

**An analysis of how the Online Non-Tariff Barriers Mechanism facilitates
Reporting, Monitoring and Elimination of NTBs in the COMESA, EAC and
SADC Region**

FULL COLOUR THINKING



A Research Report

Presented to

**The Graduate School of Business
University of Cape Town**

**In fulfilment of the requirements for the degree of
Master in Commerce in Management Practice,
Specializing in Trade Law and Policy**

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Date: 12 February 2015

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ABSTRACT

Member countries of multilateral and regional organisations have progressively negotiated tariff preferences and achieved tariff reductions on substantial trade. However, a tendency of policy reversal has been witnessed due to non-tariff barriers (NTBs) being imposed to control trade and recoup losses arising from reduced duties. To address the proliferation of NTBs, multilateral and regional organisations are implementing various forms of NTB notification, reporting, monitoring and eliminating mechanisms. The broad objectives of this study is to evaluate the performance of the tripartite NTBs reporting, monitoring and eliminating mechanism against best practice and establish its effectiveness to remove NTBs in the tripartite region. The main aim is to identify challenges and gaps in the design of the mechanism that are critical to the effective management of NTBs. Existing literature on mechanisms to address NTBs was reviewed. The focus of which was the main elements of reporting, monitoring and resolution of NTBs through the online mechanism. Policies dealing with NTBs were identified. The short comings of the tripartite online NTB mechanism (NTB-RMM) particularly with regards to data inadequacies, poor categorisation which impact negatively on NTB monitoring and policy improvements in the tripartite countries were also identified from literature. The online mechanism, hosted on the website www.tradebarriers.org was the primary source of the information and data utilised for analysis in this study. Supplementary information was obtained from the actual responses from a target group using questionnaires and interviews. Data analysis was done by aggregating and assessing results from the data extracted from the mechanism, responses from questionnaire, available literature, findings from the desk research and oral and telephonic interviews.

Evidence from literature indicated that there are basically two types of NTB mechanisms implemented at multilateral, regional and national levels. These are web and non-web based notification and reporting mechanisms. The mechanisms designed by the WTO, EU and OECD are notification mechanisms whereas the mechanisms implemented by other organisations like ECOWAS, COMESA, EAC and SADC are reporting mechanisms.

One of the most important findings of the study was that the number of NTBs reported through the NTB-RMM mechanism by stakeholders is very low. The study identified the possible factors responsible for the low level of reported NTBs and the ineffectiveness of the mechanism. These are delays in implementing policy decisions, inadequate capacity for focal points to manage the NTB-RMM, the stakeholder loyalty to the existing offline mechanisms and most notable, the absence of an enforcement mechanism to provide recourse to private sector affected by barriers. The inadequacy of administrative systems such as proper guidelines and procedures to ensure effectiveness of the coordination between the offline mechanisms and NTB-RMM for effective resolution of NTBs was revealed. In conclusion, the study recommends that the mechanism be upgraded to give it power to enforce compliance by imposing country. The enforcement mechanism must be able to protect and possibly even compensate companies against loss if a trade barrier is not removed. The

mechanism could also borrow good attributes such as developing guidelines and operational procedures similar to those implemented by the WTO, EU and OECD to improve efficiency.

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GLOSSARY OF TERMS

Acronyms

CEFTA	Central European Free Trade Area
COMESA	Common Market for East and Southern Africa
EAC	East African Community
EU	European Union
GATT	General Agreement on Trade and Tariffs
MMF	Multilateral Monitoring Framework
NAMA	Non- Agricultural market access
NMC	National monitoring committee
NTBs	Non- tariff barriers
NTB-RMM	Non- tariff barriers reporting and monitoring mechanism
NTMs	Non -tariff measures
OECD	Organisation for Economic Cooperation and Development
REC	Regional Economic Community
RTA	Regional Trading Agreement
SADC	Southern African Development Community
SMS	Short messaging service
SPS	Sanitary and Phytosanitary services
TBT	Technical barriers to trade
TFTA	Tripartite free trade area
TCCIA	Tanzania Chamber of Commerce, Industry & Agriculture
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organisation

Definitions

Countries	Member/partner states of COMESA and SADC and partner states of the EAC
Focal Points	Designated officials from governments, government departments/authorities and private sector organizations responsible for managing and administering the online mechanism
Monitoring	The process of observation, follow up and intervention by stakeholders involved in the reporting and resolution of a reported NTB using the online mechanism
Mechanism administrators	The public sector and private sector NTBs focal points; national monitoring committee members in countries and NTBs focal points at the COMESA, EAC and SADC Secretariats
Mechanism	The web-based real-time mechanism for reporting, monitoring and eliminating NTBs in the tripartite region, www.tradebarriers.org
National monitoring committee	Committee of key stakeholders from private and public sectors who have responsibility to manage, and facilitate resolution of NTBs in countries
Non -tariff barriers	'Restrictions that result from prohibitions, conditions, or specific market requirements that make importation or exportation of products difficult and/or costly. NTBs also include unjustified and/or improper application of non-tariff measures (NTMs) such as sanitary and Phytosanitary (SPS) measures and other technical barriers to trade (TBT). They arise from different measures taken by governments and authorities in the form of government laws, regulations, policies, conditions, restrictions or specific requirements, and private sector business practices, or prohibitions that protect the domestic industries from foreign competition' (Trade Mark Southern Africa, 2013).
NTB structures	Institutions and administrative arrangements in Countries and RECs that manage elimination of NTBs in the region
Tripartite	The trading arrangements of COMESA, EAC and SADC

ACKNOWLEDGEMENTS

This study is dedicated to my family, my husband Labani, daughters, Dr. Melody Ndemera, Dr Mercy Kumwenda, Rumbidzai Nyahuye and my son Takunda for their undivided and dedicated support towards my studies. Special thoughts go to my parents for inculcating the culture of reading in me during the years in our country's history when it was almost impossible for a girl child to pay attention to school work because of the war situation then. They made it possible for me to direct my focus towards education. My appreciation goes to my supervisor, Willemien Viljoen for the guidance and time she invested in me during this research.

CHAPTER I

INTRODUCTION

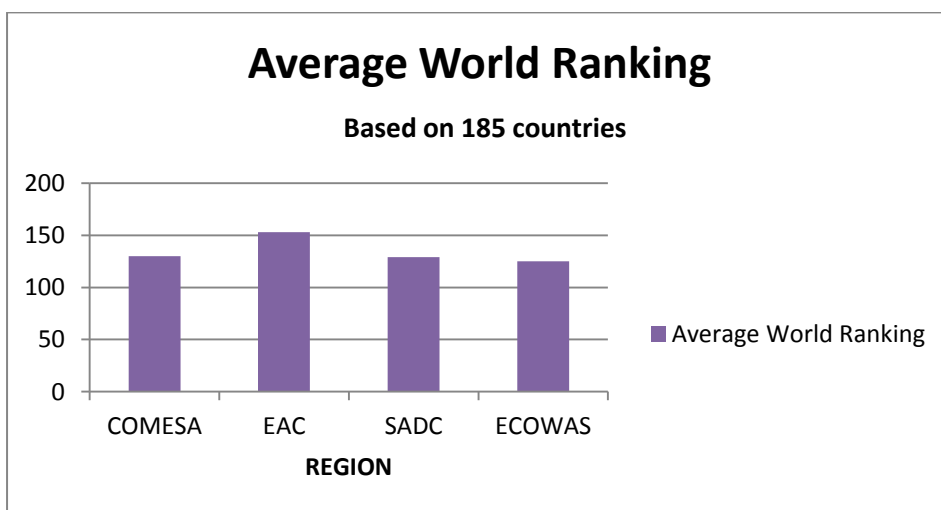
Most countries that are parties to regional trading arrangements (RTAs) have successfully negotiated and reduced tariffs on goods through progressive tariff phase down programmes. This has seen trade on a substantial number of tariff lines being conducted on a duty and quota free basis under the resultant Free Trade Area (FTAs) and Customs Unions. Following successful tariff reduction negotiations by the member and partner states, the three regional economic communities (RECs) of the Common Market for Eastern and Southern African States (COMESA), Southern African Development Community (SADC) and East African Community (EAC) groupings attained Free Trade Areas (FTAs) and customs union statuses in the case of EAC. This development means that intra-regional trade in COMESA, SADC and EAC is now conducted on a duty free quota free basis on all goods meeting the agreed rules of origin of the respective RECs. In the case of SADC, countries are implementing a phased down tariff reduction schedule

Having successfully attained their respective FTA and customs union statuses, the three RECs, COMESA, SADC and EAC are now engaged in a process to establish a tripartite free trade area joining together their three FTAs into one grand FTA. The aim under this tripartite arrangement is to achieve deeper integration through implementation of common trade development and trade facilitation programmes. However, although members of the three RTAs are now enjoying tariff preferences on intra-regional trade in all qualifying goods, there is a proliferation of non - tariff barriers (NTBs) which continue to erode the trade gains accrued from tariff reductions. The three RECs have therefore embarked on various joint initiatives and programmes to manage and deal with the scourge of NTBs. One of these initiatives is an NTB online reporting, monitoring and eliminating mechanism which has been in operation since 2009. Since its inception, the mechanism has faced criticisms from users and other stakeholders who claim that the mechanism is not effective in fully addressing the problem of NTBs in the tripartite region. However, the NTB elimination mechanism is an important aspect in the efforts to establish a successful FTA.

NTBs contribute significantly to the high transaction costs experienced in the tripartite region. (COMESA-EAC-SADC, 2009). As discussed by Gilson (2012) , the NTBs average tariff equivalent is 40 percent, 'which for most products is much higher than the most favoured nation (MFN) tariff applied by most countries' (Gilson I, 2012). Charalambides & Gilson (2011) projects very high costs of moving goods across borders in the southern African region as a result of NTBs. He gives the example of Shoprite, a leading consumer goods supplier in the region, which incurs as much as US\$500 per day for each truck stuck at the borders (Gilson I, & Charalambides N, 2011). NTBs among other things, constrain free movement of goods and services in the tripartite region (COMESA-EAC-SADC, 2009)

The proliferation of NTBs in the tripartite region is confirmed by the poor performance of the countries on the World Bank rankings on trading across borders (World Bank, 2013). These trading across borders indicators measure the number of export/import documentation required for goods to pass at borders, time required to import and export goods in terms of inland transport handling, customs clearance and inspection and port and terminal handling as well as the cost of exporting /importing goods in US\$ per container. The cost of importing a container includes cost of all documentation, customs clearance and official costs (World Bank, 2013). Poor average world rankings on the trading across borders index (on a scale of 1- 185 economies) (Figure 1) reflect the high levels of NTBs in the COMESA, EAC and SADC region.

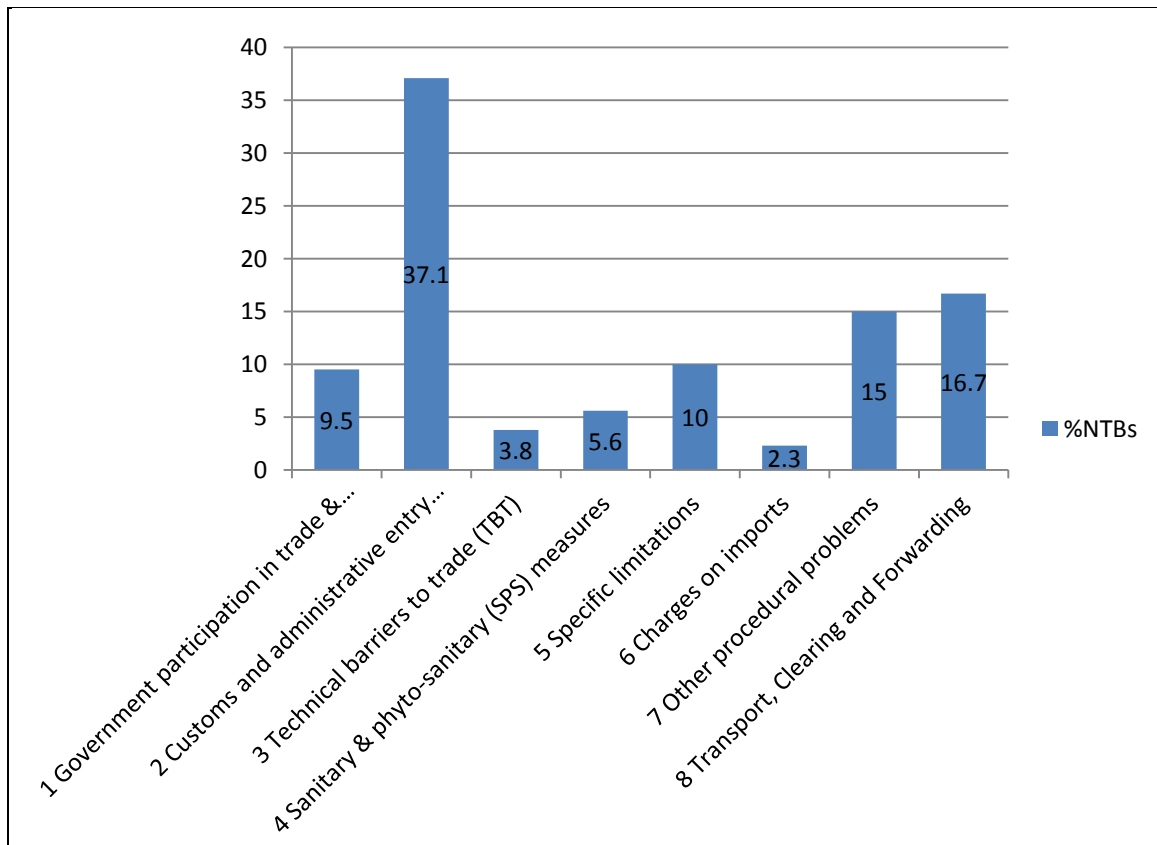
FIGURE 1: AVERAGE WORD RANKING FOR COMESA-EAC AND SADC REGIONS ON TRADING ACROSS BORDERS



Source: Doing Business 2013. World Bank

Although various NTBs experienced in the tripartite region are unrecorded, the online NTB mechanism does reveal the nature of those NTBs experienced in the region (Figure 2). According to the NTB mechanism, the most prolific barriers to trade relate to customs procedures, transport, clearing and forwarding, other procedural problems and government participation in trade and restrictive practices. These kinds of barriers particularly those in the transport sector could be complex and difficult to deal with.

FIGURE 2: COMPOSITION OF NTBS REPORTED INTO THE ONLINE MECHANISM AS AT OCTOBER 2013.



Source: www.tradebarriers.org

The continued existence of NTBs may delay the region from achieving its full growth potential. Gilson (2013), contends that there is evidence to indicate that, while tariffs fall, nations and RECs often increase protectionist measures by increasing NTBs (Gilson I, 2012). In order for countries to achieve the full benefits associated with the TFTA, it is of vital importance that NTBs be addressed. This requires the NTB mechanism to function efficiently and effectively in order to identify NTBs, monitor the progress of their removal and eventually eliminating them to reduce the cost of doing business and increase the competitiveness of enterprises in the region.

1.1 History of NTBs mechanisms

The history of NTB mechanisms goes back to the establishment of the World Trade Organisation (WTO) dispute settlement undertaking (DSU) which, among other disputes, has provision to adjudicate on NTB cases brought to its attention from the various WTO counsels and committees dealing with trade issues. The DSU which involves different approaches to settling disputes covers among other matters, all disputes pertaining to trade under the following relevant WTO agreements:

- i. Agreement Establishing the World Trade Organization,

- ii. Multilateral Trade Agreements which includes agreement on trade in goods
- iii. Plurilateral trade agreements that include agreements on Government Procurement , International Dairy Agreement and international bovine meat agreement and
- iv. Special or additional rules contained in the covered agreements like agreement on the application of SPS measures, and agreement on technical barriers to trade.

The approaches used by the WTO DSU to settle disputes include consultative processes, good offices of conciliation and mediation procedures. The DSU provides an offline mechanism that hears trade disputes under stipulated periods, depending on the nature of the product complained about. Shorter settlement time frames are provided for, for example, disputes on perishable goods must be resolved with maximum 20days.

Up until 2008 COMESA, EAC and SADC implemented individual NTB eliminating mechanisms to reduce and/or eliminate NTBs in their territories. This was in accordance with the three RECs commitments to eliminate all NTBs, and not introduce any new ones. The RECs commitments are provided for in the following respective treaty provisions:

- i. Article 47 of the treaty establishing the Common Market for Eastern and Southern Africa (COMESA) of 1994.
- ii. Article 13 of the treaty for the establishment of the East African Community of 1999.
- iii. Article 6 of the SADC protocol on trade of 1996.

These were offline¹ systems to collect and present NTBs for consideration by policy organs².

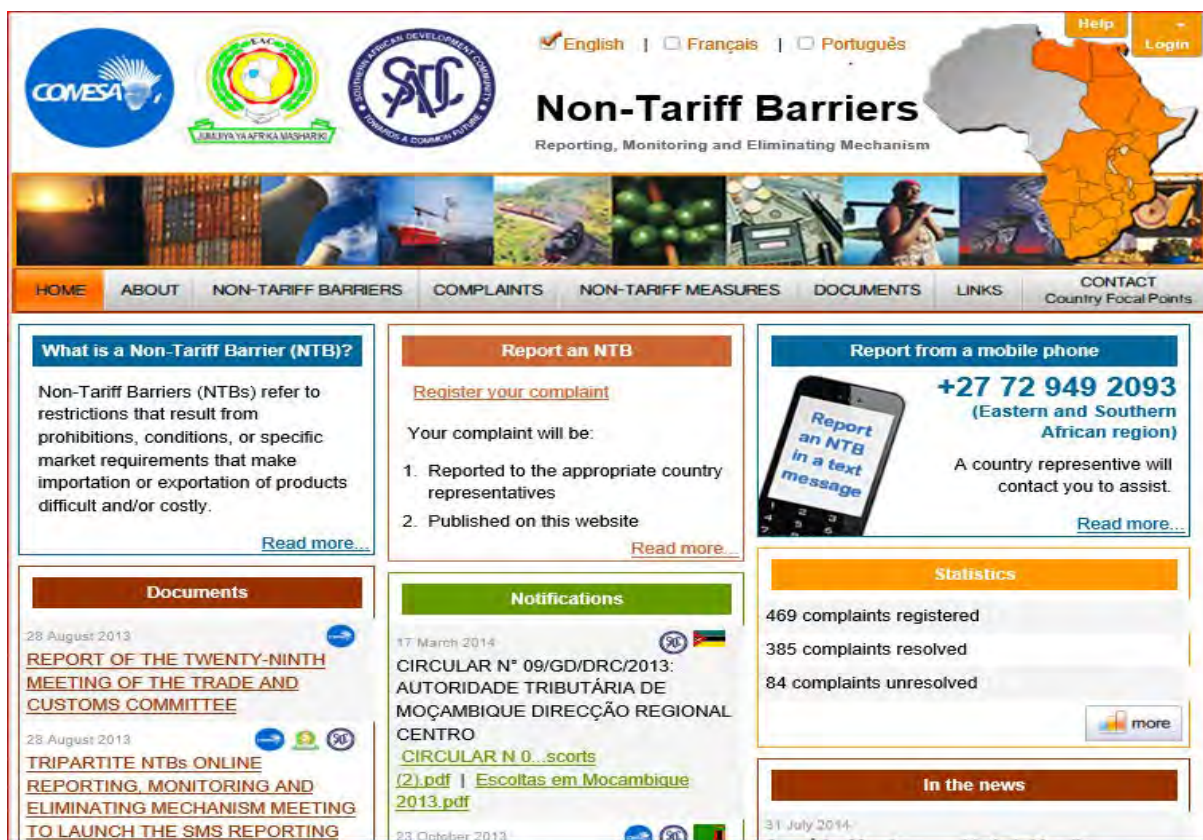
Between 2007 and 2009, COMESA implemented a web based online reporting, monitoring and eliminating mechanism that was discontinued in 2009 (<http://ntb.africonnect>). The aim of the mechanism was to introduce transparency and enhance the identification and resolution of NTBs in the trading block (Osoro G., personal communication, December 7, 2013). At the same time, the EAC was implementing an offline time bound NTBs eliminating mechanism where reported complaints were collated and submitted to EAC NTB Ministerial Forum for consideration. SADC was also implementing an offline mechanism through the SADC Sub-Committee on trade facilitation. However, despite REC efforts, NTBs continued to negatively impact on intra-regional trade (Imani Development, 2007). It was upon the realization of the high potential of NTBs to inhibit intra-regional trade that heads of state and government of the tripartite countries decided to harmonize their NTBs eliminating programmes and implement a common NTB eliminating mechanism (COMESA-EAC-SADC, 2009)

¹ Non-web-based NTBs eliminating mechanisms implemented by COMESA, EAC, SADC where stakeholders submit complaints to the Secretariat for follow up and resolution

² REC structures including Technical Committees, Committees of Senior Officials, Council of Ministers and Heads of States meetings

At their meeting held in Kampala in 2008, the Heads of State and Governments of COMESA, EAC and SADC made a political commitment to cooperate, among other things, in addressing the NTBs and therefore directed that elimination of NTBs be a priority programme under tripartite trading arrangements³. Pursuant to the 2008 decision, the three RECs signed a memorandum of understanding (MOU) establishing the tripartite trading arrangements (COMESA-EAC-SADC, 2011), committing to, inter alia, eliminating all barriers to trade in the three RECs in order to enhance intra-regional trade in accordance with the respective REC treaty obligations articulated above. In 2008, a joint COMESA-EAC-SADC online NTB reporting, monitoring and eliminating mechanism (NTB-RMM) was developed and piloted in the COMESA region. This was followed by the adoption of a harmonized NTBs eliminating programme to harmonize and strengthen the existing REC mechanisms and the development of the current web based tripartite online reporting and monitoring mechanism in 2009 (COMESA-EAC-SADC, 2009). In November 2010, the NTB-RMM was upgraded from the then NTBs repository and database mechanism (<http://ntb.africonnect>) that had been operational since 2008, to a real-time tool to enable stakeholders to effectively manage NTBs in the region. The new design facilitated exporters, importers, traders and governments to report, process, monitor and resolve NTBs at a faster rate than through offline mechanisms. The mechanism is hosted in a website www.tradebarriers.org (Figure 3). The home page shows the different functions of the mechanism.

FIGURE 3: ONLINE REPORTING AND MONITORING MECHANISM AS AT 31 JULY 2014



Source: www.tradebarriers.org

³ The tripartite trading arrangements refer to cooperation among COMESA, EAC and SADC regional economic communities

A short messaging service (SMS) reporting system was eventually developed and launched in 2013 (COMESA-EAC- SADC, 2013) to enhance the reporting function of the mechanism.

Functions of the Online Reporting, monitoring and eliminating mechanism

The functions of the mechanism are summarized in table 1.

TABLE 1: SUMMARY OF FUNCTIONS OF THE MECHANISM

Function	Detail description
Facilitates Reporting of NTBs	<ul style="list-style-type: none"> i. It comprises internet and short messaging (SMS) reporting for easy access by diverse stakeholders ii. Private /public sector report all NTBs encountered during their day to day import/export business iii. Focal Points report NTBs on behalf of those stakeholders with no access to online mechanism and record all NTBs they are aware are being imposed on stakeholders iv. Trade/Industry associations report NTBs encountered by their members on their behalf
Enables Monitoring	<ul style="list-style-type: none"> i. System produces status reports available to public which can be used to follow up progress in the processing and resolution of reported NTBs and make policy recommendations where appropriate. ii. Focal Points⁴ use the mechanism to correspond, communicate among each other on new developments and progress in processing and or resolution of reported NTBs by their counterparts. Governments use database to monitor status and nature of reported NTBs in the region and markets of interest to their business community and use this information to improve trading policy environment.
Resolving	<ul style="list-style-type: none"> i. Mechanism transparency puts peer pressure on countries to resolve NTBs where possible ii. Focal points use online processing to resolve NTBs iii. Mechanism shows status of how NTBs have been resolved allowing private sector opportunity to influence the resolution process
Database	Mechanism provides an integrated database of reported NTBs and, when complete, all NTMs in the 26 Countries
Information Dissemination	Mechanism disseminates information to stakeholders, private/public sector; researchers.
Supports NTBs Elimination Programmes at national & REC levels	<ul style="list-style-type: none"> i. It is the primary source of data and information for the national and REC offline NTBs eliminating mechanisms. ii. National and REC NTB structures are an integral part of the mechanism iii. Mechanism is administered by national and REC NTB structures

Source: Report of the NTBs Focal Points and NMC chairs - 2013

⁴ Focal points refer to designated officials from ministries, government departments/institutions and private sector responsible for processing and resolving reported NTBs. These are nominated from national monitoring committees.

To ensure correctness of reports and faster processing of NTBs by NTB focal points and REC Secretariats, the mechanism contains an in built categorisation of NTBs. Various NTBs are allocated categories which are used by stakeholders to register complaints in the online mechanism. The categories that were adopted by the mechanism as at 30 December 2013 (Box 1), were adapted from the United Nations Conference on Trade and Development (UNCTAD) classification of non-tariff measures (NTMs), February 2012 version .(Box 2).

BOX 1: NTBS CATEGORISATION IN THE NTB-RMM AS AT 31 DECEMBER 2013

1. Government Participation in Trade and Restrictive Practices Tolerated by Government

Export subsidies, government monopoly in Export/Import, state trading, and preference given to domestic bidders/suppliers, requirement for counter trade, domestic assistance programmes for companies, discriminatory or flawed Government Procurement policies.

2. Customs and Administrative Entry Procedures

Governments imposing anti-dumping duties, arbitrary customs classification, misinterpretation of Rules of Origin, Import Licensing, decreed customs surcharges, additional customs and other charges, international taxes and charges levied on imports and other tariff measures.

3. Technical Barriers to Trade

Restrictive technical Regulations and standards not based on international standards, Inadequate or unreasonable testing and certification arrangements. Standards disparities, Inter governmental acceptance of testing methods and standards, Packaging, labeling and marking.

4. Sanitary and Phytosanitary Measures

Sanitary and Phyto sanitary measures, Conformity assessment related to SPS/TBT, Special customs formalities not related to SPS/TBT, Other technical measures.

5. Specific Limitations

Quantitative restrictions, exchange controls, export taxes, quotas, import licensing requirements, proportion restrictions of foreign to domestic goods (local content requirement), minimum import price limits, embargoes,- non automatic licensing, quotas, prohibitions, quantitative safeguard measures, export restraint arrangements, other quantity control measures.

6. Charges on Imports

Prior import deposits and subsidies, administrative fees, special supplementary duties, Import credit discriminations, variable levies, border taxes.

7. Other (Procedural Problems)

Arbitrariness, discrimination, costly procedures, lack of information on procedures (or charges thereof), Complexity wide variety of charges and documentation required.

8. Transport, Clearing & Forwarding

Government policy & regulations; Administrative (Border operating hours, delays at border posts, etc.); Immigration requirements (Visa, travel permits); Transport related corruption; Infrastructure (air, port, rail, Border posts); Vehicle standards; Costly road user charges/fees; and Issues related to transit.

Source: www.tradebarriers.org

Tripartite countries decided to adopt their NTB classification from UNCTAD NTMs classification because it is the internationally accepted classification (Box 2).

BOX 2: UNCTAD NON - TARIFF MEASURE CLASSIFICATION BY CHAPTER; FEBRUARY 2012 VERSION

Category	Classification
Technical measures (Imports)	Sanitary and Phytosanitary measures
	Technical barriers to trade
	Pre-shipment inspection and other formalities
Non-technical measures (Imports)	Contingent trade-protective measures
	Non-automatic licensing, quotas, prohibitions and quantity-control measures other than for SPS or TBT reasons
	Price-control measures, including additional taxes and charges
	Finance measures
	Measures affecting competition
	Trade-related investment measures
	Distribution restrictions
	Restrictions on post-sales services
	Intellectual property
	Rules of origin
	Export-related measures
Rules of origin	
Exports	Export-related measures

Source: UNCTAD Classification of non-tariff measures 2012

The tripartite NTB categorization also took into account the unique nature of barriers experienced in the region (COMESA-EAC-SADC, 2010). Tripartite categorisation includes, for example, additional categories to capture those economic activities that cause NTBs in such areas as the transport sector in the tripartite region (Trade Mark Southern Africa, 2013).

Currently the mechanism is functional in 23⁵ of the 26 countries in the tripartite. Although the NTB-RMM was well received by all stakeholders⁶ as a useful tool to improve the process of reporting and monitoring NTBs at inception, there seems to be a low uptake of the mechanism. It has not provided the solution that the member states anticipated in terms of increased reporting, monitoring and resolution of NTBs. There is therefore need to interrogate the mechanism to establish if the mechanism is actually enabling reporting, monitoring and resolution of NTBs, what can be done to improve the NTB-RMM as well as identifying areas for improvements. This study therefore aims to establish how the NTB-RMM can contribute to improved efficiency in the reporting and monitoring of NTBs in the tripartite region.

⁵ Angola, Botswana, Burundi, Comoros, DRC, Djibouti, Egypt, Ethiopia, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe.

⁶ Stakeholders include traders and their associations; transporters; governments; public; regulatory authorities; and private sector.

1.2 Statement of the Problem

The extent of the NTB problem in eastern and southern Africa is exemplified by the magnitude of documentation required to clear one truck en-route in southern Africa. According to Brenton and Isik (2011) **“In Southern Africa, a truck serving supermarkets across a border may need to carry up to 1,600 documents as a result of permits and licences and other requirements,”** (Brenton & Isik, 2011).

COMESA, EAC and SADC are cooperating to eliminate NTBs that inhibit growth of intra-regional trade. Removal of NTBs is therefore a priority programme for the region. Despite RECs interventions to address NTBs through various mechanisms, NTBs continue to hinder smooth movement of goods across borders in the tripartite region.

Whilst the online mechanism was designed to enable countries of COMESA, EAC and SADC to speed up reporting, improve monitoring and increase the resolution rate of NTBs, it does not seem to be scoring the anticipated higher numbers of reported and resolved NTBs than those reported through current offline mechanisms operational in member states. This is reflected in the results of surveys undertaken in the COMESA and SADC countries in 2007 which identified more NTBs (289)⁷ than those reported in the mechanism between January 2009 and December 2013 (TradeMark Southern Africa, 2013). Through support from the Regional Trade Facilitation Programme, COMESA and SADC carried out surveys to establish and document NTBs prevailing in the two regions in 2007 (Imani Development, 2007). The country studies identified about 289 NTBs.

This study seeks to establish key factors responsible for current low levels of registered NTBs on the mechanism. Limited uptake of the mechanism by stakeholders has a negative impact on regional efforts to create transparency in managing and resolving NTBs, achieving the overall objective of making it less costly to do business and increase regional competitiveness. The current level of utilisation of the mechanism suggests that it is not well known to stakeholders, creating a possibility that its utilisation may be limited now and in future (TradeMark Southern Africa, 2013). It therefore remains to be seen whether or not the mechanism is capable of registering all NTBs experienced in the tripartite region and enable their efficient monitoring and resolution. Judging from the low number of complaints registered on the mechanism and the types of resolved complaints, it would appear that there are not many NTBs being experienced in the region, and yet, in practice the situation is debatable. It is therefore necessary to clearly establish the reasons behind the low levels of reporting of NTBs through the mechanism. Furthermore, there are numerous confounding factors that would influence the low levels of NTBs being registered on the mechanism.

The NTB-RMM also indicates the presence of challenges in the resolution of reported NTBs as reflected by the fact that it takes a very long time for member states to process and resolve reported NTBs. The reasons for this

⁷ This figure is included in the 461 NTBs reported in the NTB-RMM

phenomenon are unknown. Regarding the type of NTBs reported via the mechanism, most policy related NTBs⁸ are not entirely resolved. Reading from the tripartite meetings reports, one gets an impression that the NTB-RMM does not enable the resolution of policy related NTBs. In addition, stakeholders complain that the resolution of NTBs is not timeous. Therefore, it is also important to ascertain if the mechanism has the capacity to resolve all types of NTBs and to inform policy makers on possible improvements so as to reap the intended benefits from the mechanism

1.3 Research Aim and Objectives

This study aims to establish how the mechanism has enabled stakeholders to report, monitor and resolve NTBs and make recommendations for improvements of the mechanism.

The aim is sub-divided into the following objectives;

1. To establish the efficiency of the mechanism in reporting, monitoring and resolving non-tariff barriers in the COMESA, EAC and SADC countries.
2. To assess the capacity of the mechanism to address all types of non-tariff barriers experienced in the system.
3. To derive recommendations for the improvement of the different functions of the mechanism.

1.4 Research Question

The main research question is: 'To what extent is the mechanism enabling reporting, monitoring and resolution of NTBs?'

Specific questions

- i. What is the level of utilisation of the mechanism by public users and mechanism administrators
- ii. How does the mechanism allow access and reporting of NTBs by all stakeholders
- iii. How does the mechanism, enable stakeholder involvement in the monitoring and resolution of NTBs in member/partner states?
- iv. How does the mechanism enable effective resolution of reported NTBs

1.5 Research Assumptions

The study makes the following assumptions:

⁸Refers to NTBs that arise from regulations and policies operational in member states.

- i. All stakeholders have access to and are capable of utilising the online reporting, monitoring and eliminating mechanism, and that the mechanism is fully implemented in all member states at all times.
- ii. The NTBs structures cooperate and provide accurate information and additional data on how NTBs Focal Points manage the mechanism at national level.
- iii. REC secretariats prioritize NTBs reporting, monitoring and elimination mechanism in their programmes.
- iv. Business operators cooperate and provide accurate information on how they use the mechanism to report and monitor the process of resolving NTBs.

1.6 Significance of the study

Evidence indicates that the NTB-RMM is a unique instrument that is being implemented for the first time in the world (TradeMark Southern Africa, 2011). The mechanism has not been tested against any international best practice previously. This study will be the first in depth review of the functionality of the NTB-RMM since its inception in 2008 and its subsequent upgrading in 2010. It unpacks the mechanism, revealing its detailed operations, the supporting institutional framework, management structures and how it is structured to eliminate non-tariff barriers in the region. The study will contribute immensely to deeper understanding of how the mechanism works and also reveal any shortcomings in the actual functionality areas of reporting, monitoring and resolving NTBs. The fact that the study was undertaken by the administrator of the mechanism provided a unique opportunity to obtain accurate information from the stakeholders. Beneficiary interest groups included the private and public sector, small scale traders, researchers, governments and regional trade policy analysts and researchers. The significance of the study to these beneficiary interest groups is explained in the sections below.

1.6.1 Significance to the tripartite FTA, regional trade policy analysts and researchers

The mechanism enhances the achievement of goals and objectives of NTBs annex 3 of the TFTA. Analysis of the functionality of the mechanism and stakeholder inputs into the ongoing negotiations of the TFTA would contribute to improvement in the trade policy framework of the countries in the tripartite.

1.6.2. Significance to government

Governments benefit from the recommendations of the study on improvement to the mechanism. Useful recommendations focus on effective management of the mechanism and experiences of other regions on the legal framework to enforce the commitments made by countries to remove identified NTBs. The study findings would identify the shortcomings and or areas that require improvements on the operations and design of the mechanism to enhance identification and effective resolution of NTBs leading to fewer barriers to trade in the

region. Fewer barriers to trade means the cost of moving goods across borders would reduce thereby reducing the cost of delivering products to populations in the tripartite countries. The study findings would also contribute to the body of knowledge on the relevance and suitability of both the design and administrative arrangements and inform on experiences of in other RTAs. Governments would establish relevance and need for a regulatory and policy framework in the management of NTBs using an online mechanism. The factors critical to ensure effectiveness of an online reporting monitoring and eliminating mechanism are identified.

1.6.3 Significance to researchers and scholars

Researchers and scholars would benefit from the factual and accurate information for use in their future research. The findings are expected to reveal areas of further study on the mechanism, giving researchers opportunity to undertake follow up studies. Furthermore, the study would create a deeper understanding of the mechanism as it avails accurate information to stakeholders on how it functions. The study provides additional knowledge to university students on available mechanisms for addressing NTBs.

1.6.4 Significance to private sector and small scale traders

The study would create awareness on the availability of the mechanism to small businesses, its reporting tools and give them access to NTBs databases. The business community would get deeper understanding of how focal points manage the system, become aware of its existence and benefit from the resources it avails that could contribute to the growth of their operations.

1.7 Scope

The study focused on describing and elaborating the NTBs mechanism, its structures, functionality and institutional framework as well as establishing the existence of an enforcement framework that supports implementation of the mechanism.

1.8 Overview of Methodology

A detailed review of available literature on existing national, regional and international NTBs eliminating mechanisms was made using academic and institutional research material. Reports from regional and international meetings, websites hosting other mechanisms and the actual NTBs website to determine status and comparisons were reviewed. This information was analyzed to draw conclusions and recommendations for the effective implementation of the mechanism. The efficiency of the mechanism in relation to facilitating reporting, monitoring and resolution, comparing it against best practice was explored with regards to:

- i. Mechanism utilisation by stakeholders to report NTBs
- ii. Level of online processing by focal points

- iii. Quality of data in the mechanism
- iv. Utilisation of the different reporting and monitoring facilities in the mechanism and
- v. Level of interest by the users

1.9 Delimitations of the study

The boundary of study is confined to system administrators (focal points), NMC members and private sector associations. The mechanism is still in its infancy hence the need to test the administrators as key stakeholders to its successful implementation. The study is unique because it has never been done before and the system is new to the RTAs. The study was done during period August 2013 to February 2014.

Information was gathered by way of questionnaires and interviews of focal points. These methods may not have been effective because only few focal points took time to complete them. Most of the information was then obtained from the mechanism itself.

1.10 Summary

The chapter dealt with introduction, background of the study, statement of the problem, research questions, scope of the study and its assumptions and definition of key terms. This chapter justifies and identifies the factors that drive this study. It highlights the history of NTB mechanisms at multilateral and regional levels justifying the importance of the online reporting and monitoring mechanism to the tripartite region.

CHAPTER II

LITERATURE REVIEW

This chapter provides a review of available literature pertaining to NTBs reporting and or notification and monitoring mechanisms identified in RTAs. It is noted that there is very limited literature on the subject matter. The only available literature has been obtained from few studies on NTBs in which the mechanism had been referenced or commented on. Therefore, only relevant literature on existing NTBs mechanisms has been perused. The focus of this chapter is on the various mechanisms being implemented by multilateral and regional organisations for resolving NTBs. NTBs reporting, monitoring and resolution is governed by multilateral and regional policy frameworks. The NTB-RMM mechanism is examined to determine its effectiveness in relation to current practice under other mechanisms elsewhere in the world. The success of any reporting mechanism is not complete if it does not deliver resolution of the identified NTBs.

2.1 What are NTBs?

There is no universal definition of NTBs. However, NTBs are broadly understood to comprise any policy measures other than tariffs that hinder the free movement of goods, including cross border traffic and services, thereby increasing the cost of trade. These can be legitimate internal measures that discriminate or unnecessarily restrict trade (WTO, 2006).

Definition of NTBs

In order to get an insight of the meaning of NTBs, three definitions from the WTO, OECD and the trade barriers website are given below. The main difference in the definitions is that for completeness.

a) WTO

WTO texts classify NTBs to include red tape, and other NTBs (World Trade Organisation , 2014). Under the WTO legal texts, NTBs it is stated as:

'..... various bureaucratic or legal issues that could involve hindrances to trade and cites the following as constituting NTBs under the WTO agreements:

- import licensing
- rules for the valuation of goods at customs
- pre-shipment inspection: further checks on imports
- rules of origin: made in...where?
- investment measures'

b) OECD

According to the OECD (2014), 'A non-tariff barrier refers to all barriers to trade that are not tariffs. Examples of these include countervailing and anti-dumping duties; "voluntary" export restraints, subsidies which sustain in operation loss making enterprises, technical barriers to trade, and obstacles to the establishment and provision of services.' (OECD, 2014)

This study will be focusing on the definition from the tripartite countries web based mechanism which explains NTBs as:

'restrictions that result from prohibitions, conditions, or specific market requirements that make importation or exportation of products difficult and/or costly. NTBs also include unjustified and/or improper application of non-tariff measures (NTMs) such as sanitary and Phytosanitary (SPS) measures and other technical barriers to trade (TBT). They arise from different measures taken by governments and authorities in the form of government laws, regulations, policies, conditions, restrictions or specific requirements, and private sector business practices, or prohibitions that protect the domestic industries from foreign competition'. (Trade Mark Southern Africa, 2013).

Non-tariff measures in the tripartite region mainly refer to policies and regulations adopted by members either to regulate trade or in accordance to international practices, protect the environment, and human and plant health. Staiger, Wisconsin and NBER (2011) describe Non- tariff measures to 'include any policy measures other than tariffs that can impact trade flows' (Staiger RW, Wisconsin S, & NBER, 2012).

The specific NTBs experienced in the COMESA, EAC and SADC region are summarised in table 2.

Table 2:Categories	Nature of NTBs
Customs	<ul style="list-style-type: none"> Inadequate coordination among border agencies leading to inefficient and cumbersome border and transit procedures, Lack of transparency in computation of customs duties
Transport , Clearing & Forwarding	<ul style="list-style-type: none"> Ever-changing, unwritten and un notified regulations, particularly in transport sector High Road User Charges (RUCs) and non-compliance to agreed RUCs. Numerous uncoordinated and prevalent road blocks
SPS & TBT	<ul style="list-style-type: none"> Administration of sanitary and Phytosanitary measures and TBTs,
Rules of Origin	<ul style="list-style-type: none"> Restrictive rules of origin, conflicting application of rules of origin
Import/Export prohibitions	<ul style="list-style-type: none"> Export and import prohibitions, bans, quotas, and licensing requirements
Policy &Regulatory Framework	<ul style="list-style-type: none"> Restrictive and or burdensome technical regulatory framework Inadequate information on procedures and requirements for exporting and importing Unpredictable policy reversals
Administrative Procedures	<ul style="list-style-type: none"> Cumbersome and unpredictable administrative framework

Source: www.tradebarriers.org

2.2 Multilateral and regional NTBs notifying and reporting mechanisms

The RTAs are implementing different types of reporting and notifying mechanisms. The following offline and online NTB mechanisms that are being implemented in the WTO, EU, OECD countries, Economic Commission for West African States (ECOWAS), COMESA, EAC and SADC regions were identified:

- i. WTO negotiating committees under different WTO Agreements
- ii. European Union (EU) web based notification mechanism
- iii. Organisation for Economic Cooperation and Development (OECD) web based notification mechanism (CEFTA/OECD mechanism)
- iv. Borderless Alliance reporting mechanism in the Economic Commission for West African States (ECOWAS) region
- v. NTBs reporting, monitoring and resolution mechanisms in the COMESA, EAC and SADC

The above mechanisms have common transparency attributes for notification, reporting, monitoring and resolution of NTBs which are the subject of this study with respect to the NTB-RMM. The literature was reviewed on the reporting, monitoring and resolution mechanisms in the WTO, EU, OECD, ECOWAS, COMESA, EAC, and SADC and the summary findings are explained in respect of each of the three aspects. The key difference between the mechanisms is that the WTO, EU and OECD operate notification procedures whereas the COMESA, EAC and SADC have reporting mechanisms. There is significant difference between notification procedures and reporting mechanisms. Reporting mechanisms merely permits stakeholders to report non tariff barriers which they encounter as they go on their day to day business whereas notification procedures require that a barrier or a measure be notified before it is imposed. The European Commission website describes notification procedures under the WTO agreement to say that it informs WTO members ‘about legislative proposals that might have significant impact on trade’. (European Commission, 2015) . The notification procedure requires that a member wishing to introduce a measure must notify the proposed measure to WTO to allow members to submit written comments on the draft measure and these comments are taken into account when drafting. The reporting mechanism on the other hand, is a tool enabling stakeholders to report non tariff barriers imposed already. The reporting and monitoring mechanism does not have provision for engagement before a barrier is imposed.

2.2.1 WTO Notification Procedure under relevant Committees.

Notification of barriers that impact on trade among WTO is members is done through the WTO committees on specific agreements. Under this mechanism, a member who is injured by a measure or barrier introduced by their trading partner notifies the WTO committees on the relevant agreement. Notifications trigger long, extensive and highly participatory consultative processes involving a wide array of interested stakeholders and affected parties. Although members are under no obligation, they abide by the principle of uniformity, impartiality and reasonable administration. To improve on current procedures, the WTO was considering a proposal by the EU and NAMA Group for ‘horizontal mechanisms’ for timely and cost effective resolution of

NTBs in the NAMA negotiations. (WTO, 2006). This NAMA proposed horizontal mechanism provides for a conciliatory and facilitatory approach to addressing NTBs (WTO, 2006). The approach enables flexible and expeditious procedures. Mohun (2010) observed that the horizontal mechanism would allow WTO members to raise concerns about NTBs in an informal process similar to mediation. (Mohun P. , 2010). The WTO legal texts (WTO, 2006) outline the key attributes of the proposed horizontal NTB Resolution Mechanism. The mechanism outlined in box 3 presents more options to WTO members for notifying measures (WTO, 2006).

BOX 3: ATTRIBUTES OF NAMA II PROPOSED WTO NTB RESOLUTION MECHANISM

a. Finding pragmatic solutions to trade effects

Through the use of trade experts to resolve related issues on a case-by-case basis, without going into the legality of the measure. Trade experts process and resolve NTB amicably.

b. Using expert facilitators

Using expert facilitators with specialized knowledge to find the 'solution' for technical areas in trade such as SPS, TBT, customs valuation, etc. Facilitator is appointed from the roster of experts maintained by relevant WTO bodies/committees. The roster would be prepared by Members in the concerned committees through consensus, ensuring adequate representation of experts from developing country Members.

c. Submitting an NTB to the resolution mechanism

Any Member may submit an issue adversely affecting its trade, and identified by it to be a NTB maintained by another WTO Member, to the relevant WTO body/committee for reference to the other party through the "NTB Resolution Mechanism".

d. Sectoral/plurilateral elements

In recognition of the fact that several Members may face similar problems in a particular sector in the territory of another Member, the NTB Resolution Mechanism would allow affected Members to collectively present their problem articulating time lines for processing. However, the time lines applicable to a one-to-one facilitation would also apply to group requests.

e. Establishment of facts and trade effects

NTBs submitted to the NTB Resolution Mechanism would have clear and short deadlines and must be addressed within fixed timelines. An outcome should be sought within no longer than 60 working days of the appointment of the "facilitator".

f. Recommendations on the solution

In certain cases, the facilitator would be empowered to offer solutions to resolve the issue and would not approach the issue as a 'dispute' for the purpose of the DSU. In such cases the DSU would not apply to the procedures and recommendations of the "NTB Resolution Mechanism". The facilitator would therefore enable the Members to reach an amicable solution for the referred NTB, based on the facts presented and with details as to actions required on the part of the concerned Members.

g. Flexibility of procedure

This NTB resolution mechanism allows facilitator flexibility to choose preferred methods for resolving NTB in consultation with the involved Members either individually or collectively. Affected industries; and other experts, including from industry and other non-governmental organizations are also involved.

h. Implementation of award

While participating in the procedure will be mandatory, implementation of the recommended solution will not be so because a mandatory implementation requirement would affect the legal rights of the Members concerned. Therefore, any party unwilling to implement the recommended solution would be required to state its reasons in the relevant WTO body/committee, to which the original request for launching of the "NTB Resolutions Mechanism" was made.

i. Confidentiality

In order to lay down the foundation for an open and effective interaction between the parties, and the options for a solution, there shall be no third party participation unless both the parties agree to the same. The result of the process, which essentially lays down whether or not a solution was reached, including any interim solution, would be published and communicated to the relevant body/committee as a report. It is believed that under a confidential mechanism, Members may be more willing to make difficult but necessary concessions to reach a solution.

Source: WTO NTBs resolution mechanism. Submission by NAMA II group.

2.2.2 European Union (EU) web based notification mechanism

The EU operates a web based market access database where all notified barriers are recorded under the section on trade. According to the information obtained from the website, the trade section 'tells about trade barriers reported to the Commission and an overview of what the EU is doing to remove them' (European Commission, 2014). All barriers experienced by EU countries from third parties are listed by country and region imposing them. The web page is a market access database that has similar features for collecting data. The data collection template specifications which include: NTB number, type of measure, sector, date of reporting, last day measure was updated is similar to the NTB-RMM. The page is updated continuously to give status and progress reports (European Commission, 2014).

2.2.3 Organisation for Economic Cooperation and Development (OECD) web based notification mechanism (CEFTA/OECD mechanism)

In assessing the elimination of Non-Tariff barriers in the CEFTA region, it was found that the OECD developed a Trade Facilitation web portal for notification of customs regulations, licensing procedures, technical regulations and conformity assessment; technical barriers to trade; SPS and veterinary controls, trade regimes as well as the regulations for border controls applied in all CEFTA signatories (European Union, 2012). The mechanism is a NTB mechanism called Multilateral Monitoring Framework (MMF), whose main function is to coordinate 'actions of eliminating NTBs at multilateral level to complement actions already taken by the Parties at bilateral level'. The MMF includes all areas of NTBs covered by the CEFTA agreement, namely: (i) TBTs (standards, technical regulations and conformity assessment); (ii) SPS measures; (iii) Administrative barriers to trade. The CEFTA issues paper (2012), confirms that 'the MMF is a useful tool in supporting CEFTA Parties to eliminate NTBs and should serve as the basis for future monitoring' and at the same time, it makes observation that elimination of NTBs through the MMF had been very slow due to the technical nature of the NTBs in CEFTA countries, indicating that the mechanism may not be appropriate (European Union, 2012). It goes on to recommend that, in order 'to tackle these barriers in greater depth, 'the selected products for assessment under the mechanism should be goods which are significant to intra CEFTA trade and for which harmonisation and implementation of corresponding regulations is the same or similar' instead of focusing on a wider range of goods. A CEFTA Sub-committee on NTBs and TBTs therefore selected 12 priority sectors and corresponding priority products. CEFTA countries would undergo monitoring based on the MMF to support the reduction of NTBs in these priority areas

With regard to institutional arrangements to manage Implementation of the CEFTA mechanism, CEFTA Contacts points were appointed to co-ordinate the NTB elimination process which culminated in OECD conducting a series of missions to all CEFTA Parties in September and October 2011. The missions were conducted in order to clarify, collect additional data and documents on reported NTBs and processes to resolve them as well as to hold review meetings with government officials, independent experts and private sector representatives.

A monitoring and evaluation mechanism to measure members' utilisation of the mechanism is in place. Utilisation of the mechanism is measured by the regionally agreed minimum average number of notifications per period (European Union, 2012).

2.2.4 Borderless Alliance reporting mechanism in the Economic Commission for West African States (ECOWAS) region

In the ECOWAS region, Borderless Alliance, a public-private sector advocacy platform has border information centres (BIC) responsible for receiving complaints and assisting complainants, a database of NTBs experienced in the region and a hotline for drivers to report complaints. Stakeholders submit complaints to BIC offices by telephone, email or through NTB workshops organised by the Secretariat (Borderless Alliance, 2014). The BICs compile reports on NTBs experienced by stakeholders and submit to Borderless Alliance head office in Accra for onward transmission to ECOWAS governments and ECOWAS secretariat for their consideration and removal.

In September 2014, Borderless Alliance, a private sector association, introduced an online reporting and monitoring mechanism www.tradebarrierswa.org, which was developed on the same template as the NTB-RMM, (Borderless Alliance, 2015). The main difference between the Borderless alliance mechanism and NTB-RMM is that the West African mechanism does not have mandate to resolve identified NTBs. WWW.tradebarrierswa.org is a watch dog and tool for lobbying West African governments to remove NTBs, whereas the NTB-RMM is a public sector initiative which has mandate to remove reported NTBs through the policy structures at national and regional levels.

2.2.5 NTBs reporting, monitoring and resolution mechanisms in the COMESA, EAC and SADC

COMESA, EAC and SADC countries are implementing offline and online NTBs reporting mechanisms developed as far back as 2004 at REC and national levels. Imani Development, in its report on NTB action plans (Imani Development, 2007) provides snapshot reviews of such mechanisms in the RECs. Further, Kirk, (2010) examined the COMESA, SADC and the elaborate EAC Time bound NTBs eliminating mechanism for managing short term NTMs and provides insight into the functionality of the offline mechanisms (Kirk, 2010).

He finds that the COMESA-SADC approach had a 'focus on implementing an effective monitoring and reporting system that can also be accessed through the internet' and observes that EAC would 'need to examine the link between a monitoring and reporting system and a mechanism for resolving cross-border NTBs and ensuring compliance'. He therefore recommended that EAC considered adopting the COMESA and SADC NTBs online reporting mechanism on the basis of its attributes on flexible reporting tools and established procedures for member states to engage one another in managing NTBs (Kirk, 2010). The two reporting mechanisms operating in the tripartite countries are explained:

a) Offline mechanisms

Reports from the tripartite process indicate that the offline reporting tools available to the public include; reporting forms, faxing facility to focal points and making telephone calls to NMC members who include focal points (COMESA- EAC- SADC, 2010). This procedure of reporting through the above tools was clarified by Osoro (2013) who explained that stakeholders channel complaints direct to line ministries, national trade facilitation or/trade policy committees and/or REC Secretariats who compiled them into NTBs elimination matrices for consideration at scheduled meetings (Osoro, Personal Interview, 2013).

b) Online Mechanisms for reporting NTBs

At the time of this study, there were three web based NTBs reporting and monitoring mechanisms in the tripartite region which are described in table 3:

- i. The tripartite NTB-RMM.
- ii. The TCCIA NTBs reporting and monitoring mechanism.
- iii. The Rwanda NMC mechanism.

TABLE 3: ONLINE NTBS REPORTING, MONITORING & ELIMINATING MECHANISMS

Mechanism	Address	Functionality
Online Reporting , Monitoring & Eliminating mechanism	www.tradebarriers.org	It enables online reporting through the internet. It has SMS reporting mechanism for stakeholders with no or limited access to internet for example traders and truck drivers. Users pay for SMS including when they are roaming.
NTB SMS reporting and online mechanism	www.tccia.com/ntb	It uses a short code SMS and method for reporting NTBs via cell phone as well as internet based online reporting function. The SMS reporting is free of charge to users.
Rwanda NMC website	www.nmcwanda.org .	Stakeholders register NTBs online.

Source: Web-based search of available Online NTBs Reporting, Monitoring & Eliminating Mechanisms.

The three reporting mechanisms are further explored to establish their functionality.

i) The tripartite NTB-RMM.

Evidence from the NTBs website shows that the NTB-RMM successfully registered 468 complaints between 2007 and December 2013 (TradeMark Southern Africa, 2013). The NTB-RMM allows for a diversity of stakeholders to submit complaints through the website and sending short messages. It also accepts complaints transmitted by the focal points on behalf of stakeholders. Focal points receive complaints through reporting forms, telephone, fax and emails from the public and report on their behalf in the NTB-RMM. The public could also contact focal points to submit complaints as well as send direct enquiries relating to reported NTBs through country unique email addresses available on the public window in www.tradebarriers.org. (TradeMark Southern Africa, 2013).

The mechanism only accepts NTBs that have been screened using the descriptions stipulated in the NTB categories in the system. Screening of incoming complaints is done by the system administrator and focal points. The categories, classifications and examples of NTBs assist stakeholders to make correct entries into the system (TradeMark Southern Africa, 2013). Once a complaint is lodged, the system administrator, assisted by focal points where necessary, verifies its authenticity, and, if satisfied, uploads it as an NTB. The administrator can communicate with the complainant directly if there is a need for further clarification regarding a complaint. The same procedure happens for SMS complaints.

Kirk (2010) in his report wherein he explores suitable mechanism for eliminating NTBs for the EAC customs union recommended that 'the EAC coordinate with the COMESA-SADC approach with a focus on implementing an effective monitoring and reporting system that can also be accessed through the internet'. He further observed that, back in 2010, there were developments in SADC seeking to 'integrate the online NTB reporting mechanism to the newly established SADC Monitoring and Compliance Mechanism through combining monitoring, compliance (encompassing consultation, mediation and dispute settlement) and surveillance and outreach' using the existing SADC NTB structures. However, in this report, Kirk (2010) observed that the online reporting method lacked capacity to screen complaints as they came into the system thereby compromising its efficiency in that regard. He therefore suggested that, before a barrier could be posted onto the mechanism, due diligence was necessary to determine authenticity of a barrier, verify its existence and determine whether the measures being notified were actually trade restricting (Kirk, 2010). The mechanism was then overhauled in 2010 and it now incorporates elaborate screening processes before a barrier can be posted online. The mechanism was reinforced by establishing institutional structures in the form of National monitoring committees who are mandated to process and resolve reported NTBs. (COMESA-EAC-SADC, 2010)

Gilson and Charalambides (2011) reviewed and provided a summary of all new studies that identified restrictive NTBs in the southern African region. The study illustrates some of the cost structures of specific NTBs experienced by private companies moving goods across borders. In this study, they find that 'the publication of NTBs under the auspices of the well-established NTB-RMM had been a major step forward' even though the mechanism was simply recording NTBs rather than addressing them. They therefore

likened the NTB-RMM to a 'post box' where private sector deposited their complaints. There had been very slow progress in resolving the barriers once they had been reported into the mechanism (Gilson I, & Charalambides N, 2011).

Gilson & Charalambides (2011) further observe inefficiency of the mechanism in as far as accuracy of NTB data was concerned, which was caused by absence of a screening procedure that led to misidentification of complaints. Also, there were difficulties with the classification of the NTBs in its form prior to 2010. They observed that some of the NTBs could be 'misidentified', a fact corroborated by the SADC Sub Committee on Trade Facilitation (SCTF) in one of their records. They concluded that, instead of being a post box for complaints, the NTB-RMM needed to facilitate resolution of NTBs. Where offending parties did not right their wrongs, there was need to develop a framework to enforce compliance.

The mid-term review of TMSA programme, TMSA review (2011) assessed the NTB-RMM as best practice due to, inter alia, its transparency in reporting and general management of NTBs in the tripartite region (TMSA, 2011).

In a recent case study by Chikura (2013) the NTB mechanism was analysed to establish its sufficiency to deal with challenges faced by COMESA, EAC and SADC against the backdrop of 'de facto flexible legal arrangements' in place in the RECs to deal with NTBs. The study suggested that the RECs did not have effective legal provisions to handle NTBs. Chikura critiques the significance and usefulness of the NTBs reporting and monitoring mechanism to the private sector. The author determined that the mechanism used an identification approach where stakeholders only report barriers experienced as opposed to an issues-based approach where the policies or regulations or circumstances causing the NTBs are reviewed when recording NTBs. However, recording NTBs and utilizing a consultative process to address NTBs the mechanism contributes towards 'main streaming private sector participation in the regional integration processes. Under the national NTB structures the private sector focal point co-chairs the National Monitoring Committee (NMC) meetings, a key national institution responsible for managing and resolving reported NTBs in the online mechanism. Chikura (2013) also finds that RECs did not at that point have administrative control over the mechanism as it was administered by the then Trade Mark Southern Africa (TMSA). The three REC Secretariats provided a 'de facto' institutional support, with national government focal points providing the domestic contact needed to manage processing and resolution of NTBs in the mechanism.

Chikura (2013) also compared the online mechanism with the proposed WTO NTB horizontal mechanism and found similarities between the two in that, under the two mechanisms, NTBs were dealt with through a 'conciliatory process and non-adjudicatory process' whereby members adopt amicable processes for resolving NTBs rather than resorting to Dispute settlement mechanisms provided for in the treaties. With regards to enforcement issues, Chikura (2013) observed that the online mechanism's

'sustainability and longevity seemed guaranteed through its codification' in the draft NTBs Annex 3 being negotiated under the Tripartite Free trade area agreement (TFTA).

Chikura (2013) therefore concluded that, even though the mechanism had shortcomings, like the inadequacy in facilitating reporting, its 'soft approach to NTB reduction', and inaccuracy of information in the database, 'the NTB Mechanism's ultimate success will be judged on whether it deals with the regional NTB challenge, as well as strengthens the rule of law'. She observed that most of this criticism promoted constructive engagement that contributed towards possible improvement of the mechanisms. The study further concludes that, while the mechanism may have serious shortcomings especially the absence of legal enforcement mechanism, it is actually a useful mechanism that enables transparency on reporting NTBs (Chikura C, 2013).

This is supported by WYG International (2013) who, in their midterm reviews of the programmes found that the private sector had produced evidence that they benefitted from the mechanism in as far as identifying and resolving some of the NTBs that concerned them and therefore strongly supported its continued support. WYG (2013) recommended to the Department of Foreign and international Trade (United Kingdom government) that the NTB-RMM must be given priority for further support beyond TMSA following submissions by the private sector (WYG International Limited, 2013). This recommendation supports the findings that the mechanism is a useful tool in identifying NTBs and that it enables efficient managing of NTBs in the region.

According to reports from tripartite meetings, its potential to upgrade into an integrated NTBs mechanism was already under consideration for immediate implementation (COMESA- EAC- SADC, 2013) . At their meeting launching the SMS reporting tool in Lusaka in April 2013, member states agreed to establish national online reporting mechanisms linked to the tripartite to enhance identification of NTBs at the tripartite level. This was upon realization that the mechanism did not receive most of the NTBs encountered as national policies encouraged use of offline mechanisms (COMESA- EAC- SADC, 2013).

There was evidence that in 2010, the mechanism had been upgraded to incorporate built in reporting forms, followed by the introduction of an SMS reporting tool in 2013 to enable a larger pool of stakeholders with no access to internet to report NTBs (COMESA- EAC- SADC, 2013). All SMS complaints, including correspondence with complainant are processed in the online mechanism. Other reporting tools available to the public include, filling in hard copy reporting forms which they forward to focal points and telephonic complaints to NMC members including focal points (COMESA- EAC- SADC, 2010) who then submit the complaints to the online system (COMESA- EAC- SADC, 2013).

The findings however, show that all NTBs that are purely administrative and operational have been resolved quickly and only those of regulatory and policy nature take a long time to resolve (TradeMark Southern Africa, 2013).

ii) Rwanda reporting Mechanism

The Rwanda NMC website has an online facility to assist members to report any NTBs which is hosted on the www.nmcrwanda.org link. It also provides information on NTBs and any other related information that is deemed important to NMC members. Like the NTB-RMM, the Rwanda mechanism is a web based online reporting mechanism enabling stakeholders to report NTBs encountered through a website. However, the Rwanda focal point observed that not a single online complaint had been received in the mechanism by December 2013 (Rwanda NMC, 2012).

iii) TCCIA Mechanism

Tanzania's 'NTBs SMS and Online Reporting and Monitoring Mechanism', developed by the Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA), is hosted on the www.tccia.com/ntb link (TCCIA, 2011). It is the closest mechanism to the NTB-RMM in terms of functionality and is a short messaging and online reporting and monitoring mechanism. According to TCCIA, the mechanism helps local business communities to report and monitor NTBs using their cellphones (TCCIA , 2013). According to Trade-Mark East Africa (TMEA), the TCCIA online reporting and monitoring mechanism is a simplified, real-time mechanism enabling national stakeholders to report using a toll free short code line, use the cell phone to enquire on progress with regards processing of their complaints and receive status reports of their complaints on the cell phone (TMEA, 2012). The main features and functionality of the NTBs SMS mechanism were;

- i. Stakeholders are able to send SMS message to NTB coordinator through use of a short code 15539 who reviews reported case and refers for further processing other stakeholders through his/her cell phone.
- ii. Facility for reporter to track complaint through a tracking code issued by mechanism.
- iii. Mechanism sends status reports to complainant.
- iv. An optional online functionality available to those with internet access to report direct to www.tccia.com/ntb.
- v. Database of all reported cases, messages and status reports on the processes and resolution of reported cases.

The following benefits of the mechanism have been identified:

- a. It saves business community time in reporting, monitoring and following up reported NTBs,
- b. Traders are able to track the progress of reported cases by enquiring through SMS,

- c. It enables responsible ministries and private sector organisations and agencies to get information on specific NTBs on time thereby easing the process of elimination,
- d. Mechanism reduces bureaucratic procedures in reporting the NTBs to responsible authorities,
- e. It gives opportunity to stakeholders to login and interact and ensures uniformity in information dissemination to stakeholders ,
- f. It reduces cost of reporting , monitoring and eliminating NTBs and
- g. It facilitates advocacy by stakeholders to enhance elimination of NTBs in that country.

This mechanism can be said to be a subset of the NTB-RMM. A recommendation to explore and link this mechanism and others to be developed at national level to the NTB–RMM has been adopted by tripartite countries (COMESA-EAC-SADC, 2013).

It can be observed that the TCCIA SMS reporting and monitoring tool is found to be a more advanced and simplified mechanism because of its added advantage that allows stakeholders to follow up and monitor process of resolution via their phones (TMEA, 2012). Unlike the TCCIA, Tripartite SMS reporting only receives and processes reported NTBs through the website. It does not offer the monitoring functionality (Trade Mark Southern Africa, 2013). The TCCIA on the other hand, enables processing and monitoring through the SMS system. According to the findings, a complainant can follow up to establish progress with regards status of a NTB they reported via the SMS and get feedback via the SMS (TCCIA, 2011). It gives a new dimension to SMS reporting and informs the current Tripartite SMS reporting mechanism on possible options to better service the targeted clientele.

2.3 NTBs resolution **mechanisms in multilateral and regional RTAs.**

i) WTO Disputes resolution Mechanism

The WTO NTBs resolution is a notification mechanism that resorts to the agreement on the understanding on rules and procedures governing settlement of disputes. There are currently ‘two broad mechanisms for dealing with NTBs; i) the Committees under each WTO Agreement which oversee the implementation of Members’ obligations under the relevant Agreement; (ii) the Understanding on Rules and Procedures Governing the Settlement of Disputes, (commonly referred to as the Dispute Settlement Understanding or DSU), which provides for resolution of trade disputes’. The NAMA II group raised concern that the ‘Committee system operated ‘primarily on the principle of ‘notifications’ of NTBs and that, the notification only played a role as an ‘early warning system’, which did not provide an ‘efficient mechanism for resolving problems arising from the NTB’.

NTBs are only referred for dispute resolution when there is a contestation by a member(s). The DSU addresses disputes that arise among member states. Cases brought for settlement can include disputes that arise due to

measures which can be seen as barriers to trade within the WTO context. The DSU is considered to be predictable, enforceable and the most efficient mechanism under international legal regimes (WTO, 2006). However it has been observed that the DSU involve lengthy procedures and therefore does not address problems faced by entrepreneurs in a timely manner. It takes at least 2 years for outcomes to be reached (WTO, 2006).

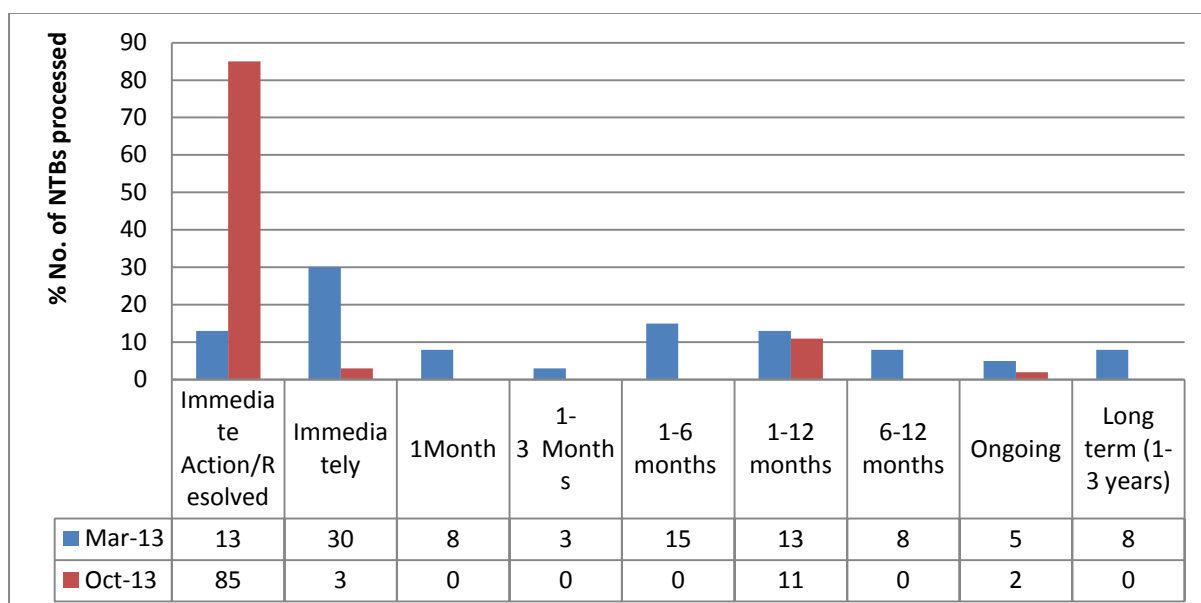
The NAMA group observed that the DSU could have adverse effects to business and could actually cause instability in new exporting firms in developing countries forcing RTAs to explore more advanced initiatives (WTO, 2006). The proposed NAMA II mechanism outlined in box 3 is structured to mitigate the challenges posed by the DSU, in that it would provide for timely and cost effective resolution of NTBs in the NAMA negotiations. Mohun (2010) observed that the horizontal mechanism would allow WTO members to raise concerns about NTBs in an informal process similar to mediation. Under this proposal, affected members can approach the DSU at any stage of the resolution process. According to Chikura, 'the so-called horizontal mechanism seeks to support the rules through promoting mutually agreed outcomes to NTBs, without necessarily having to resort to dispute settlement'. In this case, the litigation and facilitative approaches are complementary (Chikura C, 2013).

ii) NTB resolution under the offline mechanisms of COMESA, EAC and SADC

The offline mechanisms for resolving NTBs had been in existence well before the online mechanism and they continue to receive, process and resolve NTBs. These are established trade facilitation committees in COMESA, EAC and SADC countries as is the case for countries like Zambia (Ministry of Trade and Industry, Zambia, 2013) and also the regional institutions implementing regional NTBs eliminating programmes in accordance with treaty provisions. There is evidence that the RECs use the offline mechanism to facilitate processing and resolution of NTBs concerning their member's (COMESA Secretariat, 2011).

According to Viljoen (2011) NTB disputes within COMESA, EAC and SADC are addressed under the REC treaties legal framework for the settlement of disputes (Viljoen, 2011). However, COMESA (COMESA Secretariat, 2011) and EAC (EAC Secretariat, 2013) have developed regulations for enforcement of commitments to remove reported NTBs by their members at the time such regulations would come into force (COMESA Secretariat, 2011). Currently the EAC is using the time bound mechanism to resolve NTBs through regional NTBs Ministerial Forum (EAC Secretariat, 2011). Figure 4 shows the performance of the EAC time bound mechanism with respect to resolving reported NTBs.

FIGURE 4: Progress on processing and resolution of NTBs under the EAC Time Bound Mechanism



Source: (EAC Secretariat, 2012)

The high percentage (56%) of resolved NTBs in the third quarter is attributed to NTBs resolved through the NTB-RMM (Trade Mark Southern Africa, 2013)

There is evidence of an enhanced resolution rate in the EAC mechanism where dedicated high level institutions had been established specifically to deal with NTBs. All NTBs in the EAC region identified from both offline and NTB –RMM are considered by the ministerial forum (EAC Secretariat, 2013). Reports of the COMESA policy meetings revealed that COMESA had also developed draft rules and guidelines to enhance processing and resolution of NTBs. Further, negotiations for a legal enforcement framework had reached advanced stages (COMESA Secretariat, 2012).

iii) The NTB-RMM resolution mechanism

The NTB –RMM resolved 81% of the total reported NTBs between January 2008 and December 2014 (Trade Mark Southern Africa, 2013). However, despite the impressive resolution status, the mechanism has come under scrutiny as to its effectiveness in resolving reported NTBs. This is revealed in the AECOM International Development, 2012 audit report on the implementation of the SADC Protocol on Trade to establish compliance to commitments relating to, among others, status of tariff preferences and elimination of NTBs by SADC member states. AECOM (2012) audit observed that ‘NTBs had been widely cited as a significant constraint to intra-SADC trade which had increased in importance as tariff barriers declined’ (AECOM International Development, 2012). As part of the 2012 audit, Southern Africa Trade Hub (SATH) followed up on documentation for the “resolved” complaints in the online reporting system and also ‘surveyed Member States during the course of the country visits to ascertain what measures or institutions are addressing NTBs nationally’.

The audit finds that in 2011, 'the system has undergone substantial changes and actually enabled resolution of 69 percent of the 329 reported complaints'. However, the report raises 'some concerns regarding the status/nature of the resolutions' particularly on the NTBs of a policy nature which it considered not fully resolved as there was no documentation or evidence to show that these had actually been resolved.

The audit observation was that most of these complaints were 'subjective or too vague to address directly' (AECOM International Development, 2012), therefore raising red flag on the suitability of the adapted categorisation currently in the mechanism. A verifiable standard of categorisation was therefore necessary to facilitate definitive resolution of the NTBs. The audit highlighted that the listing of complaints and the notes on the status of resolutions provided useful information required to improve the reporting mechanism. More significantly was that, the mechanism database identified and brought to the attention of member states critical gaps in overall trade facilitation issues for example port congestion, lengthy customs procedures, types and levels of transit fees charged in transit routes to name a few. With these observations, the audit concludes that 'it had been substantially improved in terms of implementation in the course of the 2010 as compared to 2009 and prior periods going back to year 2008.

According to Kirk (2010) policy and operational challenges in the form of non-working NTB structures, lack of capacity and resources to implement the NTBs resolution decisions, have been identified as impacting on the effectiveness of the mechanisms implemented by COMESA, EAC and SADC countries (Kirk, 2010). Other researchers identify lack of a rules based regulatory framework as a major setback of the NTB-RMM (Chikura C, 2013).

Available reports also point to non-compliance with regards to implementation of agreed policy positions on NTBs eliminating mechanisms and programmes within the RECs (Imani Development, 2009). According to Viljoen (2011) resolution of reported NTBs in the RECs is governed by the REC specific treaty provisions which are outlined in the specific commitments by member states to eliminate NTBs. (Viljoen, 2011). In this working paper on NTBs affecting trade in the COMESA, EAC and SADC that was produced for the Trade Law Center of Southern Africa (Tralac), Viljoen evaluated the legal framework governing NTBs in the tripartite countries and the common types of NTBs affecting the region. She made an assessment to establish if there is legal framework to support resolution as well as practical measures to ensure that these NTBs are addressed effectively. She also finds that NTBs were being managed through the online reporting, monitoring and eliminating mechanism which had recorded significant successes in resolving various NTBs reported by tripartite countries. Viljoen concludes that efficient utilisation of the mechanism could actually reduce transit costs in the main transit corridors in the tripartite countries (Viljoen, 2011).

The REC policy structures are therefore technically responsible for resolution of NTBs identified through NTB-RMM hence their relevance to the NTB-RMM resolution process. It is therefore important for RECs to consider dedicated NTB institutional arrangements for resolution of NTB reported in the NTB-RMM.

As pointed out by Chikura (2013) there is no evidence of existence of a mechanism to ensure that a country found to have imposed a NTB is compelled to remove that barrier. An enforcement mechanism in the form of a legal framework agreed by the parties will compel countries imposing NTBs to comply with an agreed resolution status or to take corrective action to remove the NTB. Enforcement and prioritization of NTBs is key to effectiveness of the mechanism to eliminate NTBs. AECOM (2013) concludes that, although the mechanism provides a useful mechanism for highlighting new NTBs, it lacks a ‘mechanistic focus or prioritization of NTBs’ as all NTBs are ‘equally weighted’. Prioritization would have possibly influenced the establishment of an enforcement mechanism by now.

To expedite resolution processes, the mechanism contained a comprehensive database of NTBs, and non-tariff measures in the region as well as database of addresses and emails of all ministries responsible for handling NTBs and Private Sector focal points in the 26 countries enabling real time communication. The website also allows access into the real-time database, regional and international NTB news and related information (Trade Mark Southern Africa, 2013).

Furthermore, 23 countries have established NTB institutions which include public and private sector focal points appointed from ministries responsible for trade, chambers of commerce and NMC members appointed by the NMC committee and key private sector associations. These are the core structures of the NTB-RMM whose key role is to ensure effectiveness of the mechanism to resolve NTBs (COMESA-EAC-SADC, 2010). Their roles are described in table 4.

TABLE 4: Roles and responsibilities of structures managing the NTBs reporting and monitoring mechanism

Structure	Role
Private sector Focal Points ⁹	<ul style="list-style-type: none"> -Reporting NTBs. Monitoring resolution process; -Influence policy to ensure elimination; -Advocate for removal of NTBs; -Appointed Mechanism administrator to online mechanism. They process reported NTBs in the online mechanism.
Public Sector Focal Points ¹⁰	<ul style="list-style-type: none"> -Coordinating the implementation of the mechanism for the elimination of NTBs; -Providing secretariat services to the National Monitoring Committee (NMC), -Facilitating the immediate removal of NTBs and reporting on their elimination; -Tracking and monitoring NTBs; through utilization of the reporting tools; -Providing clear guidelines to the business community on the areas identified as NTBs; -Sensitizing stakeholders on the monitoring and evaluation mechanism and NTBS reporting tools; -Transmitting to the Secretariat copies of the forms reporting any Non- Tariff Barriers -Providing assistance to the Secretariat (NTBs; Unit)/Facilitator in the process of resolving NTBS as necessary
National Monitoring Committee ¹¹	<ul style="list-style-type: none"> -Identifying and monitoring NTBs; -Defining the process of elimination;

⁹Representatives of Chambers of Commerce appointed by Ministries responsible for trade.

¹⁰Representatives of Ministries responsible for Trade.

	<ul style="list-style-type: none"> -Confirming deadlines for action; -Agreeing on recourse due to non-action; -Defining the mandate and responsibilities of NTB institutional structures; and -Where a reported measure has not been addressed and has been identified as an NTB the NMC shall proceed to include it in the Time Bound Elimination Matrix for further action/resolution as provided for under Article 10 of this Annex.
REC NTB Units	<ul style="list-style-type: none"> -General oversight of the management and administration of the mechanism -Facilitate development and implementation of Regional NTBs policy -REC NTBs focal points who process and resolve NTBs -Overall coordinator

Source: Annex 3 of Draft Trade Agreement on NTBs

The NTB-RMM has a built-in highly interactive platform that enables access to 5 focal points in each of the 26 countries who are responsible for day to day management of the complaints submitted into the mechanism. The focal points are drawn from key ministries, and institutions (including customs administrations, transporters, SMEs)

Currently, resolution of NTBs in the mechanism is done through real time processing by focal points and consultative process among NMC members and other NTB structures in member states. Data from the system shows that there are long standing unresolved NTBs in the mechanism (COMESA-EAC-SADC, 2010) against the backdrop of a high success rate of 80.6% resolutions as at December 2013 (TradeMark Southern Africa, 2013). The mechanism shows that NTBs have stayed unresolved for periods as long as 2 454 days without being resolved.

Gilson and Charalambides (2011) while acknowledging the usefulness of the mechanism, raise concerns about its effectiveness to resolve reported NTBs. They observe that, unlike other similar mechanism, (e.g. the EU mechanism) the NTB-RMM did not have a legally binding mechanism with sanctions to resolve NTBs but instead, relied on ineffective ‘moral suasion approach to removing NTBs’. They go on to highlight the inadequacy of NTB-RMM in that it lacked mechanism for ensuring that countries followed a process of justifying their NTBs or committing to remove or reform them once a barrier had been notified (Gilson I, & Charalambides N, 2011). They suggest that the mechanism should have a clearly defined enforcement mechanism with strict time limits for action and sanctions for non-compliance, instead of the current situation where ‘each country is effectively responsible for voluntarily removing or reforming their NTBs.

In her case study of the mechanism, Chikura (2013) alludes to the positive growth path of the mechanism but also concludes that the success of the mechanism can only be measured by its ability to ‘*strengthen the rule of law*’ in resolving NTBs (Chikura, 2013). Chikura (2013) alludes to a need for a legal framework for resolving identified NTBs. This conclusion agreed with Gilson and Charalambides whose analysis of the processes of addressing reported individual cases revealed the void created by the absence of ‘*clearly defined enforcement*

¹¹ NMC comprise all government and private sector agencies responsible for creating , affected and or are impacted by NTBs .These are senior members with decision making authority to ensure that reported NTBs are effectively managed.

mechanism' with strict action plans for removing reported barriers (Gilson I, & Charalambides N, 2011). Chikura (2013) also draws parallels between the NTB Mechanism and the facilitative structure proposed by NAMA group that 'NTBs be dealt with through a conciliatory and non-adjudicatory mechanism'.

The void created by the absence of enforcement mechanisms in the online system, should be addressed when the TFTA comes into force. Annex 3 of the draft TFTA provides for a built in NTBs enforcement mechanism under the main FTA agreement (COMESA-EAC-SADC, 2013). Effective resolution is enabled by effective monitoring by all interested stakeholders to the particular barriers.

2.4 NTBs monitoring **mechanisms in multilateral and regional trading arrangements**

Monitoring plays a key role in managing NTBs and it would seem that all the multilateral and regional NTBs mechanisms contain built in monitoring mechanisms. Key indicators that enable monitoring include the type of barrier, affected product and countries affected by that barrier. In the study 'evaluating impediments to intra- regional trade in Sub-Saharan Africa', Keane et al. (2010) assessed the impact of NTBs in SADC region. The study utilised, among other resources, NTBs data in the NTB-RMM database (Keane J, Cali M, Kennan J, 2010). The study finds that the NTB data obtained from NTB-RMM had limitations as it lacked information on critical indicators like product type which is important to determining impacts on specific industry sectors. Absence of such critical data hindered policy makers' efforts to respond to private sector concerns and policy improvements that may arise from needs identified from reported NTBs. Such data limitations could have negative impact on monitoring elimination of NTBs too. The study therefore concluded that the 'coding of the new tripartite NTB monitoring database' must be improved to show categories 'by sector and product, including indicators related to the severity of impact for importers and exporters in terms of time, cost and related trade impacts' (Keane J, Cali M, Kennan J, 2010).

Under the NTB-RMM, monitoring is a process by which stakeholders follow up to check how their complaints have been processed, resolved and gives feedback. Stakeholders also provide additional detail required for their complaints to be addressed. Policy makers monitor complaints submitted into the mechanism by private sector to establish problem areas and take corrective measures to improve operating environment and facilitate smooth movement of goods across borders (COMESA-EAC-SADC, 2010). The comprehensive multilateral mechanisms like the EU notification mechanisms use well-structured and institutionalized notification and monitoring procedures (European Commission, 2014).

Monitoring under the NTB-RMM is done online by all stakeholders. A possible 130 Focal points use the system to track reported complaints, communicate vital updates and resolution statuses, exchange notes as well as convey reports to their counterparts on a daily basis¹². Each time there is activity a real-time notification is sent

¹² Focal points are expected to visit the mechanism at least once every day or each time they get notification of activity in the mechanism.

to the relevant focal points. To facilitate such monitoring, the system generates reports for use by focal points¹³, it automatically conveys all updates to complainants through its confidential user database, and produces progress and status reports for the public. On the other hand, the public can follow progress on status of processing and or resolution and use online system to provide feedback. Furthermore, system issues a weekly digest addressed to specific focal points¹⁴ detailing all outstanding NTBs, reflecting the age of complaint. Reminders regarding feedback reports are also disseminated by the system administrator.

With regards to TCCIA NTB and SMS reporting mechanism, stakeholders are able to follow up and monitor the resolution process of their complaints using their cell phones as well as the website. The Rwanda mechanism uses online monitoring similar to the online monitoring under the NTB-RMM.

2.5 Notable achievements the NTB-RMM

Reports from the tripartite meetings indicated that RECs have improved on the implementation of measures to increase the efficiency of the mechanism. At least 22 countries have complied with requirements necessary to manage the mechanism (COMESA- EAC- SADC, 2013) and these are:

- i. Twenty two countries¹⁵ have designating public and private sector focal points and established national monitoring committees,
- ii. Five countries¹⁶ have developed national NTBs eliminating strategies,
- iii. Focal points from 16 Countries¹⁷ are using online system to process and resolved NTBs and
- iv. All countries had conducted at least two awareness creation workshops

Members reported that government and private sector focal points had been trained to assume responsibility for broad-based use of the NTB system. Tripartite meetings records show that 20 of the 22 participating countries now have functional NTB committees. Training has been provided to private and public sector focal points in 21 countries and 16 countries are able to process complaints online (COMESA- EAC- SADC, 2010). Chikura (2013) alludes to the positive contribution by the mechanism to NTBs management in the region. She notes that it has gained political will that enabled streamlining of bureaucratic processes with regards to managing NTBs in the region. On a balancing scale, its short comings are viewed more as pointers to its sustainability when fully operational as the mechanism gets refined (Chikura, 2013).

¹³ Five focal points in each country, and one each at REC secretariats plus system administrator

¹⁴ Each focal point receives reminder of NTBs that needs to be attended to specifying the age of NTBs

¹⁵ Exceptions are Djibouti; Eretria; Sudan; Libya

¹⁶ Botswana; Malawi; Uganda; Zambia; Zimbabwe

¹⁷ Botswana; Burundi; Egypt; Kenya; Lesotho; Madagascar; Malawi; Mauritius; Mozambique; Namibia; Rwanda; South Africa; Swaziland; Tanzania; Uganda; Zambia; Zimbabwe

2.6 Summary

This chapter analyses existing literature on NTBs reporting, monitoring, and elimination mechanism. The analysis focused on the main elements of reporting, monitoring and resolution of NTBs through the online mechanism. Policies governing the reporting, monitoring resolution of NTBs were identified. The types of offline and online mechanism for the elimination of NTBs operating at multilateral, regional and national levels were also described. It shows that there are basically two types of NTB mechanisms implemented at multilateral, regional and national levels these being the WTO , EU and OECD notification mechanism for NTBs and the reporting and monitoring mechanisms being implemented by the tripartite RECs and other regional organisations such as ECOWAS, COMESA, EAC and SADC. The studied materials reflect success stories particularly with the notification mechanisms at WTO, EU and OECD which are procedural and systematic and are supported by well-established institutions as compared to the regional reporting mechanisms that can be said to be in their development stages. The chapter reveals the short comings of the NTB-RMM particularly with regards to data inadequacies, poor categorisation which impact on monitoring and policy improvements in the tripartite countries in meeting the requirement of traders. However, the literature is highly supportive of the NTB-RMM and offers suggestions in the critical area of enforcement in line with international practice to ensure compliance. Areas of improvement can be deduced form the reviewed literature.

CHAPTER III

AIM & OBJECTIVES OF THE STUDY

The aim of the study is to establish how the tripartite NTBs reporting and monitoring mechanism has enabled stakeholders to report, monitor and resolve NTBs and make recommendations for improvements to the mechanism. The specific objectives of the research are:

- i. To establish the efficacy of the NTB-RMM online reporting, monitoring and eliminating mechanism and its usefulness in removing non-tariff barriers in the COMESA, EAC and SADC countries.
- ii. To assess the capacity of the NTB-RMM online reporting, monitoring and eliminating mechanism to address all types of non-tariff barriers registered in the system.
- iii. To derive recommendations that will contribute to improving management operations of the NTB-RMM online reporting, monitoring and eliminating mechanism in the COMESA, EAC and SADC countries.

The research was carried out in 22 COMESA, EAC and SADC countries covering the period 2010 to 2013.

3.1 Research Design

This research is a case-study of the NTB-RMM online reporting, monitoring and eliminating mechanism currently functional in the COMESA, EAC and SADC countries. It is a semi-quantitative analysis of various elements of the system as well as a qualitative description of the status of the various functions of the mechanism using the following indicators;

- i. Reporting.
- ii. Monitoring.
- iii. Resolution.

Analysis of data was made from the online mechanism itself and the data was presented in the form of tables, graphs, and charts.

Choice of research design

The researcher used a descriptive survey research design, the choice of which was influenced by the nature of the NTB-RMM online reporting, monitoring and eliminating mechanism, the availability of information and data, financial resources, technical understanding and the background of the researcher. The extraction and analysis of data from the website and a description of trends therein was done without influencing the conduct of the subjects. Use of desk research, questionnaires and interviews was employed in the research.

3.2 Research Methodology

In this research, data was gathered by means of a survey on the selected target area and subjects in COMESA, EAC and SADC countries. The research was both quantitative and qualitative. The research instruments used were questionnaires, interviews and statistical exploration of data stored in the NTB-RMM online reporting, monitoring and eliminating system.

3.3 Sampling

The study was limited to following research subjects in the COMESA-EAC and SADC countries;

- i. REC NTBs focal points
- ii. Public sector NTBs focal points in the ministries responsible for trade
- iii. Private sector focal points representing appointed chambers of Commerce and Industry
- iv. National and regional transport associations, regional cross-border traders associations and clearing and forwarding agents

These were selected as appropriate research subjects because they are key users of the system and are also responsible for the reporting, monitoring and resolution of NTBs using the NTB-RMM online reporting, mechanism. The above list incorporates all the stakeholders of the online reporting mechanism. However, the general public, though they are active users of the system, were excluded as research subjects because they are only responsible for reporting of NTBs in the system and this function is carried out on their behalf by private sector focal points as well as national and regional transport associations, regional cross-border traders associations and clearing and forwarding agents. An additional exclusion factor was the level of activity on the online mechanism, with high level users being selected. The high level users presented a good sample to reach meaningful conclusions. The public users are the low level users. Ideally, public users are expected to be more however, the practice under the mechanism is that public channel their complaints to Focal points who then log in complaints into the system on their behalf. This practice is attributed to the fact that the system is relatively new.

The sample size was limited to the focal points that are the mechanism administrators in the 26 countries, Chambers of Commerce and Industry, trade associations and key institutions whose members are impacted by and those responsible for imposing NTBs.

A targeted sampling approach was employed to derive two sub-sets of study participants, from which data was collected. In the first sub-set of participants, a total of 49 participants were identified, being one participant each in the private and public sector respectively, from 23 COMESA, EAC and SADC countries and one each from the REC secretariats. The second sub-set of participants was drawn from active industry and trade associations representing the private sector within the region at national and/or regional level. Thus a total of

15 participants were selected into the second sub-set. Although a fairly large sample would be appropriate and more amenable to provide an accurate representation of the whole private sector population with the minimum of bias, it was not possible to take all private sector stakeholders in 26 countries on board due to resource constraints.

3.4 Research instruments

The online reporting mechanism, questionnaires and oral interviews were the research instruments that were used to collect data. Primary data necessary for the study was obtained from the online mechanism's website while the complimentary data was obtained from the questionnaire. Additional data, particularly literature related to the research, was collected by means of a desk research.

i) Collection of data from the online reporting mechanism's website

Data was extracted from the online reporting mechanism, hosted on the website www.tradebarriers.org. Statistics of the following categories of data were obtained from the website;

- i. Number of NTBs reported
- ii. Types of NTBs reported
- iii. No. and type of NTBs resolved
- iv. Resolution time per NTB
- v. No. of focal points using the system to process NTBs
- vi. The activities of the focal points in the processing of NTBs
- vii. Age analysis of unresolved NTBs
- viii. Accessibility of the system by users indicated by the number of hits

This was followed by an analysis of activities of the NTB focal points in managing and administering the mechanism. A detailed analysis of the extent of utilization of the mechanism by users and people responsible for managing the mechanism was done to show how the NTB structures have utilised the mechanism to manage NTBs in the region identified any shortcomings and useful improvements that add value to the future management needs contributing to improvement in its functionality. In this research, the researcher made overt observation of subjects as it was critical to ensure credibility and acceptance by the subjects who in this case represented their countries.

This method of data collection provided the researcher with following advantages:

1. It facilitated direct access to the population under consideration thereby minimizing reliance on the focal points that in this case would be secondary sources of information.
2. The researcher was able to observe and record the behavior of the focal points and establish factual records on the manner in which they executed their roles as mechanism administrators

3. Observation guide provided more enhanced quality of unfolding evidence in real-time enabling a more practical approach to the research. The researcher was able to secure a permanent record which may find use in future research

ii) Questionnaires

Two types of questionnaires were used in conjunction with interviews to gather information on the processing and management of the online mechanism by NTBs focal points. These questionnaires were stakeholder specific and designed to extract information from each stakeholder according to the level of utilisation and responsibilities in the online reporting mechanism. The ultimate objective was to establish the effectiveness of the system; its preference by the stakeholders relative to other methods of resolving NTBs, problems encountered by stakeholders and the level of utilisation of the online mechanism.

The first questionnaire was distributed to NTBs focal points who are also chairpersons of National Monitoring Committee (NMC) from 23 COMESA, EAC and SADC countries. These comprised the first sub-set of participants described in section 3.3. A total of 49 questionnaires were distributed, being one questionnaire each in the private and public sector respectively, from these 23 COMESA, EAC and SADC countries and one each from the REC secretariats. This questionnaire was designed to extract information on how the respondents are managing the system with respect to processing and monitoring of reported NTBs and their undertaking of national stakeholder activities to promote utilisation of the mechanism by potential users in their countries.

The second questionnaire were distributed to the second sub-set of participants described in section 3.3, comprising active industry and trade associations representing the private sector within the region at national and/or regional level. Thus a total of 15 questionnaires were distributed to the second sub-set. This questionnaire was designed to extract information on the effectiveness of monitoring and resolution of NTBs on behalf of the private sector traders and industry.

Both questionnaires were intended to extract the same information but were tailor made for the different sub-categories of respondents and they both enabled the respondents to provide answers independently. However, due to the need to include all subjects particularly focal points, the researcher did not carry out a pilot survey and concluded that the research instruments at hand (questionnaires) were adequately structured and constructed to achieve the intended objectives.

iii) Oral interviews

Oral interviews comprised of face-to-face interviews and telephonic interviews. Face-to-face interviews were conducted with the following;

- i. An official who was involved when the idea of a real-time mechanism was mooted out in COMESA in order to establish trends in the performance of the system since which are necessary to derive any conclusions on the current performance of the system.
- ii. An official at the REC NTB focal point at the COMESA secretariat.

Telephonic interviews were conducted with all REC NTB focal points located at the COMESA, EAC and SADC secretariats respectively, in order to ascertain the performance of NTB institutions in the member states with regards to their management of the online mechanism.

This method provided for real time responses and saved researcher's time as the respondents were able to listen and decide on what answer was appropriate and sought clarification to questions, where there was need. However, due to the time and financial costs involved, telephonic interviews could have limited the amount and quality of information obtained from respondents. It could be also possible that the interviewees may not have accorded the time necessary for making appropriate responses.

iv) Desk research

A desk research was undertaken to find information relevant to the research. This was done through a detailed literature review and perusal of tripartite, COMESA, EAC, and SADC reports of policy organs meetings to establish decisions by the policy organs of the RECs pertaining to the establishment of NTBs reporting and monitoring and eliminating mechanisms. Additional information was sourced from online searches of multilateral, regional and national trade websites such as WTO, EU, UNCTAD, OECD, AFDB, SADC, COMESA, SACU and ECOWAS among others. Desk research provided the researcher with a diversity of information from which to select the relevant and appropriate data for the research questions.

3.5 Data presentation and analysis

Data was presented using tables, graphs, figures, relative and absolute frequency distributions and averages coupled with written explanations. A comparison between the online mechanism and other or similar mechanisms was made.

3.6 Limitations of the study

Several limitations to the study were identified particularly in the use of a targeted sampling approach. One disadvantage of the targeted sampling of the key users of the system was that it would result in a bias regarding the number of reported NTBs as information from other active users of the system was not collected. The fact that the general public was excluded as research subjects although they are also active users of the system presents a limitation in this research as they are a potential source of key information on the performance of the system regarding the reporting, monitoring and resolution of NTBs. The selection of

high level users of the system also presents a user bias regarding the NTBs reported. The targeted sample approach was however justified by the fact that they, as the nerve center of the mechanism, they represent a wide spectrum of user and, without them the mechanism cannot perform its key functions of reporting and monitoring.

While every effort was made to obtain data from all research subjects, the response rate was lower than expected. The following limitations were therefore likely to affect research findings and outcome:

- i. Lack of cooperation from focal points and NMC members.
- ii. Lack of cooperation from REC secretariats.
- iii. Lack of or inadequate information from key stakeholders like the trade and industry associations.
- iv. Inadequate NTB structures to participate on study countries.
- v. The researcher, being the mechanism administrator may be biased towards the findings.

3.7 Research ethics

The research did not violate any ethical considerations. The right to confidentiality of research subjects was upheld and all information obtained during the research was used only for academic purposes.

3.8 Summary

In this chapter, the aims and objectives of the research were spelt out and the research design was elaborated to include the description of the research sites, sampling protocol, the data collection tools utilised in the research and the data presentation methods. The chapter informs on the methods of undertaking this study in which the role players in the making or breaking of the online system were targeted as the study subjects. The online mechanism itself is the primary source of the information and data utilised for analysis in this study as it represents almost 90% of data required which is then supplemented by actual responses from target group. The analysis is done by aggregating and assessing results from both the mechanism and responses from questionnaire, and available literature. The chapter also outlines the research limitations as well as the ethical considerations that were observed throughout the research.

CHAPTER IV

RESULTS OF THE STUDY

This chapter synthesizes the research findings. Data is presented making use of tables, graphs, diagrams, explanations and other statistical aids. The study which is guided by the research topic, 'An analysis of how the tripartite online mechanism facilitates reporting, monitoring and elimination of non-tariff barriers in the COMESA, EAC and SADC region', explores and finds answers to the following research questions:

- i. What is the level of utilisation by public users and mechanism administrators?
- ii. How does the mechanism allow access and reporting of NTBs by all stakeholders?
- iii. Is the mechanism, enabling monitoring and resolution of NTBs by stakeholders and NTB institutions in member/partner states?
- iv. How does the mechanism enable effective resolution of reported NTBs?

The data analysis and interpretation were based on the information extracted from the NTB-RMM website, responses from the questionnaires, interviews as well as from reviewed literature.

This chapter therefore provides the findings from the literature reviewed, responses from focal points and trade associations that are active in the implementation of the NTBs eliminating mechanism, and results from the analysis of the various aspects of the functionality of the mechanism. The analysis of the functionality of the mechanism was done using records of NTBs reported and processed overtime, level of activity in the mechanism by the focal points at national and REC levels as they process and resolve some of the NTBs, as well as usefulness of the mechanism to interested stakeholders. All this forms the basis of conclusions of this study.

4.1 Findings from literature reviewed

Basically, there are five web portals for notifying and monitoring and elimination of NTBs. These portals are in the OECD, EU, tripartite region, and at national level in Rwanda and Tanzania. The OECD and EU are web portals for notifying NTBs, procedures and regulations applicable in member states, while the tripartite online mechanism and those in Rwanda and Tanzania are for reporting, monitoring and eliminating NTBs. It was found that the national mechanisms in Rwanda and Tanzania were developed from the concept of the NTB-RMM. The fundamental difference between the notifying and reporting is that in the case of notification mechanisms, members notify all the NTBs and measures they put in place for transparency and efficient management of NTBs. In the online reporting mechanisms businesses and the general public report any NTBs they encounter as they perform their day to day business. Member states do not therefore notify in advance until business practices are affected by a NTB.

4.2 Findings from desk research, telephonic and oral interviews

One of the key elements in evaluating the functioning of the online mechanism is to assess whether the formulated policies and institutions designed to facilitate the operationalisation of the mechanism have been implemented. However, table 5 indicates implementation of various key policy decisions at the tripartite, REC and national level is lacking.

TABLE 5: STATUS OF IMPLEMENTATION OF POLICY DECISIONS TO ENHANCE UTILISATION OF THE ONLINE MECHANISM

Decision	Responsibility	Status of Implementation
REC Secretariats to put in place measures to ensure sustainability and continuation of the mechanism post TMSA since TMSA would be ending in October 2014. (COMESA-EAC-SADC, 2011)	REC Secretariats	Programme pending as at December 2013.
Member States to speed up process of eliminating long standing NTBs which had stayed periods ranging from 265-1300days. (COMESA- EAC- SADC, 2013)	Focal Points, NMC	No evidence was found
The NTB website should be linked to relevant websites public & private sector institutions in COMESA, EAC and SADC countries (COMESA-EAC-SADC, 2011)	Focal Points	Institutions in 8 countries (Southern African Development Community, 2012), SADC and COMESA secretariats and FESARTA created links. COMESA and EAC Secretariat are yet to create the NTBs link.
All countries to establish NMCs and where substitute structures were in place, these should be assigned NMC responsibilities to avoid duplication and ensure effectiveness of the NTBs resolution process (COMESA-EAC-SADC, 2011)	National Focal Points	Twenty three Countries established NMCs.
Member states to submit registers of NMC members with contact details to enable communication between/among NMC members to ensure speedy resolution of NTBs. (COMESA- EAC- SADC, 2013)	Focal Points. NMC Chair	No evidence of information forwarded.
Countries to undertake awareness campaigns to sensitise private sector and traders about the Online Reporting and SMS reporting tools	REC & National Focal Points	Countries reported the need for technical and financial support to their capacity building programmes. (COMESA-EAC-SADC, 2011)
RECs to assist Member States to mobilise resources for the implementation of the mechanism	REC NTBs Units	No evidence of this activity having taken off the ground in the RECs.

Source: Reports of COMESA-EAC-SADC NTBs meetings

REC NTB focal points indicated that the absence of an enforcement mechanism impacted on the effective functioning of the online mechanism. However, adoption of a legal framework to address challenges

experienced from non-implementation of NTB eliminating commitments had reached advanced stages in two RECs, COMESA and EAC. By October 2014, the EAC draft bill to make provisions for the establishment of a legally binding mechanism on the elimination of Non-Tariff Barriers in the EAC had been finalized (EAC Secretariat, 2013). COMESA was also in advanced stages of developing rules and regulations that incorporated an enforcement mechanism to enhance their resolution in the COMESA region. REC NTB focal points indicated that they continued to receive and were processing NTBs outside the online mechanism but no reasons were given why they did not post all the NTBs onto the online mechanism (COMESA Secretariat, 2011).

4.3 Questionnaire Responses

A total of 22 responses from 14 countries were received pertaining to both questionnaires which were analysed. Fourteen (14) responses were received from NTBs focal points who are also chairpersons of the National Monitoring Committee (NMC) and eight (8) responses were received from active industry and trade associations representing the private sector within the region at national and/or regional level. A higher response rate (53%, n=15) was observed in the latter group of respondents than that of the former group (29%, n=49). Consolidated responses from both questionnaires answering to the usage of the online system in the COMESA, EAC and SADC countries are shown in table 6.

TABLE 6: SHOWING QUESTIONNAIRE RESPONSES ON MECHANISM USAGE

Question	No. of responses (n)	Answer	
Which mechanism is commonly used in your country?	22	95% use offline mechanisms	5 % - use online mechanisms
Which mechanism is preferred by stakeholders?	19	74% offline mechanism	26 % - online mechanism
Are NMC members trained to manage the online mechanism?	19	95 % trained. 28% of these need retraining.	5 % - not trained
Has your country developed sensitization programmes to create awareness of the system?	14	43% - yes 21% - in the process	36% - not yet
What is the best method for creating awareness?	22	1. Media campaigns, outreach, workshops = 77% 2. Improve internet access to focal points through building capacity on internet infrastructure= 18%	5%- No response

The main reason given for offline preference was that of lack of accessibility of internet services to the stakeholders. From this category of users, it was noted that the online mechanism was not visible to all

stakeholders and that most of them did not know about it. Thus the need to sensitize stakeholders, particularly cross-border traders, customs and clearing agents as well as transporters to the online mechanism was raised. 77% (n=22) of the respondents indicated that the appropriate methods to promote utilization of the mechanism in their country was by means of media campaigns and outreach programmes, the use of websites as well as workshops and training of the public, while 18% (n=22) indicated that building capacity (for example enabling internet access) at the focal points was the appropriate method to promote utilization of the mechanism in their country. The remaining 5% (n=22) of respondents did not give a response.

Pertaining to training of NMC members, 95% (n=19) of the respondents indicated that NMC members had been trained to manage the online reporting mechanism, with 28% (n=18) of the respondents indicating the need to be re-trained in the managing of the online reporting mechanism. The following were identified as key areas for further training to improve their management of the online mechanism:

- i. SMS reporting and feedback.
- ii. Attaching evidence document and photos.
- iii. Attaching video clips.
- iv. Creating link with the NTBs website.

The need to train the public on how to use the online reporting mechanism was also raised. The national feedback mechanisms regarding online NTBs reporting mechanism indicated by the respondents were summarized to be by means of committee meetings, via the NTB focal points, at workshops, via the online mechanism itself and also via transporters' associations. Only one respondent did not specify a national mechanism to receive feedback from stakeholders regarding the online NTBs reporting mechanism.

The challenges facing focal point operations in the responding countries were identified as follows;

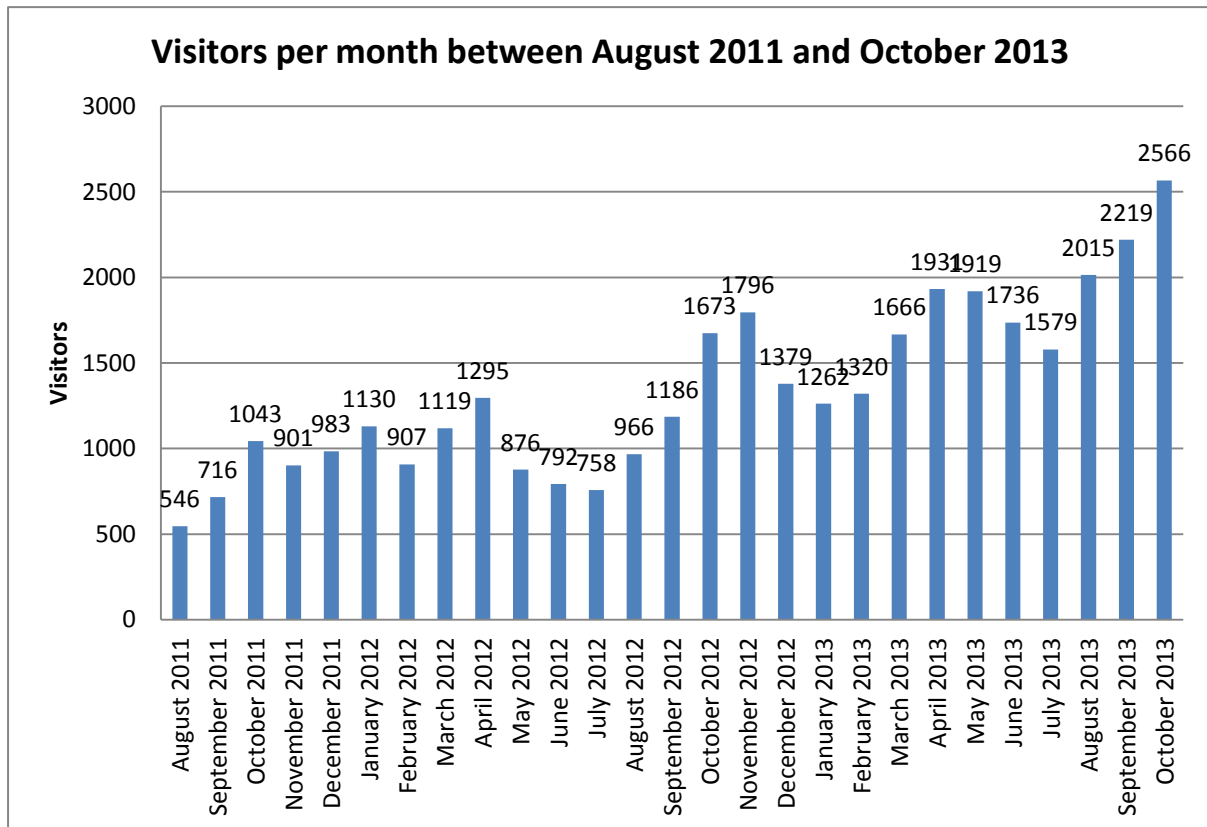
- a. Time constraints as personnel often have other responsibilities to perform.
- b. Lack of adequate resources and funding.
- c. Lack of internet access.
- d. Inefficiency in the resolution and elimination of NTBs.
- e. Lack of adequate information, communication and training on the system.
- f. Government interference.
- g. High NMC staff turnover.
- h. Low success in resolution of NTBs

4.4 Results from the NTB-RMM online reporting, monitoring and resolution mechanism

Figure 5, extracted from the www.tradebarriers.org website, illustrates the number of visitors to the website between the periods August 2011 to October 2013 (3 years). On average visitors to the website increased by

59% from 1271 (January- October 2012) to 2022 for same period in 2013. Search terms used to access information by users of the website indicate that users accessed the website to obtain information on non-tariff barriers to trade.

FIGURE 5: SHOWING VISITORS TRENDS FOR VISITORS – AUGUST 2011- OCTOBER 2013



Source: www.tradebarriers.org

The majority of users use desktop computers. However, over the past year (January 2013 – October 2013), the mechanism has had 2022 unique visitors using mobile devices (phones), 599 using tablet devices and 20,757 using desktop computers. There is a steady increase of visitors accessing the mechanism using mobile devices. In January 2013 there were 115 mobile visitors, while in October 2013 there were 444 mobile visitors.

Data from the online mechanism also indicates that the users are not only comprised from COMESA, EAC and SADC countries. A wide spectrum of users from across the globe also accesses the mechanism, with major trading partners for the region ranking high on the list of visitors to the mechanism’s website. An overview of the origin of visitors to the website is illustrated in table 7.

TABLE 7: TOP 20 COUNTRIES THAT VISITED THE MECHANISM BETWEEN AUGUST AND OCTOBER 2013

	Country	% of Visitors
1	United States	26.12
2	India	17.31
3	South Africa	13.55
4	United Kingdom	6.54
5	Kenya	3.74
6	Malaysia	3.38
7	Tanzania	2.77
8	Philippines	2.75
9	Pakistan	2.69
10	Canada	2.34
11	Botswana	2.29
12	China	2.28
13	Mauritius	2.17
14	Namibia	2.14
15	Zimbabwe	2.06
16	Australia	1.89
17	Germany	1.82
18	Zambia	1.42
19	Switzerland	1.40
20	Uganda	1.36

Source: Compiled from www.tradebarriers.org

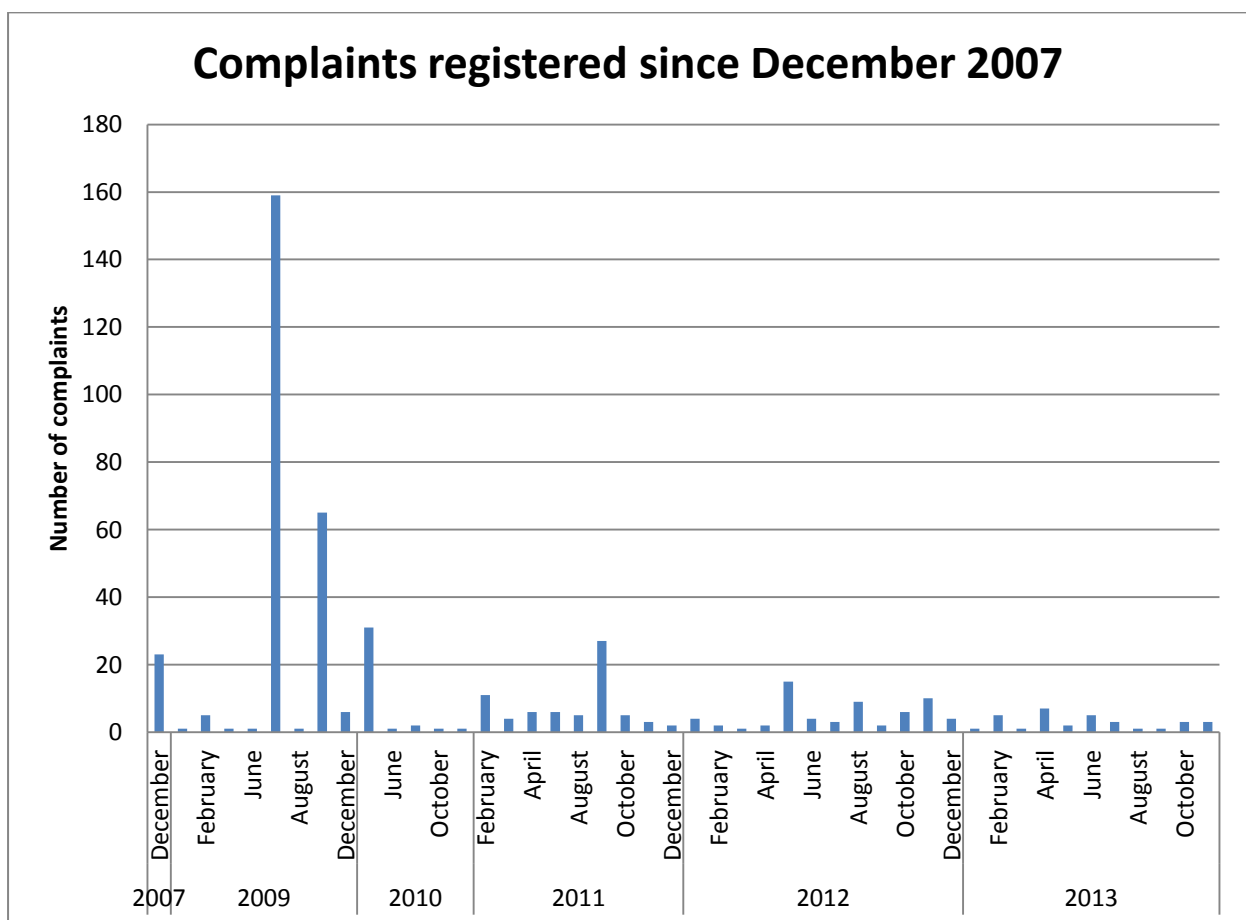
i) Mechanism Influence to resolution of NTB

Data was analysed on two time periods to demonstrate the possible scenarios of outcome at any given time. This is due to the nature of the system as a real-time mechanism. In October 2013 the mechanism revealed that 82% (n=461) of reported NTBs had been resolved. This statistic also includes those NTBs that are not effectively resolved due to the nature of the NTB. The mechanism identified 23 % (n=377) such NTBs from the set of resolved NTBs and these were categorized as NTBs of regulatory or policy nature. According to the 2012 SADC Audit report (AECOM International Development, 2012), member states agreed to set aside as ‘resolved’ all the NTBs arising from policies and regulations adopted by member states, even though these are not actually resolved. However, the result changed slightly in December 2013 with the mechanism registering less resolved NTBs (80.6%, n=461). Figure 7 illustrates the resolution status of NTBs in the online mechanism as at December 2013.

ii) **To what extent is the mechanism able to influence reporting and identification of NTBs?**

The mechanism offers an internet based and SMS reporting mechanisms. The SMS reporting number +27 72 949 2093 is advertised on the NTBs website (TradeMark Southern Africa, 2013). Online and offline reporting is one of the methods used to identify NTBs hence more reports generate identified NTBs. There were generally very low numbers of online complaints registered into the online mechanism during the period 2010-2013. During the time only five months recorded more than ten NTBs each and the rest had less numbers. This scenario is illustrated in Figure 6.

FIGURE 6: STATUS OF UTILISATION OF THE MECHANISM TO REPORT NTBS- DECEMBER 2007- OCTOBER 2013



Source: www.tradebarriers.org

The mechanism administrator explained that the peak registered between June and December 2009 was a result of the once off upload of NTBs identified in surveys undertaken in the COMESA and SADC countries in 2004 and 2007. Pertaining to the low numbers registered, stakeholders cited that (through their responses to questionnaire) some of the reasons were:

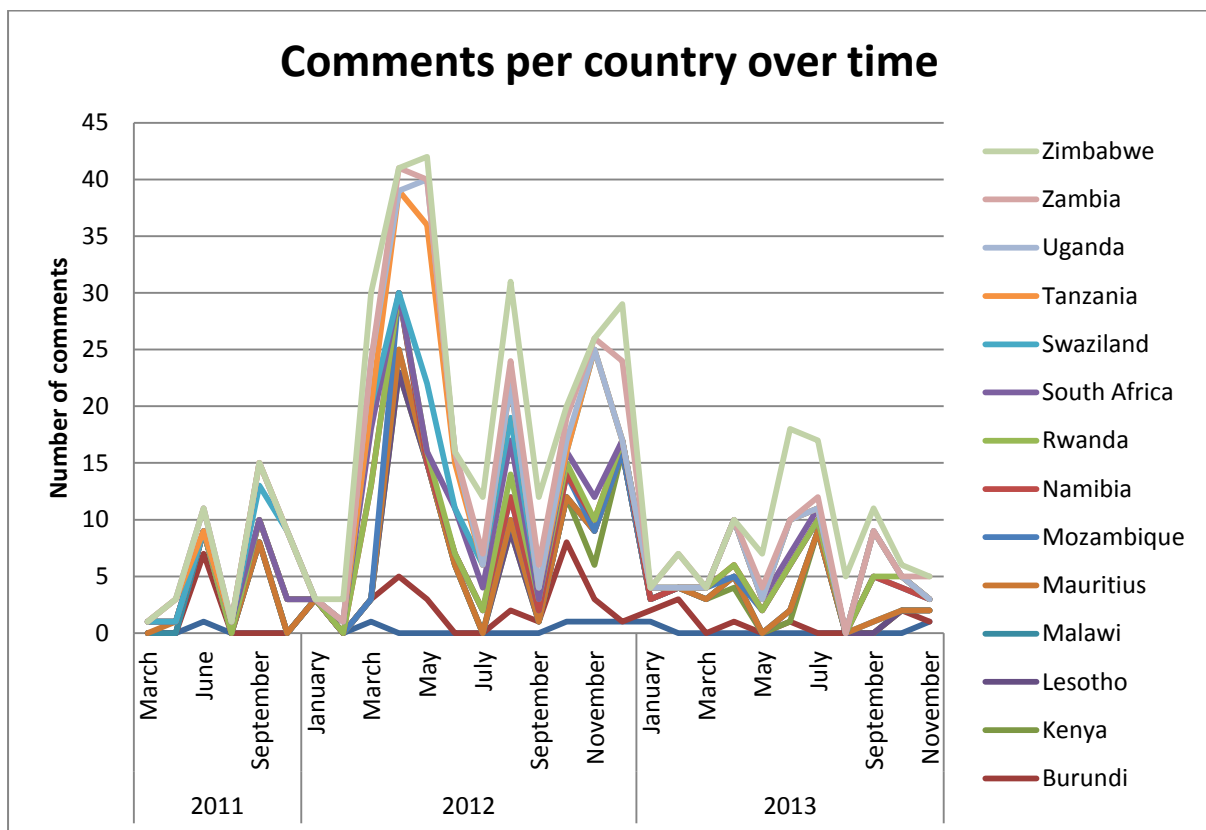
- Limited and or lack of visibility and awareness for the mechanism including the SMS reporting tool.
- Lack of internet infrastructure in member states

- Need for an integrated mechanism built on national sub mechanisms to harness and redirect offline NTBs to the online mechanism

iii) **To what extent is the mechanism enabling processing and monitoring of reported NTBs?**

Focal points actively started processing NTBs online since March 2011. According to data in the online mechanism, 64% (n=23) of the active user countries are processing NTBs online. There are active months and lull months when focal points do not visit the mechanism to process complaints even though there are unprocessed complaints in the online mechanism as proven by the age analysis of NTBs. Countries with the most frequent reported NTBs recorded high frequency logins as depicted in table 8 and also illustrated in figure 7.

FIGURE 7: LEVEL OF UTILISATION OF THE MECHANISM BY FOCAL POINTS TO PROCESS NTBS



Source: www.tradebarriers.org

The mechanism enables users to monitor progress in processing and resolution of reported NTBs by NMC members and focal points to monitor incoming complaints, interact and follow up comments posted by their counterparts in the process of resolving NTBs.

The number of times that Focal Points log into the mechanism can be used as a satisfying proxy to determine the frequency reported NTBs are monitored. While the actual actions performed when one logs on cannot be ascertained, it can be said that the number of times one logs in has a bearing on the rate at which NTBs are resolved as shown by the resolution statistics registered in the system. As such, this is a satisfying indicator of the monitoring of NTBs. Major trading partners in the region ; Zimbabwe, South Africa, Mozambique, Zambia, Burundi, Kenya and Tanzania are the most active in monitoring NTBs and therefore recorded the highest frequency logins (table 8).

TABLE 8: LOGIN COUNT OF FOCAL POINT USERS (MARCH 2012- 31 OCTOBER 2013)

Country	Number of users	Total login count
Angola	1	0
Burundi	5	112
Botswana	10	80
Democratic Republic of the Congo	4	1
Egypt	3	5
Eritrea	1	0
Ethiopia	4	0
Kenya	11	100
Comoros	4	0
Lesotho	7	46
Madagascar	6	3
Mauritius	8	18
Malawi	9	46
Mozambique	9	247
Namibia	4	26
Rwanda	6	38
Seychelles	6	32
Sudan	4	0
Swaziland	5	87
Tanzania	10	99
Uganda	4	25
South Africa	11	270
Zambia	12	108
Zimbabwe	15	523

Source: www.tradebarriers.org

4.5 Summary of factors responsible for the current low levels of NTBs being registered on the mechanism

There is ample evidence in the trends that the number of NTBs reported in the mechanism is very low depicting low levels of utilisation of the system to report NTBs by stakeholders. Key factors can be deduced from the findings in literature review, questionnaire responses and interrogations done on the mechanism itself. These can be condensed to:

- i. Member states readiness to take up the mechanism
- ii. Focal points operational inefficiencies in the administration of the mechanism for example limited or no awareness programmes undertaken
- iii. Limited or lack of infrastructure like internet facility in the member states.
- iv. Loyalty to existing offline mechanism raising doubts to member states buy-into the mechanism
- v. Appropriateness and relevance of the reporting tools (internet and SMS reporting tools)
- vi. Very limited visibility

4.6 Summary

This chapter consolidated the findings from the desk research questionnaire, oral and telephonic interviews and data extracted from the NTBs website. It identified the possible factors responsible for low level of NTBs reported in the system. These are mainly due to delays in implementing policy decisions that enhance utilisation of the NTB -RMM, inadequate capacity for focal points to manage the NTB RMM, the stakeholder loyalty to the existing offline mechanisms and most notable, the absence of an enforcement mechanism as some of the factors that impacted on its effectiveness. The chapter highlights interventions to improve the functionality of the mechanism. The substantial findings are that there is low uptake of the NTB-RMM and also that there is need for a mechanism to ensure enforcement of agreed positions to resolve NTBs. The findings are discussed in detail in the following chapter V.

CHAPTER V

DISCUSSION

This chapter draws insights and possible outcomes from the findings of research instruments (questionnaire, interviews, observation guide and literature review) in order to answer the research question. It outlines the achievements of the NTB-RMM mechanism and discusses the factors currently affecting the effectiveness of the NTB-RMM in reporting, monitoring and resolving NTBs in the tripartite region. The discussion is therefore focussing on the key factors that determine the effectiveness of the mechanism on reporting, monitoring and resolving NTBs.

Research findings reveal the following main factors as being responsible for ineffectiveness of the mechanism:

- i. Member states continue to promote implementation of offline mechanisms and have not taken deliberate steps to promote the online mechanism,
- ii. Mechanism is not visible to relevant stakeholders,
- iii. Inadequate resources in member states to promote its utilisation,
- iv. Gaps in the design and structure that lead to incomplete data capture. Data critical to influence improvements in the trade policy environment is not available in the mechanism and
- v. Mechanism lacks legal mechanism to enforce decisions relating to removal of reported barriers.

These factors negatively impact on the delivery of the mechanism

5.1 How does the NTB-RMM influence reporting & monitoring?

Reporting a barrier using NTB-RMM can be done online and/or through short messaging via a cell phone. The NTB-RMM also receives reports from offline processes managed by focal points and NMC members. However, unlike in the case of the WTO, EU and OECD where notification of barriers is stipulated in legal texts with clear notification procedures, the tripartite mechanism allows for a choice between offline and online reporting of NTBs on a voluntary basis. It is evident that very few complaints have been recorded into the mechanism from all the above sources. Comparing the NTB-RMM reporting to the notification procedure under the multilateral trading arrangements brings the realisation that more work has to be done to improve on the transparency in the reporting. The mechanism could emulate the WTO, EU and OECD which have clear procedures and guidelines for reporting NTBs. According to findings, there were a large number of visitors to the site (TradeMark Southern Africa, 2013). However, this has not translated into higher volumes of reported NTBs in the period 2010- 2013. Analyses of the origin of visitors reveal that these came from countries that are not part of the tripartite arrangements although such countries may have trading interests in the region. According to the findings, there is a declining trend in the number of complaints reported into the mechanism (figure 8). This situation is attributed to various factors, key of which is the invisibility of the mechanism and

the preference to use offline methods. It is imperative to integrate the offline¹⁸ and online mechanisms. The offline mechanisms support the online mechanism as they are the vehicle through which outstanding NTBs are taken for consideration to REC policy making organs for resolution. Outstanding NTBs in the online system are extracted and compiled in a time bound schedule, in the case of the EAC and NTBs elimination matrices for COMESA and SADC. These are presented to Council of Ministers for policy direction and decisions. The coexistence of the offline and online mechanism therefore calls for clear guidelines and procedures for managing these reporting tools in the tripartite. The link between offline and online can be justified on the basis that there is mutual benefit from the two processes. The online would receive complaints, maintain a NTB database and provide the transparency that is necessary for effective management of the NTBs at tripartite level, whereas the offline enhances reporting and resolution of NTBs. Focal points upload all reports obtained from the offline mechanisms into the online system. The offline mechanism which is reported to be processing more NTBs than online is a critical source of NTBs which could result in the increase of online reports into the mechanism.

Kirk (2010) highly recommends the online mechanism for its transparency in reporting NTBs when compared to the then offline reporting mechanisms (Kirk, 2010). However, as a way to encourage reporting especially by stakeholders, the NTB-RMM could borrow the good aspects from the WTO notification mechanisms that are more systematic, procedural and have higher or similar degree of transparency. It is likely that properly negotiated guidelines and procedures will persuade private sector to submit reports online. Private sector, who is the main beneficiary of the mechanism, needs to know that they can rely on the mechanism's ability to take in all their complaints without suffering reprisals. The mere fact that countries still prefer offline (74% focal points responded their countries still preferred offline mechanism) to online mechanism sends a signal which could discourage private sector utilisation of the online system to report NTBs. Focal points have indicated that the member states rely on REC secretariats to provide resources to create awareness and visibility of the mechanism to stakeholders. This can be an indication that member states do not provide national budgets for this cause. RECs on the other hand are yet to implement the tripartite decision to mobilise resources to assist member states to promote utilisation of the mechanism (table 5).

Reporting functionality of the mechanism is critical to its sustainability. Increased number of reports is a key indicator that justifies its credibility. The mechanism aims to enhance identification and resolution of NTBs in the Tripartite. It is also the key mechanism provided for under the NTBs Annex 3 of the TFTA. The mechanism can only deliver its mandate if beneficiaries use it for reporting the NTBs.

(European Commission, 2015)¹⁸ Offline mechanism refers to the time bound matrices as provided for under article 10 of Annex 3 on NTBs of the TFTA. These also include REC NTBs elimination matrices.

i) Reporting by public Users

There is a mutual relationship between visibility and awareness of the system and the degree of utilisation for reporting. The findings show that only 43% of Member states who responded to the questionnaire had developed sensitization programmes, 21% were in the process and 36% were yet to start. The actual sensitization is yet to be done.

The findings further reveal a low trend of incoming complaints between 2009 and 2013, for example, less than 20 complaints per month were received between October 2011 and October 2013, depicting a scenario that there were no NTBs occurring. It could also be interpreted to mean that stakeholders preferred other reporting mechanisms existing in member states to the online mechanism. Focal points reported that their countries still promoted and encouraged the use of offline reporting. Low uptake of the mechanism could be indicative of the limited capacity of member states to manage the online mechanism. This brings into question member states' ability to support its implementation at national level. Unlike the offline mechanism where governments simply collect complaints, the inherent costs associated with maintaining the online mechanism could be a deterrent factor. Data from the online system reveal that private sector focal points, a key resource to the successful delivery of the mechanism are not very actively involved in the day to day management of the mechanism, neither have they contributed resources to create visibility and awareness of the mechanism (table 5). Private sector is expected to create awareness through websites links and their internal communication systems with their members. It is evident from above findings that the mechanism is not visible and therefore not known to public users.

Another reason for few reports could rise from the nature of the reporting tools offered by the mechanism. It was reported that countries faced serious challenges with regards to internet infrastructure and internet accessibility to the group of people who may want to report. Major beneficiaries of this mechanism are the small and medium scale enterprises, informal traders, transporters represented by truck drivers and others. These groups are likely to face some resource challenges with regard to accessing internet as well as SMS reporting. The tools therefore need to respond to or match the needs of major users. Affordability and visibility of SMS reporting is necessary to promote its utilisation among the truck drivers and informal traders. This reporting tool is intended to reach a wider group of stakeholders who include small scale and informal traders, truck drivers and anybody else without access to internet. On the issue of affordability and also improved functionality, the mechanism could borrow ideas from the TCCIA short code SMS method which is less costly for users.

The REC secretariats play a pivotal role in mobilizing resources necessary to support the mechanism until such time it has taken off the ground. The low level of utilisation manifesting through very few complaints into the system shows that beneficiaries are not informed about its existence or they are not educated enough to appreciate its value to their businesses. Funding is required to create visibility and awareness of the

mechanism and stakeholders buy-in. It is observed that the REC secretariats were yet to put in place a strategy for mobilizing funding to assist member states to implement activities supporting utilisation of the mechanism.

ii) Reporting by focal points and industry associations on behalf of users

The parallel application of offline and online mechanisms poses challenges to the effectiveness of the online mechanism and general management of NTBs in the tripartite. Although Annex 3 of the TFTA on NTBs provides for both offline and online mechanisms in articles 9 and 10(1) respectively, it does not provide guidelines to ensure that the two mechanisms are complementary for effective management of NTBs. There is need to interrogate feasibility of an integrated tripartite offline-online mechanism to enhance the functionality and effectiveness of the two systems. Guidelines for the implementation of Annex 3 on NTBs must therefore be comprehensive enough to reflect an integrated system comprising the offline and online aspects.

In order to ensure that all identified complaints are reported in the NTB-RMM, the mechanism allows focal points to report complaints on behalf of all those stakeholders that face challenges in accessing the mechanism. However, the mechanism reveals that very few focal points have utilised it to report NTBs on behalf of stakeholders (TradeMark Southern Africa, 2013). Only 28% (n=14) of focal points who responded indicated they sometimes have logged in complaints on behalf of others. The same goes for industry associations. Only Federation of East and Southern Africa Road Transport Associations (FESARTA) has logged in complaints on behalf of their members on a monthly basis (TradeMark Southern Africa, 2013).

As discussed earlier, the existence of the mechanism can only be justified by the number and consistency of reports coming in. For it to remain relevant, the mechanism has to fulfill its mandate to enhance identification which in turn leads to increased resolution and eventual elimination of NTBs in the tripartite. Non fulfilment could have far reaching implications on Annex 3 of the TFTA on NTBs. Therefore, given the diversity and in some cases unique nature of stakeholders using the mechanism for reporting NTBs, it may be necessary to review the appropriateness of the current online and short messaging reporting tools to ascertain specific areas of improvements. Review of the reporting tools would determine appropriateness and relevance of the mechanism to target beneficiaries.

The tripartite has taken policy decisions that enhance utilisation of the NTB RMM and these include awareness creation, strengthening focal points and NMC, visibility programmes, among other decisions. However, these decisions are yet to be implemented by member states. Focal points have indicated that they are facing resource and capacity challenges that hinder them from implementation of agreed decisions that promote utilisation of the mechanism. The focal points have also indicated a need for retraining to gain deeper understanding of the reporting tools in specific areas. This raises an alarm to look closer at the capacity gaps in

member states. It is likely that there is no consistency in the manning of the office of the focal point. Member states have not adhered to their decision to designate dedicated focal points offices.

It is worth noting that the success of the uptake of the reporting tools in the mechanism is likely to be influenced by the actions of member states regarding implementation of the relevant policy decisions that promote utilisation. There is no evidence in the findings that the focal points in member states have sufficiently promoted online or SMS reporting tools. There are a number of factors that could contribute to this which include limited technical and financial resources cited in their responses. This raises questions around the member states readiness to fully take up the mechanism.

iii) Monitoring by stakeholders and focal points

With regards to monitoring of NTBs by member countries, it emerged that there were numerous operational and policy challenges that hinder smooth operation of the mechanism in the tripartite trading environment. While tripartite countries have pronounced their political will to cooperate in eliminating NTBs through the decision of heads of states in 2008, the member states are still grappling with operational and policy challenges to fully embrace the online NTB reporting and monitoring mechanism at national level. For example, NTB institutions require immense capacity in terms of financial, human and knowledge management to perform effective management of the online reporting, monitoring and eliminating mechanism.

According to the reports from tripartite meetings, each country has five focal points responsible for processing and managing NTBs reported into the NTB-RMM. The focal points who are also members of the NMC are responsible for resolving the complaints. To do this, they use the mechanism for online communication among themselves as well as monitor communication and progress reports posted by their counterparts into the mechanism. The mechanism produces progress and status reports for use by the public. Stakeholders can use these reports to monitor progress in resolution of NTBs of interest to them.

The real-time processing of NTBs available to focal points is a clear advantage to the business community if implemented efficiently. This facility reduces bureaucracy in governments by creating a direct communication line between government agencies and the business community. It also enables interaction among different government functionaries in the region. This facility has the potential to create an efficient and well integrated inter-governmental NTBs elimination system. The advantages of the real time processing is that it saves time and costs of moving goods across borders as focal points can address specific NTBs online without having to wait for formalised consultative processes. Eventually, the mechanism can be a platform enabling online negotiations to solve NTBs.

5.2 How does mechanism influence resolution of NTBs

According to the findings, the multilateral mechanisms employ lengthy conciliatory methods to resolve issues arising from reported barriers and only resort to dispute settlement mechanisms when such method is not sufficient to address the NTB. On the other hand, according to Kirk (2010) the online mechanism is assisted by a peer review process of resolving reported NTBs as offending members are persuaded to remove NTBs so that they are not seen as the ones impeding smooth movement of goods across borders (Kirk, 2010). All barriers become public knowledge once reported and accepted into the mechanism creating peer pressure which could be one of the contributing factors leading to the high success rate of resolutions (82% by October and 80.6% resolved NTBs as at December 2013). The rate of resolution is a cumulative percentage taking into account all NTBs reported and resolved since 2008 to date. It is however observed that about 19% of these resolved NTBs are not yet finally resolved as they comprise policies and regulations which cause NTBs and therefore must be reviewed. The transparency nature of the mechanism, where countries imposing NTBs are published, creates peer pressure on the imposing countries, persuading them to address reported NTBs faster, particularly those NTBs that are purely operational. Findings also reveal that the mechanism had broken bureaucratic barriers by allowing informal communication among focal points enabling online resolution of NTBs without having to wait for meetings and exchange visits between government officials. Furthermore, the high level of activity in the mechanism by focal points processing complaints and at times reaching consensus to resolve reported NTBs could encourage utilisation by business people. However, it remains to be seen if focal points timeously respond to both reported NTBs as well as online communications among themselves during processing to ensure the effectiveness of the mechanism in resolving NTBs. About 130 officials from 26 countries are expected to interact with the mechanism on a daily basis ensuring speedy processing and resolution of NTBs.

Timeous responses by focal points, could impact positively on the delivery by the system to resolve NTBs. Findings confirm that fourteen countries (63.63%) of the 22 active user countries are processing NTBs online. However, the irregular frequencies of logins into the system by focal points are a sign that there are months when focal points do not visit the mechanism despite presence of reported NTBs that require their attention. This could negatively affect the turnaround time for the resolution of reported NTBs some of which, according to records, had stayed for very long periods, in some instances more than 3 years unresolved (SADC, 2012).

It is worth noting that effective implementation of the online mechanism is mandated through policy decisions taken at tripartite level which are then adopted or endorsed by the REC policy organs for implementation. There is no evidence in the status of implementation of policy decisions to enhance utilisation of the online mechanism, of any policy directive to member states to develop a legal instrument to enforce commitments made by members to remove NTBs. Hence the deficiencies in the mechanism, as it lacks regulatory framework to enforce implementation of such decisions including effective resolution of NTBs arising from regulations and policies in place in member states.

There is no evidence in the mechanism of an enforcement mechanism to address such situations where business suffers because NTBs cannot be effectively resolved.

Although the mechanism recorded highest success resolution rate of 82% by end of 2013, 18, 6% of the resolved 82% were not fully resolved because they were NTBs of regulatory and policy nature put aside for further consideration by COMESA, EAC and SADC countries. The RECs undertook to remove or improve the policies and regulations inhibiting trade in certain products (COMESA- EAC- SADC, 2013). There was evidence that these had been tabled to a Tripartite meeting of focal points but no programme or time frame had been put in place under the mechanism to address them (COMESA-EAC-SADC, 2011). Further, literature shows that 32.5% of the unresolved NTBs constituted long standing NTBs in the SADC region alone that had stayed in the system for periods ranging from 265 to 1300 days (TradeMark Southern Africa, 2013) indicating lack or absence of procedures and guidelines for resolving the NTBs. It is extremely important for member states to address the longstanding NTBs because their continued existence reflects badly on the performance of the mechanism especially that there is no record that the member states are putting in place strategies to address them. The policy and regulatory NTBs seem to emanate from adhoc regulations mainly in the customs area where surtaxes and other charges are being introduced. With regards transport sector, member states are imposing various charges. All these and many other issues are picked up by the system but focal points have simply stated the policy requirements as reasons for imposing the NTBs. The mechanism allows focal points to establish bilateral consultations and negotiations on such issues.

5.3 How does mechanism enable compliance on resolving NTBs

The SADC region recorded the highest number of longstanding NTBs (32.5%) pending as at June 2012 (SADC, 2012). AECOM also observed that there existed 'un-resolved' resolved complaints for SADC countries in the mechanism, a factor that was deemed very significant to the SADC NTBs elimination programme especially for policy related measures. It was observed that, unlike in the EU mechanism which stipulates 60day time period within which a ruling should be adopted, many SADC members simply noted and agreed on the existence of the measures but did not take action to address the negative effects of such measures to trade. This pointed out to a need for a built in enforcement mechanism in the mechanism.

The business community needs the mechanism to incorporate provision for compensation and or recourse in the event a country fails to remove an identified barrier. Without such a provision, it is likely that businesses could incur serious losses and possible closure. This also has a negative impact on growth in intra-regional trade. However, the Annex 3 of draft TFTA on NTBs provides for an enforcement mechanism to address non-conformance by imposing party (COMESA-EAC-SADC, 2013) . The Annex prescribes processes and guidelines for resolving disputed NTBs through a two stage resolution process and all disputes are settled in accordance to the dispute settlement mechanism provided in the main TFTA agreement.

Experience in the tripartite shows that, NTBs by their nature do not court disputes but rather non-conformance on the part of the country imposing the barrier. Business people would therefore rather have a mechanism that forces countries imposing NTB to remove the barrier or compensate the injured party which could be a private company that would have suffered loss. The absence of built in legal framework raises questions on the effectiveness of the mechanism as evidenced by the large number of longstanding policy and regulatory NTBs in the mechanism. Findings revealed that member states acknowledged that, while the online mechanism expedited resolution of certain NTBs, a number of them could not be effectively addressed particularly those emanating from policies, rules and regulations enacted by COMESA, EAC and SADC countries for economic or and political reasons (COMESA-EAC-SADC, 2011)

Experience in the EAC Time Bound Mechanism has led to the region developing a NTBs bill specifically providing for a NTBs dispute resolution mechanism under the EAC Bill. The coming on board of the bill could see an improvement in the resolution of NTBs of policy and regulatory nature by the EAC Partner states with possible spill over to COMESA and SADC countries.

Consideration has to be made for an interim enforcement arrangement should implementation of Annex 3 take long to implement. This ensures effectiveness of the mechanism to resolve and enforce resolution of reported barriers. On this front, the mechanism could be informed by practice in the multilateral notification mechanisms which contain effective resolution and enforcement mechanisms. There is also evidence of serious institutional capacity gaps necessary for effective reporting, monitoring and resolution by the mechanism and this gap must be addressed. This is a reflection of the state of readiness by member states to implement the mechanism effectively. It is also evident from literature and findings that capacity issues are a matter of concern at REC levels.

An absence of continuity of focal points was glaring because officials designated as focal points and NMC members changed from time to time affecting management of the mechanism. New members may not always be familiar with the complex processes. Lack of capacity for both internet infrastructure and NTB structures in countries were also sighted as constraining resolution of NTBs. Focal points and NMC are designated institutions but the actual positions were not designated.

5.4 Achievements of the NTB-RMM mechanism

The NTBs eliminating programme had achieved major milestone during its formative and early years of implementation (2010-2013). According to the TMSA Annual review report (2011), the NTB-RMM was considered best practice programme as both the web based and offline resolution mechanisms were found to be 'very successful and will assume greater significance with increasing tariff liberalization' (TMSA, 2011). In

the subsequent midterm review of TMSA, the NTB-RMM was identified as flagship DFID priority programme recommended for continued support beyond TMSA programme (WYG International Limited, 2013).

The most notable achievement was that the mechanism was a non-bureaucratic communication channel among NTB operatives in 26 countries in three regional economic groupings in East and Southern Africa as evidenced by interactions among focal points in the system (TradeMark Southern Africa, 2013). On the technical side, reports obtained from the mechanism indicate that the mechanism recorded achievements in the number of resolved NTBs. As at December 2013, 80.6% of reported NTBs had been resolved through the mechanism (figure 4). Other notable achievements acknowledged by the tripartite countries (COMESA-EAC-SADC, 2011) and from the mid-term review report (WYG International Limited, 2013) of the TMSA programme are that:

- i. Mechanism facilitated efficient management of NTBs and constituted one of the achieved TMSA milestones under the TMSA log frame by 2013.
- ii. Reliable database is now available to stakeholders, researchers, academic, professional, public and private sector that can be used as input into policy decisions.
- iii. Real-time NTBs management mechanism has enhanced cooperation and collaboration between private and public sector to attend to NTBs by removing bureaucratic distance between the stakeholders.
- iv. The NTMs database is a valuable resource to private sector.

The mechanism also handles a variety of complex NTBs and most importantly, identifies policy gaps in the region manifesting as NTBs (TradeMark Southern Africa, 2013). The database reveals that the nature of NTBs managed by the NTB-RMM goes beyond the WTO list of core NTBs.

5.5 Comparison of the NTB-RMM mechanism to other mechanisms

There are commonalities in processing, and to some extent monitoring of reported NTBs between the COMESA, EAC, and SADC offline NTBs mechanisms, NTB-RMM and the WTO and the EU (Table 9). The mechanisms introduce transparency in the management of NTBs. The multilateral mechanisms by nature are more efficient as they are more systematic in the manner in which NTBs are notified and reported. The NTB-RMM relies more on individual reports that can be selective rather than being mandatory as is requirement in the OECD and EU notification mechanisms. Unlike the multilateral and individual REC arrangements, the NTB-RMM does not have an enforcement mechanism. For all the above cited mechanisms, resolution is done at different policy and administrative levels depending on the nature of NTBs encountered. The TFTA is expected to improve the NTB-RMM particularly as it addresses enforcement issues.

With regards to the functionality of the mechanisms, NTB-RMM has more online operational processes than the OECD, TCCIA and Rwanda mechanisms. Over and above the transparency, the NTB-RMM offers more

reporting tools plus real time NTBs processing facilities by focal points which makes it more advanced. Further, The NTB-RMM performs automatic analysis communicated to focal points regularly. This facility greatly improves the management of NTBs by focal points.

TABLE 9 : ONLINE NTBS REPORTING, MONITORING & ELIMINATING MECHANISMS

Mechanism	Address	Functionality
OECD Web Portal	www.ceftatradeportal.com	Transparency trade tool for recording and monitoring regulations, measures and NTBs; Database; Information dissemination; (Customs, licensing, SPS; Technical Requirements; Border Police Controls, Trade Regimes; Public Procurement
Online Reporting , Monitoring & Eliminating mechanism	www.tradebarriers.org	Transparency trade tool for online reporting, monitoring and eliminating NTBs with built in SMS reporting mechanism ; NTBs and NTMs databases
TCCIA online reporting Mechanism	www.tccia/ntb	Transparency, short code SMS reporting, monitoring & Eliminating tool
Rwanda NMC website	www.nmcrwanda.org .	NTBs database and other relevant information to NMC members. Stakeholders can register NTBs online.

Source: Web-based search of available Online NTBs Reporting, Monitoring & Eliminating Mechanisms.

Taken in the context of the draft NTBs Annex 3 of the TFTA, the NTB-RMM compared well with the ‘Horizontal mechanism under consideration within WTO negotiations’ proposed by the NAMA II group. Following similarities and common features with proposed NAMA II group can be found in provisions of Annex 3 establishing the NTB- RMM:

- i. Flexibility and expeditious processing that involves a facilitator to promote mutually acceptable solutions to concerned parties.
- ii. Stage based resolution processes.
- iii. Dispute settlement procedure for adjudication.

From the findings of the study it can be concluded that the NTB-RMM is a useful mechanism that facilitates efficiency in managing NTBs through its advanced reporting and monitoring tools. It has potential to

contribute immensely to trade facilitation agenda in the tripartite region. Although one cannot draw parallels with any existing mechanism, it can be deduced from the contributions of various researchers and stakeholder opinions that the NTB–RMM is a formidable tool that achieves effective management of NTBs. This would be achieved when the mechanism is at its full potential with regulatory and procedural processes in place. The institutional framework supporting the NTB-RMM is correctly structured and only requires capacity building.

The NTB-RMM, while it provided dynamic reporting and monitoring, seemed to lack fundamental policy instrument to enforce agreed positions taken to resolve a particular NTB. There is no evidence of a dispute settlement mechanism as is provided in other mechanisms. Instead, REC treaty provisions are applied to address any disputes that may arise during process of resolving NTBs. In the future, Annex 3 of the draft TFTA on NTBs will provide for a consultative and facilitatory process supported by a dispute settlement mechanism to resolve NTB disputes.

NTB-RMM fared well in the real-time reporting and processing of NTBs as compared to other existing mechanisms. The processing and resolution experience in similar mechanism for example the EU and could not however be established for comparison with NTB-RMM.

In accordance to policy decisions, the mechanism undergoes continuous improvements to take into account developments and specific needs of the region. Above that, Annex 3 of the draft TFTA agreement provides for a clear consultative and facilitatory process (Appendix 1) supported by an enforcement mechanism. The mechanism has gained acknowledgement for its contribution towards attaining deeper integration through its robustness in breaking boundaries between inter - governmental mechanisms thereby enabling efficient management of NTBs. The participation by at least 22 countries in the implementation of NTB-RMM is a sign that it has gained political will. It is this political will that enabled streamlining of bureaucratic processes with regards to managing NTBs in the region. However, it remains to be seen if this political will would translate to improved utilisation of the mechanism against a backdrop of serious backlog in the implementation of key to increase its utilisation decisions by member states.

5.6 Summary

The purpose of the study was to explore the functionality of the NTB-RMM in order to ascertain its effectiveness in reporting, monitoring and resolution of NTBs in the tripartite region. In line with the aims and objectives of the study, and the statement of the problem, the study reviewed various sources of literature to identify gaps and conclusions on the effectiveness of the mechanism to report, monitor and resolve NTBs.

The key findings of the study based on questionnaire and on the literature were that the mechanism has to enhance reporting, monitoring and resolution of NTBs. The key findings were:

- i. It compares very well with international mechanisms for example in the OECD, the EU in terms of introducing transparency in the management of NTBs
- ii. It has reduced the bureaucratic processes on managing NTBs between different governments/countries by introducing direct interaction of NTB focal points
- iii. That the mechanism provided advanced tools for reporting and monitoring NTBs and has potential to enhance their resolution when compared to similar mechanisms in the region and at international level.
- iv. That there are gaps in some of the operations of the mechanism that compromise its effectiveness for example; there are no guidelines and procedures to enhance efficiency in the management of NTBs through the mechanism.
- v. There is no procedure and policy to deal with non compliant member states in so far as action is required for them to remove a reported NTB
- vi. There is loyalty by member's states to existing offline mechanism.
- vii. Inadequate capacity and resources in member states and at the REC secretariats to ensure effectiveness of the mechanism

The factors responsible for low uptake of the NTB-RMM could be but not limited to capacity in the member states to manage the mechanism, their readiness to implement, availability of legal instruments to support implementation, and the suitability of the reporting and monitoring tools. There is glaring advantages gained from utilising the two forms of managing NTBs, online and offline mechanisms. The inadequacy of administrative systems such as proper guidelines and procedures to ensure effectiveness of the coordination between the offline mechanisms and NTB-RMM for effective resolution of NTBs is revealed. The conclusions are stated in chapter six and led to the recommendations therein.

CHAPTER VI

CONCLUSION & RECOMMENDATIONS

The aim of this research was to answer the main research question, being 'To what extent is the mechanism enabling reporting, processing, monitoring and resolution of NTBs?', and the following specific research questions;

1. What is the level of utilisation by public users and mechanism administrators?
2. How does the mechanism allow access and reporting of NTBs by all stakeholders?
3. Is the mechanism, enabling monitoring and resolution of NTBs by stakeholders and NTB institutions in member/partner states?
4. How does the mechanism enable effective resolution of reported NTBs?

6.1 Conclusion

From the findings, one can conclude that the reporting function of the mechanism is not fully utilised for reasons ranging from lack of visibility to stakeholders, loyalty to existing mechanisms, and lack of capacity in national and REC NTBs structures to fully implement the mechanism. Over above the capacity constraints, the reporting tools could be inadequate and not appropriate for the intended diverse users. The reporting function could be too advanced and beyond reach of the stakeholders particularly the small scale traders. Compared to other international mechanisms, the tool is more relevant to the regional requirements. However, there is need for the mechanism to be sensitive to the diversity of its intended users in order to increase the number of reports coming into the system.

With regards to monitoring and resolution functions of the NTB-RMM it was found to be functioning satisfactory as a higher percentage had been resolved. However, there was need to improve on the monitoring and resolution of long standing NTBs as well as NTBs of policy and regulatory nature. The resolution aspect requires a legal framework to ensure compliance.

Despite the shortcomings on the effectiveness of the resolution mechanism, the NTB-RMM has a dynamic monitoring facility which breaks all bureaucratic procedure between governments in the tripartite region. The monitoring has high potential to increase the number of NTBs reported as well as resolved once the mechanism is fully operational. The mechanism has recorded good successes in resolving reported NTBs, achieving a minimum 80% of reported NTBs in the system by December 2013. The mechanism has achieved the following milestones:

- i. It has introduced transparency and dynamism in the management of NTBs in the region and scored successes in number of NTBs resolved

- ii. It has capacity to expedite resolution of NTBs as it managed to achieve 80% resolution by December 2013
- iii. It has broken bureaucratic barriers by creating a real-time NTB network of key government functionaries among 26 countries. Communication to manage NTBs among these countries has express authority from heads of government enabling efficient management of and removal of NTBs
- iv. Private sector through their membership as focal points involved in day to day management of the mechanism can use the mechanism as advocacy tool.
- v. The database is useful for policy reforms and academic use
- vi. The mechanism has potential to enhance national and regional capacity to manage NTBs which may have spill over into other the continental NTBs eliminating programmes

The mechanism has its shortcomings and challenges, some of which compromise or have led to criticism about its effectiveness to manage and remove NTBs. It has been criticised for not having an enforcement mechanism which is crucial to ensure that all identified NTBs are effectively removed to minimise loss to business entities affected by such NTBs. Major shortcomings identified from this study are that:

- i. The mechanism does not have a mechanism to enforce any decisions or commitments to remove identified barriers
 - ii. Key decisions to enhance its operations at national level have not implemented by member states
 - iii. Unlike the case with multilateral notification mechanisms with similar functions, the mechanism does not have supporting procedures and guidelines to ensure a systematic and effective way of processing and addressing NTBs. Procedures provide systems with clear processes and timeframes.
 - iv. Key functionalities for example categorisation are not up to standard as they constrain mechanism from generating critical data required for policy analysis
 - v. The absence of designated offices to manage to mechanisms poses operational challenges.
- i. There is huge capacity gaps in terms of developing fully functional NTB structures

However, despite the shortcomings and challenges it faces, the mechanism has gained acceptance by the public and private sector. This conclusion is supported the private sector support for its continued existence, increased and diversified number of visitors to the website.

These and other challenges could be addressed through the ongoing programme for continuous improvements to the tripartite NTBs mechanisms to enable them address the specific needs of the region (COMESA- EAC - SADC, 2010). When operational, the successfully negotiated Annex 3 of the draft TFTA

agreement will provide policy framework for effective management of NTBs in the region because it includes an enforcement mechanism within the TFTA (COMESA-EAC-SADC, 2014).

Operationally, the web based online reporting and monitoring mechanism has achieved one of its main objectives to enhance identification and resolution of NTBs, at the same time harmonizing REC NTBs eliminating programmes. Evidence revealed that the mechanism is a unique instrument developed for the first time (TradeMark Southern Africa, 2013) which was yet to be tested against any international best practice. NTB-RMM is a dynamic mechanism that has up scaled the management of NTBs in the region and has attracted interest the world over.

Finally, it can be concluded that the mechanism has capacity to effectively resolve all reported NTBs. This can be achieved by addressing the policy and institutional capacity gaps notably the enforcement mechanism. The current status where NTBs of policy and regulatory nature remain unresolved exerts pressure to tripartite countries to prioritise the development of an enforcement mechanism whose absence poses a serious challenge in the resolution and eventual elimination of NTBs in the tripartite region. Delayed or non resolution of NTBs of regulatory and policy nature could compromise the effectiveness of the mechanism to eliminate NTBs in the TFTA.

6.2 Recommendations

The following policy and operational recommendations drawn from findings and analysis of literature are suggested to improve the mechanism;

6.2.1 Policy Recommendations to improve resolution

Generally, the effectiveness of the NTB-RMM can be improved through regular review of performance of the system and supporting structures. The following are specific recommendations to improve its operations;

- i. Establish national policies and awareness programmes to promote utilisation of the NTB-RMM
- ii. Develop guidelines and procedures to improve the monitoring and resolution aspects of the mechanism
- iii. Study to establish the nature and scope of a tripartite NTBs enforcement mechanism that provides recourse to members affected by a NTB taking into account private sector needs to recover loses or damages incurred as a result of a member states not removing a barrier
- iv. Assessment of member states readiness to fully implement the mechanism, identifying capacity gaps and recommend capacity building programme to assist member states to fully embrace and implement the mechanism effectively

- v. A study to develop regional strategy for effective harmonization of the national offline and online NTB-RMM focusing on a possible integration of offline and online mechanism to enhance reporting and resolution of NTBs through the NTB-RMM.
- vi. Capacitate NTB structures in member states for improved management of the mechanism to increase reporting and resolution of NTBs

6.2.2 Recommendations to improve reporting

- i. Address capacity constraints in national NTB structures to improve management and utilisation of the mechanism
- ii. Examine suitability and adequacy of current reporting tools
- iii. Increase visibility for the mechanism in Countries and create awareness of the SMS reporting tool

6.2.3 Recommendations to improve Monitoring

- i. Explore member states readiness to fully embrace the mechanism for its effective implementation.
- ii. Address capacity constraints in the provision of NTBs supporting administrative, ICT and other infrastructure in member states

6.2.4 Areas for Future Research

Future research is necessary for possible incorporation of a NTBs notification mechanism whereby member/partner states can notify a policy or regulatory NTB well before it is imposed. It is also necessary to explore need and type of an enforcement mechanism to facilitate removal of NTBs thereby ensuring that the NTB-RMM is effective in eliminating NTBs.

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APPENDICES

Appendix I: Process of resolution of NTBs under Annex 3

Stage	Process
<p>Stage I: Request and Response on a Specific NTB</p>	<p>Any Member/Partner State (the 'requesting Member/Partner State') may, individually or jointly with other Member/Partner States, or through the Secretariat, initiate Stage I by submitting in writing to another Member (the 'responding Member/Partner State') a request for information regarding a non-tariff barrier as identified and reported by the requesting Member/Partner State. The request shall identify and describe the specific NTB as identified and reported by the requesting Member/Partner State and provide a detailed description of its concerns regarding the NTB's impact on trade. The requesting Member/Partner State shall notify its request to the Secretariat, which shall circulate it to the affected Member/Partner States.</p> <p>The responding Member/Partner State should provide, within twenty (20), a written response containing all the information and clarification requested. Where the responding Member/Partner State considers that a response within this period is not practicable, it shall inform the requesting Member/Partner State of the reasons for the delay, together with an estimate of the period within which it will provide its response. In all cases it shall not exceed thirty (30) days from the date of receiving the request for information unless the parties mutually agree to extend the days.</p> <p>Upon submission of the response, the responding Member/Partner State shall notify of its response directly to the requesting Member/Partner State and the Secretariat.</p> <p>Where the response is acceptable to the requesting Member/Partner State, the requesting Member/Partner State shall notify the responding Member/Partner State and the Secretariat and the complaint shall be considered resolved. Where the parties mutually agree on a complaint as being an NTB as defined in this Annex, National Focal Points shall develop an elimination plan as provided for under article (10) of this annex.</p> <p>Where the response does not resolve the complaint, the requesting Member/Partner states shall notify the responding member/partner and the Secretariat. The Secretariat shall notify the Member/Partner States and convene a meeting with the parties within twenty (20) days to inter alia address the outstanding complaint from the date of receiving the notification.</p> <p>In case the matter is not satisfactorily resolved in Stage I both parties shall be mutual consent and agreements proceed to Stage II.</p>

Stage	Process
	<p>The parties shall notify any decision to proceed to Stage II to the Secretariat which shall circulate it to all Member/Partner States. Any other Member/Partner State may submit a written request to the Member/Partner State to participate in these procedures as an interested party within 10 days from the date of circulation of the decision to proceed to stage II.</p> <p>Pending final resolution of the NTB the parties may consider possible interim solutions, especially if the NTB relates to perishable goods.</p> <p>In case of perishable goods, all the periods specified in this stage shall be reduced by half once initiated stage II shall be terminated upon request of either party.</p> <p>Stage I proceedings shall not exceed a total of sixty (60) days unless otherwise mutually agreed by the parties.</p>
Stage 2- Resolution Procedure	<p>Upon initiation of stage II, of these procedures, the Secretariat shall coordinate the appointment of an independent expert/s person/s acceptable by the parties to serve as facilitator. Facilitators shall be drawn from a pool of experts whose selection and appointment shall in accordance to agreed criteria and procedures to be developed by the NTBs Sub Committee.</p> <p>The procedures developed by the NTBs Sub -committee shall be within the framework outlined in an Appendix The parties shall jointly agree on the terms of reference for facilitator.</p> <p>Upon initiation of this stage II, the parties shall agree upon the facilitator within 10 days of commencement of this stage.</p>
Role of Facilitator	<p>With the support of the NTB Sub Committee, call upon the Secretariat or any other relevant resource to provide information, or expert opinion on the matter.</p> <p>meet individually or jointly with, the parties, in order to facilitate discussions on the NTB and to assist in reaching mutually agreed solutions;</p> <p>seek assistance where necessary, of relevant experts and stakeholders, after consulting with the parties ;</p> <p>Provide any additional support requested by the parties; and</p> <p>Offer advice and propose possible solutions (technical opinion) for the parties provided any such opinion shall not pertain to any possible legitimate objectives for the maintenance of the measure.</p>

Source: Annex 3 of the Draft TFTA Agreement

Appendix II – Questionnaires

Two sets of questionnaires (A and B) were sent out to members of the National monitoring committee and Focal points and to private sector associations respectively.

A) Questionnaire to Focal Points and National Monitoring Committee Members

AN ANALYSIS OF HOW THE NON-TARIFF BARRIERS ONLINE REPORTING, MONITORING & ELIMINATING MECHANISM FACILITATES REPORTING, MONITORING AND ELIMINATION OF NTBS IN THE TRIPARTITE REGION

1. Focal Point/NMC details:

Name:.....

Title :.....

Gender: F M

Name of Institution :.....

Email:

Date form completed:2013/2014

2. How did you know about the Online reporting mechanism?

- a. I do a general search
- b. I am part of NTB structure in Member/Partner states
- c. COMESA website
- d. SADC Website
- e. EAC website
- f. Other

3. How Often do you access the online mechanism www.tradebarriers.org ?

- a. Weekly
- b. Monthly
- c. Occasionally

4. For what reasons do you generally access the website ?

- a. To monitor progress in reported complaints
- b. To process complaints
- c. Login complaint
- d. Access database

- 5. What kind of information do you generally look for in the website?**
- a. Status of complaints
 - b. General information on NTBs
 - c. NTBs data & statistics
- 6. How often do you receive weekly NTBs digests notices from the online system ?**
- a. Every Thursday regularly
 - b. Sometimes
 - c. Never
- 7. How often do you respond to the weekly digests notifications about outstanding complaints assigned to you as focal point?**
- a. Same day every week
 - b. When I get time to login
 - c. I do not find time
- 8. How often do you receive and process outside the online system in?**
- a. Not received any
 - b. Weekly
 - c. Monthly
- 9. From your experience, do you receive more offline complaints than online?**
- a. Yes, more often
 - b. Not sure
 - c. None
- 10. How many times have you received feedback from counter parts focal points in tripartite countries through the system in 2011/2012?**
- a. Regularly every week
 - b. At least once a month
 - c. Sometimes
 - d. Never received online feedback
- 11. I do not receive weekly digest on time because**
- a. I do not have access to internet
 - b. I have limited access to internet
 - c. I do not have computer with adequate capacity
- 12. How often do you use the online mechanism to communicate with counterpart focal points to process outstanding complaints?**
- a. Regularly
 - b. Sometimes
 - c. Never communicated online

13. Do you think the online mechanism is received adequate sensitization in your country?

- a. Widely
- b. Limited sensitization
- c. No sensitization programme

14. How often does the NMC meet to consider and process outstanding complaints?

- a. Monthly
- b. Quarterly
- c. Has not met yet

15. In your view, do you see stakeholders showing preference channeling complaints using the offline methods? Explain

16. Are you and other NMC members trained to manage the online reporting mechanism? Explain training needs that you may require?

17. What are the challenges facing NMC operations in the country?

18. Has your organization created link with NTBs website www.tradebarriers.org ?

19. What would be the appropriate methods to promote utilization of the mechanism in your country?

20. What other mechanism are available for reporting NTBs in the country? (Explain)

21. Has your country developed and run a NTBs online sensitization programme and how often?

22. What are the challenges facing Focal Point operations in the country?

23. Explain national mechanism to receive feedback from stakeholders regarding Online NTBs reporting mechanism

B) QUESTIONNAIRE TO PRIVATE SECTOR ASSOCIATIONS

AN ANALYSIS OF HOW THE NON-TARIFF BARRIERS ONLINE REPORTING, MONITORING & ELIMINATING MECHANISM FACILITATES REPORTING, MONITORING AND ELIMINATION OF NTBS IN THE TRIPARTITE REGION

To check an answer, just click in the box.

1. Focal Point/NMC details:

Name:

Title:

Gender: M F

Name of Institution:.....

Email:

Date form completed:2013/2014

2. How did you know about the Online reporting mechanism?

- a. General search
- b. I am part of NTB structure in Member/Partner
- c. SADC Website
- d. EAC website
- e. Other

3. Do you access the online mechanism www.tradebarriers.org

- a. Daily
- b. Weekly
- c. Monthly
- d. Occasionally

4. For what reasons do you generally access the website?

- a. To monitor progress in reported complaints
- b. To process complaints
- c. Login complaint
- d. Access database

5. What kind of information do you generally look for in the website?

- a. Status of complaints
- b. General information on NTBs

- c. NTBs data & statistics

6. How often did you access the site for purpose of monitoring NTBs reported by or affecting your members?

- a. Weekly
b. When I got time to login
c. I did not find time

7. Your members report complaints to their secretariat rather than the online system?

- a. More often
b. Sometimes
c. Always

8. from your experience, do you receive more offline complaints than online?

- a. Yes, more often
b. Not sure
c. None

9. Do you find it useful/worthwhile to report complaints forwarded by your members onto the online system ?

- a. Sometimes
b. Definitely
c. Not worth
d. Never received online feedback

10. Do you receive feedback on complaints registered from the online system?

- a. Each time there is update about a complaint I registered
b. Sometimes
c. Never receive communicated from online

11. Do you think the online mechanism has received adequate sensitization among your members/stakeholders?

- a. Widely
b. Limited sensitization
c. No sensitization programme

12. Do you find it easy to communicate with REC / National Focal Points to monitor progress on outstanding complaints?

- a. Yes
b. I do not have Focal Point contacts

C. No access to focal points



13. In your view, did you see stakeholders showing preference channeling complaints using the offline methods? Explain

14. Were you and other NMC members trained to use /manage the online reporting mechanism? Explain training needs that you may require

15. What are the challenges facing members from utilising the Online System?

16. Did your organisation create link with NTBs website www.tradebarriers.org ?

17. What, in your view would be the appropriate methods to promote utilization of the mechanism by your members?

18. What other mechanism are available for reporting NTBs in the country? (explain)

19. What are the challenges in processing and monitoring NTBs by and on behalf of your members using the online system?

20. Explain national mechanism to receive feedback from stakeholders regarding Online NTBs reporting mechanism

21. Any other useful contributions/comments to enhance the efficiency of the online mechanism

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