

**HARMONIZATION OF STANDARDS IN THE EAST AFRICAN COMMUNITY:
CHALLENGES AND OPPORTUNITIES (2000-2012)**

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DECLARATION

This Research Paper is my original work and has not been presented for a degree in any other University.

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DEDICATION

This work is dedicated to my family; and most importantly to parents for their support and believing in me.

ACRONYMS AND ABBREVIATIONS

BBN - Bureau Burundais de Normalisation

CMC - Calibration and Measurement Capability

EA - East Africa (n)

EAAB - East African Accreditation Board

EABC - East African Business Council

EAC - East African Community

EASC - East African Standards Committee

EU - European Union

IAF - International Accreditation Forum

IEC - International Electrotechnical Commission

ISO - International Organization for Standardization

KEBS - Kenya Bureau of Standards

KENAS - Kenya National Accreditation Service

NAFP - National Accreditation Focal Point

NAFTA - North American Free Trade Area

NMI - National Metrology Institute

NSB - National Standards Body

PVoC - Pre-shipment Verification of Compliance

QI - Quality Infrastructure

RBS - Rwanda Bureau of Standards

SPS - Sanitary and Phyto-sanitary

SQMT - Standards, Quality Assurance, Metrology and Testing

CEN-European Committee for Standardization

CENELEC-European Committee for Electrotechnical Standardization

ETSI- European Telecommunications Standards Institute

TFDA –Tanzania Food and Drugs Agency

WMD- Weights and Measures Department

NEMA- National Environmental Management Agency

GLOSSARY OF RELEVANT TERMS

Accreditation: is a third-party attestation related to a conformity assessment body conveying formal demonstration of its competence to carry out specific conformity assessment tasks in which specified requirements relating to a product, process and system. It is a formal recognition that an organization is competent to perform specific processes, activities or tasks in a reliable, credible and accurate manner. It provides a high degree of assurance that organizations implementing these processes (activities or tasks) are competent.

Certification: is a procedure by which a third party gives written assurance that a product, process or service conforms to specified requirements.

Codes of Practice: provide advice and recommendations for implementation (e.g. food hygiene and traceability practices, production practices, sampling and analysis methods).

Compliance: is the judgment that a product or service meets the requirements of specific standard.

Conformity Assessment: is any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

Enforcement: refers to approaches responding to non-compliance and sanctions to withdraw recognition if corrective action is not taken. The regulator or standard setter has to have procedures for responding to the results of the conformity assessment, either by invoking corrective action or withdrawing the recognition of the organization or operator as conforming to the regulation or standard.

Harmonization: is a process, by which regulations or standards on the same subject (including requirements for conformity assessment), which are approved by different standardizing bodies, establishes interchangeability of products, processes and services, or mutual understanding of test results or information provided according to these standards.

Informal trade: is trade that is not state controlled and monitored and is often unavailable for inclusion in gross domestic product (GDP) unlike the formal trade. **Inspection:** Inspection is the conformity evaluation by observation and judgment accompanied as appropriate by measurement, testing, or gauging.

Mutual Recognition Agreement (MRA): A formal recognition that the inspection and certification system of one country is equivalent to that of the partner country.

Non-Tariff Barriers (NTB): are restrictions and limitations acting as obstacles to trade, appearing as rules, regulations or laws that have a negative impact on trade.

Private standards: are trade or industry standards developed by individual firms (corporate standards) or by networks and business associations (collective standards, usually pre-competitive); examples: Global GAP, Kenya GAP, and Nature's Choice.

Quality Infrastructure (QI): refers to all aspects of metrology, standardization, testing, and quality management including certification and accreditation. This includes both public and private institutions and the regulatory protocol within which they operate.

Recognition: refers to the acceptance of conformity assessment reports from a designated service provider by other member states.

Regulatory Authority (RA): is a Competent Authority normally official government agency possessing jurisdiction and designated at national level to enforce specified regulations.

Sanitary and Phytosanitary Measures (SPS): refer to (i) the protection of human or animal health against risks in food or feed; (ii) the protection of human, animal or plant health against risks from pests or diseases of plants or animals; and; (iii) the protection of the territory of a country against other damage from the entry, establishment or spread of pests. SPS can be seen as a subcategory of technical regulations since they may also take the form of regulations or standards, laying down product-related requirements.

Standard: is a document approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.

Technical Regulation A technical regulation is a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.

ABSTRACT

East African Community (EAC) is an economic integration involving Burundi, Kenya, Rwanda, Tanzania and Uganda. One of the objectives of EAC integration was to develop policies and programmes aimed at widening and deepening trade among the Partner States. Significant progress has been made in the EAC economic integration process. For example, the East African Community Customs Union was established in 2005 that abolished intra-community tariffs and adopted a Common External Tariff (CET); in addition, the East African Community Common Market (EACCM) was established in 2010 aimed at free movements of goods in the EAC, among others. However, Partner States have not yet realized the full trade and welfare benefits of a customs union and common market because of the presence of technical barriers to trade (TBT), in addition to other trade barriers. Trade between the Partner States is still being hindered by the existence of non-tariff barriers, which is of concern to the private sector in the EAC. The EAC has experienced a general increase in the intra-EAC trade over the years. The Intra-EAC trade total increased by about 8% to US\$ 4.5 billion in 2010 compared to US\$ 4.2 billion in 2009. The study revealed that the level of intra-EAC trade was still very low.

Several scholars have put the impact of international harmonization of standards on international trade to the test their main concession is that international harmonization of standards has a positive effect on international trade. The WTO through the TBT Agreement advocate international harmonization of standard it however recognizes and respects states right to make regulations and standards applicable in the States territory. Though harmonization of standards is desired states have to consider other factors such as the protection of consumers and plant and animal health. By states exercising this right to make regulations in their territory certain regulations differ thereby inhibiting harmonization and creating technical barriers to trade.

Acknowledging the role SQMT plays in facilitating trade the EAC adopted the EAC SQMT Act 2006 which aims to harmonize standards and technical regulations in the region. So far the EAC has managed to harmonize 1240 standards this is however very low compared to the fact that partner state maintain as many as 6000 national standards. Despite the strides made in harmonization the provisions of the SQMT Act are not fully implemented. Much still needs to be done to establish trust in inspection, testing and certification conducted by the other EAC countries to establish mutual recognition. The challenges identified in implementation include: reluctance by states to adopt of EAC standards and lack of financial and technical resources. The study explores the challenges and identifies the unnecessary trade barriers faced by exporters in the EAC intra-regional trade due to differences in technical regulations and standards amongst EAC Partner States. The study also identifies opportunities and avenues that can be adopted by partner states to fast track harmonization i.e. judicial intervention and approximation of respective national standards laws to the SQMT Act.

This study has generated data that can assist to inform the private sector and other stakeholders to propose position(s) suggesting best actions to fast-track the harmonization of standards and the development of technical regulations framework with a view of promoting free movement of goods in the EAC. The study was constrained by number of factors including: lack of EAC up to date trade data and scanty information on informal trade. Therefore, the trade statistics given does not include informal trade. The paper is biased towards the original EAC countries; Kenya, Uganda and Tanzania for which data are readily available.

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CHAPTER ONE:

1.1. INTRODUCTION

1.1.1. Background of the Problem

The establishment of regional economic communities is influenced by a range of economic, political and security-related objectives which they desire to achieve and they include: exploiting economies of scale and benefits from specialization by expanding the domestic market and developing new markets, second consideration is attracting foreign direct investments, enhancing areas that are insufficiently covered by multilateral agreements, such as investments, competition, environment or labor standards, supporting the negotiating power in multilateral agreements by forming regional blocks and strengthening geopolitical alliances, and consolidate peace processes and promoting violent-free solutions to conflicts by a regional cooperation on security issues.

The purpose of regional integration is to encourage free trade by removing all barriers to trade between them. To achieve this there is need for cooperation and coordination of policies of the member states. It demands harmonization of policies in such sectors as trade, investment, infrastructural development, as well as monetary and fiscal policies of member states. A fundamental characteristic of regional economic integration is the elimination of technical barriers to trade.

With trade being the main reason for integration, removal of trade barriers is a high priority. For a long time the barriers of trade were considered to be tariffs and quotas. However in the 1970's non tariff barriers of trade came to the fore. The Tokyo round of negotiations (1973-1979) recognized the increasing importance of regulatory barriers of international trade.

The East African Community (EAC) re-emerged in 2000 after the ratification of the EAC treaty in 1999 by member states of Kenya Uganda and Tanzania. Rwanda and Burundi joined the union in 2007. According to the treaty, the objectives of the EAC are to develop policies and programs aimed at widening and deepening co-operation among the Partner States in economic, social, cultural and political fields their mutual benefit. Within this framework partner countries also resolved to establish amongst themselves a customs union, a common market, subsequently a monetary union and ultimately a political federation to strengthen, regulate, and enhance an accelerated harmonious, equitable and sustained economic development. This collaboration of efforts has so far yielded a customs union launched in 2005 and the common market established in 2010.

Article 18 of the EAC treaty provides that EAC shall apply a common policy for the standardization, quality assurance, metrology and testing of goods and services produced and traded within the Community. In its attempts at harmonization of the quality infrastructure the EAC SQMT Act 2006 was formulated. The act is aimed at ensuring that the goods produced in the region meet the necessary standards and engender competition with goods manufactured outside the region through harmonization of the quality infrastructure. Quality infrastructure is a term that covers all the elements that are required to assure and demonstrate quality. The elements include Metrology, standardization, inspection and testing and Accreditation.

The Act also guarantees the competitiveness of products from the region in relation to the world market as well as eliminating non tariff barriers of trade. Ultimately it deepens the integration process as well as facilitating intra- EAC trade as well as extra EAC trade.

Some progress has been made regarding the implementation of the SQMT Act, but there are many areas where progress has been everything but satisfactory. The reasons for this state of affairs are complex, but one of them could be that there is no real oversight or assigned responsibility. Everybody is considered responsible, but in the end nobody takes up that responsibility in the absence of any accountability requirements. Standards strike at the heart of business operations affecting business pre-production, production, sales and marketing policies.

1.1.2. Statement of the Research Problem

There is considerable literature available on regional integration and trade; however Quality Infrastructure has received little attention in the literature of interregional trade. Despite the fact that it is recognized that it may constitute a substantial impediment to trade and thereby a threat to the entire integration attempt in the EAC.

Standards are an important, albeit often overlooked, actor in the international trade arena. Trade sector plays an important role in the region's economy in terms of GDP contribution and export earnings, but mostly, in terms of employment and income generation. Quality infrastructure is important in trade as it provides a connection between the producers and consumers as the consumers are assured that the products they purchase are of good quality and safe for their health. This therefore improves the market access of products. The EAC has recognized through its Treaty and the SQMT Act the necessity of harmonization of the quality infrastructure, through the acts and omissions of state members of the EAC this has not been achieved as envisioned by the community. This is further aggravated by the size of Member States' markets which is too small to afford the establishment and operation of an appropriate Quality Infrastructure. As standards are not harmonized within the EAC, market access remains remain a challenge because of the differences in technical specifications and conformity assessment

procedures required. Kenya's main trade partners are within the EAC region and it stands to gain from increased market access that will be achieved by the harmonization of standards.

This study seeks to examine the challenges the EAC with a focus on Kenya is facing in attempts at implementing the SQMT Act that advocates for the Harmonization of standards.

1.1.3. Objectives of the study

There are three objectives to this study:

- To analyze challenges in harmonization of Standards in the EAC. Consider including other aspects of QI in your objective so that it's in line with the Topic
- To explore the potential regional Standards harmonization approaches in the EAC.

1.1.4. Justification of the Study

The establishment of a common market envisioned that there would be an increase in trade within the community. Despite attempts to harmonize tariffs and adoption of EAC regulations, suppliers in the EAC still face challenges and unnecessary trade barriers faced due to differences in technical regulation and standards. Failure to have harmonized Standards and Conformity Assessment activities, the integration has acted as a barrier of trade within the region. Failure to fully harmonize standards in the region is not for lack of trying. The SQMT Act 2006 provides a regulatory framework for development and adoption of EA Standards by member states. While a good number of standards have been harmonized exporters still experience barriers to trade as a result of differing national standards. For the purpose of deepening integration in the EAC there must be a paradigm shift in attempts at harmonization of quality infrastructure.

This study attempts to identify the challenges of harmonization and opportunities that can be utilized to further harmonization and ultimately deepen integration. The study generated information that can assist to inform the stakeholders in the EAC especially the policy maker and the private sector to propose position(s) suggesting best actions to fast-track the harmonization of standards and the development of technical regulations framework with a view of promoting free movement of goods in the EAC.

1.1.5. Hypothesis

- Harmonized Standards in the EAC has facilitated intra EAC trade.
- Harmonization of Standards under the SQMT Act has been ineffective.

1.2.Literature Review

1.2.1. Regional Integration

There is no common accepted definition of regional integration Ernst Haas, a respected scholar on Integration defines it as a *“process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over pre-existing national states. The end result of a process of political integration is a new political community, superimposed over the pre-existing ones”*¹. The difference between regional integration and cooperation is the presence of a supra-national decision-making body. Regional integration attempts has laid in direct conflict with the States role creating domestic regulations and policies in relation to trade.

¹ Haas, Ernst B., 1968: The Uniting of Europe. 1950-1957. Stanford: Stanford UP, p. 16.

In an attempt to analyze the level of integration, *Søren Dosemrode* divides the integration process into stages². In economic integration he argues there are six stages first is the ad hoc cooperation between states. The second stage is the Free trade agreements here the main task is to lower or eliminate import tariffs and import quotas among the member states. The third stage is a customs union which extends the free trade agreement with the requirement of harmonization of the external trade policies of the member states as well as imposes a common external tariff on imports from non member states. Customs union however does not operate with a free movement of labor and capital among its members. The fourth stage is the common market; it includes the free movement of labor, capital and other resources. The increased interdependence expected leads to a pressure for policy harmonization. It imposes severe limitations on member states' ability to follow independent economic policies. The fifth stage is the Economic Union it harmonizes a number of key policy areas.i.e. Formally coordinated monetary and fiscal policies, labor market, development, transportation and industrial policies. The European Union is an example of such a union where monetary matters has been transferred to a supranational institution the European Monetary Union, and where the internal market regulates inter alia regional development, transportation, industrial policies and parts of labor market. The last stage in economic integration is the Full integration, where sovereign member-states formally hand over the major part of their decision making power, their 'sovereignty,' to the new state.

1.2.2. Standards

WTO defines standards *as set out specific characteristic of a product such as its size shape design functions and performance or the way it is labeled or packaged before its put on sale. There are instances where i the way the product is produced can affect those characteristics and*

²*Søren Dosemrode: Federalism Theory and Neo-Functionalism: Elements for an analytical framework*

it may prove more appropriate to draft standards in terms of products process and production methods rather than its characteristics

Standards can be imposed by both governments (technical regulations) and non-governmental organizations. The legal character of standards imposed by governments distinguishes them from those that are created and enforced by non-governmental organizations. The standards created by non governmental agencies are voluntary, and not legally binding. Government standards on the other hand are legally binding and relate mainly to technical specifications or testing and certification requirements such that the product actually complies with the specifications to which it is subjected³

Standards work in tandem with conformity assessment activities and collectively they are referred to as Quality Infrastructure. The proper functioning of a quality infrastructure is based on the interconnection of its elements as well as the international recognition of the system. For instance, product certification is based on the results of testing laboratories whose instruments must be checked by calibration laboratories in order to receive the accreditation required for international recognition. International recognition, in turn, is based on the linking of individual Standards elements to the standards and guidelines agreed on at the regional and the international level.

*Wilson*⁴ defines and discusses meaning and role played by SQMT. He argues there are two types of standards. Product standards are those standards which involve the specifications and

³ Paul Brenton, John Sheehy and Marc Vancauteran, *Technical Barriers to Trade in the European Union: Importance for Accession Countries* CEPS WORKING DOCUMENT NO.144 APRI 2000 Available at <http://www.ceps.eu> accessed on 22nd April 2013

⁴ Wilson, John S. (2002) "Standards, regulation, and trade: WTO rules and developing country Concerns" in *Development, trade and the WTO: a handbook* (ed. by Hoekman, Mattoo and English)

characteristics of particular goods and services i.e. accounting practices, medical qualification requirements. Process standards in contrast, specify manufacturing or quality control measures to be taken to ensure that product quality is maintained. This might include, for example, the specifications on how an automated assembly line in a factory producing car bodies is constructed. Standards may be codified in written specifications or followed by custom in manufacturing processes. They are developed in various ways; in many industries, including information technology, product standards are developed through a voluntary consensus of companies engaged in producing competing products. In addition to voluntary or industry standards, regulatory standards are mandated by governments. These regulatory standards are developed to meet health, safety, or environmental objectives. In many cases, these standards involve testing and certification requirements.

He further argues that the existence of a standard does not guarantee final producers or consumers that a product functions as indicated in the technical specifications in a standard. Product testing, plant inspections, and other procedures are conducted to determine whether a product conforms to those specifications. This is where conformity assessment comes in. Conformity assessment usually involves several steps and is conducted by an authorized third party able to certify that a product meets detailed technical specifications. Certification involves testing a product against a voluntary, de facto, or regulatory standard and is often carried out by organizations that have no link to the manufacturer or purchaser. After testing, a certificate is issued confirming that the product meets a set standard.

According to an EAC report⁵, the necessity of a quality infrastructure to the everyday person can be explained using the example of a producer of fruit juice. To ensure that the cartons contain the exact volume indicated he has to have his filling machine calibrated regularly. The producer must adhere to compulsory standards regulating pre- packed food indicating origin; shelf life e.t.c. and a laboratory accredited for the necessary capabilities must test the juice to confirm its contents are as labeled. The quality of the juice must be assessed and certified and thereafter the producer is entitled to print a quality mark on his juice. The quality mark allows him to freely access the markets in the EAC Countries and assures the consumers the product is safe⁶.

1.2.3. Effects of Standards on Trade

The differences between SQMT in inter trading countries has far-reaching consequences for international trade since, for instance, products, processes and systems are subject to different mandatory requirements and may therefore violate legal regulations of the trading partner. Or testing may not be recognized.

Faber G and Roelfsema H, argue that different national standards act as a trade barrier in three instances⁷. Firstly, domestic standards may be higher than international standards and this leads to an increase in cost of production to both the foreign and domestic producer. Foreign producers have to sink the compliance cost into the production process and have to incur additional cost when switching to suit a particular domestic market to adopt higher standards set by that country. This additional cost may act as a barrier to trade

⁵ Will Musingizi J Siegfried and T Dierradt, *Establishing a Regional Quality Infrastructure in the East African Community January 2011* available at www.eac.int

⁷ Faber G and Roelfsema H, *Trade, Standards and Regional Integration* (2001) available at www.aei.pitt.edu

Secondly, though the national standard may not be higher than the international standard by the mere fact that they are different foreign producers have to comply with different standards thereby raising the cost of production.

Thirdly, the difference in standards increases uncertainty for exporters. This uncertainty may be on whether goods are accepted and on whether standards of the importing country will remain unchanged after the exporter enters the particular market. The long periods used to investigate and review markets may raise the cost of exporting.

However as stated by *Czubal et al*, it must be noted that there are sound and legitimate reasons for national measures on their Standards. Thus, the WTO Agreement on Technical Barriers to Trade expressly focuses on avoiding *unnecessary regulations*. In particular, it recommends to WTO members to use of international standards as much as possible and to actively participate in the activities of standard-setting bodies, such as the *International Organization for Standardization (ISO)* and the *International Electro technical Commission (IEC)*. Many product standards are not intended to be a barrier to trade. They may not be developed in regard to trade at all. Instead, they may respond to legitimate concerns in the fields of health and safety, consumer and environmental protection.⁸ Standards play an important role in the fields of health and safety, consumer and environmental protection. Despite the intent standards is a major NTB as it imposes additional costs on exporters and increase the time required to bring a product to market⁹.

⁸ Czubala, Witold, Ben Shepherd and John Wilson, Help or Hindrance? The Impact of Harmonized Standards on African Exports", *Journal of African Economies* (2009)

⁹ José-Daniel Reyes ' *International Harmonization of Product Standards and Firm Heterogeneity in International Trade*, The World Bank Poverty Reduction and Economic Management Network International Trade Department (June 2011) Policy Research Working Paper 5677 available at Web at <http://econ.worldbank.org>

Wilson and Otsuki, (2004) tested the assertion that international harmonized standards encouraged international trade. They did this through firm level surveys attempting to gauge the direct impact of standards and technical regulations on firms' production costs and hence export performance. The World Bank TBT survey looked at 689 firms in over 20 industries in 17 developing countries. The survey shows that in order to meet standards, firms invest in additional plant or equipment, one-time product redesign, product redesign for each export market, additional labor for production, additional labor for testing and certification, or lay off workers instead of making these types of investment in order to keep the costs from increasing¹⁰.

Moenius (2004) provides a valuable contribution by challenging the commonly held view that country-specific standards act as a barrier to trade. Whereas harmonized standards encourage trade. He argues country-specific standards tend to hinder trade in simple goods (including agricultural products, food, beverages, and mineral fuels) and promote trade in complex goods (like machinery and electronics). He explains that this is mainly because of the implication of standards on production and trade costs: While standards may impose additional costs on exporters as it may be necessary to adapt products for specific markets they also can reduce exporter's information cost if they convey relevant market information which would be costly to gather in the absence of the standard¹¹.

Portugal-Perez et al in Beyond the Information Technology Agreement: Harmonization of Standards and Trade in Electronics." extended the analysis of international harmonization in more complex products. By focusing in the electronics sector, the authors not only confirm

¹⁰ Wilson, John S. and T. Otsuki (2004), "Standards and Technical Regulations and Firms in Developing Countries: New Evidence from a World Bank Technical Barriers to Trade Survey", World Bank, Washington D.C. World Trade Organization (2005b): The Changing Landscape of Regional Trade Agreements, Discussion Paper No. 8, Geneva

¹¹ Moenius, Johannes, "Information versus Product Adaptation: The Role of Standards in Trade", International Business and Markets Research Center Working Paper (, 2004), Northwestern University.

Moenius' finding about the benign role of standardization but also found that international harmonization enhances exports to the EU¹². Standards may impose additional costs on exporters as exporters have to adapt the products to the standards of the importing country thereby incurring extra cost. In contrast, standards can also save the exporter costs in terms of information *costs* if standards convey information such as industrial requirements or consumer tastes that would be costly to collect in the absence of standards.

Czubala et al in *Help or Hindrance? The Impact of Harmonized Standards on African Exports* examines the effect international harmonization of standards in the textiles, clothing, and footwear sector on exports from 47 Sub-Saharan countries in Africa to the EU. They found that internationally harmonized standards are less trade restrictive than purely European standards¹³.

Swann summarized by stating that there are Four conclusions can be drawn in the relationship between international standards and trade First, in most studies, when exporting countries use international standards, this has in most cases a positive (or at least neutral) effect on their export performance. Second, when the exporting country uses the national standards of the importing country may lead to superior export performance the exporting country. Third when the importing countries also adopt international standards, the most common effect is also to increase imports. Lastly when the importing country uses national mandatory standards, the effects on imports tend to be negative¹⁴.

¹² Portugal-Perez, Alberto, Jose-Daniel Reyes and John S. Wilson, *Beyond the Information Technology Agreement: Harmonization of Standards and Trade in Electronics*. The World Economy, Vol. 33, Issue 12, (December 2010) pp. 1870-1897,

¹³ Czubala, Witold, Ben Shepherd and John Wilson. 2009. Help or Hindrance? The Impact of Harmonized Standards on African Exports", *Journal of African Economies*

¹⁴ Swann, G. P, *International Standards and Trade: A Review of the Empirical Literature*", OECD Trade Policy. Working Papers, No. 97, OECD Publishing (2010).

According to *Okumu L and Nyankori J.C.O*, The relationship between harmonized standards and increasing trade flows among the EAC countries is, however, not apparent and could be contradictory. In theory, increased trade is positively associated with lower or zero tariffs and non-tariff barriers. In general, tariffs and NTBs lead to higher product price. Despite reduction of tariff barriers and NTB's including un-harmonized quality infrastructure, trade within the EAC region is growing appreciably. The share of intra-regional trade as a percentage of East Africa's total trade with the world has trended slightly downwards. Intra-regional trade doubled from \$2.2 billion to \$4.1 billion between 2005 and 2010¹⁵. Okumu and Nyankori argue that this perhaps, indicates that these NTBs are not affecting trade within the EAC region, or traders are finding of circumventing NTBs.¹⁶

1.2.4. Overcoming Standards TBT

Even though SQMT have been shown to constitute a barrier to trade, they are valuable in and of themselves as argued above. Since removing the standards themselves is therefore not an option, a level playing field will have to be created by accepting their presence and making them compatible.

The Preamble to the WTO TBT Agreement states that

“No country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal, and plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate¹⁷”.

However, the regulatory flexibility of WTO members is limited by the requirement that

¹⁵ Report by Society for International Development and Trade Mark East Africa, *The State of the EAC 2012: Deepening Integration and Intensifying Challenges* (Society for International Development 2012) pp60, 70, 71

¹⁶ Okumu L and Nyankori J.C.O, *Non-tariff Barriers in the EAC Customs union implications for trade between Uganda and Other countries* (Economic Policy Research Center December 2012) research series no.75

¹⁷ Article 2.2 of TBT Agreement

technical regulations “*are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to trade.*”¹⁸”

As noted above despite the intentions of the member countries to protect its consumer’s health and safety some aspects products standards and conformity assessments may unwittingly become barriers to trade. The EU has recognized two major approaches that address standards, testing and certification requirements to remove Technical Barriers of Trade. *Paul Brenton et al*¹⁹ outlines them as Mutual Recognition Principle and the second one is the Harmonization of technical standards.

The mutual recognition principle promotes the idea that “*products manufactured and tested in accordance with a partner country’s regulations could offer equivalent levels of protection to those provided by corresponding domestic rules and procedures*”²⁰. Mutual recognition it is presumed that standards, though varying per se, are designed to meet the same regulatory objectives and there is hence no need for a further agreement. This practice is very common within the European Union and covers approximately 28% of all products in the EU²¹. It assumes that the quality infrastructures of different nations are at par Mutual recognition of standards is currently only applied by the EU, as it requires a strong enforcement mechanism (a role that is played by European Court of Justice). This is approach however very expensive and labour intensive is as it requires the accreditation of testing and certification bodies and mutual

¹⁸ Article 2.2 of TBT Agreement

¹⁹ Paul Brenton, John Sheehy and Marc Vancauteren, *Technical Barriers to Trade in the European Union: Importance for Accession Countries* CEPS WORKING DOCUMENT NO.144 APRI 2000 Available at <http://www.ceps.eu> accessed on 22nd April 2013

²⁰ Paul Brenton, John Sheehy and Marc Vancauteren, *Technical Barriers to Trade in the European Union: Importance for Accession Countries* CEPS WORKING DOCUMENT NO.144 APRI 2000 Available at <http://www.ceps.eu> accessed on 22nd April 2013

²¹ Silja Baller, Trade Effects of Regional Standards Liberalization: A Heterogeneous Firms Approach World Bank Policy Research Working Paper 4124, (February 2007)

recognition arrangement. It assumes that the quality infrastructures of different nations are at par. Mutual recognition works best when products are relatively new but it poses a problem where there is high product risk exposed to consumers.

The harmonization approach on the other hand is whereby states reach agreement on common set of legally binding requirements or standards. Therefore no legal impediments can prevent market access of complying product anywhere in else in the community. Harmonized standards facilitate exports from one country to another and increase intra-EAC trade.

Other approaches include the equivalency approach and the creation of reference standards.

The Equivalency approach assumes that if two different standards have an equivalent effect, then a country should allow goods to enter its market based on these standards. Equivalency recognizes that countries can have different standards but also acknowledges that every country is out to protect its citizens against the hazardous effects of products. It also recognizes that differences in SQMT approach may be occasioned by different conditions and influences within the country. Equivalency, is used by the US-Canada Free Trade Agreement. The two countries have sought an open-border policy with respect to trade in agricultural and other designated goods, basing that policy partly on "making equivalent" technical regulations and standards. The agreement's chapter on agriculture includes accords to make equivalent and to harmonize, where possible, testing and evaluation procedures, labeling requirements and residue tolerances for certain chemical products. However, there may be considerable national differences of opinion as to whether different standards provide an equivalent guarantee of health and safety protection or environmental protection.

*Stevens C*²² argues that the most comprehensive approach to harmonization is to establish reference standards, for products and processes through multilateral bodies. He gives the example of the SPS Agreement which directs countries to base their sanitary and phytosanitary measures on existing international standards, guidelines, or recommendations. It recommends increased reliance on international standards organizations: the Codex Alimentarius Commission (a joint World Health Organization/Food and Agriculture Organization agency), the International Office of Epizootics, and the International Plant Protection Convention. Countries can adopt standards more stringent than those set by these organizations if they can show a scientific justification for doing so. There is also some allowance for higher standards if they are based on internationally agreed-upon risk-assessment techniques. National differences in establishing standards higher than the international norm and in giving relatively more weight to science or risk assessment can lead to significant disputes.

The SQMT Act of 2006 envisages harmonization of standards in implementation of the Act mutual recognition of conformity assessment procedures i.e. testing and recognition of the quality marks of partner states. Despite the similarities of regional states in integration attempt they are not homogeneous Differences include economic size, factor endowments, per capita income or degree of industrialization, and policy factors that reflect different preferences, choices and institutional characteristics. Within the context of quality infrastructure there are differences between member states, for example in terms of regulatory policies or the state of technical development.²³

²² Stevens C. (1993) "Harmonization, Trade and the Environment" International Environmental Affairs [http://www.ciesin.org/docs/008-062/008-062.html\(6/9/99\)](http://www.ciesin.org/docs/008-062/008-062.html(6/9/99))

²³ Uwe Miesner *Contributions of quality infrastructure to regional economic integration:*

1.3.Theoretical Framework

Theories of integration have mainly been developed to explain European Integration. Many theories have been put forward to explain the phenomena that is regional integration its functions and limitation. The two main theories are inter-governmentalism and neo functionalism. These two theories analyze regional integration at the supranational level.

1.3.1. Intergovernmentalism

This theory is based on the realist school where the world is made up of equal states and they exist in perpetual anarchy as there is no world government. This theory emphasizes the importance of national governments in the process of regional integrations. The main assumption of intergovernmentalists is that after years of European integration the prevailing role of the nation-state is still there and is capable of shaping further the process of supra-national integration. According to this theory, the attainment of integration depends upon the ability of nation-states to adjust and respond to the cooperative agreements that define integration. This argument gives the foundation for the viewpoint that regards integration as a result of negotiations among nation-states to create cooperative agreements that develop into further integration. Therefore, the intergovernmental arrangement highlights that the main advocate of regional integration is the state's search for power and interests. This argument continues the tradition that integration is a means for member countries to attain domestic policy preferences through regional negotiation.

This theory can be used to explain harmonization of standards in that the power to develop standards to protect consumers and advance fair completion is jealously guarded by nation states

through their government. In the EAC all the member states have their unique state created standard bodies and a way affecting those standards. The EAC SQMT Act 2006 recognizes the role that the government plays and relies greatly on the will of the government to implement its provisions. For instance the regulatory authorities in the EAC as well as under the SQMT Act framework are statutory bodies or government departments within the Partner State.

1.3.2. Neo-functionalism

The functionalists argued that technological and economic development lead to more supranational structures as states seek practical means to fulfill necessary functions for instance coordinating the use of rivers that cross borders. As connections become stronger functionalism predicts that the integration will become stronger. Neo functionalist is a modification of the functionalism theory as it was not sufficient to analyze the development of the integration in the European Union as it went beyond the creation of specialized agencies to include more political supranational bodies. Neo functionalists argue that economic integration generates a political dynamic that drives integration further therefore closer economic ties require more political coordination in order to operate effectively²⁴. Haas the father of this theory however argued that this theory is only applicable in Europe because of neo-functionalism's deep roots in the analysis of processes of social change and decision making in plural and industrialized societies.

The application of neo-functionalism and intergovernmentalism theories of integration is vital in explaining the policy trends of regional policy harmonization of standards. As explained above. Neo-functionalism focuses on more of informal, top-down (in a sense that supra-national organizations have more influence than nation-states in policy integration), ad hoc, proactive,

²⁴Joshua Goldstein and Jon Pevehose ;International Relation (2008) Longman

gradual and internally driven kind of policy harmonization. On the other hand, intergovernmentalism explains policy harmonization as more of formal, bottom-up, intentional, externally driven and reactive process. These factors characterize the development and governance of any change process and are central to the analysis of the stages of the regionalization process. In this perspective, harmonization of standards at regional level can be explained based on the above variables stated in the theories

1.4. Research Methodology

1.4.1 Introduction

This section covers the research design, study area, target population, sampling procedure and sample size, instruments, validity of the instrument, reliability of the instrument, procedure for data collection, data analysis, logical and ethical considerations.

The study is an investigative exploratory survey designed to investigate harmonization of Standards under the SQMT Act 2006. This design was used for collecting data on the opportunities and challenges in implementation of the Act. The study was conducted in Kenya with interviews through emails and phone calls to Uganda, Tanzania, and Rwanda.

The data was collected from public officers charged with the responsibility of pushing for harmonization of standards in the EAC i.e. EAC standards officer, and exporters whose businesses are conducted in the EAC region

1.4.5 Sampling Techniques

Purposive sampling used to select respondents to participate in the study. Purposive sampling for persons with expertise in standardization and regional integration within the EAC. Secondly the

researcher identified stakeholders who receive and implement of harmonized standards in the EAC. A list of possible respondents was prepared and request for chance to be interviewed made to the identified officers.

1.4.6 Research Instruments

The study used interview schedules to collect data from respondents. Kothari highlighted that interviewing is one of the methods used in survey research for collecting data.²⁵ The interviewees were those who are in one way or another involved with EAC Quality infrastructure including officials from the various in ministries in the three countries, as well as selected individuals from the private sector. C

Categories of Interviewees

- National Standards Bodies:6
- Trade Associations and Exporters in the EAC: 31

Total 37

In addition, secondary data was used through desktop research especially on EAC trade reports; internet sources such as the EAC website and website of national quality regulatory bodies; books; statutes both regional and national; baseline studies and academic journals among other sources which have information on harmonization of standards and trade trends in the EAC. Data collected from them was analyzed qualitatively according to the various thematic areas under study.

²⁵ Kothari, C.R. (2004). *Research Methodology: Methods and Techniques*. Nairobi: New Age International (P) Ltd.

1.4.8 Logistical and Ethical Considerations

Prior to conducting the study, the researcher sought permission from the various organizations which were to be involved in the study to allow data collection. Before the actual field study, the researcher met the prospective respondents to explain the intentions of the study in order to cultivate positive relationship between the study and the respondents. Respondents were assured that information collected from them is for the sole purpose of the study and no other purpose whatsoever.

The researcher designed the interview schedules considering the respondent's privacy and psychological needs. Finally, the outcome of the study will be made known to those who participated in the research study.

1.5. Chapter Outline

Chapter one: Background of the study, the statement of the research problem, justification, theoretical framework, literature review, hypotheses and the methodology of study.

Chapter Two: Background of Harmonization of Standards in the EAC

Chapter Three: Standards & Technical Regulatory Regime in Operation in the EAC

Chapter Four: Challenges And Opportunities In Harmonization of Standards

Chapter Five: Conclusion and Recommendations.

CHAPTER TWO: BACKGROUND OF HARMONIZATION OF STANDARDS IN THE EAC

2.1. History of standards

It is difficult to identify when Standards were first developed and used. Standards of measurement have been used for a long time in the Sale of goods and services in order to prevent unfair dealings and incorrect measurements. The earliest written standards can be traced in Africa through the Egyptians who wrote Standards with respect to weights i.e. a standard of measurement termed the Egyptian Royal Cubit about 5000 years ago . . This standard of measurement was important in history as it was used a basic measurement for the pyramids other great Egyptian monuments²⁶. Other early use of standards is by Shih Huang-Ti, under whom the Great Wall was built. He ensured that standard measurements were legally binding enforceable to rule out variations and confusion in of the construction of the Great Wall of China. Standards were also used in warfare in order to gain competitive advantage. Napoleon was also a pioneer in the use of standards especially in war to his advantage. He noted the incompatibility of weapons from various countries he captured i.e. Cannon balls were not the same size, weight systems and calibers. Napoleon tried to solve this problem using the science of measurement called as metrology. He imposed this system on all the conquered and allied nations. This metric system was eventually adopted by the whole of Europe and all parts of world through colonialism.

Creation of institutions for standards research and development came thereafter in the late nineteenth and early twentieth century. The first institutions were mainly in Egypt Germany was first with the, the Physikalisch-Technische Reichsanstalt (German Imperial Institute of Physics

²⁶ Toth R.B. (1990) *"Getting Standards Implemented"* Standards Management a Handbook for Profits, ANSI, N.Y.

and Technology) which was founded in 1887 to perform scientific research, set electrical standards, and coordinate innovation in science-based industries—all of which contributed to the vitality of industry in the German Empire. Other nations imitated the German institution, including the British National Physical Laboratory (founded in 1899) and the American National Bureau of Standards (NBS)²⁷. Institutions for standards adopted by Europe countries were later adopted by other parts of the world under the influence of colonialism.

The use of standards increased rapidly with the industrial revolution. This is due to a number of factors including: First, universal suffrage and appreciation of the power of the masses has induced politicians to protect majority of the population against negative impact of consumption and production. Secondly, the role of the state changed especially under the influence of Keynesian ideas which expected that the state takes care of management of the economy and impact of economic downturns on society. Lastly, technological developments give rise to feelings of vulnerability of the unknown and therefore the state is expected to reduce these risks by introducing regulations and standards to protect its citizens²⁸.

In the modern economy, standards and standardization play a key role in the day to day life and more importantly to this study to the economy. Standardization in products, processes and management systems leads to sustainable development and trade facilitation through the promotion of safety, quality health and environmental protection. International standards also enable markets to operate effectively, increase competitiveness and provide opportunities for transfer of technology and trade. For example, Kenya's economic growth is anchored on growth

²⁷ Russell, Andrew L. "Standardization in history: A review essay with an eye to the future." *The standards edge: future generations* (2005): 247-260.

²⁸ Faber G and Roelfsema H, *Trade, Standards and Regional Integration*(2001) available at www.aei.pitt.edu

of exports of goods and services. This needs a strong quality infrastructure that will facilitate increased access and acceptability of Kenya's exports into the external markets.

2.2 Standards and the WTO/GATT

Standards feature prominently in the WTO under the TBT Agreement and the SPS Agreement. Standards as well as requirements for conformity assessment such as testing and certification were originally introduced to protect the public from hazardous or substandard products and practices in each country. As the systems developed, based on national preferences, they gradually became effective barriers to trade.

The WTO is active in advocating for elimination of Technical Barriers of Trade. To this end it advocates for the international harmonization of standards. The WTO through its regulations, limits the use of trade restrictions to protect the domestic markets. WTO imposes limits and restrictions on the freedom of countries to implement standards that hinder trade. The WTO' works as a deterrent to states imposing standards that hinder trade as states gain foreign market access through WTO regime which consequently forces down domestic standards not to be stringent in a way that the WTO would consider it unnecessary to trade.²⁹

This has not always been the case however. WTO's focus on Standards as NTB can be traced back to the GATT. Article XX of the GATT allowed the contracting parties to enforce measures *"necessary to protect human, animal, plant life, health or relating to the conservation of exhaustible natural resources"*. Moreover, it provided that these measures should not constitute *"means of arbitrary or unjustifiable discrimination between countries or be disguised restriction on international trade"*. Though this article was interpreted widely to include Standards the

²⁹ Faber G and Roelfsema H, *Trade, Standards and Regional Integration* (2001) available at www.aei.pitt.edu

provision was too wide and did not adequately address the challenges that faced traders in International trade brought about by stringent technical regulations used by state under the guise of protecting health and safety of consumers.

The Tokyo round of negotiation (1973-1979) sought to deepen the effect of article XX and came up with 11 agreements/codes one of which was the Standard Code .This Code addressed trade barriers that may arise from differences in standard, technical regulations and certification systems. The code required that states use standards in the least trade distorting way and to this end advocated for states to use international standards. The code has been effective in reducing technical barriers to international trade. It contributed to the internationalization of standards relating to products health and safety standards and has made imposition of technical trade barriers challenging.

The Uruguay round (1986 to 1994) expanded the Standard Code to the Agreement on Technical Barriers of trade and contrary to the previous agreements aforementioned this applied to all the members of the WTO. TBT came into effect on the 1st January 1995 together with the SPS agreement .The TBT deals mostly with industrial goods, but also includes aspects such as packaging and labelling of agricultural or agro-industrial products. The agreement covers technical regulations, standards and conformity assessment procedures. It distinguishes between standards and technical regulations and provides that technical regulations are mandatory requirements by government while standards are voluntary documents developed for common use and are developed by the participation of wide range of interest groups including government ,trade and industry and consumers and so forth. While the TBT agreement draws the distinction between standards and technical regulations, in Kenya all products are to comply with

all national standards, implying that all standards are mandatory, even though they have not been promulgated as such.

Despite the attempts made by The WTO /GATT international regimes to eliminate technical barriers of trade through harmonization of standards, technical barriers of trade occasioned by different national standards remain. Some are newly introduced where no international standard exist and members cannot show equivalence. Furthermore, the WTO has failed to remove technical barriers that relate to process standards like labour standards. It has also failed to address the use of hormones in cattle and use of Genetically Modified Organisms (GMO's) which creates tensions mainly between the USA and EU. Though the multilateral framework of addressing technical barriers of trade is crucial, it poses a number of challenges as outlined above thus, to overcome these problems states choose to solve them through regional integration.

2.3. Harmonization of Standards and Integration

Countries have adopted use of regional fora as solutions for these barriers of trade including the creation of common standards through common policies and harmonization. The EAC and the EU are no different.

Harmonization of QI in the EU began as early as 1958 when the Rome Statute was signed to establish the EU. However it was not until 1980's under the *New Directives* when considerable success was made in the harmonization of regulations. The single market achieved by the EU is considered the most comprehensive method of reduction of NTB's including standards³⁰. The Single market is based on three principles: non-discrimination, mutual recognition, and community legislation to ensure the functioning of the common market.

³⁰ Cadot O, Malouche M. and Sa'ez S. *Streamlining Non-Tariff Measures: Toolkit for Policy Makers* (2012 World Bank) available at

The EU adopted mutual recognition as a way of eliminating TBT's occasioned by differences in standards. This is whereby a product lawfully produced and sold in the EU member states must be given free access to all the other EU markets. For example, alcoholic beverages can now be introduced into any other EU member state when they have been lawfully produced and marketed in one of the member states. This streamlined approach to intra-EU trade relies only on "essential requirements" of alcoholic beverages and provides greater freedom to manufacturers to fulfill those requirements. If a country fails to comply after the harmonized regulation the European Court of Justice has the power to impose penalties in the form of payments.

2.5 Harmonization of Standards in the EAC

Dialogue to initiate standardization activities in the East Africa Region began as early as July 1974 under the first EAC in Kampala under the auspices of the regions Common Market Affairs Secretariat³¹. The policy adopted at that time was that each country should establish its own national standards institute before the establishment of EA standards body. KEBS was established in 1974 by Kenya. Tanzania established National standards Institute in 1975 which became Tanzania Bureau of Standards TBS in 1977. Uganda's UNBS was established in 1983 but became operational in 1989. The dream of having an EA standards institution was halted by the disintegration of the community in 1977.

Another attempt was made in 1996 when the Chief Executives of the Bureaus met in Kampala to chart out how they could cooperate on matters of SQMT³². One of the main objectives of creating the EAC was the establishment of a single market and investment area in the East Africa region. The member states therefore concentrated in both the identification of physical and

³¹ Mugisa, E., Onyango, C., Mugoya, P. (An Evaluation of the Implementation and Impact of the East African Community Customs Union. 2009): EAC, March 2009.

³² Ibid

policy barriers to trade and especially barriers that affected cross border movement of services, goods, people e.t.c. Thus setting up of a mechanism for harmonization of standards and regulation relating to trade within the region was high priority aimed at eliminating NTB's to trade manufactured and agricultural goods. The Chief of the Bureaux formed a subcommittee of experts and other stakeholders to harmonize standards covering the commonly traded products within the region. By 1998, 42 Standards had already been recommended for adoption by the EA states. The subcommittee made several recommendations that were later adopted in the protocol including mutual recognition of quality marks issued by East African States.

Kenya, Uganda and Tanzania also sought to have similar National Standards Bodies and National regulatory framework as an approach to harmonize the regulations and institutions³³. This approach was not as successful as envisioned. The challenges experienced attempts to harmonize national regulations included the exercise was tedious and was further aggravated by the fact that the different countries had different realities hence difficult to create similar regulatory frameworks. The failure of this approach necessitated the adoption of a regional law that provides for basic requirements of quality infrastructure that the member state has to have in place for i.e. A national standards body, a national metrology institute, a national legal metrology department and a national accreditation body. The EAC law would also need to create a committee to develop EAC standards that member states use commonly. The committee was to operate complementarily with the national standards development bodies. However attempt this did not lead to harmonization of standards as earlier envisaged, therefore necessitating the need for a regional regulation.

³³ Julius Oboth , ' A Report of the Study on the Prioritization of EAC Standards and Technical Regulations for Development, Harmonization, Revision or Withdrawal' East African Business Council (April 2013)

The EAC SQMT protocol 2001 was therefore adopted and was to apply to goods purchased and traded in the EAC. Under its framework 4 committees for the creation of standards were instituted and about 400 standards harmonized. SQMT protocol however did not have the impact that was envisaged when it was passed and had challenges of implementation from the onset. For instance it took Kenya and Uganda two years to ratify it after it was signed. It also had other challenges including that EACS established under it did not have the institutional framework in terms of secretariat to facilitate standards coordination process envisioned by the Protocol.

The SQMT Act was enacted to address the shortcomings of the SQMT protocol³⁴. The EAC SQMT bill as it then was initiated in the East Africa Legislative Assembly as a private members bill under Article 59 of the EAC Treaty. Private members bills are restricted from imposing institutional and financial structures on the community. This fact made it deficient in the first instance especially with regard to enforceability without financial or institutional support from the community. The SQMT Act has had some successes despite of the circumstances under which it was enacted. The number of standards harmonized has grown steadily, and currently about 1,240 standards have been harmonized and published as the region's benchmarks.

Recognizing the key role, cross-border trade and regional cooperation play for the development of national economies and the competitiveness of economic sectors. The success stories on the one side are however accompanied and threatened by shortcomings in the QI at regional and national levels on the other side. As regards quality regulations and standards, the specific interest of this study, EAC has already gone far in harmonizing standards.

³⁴ Julius Oboth, 'A Report of the Study on the Prioritization of EAC Standards and Technical Regulations for Development, Harmonization, Revision or Withdrawal' East African Business Council (April 2013)

In a bid to develop regional standards in a cost-effective and timely, as well as widely recognized and generally applied way, the EASC has established Procedures for the Development of East African. Since the Catalogue of East African Standards (EAS) supersedes national regulations and standards, Partner States are obliged to adopt EAC standards. With regard to mutual recognition, so far the marks of the Kenyan and Tanzanian Bureaus of Standardization are largely recognized across the sub-region. However, the principle of mutual recognition is not always respected³⁵.

In all the Partner States institutions that can function as the National Metrology Institute (NMI) in accordance with the EAC SQMT Act have been established. In most of them capacity is being developed in respect of national measurement standards, and some key comparisons are being conducted. A draft EAC Metrology Bill has been developed, various governance and political levels nationally and regionally. The draft EAC Metrology Bill covers both fundamental metrology and legal metrology, and would provide for a much more definitive regional approach than what is contained in the EAC SQMT Act, which only accounts for the establishment of the relevant national organizations without any additional detail. The adoption of the Metrology bill will necessitate the amendment of the SQMT Act.

In accreditation Kenya has established a national accreditation body KENAS, None of the other Partner States have established a national accreditation body, nor seem to have a process in place to do so. Partnership agreements with recognized accreditation bodies in other parts of the world have not been established either. A number of auditors have been trained in ISO/IEC 17025 and ISO 15189 auditing but due to lack of involvement in actual accreditation activities, are rapidly

³⁵ Julius Oboth , ' A Report of the Study on the Prioritization of EAC Standards and Technical Regulations for Development, Harmonization, Revision or Withdrawal' East African Business Council (April 2013)

losing their competence. The notion of a National Accreditation Focal Points (NAFP) has been talked about, but nothing concrete has been established. The EA Accreditation Board (EAAB) as envisaged by the EAC SQMT Act has been constituted, but it has not yet established any programmes of note to deal with the situation. In addition, some members of this Board come from Partner State NSBs that provide conformity assessment services, thereby pre-programming a conflict of interest. One technical committee of the EAAB has been established. The lack of accreditation services may prove to be one of the major hurdles to the acceptance of EAC products in the markets and by the regulatory authorities abroad.

In testing Accredited test laboratories are a necessity to gain international acceptance of test results. Test laboratories exist in the Partner States, but very few have been accredited at the international acceptance level even though a number of proficiency testing schemes has been conducted. This state of affairs is due to the lack of laboratory capacity in the public sector in smaller Partner States, lack of a holistic approach to testing in the large Partner States and the lack of an internationally recognized accreditation system in the region. Very few private testing laboratories have been established, partly due to the fact that testing for compulsory standards is restricted to NSB laboratories. Suppliers are therefore faced with a monopolistic situation, with the inevitable result of a lack of service excellence.

CHAPTER THREE: STANDARDS & TECHNICAL REGULATORY REGIME IN OPERATION IN THE EAC

3.1. WTO/ GATT

The WTO has two main agreements that regulate standards creation and implementation of its member states they include the TBT Agreement and the SPS Agreement.

3.1.1. TBT AGREEMENT

WTO TBT agreement places a strong emphasis on the formulation of international standards and the mutual acceptance of national standards. Article 2 of the TBT provides that regulations shall not be more restrictive than necessary to fulfil the legitimate objective including protection of human health or safety, plant and animal life or the environment. The agreement also provides for mutual recognition of standards if the state is satisfied that though the standard differs, it fulfils the same objective as their own³⁶.

The TBT Agreement is based on six principles that expound on the provisions of the Agreement:

The First principle is avoiding unnecessary obstacles to trade; technical barriers to trade are created by differences in technical regulations and conformity assessment procedures. The TBT recognizes that differences often have legitimate origins such as diversities in local tastes or levels of income. The TBT Agreement in consideration of these factors allows members much flexibility in preparing, adopting and applying their national technical regulations. This flexibility is limited only by the requirement that technical regulations do not intentionally create unnecessary obstacles to trade.³⁷ (This obligation also applies to conformity assessment

³⁶ Article 2.7 WTO On the Technical Barriers of Trade

³⁷ Article 2.2 TBT Agreement.

procedures.³⁸) The TBT also provides whenever possible, product regulations should be specified in terms of performance rather than design or description.³⁹

The Second principle is Non-discrimination and national treatment. Like many other WTO Agreements, the TBT Agreement includes the GATT's Most Favoured Nation (MFN) and national treatment obligations.⁴⁰ Under this clause, products imported from another Member country must be treated no less favourably than similar products of national origin or imported from any other country. These provisions also apply to conformity assessment procedures.

The third principle is harmonization, it advocates for technical harmonization. The Agreement encourages Members to use existing international standards as national standards/regulations when effective and appropriate.⁴¹ This principle encourages the member state to adopt available international standards instead of creating new ones. Technical regulations based on relevant international standards are presumed not to create unnecessary obstacles to trade. The TBT Agreement also encourages Members to participate as much as possible in the work of international bodies that prepare standards.⁴²

The TBT Agreement also recognizes the unique challenges faced by developing countries in adopting international standards and provides that they may be entitled to special treatment. They are allowed adopt technical regulations, standards or test methods aimed at preserving indigenous technologies and production methods and processes compatible with their

³⁸ *Technical Information on Technical barriers to trade*,
http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm.

³⁹ Article 2.8 TBT Agreement.

⁴⁰ Article 2.1 TBT Agreement.

⁴¹ Article 2.4 TBT Agreement.

⁴² Article 2.6 TBT Agreement.

development needs.⁴³ They developing countries can also request international standards bodies examine the possibility of preparing international standards for products of special trade interest to them.⁴⁴

The fourth principle is equivalence, Article 2.7 of the TBT Agreement provides for a complementary approach to harmonization, known as equivalence. Equivalence is based on the European Community's 1985 "New Approach" to standardization. Under equivalence, Members accept technical regulations different from their own that fulfil the same objectives.⁴⁵

The fifth principle is Mutual recognition provided for under Article 6.3 of the TBT Agreement strongly encourages WTO Members to negotiate mutual recognition agreements with other Members. A high degree of confidence in the competence of testing and certification bodies is needed for such an agreement to work well. The TBT Agreement⁴⁶ aims to address this and encourage confidence member states conformity assessment institutions and provides that complying with relevant guides or recommendations of international standardization bodies is an indication of adequate technical competence.

The sixth principle is transparency, which provides members must notify the WTO Secretariat where a relevant international standard does not exist, or when the content of a proposed regulation is not in accordance with an existing international standard, and when it could have a significant effect on the trade of other Members.⁴⁷ Whenever possible, the member state ought to notify the WTO secretariat of draft regulations 60 days prior to adoption to allow for

⁴³ Article 12.4 TBT Agreement.

⁴⁴ *Technical Information on Technical barriers to trade*, http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm.

⁴⁵ *Id.*

⁴⁶ Article 6.1 of the TBT Agreement

⁴⁷ Articles 2.9 and 5.6 TBT Agreement.

comments by other Members. An exception can be made for urgent problems of safety, health or environmental protection.⁴⁸ In addition, each WTO Member must set up a national enquiry point to provide information and documentation on its technical regulations, standards and test procedures, as well as participation in standard-related agreements and conformity assessment systems.

3.1.2. SPS Agreement

The SPS agreement deals specifically with food safety animal and plant health. The SPS agreement affirms the states right to restrict international trade when *necessary to protect human, animal or plant life or health*. But also provides that unnecessary health and safety regulations are not used as an excuse for protecting domestic producers.

Both the SPS and the TBT advocate for standards or technical regulations applied to be necessary and consistent with the risk level and in order to minimise restrictions to trade. The SPS agreement like the TBT agreement also encourages countries to recognise the equivalence of standards and mutual recognition in conformity assessment activities. Lastly the countries have to publish their technical and SPS requirement⁴⁹.

Despite the outlined similarities, the SPS and TBT agreements have differences. Under the TBT a country can opt not to use international standards when they are ineffective and inappropriate. However under the SPS a country can only opt out of an international standard if there are scientific arguments resulting from an assessment of the potential risks. Standards, therefore, have different meanings under the SPS they are mandatory as opposed to the TBT agreement

⁴⁸ Articles 2.10 and 5.7 TBT Agreement.

⁴⁹ Ivar Foss *et al* *Development of trade in Africa: Promoting Exports Through Quality And Product Safety* (Sida 2004) pp 44-47

that differentiates standards and technical regulations by providing standards are voluntary while technical regulations are mandatory.⁵⁰ Despite the stringent terms used in the SPS, countries have a way of going around them. For example in January 1998 the European Union (EU) banned the importation of fresh fish and fish products from Kenya, Mozambique, Tanzania, and Uganda, to safeguard EU consumers from the risk of cholera. This action was taken without regard to the disciplines of the WTO Sanitary and Phytosanitary Measures (SPS) agreement, which provides that if a member is to apply SPS measures, it has to prove scientifically that the product in question poses a real threat to the health of consumers. The agreement requires that a risk assessment be carried out on the basis of techniques developed by relevant international organizations (if these exist). This is to ensure that such action is not based merely on unnecessary fears or speculation but that it is based on scientific evidence. Even after the risk assessment has been conducted and sufficient evidence has been gathered, the exporter must be given an opportunity to put in place measures that eliminate the health risk. In the case of the African fish, the EU argued that the ban was not based on scientific evidence but was, rather, a result of the lack of a credible system in Kenya and the other African countries the ban had been imposed to safeguard the products from possible contamination. The EU stated that if this was not changed, the products would remain shut out of the EU market. EU's action caused considerable losses in the fish industry⁵¹.

Despite countries not strictly adhering to the two agreements the power that the WTO wields compels countries to have regard for the two agreements in creation and implementation of

⁵⁰ Ivar Foss et al *Development of trade in Africa: Promoting Exports Through Quality And Product Safety* (Sida 2004) pp 44-47

⁵¹ Wilson, John S. (2002) *"Standards, regulation, and trade: WTO rules and developing country Concerns"* in *Development, trade and the WTO: a handbook* (ed. by Hoekman, Mattoo and English)

standards and technical regulations. Countries participation in WTO poses a dilemma for the countries in that while on one the hand harmonization of standards increases trade and economic welfare. On the other hand free trade and harmonization of standards inevitably reduce the possibilities of states to protect their citizens from the negative non economic effects of free trade. Case in point, in the shrimp-turtle USA regulation that imposed a ban on shrimp imports caught in a manner to hurt turtle, in 1998 the appellate body of the WTO ruled that this measure created unjustifiable discrimination among the WTO members.

3.1.3 WTO DISPUTE SETTLEMENT

In circumstances where a member country feels that another member has violated the WTO agreements the WTO dispute mechanism is available to them. Member states can use it to get legal redress for protectionist practices especially with regard to standards and technical regulations of other member state. Dispute mechanism therefore ensures that member states adhere to WTO agreements and if they do not then there is an avenue for redress for the parties affected by a particular regulation. Below is a case that was brought under the TBT agreement that clearly illustrates the balance between desire to avoid unnecessary obstacles to trade and the right of a state to create regulations and standards that protect human and health safety.

Shrimp-Turtle

The USA had banned imports of shrimps caught in a manner that hurt turtles. The appellate body of WTO

US – Clove Cigarettes,

The USA put in place a regulation aimed at ensuring tobacco products are not made attractive to youth by the addition of flavored additives or ingredients. The USA banned flavored tobacco products except menthol flavored tobacco products. Indonesia a major exporter of clove cigarettes felt aggrieved by this regulation claiming the US law was and took the matter to the WTO. It requested a WTO panel review of the U.S. rules, arguing that Indonesian clove cigarettes were being treated less favorably than U.S. menthol cigarettes. Indonesia claimed that the U.S. action breached article 2.1 of the TBT agreement and Article III: 4 of the Global Agreement on Tariffs and Trade (GATT).

It also argued that the U.S. action was not necessary to achieve *a legitimate objective which in this instance was the protection of human life or health* and that therefore the action banning clove tobacco also breached Article 2.2 of TBT and Article XX(b) of GATT. In its defense the U.S.A argued that there was a distinction between cloves and menthol on health grounds, as well as arguing that clove cigarettes are more attractive to youth than menthol cigarettes. The U.S. also argued that, due to the high rate of menthol cigarette consumption in the U.S., that a prohibition would promote illicit trade. As part of its evidence the USA used expert evidence U.S. Scientific Advisory Panel (TPSAC) which stated that menthol cigarettes are attractive to youth and that cessation is less likely in menthol smoker hence more likely to be used and thereby affect the health and safety of the consumers.

The panel found that the U.S. had breached TBT Article 2.1 by prohibiting clove cigarettes but not prohibiting menthol cigarettes—as both have characterizing flavors that reduce the harshness of tobacco. However, the panel concluded that Indonesia had not established that the U.S. action was more trade restrictive than necessary to protect human health under TBT Article 2.2. And

therefore United States is within its WTO rights to protect human health. The panel decision was later upheld by the Appellate

3.2. Overview of EAC SQMT Framework

The SQMT Act provides that its implementation shall have due regard to the requirements and obligations under the WTO TBT Agreement. With the (SQMT) Act, the EAC has a legal framework for quality infrastructure which is WTO-compliant and is aimed at integration.

The EAC treaty provides under Article 81, co-operation in standardization, quality assurance, metrology and testing (SQMT). In order to operationalise the above provision the EAC SQMT Act (2006) was enacted.

Regional structures

The EAC SQMT Act has established three administrative structures to deal with standards at the regional level

The first body is the East African Standards Committee (EASC)⁵² whose mandate includes coordinating activities related to standardization, metrology and conformity assessment. The Committee monitors the implementation of these activities both at the national and regional level. It submits reports and recommendations on matters of standardization, metrology and conformity assessments to the Council of Ministers of the East African Community (Council) as it concerning the implementation of the Treaty that affects.

⁵² Section 4 of Act

The Liaison Office⁵³ provides administrative support to the EASC. It also support to the EASC in the design and management of regional projects for the implementation of standardization, metrology and conformity assessment activities. It arranges for public review of draft East African standards and present is the same to the Council for declaration as East African standards and gazetting the Standards. The liaison office also maintains the Catalogue of the declared East African standards.

The East African Accreditation Board (EAAB)⁵⁴ created under section 11 of the SQMT Act, comprises of chief executives of the national accreditation bodies. The Board facilitates cooperation and coordinates accreditation activities to avoid duplication of functions of the national accreditation bodies and national focal points. The Act also provides for structures that administer standards at national level and their functions.⁵⁵ Each Partner State must have a national quality system institution. This is constituted by a national standards body, a national metrology institute, a national legal metrology department and a national accreditation body. The partner state can decide to have the four bodies under one institution or have the four bodies operating individually.

Regulatory Authority

The Regulatory Authorities in the EAC are either Government Departments or statutory bodies established specifically for a given function e.g. Drug Authority, National Bureau of Standards. In some partner states, the Regulatory Authorities are funded by the state, and in some they are empowered to raise fees through direct charges.

Conformity Assessment

⁵³ section 5 of the Act

⁵⁴ section 11

⁵⁵ Sections 6,-10 and 12 of the Act.

In the EAC Partner States, conformity assessment for the Mandatory Standards is mostly provided by the National Standards Bodies, although they may accept testing and certification from abroad under certain circumstances. The Standards Bodies are therefore the Regulatory Authority as well as the conformity assessment service provider.

In *Section 20* of the SQMT Act (2006), each Partner State is obligated to appoint a public regulatory authority to administer compulsory standards and make notifications to the secretariat of the EAC and partner states on such compulsory standards. Under *Section 22* of the Act, *no person is allowed to manufacture, trade, distribute, sell, supply or bring a product that is within the scope of a compulsory standard into the Community unless the product conforms to the requirements of the compulsory standards.* In enforcing compulsory standards declared by the EAC Partner States are required to apply national laws in the enforcement of compulsory standards.

Under *Section 21* of the Act, each Partner State is should prepare and register a list of technically competent national conformity assessment service providers i.e. inspection agencies, test laboratories and certification organizations to support the implementation of compulsory standards in its territory. The register of competent service providers is then notified to the EAC secretariat and Partner States. The exporters and supplies that trade in the region must procure must procure conformity assessment services in from the registered national conformity assessment service providers.

Section 24 of the Act, each Partner State must notify the Council of the product certification marks within the jurisdiction of the Partner State including the design of the mark. Partner States are bound to recognize as equal to their own, product certification marks awarded by national quality system institutions of other Partner States. *Section 25* provides for the offences but

doesn't provide for specific Sanctions for the offenders. The sanctions are yet to be harmonized at the EAC level.

3.3. Overview of EAC Partner States Standards and Conformity Assessment Regimes

The Act also provides for structures that administer standards at national level and their functions.⁵⁶ The SQMT regime discusses the authorities and regulations mandated to provide control over the Standardization, Quality assurance, Metrology and Testing activities in the countries. These include the regulatory and facilitative policies and the implementation of these in the countries. (See Table 1).

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Table 1: Partner states standards and conformity assessment regime

Country	Legislation	Regulatory Authority	Functions
Kenya	Standards act	Kenya Bureau of Standards	<ul style="list-style-type: none"> • Standards development and harmonization <p>Testing</p> <ul style="list-style-type: none"> • Measurement (Calibration) • Enforcement of standards • Product inspection • Education and training in Standardization, Metrology and Conformity Assessment • Management Systems Certification • Product Certification
	Plant Protection Act, (Cap 324)	The Kenya Plant Health Inspectorate Service	Develop and maintain standards on locally produced and imported seeds
	Pharmacy and Poisons Act	Pharmacy and Poisons Board	Develop guidelines and rules for the registration of drugs and evaluations required to register them
	Trade Descriptions Act CAP 503.	Weights and Measures Department	National Legal metrology
States Corporations Act, Cap 446; Vide Legal Notice No. 55 of May 2009	Kenya National Accreditation Services	Testing, measurement and calibration	

Tanzania	Standards Act Tanzania Food, Drugs and Cosmetics Act No. 1 of 2003	Tanzania Bureau of Standards Tanzania Food and Drug Authority Weights and Measures Agency (WMA)	<ul style="list-style-type: none"> • Standards development and harmonization <p>Testing</p> <ul style="list-style-type: none"> • Measurement (Calibration) • Enforcement of standards • Product inspection • Education and training in Standardization, Metrology and Conformity Assessment • Management Systems Certification • Product Certification <p>Regulate the quality and safety of food, drugs, cosmetics and medical devices marketed in Tanzania</p> <p>Certification of weights and measures</p>
Uganda	Uganda National Bureau of Standards Act 1983	Uganda Bureau of Standards	<ul style="list-style-type: none"> • Standards development and harmonization. • Testing • Measurement (Calibration) • Enforcement of standards • Product inspection • Education and training in Standardization, Metrology and Conformity Assessment • Management Systems Certification • Product Certification

Burundi		Burundi Bureau of Standards and Quality Control	<ul style="list-style-type: none"> • Prepare or modify specifications and codes of practice • Quality assurance and management • Metrology • Create and proceed on management of the certification mark • Testing
Rwanda	law no. 43/2006 of 5/10/2006	Rwanda Bureau of Standards	development of standards, quality assurance and metrology

Source: National regulations and EAC website

As the above table shows each country have their own regimes with regard to standards and conformity assessment activities.

3.4. Interconnection between SQMT Act and National Regulations

The SQMT act as the regional regulation ought to take precedence over the national regulations. The SQMT provides the framework for the creation of national institutions and regulations. It also leaves on the enforcement of the Act to the national regulatory frameworks. This means that that the provisions of the SQMT Act cannot be implemented without the political good will of the member states. As noted above table 1 all the member states conform to the provisions of the SQMT Act which provides that the states have to have a national standards body, metrology institute however the countries have discretion on how many of these bodies are present within

their countries. This makes harmonization of standards difficult and numerous bodies that the EAC has to coordinate with and avoid duplication of roles as well as not overlooking an important body in the creation of an EAC standard. Different frameworks for National regulations of quality infrastructure makes it difficult to implement the Act as there are many there is no single body charged with implementing the Act. Furthermore the standards act have not been aligned to the SQMT Act making adoption difficult i.e. the Kenyan Standards Act does not provide for adoption of EAC standards.

3.5. Standards and Technical Regulations Framework in the European Union

The EU is a unique economic and political partnership between 27 European countries (currently) that together cover much of the European continent. The EU's single market is the main economic engine, enabling most goods, services, money and people to move freely. The creation of the single market and the corresponding increase in trade and general economic activity has transformed the EU into a major trading power. The EU is trying to sustain economic growth by investing in transport, energy and research, while also seeking to minimize the environmental impact of further economic development. To ensure free movement of goods and services the EU has employed a few mechanism and they include; the prevention of tariff and non tariff barriers to trade, harmonization of technical requirements and mutual recognition of conformity assessment activities.

3.5.1. The EU Approach (The New Approach)

The EU initially sought to harmonize the technical regulations on an individual basis. The "New Approach", represents an innovative way of technical harmonization that has resulted in major changes in the drafting as well as enforcing standards.

European Commission directives define the "essential requirements", as the *protection of health and safety that goods must meet when they are placed on the market*. Under the new approach the European standards bodies have the responsibility of drafting standards and technical regulations that meet these essential requirements. Essential requirements are *mandatory* requirements that products must meet to be placed on the market in order to protect the public interest. These requirements define the results to be attained, or the risks to be dealt with, but do not specify the technical solutions for doing so, a product that complies with the essential directives is presumed to comply with the standards and the technical specifications. Such specifications are referred to as "harmonized standards"⁵⁷. The new approach is based on a few key principles:

First there is separation between the European Economic Community (EEC) that handles legislation and European standardization bodies;

Second, harmonization is limited to the essential requirements needed to ensure the free movement of products throughout the Community. Suppliers are free to choose how the requirements are met. Essential requirements are therefore written in such a way that they remain valid over time, and do not become obsolete with technical progress. Assessment of whether requirements have been met should be based on the state of technical know-how at a given moment. This does not mean that essential requirements are vague. They have to be drafted in such a way as to give sufficient information to enable assessment of whether products meet them. Compliance with essential requirements can be achieved through construction of products

⁵⁷ According to the European Commission, a "harmonized standard" issued within the context of the "New Approach" is a standard for which the European Commission (and/or EFTA) has issued a standardization mandate to CEN, CENELEC or ETSI, and for which a reference has been published in the Official Journal of the EU. Harmonized standards provide a method for a product to comply with the relative Directive's essential requirements, and therefore provide a path for CE marking.

according to the harmonized standards, if such standards are available and are covering all essential requirements of the products.

Third, the task of drawing up the corresponding technical specifications is entrusted to the national standardization bodies.

Fourth principle, Products manufactured in conformity with harmonized standards are presumed to conform to the essential requirements. Under the new approach Standards are not mandatory but voluntary. A producer can decide to use any process without adhering to the set standards but he has an obligation to prove his products conform to the essential requirements and must offer a guarantee of quality with regard to the essential requirements.

Fifth principle, public authorities are still responsible for ensuring that consumer safety and protection of the environment, plant and animal health in their territory and this is achieved mainly through market s

Sixth, the standards under the new approach are flexible in that indicates what has to be achieved i.e. essential requirements but not the details o f how this should be achieved .I t also gives the producers different options for conformity assessment.

The New approach was an improvement to the former approach because ; it is based on total harmonization where all the states use basic similar standards as compared to optional harmonization where each partner sate has the option to choose which standard to adopt and also operates and maintains it own individual national standards . The new approach deals families of products i.e machinery and not so much on individual products it therefore covers horizontal risks and not specific products.

3.4.2. Development of Standards in the EU

The EU has a three main European Standards Organizations (CEN, CENELEC, and ETSI) who draft the standards. The Standards are adopted after a public inquiry and member states allowed to vote with the national votes based on corresponding weighting features. EU Standards are voluntary but their adoption into national standards by member states and the withdrawal of diverging national standards is mandatory according to the internal rules of the European Standards Organizations.

The standards are developed in taking into account of the essential requirements as outlined above i.e. health and safety. Finally the reference of the standard is published in the Official Journal.

3.4.3. The CE Mark

The CE Mark symbolizes the conformity of the product with the applicable European Union requirements as detailed in the relevant Directive. The manufacturer affixes the CE Mark visibly, legibly and indelibly on the product as a sign to the authorities that the manufacturer assumes full responsibility for the integrity of the product, i.e. that the product conforms to all the applicable provisions and that all the conformity assessment requirements have been fulfilled. The CE Mark is therefore a regulatory mark and not a quality mark. In the European Union it would be an offence if the CE Mark is affixed to products that do not meet all the relevant requirements and heavy penalties are the result of misdemeanors.

3.4.5. Declaration of Conformity

The declaration of conformity is whereby, a manufacturer or declares that the product placed in the EU market is compliant with the relevant safety requirements of the appropriate standard. It

is a form that is to be provided with every product and must be completed in the user's language. The Declaration must include: the manufacturer's details (name and address etc); the essential characteristics that the product complies with; any European standards and performance data; if relevant the identification number of the Notified Body; and a legally binding signature on behalf of the organization.

In the EU it is the responsibility of the manufacturer or the authorized representative established within the Community. The EC declaration of conformity and other technical documentation are intended to provide the surveillance authorities with necessary information about the product⁵⁸.

3.4.5. Market surveillance

Market surveillance is an essential tool for the enforcement of "New Approach" directives. The purpose of market surveillance is to ensure that the provisions of applicable directives are complied with across the EU. Member States must nominate or establish public authorities to be responsible for market surveillance. The nominated authorities need to have the necessary resources and powers for their surveillance activities, ensure technical competence and professional integrity of their personnel, and act in an independent and non-discriminatory way respecting the principle of proportionality.

Market surveillance authorities ensure compliance by regularly visiting commercial, industrial and storage premises in an annual program of random and spot checks to examine products and

⁵⁸ Oboth J, for, *A Report of the Study on the Prioritization of EAC Standards and Technical Regulations for Development, Harmonization, Revision or Withdrawal*, East African Business Council (April 2013)

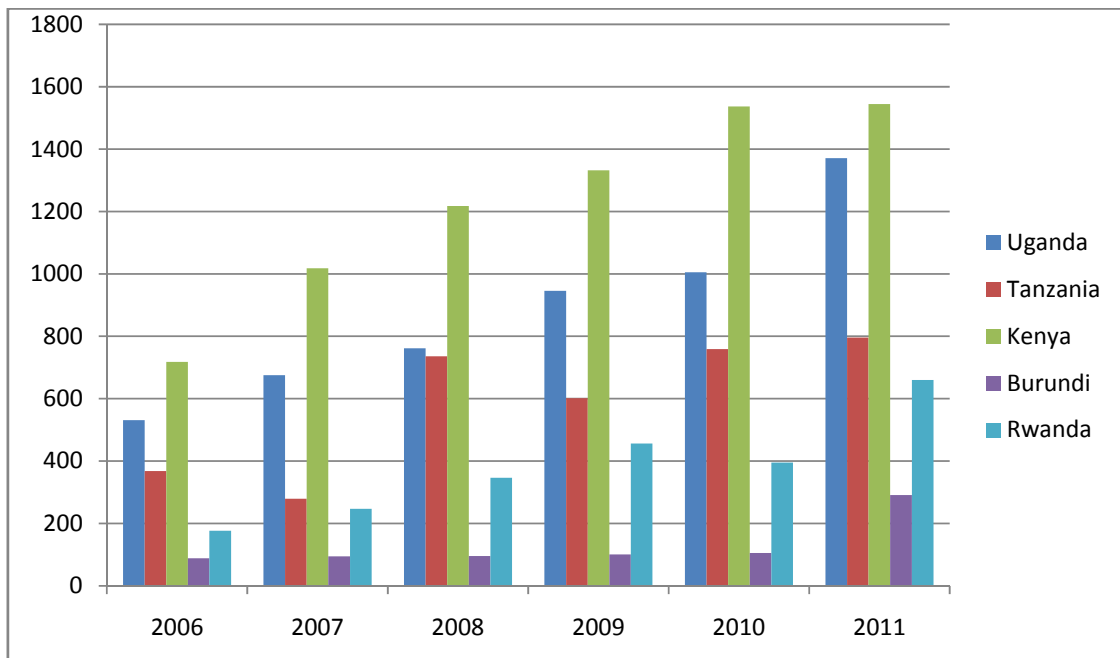
take samples of suspect products for additional testing. They have the legal powers to get all necessary information⁵⁹.

⁵⁹ Oboth J, for, *A Report of the Study on the Prioritization of EAC Standards and Technical Regulations for Development, Harmonization, Revision or Withdrawal*, East African Business Council (April 2013)

CHAPTER FOUR: CHALLENGES AND OPPORTUNITIES IN HARMONIZATION OF STANDARDS

Intra-EAC trade has continued to increase steadily as shown I graph 1. Kenya's share of the trade has also increased. This has been attributed to a number of factors including harmonization of standards for goods traded amongst Partner States⁶⁰.

Figure 1: Total Intra-EAC Trade, 2006-2010 (US\$ million)



Source EAC Trade Reports and website

East Africa's total trade was \$37 billion in 2010, representing a fourfold increase from the \$8.8 billion traded in 2000. Trade in 2010 was worth 47 per cent of East Africa's GDP, compared to 28 per cent in 2000, signaling the region's deepening integration with the global economy. The \$11.1 billion of East African exports in 2010 were predominantly from Kenya (\$5.2 billion or 47

⁶⁰ Trade Report 2008 East African Community Secretariat Arusha, Tanzania 2010

per cent) and Tanzania (\$3.9 billion or 36 per cent). Kenya also accounted for 44 per cent of the \$27 billion in imports, while Tanzania's import share was 29 per cent in 2010.

Harmonization and adoption of EAC standards under the SQMT Act 2006 however has been slow. At the time of presentation of this project paper, EAC has so far, only harmonized 1,240 standards have been harmonized and published as the regional benchmarks. Kenya has adopted only about 1000 while KEBS maintaining Kenya national standards approximately 6,600 standards. Apart from harmonization of standards conformity assessment activities has been slow if at all. Results of the study suggests that slow harmonization of standards is largely because in the absence of a legally binding framework and enforcement mechanism harmonization of standards largely depends on the good will of the countries.

4.1. Strengths of the SQMT ACT

The governments of Member States have their actions shown that it is generally committed to building the Regional Economic Communities, for which cross-border trade and hence harmonization of standards plays a crucial role. The business sector (processors, large-scale wholesalers, exporters and supermarkets) is increasingly interested to seize opportunities from cross-border trade.

More than 80% of exporter respondents felt that the abolishment of SQMT barriers contributes to decreasing transaction costs and possibly to increasing profit margins and hence to promoting production and cross border trade. Less than 20% of the respondents did not experience barriers related to standards hence did not incur any additional cost.

Removal of standards related trade barriers offer trade opportunities for balancing food surplus and deficit areas within leading not only to food security but alleviating the living standards in

the region. It also reduces production and transaction costs, post harvest losses and rejection rates may be reduced, which will give further incentives to producers and traders.

4.2. Effect of Harmonization of Standards in the EAC

4.2.1. Case of Maize

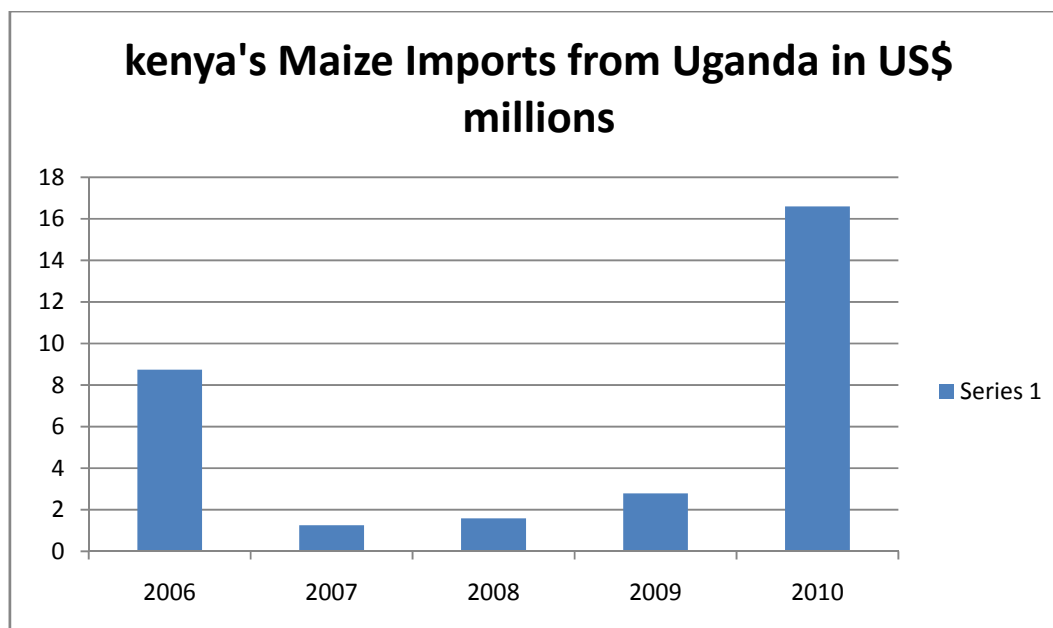
Maize is one of the most traded products between Kenya and Uganda. Maize is Kenya's main staple food. Kenya produces about 2.5 million metric tons (MT) per annum against an estimated consumption of 3 million MT⁶¹. In an effort to bridge the supply deficit, Kenya has been importing maize formally and informally from the neighboring countries especially Uganda and Tanzania.

Table 2: Intra EAC trade on Maize in \$ millions

	2006	2007	2008	2009	2010
Uganda-Kenya Exports	8.74	1.25	1.59	2.79	16.1
Total intra EAC trade	10.1	1.89	1.87	4.29	21.21

Figure 2 Uganda-Kenya Maize Exports In \$ Millions

⁶¹ Jonathan Makau Nzuma, *The political economy of food price policy: The case of Kenya* WIDER Working Paper No. 2013/026 (UNU-WIDER 2013)



Source: EAC Trade Reports and EAC website

TABLE 3: SPECIFICATION QUALITY STANDARD FOR MAIZE

	Kenya	Uganda	Tanzania
Moisture content	13.5%	14%	13%
Foreign Matter	1.0%	0.5%	1.0%
Broken Grains	2%	2%	2%
Insect Damaged	3.0%	1.0%	2.0%
Rotten diseased and discolored	4.0%	3.5%	1.0%
Live insect Infestation	Nil	Nil	Nil
Aflatoixn	10ppb	10ppb	10ppb
Total defective grains	-	6.5%	-
Immature shriveled grains	-	-	1%
Fungal Damaged grains	-	-	-
Germinated Grain	-	-	-

Contracting classes	-	-	-
Number of grade	4	2	2
Packaging	90kg	Not specified	90kg

TABLE 4: ADOPTED EAC HARMONIZED STANDARD

	Grade 1	Grade 2
Moisture Content	13%	13.5%
Foreign Matter	1.0%	2.0%
Broken Grains	2.0%	5.0%
Insect damaged grain	0.5%	2.0%
Rotten, diseased and discolored grain	2.0%	5.0%
Filth	0.1%	0.2%
Immature shriveled grain	1.0%	2.0%
Packaging	Maize handled in bulk	Maize handled in bulk

Karugia, J (2009) in his study found that the cost of NTBs applied on maize imports into Kenya from Uganda and Tanzania was on average \$0.09 per ton per kilometer NTBs applied on maize imports into Uganda and Tanzania were about \$0.15 per ton per kilometer and \$0.11 per ton per kilometer respectively⁶². The NTB's that he considered in calculating the costs included corruption, cumbersome border procedures mainly licenses, municipal and council permits in all countries), duties/taxes (mainly excise and cess duty), toll stations, weighbridges, customs procedures, immigration, transiting, standardization and certification, vehicle hire and

⁶² Karugia, J, (et al) *"The Impact of Non-Tariff Barriers on Maize and Beef Trade in East Africa"*, Re-SAKSS working paper No. 29, (2009) International Livestock Research Institute (ILRI), Nairobi.

maintenance, and security. The Transfer cost for maize occasioned by Standardization and Certification alone in the EAC Kenya -4.92% Uganda-0.41% and 2.63%⁶³. Finally he argues that if all the NTB's are eliminated producer price in Kenya will fall by 9%, Uganda will increase by 20% and Tanzania will fall by 35%. The consumer price on the other hand in Kenya will fall by 3%, increase in Uganda by 24% and fall by 5% in Tanzania. This means therefore that Uganda Maize producers will benefit from removal of all NTB's with increased domestic prices and easier market access to Kenya. Kenyan Maize producers on the other hand will be hurt by the elimination of NTB's as maize prices in the country will decrease.

Before the harmonization of maize standards (Table 3 and 4) at the Kenya Uganda Border in Busia before harmonization of maize standards, maize imports are rejected as Kenya only allows moisture content of 13.5% while for Uganda its 14%. Harmonization of maize standards is not only beneficial to farmers in the food surplus countries e.g. Uganda and Tanzania with increased sales and ultimately national income but also the consumers in the food deficit countries (e.g. Kenya); by lowering food prices due to increased supplies and lessening food shortage and improving food security in the region.. Following adoption of harmonized standards, formal maize imports from Uganda increased however the harmonization of standards was not acting in isolation of other activities that were taking place at the same time (i.e. simplifying border procedures) to allow more trade to explain more informal trade. However harmonization of standards in the region evidently saves on both costs and time in terms of testing by different agencies within the region. For instance the Kenya Standards Act provides that any product that does not comply with a Kenya Standard can be ordered to be destroyed or be re-exported back to

⁶³ Ibid

the exporting country all at the exporters cost⁶⁴. By harmonizing the standard on maize saves the exporters not only the cost but also time. Unless these standards are harmonized within the EAC, market access remains a challenge because of the differences in technical specifications and conformity assessment procedures required. The differences in the standards among the EAC member states harmfully impact on intra- EAC trade due to increase in technical barriers to trade, dampen free flow of goods and trade among Partner States and reduce product competitiveness and negatively impact on the private sector.

Karugia J et al (2009) recognizes the importance of cross-border trade for balancing between maize surplus and deficit areas, there is an urgent need to integrate national maize policies into the regional context. Harmonized standards and conformity assessment activities open the market especially for smallholder producers as well as improving food security. The effectiveness of availability of harmonized maize standards is hampered by two main factors: these are the factors that affect demand and supply of maize in the region that limit the effectiveness of harmonized standards. For example maize into Kenya reduced due to 2007-2008 post election violence⁶⁵. Other factors affecting trade especially in maize First, the balancing between maize surplus and maize deficit areas is usually not left to market forces. Given the essential position of maize in human diet and as basic ingredient for animal feed, the maize market is highly politicized through trade controls, mainly import and export bans. For instance Tanzania in 2011 imposed an export ban on maize though they had maize surplus⁶⁶.

⁶⁴ Section 14 Standards Act Cap 496

⁶⁵ Jonathan Makau Nzuma, *The political economy of food price policy: The case of Kenya* WIDER Working Paper No. 2013/026 (UNU-WIDER 2013)

⁶⁶ Ibid

Second informal trade accounts 80% of trade in agricultural produce and food in the region supposed to be informal. High share of informal trade is attributed to cumbersome border procedures, poor transport and logistics infrastructure in particularly in the case of small consignments and of perishable products. As a consequence, the formalization of informal trade and compliance with regulations and standards is a serious challenge⁶⁷.

4.3. Challenges in Implementation of the SQMT Act

The exporter respondents identified some of the SQMT barriers they experienced in the course of their trade in the EAC and they included: most Kenyan exporters experienced Duplicative testing. They argued it is costly to meet multiple conformity assessment procedures and labeling requirements, and the delays involved are costly as well.

Secondly the requirement of a standard quality prohibits trade altogether for example Maize quality standards vary as shown in the table below. The standards are mandatory .if a trader is unaware of the destination countries standards and only becomes aware of them at the port or border it can have devastating results for the trader. The goods will either be returned to country of origin at the traders cost or be destroyed at the traders costs.

Thirdly the traders still faced challenges that resulted from lack of mutual recognition of the certification marks issued by bureaux of standards in the region is a major non-tariff barrier (NTB) frustrating cross border trade in the EAC. This lack of recognition leads to increased business costs are due to barriers to the movement of goods across the borders, as countries hesitate in the implementation of the EAC protocols. This is despite procedures for awarding of National Quality marks to goods complying with EAC standards have been harmonized

⁶⁷ Karugia, J,(et al) *"The Impact of Non-Tariff Barriers on Maize and Beef Trade in East Africa"*, Re-SAKSS working paper No. 29, (2009) International Livestock Research Institute (ILRI), Nairobi

respondents in the private sector still argue that though some goods bear certification marks they are subjected to multiple tests in the importing country thereby not only does the importer incur cost due to time but is charged the extra cost for testing. For Example the Tanzania Food and Drug Agency is accused of not recognizing the Kenyan Standardization Mark and subjecting Kenyan food /drug based product to conformity tests. However a sovereignty apprehension is one of the major reasons for the reluctance to fully adopt the provisions of the SQMT Act. Conflict of (political, economic, social) interests between Member States hinders harmonization and frequently results in unjustified NTBs. Though there has been some harmonization respondents of this study concurred that there SQMT barriers still exist and thereby impeding trade. Below is a list of some of the Standards related NTB's reported

TABLE 2: Reported Standards related NTB'S 2011-2012

Type of NTB	Affected countries	NTB Source /Stakeholders	Impacts on businesses
Ban on beef/ beef products	Kenya	Uganda Departments of Veterinary Services; Ministries of Livestock Development and of Agriculture	Loss of potential markets
Certification of milk	Kenya	Uganda Dairy Board	Loss of potential market
Retesting milk/ milk products	Uganda	Tanzania Kenya Ministry of Livestock Development; Kenya Dairy Board; Kenya Bureau of Standards	Denial of market entry; loss of potential markets

Ban on day-old chicks	Uganda	Kenya Ministries of Livestock Development and Agriculture	Loss of potential market It is estimated that Ugachick was losing up to USD 200,000 per month as a result of the stalemate.
Testing procedures for food imports and exports	Kenya	Tanzania Food and Drug Authority	Cost and time incurred in testing and certification procedures
Plant import permit charges on tea destined for auction	, Uganda and Burundi	Kenya Plant Health Inspectorate Services	Costs bearing on competitiveness of Ugandan tea sold via Kenyan auction
Non recognition of SPS certificates for tea	Uganda and Burundi	Kenya Ministry of Agriculture	Delayed access to Kenya tea auction; additional costs
Cigarettes manufactured in Kenya exported to Tanzania required to have a local 75% tobacco content	Kenya	Tanzania	Loss of business
Requirement for certificates of analysis for goods destined for export to Rwanda and Burundi	Tanzania, Uganda and Kenya	Burundi and Rwanda Bureaux of Standards	An extra cost of doing business
EAC Standards Bureaus have varying procedures for issuance of certification marks,	All EAC Partner States	National Bureaux of Standards	Time and cost of complying with testing and certification procedures in the target export country

inspection and testing.		EAC Ministries of industry.	
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Time-bound programmed for the elimination of NTBs 2013.

Respondents from public institutions that are afforded responsibility of implementing the Act in Kenya identified the following challenges in the implementation of the SQMT Act. While it was difficult to establish reasons why SQMT barriers still exist despite interventions made to encourage harmonization of QI. Nevertheless the respondents were asked why some of the barriers still exist and why some have actually persisted. The reasons given were:

Compulsory Standards

Under *Section 19* of the EAC SQMT Act (2006), gives the Council power *to declare an East African Standard or a provision of that standard to be a compulsory standard throughout the Community*. Compulsory standards under the SQMT Act are declared in order to prevent *deceptive practices, protect human and animal health, animal or plant life and protect the environment*. A compulsory standard has the effect of being mandatory in that its implementation is mandatory with no room for deviation while a regular standard in the EAC is voluntary. According to the EAC Standard officer the EAC has not declared any standards compulsory hence all EAC standards are voluntary as opposed to the EAC Partner States have mandatory standards that that exporters must comply with.

Compulsory standards lay down product, service or process characteristics with which compliance has been made mandatory. Kenya and Tanzania have the highest number of compulsory standards followed in the EAC. The Kenyan Standards Law requires all products to

comply with all national standards, implying that all standards are mandatory, even though they have not been promulgated as such, whereas none of the other Partner States have such legal requirements. There is no political agreement amongst Partner States as to which products should be controlled by compulsory standard

Conformity assessments to inspect conformity to compulsory standards vary for partner states i.e. The level of import inspection, including Pre-shipment Verification of Compliance (PVoC), also differs markedly amongst Partner States, with Kenya endeavoring to inspect all products being imported, whereas Tanzania, Uganda and Rwanda only inspect those that fall within the scope of Compulsory Standards. . The varying conformity assessment also translates to varying fees payable for the Import Inspection which increases the cost of doing business. EAC Partner States have implemented or are in the process implementing import inspection scheme called Pre-Export Verification of Conformity (PVoC) aims to address the challenges posed by varying import inspection as a conformity assessment activity. The pre export verification was first introduced by Kenya but was later adopted by some of the member states .Despite Kenya introducing it it's still at the policy level whereby an importer may choose not to use it but incurs additional costs. The Tanzania has amended its Standards Act No. 1 of 1977 to include in its legislations. PVoC was put on hold by the political level in Uganda pending further review and was only reinstated on the 1st June 2013.

Adoption of Standards

Another major challenge is that standards development takes about 18 months as provided for by the act but after the east Africa standards approval committee approves the standard there is no timetable on what happens thereafter before they are declared as EAC standards by the

council. Declaration of an EAC standard may take place a year after its approval by the EASC. The bureaucracy involved discourages the member countries from solely relying on the development of standards under the EAC framework hence opt to run parallel national development of standards

States including Kenya delay in the adoption of harmonized standards hence though there are harmonized EAC standards states still use their varied national standards. This not only creates uncertainty in the market but also increases the costs of producers as they have to tailor their products to the specific standards countries they are exporting.

Third, reason was Slow or non implementation of the Act. The Act provides for withdrawal of national standards in order to adopt regional standards this has not happened at the expected pace despite the availability of EAC standards. Therefore partner states run parallel standards both regional and national regimes. The process of standards creation to adoption takes a long time and since there is limited capacity by the EASC to compel states to adopt EAC standards the standards run parallel to the national standards. In this case in practice national standards takes precedence over the EAS and conformity assessment is carried out using the national standards.

National standards are developed much faster than for example of the Kenya Bureau of Standards (KEBS) standards body for coffee indicates a certain backlog in the harmonization of standards at regional level: compared to the 6 EAS, KEBS has developed 33 vertical standards covering among others the following areas: glossary of terms in international trade, green coffee, roasted coffee beans, instant coffee, etc

Duplicative testing

The key factor governing mutual recognition arrangement at government level is the confidence that regulatory authorities in the exporting country or economy have in the technical competence of the conformity assessment bodies in the exporting country to assess the product to the importing country's or economy's requirements. The implementation of standards involves costs; they arise from the testing and certification (conformity assessment) procedures necessary to determine whether a product meets standardized requirements. Duplicative testing is one of the major challenges experienced in the implementation of the Act. Duplicative testing is where it is mandated that industry retest and recertify products that have already been tested for conformity with similar standards in multiple markets. This results in higher costs to exporters in terms of money paid for the retest and recertification. The higher cost for the exporter is transferred to the consumer as products become more expensive.

As a result of different capacities among standards institutions some test methods cannot be adopted due to the challenges occasioned by lack of capacity of laboratories in the EAC. Kenya so far has the most sophisticated testing system however Kenyan products have been subjected to double test and Kenyan products with the standardization mark are subjected to double testing in Uganda as they consider the Diamond Mark more equal to their standardization mark. Kenya, Tanzania and Uganda utilize the NSB product certification marks as a means to control products falling within the scope of their Compulsory Standards. Kenya operates a dual level system, namely the S-mark (general) and the Diamond mark (higher level), and the other two only one level. The S-mark is not recognized by the other Partner States as being equivalent to their product certification marks, whereas Kenya considers the S-mark to be equal to the others. Uganda is considering establishing a D-Mark as well. Peer reviews of the certification activities in accordance with ISO/IEC Guide 65 have not brought about a reconciliation of the differences

in perception. In spite of declarations from the political level, product certification marks of one Partner State are not yet fully accepted as being equal by the others for the purposes of regulation. Different regulatory authorities, e.g. the NSBs and the Food Safety Authorities, disagree on whether a product certification mark of another Partner State is adequate evidence of compliance with their regulations. This is compounded by the fact that Products bearing the product certification mark of one country, when tested in another, do not always meet the requirements of the original standard they are certified against. Whether this is due to a lack of consistency of production or whether the original testing was not properly conducted, remains unclear. This therefore leads to mistrust of the certification system between the member states.

Duplication, overlap and contradiction among different regional and national frameworks

Weak coordination of standard harmonization activities for instance after the standards have been declared and approved as Quality assurance implements the approved standards is another shortcoming.

More than 80 % agreed harmonization of products standards for commodities, boosts free movement of goods across the border. Lack of fully harmonized standards for all products traded in the EAC has been identified as one of the NTB'S that impede regional trade. Member States have implemented the Act insofar as it has created active quality infrastructure institutions to implement the Act as well as they actively participate in the development of EAC standards. The SQMT Act provides for the essential minimum institutions to make a quality infrastructure and every state decided the number of institutions the houses the quality infrastructure whether it's one institution or several for instance in Kenya there is KEBS the institution that administer standards at the national level. It functions as a national standards body, a national metrology

institute as provided under the SQMT Act. The a national legal metrology department on the other hand is under the Kenya Weights and Measures Department (WMD) and a national accreditation body is KENAS.

This challenge arises from the fact that the Partner States not having a framework for coordinating all the activities of all the bodies charged with development and implementation of standards. This therefore makes it difficult to harmonize standards. Lack of a well informed standards program with clear priorities for the region is another challenge. Such a program would focus on selected priority sectors for which regional standards would be developed. In the absence of such a program tendency is to lose focus and develop standards as they come

Limited financial and human resources

Lack of resources has slowed down the harmonization process. Partner states are currently funding the process but the available resources for this are limited. Though there have been donor funding and technical assistance to facilitate the process the member countries remain wary of this as while the funding and technical assistance is welcome the same is not aimed at addressing the needs and interests of the member states. Another challenge is the insensitivity of EAC partner states to recognize SQMT as one of the most important facilitator of trade. The WTO recognizes harmonized SQMT as important in facilitating trade. Due to this funding for the implementation of the SQMT has not been given priority on budgets. Donor funding is unreliable as donors only fund in accordance t their interests and not according to what is beneficial to the EAC. The SQMT structure currently constitutes a committee which is charged with development of standards in the EAC rather than an apex body .the committee cannot

effectively implement the existing and potential problems because operationalization of decisions made at higher levels may not be possible.

Lack of enough qualified technical staff in the EAC is another challenge to the implementation of the act⁶⁸. The coordinator office at the EAC secretariat is understaffed currently it's a one man office which has hindered the coordination and implementation of activities necessary for the implementation of the Act. Hence the need to employ more technical staff with specific task of effective coordination of the standards program within the EAC.

Relevance

Standards are made for the market with its specific needs in mind. The development of a standard is better for a member state at the regional level rather than at the national level as it is able to exploit economies of scale in regulatory expertise. Furthermore a regional standard is able to prevent fragmentation of the market occasioned by differences in standards. However creating regional standards is difficult as it need to cater to the unique needs and specific preferences of regional actor. If a standard caters to the specific need of a member country it will ensure that states adopt the standard and in future help to avoid non-compliance or unnecessary implementation costs occasioned by a state trying to implement the standard.. An example of an EAC standard that does not reflect the needs of the local Kenyan producer is the EAC standard on pasteurization (KS EAS 69:2007). The EAC standard focuses on pasteurization as the key to ensuring product safety. This technology is successfully and largely used in developed countries. However in developing countries it has posed a challenge as it is expensive to apply in the context of smallholder dairying, which is the main form of production in East Africa. The

⁶⁸ Mugisa, E., Onyango, C., Mugoya, P. (An Evaluation of the Implementation and Impact of the East African Community Customs Union. 2009): EAC, March 2009.

smallholders' producers of milk supply raw milk for pasteurization. However this is proving too expensive as occasioned by the infrastructure and quality control systems needed for delivery of milk to a processing plant. This results in higher consumer prices while the raw milk informally traded remains low.

The raw milk traded informally is perfectly safe as consumers in have found an alternative way to reduce health hazards not recognized in the EAC standards, which is boiling. This practice reduces the high bacteria levels found in East African milk, to safe levels, a point not recognized during the harmonization process, because the Codex standards were developed for Western countries, which consume pasteurized milk. The respondent from the Milk industry -Brookside Dairy Ltd argued that as a result of setting the regional standards too high, the EAC's harmonized dairy standards have been difficult to implement, and provide little practical guidance for farmers, dairy traders, and large processors, on how to upgrade their operation. According to this standard, more than 95 percent of the EAC's milk supply is technically illegal because it does not comply with the standards requirements.

Harmonization of standards in the EACA is a developing process with harmonization of one product after the other. This is what has culminated in the at least 2000 standards while there are thousands more products traded in the EAC. The service sector has however not featured prominently in the standards and the same are not recognized in the SQMT Act. This is despite the fact that services contributed in 2007 62% of total exports and 16% of total imports. Services also contributed to over 50% of the GDP of Rwanda, Uganda, Kenya and Tanzania while in Burundi it contributed to about 42%⁶⁹.

⁶⁹ Dr Alain Niyubahwe, *Liberalisation of Trade in Services in EAC: A regional perspective* available at spip.idecburundi.org/IMG/pdf/ci

Lack of EAC standards for the service sector is a threat to the SQMT Act. The SQMT Act does not cover the services sector which are relevant to the development of the region as a single trade and investment area. Example of areas that fall under this section include hotel and catering, industry, tourism engineering and testing of equipment etc. This calls for a need to set benchmarks on EAC accreditation scheme for services. Harmonization of standards in the service sector may benefit the EAC in that it allows for labor mobility and thereby creates employment opportunities throughout the region. Intra-EAC trade in services can have significant economy-wide benefits for all EAC countries. For instance Kenya, firms export services such as financial and distribution services to the EAC region. Creating EAC standards for services will open up the EAC market further which in turn will improve efficiency and help attract greater levels of foreign direct investment due to the economies of scale occasioned by a wider EAC market.

Monitoring and Evaluation

There lacks institutionalized effective monitoring and evaluation mechanisms for implementation of the SQMT Act. The only monitoring and evaluation program available is used for all Non-Tariff barriers and is not specific to harmonization of standards. The EAC Secretariat produced a report entitled the EAC Timebound Programme for Elimination of NTBs (the “EAC NTB Report”) in which it aims to identify and eliminate NTBs. The efficacy of this monitoring and evaluation is suspect as *“Only 50 percent of the NTBs identified by EAC in 2008, and approximately 30 percent in 2011 were eliminated by partner states within the agreed timeframe reflecting possibly an increased political resistance to consider NTBs for more rapid removal”*⁷⁰.

⁷⁰ Okumu L and Nyankori J.C.O, *Non-tariff Barriers in the EAC Customs union implications for trade between Uganda and Other countries* (Economic Policy Research Center December 2012) Research Series No.75

The approach used to eliminate NTBs has focused on establishing national monitoring committees and publicizing specific NTBs. However, little attention is paid to reducing the NTBs.

4.4. Opportunities

As tested and analyzed by Wilson & Otsuki (2001) and Karugia, J et al (2009), removal of NTBs through harmonization of standards facilitates and encourages cross-border and international trade. In East Africa, international trade, especially in agricultural products, does not only contribute to economic growth but food security as well. Countries that produce surplus food can export to those that have a deficit. This also improves the living standards of farmers due to the availability of a ready market. The transfer of food staples from food surplus markets to **food deficient markets is the greatest opportunity for EAC economies.** Apart from creating food security and improving standards of living of people in the region, Intra-EAC trade can also reduce unemployment. Non-tariff barriers, however, are currently limiting such opportunities through increasing production and consumer costs.

Through the EAC SQMT regime, the EAC has created regulations that apply to producers and manufacturers uniformly throughout the region. The long-term and public nature of the regulatory process generally ensures that these regulations have wide-ranging purposes. Exporters' compliance with the SQMT regime results in benefits for the consumers, manufacturers, as well as the regulating agencies. The EAC SQMT regime ensures that the consumers are protected and ensure non-discrimination of exporters and producers of products in the region as they are allowed market access. Primarily, this includes enhancing the appreciation of the requirements in standard specification and the need to be involved in the development of National specifications, thus creating diversity in discussions for standard development. Member

states will definitely benefit if it pushes for harmonization of standards within the region. Some of the opportunities available in order to reap the benefits of harmonization of standards include:

Legal frameworks of member states

As stated above one of the challenges in implementing the Act is that states are slow to adopt EAC standards and replace national standards with EAC standards. This is aggravated by the fact that partner states does not automatically apply EA standards as national standards and the same has to be adopted before it is recognized as a national standard. Specifically national laws i.e. the standards act needs to be brought under the framework of the SQMT in terms of definitions and requirement for example the provision that the EAS is automatically adopted after six months by nations as provided under the SQMT Act. The review of the Standards Act should address this and domesticate the various provisions of the SQMT Act e.g. For instance the proposed Kenyan Standards Bill 2012 provides;

16 (4) within six months of the declaration of an East African Standard, the Council shall adopt such East African Standard without deviation from the approved text and withdraw any existing national standard with similar scope and purpose.

This is opposed to the present Standards Act which does not provide for recognition of the EA standards. The Private Sector can play a key role by advocating for and urging national lawmakers to prioritize the approximation of national standards laws with SQMT Act in order to reduce trade barrier occasioned by un-harmonized quality infrastructure in the region.

- ***Increased coordination***

Secondly there is need to have a regional quality policy. This is to coordinate the various activities of the various national institutions that overlap in the creation and administration of standards. This is to coordinate the various activities of the various national institutions that overlap in the creation and administration of standards. The EAC Partner States should have their certification marks notified to the respective Partner States for recognition and acceptance as equivalent to their own. Also an EAC regulatory mark that symbolizes the conformity of the product with the EAC regulations be established.

- ***Judicial Intervention/Penalties for non compliance***

The EU has effectively used the court system in order to push for harmonization of standards in the EU. *Dassonville ruling* of 1974 and the *Cassis De Dijon Case* of 1979 are landmark cases on the implementation of harmonized standards and regulations in the EU. The two cases had the effect of compelling member states of the EU/EC to accept products legitimately brought in the market in another member state as long as the object of the regulatory policies were equivalent. 1979 *Cassis de Dijon case*⁷¹, an importer was prohibited by the German authorities from importing Cassis de Dijon, a French liqueur, into Germany; on the grounds that it's alcoholic strength was too low. The European Court of Justice held that the measure was equivalent to a quota. The rationale behind the stance taken by the EU is that all member states care for their citizens and cannot be assumed to produce for instance unsafe or unhealthy products, merely because technical specifications differ.

The EACJ has jurisdiction to determine matters in the EAC. As at now none has been brought under the provisions of the SQMT Act and furthermore the act does not provide that the

⁷¹ Case 120/78, *Rewe-Zentrale AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR 649, although this principle was only explicitly developed in Case 113/80, *Commission v Ireland* [1981] ECR 1625

introductions of penalties for abuse as present penalties are neither uniform nor punitive enough. One of the reasons whereby States have failed to implement the Act fully is that there is no body that is there to guarantee that the act is implemented. The EAC secretariat has already identified NTBs for removal, but as discussed above their removal is slow .The binding dispute settlement process of the WTO, and the experience of the EU in establishing a legally binding mechanism with sanctions for non-compliance, provide additional relevant models for the EAC to consider. Establishment of mutual recognition and dispute settlement mechanisms is essential for removing barriers to regional trade.

The EAC is in the process of getting stakeholders views on the draft bill on the Elimination of Trade Barriers. The bill is a legally binding mechanism meant rid the EAC of non tariff barriers and prevent new NTB's including those brought about by standards and conformity assessment activities. The bill to be enacted is Pursuant to the provisions of Article 5 of the Treaty for the Establishment of the East African Community, the provisions of Articles 2 (4), Article 6, 7 and 13 of the Protocol on the Establishment of the EAC Customs Union and Article 5 of the Protocol on the Establishment of the EAC Common Market.

Under the bill the procedures for elimination of Non-Tariff Barriers consist of four phases including; Implementation of EAC Time Bound Programme on Elimination of NTBs; Use of bilateral and cross border committee meetings; Mediation by the Council; Arbitration by the Trade Remedies Committee; Petition to the EAC Court of Justice when deemed necessary . The parties to an NTB dispute can be represented by the Partner state or by a business membership organization to which they are members (except for the East Africa Business Council). The dispute does not have to pass through all the stages and a matter may be referred directly to either the EACJ when procedural stages have failed to resolve or when they have taken longer

than the allocated time in the Act thereby affecting trade activity. The decision of the East African Court of Justice shall be final and binding on parties in dispute. The EACJ shall determine the bearer of the costs associated with the NTB resolutions⁷². The bill will ensure that state obligations in the SQMT Act are met and that Partner States that fail to meet their obligations are appropriately sanctioned.

While the SQMT Act is a good piece of legislation it is my argument that more need to be done in order to fulfill the spirit that sought to have harmonized standards and quality infrastructure. The *New approach* used by the EU is a better approach as it recognizes the different national SQMT regimes and different national capacities developing EAC standards to be applied uniformly in the region is not practical. Therefore creating essential requirements for products and implementing the essential requirements whereby products produced in the region meet the essential requirements are recognized without discrimination work better for the region. It is however important to develop the capacities of quality infrastructure for all member states in order to allay fears against mutual recognition of standards and conformity assessment activities. The member states ought to consider upgrading the regulatory and standards frameworks.

⁷² DRAFT EAC BILL ON LEGALLY BINDING ENFORCEMENT MECHANISM FOR THE ELIMINATION OF IDENTIFIED NON TARIFF BARRIERS EAC (March 2013)

CHAPTER 5: SUMMARY CONCLUSION AND RECOMMENDATIONS

The study explored the challenges and unnecessary trade barriers faced by suppliers in the EAC intra-regional trade due to differences in technical regulations and standards amongst EAC Partner States. This study to generated data that can assist to inform the private sector and other stakeholders to propose position(s) suggesting best actions to fast-track the harmonization of standards and the development of technical regulations framework with a view of promoting free movement of goods in the EAC.

As reflected by the interviews and desk research, different SQMT frameworks within the EAC affects trade in terms of increasing the cost of trade for instance in terms of fees incurred when an exporter products have to be tested at the country of origin and the importing country to test compliance to national standards . furthermore there are instances where goods that do not conform to compulsory national standards are rejected and have to be re-exported back to the exporting country or are ordered to be destroyed all at the exporters cost. The EAC has achieved a lot to date with regard to enhancing economic integration, harmonizing regulations and standards and initiating the establishment of a Quality Infrastructure that builds on existing national bodies able to take on responsibilities at REC level and, only where necessary, complemented by newly established regional entities

The imposition of product standards and technical regulations is not solely a trade issue. Effective regulation within the partner states markets is important for ensuring consumer safety. To establish and enforce appropriate standards requires building expertise and devoting additional resources to applied science and public management.

The results from interviews with key experts and desk research suggest that strategies for upgrading the regulatory and standards frameworks at the level of EAC and their respective Member States Kenya in particular should be guided by the following recommendations:

First, there is need for approximation and alignment of national laws with SQMT Act. While in the EAC the SQMT Act regulates the Quality infrastructure, the partner states in the EAC have parallel national laws whereby QI is regulated under various diverse laws and regulation. The regulatory authorities i.e. NEMA, KEPHIS and WMA, TFDA have significant overlap of mandates both at the level of different line ministries and at the level of their respective subordinate parastatals organizations. For example The Standards Act (Chapter 496) of 1973 of the Republic of Kenya is largely outdated. This Act does not provide clear definitions of all terms used in the sector or principles, which govern standardisation in line with the WTO TBT and SPS Agreements, as well as the East African Community SQMT Act of 2006. All these issues can be regarded as a serious drawback for the overall standards setting, enforcement, compliance and conformity assessment situation in the country as well as a barrier to trade. New concise and updated revision of the member states Standards Acts is necessary to reflect international and regional commitments.

Second, Governments should be urged to prioritize harmonization of Standards and quality Infrastructure in securing budgetary provisions to improve infrastructure, labs, manpower and extend working hours on border posts. One of the major drawbacks in the implementation of the SQMT Act is the fact SQMT related activities have very limited funding. The national standards bodies can be able to fund themselves through conformity assessment activities i.e. charging for testing and certification and the EASC does not offer these services. Furthermore Standards making in Africa is depletes more funds than it generates hence the EASC has to rely on donor

funding, There is little funding so much so that the manpower is limited that the EASC secretariat in Arusha is a *one man office*. Furthermore the East Africa Technical Committee (TC) which consists of experts is underfunded hence not all the necessary stakeholders are able to participate. This is unlike the national TC participation by stakeholders is very good. Major part of the limited budget is received from the donor funding. However the donor funding is tied to the vested interests of the donors and not tailored to the needs of the EAC.

Fourth, an amendment of the SQMT Act is necessary. Standards experts interviewed urged that the Act need to be amended so that approval of standards ends with the EASC. This is to remove the need for the council to approve standards as it needlessly delays the process while they rarely make input into the standards as the standards are created by technical experts who form part of the EASC. An amendment of the act is in the offing as a metrology bill was presented to the EALA for adoption however since the SQMT Act also includes metrology aspects in the EAC the same has to be amended to remove the metrology aspect. Therefore both bills have been circulated to the partner states for comments and input this would therefore be a good opportunity to amend the act to remove the unnecessary bureaucracies.

Fifth, the member states should implement mutual acceptance and recognition of the conformity assessment services in the EAC. This ultimately depends on the confidence in the technical competence of the conformity assessment service providers. The EAC Partner States should designate, register and publish the list of the mutually recognized technically competent national conformity assessment service providers. The testing laboratories should be upgraded and accredited to international standards, ISO 17025 in order to attain international recognition of the services provided and Certification bodies in the EAC Partner States should be accredited based on International standards, ISO 17065. . The capacities of the inspection bodies in the EAC Partner

States should be strengthened and accredited based on international standards, ISO 17020, for international recognition of the services. Credibility of the regions QI will only be boosted if Suppliers in the EAC procure conformity assessment services from the published list of the service providers.

There are many avenues available to the EAC to create a credible regional infrastructure EAC. A few issues are very important in consideration for reform for the EAC SQMT framework: It must be acceptable to the partner States, It must comply fully with WTO TBT Agreement obligations and requirements; and it must be affordable for the EAC as a whole.

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ANNEXTURES

ANNEX 1

QUESTIONNAIRE 1: EXPORTERS/ TRADE ASSOCIATION

NAME _____ ORGANISATION _____

DESIGNATION _____

DATE _____

1. What is your organization's field of operation?

2. In the course of your business do you interact with standards and conformity assessments activities (testing, quality assurance e and certification)?

3. Are you familiar with the standards applicable to your product? If yes which are they

4. Does your product have an EAS standard equivalent to your national standard?

5. Are you aware of the attempts by EAC to harmonize EAC standards?

6. Do you experience any Non –tariff barriers related to standards and conformity assessment activities in your trade in the EAC? If yes list them

7. Do these NTB's have an impact? If yes how does it impact your business?

8. Do you think the Partner states have done enough to harmonize standards in the EAC?

9. What can be done to eliminate standards and conformity assessment related Non- Tariff Barriers to trade in the EAC?

QUESTIONNAIRE 2: KEBS/RBS/TBS/UBS

NAME _____ ORGANISATION _____

DESIGNATION _____

DATE _____

1. What are the measures that your organization has put in place to implement the provisions of the SQMT Act?

2. What are the present challenges you face that relate to harmonization of standards under the SQMT Act?

3. What are your recommendations to address the challenges of harmonization of standards in the EAC?

4. What are your recommendations to address the challenges of harmonization of Standards ?

Interviews with Stakeholders

Annex 2

	INSTITUTION	NAME OF PERSON CONTACTED	TITLE	CONTACTS
1	Kenya Bureau of Standards	John Abongs'	Director-Quality Assurance and Inspections	abongj@kebs.org
2	Kenya Bureau of Standards	Paul Kimeto	Ass.Manager EAC/COMESA	
	Kenya Bureau of Standards	Mugambi Michubu	Standards Officer	michubum@kebs.org
3	Kenya Association of Manufacturers	Frida Mbugua	Legal Officer	frida.mbugua@kam.co.ke
4	Maharata Food Co. Ltd	Eunice Waithera	Sales Executive	+254202013271/0721856976 info@mahara.com
5	East African Grain Council	Samuel Ruto		srutto@eagc.org
6	Megh Cushion Industries Ltd.	G. S. Kenth	Managing Director	+254 206536041/info@mci.co.ke
7	Farmer's Choice Ltd	S. C. G. Strong	Administration Director	+ 254 20 2013008 info@farmerschoice.co.ke
8	Cook 'N Lite Ltd	Paul Byomukeshi.		020-26/62328070584 info@cooknlite.com
9	Kenafri Industries Ltd	Janice Ngulu		Janice@kenafriind.com;
10	BOC Kenya Ltd	Kenneth Ichamiya	Supply Process Manager	+254 02069400 info@boc.com
11	East African Community	Tobias Ololo	Standards Officer	254 722 734921
12	Uganda National Bureau of Standards	George Opiyo	National TBT Enquiry Point	George.opiyo@unbs.go.ug
13	Razco Food products limited			+254208563123
14	Brookside Dairy Ltd	James Mungai		maziwa@brookside.co.ke (+254 20)354 2480/1/2
15	Nestle Foods Kenya Ltd	James Ojiambo	Technical Production Manager	+254-202303990
16	Bio Food products	Lea Gasser Khimani	Technical Production Manager	254 20 350 3595 -8
17	Mabati Rolling mills	Aphline Bella Oyando	Legal Officer	254 (020) 642 70 00
18	Power Technics Ltd	Cyrus Halusi	Public Relations Officer	254 (0) 20 3569591 info@powertechnics.com
19	Metsec Cables Ltd	Abdulghani Noor		Metsec-info@doshigroup.com

20	Tanzania Bureau of Standards	Leandri S. Kinabo	Director Standards	+255222450206/713261244
21	Rwanda Bureau of Standards	Liliane Kamanzi	Trade affairs Officer	250586103/788483488 info@rbs.org.rw
22	KEPHIS	Lucy Namu		PO BOX 49421 - 00100 NAIROBI director@kephis.org
23	EVEREST GROWERS	T. K. Mutiso		mutisotk@everest.co.ke
24	Homegrown Producers Ltd	Peter Wanyama		pwanyama@homegrown.co.ke
25	East African Portland Cement Co. Ltd	Abraham Kiprotich	Country Manager Uganda	customercare@eapcc.co.ke +254733- 333212/14
27	Bidco Oil Refineries Ltd	Manish Patel		info@bidco-oil.com
29	Simgas Technologies	Charles Mackens	Engineer	
30	Eveready Batteries Kenya Ltd	Tom Mboya		batteries@eveready.co.ke 020216139
31	Associated Batteries Manufacturers	Stanely Mbugua		(254) 20653121
32	International Distillers (K) Ltd	Robert N. Mwaniki		Robert.mwaniki@eabl.com
33	Premier Foods Ltd	S. Mugala		pfil@peptang.com
34	Pembe Feeds	Kevin M. Mwambi		Feedmill@pembe.coke 0720977283
35	Kenchic Ltd	Eric Muraguri		eric@kenchic.com
36	Simlaw Seeds Co. Ltd	Mwangi D. Kuria		Simlaw@kenyaweb.com
37	Fresh Producers Exporters Association of Kenya	Francis Wario Mwangi	Training and Standards Expert	+254722753851 fmwario@gmail.com