the global economic recession before beginning to recover after 2009.

Figure 1: The Volume of World Trade 2000-10 (constant 2000 US$ trillion)



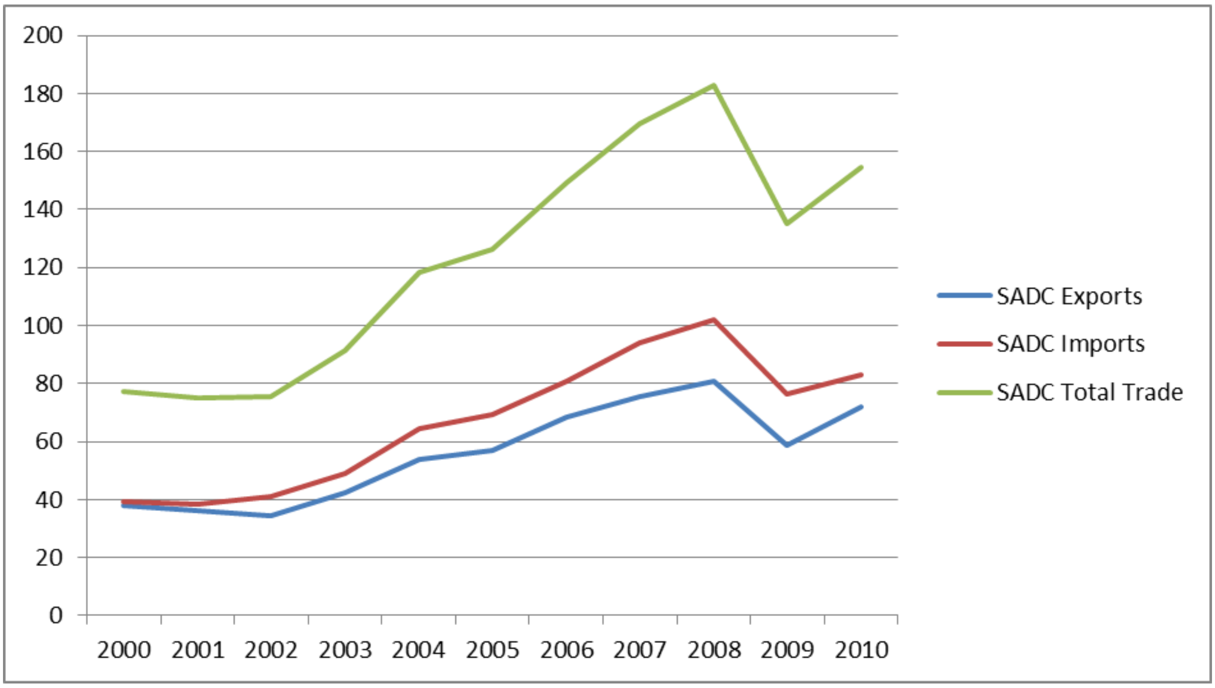
Source: Calculated from COMTRADE and data from World Trade Organization (WTO).

Figure 2 illustrates overall SADC trade and shows a similar trend with SADC exports doubling in constant terms between 2000 and 2008, dropping by nearly 25% during the recession period before beginning to recover to previous levels.

Given the matching trends, it is not surprising that SADC's share of world trade in constant dollars has changed little throughout the period and in nominal terms has actually fallen.[7] Figure 3 illustrates that the share of SADC in world trade has fluctuated only marginally around 0.6%.

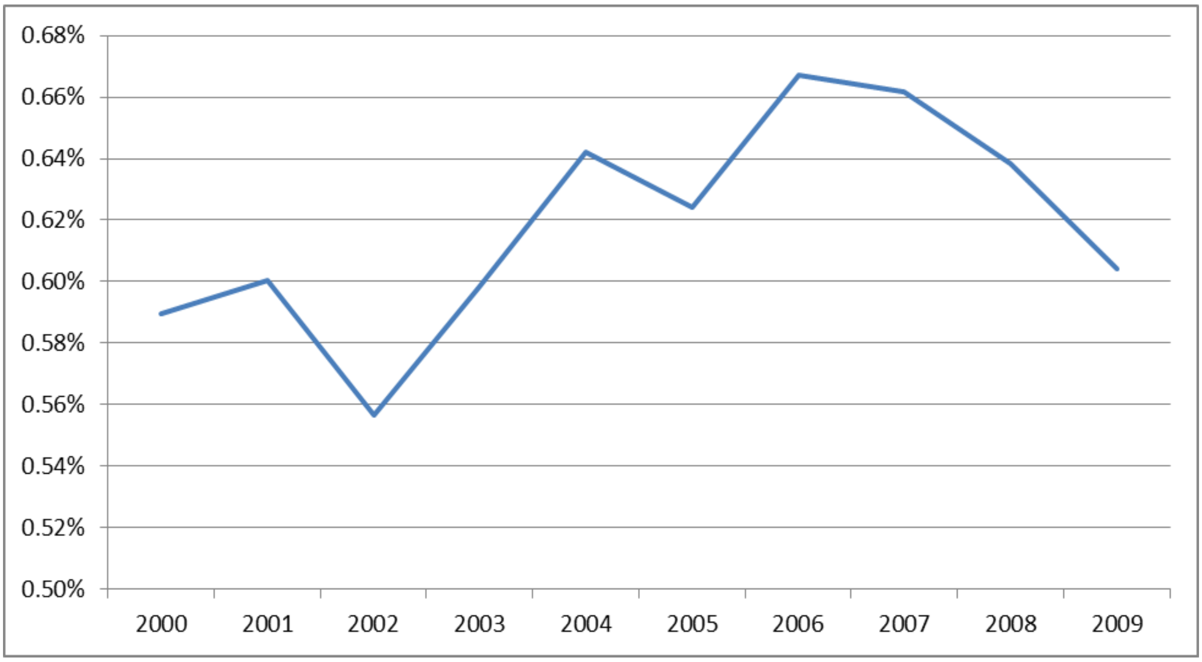
[7] Despite this, a recent report from the World Bank concludes that controlling for income levels and other characteristics, trade between SADC Member States is higher than expected for countries with similar characteristics. For further details see: Behar, A. and Edward, L. *"How Integrated is SADC: Trends in Intra-Regional and Extra-Regional Trade Flows and Policy"* World Bank Policy Research Working Paper 5625, April 2011.

Figure 2: SADC Trade with the World (in constant 2000 US$ billion)[8]



Source: Calculated from United National (UN) COMTRADE

Figure 3: SADC share of World Trade



Source: Calculated from UN COMTRADE

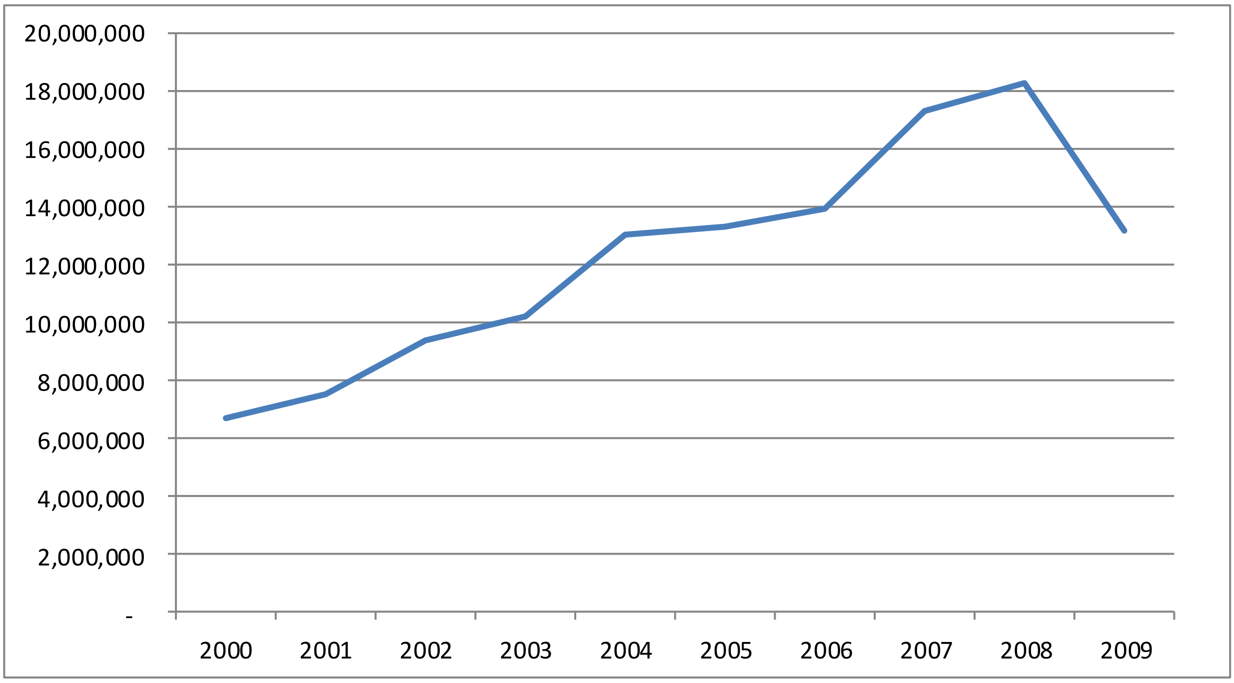
---

[8] Trade is for participating members of the FTA. The data excludes Lesotho who has not reported to COMTRADE since 2002. Data for Namibia were not available for 2009 and 2010; Data for Swaziland were not available for 2008 and 2008 and data for Zimbabwe were not available for 2003 and 2010.

2.2 INTRA-SADC TRADE

In considering intra-SADC trade, Figure 4 shows that trade between SADC Member States that have acceded to the SADC FTA has risen sharply in the past decade which again, mirrors global trade trends. In 2000, trade between these SADC Members amounted to only US$ 6.67 billion. By 2009, intra-SADC trade had more than doubled to just over US$ 18 billion. The economic crisis of 2008-09 had a significant impact on intra-SADC trade as trade which fell by more than 27% between 2008 and 2009.

Figure 4: Total Intra-SADC trade (2000-09) in US$ ('000)[9]



Source: Calculated from the UN COMTRADE Database

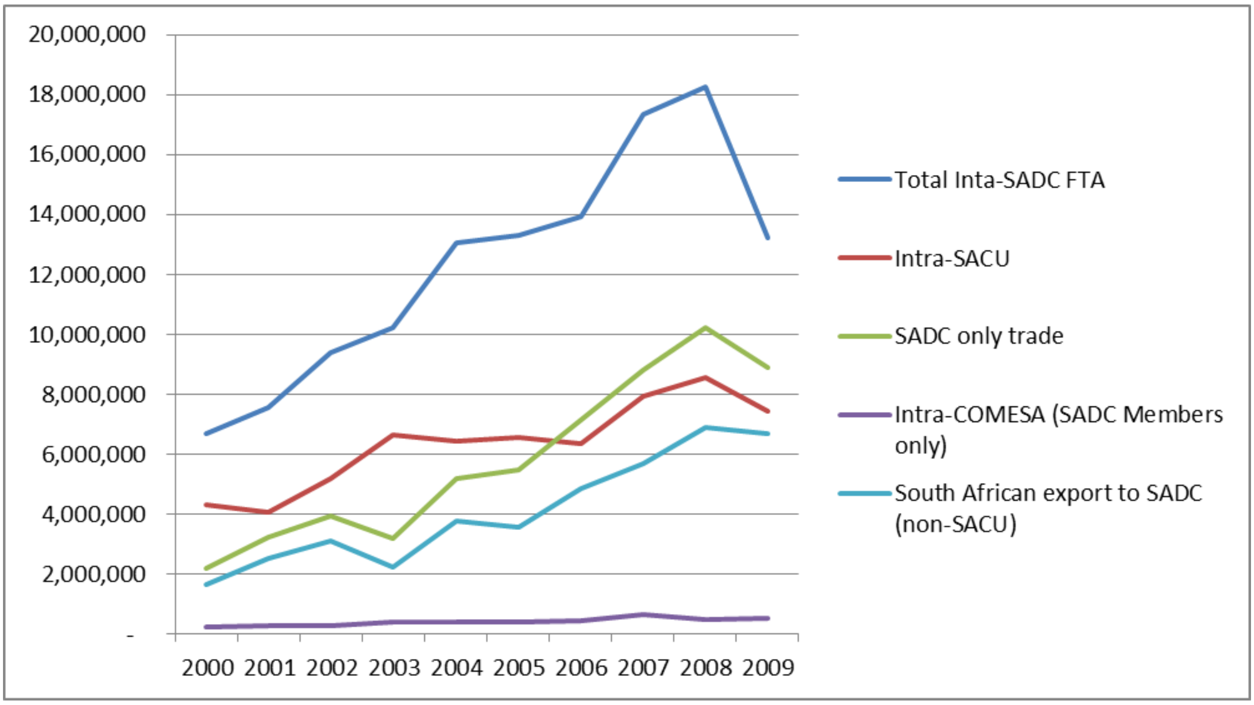
SADC Member States participate in several overlapping regional and bilateral trade arrangement with the Southern Africa Customs Union (SACU) and COMESA being the most prominent.

Figure 5 attempts to identify the share of trade within SADC that is actually taking place under the ***SADC*** FTA as opposed to the overlapping arrangements. In order to do so we make a strong assumption that all trade taking place between SADC Members that are simultaneously members of COMESA or SACU will be qualified as

[9] It is important to note that the analysis provided in Figure 4 is highly dependent on the quality and reliability of trade statistics provided by the UN COMTRADE and in some instances might over or underestimate the actual value of trade taking place. Some additional problems need to also be noted. Due to lack of trade data Lesotho was excluded from this analysis. Furthermore data for Namibia was not available for 2009; data for Swaziland was not available for 2008 and 2009 and data for Zimbabwe was not available for 2003. The intra-regional trade was calculated on the basis of import data provided by the SADC Member States as it is often assumed that imports statistics that are subject to tariffs are more reliable.

taking place under these agreements rather than under the SADC FTA.[10] In the case of SACU, this is necessarily the case. For COMESA, this is a strong assumption as in reality, traders in countries that are members of multiple trade agreements can choose under which trade agreement to trade. This assumption is made as it has been noted that traders often choose to trade under COMESA rather than SADC as the former has generally less strict ROO.

Figure 5: Intra-SADC trade disaggregated by Regional Trade Agreement (2000-09) in US$ ('000)



Source: Calculated from the UN COMTRADE Database

Under these assumptions, Figure 5 shows the portions of intra-SADC trade potentially conducted under each agreement. Intra-SACU trade more than doubled between 2000 and 2009 while trade among SADC/COMESA Members remained roughly flat over the period at US$ 0.5 billion.

Trade under the SADC FTA, rose significantly – particularly after 2004 nearly quadrupling in value.[11] Exports from South Africa were the main source of rise in this type of intra-SADC trade with more than US$ 5.2 billion to non-SACU, SADC Member states in 2009. However, as illustrated in Figure 5, the non-SACU countries have increased their share of intra-SADC trade over the period.

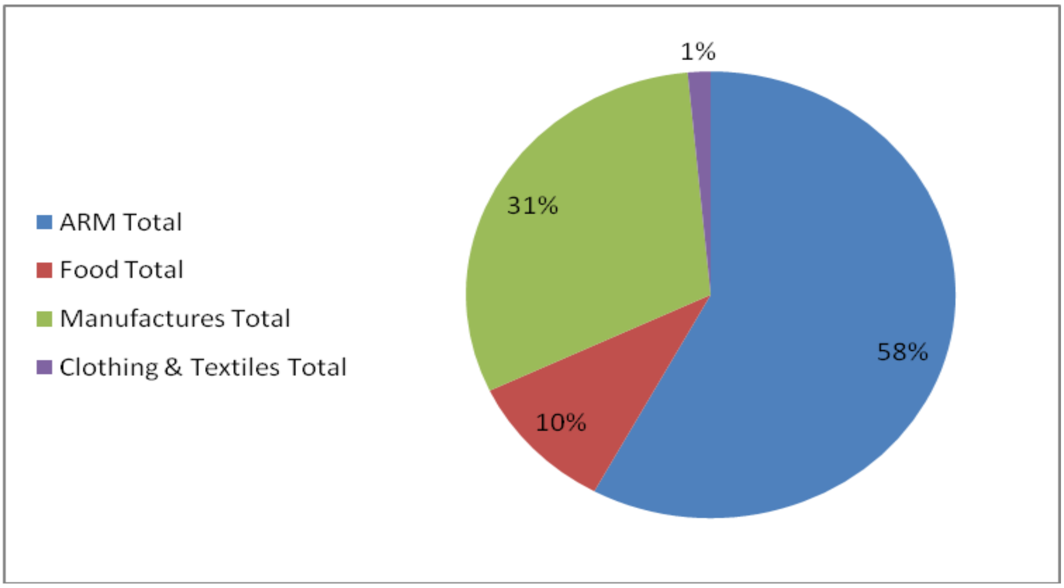
---

[10] SADC Member States with overlapping membership in COMESA include Malawi, Mauritius, Madagascar, Zambia and Zimbabwe. SACU consists of Botswana, Lesotho, Namibia, South Africa and Swaziland.

[11] This is all intra-SADC trade less intra-SACU trade and trade between SADC Member States that are members of COMESA.

Sectorally, four broad sectors account for 98 percent of intra-SADC trade namely: agricultural raw materials (ARM); food; manufactures and; clothing and textiles. As illustrated in Figure 6, ARM dominated intra-SADC trade accounting for nearly 60 percent of the total. This breakdown has been roughly constant over the period.

Figure 6: Sector shares in Total Intra-SADC trade (2005-2009)



Source: UN COMTRADE, COMSTAT

3. Implementation of the 2011 Tariff Phase Downs

The SADC FTA was officially launched in August 2008 with 85% of intra-SADC trade receiving duty free treatment. From 2008 to 2012, the Member States have agreed to lower tariff duties on the remaining “Schedule C” or “Sensitive Products” leaving only the excluded goods subject to duties.[12]

By the decision of the Committee of Ministers Responsible for Trade (CMT) and the terms of the original agreement, Member States are to implement tariff phase downs on January 1 of each year and formally notify the Secretariat of this action. The SACU Member States have completed their phase downs and Mozambique, Tanzania, and Zambia have submitted their notifications for their block tariff phase downs. Of the remaining Member States - Malawi, Mauritius and Zimbabwe – formal notifications of tariff phase downs were not submitted to the Secretariat.

Generally, the reporting of information to the Secretariat is uncoordinated and it would greatly benefit transparency in the FTA to more effectively receive notifications and for the SADC Secretariat to disseminate this information more widely. While tariff phase downs will be largely complete in January 2012, there is a need for Member States to report regularly on trade statistics, changes in trade regulations

[12] Excluded goods were determined by each Member State as part of their original offers. However, by agreement of all Member States, Chapter 93 (Arms and Ammunitions; Parts and Accessories thereof) was specifically excluded from the Protocol on Trade.

etc. The reporting of such information to the Secretariat and the dissemination of such information to the Member States is an important component to the effective operation of the FTA. Beyond the process of formal notification, the key to the process is the need for functional websites where tariff information is posted so that stakeholders and the Secretariat can follow up on actual implementation. As discussed below, for the majority of Member States, SADC preferences are easily available online.

As part of the 2011 Audit, verifications of the 2011 phase downs were accomplished through the country visits and a review of posted information from the respective revenue authorities and customs websites.

3.1 Overview of Tariff Phase down Offers

As part of the SADC Protocol on Trade, Member States agreed to phase down tariff barriers to intra-SADC trade over a twelve year period between 2000 and 2012.[13] Each Member State submitted two tariff phase down offers – one for South Africa and a "Differentiated Offer" for the remaining Member States.

Tables 1 and 2 below highlight the tariff phase down offers for each Member State. It should be stressed that these are based on the original offers and look at the tariff phase downs in terms of ***tariff lines and not trade volumes***.

As indicated in the tables, the tariff phases down offers were heavily back-loaded with much of the tariff phase downs occurring in the latter years of the implementation. Although the most significant jumps in duty free status occurred in 2007-2008 as the Category B phase downs were completed. The Category C phase downs for the majority of the Member States occur from 2010-2012.

Table 1: SADC Tariff Phase-Down Offers: Differentiated Offer[14] (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

[13] Mozambique has a derogation to extend its tariff phase down with South Africa until 2015.

[14] Note that the incorporation of excluded goods varied across the schedules. Chapter 93 is excluded by all Member States, while this is noted in the schedules of most countries; others did not even include it in their schedules. For example, Mauritius' schedule does not include Chapter 93 thus it is calculated as having no excluded goods.

Zimbabwe	7,167	30.7	70.6	89.8	93.1	93.2	95.0	98.7	1.3

Source: Original Tariff Phase Down Offers

Table 2: SADC Tariff Phase-Down Offers: South Africa[15] (Percent of Tariff Lines at Zero)

	# *Lines*	*2001*	*2005*	*2008*	*2010*	*2011*	*2012*	*2015*	*Excluded*
Malawi	5,443	33.4	33.4	84.9	84.9	84.9	99.7		0.3
Mauritius	5,479	69.4	69.7	90.5	90.5	90.5	100.0		0.0
Mozambique	5,246	28.1	28.1	92.6	92.6	92.6	92.6	99.6	0.4
Tanzania	6,217	15.7	15.7	84.5	84.5	84.5	99.3		0.7
Zambia	6,066	32.1	32.1	95.8	95.8	95.8	100.0		0.0
Zimbabwe	7,167	32.0	44.4	71.8	72.7	82.3	82.3		0.8

Source: Original Tariff Phase Down Offers

With the exception of Mozambique and those countries which have requested and received derogations, all Member States will have phased down all tariffs and duties in January 2012. The list of excluded products as illustrated in Table 3 below is quite small.

Table 3: Excluded Products

Country	**# Lines**	**Products[16]**
SACU[17]	31	Sugar and Sugar Products, Used Clothing, Motor Vehicle Parts
Mauritius	0	None
Malawi	19	Sugar, Weapons/Ammunition
Mozambique	19	Ivory, Weapons/Ammunition
Tanzania	43	Ivory and other restricted animal hides/materials, Weapons/Ammunition, Opium, Propellant Powder (Explosive)
Zambia	0	None
Zimbabwe[18]	34/89	Jet/Specialized Fuels, Vehicles/Parts, Rear View Mirrors,

[15] Zimbabwe's offer to South Africa contains a small number of excluded goods but contains only 5,597 lines as opposed to 7,167 lines for the Differentiated Offer.

[16] These are general product categories and do not imply that the entire class of goods is excluded – only specific tariff lines therein.

[17] In 2008, for several tariff lines in Chapter 17 previously categorized as excluded, SACU set these lines as duty free leaving only 4 lines out of the original 13 Category E products.

		Used Clothing, Radioactive Products, Used Tires, Precious Metals

Source: Original Tariff Phase Down Offers; Note that Chapter 93 is excluded for ALL Member States although not all have included it in their specific list.

Box 2: Updating of Tariff Offers

When initially negotiated, the SADC Tariff Offers were stated in terms of Harmonized System of Classification (HS) Version 1996 (HS1996) nomenclature and later updated to HS2002. Since that time, the HS system has undergone several modifications with the most recent being an upgrade to the HS2007 system. This has created some uncertainty during the tariff phase down period as the original offers were never updated to reflect the changes in the customs tariffs. In 2010, a draft of the original offers updated to HS2007 was submitted to the SADC Member States at the June 2010 Trade Negotiating Forum Meeting (TNF). However, no further steps have been taken to approve these drafts.

Given that the tariff phase downs will be largely complete in less than six months and furthermore given that a new HS update (HS2012) will come online in January 2012, the exercise of updating the original offers has lost its relevance. In lieu of this, Member States should review their list of excluded products or outstanding Category C products for Mozambique and those countries under derogation to ensure that the customs tariff in use corresponds to the original offer.

3.2 Implementation of 2011 Phase Downs – Audit Results

Table 4 below provides an overview of the status of the 2011 tariff phase down findings. As illustrated in the table, the overall level of compliance with the tariff phase down commitments is generally high with the exception of Malawi, Zimbabwe and a recent derogation request from Tanzania.

While compliance is overall good, discrepancies continue to arise for individual tariff lines. However, these tariff line discrepancies will become increasingly irrelevant as Member States complete the tariff phase downs in January 2012.

Throughout the process of the annual Trade Audits, each year tariff phase downs have been verified through country visits and/or desk research. For nearly all Member States, the SADC tariff rates are easily available online – usually through the revenue authority websites. As detailed below, Zambia is the exception to this rule.

Annex 1 reproduces the information from the 2010 Audit regarding country specific issues raised in the 2007-2010 Audits which are highlighted in the following sections.

[18] Zimbabwe has 34 excluded tariff lines in its offer to South Africa and 89 in its Differentiated Offer.

Table 4: Summary of 2011 Tariff Phase Downs

	Implemented?	*Method*	*Notes*
SACU	Yes	South Africa Revenue Service (SARS) Website	SACU Tariff Phase Downs were completed in 2008
Malawi	Partial?	Malawi Revenue Authority website and submissions by Malawi	While Malawi has phased down some SADC duties throughout the course of the last year, as of April 2011, Malawi was still at 2004/2005 tariff reduction levels.
Mauritius	Yes - Imminent	Country Visit	During the country visit to Mauritius in April 2011, the Mauritius Revenue Authority advised that the 2011 tariff phase downs were prepared and were to be gazetted in May/June.
Mozambique	Yes	Mozambique Revenue Authority	Block approval of SADC tariff phase downs.[19]
Tanzania	Yes	Country Visit	Block approval of SADC tariff phase downs. Derogation requested for sugar and specific categories of paper.
Zambia	Yes	SADC Secretariat	Block approval from 2008 through 2012 gazetted through SI 103 of 2008.
Zimbabwe	No	Country notification	Zimbabwe has requested and received a derogation on tariff phase downs.

3.2.1 SACU

With the implementation of the 2008 tariff phase downs, SACU has completed its tariff phase down obligations. A review of information available from SARS revealed no modifications to the customs tariff in 2011 which would impact SADC duty rates. Annex 1 notes that there are presently no outstanding issues with regards to the SACU tariff phase downs.[20]

[19] According to the Revenue Authority website, as of this writing, Mozambique is at its 2010 tariff phase down levels. However, in accordance with the block phase down schedule, the changes to the customs tariff traditionally takes place in the second half of the calendar year.

[20] This discussion applies to the SACU Common External Tariff (CET). However, individual SACU Member States do impose duties outside of the SACU CET some of which are detailed in Section 4 below.

3.2.2 Malawi

Due to budgetary considerations, Malawi has been delayed in implementing its tariff phase down commitments. As of the 2010 Audit, Malawi remained at its 2004 tariff phase down levels. However, as part of the 2010/2011 Budget Speech, Malawi reaffirmed its commitment to meeting its obligations under the SADC Protocol on Trade.

Throughout the remainder of 2010 and early 2011, Malawi has worked with the SADC Secretariat on verifying its implementation status. In October 2010, the SADC Secretariat received the details of the changes to the customs tariffs and Malawi reported that these changes had been gazetted. However, a review by the SADC Secretariat indicated that only Most Favored Nation (MFN) duty rates had been changed with no changes to the SADC and South Africa duty rates.[21]

At the February 2011 CMT meeting, Malawi notified the meeting that additional changes had been made to the Malawi Customs Tariff which brought Malawi into full compliance with its SADC tariff phase down obligations. As a result, Malawi withdrew its request for derogation which had been outstanding for some time. At the request of the SADC Secretariat, a comprehensive review of Malawi's customs tariff was again undertaken.[22]

While the recent changes to the customs tariff have decreased the SADC and South Africa duty rates on a number of tariff lines, only 46% of tariff lines under the SADC and South Africa offers respectively are currently compliant with Malawi's 2011 obligations. Compared to the customs tariff in effect on January 2010, 550 and 545 tariff lines have been lowered for SADC and South Africa respectively. To bring Malawi into compliance with its 2011 obligations 2,508 and 2,518 rates would need to be reduced for the SADC and South Africa. Using simple average tariffs on SADC and South African imports as an indicator, Malawi's current level of compliance is with the 2004 and the 2005 offer for SADC and South Africa respectively.[23] This analysis has been sent to Malawi and the awaited response will inform the final position regarding the updated assessment of Malawi's implementation of its SADC tariffs.

On June 3, 2011, the 2011/2012 Budget Statement, delivered to the National Assembly by the Minister of Finance, Honourable Ken E. Kandodo, reaffirmed Malawi's commitment to the SADC FTA noting that the government is *"committed to fast tracking the process of phasing down tariffs under the Southern Africa Development Community (SADC) Free Trade Area in order to reap the economic benefits of deeper integration and regional trade. This measure in line with our regional commitment under SADC."*[24]

---

[21] See "Technical Report: Assessment of Malawi's Customs Code Changes: Impact on SADC FTA Obligations" by Southern Africa Trade Hub, November 2011. Submitted to SADC Secretariat.

[22] See "Technical Report: Assessment of Malawi's Customs Code Changes: Impact on SADC FTA Obligations – April 2011 Update" Submitted to SADC Secretariat.

[23] As of this writing, June 2011, the customs tariff posted on the website of the Malawi Revenue Authority remains unchanged from the version posted in early 2011.

[24] From the 2011/2012 Budget Statement Delivered in the National Assembly of the Republic of Malawi by the Minister of Finance, Honourable Ken E. Kandodo, MP. Available at http://www.finance.gov.mw/.

As part of the presentation of the budget, the Government of Malawi announced its intention to implement a zero deficit budget policy which proposes to finance all public recurrent expenditure from domestic resources. In line with this policy, the Commissioner General of the Malawi Revenue Authority, Lacton Muhara, directed all revenue generating stations to adjust tariffs in line with Minister of Finance's 2011/12 budget statement. The order was issued *""with effect from the midnight of 3rd June 2011, the Customs and Excise (Tariffs) Order is amended." The amendments include in the introduction of 16.5 per cent VAT on table and kitchen salt as well as meat and edible meat offal, table and hatching eggs, natural honey, residues and waste from food industries and newspapers."*[25] As of this writing, the amended Customs and Excise Order is not available although the representative from Malawi informed the TNF that these changes were strictly on domestic taxes.

3.2.3 Mauritius

During the country visit to Mauritius, the Mauritius Revenue Authority advised that the 2011 SADC tariff phase downs had been prepared and would be gazetted in May/June. Generally, Mauritius has reported that it has been ahead of schedule in implementing its tariff phase downs and additionally has undergone substantial tariff liberalization across the board.

Annex 1 describes outstanding issues for Mauritius. As of the 2010 Audit, there were some reported discrepancies between the applied and offered duty rates. As of this writing, it was not possible to examine the amended schedule. However, with the final SADC phase downs to be implemented in January 2012, such tariff line discrepancies will lose relevance. Furthermore, Mauritius has noted that the discrepancies pointed out in the above table are temporary and pertain only to the period 2009-2010. This will automatically be adjusted with the 2011 tariff phase in January 2011. Additionally, Mauritius has undertaken autonomous liberalization in most of its sensitive product lines and is thus beyond its tariff phase down commitment.

3.2.4 Mozambique

Parliament made a block approval of Mozambique's tariff phase down program from 2001 up to 2015 so no additional legislative action is required for annual implementation. In part due to the block approval, Annex 1 highlights that there have been few significant issues regarding Mozambique's implementation. A review of Mozambique's currently posted customs tariff at the time of this writing reveals that Mozambique is currently at its 2010 tariff phase down level. However, the change in the customs tariff customarily occurs in the latter half of the year in accordance with the block approval.[26]

[25] From Newstime Africa, June 8, 2011, http://www.newstimeafrica.com/archives/20543. The complete details of new changes in the customs tariff were not available at this writing.

[26] http://www.alfandegas.gov.mz/pauta_ad.htm

3.2.5 Tanzania

Like Mozambique, Tanzania made a block approval of its entire phase down schedule. No further action is required for implementation and a press notice is sent out annually noting the change in the SADC rates. A review of Annex 1 notes that there are few outstanding issues aside from a discrepancy regarding the number of Category C products in the two schedules. As with tariff line discrepancies for other Member States, this issue will no longer have relevance after 2012.

At the February 2011 CMT meeting, Tanzania notified that it had increased tariffs on sugar and certain categories of paper and requested an ex post derogation. While not expressly acceding to Tanzania's request, the CMT noted the challenges faced by Tanzania's sugar and paper industries and allowed that Tanzania could retain the tariffs introduced on sugar and paper imports from SADC, pending the outcome of further investigations to be carried out in collaboration with the Secretariat. Section 3.3 provides further discussion of the requests for derogation by Tanzania.

3.2.6 Zambia

In 2008, Zambia gazetted a schedule for SADC tariff phase downs for the period 2008-1012. During the 2010 Audit, the Zambia Revenue Authority confirmed that Zambia was fully compliant having implemented the 2010 tariff phase downs which were available on the Zambia Revenue Authority website.[27] As highlighted in Annex 1, in the past, discrepancies have arisen between the SADC applied rates and those in the original offer. In 2010, Zambia passed new legislation which allows the Revenue Authority to address these issues directly without reference to further legislative process. Traders should report any discrepancies at the Authority's website at www.zra.org.zm.

While the customs and excise rates are readily available online from the Zambia Revenue Authority, this document does not include SADC tariff rates nor were they available at related government or private sector web sites. Aside from the issue of verification for the purposes of the Audit, the lack of transparency of the preferences offered by Zambia under the SADC Protocol on Trade negatively impacts the ability of the private sector to take advantage of its benefits.

3.2.7 Zimbabwe

Zimbabwe has been granted a derogation from tariff phase downs at the February 2011 CMT meeting. Zimbabwe referred to Article 3(c) of the Protocol on Trade in making this request for derogation to the CMT, which is meant to give temporary relief to industries strongly negatively impacted by tariff phase downs. Section 3.3 provides an overview of the request for derogation. As detailed in the annual Audits, Zimbabwe has not implemented tariff phase downs since 2008.

[27] It should be noted that while Zambia's customs tariff book is readily available on the website, the SADC tariff rates are not included.

3.3 Derogations – Tanzania and Zimbabwe

At the February 2011 CMT meetings, Tanzania and Zimbabwe submitted requests for derogation from SADC tariff phase down obligations. Tanzania's request was conditionally approved pending a formal report to be developed with the Secretariat. Zimbabwe's request was approved. Both requests were made by reference to Article(3)(1)c) of the Protocol on Trade which provides:

That Member States which consider they may be or have been adversely affected, by removal of tariff 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.

At the request of the SADC Secretariat, a full report has been prepared on the economic impact of these derogations – with a specific focus on the smaller economies within SADC - which is submitted as a companion piece to the 2011 Audit.[28] The following summarizes the results of this analysis.

3.3.1 Tanzania

Tanzania notified the CMT in February 2011 that it had re-imposed tariffs on sugar products and specific categories of paper which had previously been phased down to zero for SADC Member States. It requested an ex post derogation for these tariff increases. While the CMT did not expressly accede to Tanzania's request, the Ministers noted the challenges faced by Tanzania's sugar and paper industries and allowed that Tanzania could retain the tariff introduced on sugar and paper imports from SADC, pending the outcome of further investigations to be carried out in collaboration with the Secretariat. During the country visit to Tanzania as part of the 2011 Audit, meetings were held with representatives from both the paper and sugar sectors.

Sugar: Sugar tariffs for Tanzania had previously been phased down under Tanzania's obligations under the SADC Protocol on Trade. However, in recent years, sugar imports have increased substantially from US$ 41.5 million in 2008 to US$ 92.4 million in 2010. Sugar imports from SADC Member States more than quadrupled during this time from US$ 4.2 million in 2008 to US$ 17 million in 2010. Calculated on a volume basis, during a time of rising world sugar prices, Tanzania's imports of sugar from SADC Member States increased by nearly 200% during this time.

As a result, Tanzania has reinstated tariffs on sugar products which are now at 25% although industrial users are allowed to import at a special 10% rate. The MFN tariff is currently 100% or $200/ton. Under the new tariffs on sugar, there is a "disaster clause" which allows for duty free imports. This clause was invoked during the March-May 2011 period due to increasing world prices and no tariff was applied during this period.

---

[28] *"Technical Report: Impact of Derogations from Implementation of SADC FTA Obligations on Intra-SADC Trade",* T. Iwanow, USAID/Southern Africa Trade Hub, June 2011.

The sugar sector is a substantial employer for Tanzania. The Sugar Board estimates that employment at the sugar factories and the estate farms in addition to small-holder farmers and outgrowers provides income for 65,000 people. During the period of derogation, the sugar industry will focus on rehabilitation of the sugar estates including the introduction of higher yielding varieties of sugar cane which will better enable them to compete when the derogation ends.

Paper: Tanzania's pulp and paper Industry is relatively small but growing industry. There is one medium sized company - Mufinidi Paper - and two small sized factories manufacturing industrial packaging grades. Mufinidi Paper was privatized in 2003 and the new investor has already invested more than US$ 60 million in the company.

According to Mufinidi Paper, the company currently produces about 43,000 tons annually. This capacity is too small to achieve significant economies of scale. Therefore, the firm has put in a place a roadmap to increase capacity and achieve a competitive scale. Over the next five years, it is planned to increase capacity more than threefold to 150,000 tons annually.

Tanzania has made a request for derogation for its paper industry to support it in achieving required economies of scale and to successfully compete in international markets. The request for derogation is for three years during which time Tanzania will apply a 25% tariff for Industrial Packaging Grades.

Impact: The estimated impact of Tanzania's request for derogation is small. While SADC Member States do have significant exports to Tanzania in these categories, as a proportion of total exports, the percentages are low.

- ***Sugar:*** For South Africa, SADC's largest exporter of sugar to Tanzania, the share of total sugar exports going to Tanzania is only 3.8%. Other SADC Member States such as Malawi, Zambia and Mozambique have also registered exports of sugar to Tanzania. However, as in the case of South Africa, these exports are small in comparison to the total sugar exports of these countries. The share of sugar products going to Tanzania as a share of Malawi's and Zambia's total sugar exports are 1.81% and 1.48%, respectively.[29] Hence, these two countries will be affected by the derogation to even a smaller extent than South Africa.
- ***Paper:*** Similarly for paper products, trade data indicate that the sole SADC exporter of these products to Tanzania is South Africa, and thus any negative economic effects of the derogation are likely to be confined to that country. As in the case of sugar, paper products exported to Tanzania are only a small fraction of South Africa's total, and hence only a small share of its exports will be affected by the re-imposition of duty. The share of South Africa's total exports in the category going to Tanzania is only 3.13%.

Additionally, given the time limits on these derogations, they are unlikely to have a lasting impact on intra-SADC trade possibilities.

[29] Figure for Malawi for 2007.

3.3.2 Zimbabwe

Zimbabwe has requested and been granted a two-year delay in their tariff liberalization schedule for goods in Category C i.e. sensitive products. The SADC Protocol on Trade envisages full liberalization of trade in these tariff lines by 2012. Therefore, Zimbabwe's request for derogation delays tariff phase down for goods in this category for a two year period with full liberalization envisaged in 2014.

The request for derogation by Zimbabwe is due to a particularly difficult economic situation prevailing in the country. In fact, Zimbabwe has suffered the world's most severe recession in the past 20 year among non-conflict countries with the economy shrinking by over 45 percent between 1999 to 2008.

Impact: Trade between Zimbabwe and SADC Members (except South Africa) is comparatively low. In fact, SADC's exports of goods in category 'C' to Zimbabwe (excluding South Africa) comprised only 3.3% of total SADC exports in these categories although they represent 78% of Zimbabwe's imports in these goods – 62% of which originate in South Africa. The impact of the derogation is likely to be limited given the small share of these goods in the export basket of SADC Member States. Additionally, its short duration – 2 years – implies that any impact will likely be transient.

3.3.3 Conclusions

Although the current derogations are likely to have a limited impact on intra-SADC trade, SADC has yet to design clear rules and procedures for approving derogations. Article 3(1)(c) of the Protocol on Trade states that: *'CMT shall elaborate appropriate criteria for the consideration of applications… for derogations*'. In order for the principle of reciprocity in SADC to be maintained as well as to make the process fully transparent and regulated, formal derogation procedures and criteria should be developed which may entail the following:

- Establishment of a maximum time threshold for the duration of the derogations and verify whether, and under what conditions, an extension of derogation can be granted.
- Establishment of a percentage value of rise in imports that can be qualified as an 'import surge' and other criteria for granting a derogation.
- Establishment of a minimum time (in years or months) of a continuous rise in imports after which a derogation can be granted.
- Clarification of required documents to be presented to CMT along with an application for derogation.

4. Non-Tariff Barriers

The SADC Protocol on Trade calls for the removal of all tariff and NTBs to intra-SADC trade. Article 6 of the Protocol provides that:

Except as provided for in this Protocol, Member States shall, in relation to intra-SADC trade:

(a) adopt policies and implement measures to eliminate all existing forms of NTBs.

(b) refrain from imposing any new NTBs.

NTBs are defined broadly under the Protocol as "any barrier to trade other than import and export duties". Further, Articles 7 and 8 explicitly call for the removal of quantitative import and export restrictions. However, Article 9 allows for nine exceptions to these rules:

(a) Necessary to protect public morals or to maintain public order;

(b) necessary to protect human, animal or plant life or health;

(c) Necessary to secure compliance with laws and regulations which are consistent with the provisions of the WTO;

(d) Necessary to protect intellectual property rights, or to prevent deceptive trade practices;

(e) Relating to transfer of gold, silver, precious and semi-precious stones, including precious and strategic metals;

(f) Imposed for the protection of national treasures of artistic, historic or archaeological value;

(g) Necessary to prevent or relieve critical shortages of foodstuffs in any exporting Member State;

(h) Relating to the conservation of exhaustible natural resources and the environment; or

(i) Necessary to ensure compliance with existing obligations under international agreements.

Although these allow for exceptions, no specific process of verification is elaborated. Article 10 additionally allows for a security exception.

The experience of SADC with NTBs is not different than global trends. As tariffs diminish in importance, NTBs tend to proliferate and form more significant constraints on trade. Currently, NTBs in SADC are often cited as the most significant constraint on the growth of intra-SADC trade. NTBs in SADC have been widely documented and a recent report by the World Bank notes that *notified* NTBs affect products which account for one-fifth of regional trade.[30]

While different approaches to the reduction in SADC NTBs have been discussed, currently SADC is participating in the online NTB reporting mechanism (www.tradebarriers.org). This tripartite mechanism provides a portal for the private (and public) sector to register complaints on NTBs which are then addressed through a primarily bilateral mechanism. While the system went online in 2009, little progress was made in the initial phase. However, during the course of the last year, the system has undergone substantial changes. To date, of the 329 complaints registered on the system, 227 (69 percent) have been resolved. However, as

[30] "Harnessing Regional Integration for Trade and Growth in Southern Africa" World Bank, October 2010.

described below, there are some concerns regarding the status/nature of the resolutions.

As part of the 2011 Audit, the SADC Secretariat a follow up on the resolved complaints and document their conclusion. Additionally, we reviewed the mechanisms for addressing NTBs in each of the Member States visited. The following discusses the status of resolved complaints based on country visits and information in the online system. These resolved complaints are listed in Table 5 below. Based on this exercise, there is little or no documentation to support the resolution of issues. In fact, in many cases, it would not be possible to provide documentation given the nature of the complaints which are often subjective or too vague to address directly.

Botswana*:* For Botswana, eleven complaints are reported as resolved in the online monitoring system. Five of the complaints related to single channel marketing schemes. Botswana verified that such channels exist for grains and meat. While there is no single marketing channel for dairy, Botswana does import additional duties on Ultra High Temperature (UHT) milk from all sources. Additionally, during the country visit, the Ministry of Agriculture noted that Botswana does apply seasonal or temporary quantitative restrictions on the imports of dairy products, grains and some vegetables.

One complaint registered claimed that Botswana imposed a 15% levy on wheat imports. While the online system reports that no such levy on wheat exists, during the country visit it was confirmed that there is a 15% levy charged on wheat flour from all sources with the purpose of protecting the local milling industry.

Botswana addresses NTBs in the context of its inter-ministerial market access committee. Additionally, a national trade facilitation working group which includes both public and private sector representatives was established in 2010.

Lesotho: Eight resolved complaints were registered for Lesotho. Three of the complaints regarded price regulation on legumes and two import bans on wheat and beer.

In addition to the issues above, during the country visit, Lesotho clarified the prevailing import/export regulations. Lesotho does require permits on the importation of some agricultural products. The Agricultural Marketing Act 26 of 1967 (amended by Act NO.18 of 1973, Order No.6 of 1991 and Act No.5 0f 2001) controls the importation and exportation of the agricultural products in Lesotho. The purpose of this Act is to improve the exportation and importation of products and supplies, and in particular to prohibit the importation of products and supplies which are unsafe or inappropriate for the function for which they are to be sold. The commodities requiring permits include bread; fruits and vegetables; pulses (beans and peas); milk and dairy products; poultry eggs; livestock and meat; wool and mohair; hides and skins; sugar and sunflower.

However, the number of goods requiring permits is being reduced under the Import Restriction (Amendments) Regulations of 2009 amending Act No.5 of 1996 was introduced to reduce the number of items that require import permits.

Mauritius*:* Three resolved complaints were registered for Mauritius including Technical Barriers to Trade (TBT) issues, export taxes and single marketing channels for agricultural products. On the marketing channels Mauritius confirmed that this is the case and is done for food security purposes as Mauritius is a net food importer.[31] There is a sugar syndicate and an agricultural marketing board which is allowed for under the GATT.

Mauritius is actively pursuing the removal of NTBs. There is a joint public/private sector working group co-chaired by the Ministry of Foreign Affairs and the private sector it includes the additional ministries, SPS agents, the Mauritius Bureau of Standards and Customs. Three studies are currently underway or recently completed on NTBs: joint with the International Trade Centre, a study of NTBs faced by Mauritian exporters and last year a World Bank report on Mauritius NTBs and an Enterprise Mauritius study on NTBs confronted by Mauritian firms abroad.

Namibia: Fourteen resolved NTBs were reported for Namibia across the range of trade facilitation, import and export regulations and Sanitary and Phytosanitary (SPS) constraints. For a number of trade facilitation measures, Namibia reported that it was actively hiring additional personnel to address delays. In response to a complaint regarding the prohibition of importation of wheat flour, Namibia noted that this measure is to protect the local milling industry and is therefore not an NTB. However, the use of import bans – a non-tariff measure to protect local industry – is almost by definition an NTB. This response should be clarified in the system.

[31] Specifically this is the case for wheat imports which are purchased in a single annual tender. However, it is unclear why this is required – many countries are net food importers and do not required state regulated imports.

Table 5: Resolved Complaints – Botswana, Lesotho, Mauritius, Namibia and Tanzania[32]

Complaint	Resolution
Botswana	
Botswana regulates importation and pricing of petroleum products.	Botswana notes that this is incorrect.
Botswana regulates importation of grains.	There does exists a multi-channel maize marketing scheme which imports requiring licensing to balance local sourcing and imports.
It is difficult to get copies of relevant standards.[33]	The Botswana Bureau of Standards will provide the standards for a fee.
Botswana charges very high road levies.[34]	Botswana reported that Botswana charges road levies on entry to Botswana at the border only. Road levies are used for road maintenance in Botswana, and are only paid once at entry point.
It is difficult to obtain credit insurance in Botswana.	Botswana reported that there is a credit insurance company which provides credit insurance for Botswana exporters.
The Botswana drug registration process was intended to safeguard public health. However, due to a lack of human resources to administer the process, half of the drugs available in South Africa are no longer available in Botswana.	Botswana reported that it regulates medicines to safeguard public health and to assess products/drugs. There is a priority list for drugs, e.g. for the following diseases: HIV, Tuberculosis and Malaria. The issue of lack of human resources is being addressed.
Botswana imposed 15% levy on wheat imports.	The online system reports that no such levy exists. During the country visits, meetings at the Ministry of Agriculture, noted t*hat there is a 15% levy charged on wheat flour from all sources with the purpose of protecting the local milling industry*.
Four separate complaints that Botswana has single marketing channels for wheat, maize, meat and dairy.	Grain imports are discussed in under the regulations on the import of grains and the meat channel is currently under review. No such marketing channel exists for wheat or dairy. **Note:** Meetings at the Ministry of Agriculture confirmed that Botswana does apply seasonal or temporary quantitative restriction on imports of dairy products, grains and some vegetables. While there is no single marketing channel for dairy, Botswana does impose additional duties on UHT milk from all sources.

[32] Source: www.tradebarriers.org and country visits.

[33] Again, this type of complaint is hard to address as "difficult" is not an objective standard.

[34] "Very high" is subjective.

Complaint	Resolution
Lesotho	
Three complaints regarded price regulation for peas and dry beans.	Lesotho reported that it does not regulate prices for any product but sometimes subsidizes prices in cases of shortages.
Two complaints dealt with import bans on wheat and beer.	Lesotho reports no such bans.
Lesotho has restrictive and time wasting foreign exchange limitations.	Lesotho notes that any measures are necessary to prevent corruption and money laundering.
Import licenses procedure is cumbersome.	Lesotho reports this is resolved through the establishment of a One Stop Business Facilitation Center.
Lesotho is restricting employment of qualified manpower not available in that country.[35]	Lesotho reports there are no such restriction on employment.
Mauritius	
Mauritius has refused to buy beer from Tanzania on TBT grounds.	During the course of country visit, Mauritius officials were uncertain as to the origin or cause of this complaint but confirmed that there are no specific restrictions on imports of Tanzanian beer.[36]
Mauritius charges an export tax on sugar.	Mauritius officials indicated that this export tax was removed more than ten years ago.
Mauritius has a single marketing channel for agricultural products.	The online reporting system reports that, Mauritius has confirmed that this is the case and is done for food security purposes as Mauritius is a net food importer.[37] There is a sugar syndicate and an agricultural marketing board which is allowed for under the General Agreements on Tariff and Trade (GATT) agreement.
Namibia	
Delays occur at Walvis Bay to get the required documentation out in time for the trucks to leave. It leads to the company paying	Namibia reports that recruitment of personnel is in process.

[35] This would seem to be outside of the provisions of the SADC Protocol on Trade.

[36] One difficulty in documenting resolved complaints is that complaints are entered in such a way as to make them difficult to identify and/or document. In this particular case, the complaint did not provide enough information to identify the exact issue. However, as the online system is developed further, efforts are being made to rectify this and allow countries/focal points to follow up with the registrant of the complaint.

[37] Specifically this is the case for wheat imports which are purchased in a single annual tender. However, it is unclear why this is required – many countries are net food importers and do not required state regulated imports.

Complaint	Resolution
demurrage/penalties for trucks standing idle.	
Namibia requires provisional payments for all transit cargo through Namibia.	Namibia notes that this is required to secure duties and taxes.
3% of the horticulture produce purchases in Namibia need to be locally sourced before any imports are allowed.	Namibia reports that this is a trade measure and not an NTB.
Inspections, sealing/tagging of cargo cause major delays.	Namibia reports that recruitment of personnel is in progress.
The following stringent conditions stringent and cumbersome conditions are applied on the re-export (in bond mainly to Angola) of controlled petroleum products subject to permit.	Namibia reports that this is necessary for customs and excise purposes.
General export licenses and permits issued for all non SACU exports are processed by hand.	Namibia reports that information on the system is available and is necessary for determination of duties.
An export license is required for all non-SACU SADC exports even if product does not feature on the positive list.	No general export licensing applies to SACU trade. Namibia reports that there is no license required only an export permit.[38]
The Namibian Agronomic Board decided not to register agents for white maize imports anymore. The permit fee is now NAD51.00/permit and the permit is valid for a specific period (one month) only.	Namibia reported that there is no need for agents for white maize imports. The permit fee of N$ 51.00 covers administrative costs only. The period of validation is one month because all imports are effected in one month. The import of maize and maize products from all 3rd parties is only regulated for the time the local harvest is not taken up by the local milling sector.
Customs Clearing process at the Oshikango/Santa Clara border is very long.	Namibia reports that additional personnel have been employed.
Customs documentation not stamped on export of pharmaceuticals to RSA, Angola and Botswana is left behind and delivered late resulting in late claim or no claim of VAT.	Namibia reported that, procedurally no parcels are allowed to leave the Border without the accompanying documentation.
In Namibia the same information has to be provided and captured more than once in the import and export supply chain, e.g. Namport, Custom & Excise, MoF, MTI, NCCI, Carriers and Agents on imports of fuel from RSA.	Namibia reports this has been resolved?
The importation of wheat flour into Namibia is prohibited.	Namibia reports that this is to protect the local milling industry and is therefore not an NTB.

Complaint	Resolution
	NOTE: This information comes from the online system. The use of import bans to protect local industry is almost by definition an NTB. This should be clarified in the online system as during the country visit, Namibia informed that it does NOT generally prohibit imports of wheat flour. However, import of white maize meal and white maize is prohibited during harvest season to ensure local supplies are utilized.
Border delays due to documentation and customs procedures.	Recruitment of staff is in process.
Work permits are required from consultants and business representatives even for one day visits.	*Reported as resolved but no details available.*
Tanzania	
Dar es Salaam port arbitrarily transfers containers to Inland Container Depots (ICD) without the knowledge of importers and charges importers between US$150-US$200 depending on the type of ICD the containers are sent to.	Tanzania reported that, currently the Tanzania Ports Authority (TPA) is discouraging the Transit Cargo to be transferred to the ICSs by keeping them at the port or by operating the system of Whole Ship Transfer to ICDs with no additional charges.
Tanzania was charging a discriminatory US$ 100 for visas for all business people attending the Saba Saba Trade Fair in Dar es Salaam without notification.*(report from Zambia)*	Tanzania reported that there is no VISA between Tanzania and Zambia. US$100 is not VISA but rather a Temporary Assignment Pass for any gainful activity which is undertaken for less than 3 months which is being paid at the entry and exit points respectively. Notification is communicated during the preparations of the trade fairs.
Periodic port congestion in Tanzania makes logistical planning near impossible, which impacts negatively on perishable exports.	Tanzania reported that by July 2010, the import container dwell time had been reduced to 10 days, ship waiting time from 13 days to 4 days and ship turnaround time from 19 days to 3 days. This improvement has been attributable to additional investment to increase handling capacity which involved reorganization of the port area
Tanzania banks delay processing bank documents resulting in vessels arriving at the port of destination before the importer receives the original documents from the bank.	Tanzania reported that the complaint is obliged to comply with the banks' requirements to speed up the process.
Tanzania demands pre-shipment inspection for exports from Mauritius. The lack of appointed inspection company in Mauritius makes abiding to the requirements of pre-inspection difficult.	Tanzania reported that there is no pre-shipment inspection for exports from Mauritius.
There are long administrative procedures at the customs department with the Tanzania Revenue Authority and other affiliated organizations. There are too many stages to go through before a container is released.	Tanzania reported that easing of Customs Procedures and Improvement in Customs clearance has eased this problem.

Additionally during the country visit, Namibia noted the following:

- The importation of certain medicines is regulated and motor vehicle imports are restricted through high duties.
- A ban exists on imports of motor vehicles originating outside of SACU that are older than five years.
- An export levy is charged on certain hides and skins to promote local value addition.

While no official structure for addressing NTBs exists in Namibia currently, specific identified issues are referred to relevant stakeholders for resolution. However, Namibia is currently in the process of establishing an inter-ministerial body that would resolve NTBs.

Tanzania

Six complaints against Tanzania were reported as resolved. Half of the complaints dealt with port congestion and procedures. Tanzania has noted that upgrading of port facilities infrastructure and amendments in regulation are addressing this issue with significant reductions in dwell times. While the online system registered a complaint that Tanzania required pre-shipment inspection, no such requirement exists in Tanzania.

In April 2011, Tanzania instituted a ban on food exports anticipated to last April-June. The measure was taken in response to concerns about inflation – particularly rising prices for staple foods.

Conclusions: The online NTB mechanism has been substantially improved in terms of implementation in the course of the last year. The above information is largely available in the online reporting system. However, the listing of complaints and the notes on resolutions highlights several areas for improvement in the reporting mechanism and SADC's efforts to address NTBs.

Overall for the "resolved" seem to fall into four categories:

1. Outdated or non-existent issues: For example, pre-shipment inspection in Tanzania or the sugar tax on exports in Mauritius. The information in the complaints was long out of date:
2. Subjective complaints: Many of the complaints registered are often vague and therefore difficult/impossible to resolve. Phrases like "cumbersome", "slow", "too high" are too subjective for definite resolution. Other complaints simply do not provide enough information. This issue is currently being addressed by further development of the online system which allows for the complainant to be contacted directly. **In the absence of a verifiable standard, these cannot be resolved definitively or progress measured.**
3. Trade Facilitation Issues: Across the board, countries reported working on increasing trade facilitation to address port congestion, lengthy customs procedures, etc.

4. “Un-resolved” Resolved Complaints: This is likely the most significant issue. For the five countries examined, countries affirmed that the measures noted existed. For example, levies on wheat flour in Botswana where it was noted that this was to protect local millers. A ban on the importation of wheat flour (seasonal for white maize meal) in Namibia was noted as a trade measure to protect local industries. Further clarification needs to be provided in the notes on resolved complaints. While the Protocol on Trade under Article 9 cites exceptions to the NTB prohibition, it’s not clear that many of these cases fall under one of these exceptions. ***SADC Member States should consider a process or standards by which exceptions can be granted.***

In these four categories for the countries examined, none of the NTB complaints registered resulted in a verifiable regulatory change in response to an existing NTB.

The system provides a useful mechanism for highlighting new NTBs and for providing the private sector with a forum in which to resolve complaints. However, it lacks a systematic focus or prioritization of NTBs. Every complaint is equally weighted. It would be advisable to complement this mechanism with an approach which will address systematic constraints and priority NTBs.

While the system is still in its initial implementation, throughout the country visits, it was noted that there was a severe lack of awareness outside of the public sector involved in the system or additionally the chamber of commerce. To be an effective tool for the private sector, the system and its benefits must be more widely advertised.

Finally, as part of the 2011 Audit, SADC requested information on the mechanisms in place in Member States to address NTBs including the formation of specific committees. In discussions during the country visits, Member States noted the constraints on the time and capacity of the stakeholders to be involved in such committees. National SADC committees include TBT, SPS, NTBs, Trade Facilitation etc. Botswana in particular has chosen not to form a separate NTB committee but rather to address issues in the context of an existing market access committee.

5. Revised Rules of Origin[39]

ROO are a necessary requirement for any FTA as a means of determining whether goods are eligible for preferential treatment in the importing country and to prevent trade deflection. Under the SADC Protocol on Trade, ROO have been one of the most contentious issues in negotiations. Although the initial ROO have undergone two significant revisions, the complexity and stringency of the ROO are commonly cited as a constraint to increasing intra-SADC trade. Additionally, there still does not exist a ROO for wheat flour which, therefore, cannot receive preferential treatment.

The last revision of the ROO was adopted at the July 2008 CMT meetings. The revision contained several changes which, in addition to changes in information and basic rules, included several changes to the product specific list. The following section provides an update of the status of the revised ROO in Member States.

[39] A complete audit of the application of SADC Trade Facilitation Instruments has been commissioned by the SADC Secretariat. The initial draft is anticipated for end June 2011.

Based on the decision of the July 2008 CMT, Member States were required to begin implementation of the revised ROO and report implementation actions to the Secretariat by November 2008. However, as of 2010, this had not been accomplished and concerns have been raised by several Member States as to the ROO being applied in individual countries – Revised (2008) or Old (2004). As part of the 2010 Audit, the Trade Hub was asked to provide an update on the status in each Member State. Table 6 below updates the results from the 2010 Audit.

As with the 2010 Audit, only partial verification was possible. The information in Table 6 comes from three sources – verification during country visits, responses of Member States at the April 2010 TNF meetings held in Gaborone and a review of the websites of the relevant agencies.

Table 6: Implementation of Revised ROO

	Implementing Revised ROO?	Issuer of COO	Available Online
Botswana	Yes	Botswana Unified Revenue Service	Summary Only
Lesotho	No	Revenue Authority	
Malawi	No	Revenue Authority	
Mauritius	Yes	Mauritius Revenue Authority	Yes - MCCI[40]
Mozambique	Yes	Mozambique Revenue Authority	No
Namibia	No	Customs Authority	
South Africa	No	SARS	
Swaziland	??	Trade Promotion Unit	
Tanzania	Yes	Tanzania Chamber of Commerce, Industry and Agriculture	Yes – TRA Website[41]
Zambia	Yes	Revenue Authority	No
Zimbabwe	??	Zimbabwe National Chamber of Commerce	

Member States have continued to report occasional difficulties in verifying Certificates of Origin (COO). However, as in previous years, these have, for the most part been effectively resolved through bilateral mechanisms. The the issues raised with regards to COO and the implementation of ROO specifically include:

- The use of the SADC COO as exclusive proof or origin is limiting. An approved exporter scheme where possible would simplify matters.
- The exchange of electronic COO (e-COO) between countries would expedite shipments. Mauritius has a fully electronic system and throughout the year, the

[40] Mauritius Chamber of Commerce and Industry (MCCI).

[41] Tanzania Revenue Authority (TRA)

SADC Secretariat has been facilitating training on the application of e-COO in other Member States.[42]

- Issues continue to arise with the verification of accepted signatures. During the country visits, recommendations were made to post the accepted signatures on the SADC website.

6. Results from Country Level Audits

For the 2011 Audit, country visits were undertaken to Botswana, Lesotho, Namibia, Mauritius and Tanzania. As part of each country visit, meetings were conducted with the relevant government agencies including the Ministry of Trade, Ministry of Finance and the Revenue Authority. Additionally, meetings were sought with representatives of the private sector – both individual businesses and chambers of commerce – to ascertain their experiences with the Protocol on Trade. Many of the issues raised or verified during the missions are discussed above. The following highlights recent developments or additional information.

While there were a number of country specific issues, a number of common issues emerged during the country visits.

- In interviews with the private sector, the view was nearly unanimously expressed that the Protocol on Trade has brought few benefits. This belies the significant expansion in intra-SADC trade discussed in Section 2 but it may be the case that the benefits are being captured by previously existing exporters and SADC exports have not diversified. Also, the business community expressed the view that there was very little awareness of the benefits arising from the Protocol on Trade.
- NTBs and strict ROO continue to be a concern for the private sector in attempting to expand trade. For the ROO in particular, non-SACU Member States expressed concern over the stringency of the ROO on clothing and textiles in particular. Throughout the country visits, there was very little awareness on the part of the private sector regarding the online NTB reporting mechanism.

Botswana: As a member of SACU, Botswana has completed its tariff phase downs under the SADC Protocol on Trade. As illustrated in Table 7 below, Botswana's trade with SADC has fallen in recent years partly due to the effects of the global financial crisis. The data show that Botswana relies heavily on the SACU market with an average of 93.5% of intra-SADC trade with SACU markets. Botswana conducts very low trade with non-SACU - SADC Member States which has actually fallen in recent years.

[42] In meetings with the Mauritius Revenue Authority stressed the importance of reducing transport costs and dwell times. The feeling of the MRA was that COO issuance should maximize

Table 7: Botswana's total intra-SADC trade under the SADC Protocol on Trade (US$ million)

	2008			2009			2010		
	Total SADC	SACU	Non-SACU SADC MS	Total SADC	SACU	Non-SACU SADC MS	Total SADC	SACU	Non-SACU SADC MS
	2,689	2,512	176	2,225	2,078	147	2,571	2,409	163

Source: UNCOMTRADE

In addition to the issues cited in earlier sections, the private sector expressed several concerns:

- Little or low private sector involvement or consultations regarding SADC issues. This is exacerbated by the lack of capacity on the part of the private sector to effectively participate in negotiations.
- NTBs of concern to the Botswana private sector focused on trade facilitation issues particularly delays in customs clearance, limited border opening times, and numerous police check points and fines.

Lesotho: As with Botswana, as a SACU Member, Lesotho's tariff phase downs are complete. While Lesotho is not currently implementing the revised ROO, the SADC COO is currently issued through a streamlined One Stop Business Facilitation Center through the Lesotho Revenue Authority customs desk. In 2010/2011, approximately 50 COO were issued. The private sector reported that the process is substantially simplified but noted problems with the travel necessary to receive the COO in Maseru.

At the national level, the Ministry of Trade, Industry, Cooperatives and Marketing organizes workshops, meetings and seminars for the private sector to raise the level of SADC FTA awareness. Overall the feeling was that more effort is required to intensify information dissemination to the private sector Lesotho's non-SACU, SADC trade is low and the private sector expressed concerns regarding the benefits of the FTA.

The SADC SPS National Committee is operational in Lesotho and brings together a range of stakeholders from the public and private sector. The Committee is actively developing a defined work plan. Lesotho does not currently have legislation on SPS issues although a draft is in development.

Mauritius: Mauritius reports that it is ahead on its tariff phase down commitments and has gone beyond its SADC offers. Only sensitive products covering less than 10% of trade remain to be phased down. Mauritius is currently implementing four tariff bands and has reduced the maximum tariff rate from 80% to 30% in the course of unilateral reductions.

Regarding implementation, Mauritius maintains a committee of both public and private sector stakeholders to consult on SADC issues. The private sector participates actively in SADC consultations and meetings.

Mauritius is actively engaged in extra-regional negotiations through a program of "triangular cooperation" which combines SADC countries with third countries. For example, Mauritius/Mozambique/Singapore and discussions related to

Mauritius/Madagascar/India. In addition to intra-SADC issues, Mauritius sees the advantages of looking to form more strategic partnerships outside of SADC.

Mauritius expressed concern regarding the impact of the FTA. In particular, there are significant supply constraints within the region and SADC needs to look at greater liberalization to allow for more inputs to come from outside the region – particularly in such sectors as textiles/apparel, wheat and fish.

Namibia: Again, as a member of SACU, tariff phase downs are complete. Namibia is currently not implementing the revised ROO. During the country visit to Namibia, a range of stakeholders were interviewed including the Ministry of Trade and Industry, the Department of Customs, the NTB Focal Point, the Ministry of Agriculture, Water and Forestry, the Namibia Chamber of Commerce and Industry, the Namibia National Association of Women in Business, the Agricultural Trade Forum and the Bank of Namibia.

Over the course of the last year, Namibia has been actively engaged in trade facilitation initiatives particularly along the Trans Kalahari Corridor. Among the initiatives include the introduction of a cloud computing system – in partnership with SATH and Microsoft – which will allow revenue authorities in both Botswana and Namibia to better track the flow of goods between the countries, reducing clearance times and fraudulent declarations. Additionally, Namibia is moving forward on initiatives to develop One Stop Border Posts.

The SADC SPS National Committee has been established but is still in its preliminary phases. There is currently no national legal adaptation instrument for the SPS Annex to the SADC Protocol on Trade.

Meetings with the private sector highlighted several issues. Overall, there was a feeling that active involvement of the broader private sector in negotiations could be improved. The Namibia Trade Forum exists and is currently developing a firm work program.

Tanzania: During the country visit to Tanzania, interviews were held with the Ministry of Industry, Trade and Marketing, the Tanzania Chamber of Commerce, Industry and Agriculture, the Sugar Board of Tanzania and the Confederation of Tanzania Industries.

The Chamber of Commerce reported that there had been an increase in trade between Tanzania and SADC Member States and in particular a significant increase in trade with Zimbabwe which included building materials and consumer goods. Additionally, the volume of exports to Mozambique had increased – particularly for wheat. Greater sensitization is needed regarding the SADC FTA and particularly for ROO.

7. Compliance of Third Party and Intra-SADC PTAs

All SADC Member States are signatories to at least one preferential trade agreement (PTA) with one or more SADC Member States or with third parties. These agreements can be classified into three categories:

(i) Bilateral Agreements: There are nine bilateral agreements between SADC Member States some of which date to the 1950s and are in various states of use.

(ii) Regional Economic Agreements: SADC Member States have overlapping memberships: SACU, COMESA, the EAC and the Indian Ocean Commission (IOC). These agreements involve all SADC signatories to the Protocol on Trade with the exception of Mozambique.

(iii) Third Party Agreements: These are agreements with non-SADC Members most prominently with the European Union (EU).

Part 8 of the SADC Protocol on Trade defines set principles governing such trade agreements requiring that any agreement entered into force or amended after the signing of the Protocol ensure that the MFN principle is applied to all SADC Member States.

As part of the 2011 Audit, the SADC Secretariat requested an examination of all PTAs with a view to identifying any inconsistencies and providing policy guidance on how the Member States could bring these agreements into conformity with the provisions of the Protocol on Trade. The following sections provide an overview of the PTAs of SADC Member States and their compliance with the terms of the SADC Protocol on Trade.[43]

7.1 Overview of Protocol on Trade Provisions

Part 8 of the SADC Protocol on Trade governs “Trade Relations among Member States and with Third Countries”. Specifically, Articles 27 and 28 outline the conditions for such agreements:

Article 27: Preferential Trade Agreements

1. *Member States may maintain preferential trade and other trade related arrangements existing at the time of entry into force of this Protocol;*
2. *Member States may enter into new preferential trade arrangements between themselves, provided that such arrangements are not inconsistent with the provisions of this Protocol.*
3. *Notwithstanding the provisions of paragraph 1 and 2 of this Article, Member States party to any existing preferential trade arrangements and other trade related arrangements undertake to review the further application of such preferential trade arrangements, with a view to attaining the objectives of this Protocol.*

Article 28: Most Favoured Nation Treatment

1. *Member States shall accord Most Favoured Nation Treatment to one another.*
2. *Nothing in this Protocol shall prevent a Member State from granting or maintaining preferential trade arrangements with third countries, provided that such trade arrangements do not impede or frustrate the objectives of this*

[43] The analysis is qualitative only as it is not possible to examine trade data for these agreements without reference to detailed Certificate of Origin (COO) data. Figure 5 in Section 2.2 provides an upper bound estimate of trade taking place within under the auspices of SACU, COMESA and the SADC agreements.

Protocol and that any advantage, concession, privilege or power granted to a third country under such arrangements is extended to other Member States.

3. *Notwithstanding the provisions of paragraph 2 of this Article, a Member State shall not be obliged to extend preferences of another trading bloc of which that Member State was a member at the time of entry into force of this Protocol.*

7.2 Issues for Consideration

As part of the discussion and analysis, we have made the following qualifications.

- **Trade in Goods**: We have limited the analysis to trade in goods and not considered agreements on services or broader trade facilitation issues.
- **Exclusion of Customs Unions**: As part of the terms of reference for this analysis, customs unions were explicitly excluded from consideration which would include SACU as well as the EAC and COMESA customs unions which are currently in their implementation phase.

These qualifications aside, what are the main issues for consideration? Generally, one of the defining characteristics of an FTA is that participants are free to negotiate with non-members as there is no common external tariff. However, the MFN principle enshrined in Article 28 of the SADC Protocol on Trade is common across such agreements.[44] Article 28 (2) is specific in detailing that the MFN principle to be applied goes beyond tariffs and extends to "***any*** *advantage, concession, privilege or power granted"***.** This broad statement could include not only tariffs but measures regarding trade facilitation, NTBs and, perhaps of greatest interest in the SADC context, ROO. While the trade facilitation and NTB reviews are beyond the scope of the current review, the follow discussion focuses on tariff concessions and ROO.[45]

Tariff Liberalization: With the exception of Malawi, Tanzania and Zimbabwe who are delayed in tariff phase down implementation and Mozambique which will complete tariff phase downs in 2015, all intra-SADC trade will be duty free/quota free in January 2012. Thus, while there may be cases where duty free access for certain commodities is granted to third parties (or to individual Member States through bilateral agreements) which are not yet duty free under the SADC Protocol on Trade, such cases will quickly lose relevance. There are two broad issues to address:

- ***Extended SADC Tariff Phase Downs***: For countries receiving derogation or are delayed in their phase down commitments (Malawi, Zimbabwe and Tanzania) or Mozambique whose tariff phase downs extend until 2015, should the extension of duty free access under bilateral, regional or third party agreements be brought into strict compliance with the Articles 27 and 28?
- ***Coverage of Goods:*** Should the extension of duty free preferences to goods under extra-SADC agreements which are classified as "excluded" under the SADC Protocol on Trade be considered? These goods are few as outlined in

[44] MFN is one of the core principles of the WTO. However, the GATT allows for specific exceptions – including the formation of PTAs such as SADC. The SADC Protocol on Trade makes no such exceptions.

[45] Article 28(2) specifically cites only third country (non-SADC Member State) agreements. In the discussion, the broader view is taken and considers agreements between SADC Member States.

Table 4 in Section 3.1 above but could include sugar, used goods and some specific manufactured products.

In the analysis below, we limit our consideration to tariff liberalization and leave aside the question of sugar and excluded products. It is, of course, for the SADC Member States to decide how to interpret the provisions of Articles 27 and 28 and in that context, we highlight all *potential* conflicts given the strictest interpretation of Articles.

ROO: Aside from tariff liberalization commitments, ROO vary considerably across the agreements and would presumably be included as a portion of the MFN treatment. Therefore, more favorable ROO treatment granted under an agreement covered by Article 27 could be considered a violation of the MFN treatment required by Article 28. Direct comparisons are difficult as the SADC ROO are product specific thus for PTAs with non-product specific ROO, the most that can be implied is that for *some* commodities the ROO may be less stringent than those required under the SADC FTA.

7.3 Bilateral Agreements

There are nine bilateral agreements among SADC Member States which are outlined in Table 8 below. Annex 2 provides further details of these agreements. Of these, seven were in place prior to the signing of the SADC Protocol on Trade and are thus not governed by the provisions of Protocol.[46] The two remaining agreements were signed or amended after the implementation of the SADC Protocol on Trade:

- Malawi-Mozambique: Signed in 2006
- Mozambique-Zimbabwe: Signed in 2004.

The details and ROO of these agreements are provided in Table 7.

7.4 Regional Economic Agreements

SADC Member States, with the exception of Mozambique, have overlapping memberships in four regional economic arrangements:

SACU: Botswana, Lesotho, Namibia, South Africa and Swaziland are all members of the SACU customs union. Signed in 1910, this of course pre-dates the implementation of the SADC Protocol on Trade and is not considered in the analysis.

COMESA: Malawi, Madagascar, Mauritius, Zambia and Zimbabwe are members of COMESA and participate in the COMESA FTA launched in 2000. Swaziland has a special arrangement in COMESA where its products receive non-reciprocal duty free status in COMESA markets. COMESA Member States are currently moving towards the implementation of a customs union. While not all COMESA Member States participate in the customs union, the COMESA FTA was *launched* in 2000 concurrently with the start of implementation of the SADC FTA.

[46] While the Botswana-Zimbabwe agreement was amended in 2010, the amendments were only procedural and therefore are not considered to be an agreement covered by the provisions of the SADC Protocol on Trade.

EAC: Tanzania is a member of the EAC which is currently implementing a customs union and is outside the scope of the current study.

IOC: The IOC, dating from 1984, is an intergovernmental organization that joins the Comoros, Madagascar, Mauritius, Reunion and the Seychelles. While there were plans for joining the Member States in an FTA, as Reunion, through France, is a member of the European Union this was not possible.

Presently, only Mauritius and Madagascar are granting trade preferences under the IOC and there are no customs duties for products meeting the IOC rules of origin between the two countries. The ROO require that products are either wholly produced, the CIF value of any foreign materials should not exceed 60% of the total cost of all materials used in their production; or the value added resulting from the process of producing the goods from imported materials should account for at least 35% of the ex-factory cost of the goods.

Trade between Mauritius and Madagascar is thus potentially covered by three separate agreements – SADC, COMESA and the IOC. During a recent country visit to Mauritius, it was reported that trade facilitation arrangements under the IOC are simplified compared to the other agreements and thus it is an active agreement.

7.5 Agreements with Third Countries

All SADC Member States participate in one or more reciprocal agreements with non-SADC Member States. These agreements fall into two categories – agreements with the EU including the Economic Partnership Agreements (EPAs) and Other Agreements as outlined in Table 9 below.

Agreements with the EU

With the exception of the Trade and Development Cooperation Agreement (TDCA) between the EU and South Africa, all SADC Member States are currently in negotiations or have signed EPA agreements which will govern trade with the EU.

TDCA: The TDCA entered into force on January 1, 2000 approximately concurrent with the SADC Protocol on Trade. The terms of the agreement allowed for a twelve year implementation period for South Africa and a ten year period for the EU. Under the agreement, the EU eliminated tariffs on 95% of trade goods and South Africa on 86%.

The ROO of the agreement require that products be wholly obtained or their "total value does not exceed 15 per cent of the ex-works price of the product except for products falling within Chapters 3 and 24 and HS Headings 1604, 1605, 2207 and 2208 where the total value of the non-originating materials does not exceed 10 per cent of the ex-works price of the product" Textile and Garments in Chapters 50 to 63 are required to meet strict cumulation and transformation requirements.

As this agreement was signed relatively concurrently with the SADC Protocol on Trade, it is not clear that the provisions of the Protocol would apply or be excluded by Article 27(1).

Table 8: Bilateral Agreements among SADC Member States

Agreement	Date	Covered by Provisions of Protocol?	Text Available ?	ROO	Issues
Botswana-Malawi	1956	No	Yes	Not available.	None.
Botswana-Zimbabwe	Amended 2010	No – 2010 Amendments were only procedural.	Yes	25% local content.	• Zimbabwe offers duty free access to Botswana goods but does not yet extend similar preferences to other SADC Member States under its current derogation request. • 25% local content requirement potentially violates MFN principles for commodities where this requirement is less strict than SADC ROO.
Malawi-Mozambique	2006	Yes	Yes	The c.i.f. value of materials does not exceed 60 percent of the total cost of materials used in the production of the goods, or there is a change in the tariff heading of a product arising from a processing carried out on the non-originating materials.	• Malawi and Mozambique offer reciprocal duty free access which is not yet extended to other SADC Member States. • ROO potentially violate MFN principles for commodities where this requirement is less strict than SADC ROO.

Agreement	Date	Covered by Provisions of Protocol?	Text Available ?	ROO	Issues
Malawi-South Africa	1967?	No?	No	25% value added for Malawi.	Further details required. This agreement may no longer be valid.
Malawi-Zimbabwe	1995	No	No	25% domestic value added.	None.
Mozambique-South Africa	Pre-SADC Protocol??	No?	No	??	Further details required. This agreement may no longer be valid.
Mozambique-Zimbabwe	2004	Yes	Yes	The c.i.f. value of materials does not exceed 60 percent of the total cost of materials used in the production of the goods, or there is a change in the tariff heading of a product arising from a processing carried out on the non-originating materials.	• Zimbabwe and Mozambique offer reciprocal duty free access for commodities which is not extended to other SADC Member States. • For some categories of goods, the ROO prevailing under this agreement are less strict than those required under the current SADC ROO.
Namibia-Zimbabwe	1992	No	Yes	25% local content.	None.
South Africa-Zimbabwe	1996	No	Yes	25% local content.	None.

Table 9: SADC Member States PTAs with Third Countries[47]

Agreements with the EU	*Other Countries*
Trade and Development Cooperation Agreement (TDCA): South Africa (2000)	SACU-MERCOSUR[48] (2004)
SADC EPA: Botswana, Lesotho, Namibia, Swaziland, Angola and Mozambique	SACU-EFTA[49] (2006)
Eastern and Southern Africa (ESA) EPA: Madagascar, Malawi, Mauritius, Zambia and Zimbabwe	Mauritius-Pakistan (2007)
EAC EPA: Tanzania	

EPAs: The EPAs will replace the non-reciprocal preferences previously granted by EU to the African, Caribbean and Pacific Group of States (ACP). The SADC Member States are participating in three different configurations for the EPAs as listed in Table 8 – the SADC EPA, the ESA EPA and the EAC EPA. These agreements are currently at different states of implementation/negotiations:

SADC Interim EPA: This agreement was signed in 2009 by Botswana, Lesotho, Swaziland and Mozambique. Namibia initialed the agreement but has not signed. The agreement allows for duty free, quota free access for *most* commodities while allowing a transition period for the SADC countries. The ROO for the Interim EPA, differ from those of the TDCA which has caused difficulties within SACU. Significantly, the Interim EPA will allow for single transformation in some textiles and garments.

ESA EPA: In 2009, the interim ESA EPA was signed and included SADC Member States Mauritius, Seychelles, Zimbabwe and Madagascar. The agreement provided for 'immediate and full access to EU markets (with transition periods for rice and sugar), together with improved rules of origin.' ESA markets will open to the EU over the next 15 years.

EAC EPA: Negotiations under the Framework EPA between the EU and the EAC, including Tanzania, are expected to be completed by the end of 2012. The EAC has offered to liberalize 82.6 percent of its trade with the EU subject to product specific ROO.

[47] The dates in the table indicate when the agreement was signed or began implementation.

[48] MERCOSUR, the Mercado Común del Sur, or the Southern Common Market is comprised of Argentina, Brazil, Paraguay, Uruguay and Venezuela.

[49] EFTA, the European Free Trade Association, is comprised of Iceland, Liechtenstein, Norway and Switzerland.

Other Agreements

There are three agreements with third countries, signed after the implementation of the SADC Protocol, which would be covered by the provisions of Articles 27 and 28 – SACU/EFTA; SACU/MERCOSUR and Mauritius/Pakistan. In addition to these agreements, a number of SADC Member States are actively investigating agreements with the US, China and India among others.

SACU – EFTA: This agreement implemented in May 2008, offers "SACU full duty and quota free access for industrial products with rules of origin equivalent of better than those contained in the TDCA. EFTA has provided SACU with limited but enhanced access to their agricultural markets. SACU offered EFTA what it has already offered the EU in terms of the South Africa-EU TDCA on both agriculture and industrial products with some adjustments."[50]

SACU-MERCOSUR: The first PTA to be signed by SACU as an entity, the SACU-MERCOSUR agreement was signed in December 2004. "The PTA contains a Main Text, and five Annexes. The Main Text sets out the principles, legal provisions and procedures for the arrangement. It also establishes an institutional arrangement to manage the new trade arrangement. Annexes 1 and 2 set out MERCOSUR and SACU respective tariff concessions covering around 1000 products each way with preference margins spread over 100-10%."[51] This agreement has yet to be implemented.

Mauritius-Pakistan: This PTA was signed in 2007 under which tariff concessions were granted on a list of products of export interest to both countries. The ROO require that goods be wholly obtained, or the total value of the materials, parts or produce originating from outside the territory of a Contracting Party does not exceed 65% of the Freight on Board (FOB) value of the product so produced or obtained or there is a change of tariff heading.

7.6 Compliance of Agreements with SADC Protocol on Trade

Do the agreements described above comply with the provisions of the SADC Protocol on Trade as defined in Articles 27 and 28? The interpretation of these articles is for the SADC Member States to decide and the following discussion highlights *potential* issues for consideration. There are several issues to consider.

Which agreements are subject to the provisions of the Protocol? According to Article 27(1), agreements existing at the time of entry into force of the SADC Protocol on Trade may be maintained. Thus the provisions of the Protocol would apply to:

- Two Bilateral Agreements: Malawi/Mozambique and; Mozambique/Zimbabwe.
- All three EPA agreements but possibly not the TDCA which was essentially concurrent with the SADC Protocol.
- SACU/EFTA; SACU/MERCOSUR; Mauritius/Pakistan

[50] Source: SACU - http://www.sacu.int/traden.php?include=about/traden/bilateral.html

[51] Source: SACU - http://www.sacu.int/traden.php?include=about/traden/bilateral.html

Issues with regional economic arrangements: SACU obviously pre-dates the SADC agreement and both COMESA and the EAC agreements were approximately concurrent with the SADC Protocol. However, the agreements have evolved over the course of implementation of the SADC Protocol – particularly for COMESA and the EAC. Despite this, as all three regional economic communities (RECs) are currently engaged in preparing for the Tripartite FTA any inconsistencies between the two agreements are best addressed in that context.

The central significant issue with both COMESA and the EAC relates to ROO. The COMESA and EAC ROO are identical and not product specific. Therefore, for a number of commodities, COMESA and the EAC allow for greater privileges with third parties and SADC Member States than that allowed under the SADC Protocol on Trade.

Article 27(3)*:* For those agreements in existence prior to the SADC Protocol on Trade, Article 27(3) requires Member States to undertake to review the further application of such PTAs to ensure they are attaining the objectives of the Protocol. This has not been undertaken. Member States' would need to agree as to how to operationalize this requirement. The objectives of the Protocol as described in Article 2 provide broad goals for the Protocol. To operationalize Article 27(3), Member States would need to agree on specific measures which would comply with the objectives.

What are the potential areas of non-compliance? There are two major areas: ROO and tariff liberalization.

ROO: The ROO under the SADC Protocol on Trade have long been one of the most controversial portions of negotiations. The SADC ROO is product specific. Therefore, on a product by product basis, the ROO that applies under the 3rd country and intra-SADC agreements could be and in many cases are less strict than those that apply under SADC. For wheat flour, there is no ROO under the SADC Protocol, thus all the agreements which don't exclude wheat flour by definition have more favorable ROO. Textiles and Garments have long been a topic of discussion among SADC Member States. Current SADC ROO requires double transformation in the majority of the textile/garment chapters. Several of the agreements allow for single transformation including COMESA, EAC and the EPAs agreements. In these and other cases, the ROO under these agreements are thus in violation of the MFN principle.

*Policy Options***:** ROO under the SADC Protocol on Trade are being re-examined on several fronts. Within SADC, ROO for textiles and garments specifically are being discussed within the Experts Working Group on Textiles and Clothing with recommendations to be forwarded to the TNF for consideration. Additionally, Member States are preparing to negotiate the Tripartite FTA which will consider harmonization of ROO across SADC, COMESA and the EAC. Member States must consider which of these forums are the most productive for addressing concerns over ROO and whether application of Article 28 is one of the options to consider.

Tariff Liberalization: The issues with regards to tariff liberalization are few. Aside from excluded products, the vast majority of SADC tariff phase downs will be complete by January 2012.

- Product Coverage: The list of excluded products under the intra-SADC and third party agreements is in some cases smaller than those products excluded by Member States under the SADC Protocol on Trade. Although these goods are few in number, the extension of preferences to such goods under agreements signed after the Protocol on Trade could be re-examined in light of the MFN clause.

- Phase Downs: While the majority of countries are completing the tariff phase downs on schedule, Malawi, Tanzania and Zimbabwe will be delayed in the completion of their tariff reductions. To the extent that these countries extend duty free/quota free preferences under other agreements signed after the Protocol, this could be considered a violation of the MFN principle. While tariff phase downs under the EPA agreements will be phased in over a longer period, this qualification could apply to the three bilateral agreements signed after the Protocol on Trade. Mozambique, under the terms of the initial agreement, will extend its tariff phase downs until 2015.

Of greater concern to SADC Member States is perhaps how these agreements affect the requests for derogation. In cases where revenue concerns are cited as a reason for delay, the question is whether the revenue losses are heightened by the application of other agreements. Member States and the SADC Secretariat are currently considering formalizing the process for derogation requests and this issue is perhaps best addressed in that context.

7.7 Conclusions

All signatories to the SADC Protocol on Trade are additionally signatories to one or more PTA either with other SADC Member States or with third parties. Additionally, Member States are actively engaged in developing future agreements. Articles 27 and 28 of the SADC Protocol on Trade govern the terms of such agreements and require that Member States maintain MFN status within SADC.

As discussed above, there are a number of agreements which are governed by the provision of the Protocol whose terms could be considered as violations of the MFN principle to the extent that they are not extended to other SADC Member States. The main issues considered above are tariff liberalization and ROO. For the former, the issues involved are of small significance as tariff phase downs are nearing completion under the SADC FTA. For ROO, under several of the agreements, the ROO offered to third parties or groups of SADC Member States may be more favorable than those offered under the SADC FTA and would thus contradict the MFN principle.

To date, there have been no applications of Articles 27 and 28 under the SADC Protocol. It is for Member States to decide on their application and interpretation. A broader question is the extent to which such agreements enhance or hinder intra-SADC integration? There is not a general, clear cut answer.

Particularly for the agreements among the SADC Member States, the overlapping arrangements with varying ROO and administration complicate trade facilitation issues. However, it should be stressed that these overlapping arrangements are not unique to SADC. There is a longstanding debate in the economic literature as to whether bilateral/regional agreements are “stepping stones” or “stumbling blocks” to global integration of markets. To the extent that such agreements facilitate ongoing trade negotiations, they are stepping stones. If they create protected interest groups which block greater regional (or global) integration, they are stumbling blocks. As

SADC Member States consider what, if any, actions to take in light of conflicting agreements between SADC Member States or with third parties, consideration needs to be given to SADC's broader integration agenda and the extent to which addressing these issues in the SADC context can promote that agenda.

8. Conclusions of 2011 trade audit

The 2011 Audit of the Implementation of the SADC Protocol on Trade is the fourth such audit. The Audit focused on three issues as requested by SADC:

- Implementation of the 2010 Tariff Phase Downs;
- Non-Tariff Barriers
- Analysis of Third Country Agreements in light of the provisions of the SADC Protocol on Trade.

Overall, implementation of the basic Protocol provisions – most specifically tariff phase downs is high. For seven of the twelve signatories, Category C phase downs are proceeding on schedule and will be completed within the next year. There remain some tariff line discrepancies. Substantial increases in intra-SADC trade in recent years are at least in part a reflection of the successes of SADC integration.

Additionally, there have been several significant positive developments within SADC including:

- Derogations: Tanzania and Zimbabwe have both received derogations under the provisions of the Protocol. While the derogations are a setback in terms of implementation, they are the first such specific derogations granted and a first step towards a greater formalization of the process. As part of a commissioned study by the SADC Secretariat, the economic impact of these derogations was formally analyzed and determined to have a small and transitory impact on intra-SADC trade. The SADC Secretariat is currently working towards the development of specific guidelines for future requests for derogation.
- NTBs: There is a greater awareness of the impact of NTBs and Member States are moving towards a more systematic approach to addressing these measures. While more needs to be done, the online NTB monitoring system has progressed significantly over the course of the last year moving from almost no resolved complaints to nearly 70% resolved.
- Discussions on ROO, a significant point of contention among Member States, are continuing with the re-establishment of an Experts Working Group on Textiles and Clothing.
- The broader integration agenda of SADC is progressing with significant progress being made on the initial stages of the Tripartite agreements.
- There has been significant progress across most areas of the 2010 Action Plan recommended in the 2010 Audit as highlighted in Annex 3. In addition to successes, there are additionally areas of concern:
- Although Malawi continues to lag on tariff phase down implementation, its request for derogation was withdrawn in early 2011.

- An examination of the "resolved NTBs" in the online reporting mechanism highlights several areas of concern with regards to the classification of measures as NTBs. Member States may wish to clarify which types of measures can be granted an exception to the NTB elimination principle.
- In interviews with the private sector, the view was nearly unanimously expressed that the Protocol on Trade has brought few benefits. This belies the significant expansion in intra-SADC trade discussed in Section 2 but it may be the case that the benefits are being captured by previously existing exporters and SADC exports have not diversified. Also, the business community expressed the view that there was very little awareness of the benefits arising from the Protocol on Trade. Greater outreach and capacity building initiatives could address these concerns.
- As highlighted in Annex 3, there has been little progress on the development of the SADC Trade Monitoring and Compliance Mechanism (TMCM). The development of this mechanism would allow for continuous monitoring of the Protocol and vastly expanded transparency.

  In 2012, a full audit of all SADC Member States is anticipated to coincide with the final year of implementation of the SADC tariff phase downs. The development of the TMCM within SADC would then allow for a continuous monitoring of ongoing implementation issues.

Annex 1: Outstanding Issues on Tariff Phase Downs from Trade Audits

SACU		
	Implemented?	**Outstanding Issues/Notes**
2011	Yes	• No Outstanding Issues
2010	Yes	• SADC tariff phase down complete.
2009	Yes	• SADC tariff phase down complete. • February 2009, Government Gazette No. 31892, the SACU rate on Sub-Chapter 1701 was raised from free to 6c/kg for SADC Member States. *A review of the tariff book dated May 27, 2010 reveals that this issue has been resolved and this tariff line is now duty free for SADC.*
2008	Yes	• SADC rates of duty in Chapter 87 reduced to free rate of duty for 2008. • Several tariff lines in Chapter 17 previously categorized as excluded were set as duty free leaving only 4 lines out of the original 13 Category E products. • **New tariff subheading established for abalone. This does not comply with the original offer. *However, the current tariff is at zero for this product.***
2007	Yes	• No outstanding issues noted.
MALAWI		
	Implemented?	**Outstanding Issues/Notes**
2010	??	• **As of May 2010, Malawi had yet to implement any tariff phase downs beyond the 2004 level. However, the recent budget speech (28 May 2010) indicates that Malawi will begin to implement phase downs although the extent of that reduction remains unclear as of this writing.**
2009	No	• Tariff phase downs remain at 2004 level. Budgetary constraints have prevented further implementation.
2008	No	• Reported to 2008 Senior Officials Task Force on Economic Integration on continued commitment to

		Protocol on Trade.
2007	No	• Discrepancies noted in that in several cases, the applied SADC tariff rates are higher than the MFN rates. *This issue has been resolved.*
MAURITIUS		
	Implemented?	**Outstanding Issues/Notes**
2010	Yes	• Mauritius has undertaken autonomous tariff liberalization and above 85% of its tariff lines have been liberalized. It is currently ahead of its tariff reduction schedule.
2009	Yes	• Reduced category C sensitive products to roughly 6% of total tariff lines. • **A number of tariff rates (20 tariff lines) are higher than what would apply for the 2009 reduction. *A review of the current customs duty schedule for Mauritius – December 2009 – reveals that this issue has only been partly addressed.*** • Notified Secretariat that it would not be implementing any further tariff reduction prior to an assessment of the impact of the global economic recession.
2008	Yes	• **Introduced specific duties on products in Chapters 62, 64 and 90 when they had ad valorem duties in the original offer.** • **Discrepancies identified in the gazette schedule.**
2007	Yes	• In 2006, Mauritius combined Differentiated and South Africa offers. • In 2006, embarked on three year program to liberalize tariffs and turn Mauritius into a duty free island. ***Concerns were raised regarding the maintenance of preferential margin in favor of SADC.***
MOZAMBIQUE		
	Implemented?	**Outstanding Issues/Notes**
2010	Yes	• No issues noted.

2009	Yes	• No issues noted.
2008	Yes	• No issues noted.
2007	Yes	• **Data at points of entry showed differences between applied rates generated by the Trade Information Management System (TIMS) and those of the original offers.**
		TANZANIA
	Implemented?	**Outstanding Issues/Notes**
2010	Yes	• ***No additional issues***
2009	Yes	• No new issues – no further verification process to follow up on outstanding issues.
2008	Yes	• **Trade levy of 2% on all imported goods regardless of origin introduced.** • **Discrepancies between the number of Category C products in the two schedules (2000 schedule and 2008 schedule). In some HS chapters the number of Category C goods had increased. Furthermore, it was noted that Tanzania need to address anomalies between the applied rates and those in the original offer.**
2007	Yes	• **As a member of the EAC and applying a common external tariff (CET), Tanzania made no amendments to its schedule of offers. Some products' rates have gone up as a result of the CET and this does not conform to the requirements of Article 4:4 of the SADC Protocol on Trade. However, a number of products alternatively had their duty rates reduced as a result of the introduction of the EAC CET. *Tanzania reports that this issue has been resolved with a realignment of tariffs.***
		ZAMBIA
	Implemented?	**Outstanding Issues/Notes**
2010	Yes	• **No new issues identified during country visit. The Zambia Revenue Authority noted the passage of**

		legislation which would allow them to address discrepancies between the SADC phase down offers and existing tariff book directly rather than going through legislative remedies.
2009	Yes?	• Not notified to SADC at time of Audit Report.
2008	Yes	• **A number of discrepancies were identified. Product lines 48196000 and 48232000 which should have been duty free in 2008 are instead attracting 25% duty. Tariff lines 48201000 and 48234000 which should have been at 25% in 2008 are now at zero for SADC products not from South Africa.**
2007	Yes	• In the 2007 Budget, a number of tariff lines were either reduced or increased.[52] However, Zambia noted that these only affected the MFN rates and did not apply to the SADC Offers.
	ZIMBABWE	
	Implemented?	**Outstanding Issues/Notes**
2010	No	• **A number of discrepancies revealed in a random check of tariff lines.** • **Zimbabwe has formally written the Secretariat seeking derogation from implementing tariff reduction till 2012 when it proposes to resume and complete it reductions in 2014. They refer to Article 3(c) of the Protocol on Trade in making this request for derogation to Ministers of Trade, which is meant to give relief to depressed industries.**
2009	No	• **Zimbabwe notified the CMT that it was not in a position to implement the 2009 tariff phase downs due to the economic situation.**
2008	Yes – Partial	• **Zimbabwe did not gazette the differentiated offer.** • **Still a number of tariff lines that were not reduced in accordance with the original offers.**
2007	Yes – Partial	• **Discrepancy between original offer and phase down implemented. No phase down made on the Differentiated Offer.**

[52] For full details, see 2009 Audit on the Implementation of the SADC Protocol on Trade

Annex 2: Bilateral Agreements among SADC Member States

1. **Botswana-Malawi**: The current agreement between Botswana and Malawi stems from an original 1956 agreement. Officials from both countries report that no further amendments have occurred to the original agreement and it is rarely (never) utilized. ***Not subject to provisions of the SADC Protocol.***

2. **Botswana-Zimbabwe**: This agreement originally came into force on June 1, 1956 as a Customs Agreement between the Federation of Rhodesia and Nyasaland and Basutoland, Bechuanaland Protectorate and Swaziland. It was amended in 1988 and although signed in 2001, it was reported that implementation failed due to an error in the texts. On August 15, 2010 the agreement was again amended. The agreement provides reciprocal duty free access to all goods grown or produced in the two countries subject to the ROO which require 25% local content which includes direct labor costs, the costs of local materials, cost of waste in production process.[53] ***Subject to provisions of SADC Protocol through 2010 amendment.***

3. **Malawi-Mozambique:** Building on a 1959 agreement between Portugal and the Federation of Rhodesia and Nyasaland, this agreement was signed in 2006 and provides for reciprocal duty free access for all goods grown or produced in the two countries. The ROO require alternately that the good be wholly produced or the c.i.f. value of materials does not exceed 60 percent of the total cost of materials used in the production of the goods, or there is a change in the tariff heading of a product arising from a processing carried out on the non-originating materials. ***Subject to provisions of SADC Protocol.***

4. **Malawi-South Africa:[54]** This agreement was initially reached in 1967 and provided for preferential rates of duty, rebates and regulations on certain goods traded between the two countries. The agreement has been amended and all goods of Malawian origin enter South Africa duty-free. South African goods entering Malawi receive the most-favoured-nation rate of duty afforded to all WTO members. The Malawi Chamber of Commerce and Industry notes that “The bilateral trade agreement between Malawi and South Africa is asymmetric, providing the former with duty-free status for its commodities as long as they meet the 25 percent local value added, while the latter receives only MFN treatment. This bilateral agreement will remain in force until SADC tariffs reach zero.” There was an update of the agreement in 2007 to increase technical and economic cooperation between the two countries. It is unclear whether this agreement is applicable as SACU has completed its tariff phase downs. However, the ROO cited would be more favorable than those for many

---

[53] The 1956 agreement excluded motor cars, oils, film but these restrictions do not appear in the 2010 amendments.

[54] While this agreement is cited in several documents related to Malawi’s trade regime, it does not appear on South Africa’s Department of Trade and Industry website nor was it possible to locate a copy of the agreement or further details.

commodities under the current SADC rules. ***Not subject to provisions of SADC Protocol – Further Information Required.***

5. **Malawi-Zimbabwe**: Implemented in 1995, this is a reciprocal trade agreement, with 25 percent domestic value added requirements. Arrangements are characterized by implementation problems, in particular with regards to rules of origin, and no dispute settlement mechanism. As of 2002 it was under re-negotiation. However, there is no evidence that the re-negotiation was concluded. ***Not subject to provisions of SADC Protocol.***

6. **Mozambique - South Africa**: While the 2010 Audit cited a reference to this agreement, no text of this agreement was available and it is not cited on South Africa's Department of Trade and Industry listing of trade agreements. During a country visit to Mozambique in 2010, it was reported that a previously existing agreement allowed Mozambique to continue exporting garments on a single transformation basis into the South African Market. According to available information, this agreement would be longstanding and predate the Protocol on Trade. ***Not subject to provisions of SADC Protocol – Further Information Required.***

7. **Mozambique-Zimbabwe**: Signed in January 2004, this agreement became operational on March 1 2005. Its objective is to eliminate tariff and non-tariff barriers and also to cooperate in customs and trade promotion. The agreement provides for duty free trade between the two members with the rules of origin specifying a 25 percent domestic value added. Excluded from the arrangement are refined and unrefined sugar, Coca-Cola/Schweppes soft drinks, firearms, ammunition and explosives, motor vehicles and cigarettes. ***Subject to provisions of SADC Protocol.***

8. **Namibia-Zimbabwe:** The reciprocal agreement in effect since 1992, subject to rules of origin which require at least 25 percent local content for manufactured goods and that Zimbabwe and Namibia should, as exporters, be the last place of substantial manufacturing. Other eligible products include mineral and vegetable products, live animals and their products. ***Not subject to provisions of SADC Protocol.***

9. **South Africa - Zimbabwe**: A duty free regime or preferential tariff quota applies to items including dairy products, potatoes, birds, eggs. Specified types of woven fabric, for example cotton, and are subject to concessional tariff rates when they meet the specified levels of Zimbabwean content: 75 percent in most cases. Most recent version of the agreement was signed in August 1996 at which time the tariffs and quotas on textile imports into South Africa were lowered. Currently, the agreement for textile imports is in abeyance as no quota has been agreed. ***Not subject to the provisions of SADC Protocol.***

Annex 3: Draft Action Plan Matrix from 2010 Audit

TMCM	Progress
1. Fully operationalize the TMCM, identifying outside resources to fill in technical gaps.	Incomplete.
2. Develop comprehensive work and information plan including a review of all required or recommended notifications from Member States based on Protocol and decisions of CMT and TNF.	Incomplete.
3. Develop communications strategy particularly focused on developing website with online links to status of implementation. Website should focus as well on information of value for traders.	Incomplete.
4. Begin process on information collection from Member States	Incomplete.
5. Launch annual review process which concludes public dissemination – online – of status of implementation of **all** obligations and updating the progress on recommendations.	Not complete.
6. Conclude annual review presenting to annual CMT meeting.	Not planned.
7. Launch communications strategy and website.	Not commenced.
8. Develop technical assistance program to assist Member States in preparing documentation, improving dissemination at national level of tariff and statistical data.	
TARIFF PHASE DOWN IMPLEMENTATION	
1. Draft and adopt timeline for review and acceptance of HS2007 upgrade to tariff phase down schedules.	No longer relevant.
2. Adopt HS2007 Tariff Phase Down Schedules	No longer relevant.
3. Address Country Specific Issues – Lagging Implementation and tariff line discrepancies.	Ongoing
4. Consider and Adopt Formal Definition of FTA for future accessions	??
RULES OF ORIGIN	
1. Examine ROO in light of proposed Tripartite FTA.	Part of Tripartite Discussions.
2. Provide Technical Assistance to Member States to implement Revised ROO.	Still required.
3. Resolve outstanding product specific ROO.	Ongoing.
4. Consider a remedy for the end of the MMTZ Market Access Agreement	Ongoing.
NTBs	
1. TIFI to develop and implement work program to enhance function of NTB reporting mechanism particularly regarding the mechanisms for resolution of outstanding issues.	Substantial Progress.
2. Member States agree to comprehensive method for addressing existing and new NTBs.	Partial.

3. Through TMCM, increase the scope of sensitization workshops to increase involvement by the private sector in the NTB reporting mechanism.	Ongoing.
Trade Facilitation Instruments	
1. Continue training and technical assistance for trade facilitation along transport corridors.	Ongoing.
2. Provide technical assistance to Member States to develop and maintain an agreed time frame for complete implementation.	Address after completion of Customs Audit due end June 2011.
Knowledge	
1. Perform a comprehensive analysis of the level of intra-SADC trade and estimate the level which is taking place under the SADC Trade Protocol	Addressed in part in 2011 Audit.
2. Commission study of the impact of the Protocol on Trade taking into account trade which takes place under competing agreements and the trade flows which takes place without taking advantage of the Protocol.	Addressed in part in 2011 Audit.
3. Undertake a review of the implications for the imposition of COMESA/EAC ROO on trade flows within SADC.	Included in 2011 Audit.