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The Implications of Non-tariff Barriers to Trade on COMESA Free Trade Area: The Case of Zimbabwe and Zambia

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Abstract

This research sought to explore the implications of Non-Tariff Barriers (NTBs) to trade on the Common Market for Eastern and Southern Africa (COMESA) Free Trade Area (FTA). If the COMESA free trade area is appropriately dealt with, COMESA members and trade stakeholders will get information that is important in their attempt to attain the goal of eliminating trade impediments within the region. This will promote regional economic integration and enhance growth through increased investment levels; scaled up exchange of goods and services; and enhanced socio-economic cooperation. Such cooperation will directly contribute to the improved political and trade relations. The research adopted a case study design in which various cases were examined to understand issues surrounding the implications of NTBs on COMESA free trade area. A qualitative research methodology was also utilised while data was collected through key informant interviews and document analysis. The research concluded that NTBs in COMESA FTA are used on health issues as well as to protect the infant industries in the region. The research therefore recommended that COMESA members find a working definition of what constitute an infant industry for the purpose of applying for derogation; and also that they make use of bilateral trade agreements to eliminate existing NTBs where States clearly indicated their objectives of removing all NTBs that inhibit trade between them.

Key words: Non-tariff barriers; Import quotas; Trade restrictions; Free trade; Domestic content provision

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INTRODUCTION

Over the last fifteen years Regional Trade Agreements (RTAs) have become defining features of the modern economy and a powerful force for globalisation. In 2005, more than 250 RTAs had been notified to the World Trade Organisation (WTO) (Brown, 2005). One such African regional integration agreement was COMESA which was initially established in 1981 as the Preferential Trade Area for Eastern and Southern Africa (PTA). It was established within the framework of the Organisation of African Unity's (OAU) Lagos Plan of Action and the Final Act of Lagos (ACTRAV, 2012). According to ACTRAV (2012), the PTA was transformed into COMESA in 1994. The PTA was established to take advantage of a larger market size, to share the region's common heritage and destiny and to allow for greater social and economic co-operation (ACTRAV, 2012). COMESA comprises of 19 African member states which are Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. These countries have agreed to co-operate in developing their natural and human resources for the good of all their people (ACTRAV, 2012). COMESA adopts the market integration approach. It is one of the most important regional trade groupings in Africa besides the South African Development Community (SADC) and Economic Community of West African States (ECOWAS). For a number of countries that have limited opportunities for increasing their exports to Europe, the Americas and Asia, COMESA looms large as the way of the future.

COMESA is the first African economic community to have in place an FTA, which was established in October 2000. This was the third in the world after the European Union and the North American Free Trade Agreement. It is the only regional grouping to have signed a Trade and Investment Framework Agreement (TIFA) with the United States in October 2001, within the framework of the Africa Growth and Opportunity Act (AGOA) (Karingi, 2015). One of the objectives of COMESA is to have a full FTA guaranteeing the free movement of goods and services produced within COMESA and the removal of all tariffs and non-tariff barriers.

It has become common-place to recognise that the use of tariffs to restrict international trade has been gradually replaced in recent years by the use of other tools of commercial policy. According to Deardorff (1987), these Non-Tariff Barriers (NTBs) include such heterogeneous policy tools as import quotas, Voluntary Export Restraints (VERs), exchange controls, domestic content requirements among other issues.

Katenga (2011) asserts that NTBs have been widely cited as a significant constraint to intra-COMESA trade. Gathii (2011) notes that, only limited steps have been made across Africa to implement the commitments in the regional economic communities for the elimination NTBs. A number of goods and sectors are excluded from the agreement. As a result, there is little evidence of progress on further deepening of trade liberalisation and facilitation. To this end, there is a need for serious focus on the best ways to address these NTBs otherwise the cost of doing business across borders in COMESA will be unnecessarily high and scaring away the much needed investment in the region. Again these NTBs will militate against the formation of tripartite free trade area if not immediately addressed.

Nevertheless, trade in the COMESA is hampered by procedural obstacles imposed by individual countries. Although there is some progress in implementation, there are indications that, in spite of the commitments made by the partner states to remove NTBs, they remain a serious obstacle to trade within the region. NTBs continue to increase the cost of doing business in the region and have negatively impacted on trade and cooperation. A World Bank (2011) study finds that notified NTBs affect products accounting for 20% of regional trade.

It is therefore against this background that this study seeks to assess the implication of non-tariff barriers on COMESA free trade area with particular focus on Zambia and Zimbabwe.

1. LITERARTURE REVIEW AND THEORETICAL FRAMEWORK

The main thrust of this section is to provide the theoretical underpinnings of the study as well as review pertinent literature on the existence of NTBs hindering trade within COMESA region and also assess costs attached to their prevalence. The discussion will pay special attention to the fact that whereas some of NTBs are purely illegal under the WTO and COMESA Treaty, exceptional cases exists where other measures are considered to be legitimate. For instance measures aimed at protecting human, animal or plant life or health in the form of sanitary and phytosanitary are permissible as long as they do not unnecessarily inhibit trade. The study employed the concept of NTBs within COMESA which is grounded in the theory of complex interdependency an idea put forth by Keohane and Nye in 1977 to explain complex transnational connections and interdependencies between states and societies.

Keohane and Nye (1977) define interdependence as a situation in which actors or events in different parts of the system affect each other in a manner where there is potential for benefits and potential for tragedy as well. The theory recognises that the various and complex transnational connections and interdependencies between states and societies were increasing, while the use of military force and power balancing are decreasing but remain important. Keohane and Nye (1997) also importantly differentiated between interdependence and dependence in analysing the role of power in politics and the relations between international actors. Le Roy (2012) contends that other than the state, there are other multiple actors inclusive but not restricted to inter-state, trans-governmental and transnational structures that are increasingly shaping the international system. In the post-cold war period, non-state structures such as the United Nations, African Union, SADC International Monetary Fund, the World Bank, multinational companies, churches, pressure groups and Non-Governmental Organisations (NGOs) have become active players in the international system. Interdependency emphasises that all different actors are interconnected through a variety of channels such as trade, finance, travel and communications. Interdependency is also based on the assumption that all these actors are benefiting from closer ties that the world would be peaceful and prosperous. However, it does not mean that relationships are asymmetrical because some international actors may be more vulnerable than others. These vulnerable actors will resort to the use of NTBs in trade relations.

Keohane and Nye (1977) clarify their understanding of interdependence and its implications for international relations. They indicated that interdependence generates classic problems of political strategy, since it implies that the actions of the states, and significant non-state actors will impose costs on other members of the system. These affected actors will respond politically if they are able, in an attempt to avoid having the burdens of adjustment forced on them. From the foreign policy standpoint, the problem facing individual governments is how to benefit from international exchange while maintaining as much autonomy as possible. From the perspective of the international system, the problem is how to generate and maintain a mutually beneficial pattern of cooperation (Keohane & Nye, 1977). This theory is applicable to the study in that COMESA member states depend on each other for trade. However, there exist barriers to this interdependence in the name of regulatory frameworks imposed by member States. This has complicated the interdependence. An analysis of trade between Zambia and Zimbabwe can be said to be that of interdependency. Le Roy (2012) noted that the opening up of markets that is associated with liberalism has seen national interests being redefined to accommodate interests that might be outside a country's borders. In such arrangements, Brenner (2000) noted that it is imperative that States act in a manner that ensures protection of their interests in other countries.

As regional integration initiatives begin to address NTBs, they are faced with the practical challenge as well as the working definition of NTBs. As a result it is inevitable for deep divisions to emerge among scholars in their effort to define what NTBs are and on the proper mechanism to address them.

It is crucial to state that despite substantial literature on NTBs, a great deal of literature has focused on individual types of NTBs and only in exceptional instances is sophisticated empirical analyses of their economic and social implications provided. Even though Article 49 of the COMESA Treaty provides for the elimination of all existing NTBs and refraining from introducing new ones in order to enhance a transparent and predictable regional trading environment conducive for trade growth, in practice it does appear that NTBs measures are widespread, increasing and are a real obstacle to intra-regional trade expansion.

Negasi (2009) argued that some COMESA members continue to introduce NTBs such as periodic ban on imports, imposition of additional import levies and other forms of import controls, police roadblocks, corrupt practices at roadblocks, and road toll charges as protectionist devices. This undermines the credibility of the Trade Protocol and makes it irrelevant in the eyes of traders, investors and consumers at large (Negasi, 2009).

Major impediments to trade in the region are related to procedural obstacles in the application of NTBs leading to administrative and bureaucratic inefficiencies. Another category of barriers relates to NTBs in the form of import measures, mainly SPS and TBT. When these standards and requirements are imposed unilaterally to protect local industry they can have a severe restrictive impact on trade. With Zimbabwe having adopted an open economy approach and with trade accounting for almost 75% of GDP, the imposition of a ban on its most important trading partner is cause for alarm and raises some serious questions (World Bank, 2016). Protectionist arguments appear somewhat misplaced in light of the current narrative about regional integration and its many benefits.

1.1 Categories of NTBs IN COMESA FTA

According to Article 4 of the COMESA Regulations on NTBs (2014), NTBs are generally categorised as follows:

Government participation in trade and restrictive practices tolerated by Government;

Customs and administrative entry procedures;

Technical barriers to trade;

Sanitary and phyto-sanitary measures;

Specific limitations;

Charges on imports; and

Other (Procedural Problems), (COMESA Regulations on NTBs, 2014).

1.2 Types of NTBs in COMESA FTA

1.2.1 Quantitative Restrictions

Licensing of foreign trade is closely related to quantitative restrictions quotas on imports and exports of certain goods. A quantitative restriction refers to a ban on imports or exports after a determined quantity (the quota) has entered the territory of another member State and there are different types of quantitative restrictions (Van den Bosche, 2005). Quantitative restrictions on imports and exports is a direct administrative form of government regulation of foreign trade. Pursuant to Article XI: 1 of GATT WTO members including COMESA who are all WTO contracting parties, are generally prohibited from maintaining quantitative restrictions. Consequently, quantitative restrictions, whether quotas, import or export charges or other measures, are a violation of the rule in Article XI: 1. Evidence however, shows that in spite of the prohibitions under WTO rules, most COMESA members impose import quotas aimed at directly limiting the quantity of goods that can be imported. The need to protect the local industry seems to be the major force behind the use of quantitative restrictions (The Zimbabwe Standard Newspaper, 2011). For instance, the Zambian Minister of Agriculture justified the frequent restrictions on exports of maize and maize products as a strategy that is essential until Zambia is able to consistently produce exportable surplus (Imani Development International Trade, 2007)

Zimbabwe has through Statutory Instrument (SI) 156 of 2011 introduced a surtax of 25 percent on a number of commodities at the beginning of 2012 aimed at protecting local industry against what the Government referred to as extensive imports (Viljoen, 2011). In 2016, Zimbabwe also introduced Statutory Instrument 64 of 2016 which removed goods that are locally available from general import license exemption. The introduction of SI 64/2016 was meant to support local industry (The Herald, 2016). It therefore follows that instead of COMESA members enacting legislations that facilitate free flow of goods as mandated by the WTO and COMESA Treaty, they are doing the opposite by implementing laws that in actual fact impede trade in violation of rules that seek to prohibit the imposition of quantitative restrictions.

1.2.2 Rules of Origin (RoO)

The Imani Development Report (2007) defines rules of origin as the criteria used to define where a product was made. Rules of Origin are an essential part of trade rules because a number of policies discriminate between exporting countries, quotas, preferential tariffs, anti-dumping actions, and countervailing duty. The Imani Report (2007) also states that, rules of origin are also used to compile statistics. The first agreement on the subject required WTO members to ensure that their rules of origin are transparent, that they do not have restricting, distorting or disruptive effects on international trade, are administered in a consistent, uniform, impartial and reasonable manner, and are based on a positive standard (Imani Development Report, 2007).

Goods qualify for preferential treatment if they undergo substantial transformation such that they contain a minimum of 35 percent regional value-added, or include non-COMESA imported materials worth no more than 60 percent of the value of total inputs used, or undergo a single change of tariff heading. There is a list of 'goods of economic importance' to member States according to which the domestic value added requirement is relaxed to 25 percent (Khandelwal, 2004)

Member Sates often use rules of origin as NTBs. This is contrary to the theoretical understanding that the rules of origin would promote regional development through import substitution achieved by forcing the producers to source inputs in the region (Madzvova, 2002). For years, COMESA members have been accused of using rules of origin for other purposes that are not in the interest of promoting regional trade and industrial competitiveness. These purposes include protection against anti-dumping, enforcement of consumer safety standards and protection of the environment (Madzvova, 2002).

The COMESA rules of origin have also caused problems. While COMESA has a 35% value-added rule, not all countries have adopted this. Egypt unilaterally imposes a 45 percent local content requirement. Until recently, Zambia, Uganda and Malawi did the same. Rules in two sectors have also proven to be particularly contentious under COMESA. For wheat flour, the 35% value added rule has generated difficulties for exporters in Egypt and Mauritius that do not produce wheat grain, but import the raw material from the world market. During periods of high wheat prices, these countries have been unable to meet the value added requirement. There have also been disputes with regards to palm oil because of difficulties in assigning value addition. These have arisen because a number of products can be produced from the raw material such as cooking oil, soap and margarine (Gillson and Charalambides, 2011)

The other major concern is that restrictive rules of origin are not only a barrier to international competitiveness but also costly in terms of ensuring conformity. These costs arise from the administrative requirements for certificates of origin which can account for nearly half the value of the duty preference. Instead it simply pays full tariffs because it currently deems the process of administering rules of origin documentation to be too costly (Gillison, 2012). The situation is further complicated by the fact that most of COMESA Member States have membership to a multiple and varied trade agreements, especially when such rules are not harmonised as with the case of many COMESA Member States. This creates confusion in deciding on the rules of origin to apply. Authentication of Rules of Origin Certificates is sometimes negatively affected by the bureaucratic procedures involved in changing signatories.

1.2.3 Poor Infrastructure

Cross-border infrastructure, for example, transport, energy and telecommunications are essential to move goods, services, labour and information between and among States. Such linkages enlarge market access, reduce economic distance and liberalise trade, investment and movement of workforce (Arncharaz, 2011). However, COMESA's poor transport and communications infrastructure and unreliable power increase trade costs and undermine competitiveness and the region's ability to integrate. Poor communication infrastructure and the state of the road network in the region are affecting efficient movement of goods, forcing importers and exporters to use alternative routes which are expensive. In addition, police roadblocks in COMESA FTA causes serious time delays for products being transported by road which can have significant impact on the quality of agricultural products available in the region. In Zimbabwe police checkpoints stop all commercial vehicles at various points on all major highways causing time delays and encouraging bribery and corruption (Viljoen,2011). At times police road blocks are found at every five or ten kilometers on the main high way from Beitbridge border post to Harare. The delays are further caused by a poor road network which links Zimbabwe and South Africa specifically on the Zimbabwean side. The road is too narrow and full of pot holes hence it cannot cope with a large volume of traffic. It therefore follows that poor transport infrastructure within COMESA is a big challenge and it constitutes an NTB. The delay caused by poor road networks and police road blocks means more costs are incurred by transporters of goods and this has a negative impact on business operations.

1.2.4 Customs Procedures and Administrative Requirements

Toll fees and road charges on the highways connecting Zambia from sea ports constitute an important NTB to trade. With respect to trade between Zimbabwe and

Zambia evidence showed that another administrative NTB exist in the form of lengthy border delays. The Chirundu border post closes at 2200 hours. The closing of the border post at 2200 hours lead to the prolonged stay of companies at the border post as they will have to wait for opening of the border the following day. Prolonged formalities, lengthy procedures, duplication of clearance procedures and limited capacity all contribute to high costs of doing business within COMESA. These administrative complexity procedures are problematic for transparency and efficiency in the clearance of goods (Viljoen, 2011). Under these circumstances corruption by customs officials which is classified as another form of an NTB is inevitable. It also remains a significant problem in Zimbabwe, with the country ranked 154th out of 176 countries by Transparency International's Corruption Perception Index in 2016 (Viljoen, 2011). For example Beitbridge border post on the Zimbabwean side, Customs Officials demand bribes from cross border traders. It is extremely hard for transport operators to pass through the border quickly without paying bribes to the Customs Officials in order to speed the process of clearing goods. The cost of corruption in most cases is transferred to the final price of a product.

In addition to poor administrative services at the border post, there are other challenges and difficulties to be negotiated by traders and transporters. Zimbabwean companies importing goods from South Africa and elsewhere are facing time consuming and costly administrative NTBs relating to improper/incorrect classification of imports. Some Zimbabwean companies reported about 19 approvals which can take up to three months to acquire are required for some imports (World Bank, 2010). Zimbabwean authorities are also accused of classifying some imports as a service and subjecting them to 20% withholding tax instead of treating them as goods that generally attract a lower tax. In this case the government replaced a tariff with an NTB in order to preserve its revenue flow. Such practices are a violation of WTO rules on transparent laws and regulations. It has been also noted that northbound trucks travelling from South Africa to Zambia and the Democratic Republic of Congo (DRC) are increasingly avoiding Beitbridge border post despite recent reforms and an overall shorter journey distance, opting to pass through Botswana instead. The main reason motivating this decision is that transporters reckoned the time and distance disadvantages were outweighed by the cost of sending their goods through Zimbabwe (Mthembu, 2007). In acknowledgement of the poor administration at the border post the Government of Zimbabwe warned that poor administration at Beitbridge border post risks driving off commercial traffic to Kazungula as international transporters are getting frustrated by the delays at the border due to poor administration (The Zimbabwe Standard Newspaper, 2011). This is a clear indication that there is a lot of work that need to be done to improve the flow of goods in the region through addressing NTBs.

Trade facilitation issues such as inefficient customs administration, border delays, high transport costs, poor physical infrastructure and a lack of knowledge among customs officers, insufficient dissemination of relevant information and corruption are also significant barriers to Zambian importers. According to the World Bank Report (2010), Zambia ranks 153rd out of 183 countries or territories in terms of ease of trading across borders. This poor performance relates largely to the high number of documents required and long processing times. Zambia is also ranked 87th out of 176 countries on Transparency International's 2016 Corruption Perception Index, reaffirming a belief within the country that corruption is a major problem for Zambia's business environment (TRALAC, 2010).

1.2.5 Technical Regulations and Standards

Technical regulations and industrial standards are important, but they vary from country to country. The WTO agreement on Technical Barriers to Trade tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles. Countries often have an interest in making sure that imported products meet certain technical standards. In order to ensure that such standards are met, countries adopt technical regulations**.** In order to prevent unnecessary technical barriers to trade, WTO agreement on Technical Barriers to Trade encourage all WTO parties as well as COMESA members to use international standards whenever technical regulations are considered necessary (Chilala, 2009). Technical regulations standard regimes in COMESA are classified as being over-reliant on mandatory inspection and certifications. It is reported that in most Southern African countries there are no procedures by which technical regulations are assessed in terms of their consistency with public policy objectives, whether countries and the private sector have the capacity to implement them or their impact to trade and competitiveness. In particular the lack of Office of Regulatory Reform in all Southern African countries to review the justification for both new and existing technical regulations is raised as a big concern. Such absence of regulatory impact assessment causes problems and raises costs.

According to the Imani Development Report (2007), another problem due to technical procedures is the requirement for Iodisation of salt backed by Salt Iodization Act. Requirements to have salt tested for iodine verification at the entry border and consequent testing for iodine levels in salt delays the distribution of the product since the product cannot be distributed until testing is done (Imani Development Report, 2007). The survey by Imani Development revealed that companies are faced with delays in receiving certificates of approval, which delays the distribution of the product and at times wastage of a perishable item.

1.2.6 Sanitary and Phytosanitary Measures

The WTO agreement on Sanitary and phytosanitary measures authorises COMESA members to regulate the importation of food products in order to protect consumers, plants and animals from contaminants, toxins, pests and diseases. These regulations are called Sanitary and Phytosanitary (SPS) measures. Sanitary refers to regulations on human and animal products, while phytosanitary refers to regulations on plant products. Thus, SPS measures concern the safe handling and production of food for animals and humans and plant products (Chilala, 2009). In order to make trade easier and minimise the burden of regulation, while at the same time protecting the health and welfare of citizens, the COMESA treaty requires members to adopt SPS measures that are in harmony with international standards. The Treaty forbids the creation of SPS measures for the purpose of reducing trade and competition. Therefore SPS measures should have a scientific basis and only be adopted for health and safety reasons (Chilala, 2009). However, in practice the demands of the treaty are neglected as various members require cumbersome pre-shipment inspections and stringent SPS certification requirements for the importation of different agricultural products.

There are also complaints that SPS regulations relating to the importation of agricultural goods into Zambia lack transparency and there is an overall lack of available information regarding phytosanitary requirements. There is also little information regarding quarantine pests and regulated pests for importers and potential importers. In the national health and agricultural plans there are no specific policies pertaining to food safety and food safety standards. The Food and Drug Act of 2001 plus additional and regulations provide a foundation for food safety standards to be implemented, but current food laws are not adequately enforced (TRALAC, 2010). The Zambian Plant Pest and Disease Act, Chapter 233 and other regulations govern SPS requirements and import permits for the importation of various agricultural products into Zambia. In general, the importation of fruit and vegetables is restricted due to the requirement of an import permit from the Plant Quarantine and Phytosanitary Service, phytosanitary certificates from the Zambian Department of Agriculture and the exporting country, as well as the inspection of goods prior to entry (TRALAC, 2010). Zimbabwe is the only country in COMESA that has a clear legislation on production and sale of Genetically Modified Foods.

1.2.7 State Trading Enterprises

There are numerous ways in which governments can engage in practices which restrict imports or exports. Instruments which can be used include state trading enterprises, state sanctioned monopolies, procurement policies which discriminate against foreign goods and services, and industrial policies which subsidise domestic firms. Governments can also use macroeconomic, competition, fiscal, immigration or investment policy tools to distort trade in desired ways. The Zimbabwean government introduced the Indigenisation and Economic Empowerment Act in 2008 policy which gave Zimbabweans the right to take over and control 51 percent shareholding in foreign owned companies in Zimbabwe (Borsch, Marcus, Jones and Mathew, 2008) The Ease of doing business in Zimbabwe deteriorated to 155 in 2015 from 153 in 2014. Foreign investments levels in some sectors of the economy are capped by government. State owned enterprises distort the economy.

Government procurement provisions generally restrict the purchasing of certain products by government agencies in some ways towards domestic products rather than foreign products. This type of preference implies protection for local manufacturers and thus creates an obstacle to foreign producers (Soontiens, 2003). Participation of national governments, parastatals and monopolies in the trading system are prevalent in COMESA. This extends to the government operation of borders and ports. In Zambia for instance, the exportation of maize is done through one channel marketing. This is done not only by procuring maize from domestic farmers, but also through running a state trading enterprise which it occasionally support with import and export quotas. In the case of Zimbabwe the importation of maize is done via state trading government monopolies As a result only the Grain Marketing Board of Zimbabwe is authorised to import or export maize. The Grain Marketing Board has legal authority to engage in, or provide license trading in grains.

1.2.8 Dumping and Safeguards Measures

One of the most utilised forms of NTB in recent decades by the industrialised countries and increasingly being used by developing countries such as South Africa is the imposition of anti-dumping or counter-veiling duties on imports. In as much as not all COMESA countries are neither the targets nor the initiators of anti-dumping measures, they still represent a veiled threat to their exports. Anti-dumping and countervailing measures are permitted to be taken by the WTO Agreements and the Treaty in specified situations to protect the domestic industry from serious injury arising from dumped or subsidised imports. The way these measures are used entails heavy costs for the foreign firms targeted by this policy and certainly for consumers in the country applying anti-dumping legislation. If used as protectionist measures, they may act as some of the most effective NTBs. In Southern and Eastern African regions for example, several least developing countries have complained about firms from more advanced developing countries for allegedly dumping goods on their market to the detriment of local industries, while keeping their own markets off-limits through a labyrinth of tariff and NTBs measures (Mold, 2005).

In accordance with other international trade agreements, and especially the provisions of the WTO, the Protocol provides for suspension of trade liberalising measures in order to protect domestic producers from harmful effects of dumping by other COMESA exporters to provide safeguards against damaging surges of imports into the domestic market. While such measures are provided for under the WTO, there is increasing recognition that they can be and often are used as a form of disguised protection, and that standard techniques for determining the need for anti-dumping and safeguard measures are heavily biased in favour of narrow producer interests and against the broader national interests of users and consumers of importable goods. This argument is supported by the fact that usually not every investigation results in the finding of dumping or injury to the domestic industry causing severe damage on the exports of the country under investigation (Flatters, 2013).

Anti-dumping is often regarded as a form of protectionism and its impact on trade is acknowledged. It is viewed as a form of inherent protectionism and therefore should be thought of in the same ways of any forms of protection aimed at assisting domestic industries against competition from imports (N'goma, 2010). There is also a growing recognition that true dumping, in the economic sense, is just one type of anti-competitive behaviour that should be dealt with as part of broader domestic policies to ensure competition and smooth and efficient working of domestic markets. In the context of COMESA, the claim of 'dumping' is often used by producers seeking continued protection of non-competitive domestic industries. Some COMESA members have been among the heaviest users of WTO anti-dumping provisions in recent years. This has been a great hindrance to the achievement of many of the promised economic benefits of international economic integration.

Non-tariff barriers are increasingly acting as blockages to international trade, and economic growth and development. They are capable of restricting trade, are unpredictable, persistent, and influence trade patterns across countries. A review of literature on intra-COMESA trade is suggestive of the fact that as tariffs have been lowered, demands for protectionism have induced a new form of protectionism in the form of NTBs (Gillison, 2010) Therefore, there is a need to eliminate these NTBs because removal of tariffs alone is not enough to open up markets. Their prevalence may also be a drawback on the Free Trade Area.

2. RESEARCH DESIGN AND METHODOLOGY

This study adopted the qualitative research methodology while a case study design of Zimbabwe was utilised. Data was gathered using key informant interviews and documentary analysis. Key respondents for the study were purposively selected from the Ministry of Industry and Commerce, academics and trade attaches from the Zambian government.

3. DISCUSSION OF FINDINGS

This section constitute the key findings of the study. The findings are based on both primary and secondary data.

3.1 Rationale behind NTBs on COMESA FTA

A question was posed to find-out the rationale for the continuous use of NTBs within the COMESA region. The rationale for the continuation of NTBs within COMESA FTA was justified by respondents mainly on four grounds. These are safeguarding health, safety, and security of human beings, animals and plants, and environmental pollution. A trade expert from the Zambian Embassy indicated that:

> "The Zambian government banned the importation of poultry and other products from South Africa and the Democratic Republic of Congo (DRC). This came after an outbreak of a highly pathogenic avian influenza scientifically known as H5N8. The move was however, aimed at safeguarding the Zambian poultry industry."

An International Economic Relations scholar also supported the use of NTBs. He mentioned that:

> "It's an issue of national interest as realism would dictate; states are selfish with these issues and tend to prioritise their immediate needs and domestic pressures at the expense of regional imperatives. Above that the existing inequalities leave weak economies at the mercy of advanced ones hence they take solace in crafting protectionist policies like NTBs to cushion themselves."

This concurs with the East African Community Elimination Report (2015), which says that NTBs are often justified on four main reasons which are to safeguard health, security and safety of animals, plants, human beings, and against environmental pollution to safeguard the interest of the nation, to protect infant industries and consumers and also serves as a safeguard against revenue loss. Under the General Agreement on Tariffs and Trade (1994) provisions, member States are justified to take measures to protect domestic industries from serious injury caused by increased imports of certain goods.

The findings also concur with the CZI report of 2016 which stipulates that since the quantitative restrictions came into effect the manufacturing industry's utilisation rose from 34, 5% in 2015 to 47, 4% in 2016 partly due to the gazetting of the instruments boosted local industry production as well as local demand.

3.2 Effects of NTBs on COMESA FTA

Respondents indicated that NTBs have potential effects on free trade within the COMESA region. An International Economic Relations academic said that:

"NTBs in COMESA, like in any other region, result in delays and increased transportation costs which ultimately hinder the free movement of goods and services. Removal of NTBs is much more effective in boosting intra-regional trade. NTBs frustrate competitiveness of exports in the context of FTAs under COMESA."

The Secretary to the President of the Zimbabwe Cross Borders Association gave an example of the Zimbabwean S.I 64/2016 which he said caused animosity and strained relations between Zimbabwe and its neighbouring countries particularly Zambia and South Africa.

This concurs with earlier studies finding that NTBs negatively impact trade flows within COMESA. For example the 2008 NTB Impact Study, which was done by Imani Consultants established that NTBs act as an additional tax in that they add more than 5 percent to the landed cost of a product and more than 20 percent to the total landed cost, which are ultimately passed on to the consumer thereby making commodities expensive. In effect the cost of doing business, and the trade facilitation initiatives are negatively affected.

Tariffs and NTBs can have equivalent effects when markets are competitive and therefore the removal or reduction of NTBs can have similar effects to that of tariff reduction. Tariffs increase the costs for foreign suppliers while quotas and other types of NTBs serve to restrict the quantity of foreign-supplied goods in domestic markets. The two may cause prices to increase in the domestic market. This in turn results in a decrease in economic welfare because of the distortion or wedge created between domestic and world market prices. It therefore follows that the removal or reduction of NTBs increase imports and therefore impact on welfare through effects on local producers, domestic consumers and government revenues. The increased imports may displace domestic producers by foreign suppliers, depending on the assumed elasticity of substitution between imported and domestically produced goods. Consumers and producers using imported inputs may benefit from cheaper product prices and governments may lose revenues for the product liberalised.

3.3 The role of non-state actors in the COMESA FTA

All Non-State actors who participated in the study argued that they had a bigger role to play on issues to do with trade particularly within the COMESA region. They indicated that their major role was to lobby Governments to remove NTBs on trade and other matters that affect trade. The Secretary to the President of the Zimbabwe Cross Borders Association said that:

"The ban on imports was not the greatest idea as the country is sixty percent (60%) made up of informal sector. The Government needs to work with everybody. There are no industries in Zimbabwe. People survive on buying and selling. Statutory Instrument (SI) 64/2016 has taken away people's livelihoods. There is need for the involvement of non-state actors in policy formulation and particularly in the areas of trade".

An official from the Confederation of Zimbabwe Industries said that they welcomed the imposition of some NTBs on trade. He mentioned that:

"We support the implementation of S.I 64/2016 as a strategy that is aimed at ensuring that Zimbabwe reclaimed its lost economic glory."

The CZI report of 2016 stated that S.I 64/2016 came at an opportune time as it was not good for Zimbabwean industries to continue under a situation in which local products were being crowded out of the domestic market by imports that do not face equally high production costs prompting the Government to intervene through this import control.

3.4 The role of the State on COMESA FTA

A trade expert from the Ministry of Industry and Commerce responded argued that the State had the responsibility to introduce NTBs to protect its industries. He mentioned that:

"The role of the State is to facilitate free trade between and among COMESA members and this can only be possible if members liberalise import licensing, remove foreign exchange restrictions, taxes on foreign exchange, import and export quotas, road blocks, ease Customs formalities, extend times of operation at border posts, create one-stop border-posts, among others. The Government banned all grain imports because the country had reserved enough maize and it also wanted to protect local industries".

The above statement concurs with the report in The Herald Newspaper dated 23 September 2017, which noted that the Zimbabwean Government through the Ministry of Industry and Commerce introduced pre-shipment assessments of all imports under the Consignment Based Conformity Assessment (CBCA). This conformity and valuation programme intends to reduce hazardous and substantial imported products, provide compliance certificates to regulate products exported to Zimbabwean source prior to shipment, improve customs duty collection, ensure Zimbabwe consumers and industry protection, enable fair competition, avoiding unnecessary retesting by recognition of tests results/ meeting minimum reliability criteria. The CBCA ensures that the products imported into Zimbabwe are regulated to meet minimum safety, health and quality standards.

The Imani inventory of 2007 indicated that the biggest barriers facing regional trade was mainly on agricultural commodities. The main reasons given to justify these barriers are food security, protecting local producers, health and safety, and single-channel marketing. The commodities that are most regularly affected by these restrictions include sugar, maize, meat products (including poultry), dairy products, tea, timber products, and seasonal vegetables.

3.5 Effectiveness of legal frameworks that regulate COMESA NTBS

Asked on the effectiveness of legal frameworks that regulate COMESA NTBs, one respondent argued that the legal instruments which are in place are too weak to control countries imposing NTBs by failing to provide a definition of an infant industry for the purposes of derogation. The respondent further indicated that Article 49 of the COMESA Treaty provides that member states should remove and abstain from implementing NTBs to trade for the purposes of trade facilitation. The COMESA Treaty however, allows member States to implement NTBs on certain exceptions such as the protection of local industries. It is this exception or derogation that member States have been abusing. The respondent argued that:

> "The provisions dealing with the granting of derogations to Member States for the purpose of protecting infant industries are prone to abuse. A clear and concise definition of infant industry must be included in the legal frameworks. "

A trade expert from the Zambian Embassy mentioned that:

> "Legal instruments in the form of the COMESA Treaty and COMESA Regulations on NTBs exist but their implementation become problematic due to the fact that some countries belong to more than one regional grouping, e.g. SADC, East African Community (EAC) and COMESA. However, these three regional organisations have embarked on a process of harmonising their strategies and also collaborating on the elimination of NTBs."

This concurs with the report by Salter (2007) on COMESA which says that several challenges in NTBs have proved hard to solve and new ones have emerged. Several reported NTBs vary remarkably in terms of their type and breadth of application, suggesting that some NTBs will require much lengthier and complex multi-institutional processes to remove than others. Some measures have been addressed several times implying that some NTBs resurface from time to time. Salter (2007) argues that the monitoring mechanism appears to address only those NTBs that affect companies from different countries within the region which are in direct competition with each other. There are a whole range of NTBs within the region which are not being addressed by COMESA including infrastructural constraints and other ad-hoc import bans which need to be disciplined. Despite these concerns, the monitoring of NTBs and responding to private sector concerns about them constitutes a step towards reducing them.

The SADC Report (2013) indicated that all SADC member States complained against NTBs affecting regional trade. The report states that, the greatest number of complaints were 143 and these fall under 'Customs and administrative entry procedures', mainly relating to 'Lengthy and costly customs clearance procedures'. The highest number of outstanding, active complaints was 33 and these fell under 'Transport, clearing and forwarding', while those related to 'costly road user charges and fees' stood at 15.

CONCLUSIONS

The study concludes that the COMESA Treaty that seeks to regulate NTBs was too weak as provisions dealing with the granting of derogations to Member States for the purpose of protecting infant industries are prone to abuse. This is due to the lack of definition of what constitute an infant industry for the purpose of applying for derogation. On the potential effects of NTBs on COMESA FTA, it was established that NTBs frustrate competitiveness, pose serious threats to mutual trade, and tend to result in imbalances in terms of economic benefits thereby causing conflicts in terms of relations between States thereby impeding trade in a significant way. The 2008 NTB Impact Study by Imani Consultants indicated that NTBs act as an additional tax, in that they add more than 5 percent to the landed cost of a product and more than 20 percent to the total landed cost which are ultimately passed on to the consumer thereby making commodities expensive. It is clear that NTBs have a serious effect on the cost of doing business, and the trade facilitation initiatives are negatively affected. The study also established that the rationale behind the continuous use of NTBs by COMESA members is an issue of national interest as realism would dictate; states are selfish with these issues and tend to prioritise their immediate needs and domestic pressures at the expense of regional imperatives. The existing inequalities leave weak economies at the mercy of advanced one's hence they take solace in crafting protectionist policies like NTBs to cushion themselves. The East African Community Elimination Report (2015) argued that NTBs are often justified on four main reasons which are to safeguard health, security and safety of animals, plants, human beings, and against environmental pollution to safeguard the interest of the nation, to protect infant industries and consumers and also serves as a safeguard against revenue loss.

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