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**BILATERAL AND REGIONAL TRADE AGREEMENTS AND TECHNICAL BARRIERS TO TRADE:
AN AFRICAN PERSPECTIVE**

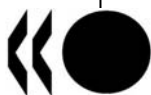
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by Nico Meyer, Tamas Fenyes, Martin Breitenbach and Ernst Idsardi

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ABSTRACT

Regional trade agreements (RTAs) present opportunities for controlling technical barriers to trade (TBTs). Using key principles and provisions of the WTO Agreement on TBT as a yardstick for analysis, this paper examines whether and how eight major regional integration agreements within the African region address TBT issues. It finds that TBT are not an important issue in Sub-Saharan African RTAs. Only one of the 8 agreements surveyed refers explicitly to the WTO TBT Agreement. Existing provisions for eliminating TBT-related barriers or harmonising legitimate technical regulations are formulated mostly in broad and nonprescriptive terms. The paper describes concrete steps that parties to these RTAs have taken in order to reduce technical barriers. Such initiatives have been taken at the national level but can also involve collaboration between RTAs. Country case studies show that weak TBT infrastructure remains a handicap for businesses and governments and that, with the exception of the Southern African Development Cooperation (SADC), investment by regional economic communities (RECs) in institutional infrastructure related to TBT has not been significant. The paper describes in some detail relevant activities taking place within SADC which could serve as a best-practice model for other African regional agreements. Serious capacity constraints stand in the way of African countries taking on the challenge of reducing TBT barriers. Also, low local levels of living standards favour weak product standard, and this acts as a barrier to upgrading product standards for export markets. Amending TBT coverage in African RTAs, a review of performance of enquiry points and assistance with infrastructure modernisation are among a set of measures recommended for achieving better TBT policy alignment among countries of the region.

Keywords

Technical barriers to trade, TBT, technical barriers, trade barriers, regional trade agreements, RTA, free trade agreement, FTA, regional economic community, Sub-Saharan Africa, WTO Agreement on TBT, technical regulations, mutual recognition, conformity assessment procedures, harmonisation, standards, West African Economic and Monetary Union, Economic Community of West African States, Central African Economic and Monetary Union, East African Community, Southern African Development Community, South African-EU Trade and Development Cooperation Agreement, Kenya, Nigeria, South Africa.

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EXECUTIVE SUMMARY

Regional integration has come a long way in Sub-Saharan Africa (SSA), since the establishment of the Southern African Customs Union (SACU) in 1910. Regional integration has been accompanied by the development of intra-regional trade agreements with the most recent the implementation of the Southern African Development Community (SADC) Free Trade Agreement (FTA) in 2008. To date the region counts 14 regional trade or cooperation agreements. Most SSA countries have multiple memberships of various Regional Trade Agreements (RTAs). In recent years, several groupings have engaged in major revisions and restructuring, such as UDEAC into CEMAC, and others have been intensifying sub-regional integration, such as SADC's adoption of its trade protocol in 2000 (calling for the formation of a FTA within 8 years), and the entry into force in 2000 of the COMESA FTA. Africa's regional economic communities are making progress in certain areas but the integration process still faces numerous challenges. Addressing barriers to trade caused by TBTs is one of these challenges.

At the outset, the paper acknowledges that domestic regulation and standards are essential for protecting economies from unscrupulous business practices that bring harm to humans, plant and animal life, the environment, national security and infant industries. The aim of the Agreement on TBT is to ensure that technical regulations and other TBT measures do not unnecessarily constitute barriers to trade. The key principles and provisions of this Agreement are used in this paper as a yardstick to assess the scope and content of TBT provisions included in seven RTAs in force in SSA: In addition, the bilateral Trade and Development Cooperation Agreement (TDCA) between South Africa and the European Union (EU) is reviewed. The analysis is undertaken mindful of the myriad of bilateral trade agreements underlying a conundrum of overlapping regional economic cooperation agreements aimed at further regional integration.

The key principles and provisions of the WTO Agreement on TBT used as yardstick for the analysis are: Harmonisation of technical regulations, standards and conformity assessment procedures, acceptance of technical regulations as equivalent, mutual recognition of conformity assessment, transparency and enforcement and dispute settlement.

TBTs are not an important issue in Sub-Saharan African RTAs. The review finds that only one of the eight agreements surveyed refers explicitly to the WTO TBT Agreement. Most of the RTAs refer to the elimination of TBT-related barriers or harmonisation of legitimate measures but use broad and non-mandatory language. Few of the eight RTAs require or encourage parties to accept as equivalent the other parties' regulations and conformance procedures. Mutual recognition is envisaged by some, but mostly as a goal and in broad terms. None of the agreements reviewed require that parties explain the reasons for non-recognition. Finally, there are no clauses prescribing transparency and no procedures for dealing with disputes over TBT matters.

The study provides additional insights by describing concrete steps that parties to RTAs have taken in order to reduce technical barriers to trade. This includes initiatives taken at the national level by three countries – Kenya, Nigeria and South Africa – as well as collaboration on different RTAs across the African continent. From the country case studies there is evidence that countries have taken various measures to develop TBT, but weak TBT infrastructure remains a handicap for businesses and governments.

It is noted that at the regional level, very few of the regional blocs, also known as regional economic communities (RECs), have made substantive investments in institutional infrastructure related to TBT. A notable exception is the Southern African Development Community (SADC), which has put in place a

widely recognised Standardisation, Quality Assurance and Metrology (SQAM) infrastructure encompassing Standards (SADCSTAN), Accreditation (SADCA) and Scientific and Industrial and Legal Metrology (SADCMET and SADC MEL). The objective of SADC's SQAM Programme is the progressive elimination of technical barriers to trade (TBTs) among the Member States and between SADC and other regional and international trading blocks, and the promotion of quality standards and quality standards infrastructure in the Member States. The paper describes in some detail activities taking place within SADC's SQAM Programme, which could serve as a best-practise model for other African regional agreements. Among the other initiatives covered, is the NEPAD initiative for creating an 'African' body for Metrology – AFRIMETS (Intra-Africa Metrology System) and the regional metrology programme of the African Organisation for Standardisation (ARSO).

The main reason for SSA's generally weak SQAM infrastructure seems to be severe capacity constraints, ranging from a lack of technical expertise to lack of financial resources and organisational capacity. There is an import-export bias in the sense that developing regions in Africa seem to favour low technical requirements in respect of their imports whereas they face high TBT requirements for their exports to developed regions. Products are often re-tested in export markets, leading to large cost penalties for exporters, whereas products of sub-standard quality often find their way into the markets of the region, because the TBT infrastructure is underdeveloped.

The weak SQAM infrastructure helps explain why relatively little attention is paid in RTAs to the elimination of TBT-related barriers to trade among parties. Also, low levels of living standards seem to favour weak product standards that can be provided at low cost; this makes it difficult to upgrade product standards. The high cost of compliance with technical regulations is not always justified given the regional demand for low priced, low quality products. That TBTs receive relatively little attention may also have to do with the prominence of tariff barriers at the time of the drafting and ratification of the agreements. The paper notes that the emphasis of RTAs drafted after 2000 has shifted towards recognising that the trade policy agenda is evolving, and that the findings of the survey of SSA RTAs with respect to TBT provisions reinforces the need to pursue an overhaul of TBT.

The overall impression is that African countries still have a long way to go in taking on the challenge of reducing TBT. Africa may need a unique solution and holistic approach that takes advantage of opportunities to pursue reforms both at the multilateral level and regionally. While TBT policy reform could be advanced through WTO negotiations, the authors recommend the following measures in order to facilitate TBT policy alignment among countries of the region:

- African RTAs should be revisited, reviewed and amended to include TBT provisions.
- A targeted review of TBTs should be undertaken in light of the development needs in meeting the basic requirements of standards systems and implementation of current obligations to support expanded trade opportunities
- It should be investigated whether African countries benefit from Mutual Recognition Agreements for national product testing and certification.
- Performance of enquiry points should be assessed throughout the region on an ongoing basis.
- A programme of assistance in infrastructure modernisation should be considered, comprising *inter alia* a long-term plan for infrastructure modernisation and enhanced access of African countries to the development of voluntary standards activities.

- More attention should be paid to trade with India and China, with which the RECs in Africa and specifically the tripartite SADC/EAC/COMESA alliance have no trade agreement or TBT arrangements. Because of the sheer size of these economies, trade in unregulated low-priced products may be harmful to consumers and economies of the sub-Saharan region.

BILATERAL AND REGIONAL TRADE AGREEMENTS AND TECHNICAL BARRIERS TO TRADE: AN AFRICAN PERSPECTIVE¹

I. Introduction

1. According to the Organisation for Economic Co-operation and Development (OECD), there is a growing consensus, supported by a growing body of theoretical, empirical and policy analysis, including by the World Trade Organisation (WTO), that technical regulations, standards and procedures for determining conformity can have both positive and detrimental effects on competition and international trade (OECD, 2005b). These measures ensure consumer safety, increase the transparency of product information and compatibility of products and serve other goals. Yet, business surveys and discussions in the WTO and other trade policy forums also indicate that, in both developed and developing countries, these requirements often increase transaction costs and are of greater concern to exporters and governments than any other type of non-tariff measure.

2. Technical regulations are on the rise and can be used as instruments of commercial policy in unilateral, regional, and global trade contexts. Their operation as potential non-tariff barriers (NTBs) is of particular concern to developing countries. Barriers to trade are measures in place in markets which make it difficult, or even impossible, for actual or potential foreign companies to enter or sell. Such measures are considered undesirable in the context of world trade, because they restrict the flow of goods and services, drive prices up and are harmful to consumers. Exporters frequently face difficulties in gaining access to markets due to requirements that products be tested and assessed in the importing country to ensure that local regulatory requirements are met. A large array of these restrictions to access is usually referred to by using the acronym TBT (Technical Barriers to Trade).

3. The multilateral agreement on Technical Barriers to Trade (TBT) seeks to ensure that technical regulations, standards and procedures for assessing conformity do not create unnecessary obstacles to trade. It requires *inter alia* that applicable regulations are transparent, justifiable, non-discriminatory and based on international standards whenever possible.

4. The Agreement recognises that countries have the right to establish protection levels that they consider appropriate, for example, to safeguard human, animal or plant life or health or the environment. As such, the Agreement does not prevent countries from taking measures necessary to ensure that these levels of protection are met. Least developed and developing countries enjoy special and differential treatment but have to bear in mind that producing to standards lower than those of the rest of the world makes it harder for them to export.

5. Africa is part of a world trading system subject to elaborate WTO rules but also home to some 30 RTAs, many of which are part of deeper regional integration schemes. Annex 1 lists all African intra- and extra-regional trade agreements registered with the WTO. On average, each African country belongs to four RTAs (Yang et al (2005)). In recent years there has been a renewed push for broader and deeper preferential trade arrangements within Africa. The African common market has been the vision of African leaders since the early years of independence. Africa's regional economic communities are making

1. The authors wish to thank Barbara Fliess of the OECD for her dedicated technical support, guidance, advice and moral support without which this research would not have been possible. A special word of thanks also to the Kenya Bureau of Standards, The Standard Organisation of Nigeria and the South African Bureau for their collaboration with regards to the country case studies.

significant progress in attempts to integrate. Improvements have been made in areas including trade, communications, macroeconomic policies and transportation. Despite the gains, there are still a number of challenges facing the integration process. Addressing TBT is part of that challenge.

6. Despite the proliferation of preferential trade agreements in Africa, significant barriers to intra-regional trade still remain within “free” trade areas, and even within customs unions, in all four of the regional Economic Partnership Agreement (EPA) groupings in SSA. The deepening of regional integration has also taken place with existing RTAs, and included other areas, such as monetary and fiscal integration, and other forms of policy, cooperation and/or harmonisation. This deepening of integration has often been accompanied by a widening of regional agreements. Considering the various bilateral, regional and multilateral trade and integration agreements, it is important to keep in mind the variety of forms, legal provisions and objectives are pursued.

7. Recent research carried out by the OECD compares the alignment of rule-making provisions in the RTAs with those of the WTO (OECD, 2007). Similarly, this paper draws on existing frameworks and aims to complement this research by examining the legal provisions in selected RTAs in SSA, in terms of their divergence and/or convergence with the WTO TBT Agreement and amongst themselves.

8. Setting the stage for this analysis, the following section outlines the key principles and provisions of the WTO TBT Agreement and key policy options for addressing TBT. Section III describes existing RTAs in SSA. This is followed by a review of provisions and commitments in eight major RTAs relating to TBT and a description of what concrete steps parties to the RTAs have taken to remove TBT-related barriers to trade, including through cooperative arrangements at the regional level (Section IV). Section V offers conclusions and some recommendations.

II. Key provisions of the WTO TBT Agreement²

9. With tariffs declining over the years following successive rounds of multilateral WTO negotiations, behind-the-border non-tariff trade measures like technical regulations or conformity assessment procedures have gained in importance in today’s trade landscape. These technical barriers may aim to protect human, plant and animal health as well as the environment, national security and infant industries. The effects of these barriers, supported by advances in science and technology, are experienced throughout the local and international supply chain and can act as a stimulus for development and innovation.

10. These measures may however, discriminate against imports and therefore restrict trade and cause market distortions. This situation can occur when technical regulations are not well targeted, not scientifically underpinned, comprise unclear certification and assessment procedures, or is arbitrarily applied. Technical barriers at times entail high compliance costs, especially for companies that operate in different markets. Producers in developing countries face considerable challenges in overcoming TBT as they often do not have the capital, technical and institutional capacity to comply with emerging regulations and conformity assessments.

11. The WTO TBT Agreement aims to ensure that technical regulations, standards and conformity assessment procedures do not constitute unnecessary barriers to trade, by setting disciplines for the elaboration, application, notification and review of such measures by WTO members (OECD, 2007). Its key principles and provisions are presented in Box 1.

2. This part draws heavily from OECD, 2007

Box 1. Key principles and provisions of the WTO Agreement on TBT

Non discrimination and national treatment: Article 2.1 of the Agreement states that “*in respect of their technical regulations, products imported from the territory of any Member be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country*”. The same principle applies to conformity assessment procedures and related fees and information requirements, which must not discriminate against imported products.

Avoidance of unnecessary obstacles to trade: When a government is preparing a technical regulation to achieve a certain policy objective, the regulation should not be more trade-restrictive than necessary to fulfil the legitimate objective. According to the Agreement, specifying, whenever appropriate, product regulations in terms of performance rather than design or descriptive characteristics, helps in avoiding unnecessary obstacles to international trade (Art. 2.8). The obligation to avoid unnecessary obstacles to trade applies also to conformity assessment procedures (Art 5.1). Thus such procedures should not be stricter or more time-consuming than what is necessary to assess the compliance of a product with domestic laws and regulations

Harmonisation of technical regulations, standards and conformity assessment procedures: The Agreement calls governments to use existing international standards, or the relevant parts of them, as a basis for setting national technical regulations and to follow international recommendations and guides, or relevant parts thereof, when setting conformity assessment procedures. The Agreement however allows for exceptions when international standards, guides and recommendations are ineffective or inappropriate to fulfil a country’s “*legitimate objectives*”. In addition, governments should participate, “*within the limits of their resources*” in the preparation by international standardisation bodies, of international standards for products for which they either have adopted, or expect to adopt, technical regulation, and in the elaboration of international guides and recommendations for conformity assessment procedures.

Acceptance of technical regulations as equivalent: Alongside harmonisation, the Agreement encourages Members to accept “*equivalent*” technical regulations of other Members if these regulations adequately fulfil the objectives of their own domestic regulations (Art. 2.7).

Mutual recognition of conformity assessment: Furthermore, the Agreement encourages Members to recognise “*whenever possible*” the results of each other’s procedures for assessing whether a product conforms to mandatory technical regulations. Without such recognition, products might have to be tested twice, first by the exporting country and then by the importing country. The agreement also encourages Members to enter into negotiations for the conclusion of agreements for the mutual recognition of conformity assessment results. Yet MRAs requires confidence in the competence of other Member’s conformity assessment bodies and procedures. The WTO agreement therefore recognises that prior consultations may be necessary to arrive at a mutually satisfactory understanding regarding the competences of conformity assessment bodies (Art 6.1).

Transparency: To help ensure transparency, all WTO Members are required to establish *national enquiry points* and to *notify* to the WTO Secretariat, discuss and publish technical regulations and conformity assessment procedures which do not exist, which differ from existing international standards, recommendations or guides, or which may have a significant effect on trade of other Members, before they are adopted (Art 2.9 and 5.6). Members must publish a notice in a publication at an early stage and notify other Members through the WTO Secretariat, giving a brief indication of the purpose of the new technical regulation or conformity assessment procedures. Finally, they should allow reasonable time for other Members to comment on proposed technical regulations before their entry into force, which the TBT Committee has recommended to be at least 60 days. The Code of Good Practice applicable to (voluntary) standards states explicitly that a standardising body must give interested Parties at least 60 days for the submission of comments on a draft standard.

Technical assistance: The Agreement calls on Members to provide technical assistance to other Members (Art 11). Technical assistance can be targeted to, e.g., the preparation of technical regulations, the establishment of national standardising bodies, the participation in international standardisation bodies and the provision or strengthening of adequate equipment and capacities for testing and certification.

Special and differential treatment: Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing countries. In addition, developing countries are not expected to use international standards which are not appropriate to their development, financial and trade needs. Finally, the Committee on TBT can grant developing

countries specified, time-limited exceptions in whole or in part from the obligations of the Agreement (Art 12).

Enforcement and dispute settlement: The WTO Technical Barriers to Trade Committee is the major forum to consult on matters pertaining to the operation of the agreement and discuss concerns about the regulations and their implementation (Art 13). In order to resolve concerns between countries on TBT matters, the TBT Agreement explicitly refers to the WTO Dispute Settlement Body for consultations and solutions of disputes (Art 14).

Source : WTO TBT Agreement, WTO TBT Committee as adapted by OECD (2007)

III. Regional Trade Agreements (RTAs) in Sub-Saharan Africa³

12. There are some 230 regional trade agreements (RTAs) in force globally, with almost every country being a party to one or more agreements. The stalling of multilateral trade negotiations in the WTO has resulted in an increasing focus on regionalism and RTAs. In general, RTAs are perceived to be either stumbling blocks or building blocks for further global trade liberalisation. They may reduce welfare when trade diversion is greater than trade creation; however, proponents argue that the trade diversion effects tend to be smaller than the trade creation effects and those RTAs are more manageable than multilateral arrangements.

13. Regional integration has come a long way in SSA. To date the region counts 14 regional trade or cooperation agreements. Many SSA countries have small economies, are landlocked and have an inadequate infrastructure. The region only contributed 1.5 % to global GDP but accounted for 12 percent of the global population in 2007. The region also is fairly dependent on trade, reflected by the percentage of exports to GDP of 33% (WB, 2009). RTAs, by creating larger markets, are thought to enable African economies to exploit economies of scale and enhance competitiveness and attract investments. Furthermore, regional integration may raise bargaining power at the level of international trade negotiations as well as promote regional stability (IMF, 2005).

14. For strategic and political reasons many African countries belong to more than one regional bloc, also known as Regional Economic Community (REC), especially in East and Southern Africa (UNECA, 2004a). The structure of each regional economic community varies, but they all share a common objective: reducing trade barriers among member countries by creating a common, larger economic space. However, the complex patchwork resulting from the multiplicity and overlapping membership in regional economic communities raises considerable problems for policy and programme coordination and harmonisation. According to UNECA (2004b) the multiplicity of regional economic communities has several drawbacks:

- fragmented economic spaces and approaches to regional integration,
- increased cost of membership in regional economic communities,
- unhealthy rivalry for donor funds,
- contradictory obligations and loyalties for member countries,
- inconsistent objectives and conflicting operational mandates,
- duplicated efforts, and
- reduced ability for regional economic communities to pursue coherent and effective integration programmes.

3. RTAs of North Africa have been covered extensively in Lesser C. (2007) *Do Bilateral and Regional Approaches for Reducing Technical Barriers to Trade Converge towards the Multilateral Trading System* (OECD Trade Working Papers No. 58). Hence they are not included in this study.

15. Regional integration may be particularly beneficial for the landlocked countries in SSA. For example, through regional integration a landlocked country may have access to harbour facilities. Evidence shows that these countries in particular are more involved in regional trade. Moreover, these countries stand to gain more from multilateral trade liberalisation as the marginal cost of regional imports is generally higher. Past experience suggests that RTAs have not generated the expected benefits for landlocked African countries because coastal countries have more often than not created obstacles, administrative (customs procedures) or physical (roadblocks), resulting in excessively high costs of transit or even double taxation at entry (IMF, 2005).

16. SSA is now a complicated web of various regional integration initiatives. Most countries have multiple memberships of various RTAs. This becomes evident from the mapping of the various RTAs in the figure in Annex 2. There are four major RTAs in SSA, each at a different stage of progressing into a customs union: West African Economic and Monetary Union (WAEMU), Southern African Customs Union (SACU), Central African Economic and Monetary Union (CEMAC) and the East African Cooperation (EAC). Combined, these RTAs include more than 24 countries (see also Figure 1). Four other important regional groupings exist that include 53 countries in total which are involved in different stages of a Free Trade Area (FTA). These RTAs are: Economic Community of West African States (ECOWAS), Economic Community of Central African States (ECCAS), Common Market of Eastern and Southern African States (COMESA) and the Southern African Development Community (SADC). Other RTAs in the region include Arab Maghreb Union (AMU), Inter-Governmental Authority for Development (IGAD), Community of Sahel-Saharan States (CASS), Cross Border Initiative (CBI), Permanent Interstate Committee on Drought Control in the Sahel (CILSS) and the Indian Ocean Commission (IOC). However, these initiatives are cooperation agreements and have little economic impact (IMF, 2005).

17. In recent years, several groupings have engaged in major revisions and restructuring, such as UDEAC into CEMAC, and others have been intensifying sub-regional integration, such as SADC's adoption of its trade protocol in 2000 (calling for the formation of an FTA within 8 years), and the entry into force in 2000 of the COMESA FTA. Currently there are multiple RECs, many of which have overlapping memberships. The RECs primarily constitute trade blocs and, in some cases, involve political and military cooperation. Most of these RECs form the 'pillars' of the African Economic Community (AEC). Many countries belong to more than one regional grouping, some of which with overlapping membership and in some cases conflicting objectives and obligations. This is the case for instance in east and southern Africa with COMESA/SADC/EAC whose integration processes and agendas were until recently, not consistent (see Box 2). Due to the high degree of membership overlap it is likely that some states will eventually withdraw from one or more REC. A deepening of regional integration has also taken place with existing RTAs, and includes other areas of integration, such as monetary and fiscal integration, and other forms of policy cooperation and/or harmonisation. This deepening of integration has often been accompanied by a widening of regional agreements.

Box 2. EAC-COMESA-SADC: Steps towards broader integration

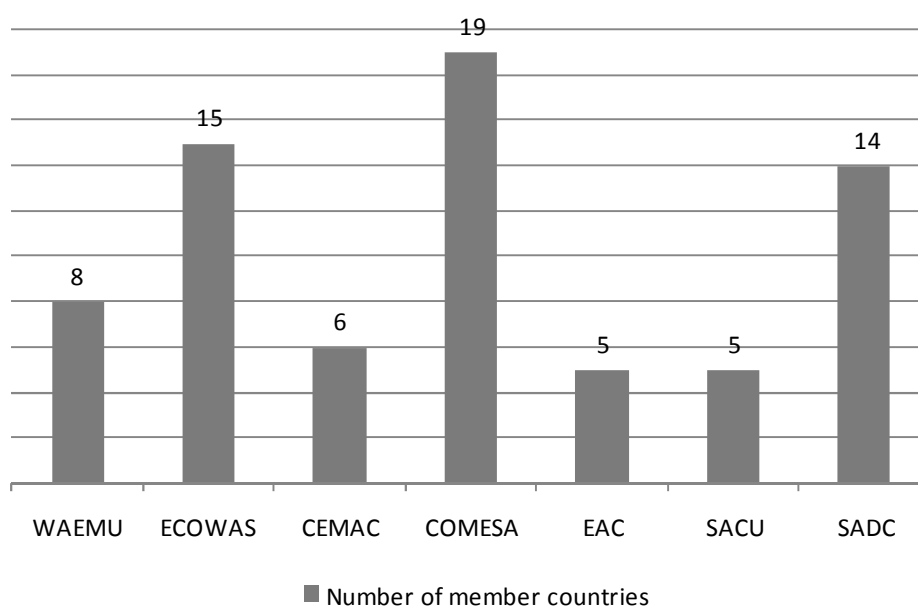
An historic EAC-COMESA-SADC Tripartite Summit was held on 22 October 2008 to strategize on how to integrate territories and moving towards deepening and widening integration. It agreed on a programme of harmonisation of trading arrangements amongst the three regional economic communities (RECs), free movement of business persons, joint implementation of inter-regional infrastructure programmes as well as institutional arrangements on the basis of which the three RECs could foster cooperation. In the area of trade, customs and economic integration the Tripartite Summit approved the expeditious establishment of a FTA encompassing the member/partner States of the 3 RECs with the ultimate goal of establishing a single Customs Union. Furthermore it directed the 3 RECs to undertake a study incorporating the development of a roadmap for the establishment of the FTA, the legal and institutional framework to underpin the FTA and measures to facilitate the movement of business persons across RECs. The EAC, COMESA and SADC currently have a combined population of 527 million and a combined GDP of USD625 billion (Ncube, 2008).

18. This study focuses on seven RTAs in force in SSA, because of their wide membership coverage, economic impact, notification to the WTO⁴ and stage of implementation. In addition, the bilateral Trade and Development Cooperation Agreement (TDCA) between South Africa and the European Union (EU) is also reviewed. Table 1 provides an overview of the eight agreements, which are described in more detail in Annex 3.

19. Although scope and stage of implementation varies, some common features of the seven RTAs are prominent. They are (IMF, 2005):

- a) Interregional tariff reduction is generally the primary focus
- b) Some of the rules of origin are very restrictive
- c) External trade barriers remain high
- d) Revenue losses are an important concern in the design of the RTAs
- e) The desired level of regional integration is high

Figure 1. Membership of RTAs in SSA



4. RTAs that are notified to the WTO are in line with the transparency mechanism that was established by the General Council. The notified RTAs fall either under Article XXIV of General Agreement on Tariffs and Trade, Article V of the General Agreement on Trade in Services or the enabling clause for developing countries.

Table 1. Overview of Regional Trade Agreements in Sub-Saharan Africa

| Agreement | Type* | Member countries | Date of entry into force | GDP per capita (\$) | Total population | TBT provisions | Trade agreements with third parties |
|--|----------------------|---|--------------------------|---------------------|------------------|----------------|-------------------------------------|
| West African Economic and Monetary Union (WAEMA) | CU | Benin, Burkina Faso, Ivory Coast, Guinea-Bissau, Mali, Niger, Senegal, Togo | 1-1-2000 | 7,890 | 256,646,263 | Yes | (USA) |
| Economic Community of West African States (ECOWAS) | FTA | Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo | 28-5-1975 | 1,361 | 251,646,263 | Yes | EU** |
| Central African Economic and Monetary Union (CEMAC) | CU | Cameroon, Central African Republic, Chad, Congo, Guinea, Gabon | 1-6-1999 | 2,435 | 34,970,529 | No | EU** |
| Common Market for Eastern and Southern Africa (COMESA) | PTA | Burundi, Comoros, D.R. Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe | 1-12-1994 | 1,811 | 406,102,471 | No | EU** |
| East African Community (EAC) | FTA | Burundi, Kenya, Rwanda, Tanzania, Uganda, | 7-7-2000 | 1,200 | 124,858,568 | No | EU** |
| Southern African Customs Union (SACU) | CU | Botswana, Lesotho, Namibia, Swaziland, South Africa | 1910 | 10,605 | 51,055,878 | Yes | EU**, EFTA, USA, India, China |
| Southern African Development Community (SADC) | FTA | Angola, Botswana, Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe | 1-4-1980 | 3,152 | 233,944,179 | Yes | EU** |
| South Africa – EU Trade and Development Cooperation Agreement (TDCA) | Free Trade Agreement | South Africa, EU 27 | 11-10-1999 | 5,833 | 47,587,543 | Yes | SA-EU |

Notes: * CU: customs Union, FTA: Free Trade Area, PTA: Preferential Trade Area

** EU Economic Partnership Agreement under negotiation

Source: The World Bank (2009b)

IV. Analysis of TBT provisions in the RTAs

20. This section assesses the eight RTAs of SSA using the provisions of the WTO Agreement on TBT as a benchmark. The analytical framework is shown in Table 2 and a schematic overview of the TBT provisions of the eight RTAs is presented in Annex 4.

Table 2. Analytical framework for examining TBT provisions in RTAs

| Category | Questions |
|--|---|
| Reference to the WTO TBT Agreement | <ul style="list-style-type: none"> • Does the agreement make reference to the WTO agreement (i.e., its objectives, rules and/or provisions)? • Does the TBT chapter in the agreement have more far-reaching goals? |
| Harmonisation | <ul style="list-style-type: none"> • Does the agreement require or encourage Parties to harmonise their technical regulations, standards and conformity assessment procedures? • Does the agreement promote the use of international and/or regional standards and guidelines as a basis for setting national regulations, standards and conformity assessment procedures? |
| Acceptance of technical regulations as equivalent | <ul style="list-style-type: none"> • Does the agreement require or encourage Parties to accept as equivalent other Parties technical regulations and standards? • Does the agreement call Parties to explain the reasons for not accepting the other Party's technical regulations as equivalent? |
| (Mutual) recognition of conformity assessments | <ul style="list-style-type: none"> • Does the agreement call for a (mutual) recognition of conformity assessment results? • Does the agreement require that the Parties explain the reasons for non-recognition? • Is the agreement accompanied by a (separate) mutual recognition arrangement or does it promote the conclusion of such arrangements? |
| Transparency | <ul style="list-style-type: none"> • Does the agreement include transparency provisions? • Does the agreement require members to hold consultations and notify regulations and procedures at bilateral and regional level before they are adopted? • Is a time period for the receipt of comments by other Parties defined? Is it longer than 60 days? • Does the agreement require the establishment of a (separate) regional enquiry point? |
| Enforcement and dispute settlement | <ul style="list-style-type: none"> • Does the agreement call for the establishment of, and participation in, a regional TBT body (e.g. committee) to monitor and review the TBT commitments and process)? • Does the agreement include specific provisions for the resolution of regional TBT-related disputes? • Does the agreement foresee consultations and recommendations, or a more formal mechanism at the regional level to resolve disputes? |

Source: Adapted from Sampson and Woolcock, 2003 and Piermartini and Budetta, 2006.

A. Stocktaking

1. Reference to the WTO TBT Agreement

21. Only two of the eight RTAs analysed refer specifically to the WTO Agreement on TBT. In the case of SACU it is stated that “Member States shall apply product standards and technical regulations in accordance with the WTO Agreement on Technical Barriers to Trade and that they shall strive to harmonise product standards and technical regulations within the Common Customs Area”. In the case of the SA-EU TDCA, Article 47 provides for “cooperation between members regarding measures to promote the greater use of regulations, standards and conformity assessment in accordance with the provisions of the WTO TBT Agreement”.

22. The ECOWAS Agreement makes no direct reference to the TBT Agreement. Article 3.2 provides for the liberalization of non-tariff barriers in general. The CEMAC Agreement also does not mention the TBT Agreement; Article 13 j calls for the elimination of any measure that negatively affects trade between parties.

2. Harmonisation of technical regulations, standards and conformity assessment procedures

23. The vast majority of the eight RTAs reviewed encourage parties to harmonise their technical regulations, standards and conformity assessment procedures. With regard to voluntary standards, COMESA Treaty calls for member states to coordinate their views with regard to the selection, recognition, adaptation and application of African regional and international standards in so far as the needs of the Common Market are concerned, and to continuously endeavour to improve the standardisation of goods and services within the Common Market.

24. SACU for example, calls on members to strive to harmonise product standards and technical regulations in accordance with international standards such as prescribed by the WTO Agreement on TBT while taking into account the results of the Uruguay Round of multilateral trade negotiations and recognising the obligations of Member States arising from existing regional and bilateral trade agreements.

25. The WAEMU Agreement encourages members to harmonise their technical regulations, standards and conformity assessment in Article 76 e. It specifically calls for “the realization of harmonisation and mutual recognition of technical standards and procedures for approval and certification.”

26. The ECOWAS Agreement addresses this issue in Article 3.2 b, j and Article 26.3 i. Article 3.2 b states: “the Community shall ensure the harmonisation and co-ordination of policies for the protection of the environment.” According to Article 3.2 j the Community shall ensure harmonisation of standards and measures, whereas Article 26.3 i stipulates that “Member States shall promote technical co-operation and the exchange of experience in the field of industrial technology and implement technical training programmes among Member States.”

27. The CEMAC Agreements contains two articles dealing with the harmonisation of technical regulations, standards and conformity assessments. Article 13 calls for “the harmonisation and mutual recognition of technical standards and procedures for approval and certification.” Article 17 stipulates “...harmonisation and mutual recognition of technical and health standards as well as of the approval and certification procedures.”

28. The SA-EU TDCA trade agreement calls on the partner states to undertake to promote the use of regional standards by undertaking to evolve and apply a common policy for maintaining the level of the

standardisation, quality assurance, metrology and testing currently applicable and that differences between parties should be reduced (Article 47).

3. Acceptance of technical regulations as equivalent

29. Very few of the RTAs reviewed, i.e. three of eight, require or encourage parties to accept as equivalent other parties' technical regulations and standards. Equivalence should be based on the assessment whether these regulations adequately fulfil the objectives of their own domestic regulations. The CEMAC Agreement states in Article 17 of Section III that technical and health standards are to be mutually recognised.

30. In the case of COMESA parties are encouraged to adopt African regional standards and where these are unavailable, adopt suitable international standards for products traded in the Common Market. In the case of EAC, partner states undertake to evolve and apply a common policy for the standardisation, quality assurance, metrology and testing of goods and services produced and traded within the Community. In none of the cases reviewed does the agreement require a party to explain the reasons for not accepting another party's technical regulations as equivalent.

4. Mutual recognition of conformity assessments

31. Four of the eight agreements encourage mutual recognition of conformity assessment results. Article 76 e of the WAEMU Agreement calls for the mutual recognition of procedures of approval and certification. The CEMAC Agreement refers to mutual recognition of conformity assessment procedures twice, i.e. in Article 13 n and Article 17, respectively. These Articles literally mandate the mutual recognition of procedures for approval and certification.

32. The SA – EU TDCA Agreement addresses this issue in Article 47 b, which specifically mentions that agreements on mutual recognition of conformity assessment in sectors of economic interest should be developed. It is the only agreement promoting the establishment of separate mutual recognition arrangements (MRA's).

33. According to SADC, the aim is to create an environment for the conclusion of MRAs amongst qualifying institutions in Member States within the framework of and consistent with global MRAs being prepared by various international organisations in these fields.

34. None of the agreements reviewed require that parties explain the reasons for non-recognition.

5. Transparency

35. None of the RTAs reviewed has transparency provisions or requires members to hold consultations and notify regulations, or sets a time period for comments by other Parties, or require the establishment of a regional enquiry point. The EAC Treaty states that each member state shall designate a Ministry with which the Secretary General may communicate in connection with any matter arising out of the implementation of the Treaty, and shall notify the Secretary General of that designation. Upon receipt of this request the Registrar shall immediately give notice of the request to all partner states. With a view of contributing towards the objectives of the Community, the Community shall foster co-operative arrangements with other regional and international organisations whose activities have a bearing on the objectives of the Community.

6. Enforcement and dispute settlement

36. None of the agreements include provisions on enforcement and dispute settlement specific to technical regulations and other TBT matters.

37. The SACU Treaty provides for the settlement of any dispute regarding the interpretation or application of the RTA Agreement, or any dispute arising thereunder at the request of the Council by an ad hoc Tribunal. In the cases of COMESA and EAC, disputes are resolved by a court with jurisdiction to hear disputes. Member states also undertook to accede to the International Convention on Settlement of Investment Disputes between States and Nationals of other States.

38. There is hardly any regional body dedicated to TBT matters, or joint committees or other consultation mechanisms focusing on TBT issues.

39. In the case of COMESA, a Trade Information Network (TINET) is to facilitate the exchange of information and manage further cooperation among Parties *inter alia* through provision and exchange of computerised trade information in the region, company data, tender invitations issued by national authorities for public procurement, statistical profiles of general and specific product groups, restrictive trade practices, non-tariff barriers (including TBTs) and others, as stated in the TINET's region-wide standards. These standards contain special TINET instructions, ad hoc requests, and standing practices which are subject to change from time to time.

40. In the case of SADC, members signed a Memorandum of Understanding (MOU) on Standardisation, Quality Assurance, Accreditation and Metrology (SQAM) with the aim of creating a formal framework under which the co-operation amongst the relevant national institutions could take place in the region. This framework is referred to as the *SADC SQAM Programme* and its structures and activities are described further in Section V.

41. To summarise the review, only one agreement refers explicitly to the WTO and more specifically the WTO TBT Agreement. Most of the RTAs stipulate the elimination of regulations and standards that hinder trade in broad terms or otherwise require the harmonisation of these technical regulations if they are legitimate. Very few of the RTAs reviewed require or encourage parties to accept other parties' technical requirements and standards. Mutual recognition of technical regulations and conformity assessment is envisaged by some of the agreements, but mostly as a goal and in rather broad terms. None of the agreements reviewed require that parties to explain the reasons for non-recognition. And finally, there are no clauses prescribing transparency and providing for procedures for dealing with disputes over TBT matters. These findings are summarised in Table 3.

Table 3. Performance of TBT provisions in SSA RTAs

| Provision | Included in SSA RTAs |
|---|----------------------|
| Reference to WTO TBT | 1/8 |
| Harmonisation of technical regulations etc. | 6/8 |
| Acceptance of technical regulations as equivalent | 3/8 |
| Mutual recognition of CA | 4/8 |
| Transparency provisions | 0/8 |
| Enforcement and dispute settlement | 0/8 |

B. Working towards elimination of barriers to trade

42. Technical regulations are motivated by various objectives, e.g., to ensure the quality of products, protect consumer health, food safety and the environment, or to strengthen social responsibility. The increased attention paid to national regulations and standards in international trade policy discussions can be explained by their growing importance as barriers to trade relative to declining use of import tariffs and other interventions at the border. Because of the wide use of mandatory regulations and voluntary standards, almost every customer-supplier transaction across borders faces some testing and certification requirement. Under these circumstances, differences in product standards and conformity assessment procedures across countries can greatly influence trade volumes and patterns.

43. Removal of unnecessary technical barriers to trade within RTAs usually engages governments in such activities as harmonisation or mutual recognition of product standards and testing procedures and results. Developed countries have extensive experience with and a long history of implementation of technical regulations through various technical regulatory frameworks. By comparison, the regulatory infrastructure of many countries in Sub Saharan Africa remains underdeveloped and fragmented. For most countries of SSA, a most fundamental challenge exists, namely the existing weak infrastructure for engaging in calibration, testing, certification, accreditation, quality assurance and standardisation. This weak infrastructure represents by itself an obstacle to participation in trade, globally and within the region. As a direct consequence, it is difficult for local suppliers and importers to comply with all kinds of technical requirements. Products often have to undergo re-testing in export markets, leading to large cost penalties for exporters while, conversely, substandard products easily find their way into SSA markets.

In this section, concrete steps that parties to RTAs have taken to reduce or eliminate technical barriers to trade are reported. This includes initiatives taken at the national level and collaboration between different RTAs or across the African continent. No claim is made that this is an exhaustive account of relevant activities and results.

1. National perspectives

44. Developments at the national level are illustrated using as examples three (not necessarily representative) countries – Kenya, Nigeria and South Africa. A description of TBT-related national institutions and policy frameworks for each country is provided in Annex 5.⁵ Using a simple checklist, the following information was collected through contacts of National WTO TBT Enquiry Points and other sources on trade-facilitating measures.

Technical regulations

(a) Promotion of harmonisation or mutual recognition of technical regulations (or standards)

45. *Kenya:* The Kenya Bureau of Standards (KEBS) participates in harmonisation of East African Standards. KEBS brings together stakeholders who deliberate on the proposed East African Standards and also operates the TBT National Enquiry Point where all changes in technical regulations are reported and notified to the WTO.

46. *Nigeria:* The Standards Organisation of Nigeria (SON) makes reference to some of the international standards where an applicable Nigerian standard does not exist for a particular product.

5. For the comprehensiveness of the country studies, inclusion of countries of the francophone West African region would have been advantageous. The National WTO TBT Enquiry Points of Cameroon, Rwanda and Senegal were approached, but no information was provided.

47. *South Africa:* According to the South African Bureau of Standards (SABS), which is the core national standards body, all South African laboratories make, where required, use of technical regulations, such as IEC technical operating documents, mandatory specifications, and ECE Regulations in the transportation sector. Management system certification is primarily based on harmonised standards published by ISO or IEC.

48. The National Regulator for Compulsory Specifications (NRCS) benchmarks the process of developing technical regulations against TBT requirements and best-practice models, especially the UK and Australia. The NRCS also promotes the adoption of internationally recognised standards as SA National Standards. Technical regulations refer wherever possible to national standards that are aligned with, or identical to, international equivalents. Wherever possible, the technical and administrative requirements for compliance are similar to those applied in other WTO member States.

Conformity assessment

(a) Participation in international standardisation and conformity assessment activities

49. *Kenya:* KEBS of Kenya is a member of and participates in activities of international standardisation through ISO, IEC and the CODEX Alimentarius Commission. KEBS laboratories are accredited by UKAS (United Kingdom Accreditation Services).

50. *Nigeria:* SON of Nigeria participates in various standardisation and conformity assessment activities. It is a member of both ISO and Codex Alimentarius Commission.

51. *South Africa:* In South Africa, test and Calibration laboratories are accredited to ISO/IEC 17025, Proficiency Testing Schemes to ISO/IEC Guide 43-1 and ILAC G-13 Good Laboratory Practise to OECD principles. For management systems, SABS Commercial operates conformity assessment activities in approx 30 countries throughout the world. Activities are based primarily on international standards of ISO or IEC. Staff of SABS Commercial participates actively in the development of international CA standards under ISO and IEC auspices.

52. SABS's participation in international standardisation activities is extensive. NRCS participates in a number of international regulatory and conformity assessment activities, and maintains active membership inter alia in Codex Alimentarius (food), the International Association for Fish Inspectors, OIML (Legal Metrology), UN ECE Working Party 29 (Automotive), and the IEC.

(b) (Mutual) recognition of CA tests or certificates, and promotion of co-operative arrangements between domestic and foreign CA bodies

53. *Kenya:* KEBS has signed MOUs with several countries. Through these MOUs there is mutual recognition of standardisation marks. These include two EAC countries (Uganda and Tanzania). There is generally good cooperation, based on peer review, between the local accreditation body and foreign accreditation bodies.

54. *Nigeria:* SON reportedly does not recognise certain conformity assessment results or certificates because of differences in other parties' standards due to e.g. climate, voltage etc.

55. *South Africa:* Because of SANA's membership in ILAC, all SANAS-accredited laboratories participate in ILACs MRAs. In terms of management system standards certification, SABS accepts those certificates which are issued by accredited conformity assessment bodies and whose accreditation body is a signatory to the IAF multilateral agreement. SABS would accept a transfer of registration from a foreign CAB on the proviso that the foreign CAB is accredited by an IAF signatory.

56. The NRCS recognises CA tests or certificates originating in the territory of other parties. The administrative requirements of technical regulations administered by NRCS make mandatory the acceptance of evidence of conformity from bodies recognised as competent according to the normal criteria; i.e. accreditation by an ILAC affiliated authority and/or peer review.

57. NRCS has also signed a number of regulatory technical cooperation and mutual recognition agreements, including with Thailand (technical cooperation agreement with Department of Fisheries); Mozambique (technical cooperation agreement with regulatory authorities, regarding fish; Mauritius, Canada (MOU regarding fishery products); and Namibia (cooperation agreement regarding fishery products). By agreement with the EU's food and fishery authorities, NRCS is the competent authority to issue health guarantees for fish and fishery products.

(c) Accreditation to qualify CA bodies

58. *Kenya:* All conformity assessment bodies in Kenya have to be registered with and accredited by the local National Accreditation Body before they can operate in the country.

59. *Nigeria:* The laboratories where goods coming into Nigeria are tested must be ISO 17025 accredited. Only test reports from these laboratories are eligible for the issue of a product certificate (certifying the quality).

60. *South Africa:* The NRCS policy on conformity assessment is that bodies must demonstrate competence by means of expert third-party attestation. In practice, NRCS only accepts evidence of conformity provided by appropriately accredited bodies; however in the absence of appropriate accreditation it reserves the right to apply other criteria, such as peer review.

(d) Unilateral recognition by governments of test reports and certificates granted by CA bodies or other parties of the RTAs

61. *Kenya:* This is done through the framework of MOUs.

62. *Nigeria:* The answer is no.

63. *South Africa:* This question is answered under (b) and (c).

(e) Government initiatives to introduce supplier's declarations of conformity

64. *Kenya:* Infrastructural challenges make this route inappropriate at the moment. Third party certification is still the norm.

65. *Nigeria:* Suppliers must submit their test reports to one of the overseas Country Offices of SON (CONCO) for evaluation/review. For products for which there are no testing facilities available overseas, test results are evaluated for compliance with domestic standards.

66. *South Africa:* The NRCS is not aware of government support for such an initiative. At this time NRCS will not accept suppliers' declarations of conformity, due to the lack of an effective legal framework for consumer protection.

Participation in regional collaboration in the field of standardisation

67. *Kenya:* There is a move towards sharing especially the test facilities say within the East African Region. There are also peer review mechanisms between test facilities. The test results are usually recognised if a MOU has been signed.

68. *Nigeria:* Nigeria has extensive collaboration relations across Africa. For example, SON is a member of the African Organisation of Standardisation (ARSO).

69. *South Africa:* Many African countries (especially in SSA) use SABS standards and rely on SABS to supply CA services when they do not have the capacity in their own country. There is a trend however for these countries to try to implement their own CA systems. These are largely supported by donor funding and usually for a specific type of CA.

2. Perspectives on wider regional cooperation

70. Of all the RTAs in SSA, only SADC so far has put in place a credible and internationally recognised regional Standardisation, Quality Assurance and Metrology (SQAM) infrastructure, encompassing Standards (SADCSTAN), Accreditation (SADCA) and Scientific and Industrial and Legal Metrology (SADCMET and SADCMELE).

71. Noting the objectives of SADC as listed in the SADC Treaty, the objectives of the SADC SQAM Programme is the progressive elimination of technical barriers to trade (TBTs) among the Member States and between SADC and other regional and international trading blocks, and the promotion of quality and quality infrastructure in the Member States. Working groups were established to drive the programme forward.

72. **SADC Co-operation in Standardisation (SADCSTAN)** was established in 1997 to promote the coordination of standardisation activities in the region. The body facilitates the adoption of regional standards as well as dissemination of information on regulations and standards between members. Furthermore, the organisation liaises with international standard setting bodies and administers the TBT Agreement for the region. SADCSTAN members consist of the National Standard Setting Bodies which work together in 13 different technical committees. With the exception of D.R. Congo all SADC members have a legal framework in place to write and adopt standards and all are members of ISO. So far 51 standards have been harmonised within the SADCSTAN framework. However, SADCSTAN has to deal with a few constraints mainly due to lack of capacity within member states regarding infrastructure/facilities, resources and skilled staff. Furthermore, there is no legal obligation to adopt and implement harmonised SADC standards (Masuku, 2006).

73. **SADC Cooperation in Legal Metrology (SADCMELE)** was formed in 1996 as a result of a MOU with the main aim of giving effect to applicable requirements of the SADC Protocol on Trade. SADCMELE's mission is to harmonise technical regulations as far as possible. The implementation of a Common Technical Regulatory Framework in all of SADC member states will be initiated once the TBT Annex to the SADC Trade Protocol is agreed and adopted by all. Member countries are in different stages of technical regulations, standards and legal metrology development with mostly outdated legislation. Regionally developed regulations could be adopted by member countries, especially those with no legislation at present. SADCMELE has developed four harmonised technical regulations published as SANAS voluntary standards to date (Carstens, 2007):

- sale of products – units for measurement, misleading practices and labelling of packages

- accuracy of measurement – suitable instruments and tolerances for quantity declarations on packages
- mechanical counter scales; and
- beam scales

These standards are made compulsory by reference in a regulation under the Trade Metrology Act. The above framework promotes the concept that the technical content of regulations ought to be in line with, and reference, international standards.

74. **SADC Cooperation in Accreditation (SADCA)** was established in 1997 to provide for suitable regional accreditation and testing procedures. The organisation has developed the SADC Accreditation System (SADCAS), which functions as the regional accreditation body. This body offers a full scope of accreditation to testing and calibrating laboratories, certification bodies and inspection bodies. SADCAS is linked with other recognised regional accreditation bodies by a MRA and is a member of the International Laboratory Accreditation Cooperation (ILAC), Inter-American Accreditation Cooperation (IAAC) and has technical cooperation agreements with the EU. Accreditation has a very important role to play in ensuring competence and integrity of the organisations that provide testing, calibration, inspection and certifications services. SADCA uses the following criteria to assess national providers:

- the qualification, training and experience of staff
- validity and appropriateness of test methods
- traceability of measurements and calibrations to national standards
- testing environment
- sampling, handling and transportation of test items
- adequate quality assurance procedures
- proper sampling practices

75. SADCA has initiated the establishment of 13 National Accreditation Focal Points (NAFP) which are the technical specialists responsible for the day to day activity associated with accreditation in their respective countries (SADCA, 2009).

76. The kinds of constraints that countries in the region face are illustrated for *Mauritius*, a member of SADC, for accreditation of conformity assessment bodies (Gopee, 2005):

- lack of awareness and understanding of the importance of accreditation / voluntary aspect of accreditation;
- need to have financial incentives to attract users of conformity assessment services;
- budgetary constraints (foreign accreditation expertise is costly), before Mauritius was able to conclude a twinning agreement with accreditation bodies in South Africa and Sweden.
- lack of trained and qualified technical personnel
- Proficiency Testing Schemes and Certified Reference Materials (CRMs) are not always easily accessible.

77. The lessons learnt and options available to developing countries to access accreditation would be either to set up a National accreditation body and pay for foreign expertise for its development or set up regional and sub-regional accreditation system like in the SADC and ECOWAS (UEMOA). This option would help to eliminate the constraints related to scarce human resources and the budget.

78. One possible way forward in legal metrology shows the NEPAD initiative for creating an ‘African’ body for Metrology – AFRIMETS (Intra-Africa Metrology System). AFRIMETS brings together 5 sub-regional metrology organisations (principal members) and countries not belonging to Sub Regional Metrology Organisations (SRMOs) (ordinary members). The SRMOs are SADC MET, EAMET, CEMAC MET, SOAMET⁶, and MAGMET⁷, representing 36 countries in Southern, Eastern, Central and North Western Africa. The main objective of AFRIMETS is to harmonise scientific, industrial and metrology issues across Africa and to operate as a fully fledged regional metrology organisation (RMO) fulfilling the obligations as stipulated in the mutual recognition arrangement of the international Committee for Weight and Measures, the CIPM MRA.

79. Another major initiative on the African continent in the area of standard development, conformity assessment and harmonisation is the African Organisation for Standardisation (ARSO), an independent, non profit-making regional association of African national standards bodies. Members of ARSO include the National Standards Bodies of Burkina Faso, Cameroon, Congo, Egypt, Ethiopia, Gabon, Ghana, Kenya, Libya, Madagascar, Malawi, Mauritius, Nigeria, D.R. Congo, Guinea, Senegal, Rwanda, South Africa, Sudan, Tanzania, Tunisia, Uganda and Zimbabwe. ARSO was established in 1977 and is tasked to coordinate standardisation in Africa in collaboration with various socio-economic stakeholders in order to reduce TBTs. The political support for ARSO is laid down in the Abuja Treaty of 1991.

80. The Organisation is involved in the following activities:

- coordination of adaption of international standards as regional standards
- maintenance of a database on ARSO approved African standards
- support of African Union’s initiative to create a common market and NEPAD’s market access initiative
- promotion of standards as beneficial to socio-economic development
- assistance in the operationalisation for National Standardisation Bodies
- human resources development in the field of standardisation

81. ARSO has developed 733 standards over time on Basic and General Standards, Agriculture and Food Products, Building and Civil Engineering, Mechanical Engineering and Metallurgy, Chemical Engineering, Electro technology, Textiles, Transport and Communications, Environmental Protection and Pollution Control. Following a recent reorientation, no new standards will be developed but the organisation will focus on harmonisation and adoption of international standards.

82. ARSO has developed a regional metrology programme based on a Network of Testing, Metrology and Instrumentation Centres in Africa (ARSO-TMICNET). As provisions of metrology services require expensive capital requirements, the Network wants to foster co-operation and sharing of facilities, and development of metrology activities commensurate with the needs and resources of member States. The Network is open to member States whose metrology facilities satisfy the requirements of the ARSO-TMICNET constitution and rules.

V. Conclusions and recommendations

83. Africa is home to some 30 regional trade arrangements, many of which are part of broader initiatives of intra-regional cooperation. Africa’s regional economic communities are making progress in certain areas but the integration process still faces numerous challenges. Addressing barriers to trade caused by TBTs is one of them.

6. Benin, Burkina Faso, Ghana, Guinea-Bissau, Mali, Niger, Senegal, Togo

7. Algeria, Morocco, Tunisia

84. Whereas quantitative barriers to trade, like tariffs have been dramatically reduced over the years, the significance of non-trade barriers such as TBTs is quite visible in today's trade landscape. For businesses, the effects of technical regulations and other TBTs are often felt throughout entire international value chains. Standards may provide a stimulus for development and innovation but these and other TBT measures may accidentally or explicitly also discriminate against imports and restrict or distort trade flows. TBTs imply compliance costs especially for companies operating in different markets.

85. This review of selected RTAs in SSA finds that while these agreements contain some provisions intended to help prevent that standards and technical regulations unduly interfere with market access and trade, in the majority of cases these provisions are weak. With the exception of SADC, TBTs are not an important issue in the SSA RTAs.

86. One can only speculate about the reasons for TBTs not featuring more strongly in these agreements. It may be due to the prominence of tariff barriers at the time of the drafting and ratification of the agreements. The emphasis of RTAs drafted after 2000 has shifted towards recognising that the trade policy agenda is evolving. For instance, in the case of SACU the preamble in the RTA states that "the Customs Union Agreement concluded on 11 December 1969 no longer adequately caters for the needs of a customs union in the 21st century and should therefore be aligned with current developments in international trade relations". The findings of the present study support the notion that RTAs need to be adapted to better reflect today's trade environment and needs.

87. Under-development in the region is one of the main reasons why little attention is being paid to the elimination or reduction of trade barriers in the TBT field. Firstly, there exists a lack of capacity at the level of the African SQAM infrastructure. One can postulate that where governments' mandatory standard systems are weak, businesses engaged in export value chains will find it all the more difficult to sell their produce in international markets. Secondly, because of the high level of poverty it is difficult for regulators and businesses to insist on a high level of standards for products. Thirdly, the cost of compliance with technical regulations is high and is not always justified given the regional demand for low priced, low quality products. Developing countries in SSA face additional constraints in absorbing best-practice information on standards and mobilising resources necessary to adopt appropriate process and production methods. These constraints also influence the ability of African countries to both exercise their rights and meet obligations as members of the WTO.

88. Developing countries including SSA thus face several challenges. A country needs technical infrastructure to be able to take full advantage of trade opportunities, as well as the technical knowledge base required to support the national framework. Once the technical landscape has been established, a country needs to ensure equivalence in measurement systems and in standards to support trade. It must also be able to provide proof of compliance with technical regulations, product specifications and standards. It also needs to show that its products meet "fit for purpose" and internationally required safety standards. A country therefore needs a national accreditation body, standardisation body, metrology system and a technical regulatory body or framework. For each of these critical domains certain internationally accepted practices exist that have to be internalised.

89. To date, only SADC has a recognised SQAM system, which possibly could serve as a best-practise model for other African regional agreements. The overall impression is that African countries still have a long way to go. In taking on the challenge of reducing TBT barriers to trade, Africa may need a unique solution and holistic approach that takes advantage of opportunities to pursue reforms both at the multilateral level and regionally. A focus on reform advanced through WTO negotiations has been

recommended by Wilson (2001)⁸. As far as action at the regional level is concerned, the following recommendations are made:

- African RTAs should be revisited, reviewed and amended to include stronger TBT provisions.
- A targeted review of TBTs should be undertaken in light of the development needs in meeting the basic requirements of standards systems and implementation of current obligations to support expanded trade opportunities
- It should be investigated whether African countries benefit from Mutual Recognition Agreements for national product testing and certification.
- Performance of enquiry points should be assessed throughout the region on an ongoing basis.
- A programme of assistance in infrastructure modernisation should be considered. Such a programme of assistance according to Wilson (2001) would *inter alia* comprise a long-term plan to infrastructure modernisation and enhanced access of African countries to voluntary standards development activities. The programme would take into consideration existing infrastructure within the context of RTAs and should also include building capacity at a human resource and institutional level. The action plan would consist of:
 - Strengthening countries' capacity to absorb and adopt best practice international standards in regard to WTO obligations in the TBT and SPS and to adopt international standards.
 - Improvement of standards and development centres which promote trade expansion through regulatory reform and removal of technical barriers in discriminatory standards, testing and certification regimes.
 - Creation of a "Global Conformity Agreement" for a systematic review of products subject to mandatory government testing and certification.
- More attention should be paid to trade with India and China, with which the RECs in Africa, and specifically the tripartite SADC/EAC/COMESA alliance, presently have no trade agreements or other arrangements for closer collaboration in the TBT field. Because of the sheer size of these economies, trade in unregulated low-priced products may be harmful to consumers and economies of the sub-Saharan region.

8. Wilson makes the following recommendations: (1) commitment from African countries to place on the table the removal of domestic barriers to trade; (2) ending discriminatory treatment through science-based risk assessment; (3) removing duplicative testing requirements through agreement on portability of certificates of conformity; (4) recognition that foreign standards can achieve the same level of social and consumer protection as domestic standards; (5) making regulation more transparent through stronger WTO requirements; (6) scaling regulation to levels that do not impose excess costs on consumers and firms; and (7) establishing a development fund to aid the least developed countries in building modern standards infrastructure, including regional laboratories and other facilities.

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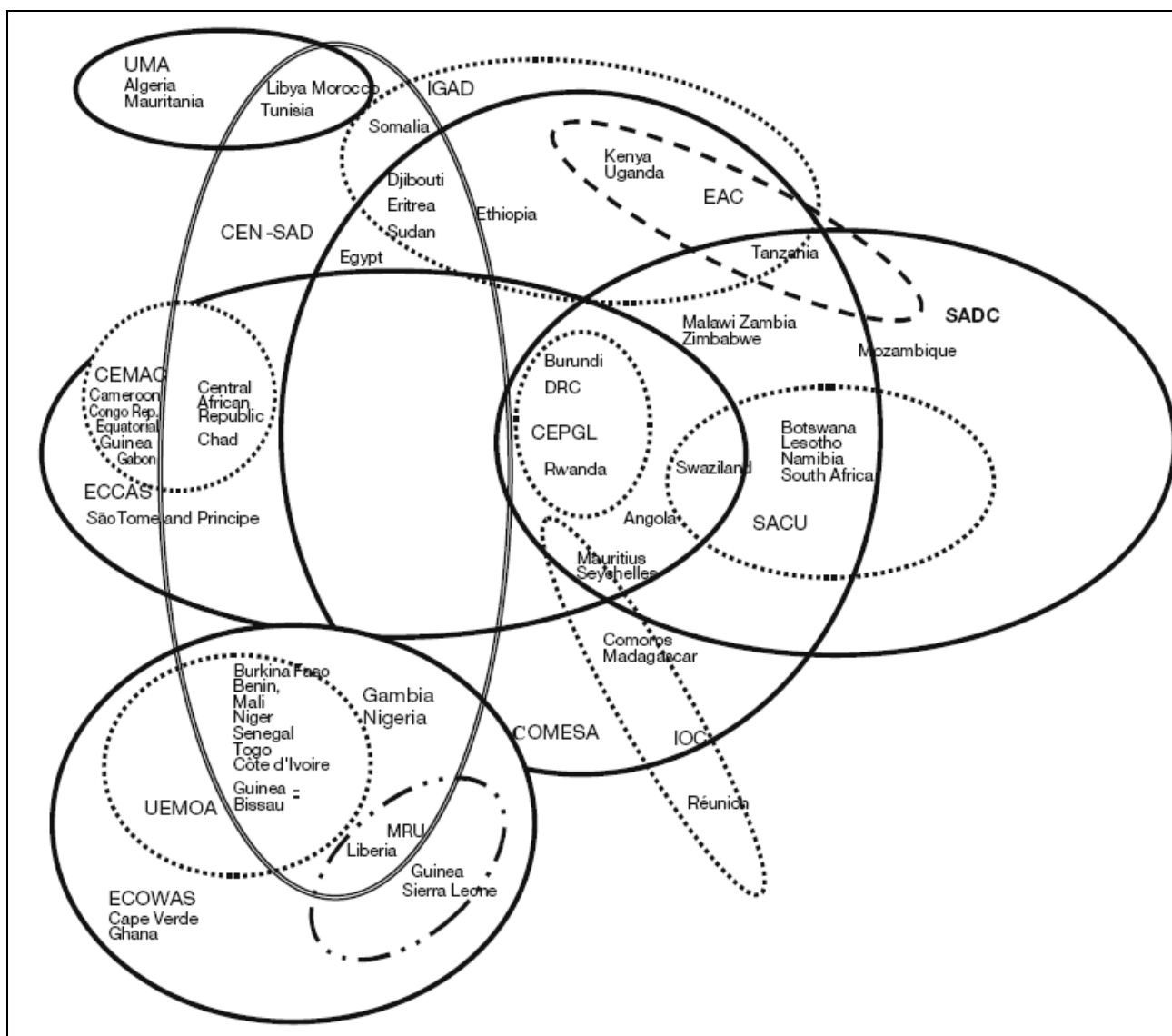
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**ANNEX 1. AFRICAN INTRA- AND EXTRA-REGIONAL TRADE AGREEMENTS
NOTIFIED TO THE WTO**

| RTA Name | Coverage | Type | Date of notification | WTO Legal Cover | Date of entry into force | Status |
|---|------------------|-----------|----------------------|-------------------------|--------------------------|----------|
| Common Market for Eastern and Southern Africa (COMESA) | Goods | FTA | 04-May-95 | Enabling Clause | 08-Dec-94 | In Force |
| East African Community (EAC) | Goods | CU | 09-Oct-00 | Enabling Clause | 07-Jul-00 | In Force |
| EC – Egypt | Goods | FTA | 03-Sep-04 | GATT Art. XXIV | 01-Jun-04 | In Force |
| EC - South Africa | Goods | FTA | 02-Nov-00 | GATT Art. XXIV | 01-Jan-00 | In Force |
| EC - Switzerland - Liechtenstein | Goods | FTA | 27-Oct-72 | GATT Art. XXIV | 01-Jan-73 | In Force |
| EC – Tunisia | Goods | FTA | 15-Jan-99 | GATT Art. XXIV | 01-Mar-98 | In Force |
| Economic and Monetary Community of Central Africa (CEMAC) | Goods | CU | 21-Jul-99 | Enabling Clause | 24-Jun-99 | In Force |
| Economic Community of West African States (ECOWAS) | Goods | PS | 06-Jul-05 | Enabling Clause | 24-Jul-93 | In Force |
| EFTA - SACU | Goods | FTA | 29-Oct-08 | GATT Art. XXIV | 01-May-08 | In Force |
| EFTA – Tunisia | Goods | FTA | 03-Jun-05 | GATT Art. XXIV | 01-Jun-05 | In Force |
| Egypt – Turkey | Goods | FTA | 05-Oct-07 | Enabling Clause | 01-Mar-07 | In Force |
| Southern African Customs Union (SACU) | Goods | CU | 25-Jun-07 | GATT Art. XXIV | 15-Jul-04 | In Force |
| Southern African Development Community (SADC) | Goods | FTA | 02-Aug-04 | GATT Art. XXIV | 01-Sep-00 | In Force |
| Turkey - Morocco | Goods | FTA | 10-Feb-06 | GATT Art. XXIV | 01-Jan-06 | In Force |
| Turkey - Tunisia | Goods | FTA | 01-Sep-05 | GATT Art. XXIV | 01-Jul-05 | In Force |
| US – Morocco | Goods & Services | FTA & EIA | 30-Dec-05 | GATT Art. XXIV & GATS V | 01-Jan-06 | In Force |
| West African Economic and Monetary Union (WAEMU) | Goods | CU | 27-Oct-99 | Enabling Clause | 01-Jan-00 | In Force |

Source: WTO, 2009

ANNEX 2. AFRICA'S OVERLAPPING REGIONAL ECONOMIC COMMUNITY MEMBERSHIPS



Source: Economic Commission for Africa, 2006

ANNEX 3: PROFILES OF RTAS INVOLVING SUB-SAHARAN AFRICA

West African Economic and Monetary Union (WAEMU/UEMOA)

The West African Economic and Monetary Union (WAEMU) (or UEMOA from its name in French, Union Économique et Monétaire Ouest-Africaine) is an organisation of eight states of West Africa established to promote economic integration among countries that share a common currency, the CFA franc⁹ zone. The union has a Commission which is located in Ouagadougou, Burkina Faso, and is financed by a one percent levy on all imports by WAEMU. The Commission is undertaking efforts to harmonise investment incentives, public financial management procedures and taxation and to monitor macroeconomic convergence criteria. The Union's institutions consist of a common central bank, a development bank, a court of justice, a general accounting office and a chamber of commerce, none of which is fully functioning.

The WAEMU region consists of two distinct zones, a dry landlocked Sahellian zone and a more humid coastal zone. Income levels, economic potential and constraints and constraints vary between the two zones and create substantial interdependencies. Ivory Coast and Senegal dominate the Union's economy accounting for 56,3 percent of the Union's total GDP in 2007 (WB, 2009). Intra-regional trade as a share of total trade was almost 12 percent in 2004.

All member countries of WEAMU have an overlapping membership of ECOWAS.

Economic Community of Western African States (ECOWAS)

The Economic Community of Western African States (ECOWAS) was formally established in 1975 with the signing of the Treaty of Lagos and the treaty was revised in 1993 to accelerate the process of economic integration. The Community has the following objectives: removal of customs duties and taxes for intra-ECOWAS trade, the establishment of a common external tariff, harmonisation of economic and financial policies and the creation of a common market. It was founded to achieve "collective self-sufficiency" for the member states by means of economic and monetary union creating a single large trading bloc. The very slow progress towards this aim meant that the treaty was revised in Cotonou on July 24, 1993 towards a looser collaboration. As Mauritania decided to withdraw in 1999, the Community now consists of 15 members including the eight WAEMU countries. The Communities' institutional design is loosely patterned after that of the European Union (EU). The ECOWAS Secretariat and the Fund for Cooperation, Compensation and Development are its two main institutions to implement policies. Other institutions include the Parliament, Economic and Social Council and a Court of Justice. The ECOWAS Fund was transformed into the ECOWAS Bank for Investment and Development in 2001 (The World Bank, 2009b).

ECOWAS exports mostly comprises of agricultural products and oil (Nigeria). This leaves the Community vulnerable to external shocks on the international market. Since all countries but Nigeria are net oil importers, fluctuations in oil prices on the import side are often combined with commodity price

9. The CFA (Colonies Francaises d'Afrique) franc is a currency used in twelve former French colonies

shocks on the export side (WB, 2009). The total GDP of the Community grew with almost 32 percent in the period 2000 to 2006. Nigeria and Ivory Coast are the dominant economies within ECOWAS, with a contribution to total GDP of 61 and 10 percent respectively. Intra regional trade as a share of total trade was 23 percent in 2005.

The ECOWAS member countries include Ghana, Gambia, Liberia, Nigeria, Sierra Leone, Cape Verde and Guinea which are not members of WAEMU.

East African Community (EAC)

The present Eastern African Community (EAC) is a revival of the previous East African Cooperation between Kenya, Tanzania and Uganda which collapsed in 1977. The cooperation was revived in 2000 and is now receiving more prominence as a result of the strong personal interest of the current leaders. Burundi and Rwanda joined the community in 2007. The main objective of the Treaty is to improve the competitiveness of the region by deeper economic integration. This should be achieved by moving from a customs union to a common market to a monetary union and ultimately to a political federation. The three main institutions of the Community are the Secretariat, the East African Legislative Assembly and the East African Court of Justice. The impact and role of these institutions, however, have been limited and they are underfunded. On the positive side there have been some mayor achievements in the field of convertibility of currencies, enhanced monetary and budget policy coordination, share management of Lake Victoria and the establishment of a customs union in 2005 (WB, 2009). The total GDP of the EAC grew with almost 35 percent in the period 2000 to 2006. Kenya and Tanzania are the dominant economies within EAC; these countries combined contributed towards more than 75 percent of total GDP. Intra regional trade as a share of total trade was 9 percent in 2007.

Common Market for Eastern and Southern Africa (COMESA)

The Common Market for Eastern and Southern Africa (COMESA) was established in 1994 and superseded a Preferential Trade Agreement (PTA) for the sub-region and is the largest regional grouping in Africa. COMESA currently has 19 members and a few countries have withdrawn in the past including Lesotho, Namibia, Mozambique, and Tanzania. The initiation of COMESA was to take advantage of a larger market, to share the region's common heritage and to allow greater social and economic cooperation to ultimately create an economic community. The aims and objectives of COMESA are to facilitate the removal of the structural and institutional weaknesses of member states, so that they are able to attain collective and sustained development. The regional initiative wants to eventually evolve into a monetary union in 2025.

So far, COMESA's main focus has been on strengthening outward-oriented regional integration (within the framework of the WTO) through removal of tariff and non-tariff barriers and adoption of trade and investment facilitation measures. Although market integration is still an unfinished agenda, recently, the integration strategy has been broadening to include supply-side areas such as transport and communications infrastructure development. The COMESA region features extreme diversity in socio-economic development among countries (WB, 2009). The total GDP of COMESA grew with 32 percent in the period 2000 to 2007. Egypt and Sudan are the dominant economies within COMESA with a contribution to the total GDP of 41 and 19 percent respectively. Intra regional trade as a share of total trade was 10 percent in 2006.

COMESA members Uganda, Kenya, Rwanda and Burundi are also member countries of the EAC. Malawi, Zambia and Zimbabwe are also members of SADC as where Uganda, Kenya, Ethiopia, Eritrea, Sudan, Djibouti and Egypt have an overlapping membership with IGAD and Libya of AMU.

Southern African Development Community (SADC)

The Southern African Development Community (SADC) was established in 1992 and was formerly known as the Southern African Development Coordination Conference (SADCC). It's one of the most important regional groupings in Africa and comprises 14 member states. The SADC Summit in August 2008 launched a comprehensive SADC Free Trade Area (FTA) for Growth, Development and Wealth Creation. Based on the implementation of the agreed phased down commitments, SADC attained the FTA as of January 2008. In this regard, the SADC principle of variable geometry will form the basis of the FTA process with three member States Angola, DRC and Malawi still addressing challenges facing them in the implementation of the Protocol on Trade.

The SADC Free Trade Area brings both opportunities and challenges for SADC member states. Many economies are too small to support a large range of viable productive investments and thus, the Free Trade Area will provide the opportunity for an enlarged domestic market which can foster economic growth through the economies of scale and improved efficiency. Intra-SADC trade is still low at 25 percent, largely concentrated in the countries of the Southern African Customs Union (SACU) - Botswana, Lesotho, Namibia, South Africa, and Swaziland. Official statistics further indicate that SADC countries are attracting only one percent of global foreign direct investment, a performance that is still low but greater than most regions in Africa (Munetsi, 2008)

SADC opted for a development integration approach which recognises the political and economic diversities of regional integrating countries including their diverse production structures, trade patterns, resource endowments, development priorities, institutional affiliations and resource allocation mechanisms. SADC's main objectives are mostly economic, political and cultural but more specifically they are to form common political interests and support greater trade and investment flows between Member States. Recent developments have led to a restructuring of SADC institutions with the creation of a centralized Secretariat and an Integrated Committee of Ministers aimed at ensuring proper policy guidance, coordination and harmonisation of cross-sectoral activities and to oversee the activities of the four Directorates: Trade, Industry, Finance and Investment (TIFI); Infrastructure and Services; Food, Agriculture and Natural Resources (FANR); Social and Human Development and Special Programmes. A 15-yr Regional Indicative Strategic Development Plan (RISDP) has been developed which will be implemented in five-year phases with the aim of making the region a Customs Union by 2010. The structures of the SADC countries are diverse and at varying stages of development. However, common features among several of the SADC countries include: small domestic markets, landlocked locations, linked infrastructure networks, and reliance on a few primary commodity exports. The reliance on internationally traded commodities leaves all SADC countries, and to a lesser extent South Africa, vulnerable to external shocks of international market price fluctuations (WB, 2009). The total GDP of the Community grew by 30 percent in the period 2000 to 2006. South Africa is by far the dominant economy within SADC with a contribution of total GDP of almost 70 percent. Intra regional trade as a share of total trade was 15 percent in 2007.

Tanzania has an overlapping membership with the EAC and Swaziland is also a member of COMESA. The Democratic Republic of the Congo (DRC) and Angola are also members of both ECCAS and COMESA.

Southern African Customs Union (SACU)

The Southern African Customs Union (SACU) is the oldest Union in the world and was established 1910 as a Customs Union Agreement between the Union of South Africa and the High Commission Territories of Bechuanaland, Basutoland and Swaziland. The updated Union with South Africa, Botswana, Lesotho and Swaziland entered into force 1970, thereby replacing the Customs Union Agreement of 1910.

Namibia joined in 1990 after its independence together forming the BLNS countries. A new SACU Agreement was signed in 2002 represents an important element in the reshaping of the Southern African regions. It mandates that all members must jointly take part in any external trade policy negotiations by the Council of Ministers, the BLNS had to accept the exiting tariff policy of SACU as a starting point. SADC has a membership of 14 countries comprising Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe.

One of the objectives of the 2002 SACU Agreement provides for the promotion of integration of member states into the global economy through enhanced trade and investment. The aim of the organisation is to maintain the free interchange of goods and services between member states. It provides for a common external tariff, which revenue is shared amongst its members according to GDP and developmental needs. The Union's constitution and mandate allow for the following institutions: SACU Council of Ministers, Technical Liaison Committees (customs, transport, trade and industry, finance), Agricultural Liaison Committee, Tariff Board, Tribunal and Secretariat (SACU, 2009). The total GDP of SACU grew with almost 91 percent in the period 2000 to 2006. South Africa is by far the dominant economy within the Union with a contribution of total GDP of more than 90 percent. Intra regional trade as a share of total trade was 3 percent in 2007. There is a particular challenge of economic diversity and of uneven development within the SACU region.

A major implication that might arise for SACU is the multiplicity of membership in other regional blocs. South Africa, Botswana and Lesotho and Namibia are members of SADC, while Swaziland is a member of both SADC and the Common Market for East and Southern Africa (COMESA).

Economic and Monetary Community of Central African (CEMAC)

The Economic and Monetary Community of Central Africa was established in 1992 to promote economic integration amongst countries that share the CFA franc. CEMAC is not registered with the WTO and was therefore not assessed i.t.o. TBT compliance. The objectives of the Community are to promote trade, a common market and greater solidarity. In 1994 it succeeded in introducing quota restrictions and reductions in the range and amount of tariffs. To date, CEMAC countries share a common external tariff for imports from outside the Community. The institutions of CEMAC comprises of a Network of Parliamentarians of Central Africa (REPAC) and a Council for Peace and Security in Central Africa (COPAX), including the Defence and Security Commission (CDC), Multinational Force of Central Africa (FOMAC) and the Early Warning Mechanism of Central Africa (MARAC). In 2003, the European Union concluded a financial agreement with ECCAS and CEMAC, conditional on ECCAS and CEMAC merging into one organisation. However, to date this has not been implemented. The ultimate goal of the Community is to establish a Central African common market (Wikipedia, 2009). The total GDP of CEMAC grew with more than 97 percent in the period 2000 to 2006. Cameroon is by far the dominant economy within the Community, contributing almost 50 percent to total GDP. Intra regional trade as a share of total trade was 2 percent in 2005.

All CEMAC member countries are also member of ECCAS.

At a bilateral level there are the following trade initiatives:

- **EU-SA TDCA.** South Africa's limited role in the Cotonou Agreement led to the TDCA between South Africa and the EC and its member states. The TDCA came into effect on 1 January 2000 and aims to introduce the freer bilateral trade over a 12 year period. Given the membership of SACU, BLNS are now *de facto* members of the TDCA. The EU has also negotiated an Economic Partnership Agreement (EPA) with the seven SADC member states which include the BLNS,

Mozambique, Angola and Tanzania. The Agreement is said to be a comprehensive one that establishes a ‘free trade area’ (TDCA, Article 5). It largely deals with the movement of goods but there are provisions related to services and investment as well as other issues, such as government procurement, competition policy and intellectual property. The trade provisions are complemented by comprehensive development assistance provisions. A review process was included in the TDCA and the first five-year review has recently taken place. With regard to market access, the EU is required to eliminate tariffs on approximately 95% of goods currently traded, and South Africa on 86% (Grant, 2006). Analyses show that the trade of strategic products has increased since the implementation of the TDCA, thus improving gains from trade to both parties.

- **SACU- Mercosur.** The SACU-Mercosur agreement was signed in December 2004 and was the first agreement that SACU negotiated in accordance with the provisions of the 2002 SACU Agreement. This agreement was also the first agreement that SACU negotiated with another developing region regional trade agreement (RTA). Although the agreement covers only a narrow range of products in industrial and agricultural goods, the parties are committed to broadening and deepening the agreement over time.
- **SACU – EFTA.** In May 2003 negotiations commenced for a Free Trade Agreement between SACU and the European Trade Association (EFTA) and the agreement was signed in 2005 and has been ratified by the South African Parliament and SACU member states. Four agreements were negotiated that all form part of the instruments establishing the FTA between the two groupings. The agreement would allow all to trade to move duty-free between SACU and EFTA (except of course access to most of the sensitive agricultural markets in EFTA that would potentially benefit South Africa).
- **SACU- US.** SACU entered into negotiations for a free trade agreement with the United States in July 2003. The stated US intention was to level the playing field in areas where US exporters are disadvantaged by the TDCA between South African and the EU. Given the template nature of US FTAs with other trading partners it is difficult to see how so-called “new” issues such as competition policy can be negotiated between SACU and the US since BLNS countries do not have competition policies in place. SACU members enjoy duty-free access to the US for most products under the African Growth and Opportunity Act (AGOA), a trade act that significantly enhances US market access for SSA countries. The FTA negotiations were suspended in 2006, largely due to the divergent views on the scope and level of ambitions for an FTA. On July 16, 2008, the US and SACU signed a Trade, Investment and Development Cooperative Agreement (TIDCA). The TIDCA establishes a forum for consultative discussions, cooperative work, and possible agreements on a wide range of trade issues, with a special focus on customs and trade facilitation, technical barriers to trade, sanitary and phytosanitary measures, and trade and investment promotion. The TIDCA is designed to build on and potentially capture some of the progress made in the earlier negotiations on an FTA, which remains a longer-term objective for both the US and SACU.
- **SACU – India and SACU-China.** The links between Asia and Africa have deepened significantly over the past decade in the area of trade, investment and aid. China has stepped up its aid mostly in the form of technical assistance. In June 2004 minister gave SACU the mandate to negotiate Free Trade Agreements with India and China. These agreements however are envisaged to take the form of less extensive preferential trade agreements. India may sign a preferential trade agreement with SACU by the end of 2009. Once signed the progression is to move towards FTA which encompasses services and investment. Under PTA the countries would lower tariffs on certain goods. In the case of China negotiations have started.

ANNEX 4. OVERVIEW OF THE LEGAL PROVISIONS IN SSA RTAS

| Category | Questions | WAEMA | ECOWAS | CEMAC | SA- EU TDCA | COMESA | EAC | SACU | SADC |
|---|---|---|--|--|--|---|--|---|---|
| Reference to the WTO TBT Agreement | Does the agreement make reference to the WTO agreement (i.e., its objectives, rules and/or provisions)? | No direct reference to the TBT Agreement. | No direct reference to the TBT Agreement (Article 3.2.d.i stipulates the liberalisation of non-tariff trade barriers in general) | No direct reference to the TBT Agreement (Section III, Article 13, j stipulates the elimination of any measure that negatively affects trade. Exceptions are mentioned in Section III, Article 16) | Yes (Article 47 a stipulates cooperation between members regarding measures to promote the greater use of regulations, standards and conformity assessment in accordance with the provisions of the WTO TBT Agreement) | No direct reference to the WTO and WTO TBT Agreement. | No direct reference to the WTO TBT Agreement - refers only to the Marrakesh Agreement Establishing the World Trade Organisation, 1995 referred to "as the WTO Agreement" | Yes direct reference to the WTO TBT Agreement | No direct reference to the WTO and TBT Agreement. |

| Category | Questions | WAEMA | ECOWAS | CEMAC | SA- EU TDCA | COMESA | EAC | SACU | SADC |
|----------------------|---|--------------------|---|---|---|--------|-----|------|------|
| | Does the TBT chapter in the agreement have more far-reaching goals? | No | No | No | Yes (Article 47a stipulates that agreements should be developed for mutual recognition of conformity assessments, developing practical links with the relevant EU organisations as well as cooperation in the area of quality management and assurance in selected sectors) | No | No | No | No |
| Harmonisation | Does the agreement require or encourage Parties to harmonise their technical regulations, standards and conformity assessment procedures? | Yes (Article 76 e) | Yes (Article 3.2 b,j and Article 26.3i) | Yes (Section III, Article 13, n and 17) | Yes (Article 47 stipulates that differences between parties in the field of standardisation, metrology, certification and quality assurance should be reduced) | Yes | Yes | No | No |

| Category | Questions | WAEMA | ECOWAS | CEMAC | SA- EU TDCA | COMESA | EAC | SACU | SADC |
|--|---|-------|--------|-------------------------------|--|--------|-----|------|------|
| | Does the agreement promote the use of international and/or regional standards and guidelines as a basis for setting national regulations, standards and conformity assessment procedures? | No | No | No | Yes (Article 47a stipulates cooperation between members regarding measures to promote the greater use of international regulations, standards and conformity assessments) | Yes | Yes | Yes | No |
| Acceptance of technical regulations as equivalent | Does the agreement require or encourage Parties to accept as equivalent other Parties technical regulations and standards? | No | No | Yes (Section III, Article 17) | No | Yes | No | No | No |
| | Does the agreement call Parties to explain the reasons for not accepting the other Party's technical regulations as equivalent? | No | No | No | No | No | No | No | No |

| Category | Questions | WAEMA | ECOWAS | CEMAC | SA- EU TDCA | COMESA | EAC | SACU | SADC |
|---|---|--------------------|--------|-------------------------------|--|--------|-----|------|------|
| (Mutual) recognition of conformity assessments | Does the agreement call for a (mutual) recognition of conformity assessment results? | Yes (Article 76 e) | No | Yes (Section III, Article 17) | Yes (Article 47b stipulates that agreements on mutual recognition of conformity assessment in sectors of mutual economic interest should be developed) | No | No | No | No |
| | Does the agreement require that the Parties explain the reasons for non-recognition? | No | No | No | No | No | No | No | No |
| | Is the agreement accompanied by a (separate) mutual recognition arrangement or does it promote the conclusion of such arrangements? | No | No | No | Yes (Article 47b stipulates that agreements on mutual recognition of conformity assessment in sectors of mutual economic interest should be developed) | No | No | No | No |
| Transparency | Does the agreement include transparency provisions? | No | No | No | No | No | No | No | No |

| Category | Questions | WAEMA | ECOWAS | CEMAC | SA- EU TDCA | COMESA | EAC | SACU | SADC |
|---|--|-------|--------|-------|-------------|--------|-----|------|------|
| | Does the agreement require members to hold consultations and notify regulations and procedures at bilateral and regional level before they are adopted? | No | No | No | No | No | No | Yes | No |
| | Is a time period for the receipt of comments by other Parties defined? Is it longer than 60 days? | No | No | No | No | No | No | Yes | No |
| | Does the agreement require the establishment of a (separate) regional enquiry point? | No | No | No | No | No | No | No | No |
| Enforcement and dispute settlement | Does the agreement call for the establishment of, and participation in, a regional TBT body (e.g. committee) to monitor and review the TBT commitments and process)? | No | No | No | No | No | No | No | No |
| | Does the agreement include specific provisions for the | No | No | No | No | No | No | No | No |

| Category | Questions | WAEMA | ECOWAS | CEMAC | SA- EU TDCA | COMESA | EAC | SACU | SADC |
|----------|---|-------|--------|-------|-------------|--------|-----|------|------|
| | resolution of regional TBT-related disputes? | | | | | | | | |
| | Does the agreement foresee consultations and recommendations, or a more formal mechanism at the regional level to resolve disputes? | No | No | No | No | No | Yes | No | No |

Note: SADC - harmonisation of member countries' standards and technical regulations is the responsibility of SADC Cooperation in Standardisation (SADCSTAN)

ANNEX 5. TBT POLICY FRAMEWORKS OF KENYA, NIGERIA AND SOUTH AFRICA

1. KENYA

Besides being a member of the WTO, Kenya belongs to the Common Market of Eastern and Southern Africa (COMESA), the East African Community (EAC), the Organisation of African Unity (OAU), the Inter-governmental Authority on Development (IGAD) and the African Caribbean, Pacific-European Union (ACP-EC).

a) Technical regulations and standards

The organisation responsible for development, setting, and implementation of standards in Kenya is the Kenya Bureau of Standards (KEBS). The Kenyan government, through the Ministry of Trade and Industry, has designated Kenya Bureau of Standards (KEBS) as the notification authority and national enquiry point for WTO-TBT Notifications. The principal responsibilities of the National Enquiry Point and Notification Authority for Kenya include responding to technical enquiries from other WTO members regarding Kenyan domestic regulations, standards and conformity assessment procedures in force and meeting the notifications obligations under the WTO's TBT Agreement (Article 2.9.2).

KEBS is a statutory body of the government, established by the Standards Act CAP 496, and is mandated to prepare and standards in relation to goods, services, processes and practices and promote these at national, regional and international levels. Other objectives include certification of industrial products, assistance in the production of quality goods, improvement of measurement accuracies and dissemination of information relating to standards. KEBS has accepted the TBT Agreement's Code of Good Practice for the Preparation, Adoption and Application of Standards. Notices of all proposed draft standards are published in the KEBS Standards Work Programme Bulletin. Interested persons are given a period of 60 days to make written comments on Kenya's Notification under Articles 2.9.4 and 5.6.4 of the Agreement.

KEBS works closely with three main public organisations in the development and implementation of health standards on animal and animal products, plant and plant products, and food safety. These are the Kenya Plant Inspectorate Services (KEPHIS) for standards on health of plant and plant products, the Department of Veterinary Services (DVS) for standards on health of animal and animal products, and the Fisheries Department responsible for fisheries.

The government through the Ministry of Trade and Industry (MTI) handles all issues relating to WTO agreements. The Ministry's Department of External Trade (DET) is responsible for WTO matters. Furthermore, there is a standing committee known as National Committee on WTO (NCWTO), which includes in its membership representatives from relevant government departments and agencies as well as private organisations, which prepares for WTO negotiations. Various subcommittees assist the NCWTO in its work; among them is the subcommittee on the TBT Agreement. Administrative responsibility for issues relating to TBT with regard to trade is the responsibility of the Ministry of Trade and Industry (MTI). There exist contact points for international bodies involved in standards setting that are coordinated by the Ministry of Trade and Industry for the purpose of notifying the WTO. The TBT subcommittee prepares Kenya's position on standards for deliberation by the NCWTO and whose recommendations are reflected in Kenya's positions taken in the WTO. Members of the TBT subcommittee are not satisfied with the flow

of information from the NCWTO secretariat to industry. Stakeholders from industries, especially horticulture, complain of limited access to notifications of standards in export markets. Another concern relates to the delegations to international meetings (WTO, 2005b).

Although mandate of KEBS is well defined and it has some capacity to undertake its obligations, it faces constraints in terms of limited laboratory capacity and libraries in the branches required for effective implementation of its activities. With the adoption of the WTO Agreements on SPS and TBT there is a need for KEBS staff to participate in the development of international standards and their subsequent adoption as national standards. For this reason KEBS requires more funds enabling it to participate in more committees of Codex and ISO at the international level. The Codex contact point at KEBS needs communications equipment to liaison with stakeholders in the country and at the international level.

KEBS, KEPHIS and DVS also notify firms and farmers about TBT and SPS standards using newsletter, letters, and meetings of stakeholders. The Export Promotion Council (EPC) also plays a leading role in notifying foreign investors and local producers on technical requirements for products sold in Kenya. There are mandatory standards specifications under Kenyan laws and regulations. However, the NCWTO TBT committee has observed that the dissemination of information is not adequate. This is partly because of a fragmentation of duties among the enquiry points and overlaps in functions among the authorities as well.

b) Conformity assessment

The overall conformity assessment activities that include standardisation, inspection, market surveillance, testing, certification, metrology and accreditation, are mainly implemented by governmental bodies. Some private bodies also perform certification and testing. Hence, the quality assurance of these activities is of paramount importance. The major official agency working in this area in Kenya is the KEBS (WTO, 2005a).

In respect of *inspection and market surveillance* various regulatory and/or conformity assessment bodies (CABs) inspect imported and locally produced products to ensure their compliance with Kenya standards and technical regulations. These bodies include Kenya Bureau of Standards (KEBS), Ministry of Health, Ministry of Agriculture Kenya Revenue Authority (KRA), Ministry of Livestock and Fisheries, Kenya Ports Authority (KPA), Kenya Plant Health Inspectorate Service (KEPHIS), the Kenya Police etc.

There is a need to harmonise the regulatory infrastructure in order to make technical regulations more effective and efficient in line with the requirements and or obligations of the WTO's TBT Agreement. The inspection and testing infrastructure in Kenya is weak, and the quality assurance system does not adequately cover all products that are placed in the Kenyan market. This hampers effective assurance of health and safety standards for Kenyan citizens and environment protection.

In respect of *testing*, there are quite a number of public and private testing laboratories in the country. However, due to the high cost involved in running a testing facility, this activity is dominated by the public sector. KENAS has identified a total of about 100 laboratories that carry out tests in various fields in the country and which will benefit from KENAS accreditation services.

Certification in Kenya includes a quality, environmental, food safety (HACCP), occupational health and safety management systems (OHSAS) and product certification. The four (4) registered certification bodies working in this field in Kenya are from both the private and governmental sectors. They include KEBS-Certification Department, SGS, Bureau Veritas (BVQI) and CVA International.

In terms of *accreditation*, a national accreditation body – Kenya Accreditation Service (KENAS) – has been established under the Standards Act, Cap 496 vide Legal No. 26 of 8 March 2005. KENAS has

also taken over the functions of Quality Systems Assessment Committee (QSAC) (established under Legal Notice No. 90/95) and the National Calibration Scheme (NCS) (established under Legal Notice No. 80/84) which were registering assessors and accrediting calibration laboratories respectively. KENAS provides accreditation services to testing and calibration laboratories according to the International Standard ISO/IEC 17025, inspection bodies according to ISO/IEC 17020 and certification bodies according to ISO/IEC 17021.

KEBS has been providing *metrology services* since 1981 in the fields of mass, hardness, moisture content, dimensional metrology, time and frequency, pressure, electrical energy, temperature and humidity, volume and flow, density and viscosity, force, torque, direct and alternating current and instrumentation services. International traceability of the National Standards is achieved by inter-comparison with other metrology laboratories which are in countries that are members of the International Bureau of Weights and Measures (BIPM).

2. NIGERIA

Nigeria plays an important role in regional (Economic Community of West African States – ECOWAS), continental (African Union – AU) and international trade agreements. On the regional front, the ECOWAS customs union is viewed as a step towards an economic and monetary union with a single currency under the West African Monetary Zone (WAMZ) (OECD, 2007).

a) Technical regulations and standards

Nigeria has numerous laws and regulations setting mandatory standards for food safety, animal health and plant protection. Various legislation governs import and export standards regarding produce, fish, quarantine measures and control of animal diseases. Besides SPS-related legislation there are two decrees setting up the Standards Organisation of Nigeria (SON) and the National Agency for Food and Drug Administration (NAFDAC) (World Bank, 2003).

The law regulating and standardising food production for export and import provides that no processed foods, drug products, medical devices, cosmetics and packaged water shall be sold, manufactured, imported, exported, advertised or distributed in Nigeria unless it has been registered in accordance with provisions of the regulations. The purpose of NAFDAC's control on export of regulated products is to ensure that products exported from Nigeria are wholesome, safe, and of good quality in support of building the country's reputation in the international trade arena. Only registered regulated products can be lawfully exported from Nigeria. If a product meets the requirements of good manufacturing practices (GMP), an export certificate will be issued by NAFDAC (World Bank, 2003).

There are four major laws that govern export trade in Nigeria: the Export of Nigerian Produce Act, the Export of Produce Federal Powers Act, the Export Incentive and Provisions Act, and the Export Prohibition Act. The first two laws mainly aim at the main trading commodities, cacao, palm oil and groundnuts, with regulation ensuring the quality of produce conform to standards in the international markets. The Export of Produce Federal Powers Act authorises the minister to set standards and grades for quality of any produce intended for export. The other two Acts provide incentives for export and regulate exports during food shortages (World Bank, 2003).

Import trade is governed the Import Prohibition Act. This Act provides for the prohibition of importation into Nigeria of certain foodstuffs, especially those contaminated by toxic substances. The importation of the following goods into Nigeria was prohibited: meat (frozen and fresh), chicken (frozen or fresh), fish (except those caught by vessels licensed by Nigeria), expired food products. Furthermore all imported foodstuffs for which the Minister of Health has issued a certificate of contamination with toxic or nuclear substance or any other harmful waste are prohibited (World Bank, 2003).

The Produce Act of 1959 provides for the inspection of agricultural commodities for export from Nigeria at ports of shipment, for the purpose of enforcing grades and standards of quality. It contains subsidiary legislation for cotton lint, cotton seed, copra and coffee and also established certain produce inspection boards. All mandatory standards and technical regulation affecting manufacturing industries are under governance of the SON and NAFDAC. Both these bodies are designated national enquiry points for the WTO TBT and SPS Agreements. SON and NAFDAC are also members of the International Standardisation Organisation (ISO), the Codex Alimentarius Commission and the African Organisation of Standardisation (ARSO) (World Bank, 2003).

SON sets standards and regulations for processed food, beverages, medical devices, drugs and other chemicals (and raw materials). Nigerian standards specify production process, quality characteristics, and testing procedures. SON has adopted the ISO 9000 series of standards and formulates, enforces and provides technical advice to industry. New products and imports need to comply with the set standards before SON gives clearance. NAFDAC deals with the same regulated products as SON but focuses on public health issues. Standards in Nigeria are mostly in line with existing relevant international norms, especially for export products. This conformity is ensured by participation in the mentioned international standard setting bodies. However enforcement seems weak and has led to rejections of Nigerian export products by trading partners. It is furthermore been noted that there exists little awareness of international standards among local firms and farmers (World Bank, 2003).

Nigeria faces various problems in implementing the obligations of the WTO TBT Agreement. Firstly, the high level of poverty makes it difficult to insist on a high level of standards for products. As costs increase when quality increases, low-income countries trade off quality for low priced products. Secondly, the costs of compliance for export products to be eligible to be exported to high-income countries are often too high. Capacity constraints in the national standard setting framework mean that Nigeria cannot realistically demonstrate higher than normal standards based on scientific evaluation. Furthermore, its capacity to challenge new standards of trading partners is weak. The WTO TBT Agreement stipulates that developed countries should provide assistance with the obligations of the Agreement, which has occurred in the case of Nigeria (World Bank, 2003).

Conformity assessment

Both SON and NAFDAC are responsible for conformity assessment, i.e. determining whether a product meets given standards and regulations and are eligible for certification. NAFDAC issues quality and food safety certification for the products under its mandate after appropriate analysis, testing and registration of products, processes and production facilities. Its inspections are carried out in local and foreign manufacturing facilities. Inspection is further carried out by the Ports Inspection Division (PID) and the Establishment Inspection Division (EID). PID monitors regulated products at the ports of the country. EID inspects local manufacturing facilities. The Registration and Regulation (RR) Division administers and approves the registration of new products. There are four testing facilities in the country which are in the process of being internationally certified. These laboratories analyse all products for registration and undertake routine compliance testing and research (World Bank, 2003).

The SON Directorate of Quality Assurance conducts routine factory inspection and surveillance to enforce compliance with set standards and quality control practices. Regular market surveys are also undertaken whereby samples of locally produced and imported goods are collected and subjected to laboratory testing. SON operates three laboratories across the country, namely: the Food and Chemical Laboratory, the Engineering Laboratory and the Textile and Leather Laboratory. These laboratories conduct third-party conformity assessment tests of products using stator approved testing and quality control standards. SON also embarks on port and border control to ensure that import and export products meet labelling and other requirements. Samples of traded goods are subject to laboratory testing. Cases of

import bans due to non-conformance with SPS measures or TBT are not very common; a few cases occur each year (World Bank, 2003).

3. SOUTH AFRICA

South Africa is a member of the WTO and where applicable all relevant trade promotion activities and negotiations that South Africa undertakes fall within WTO rules. Along with Botswana, Lesotho, Namibia and Swaziland, South Africa belongs to the Southern African Customs Union (SACU), which sets a common trade system for the five countries. South Africa became a member of the Southern African Development Community (SADC) in 1994. A trade protocol has been negotiated within SADC, which forms the basis of the Free Trade Area coming into effect on 1 September 2000.

a) Technical regulations and standards

While South Africa built a well-established infrastructure to deal with standards compliance. The dynamic international standards environment requires a matching response on the part of the South African infrastructure because compliance with standards is becoming increasingly important to businesses seeking to sustain or expand export growth and as a defence against import competition.

In a policy document¹⁰, the Department of Trade and Industry (DTI) underscored the importance of quality and standards in facilitating (foreign) market access and sustainable export growth. The development of systems for Standardisation, Quality Assurance, Accreditation and Metrology (SQAM) are singled out as an important platform for sustainable long-term competitiveness. Similarly, the South African Bureau of Standards (SABS) and the South African National Accreditation Systems (SANAS) figure prominently among the battery of institutions at the disposal of DTI for achieving national development objectives.

Since South Africa follows a policy of compliance to standards and reaps the benefits thereof in the penetration of export markets, it remains important to build on its existing standards and compliance infrastructure especially with regard to standards and technical regulation. According to Wilson et al (2001) fragmentation of the functions of standard setting, compliance and dispute settlement remains to be addressed.

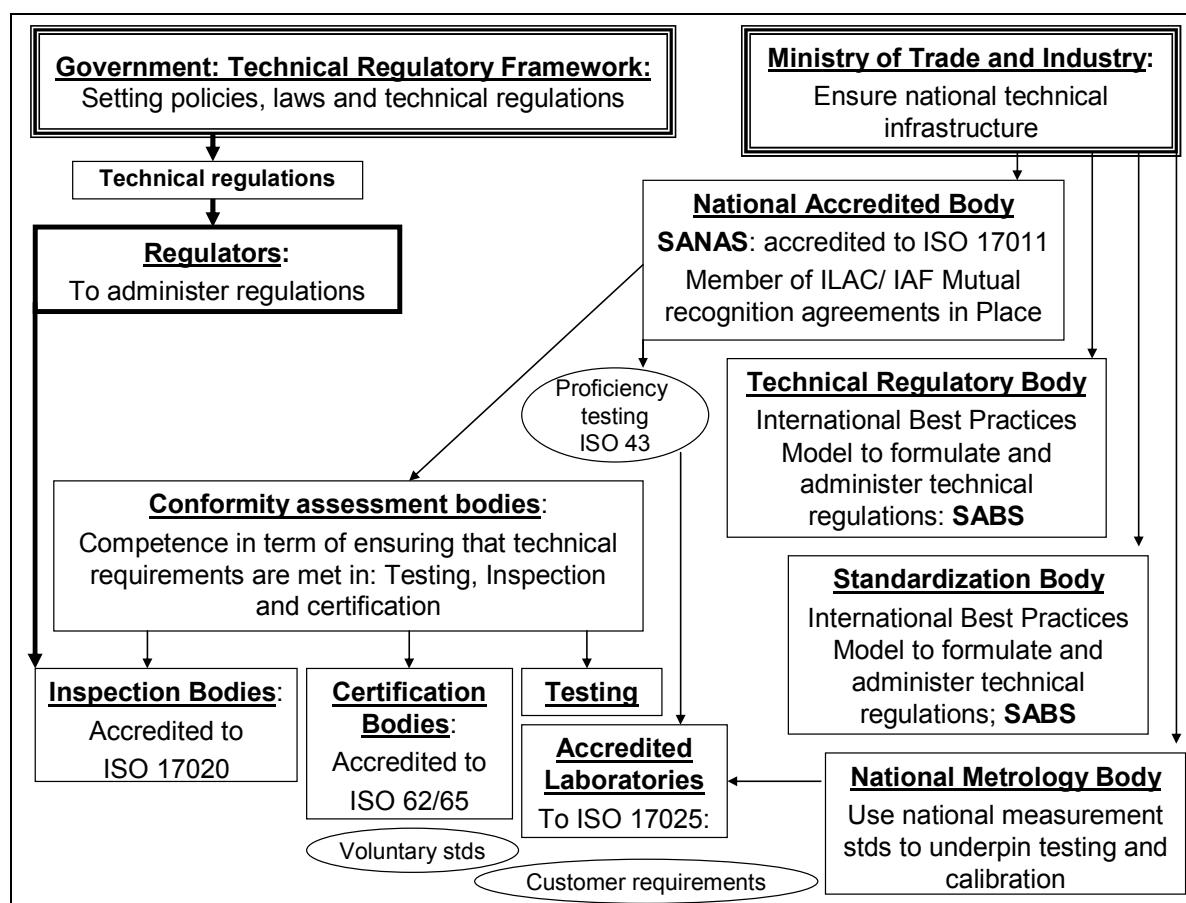
The South African regulatory and standards system comprises various different players. These players perform different functions pertaining to regulations and standards setting, as well as policing and accreditation. **Figure A** shows the regulatory and standards landscape, as well as linkages between different players in South Africa and internationally.

The process of standards harmonisation within SADC has been very slow. This is mainly due to the low rate of participation of member states' delegates in technical committee meetings, because of financial constraints.

The interaction between government departments in this field leaves a lot to be desired. There are, for example, no regular meetings between the relevant government officials to discuss issues of common interest. DTI is in the process of drafting a technical regulatory framework aimed at harmonising the way in which technical regulations are drafted. This should increase the transparency of the drafting process and oblige officials to use a set of common rules.

10. The Department of Trade and Industry South Africa: "Accelerating Growth and Development: The Contribution of an Integrated Manufacturing Strategy" 2002.

Figure A: South African Technical Regulatory Landscape



Source: Jooste et al (2003)

SABS administers a large range of compulsory specifications across a wide spectrum of areas. These specifications are legal measures and requirements to ensure that products locally manufactured or imported into South Africa or exported from South Africa meet the minimum requirements for health and safety as set out in the relevant South African National Standards.

b) Conformity assessment

The notification link to the WTO via the SABS works well. However, there is no effective mechanism of informing South African industry of technical regulations abroad. As a result the industry is often ignorant or late in learning of draft regulations in other countries, which severely restricts the ability to respond to these draft regulations. As far as participating in the activities of the WTO's TBT Committee are concerned, DTI has stepped up its participation. However, more can still be done to pro-actively build SADC, South-South and other kinds of alliances on TBT issues.

As mentioned, DTI is responsible for South Africa's multi- and bilateral trade relations and negotiations. It has responsibility for trade and export promotion and oversees various development assistance programmes and also oversees accreditation of all South African test laboratories, certification bodies and inspection bodies, whether commercial or state-owned. DTI has also invested a significant

amount of funds into the South African National Accreditation System (SANAS). In addition, it has invested a significant amount of money over the past six years in upgrading the National Metrology Laboratory (NML) to ensure that South Africa's national measurement standards are on par with its trading partners. Most industrial product standards are developed under the auspices of the South African Bureau of Standards (SABS), which was established under Act 24 of 1945 (now Act 29 of 1993). That is, the SABS currently functions in terms of the *Standards Act (Act 29 of 1993)*.

The South African National Accreditation System (SANAS) was formally established in 1994 as a, non-profit, Section 21 company. Previously it was known as the National Calibration Service (NCS) and was in operation from 1980 to 1994 under the auspices of the CSIR. The establishment of SANAS is backed by a Cabinet Memorandum and is recognised by the South African Government through DTI as the single National Accreditation Body within its defined scope of activity. SANAS accredits Certification Bodies, Inspection Bodies, Proficiency Testing Scheme Providers and Good Laboratory Practice (GLP) test facilities as competent to carry out specific tasks. SANAS certificates are a formal recognition that an organisation is competent to perform specific tasks.

As far as the international recognition and participation of SANAS, the NML and the SABS is concerned, South Africa can boast full membership of nearly all the relevant international cooperation fora. SANAS enjoys full recognition through International Laboratory Accreditation Cooperation (ILAC) and the IAF and is one of only a handful of organisations outside the OECD to be a full member of the GLP Panel, thus ensuring high recognition of South African certificates and test report