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**ANALYSIS OF THE TRANSPARENCY POLICY REVIEW MECHANISMS WITHIN
PARTICULAR REGIONAL TRADE AGREEMENTS: A SPECIFIC FOCUS ON
COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA AND
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY**

By

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DECLARATION REGARDING ORIGINALITY

I, KUDZAI CATHRINE NYIKA, declare that:

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ABSTRACT

This dissertation examines transparency mechanisms within regional trade agreements, focusing on the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA). It aims to assess how transparency principles have been integrated and applied within these regional frameworks and compares their effectiveness against global mechanisms such as the World Trade Organization's (WTO) Trade Policy Review Mechanism (TPRM). The research further explores the role of transparency in achieving Africa's development goals as outlined in Agenda 2063, emphasizing the need for informed decision-making, equitable trade practices, and regional cooperation. Through a detailed comparative analysis of SADC and COMESA's transparency instruments, this study highlights the institutional and implementation challenges these regions face, particularly in dispute resolution, public access to information, and digital platforms for enhancing transparency. The findings underscore the importance of strengthening transparency for fostering sustainable economic integration and advancing Africa's collective development objectives.

LIST OF ABBREVIATIONS AND ACRONYMS

- AfCFTA** - African Continental Free Trade Area
- AU** - African Union
- COMESA** - Common Market for Eastern and Southern Africa
- DSB** - Dispute Settlement Body
- DSU** - Dispute Settlement Understanding
- FTAs** - Free Trade Agreements
- GATS** - General Agreement on Trade in Services
- GATT** - General Agreement on Tariffs and Trade
- MFN** - Most-Favored-Nation
- NGOs** - Non-Governmental Organizations
- PTAs** - Preferential Trade Arrangements
- RECs** - Regional Economic Communities
- RI** - Regional Integration
- RTA's** - Regional Trade Agreements
- SADC** - Southern African Development Community
- SPS** - Sanitary and Phytosanitary Measures
- TBT** - Technical Barriers to Trade
- TIFI** - Trade, Industry, Finance, and Investment
- TPRM** - Trade Policy Review Mechanism
- TRIPS** - Trade-Related Aspects of Intellectual Property Rights
- TRMs** - Transparency Reporting Mechanisms
- UNCTAD** - United Nations Conference on Trade and Development
- WTO** - World Trade Organization

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CHAPTER 1

1.1. Introduction

Transparency is a fundamental principle in international trade law, ensuring predictability and accountability.¹ The World Trade Organization (WTO) Glossary defines transparency as:

‘The degree to which trade policies and practices, and the process by which they are established, are open and predictable’.²

Transparency is the cornerstone of effective international trade governance. Transparency policy review processes are essential for maintaining accountability, building confidence amongst trading partners, and advancing honest and open trade practices in global trade. According to Bianchi and Peters, ‘transparency is of fundamental importance to all international organisations because it can foster commitment and compliance’.³ The operation of regular trade within the multilateral trading system depends on adherence to the regulations codified in the WTO agreements.⁴

To promote international trade by lowering tariffs and other trade barriers, the General Agreement on Tariffs and Trade (GATT) was formed as a multilateral agreement in 1947.⁵ It provided a framework for negotiating trade agreements and resolving disputes among member countries.⁶ The WTO is the institutionalised framework of the multilateral trading forum. It was formed in 1995 to create an institutional framework for multilateral trade.⁷ The WTO's functions include:

‘Administering WTO trade agreements, serving as a forum for trade negotiations among member countries, handling trade disputes through a structured dispute settlement mechanism, monitoring trade policies of member countries, providing technical assistance and training

¹ Slaughter, A.M., 2004. Disaggregated sovereignty: Towards the public accountability of global government networks. *Government and Opposition*, 39(2), pp.159-190.

² World Trade Organization (WTO). n.d. ‘Glossary of Terms’ available at https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm, accessed on 10 July 2024.

³ Bianchi, A. and Peters, A. eds., 2013. *Transparency in international law*. Cambridge University Press, p114.

⁴ Ehlermann, C.D. and Lockhart, N., 2004. Standard of review in WTO law. *Journal of International Economic Law*, 7(3), pp.491-521.

⁵ Irwin, D.A., 2017. The GATT in historical perspective. In *Global Trade* (pp. 333-338). Routledge.

⁶ Hudec, R.E., 1971. GATT or GABB? The future design of the general agreement on tariffs and trade. *The Yale Law Journal*, 80(7), pp.1299-1386.

⁷ Winham, G.R., 2017. The World Trade Organisation: institution-building in the multilateral trade system. In *Global Trade* (pp. 393-412). Routledge.

programs to aid developing economies in engaging in international trade, and fostering cooperation with other international organisations.”⁸

These functions promote a fair, predictable, mutually beneficial global trading environment. The WTO agreements, such as the General Agreement on Trade in Services (GATS), build upon GATT's principles. This organisation has a legal personality, which gives it explicit authority to develop and maintain relations with other international organisations.⁹ Article IX of the¹⁰ Marrakesh Agreement Establishing the World Trade Organization outlines the legal status of the WTO as an organisation distinct from its member states, specifying that the WTO shall have an international legal personality and capacity to perform legal acts necessary for its functions. Additionally, Article XVI addresses the privileges and immunities of the WTO, its staff, and its representatives, further reinforcing its legal personality and operational independence.¹¹ The organisation itself is a direct product of globalisation and the economy's and society's growing interdependence.¹²

Owing to the rapidly growing rule-based system's preference for openness over power-based systems and globalisation's accelerating speed, stakeholders began to press the WTO for greater transparency in its operations.¹³ In the early years of the WTO, the organisation's legitimacy was questioned due to numerous contentious rulings by its adjudicating bodies, particularly those on its judicial organs.¹⁴ A growing number of highly mediatised and politically elevated cases, especially in the developed nations, were decided by the WTO's new Appellate Body, which acted as its last-instance standing court.¹⁵ These verdicts, for example, denounced the US import ban on shrimp due to environmental concerns and the EU's preference for banana imports from the former EU colonies.¹⁶ Conversely, a robust dispute resolution mechanism within the WTO framework was demanded during the Uruguay Round

⁸ WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994), Article III, page 10.

⁹ Lamy, P., 2006. The Place of the WTO and its Law in the International Legal Order. *The European Journal of International Law*, 17(5), pp.969-984.

¹⁰ WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994),

¹¹ Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994), Article IX and Article XVI.

¹² Mortensen, J.L., 2000. The institutional requirements of the WTO in an era of globalisation: Imperfections in the global economic polity. *European Law Journal*, 6(2), pp.176-204.

¹³ Ostry, S., 2000. Convergence and sovereignty. *Coping with globalisation*, pp.52-76.

¹⁴ Howse, R., 2016. The World Trade Organization 20 years on: global governance by judiciary. *European Journal of International Law*, 27(1), pp.9-77.

¹⁵ Delimatsis, P., 2012. A global law perspective of the WTO. *Tilburg Law Review*, 17(2), pp.285-295.

¹⁶ WTO Panel Report, European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by the United States, 22 May 1997.

negotiations by politically and economically advanced nations like the United States, the EU, and Japan, which possessed considerable economic power.¹⁷ Due to their significant contributions to the world economy and trade and their political influence in international forums, these nations were essential proponents.¹⁸ Their strong economic interests in global commerce required a stable, rules-based trading environment to reduce trade uncertainty and potential disputes. Hence, they insisted on a functional dispute settlement system.¹⁹ Based on these events and discussions these events and discussions show that transparency within the WTO or multilateral trade framework has become an important facet. The WTO highlighted the pressing need for greater judicial transparency and broader participation in WTO decision-making processes.²⁰

1.2. Rationale

Ensuring adherence to established guidelines and norms is paramount in international trade governance.²¹ Transparency mechanisms are pivotal in this context, particularly as RTA's proliferate and gain popularity.²² RTA's are intricately linked to the multilateral trade system, influencing global trade flows and regulations. They can complement or potentially conflict with WTO rules, underscoring the necessity for transparent processes to maintain coherence and prevent trade distortions.²³ As RTA's expand in number and scope, the imperative for transparency grows, fostering trust among member states and bolstering the overall efficacy and legitimacy of the WTO-led multilateral trading framework. Thus, enhancing transparency within RTA's and the broader multilateral trade system emerges as a critical focus area in contemporary international trade governance discourse.²⁴ The viability and effectiveness of regional trade agreements depend on their ability to develop trust and accountability among member governments. Aside from identifying and addressing trade barriers, transparent trade policies and practices can also help coordinate trade policies among member states, ensuring

¹⁷ Vermulst, E. and Driessen, B., 1995. Overview of the WTO Dispute Settlement System and Its Relationship with the Uruguay Round Agreements, An. *J. World Trade*, 29, p.131.

¹⁸ Vermulst & Driessen op cit note 14.

¹⁹ Ibid.

²⁰ Marceau, G. and Hurley, M., 2012. Transparency and public participation in the WTO: a report card on WTO transparency mechanisms. *Trade L. & Dev.*, 4, p.19.

²¹ Joyner, C.C., 2005. *International law in the 21st century: rules for global governance*. Rowman & Littlefield.

²² Mikic, M., 2008. Multilateral rules for regional trade Agreements: past, present and future. *emerging trade issues for policymakers of developing countries in Asia and the pacific*, pp.216-235.

²³ Maia, C.C., 2021. *The principle of transparency as an instructive and normative beacon of the multilateral trade regime: in search of a systematic response to the crisis of internal and external legitimacy of the World Trade Organization* (Doctoral dissertation, Universidade de São Paulo).

²⁴ Lejarraga, I., 2013. Multilateralising regionalism: Strengthening transparency disciplines in trade.

consistency and minimising trade friction.²⁵ This promotes smoother economic integration and intra-regional trade.

This dissertation aims to explore the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) as two of Africa's most significant and most consequential regional trade agreements (RTA's).²⁶ These RTA's are pivotal to the integration and economic growth of the region, distinguished by their extensive memberships and strategic significance. SADC encompasses 16 member states²⁷, while COMESA includes 21,²⁸ highlighting their broad regional coverage and potential economic impact.²⁹ Both regional groups play crucial roles in promoting economic cooperation, facilitating trade, and fostering regional integration among member states. They serve as platforms for aligning policies, harmonising regulations, and enhancing infrastructure development to bolster trade and investment flows within and beyond their borders.³⁰ By examining academic literature, reports from international organisations, and official documents from the SADC and COMESA, this study seeks to comprehensively analyse their contributions to regional economic integration and development in Africa.

While global mechanisms have been researched in great detail, more information is needed regarding the transparency mechanisms implemented in RTA's, particularly in Africa. The purpose of this research is to fill the gap in the literature by providing a detailed examination of the implementation of these mechanisms and their influence on trade policy and economic outcomes within RTA's. For instance, national governments influence regional organisations, which may cause transparency mechanisms to be biased in favour of national interests, compromising their objectivity and efficacy. The economic disparities among COMESA and SADC member nations may limit their ability to implement and benefit from transparency

²⁵ Maskus, K.E., Wilson, J.S. and Otsuki, T., 2000. Quantifying the impact of technical barriers to trade. *World Bank Policy Research Working Paper*, 2512, pp.1-51.

²⁶ Taole, T.E., 2014. *Multi-membership in African regional trade agreements: A focus on SADC and COMESA* (Doctoral dissertation North-West University).

²⁷ The Southern African Development Community (SADC) is a Regional Economic Community comprising 16 Member States; Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia and Zimbabwe.

²⁸ The Common Market for Eastern and Southern Africa (COMESA) comprises 21 member states: Burundi, Comoros, the Democratic Republic of the Congo (DRC), Djibouti, Egypt, Eritrea, Eswatini (formerly Swaziland), Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, South Sudan, Sudan, Tanzania, Uganda, and Zambia.

²⁹ Lunogelo, B. and Mbilinyi, A.V., 2009. Convergence of COMESA-SADC-EAC regional frameworks. *The Economic and Social Research Foundation (ESRF)*, 35.

³⁰ Lunogelo & Mbilinyi op cit note 20.

mechanisms, potentially affecting how their effectiveness is evaluated.³¹ Furthermore, varying levels of infrastructure development among member states could affect the practical implementation of transparency measures, leading to inconsistent outcomes.³² Finally, by conducting a thorough analysis of the transparency policy review mechanisms within SADC and COMESA, this research aims to provide practical recommendations for enhancing these systems. Improving transparency policy review mechanisms within the legal instruments of these institutions is crucial for fostering regional cooperation, promoting economic stability, and facilitating development. This study will focus specifically on transparency mechanisms embedded within the legal and institutional frameworks of SADC and COMESA, aiming to identify areas for improvement and propose actionable strategies to strengthen these procedures.

1.3 Methodology

The TRMs included in RTA's are examined in this dissertation utilising a qualitative desktop study, emphasising COMESA and SADC. This desktop study entails gathering, examining, and interpreting primary and secondary data from various sources, such as government documents, policy papers, reports from international organisations, academic literature, peer-reviewed journal articles, books, and dissertations. This desktop study will examine these sources to gain insights into the purposes, methods, and efficacy of transparency mechanisms within the WTO multilateral trading systems. These sources encompass annual reports, policy documents, minutes from pertinent meetings, agreements, protocols, and communiqués. Additional sources will include journal articles and working papers from major organisations such as the WTO, the United Nations Conference on Trade and Development (UNCTAD), and the World Bank, which provide context and comparative statistics on Transparency Reporting Mechanisms (TRMs) and RTA's. Additionally, a thorough analysis of specific case studies will be conducted to illustrate the achievements, challenges, and lessons learned from implementing TRMs.

1.4 Literature review

This thesis aims to provide a comprehensive analysis of transparency mechanisms within RTA's, focusing specifically on SADC and COMESA. The literature review will highlight key

³¹ Sidiropoulos, E. and Meissner, R., 2005. Evaluating progress. *SADC Barometer*, 8(1).

³² Ciborra, C., 2005. Interpreting e-government and development: Efficiency, transparency or governance at a distance? *Information technology & people*, 18(3), pp.260-279.

contributions from various authors to establish a foundational understanding of the interplay between transparency, regional integration, and trade policy effectiveness.

Whalley's article concerns 'the motivations behind national pursuits of RTA's'.³³ This article is essential to the knowledge of international trade and regional integration. It examines the reasons behind the growth of RTA's and how they affect international economic governance. The first section of the article thoroughly summarises how RTA's have changed over time and how common they have become in the years following World War II, discussing their evolution and prevalence.³⁴ Whalley explores the reasons behind nations' pursuit of regional economic integration, and his main points centre on how political and economic considerations influence nations' decisions to participate in RTA's.³⁵ He highlights the many shapes and purposes of RTA's, such as the economic benefits of RTA's, such as 'trade liberalisation, market access, regional stability and security, free trade zones and customs unions'.³⁶

Furthermore, Whalley discusses how geopolitical factors, like regional stability and security concerns, might affect a country's willingness to sign an RTA.³⁷ To clarify the intricate interaction between political dynamics and economic logic in creating RTA's Whalley synthesises actual data and theoretical frameworks throughout the article. The author provides a view of the reasons underlying regional commercial integration by incorporating ideas from political economy, economic geography, and international relations theory.³⁸

Whalley offers thorough insights into the motivations for RTA's, but more targeted research is needed on how these RTA's transparency mechanisms are developed and administered. Whalley's article highlights the role of transparency in balancing political and economic dynamics within RTA's. However, there is a notable gap in examining how transparency mechanisms can mediate these interactions to ensure that the objectives of RTA's are achieved both transparently and efficiently. Having identified this deficit in the literature, this thesis intends to address it by exploring how transparency systems can effectively manage political and economic dynamics within RTA's. Through a detailed analysis, this research aims to

³³ Whalley, J., 1998. Why do countries seek regional trade agreements? In *The regionalisation of the world economy* (pp. 63-90). University of Chicago Press.

³⁴ Hafez, Z., 2003. Weak discipline: GATT Article XXIV and the emerging WTO jurisprudence on RTA's. *NDL Rev.*, 79, p.879.

³⁵ Whalley op cit note 33.

³⁶ Whalley op cit note 33.

³⁷ Antkiewicz, A. and Whalley, J., 2011. China's new regional trade agreements. In *China's Integration Into The World Economy* (pp. 99-121).

³⁸ Whalley op cit note 33.

provide insights into enhancing the balance between political interests and economic goals within the framework of RTA's. Comprehending Whalley's explanation of the rationale for RTA's puts transparency tools in context. The argument is that RTA's can be more effective and legitimate by transparently addressing their political and economic objectives.

The study will frame its examination of SADC and COMESA's transparency procedures within the historical and theoretical context provided by Whalley. This approach will highlight the development and driving forces behind these agreements. The research explores how transparency mechanisms can address political and economic challenges within RTA's by identifying the disparities between Whalley's insights and the study's findings. The goal is to enhance the understanding of transparency's role in improving the governance and efficacy of regional trade agreements. The study will investigate how achieving the intended economic and political goals of RTA's while ensuring transparent and accountable implementation can foster greater confidence and collaboration among member states.

Similarly, Mason provides a conceptual overview of transparency, accountability, and empowerment in sustainability governance.³⁹ The review starts by defining empowerment, accountability, and transparency, highlighting the importance of each in advancing good governance and encouraging public involvement in sustainability-related decision-making processes, and providing examples from various contexts to show the practical applicability of these concepts.⁴⁰ Mason's review succeeds in analysing the connections among accountability, openness, and empowerment as it takes a comprehensive approach.

According to the author, 'transparency is necessary for responsibility and empowerment, and these ideas are interrelated and mutually supportive'.⁴¹ Mason also stresses the significance of applying these ideas to participatory and institutional facets of sustainability governance.⁴² Mason summarises theoretical frameworks throughout the study to show how empowerment, accountability, and transparency can improve the legitimacy and efficacy of sustainability governance systems.⁴³ The author offers insights into the applicability of applying these concepts in actual situations by examining case studies and best practices from many contexts.

³⁹ Mason, M., 2020. Transparency, accountability and empowerment in sustainability governance: a conceptual review. *Journal of Environmental Policy & Planning*, 22(1), pp.98-111.

⁴⁰ Mason op cit note 39,

⁴¹ Mason op cit note 39.

⁴² Mason op cit note 39.

⁴³ Mason op cit note 39, p.100.

The examination of transparency review processes within SADC and COMESA can be closely aligned with Mason's concept of openness and accountability. Understanding these guiding principles can make analysing how these RTA's promote good governance and stakeholder participation easier. In line with Mason's emphasis on the interconnectedness of these ideas, this dissertation will examine how transparency mechanisms empower stakeholders and hold member states accountable. Although Mason's research on sustainability governance is extensive, it does not fully address the specific context of RTA's in Africa, particularly within SADC and COMESA. Having identified this gap in Mason's work, this thesis intends to translate his theoretical insights into practical applications relevant to these RTA's.

This research aims to understand further how these concepts could be effectively integrated into governance frameworks to promote sustainable development. By delivering a thorough theoretical assessment of the transparency review processes in COMESA and SADC, this research will close this gap and recommend how to improve RTA governance. Additionally, building on Mason's conceptual overview, this paper will apply the principles of accountability, transparency, and empowerment to the governance of COMESA and SADC, assess how these mechanisms for transparency reviews have been implemented and how they affect the effectiveness and legitimacy of regional trade agreements, and provide theoretical evidence through best practices and case studies. This approach is similar to Mason's, but specific to the context of African RTA's.

Similarly, Khandelwal examines 'the potential and difficulties of regional trade integration within COMESA and SADC'.⁴⁴ He further critically examines the mechanisms influencing regional economic cooperation in Africa.⁴⁵ The first part of Khandelwal's research lists 'the advantages of regional trade integration, such as improved market access, scale economies, and higher investment flows.'⁴⁶ COMESA and SADC seek to foster a favourable trade and economic development environment amongst member states by combining resources and harmonising trade policies.⁴⁷

Nevertheless, Khandelwal also identifies several obstacles to achieving these goals, including trade restrictions, institutional capacity limitations, and insufficient infrastructure.⁴⁸ Even with

⁴⁴ Khandelwal, P., 2004. COMESA and SADC: Prospects and challenges for regional trade integration, p. (1-43).

⁴⁵ Khandelwal, op cit note 44, p5.

⁴⁶ Khandelwal, op cit note 44, p.7-10.

⁴⁷ Khandelwal op cit note 44.

⁴⁸ Khandelwal op cit note44.

these efforts, research gaps exist, especially regarding how regional trade agreements in SADC and COMESA are implemented and enforced. There is also a need for more focused research on the role and effectiveness of transparency mechanisms in overcoming these challenges.

As such, this research will build on Khandelwal's identification of obstacles by analysing how transparency review mechanisms can address these barriers. For example, transparency mechanisms can help mitigate trade restrictions and enhance institutional capacities by promoting accountability and clear communication. Furthermore, this dissertation will delve deeper into the specific transparency review mechanisms that facilitate implementing and enforcing RTA's within SADC and COMESA.

Qureshi critically analyses the Trade Policy Review Mechanism (TPRM) established by the General Agreement on Tariffs and Trade (GATT)',⁴⁹ outlining its goals and characteristics. The author first gives background information on creating the TPRM inside the GATT framework, emphasising its main goals and characteristics. Qureshi talks about how

‘The TPRM, instituting a methodical and regular evaluation of member nations' trade policies, marks a substantial shift from conventional GATT procedures’.⁵⁰

He highlights the tension between the TPRM's objective to promote transparency and its potential use for coercion and compliance. The TPRM, according to the author,

‘Has the potential to be used as a weapon to put pressure on nations to adopt preferred trade policies, even if its primary goal is to promote more transparency and information sharing among member nations’.⁵¹

Qureshi examines how the TPRM operates and what it means for global trade regulation theories. The author examines how the TPRM has changed over time, notably in participation, processes, and scope, and evaluates how well it has worked to accomplish its goals.⁵²

It is necessary to analyse how regional transparency systems differ from or complement global processes and whether they encounter comparable problems with possible coercion and enforcement. Compared to the well-researched TPRM, the unique dynamics and consequences of transparency review mechanisms inside regional trade agreements must be better

⁴⁹ Qureshi, A.H., 1990. New GATT Trade Policy Review Mechanism: An Exercise in Transparency or Enforcement, *The J. World Trade*, 24, p.147.

⁵⁰ Qureshi op cit note 49.

⁵¹ Qureshi op cit note 49.

⁵² Ibid.

understood. To avoid the coercion issues raised by Qureshi and ensure that transparency systems within SADC and COMESA create true transparency and accountability, more research is required.

This dissertation intends to expand upon Qureshi's critical analysis by investigating how SADC and COMESA transparency review mechanisms foster accountability and transparency, as well as whether or not they encounter the same difficulties with coercion and enforcement as other global TPRM—analysing the mechanisms' progress and effects on member states while assessing their performance in reaching their objectives. Providing data and valuable suggestions to improve transparency measures in regional trade agreements, ensuring they comply with good governance principles without imposing pressure.

Ghosh A explores 'the experiences and involvement of developing nations in the WTO TPRM'.⁵³ A crucial part of the WTO's transparency framework, the TPRM seeks to improve knowledge of member nations' trade policies and practices.⁵⁴ A summary of the TPRM's goals, processes, and frequency of reviews is given at the outset of the article. Ghosh emphasises the importance of the TPRM for 'fostering accountability and transparency in international trade interactions by placing it within the larger framework of WTO agreements and protocols'.⁵⁵

Ghosh examines developing nations' uneven involvement and representation in the TPRM process. The author examines the challenges faced by developing nations in preparing for and participating in TPRM evaluations, including capacity issues and a need for more technical and human resources. Ghosh also critically assesses

'How well the Transparency and Partnership Mechanism (TPRM) promotes transparency, facilitates capacity-building, and attends to developing nations' particular concerns and priorities'.⁵⁶

The author evaluates the influence of the TPRM on developing nations' trade policy development and execution by using case studies and theoretical data to highlight their experiences within the framework.

⁵³ Ghosh, A., 2010. Developing countries in the WTO trade policy review mechanism. *World Trade Review*, 9(3), pp.419-455.

⁵⁴ Ghosh op cit note 53.

⁵⁵ Ghosh op cit note 53.

⁵⁶ Ibid.

SADC and COMESA's transparency review processes aim to increase accountability and openness in regional trade. Ghosh's examination of the obstacles that developing countries face offers insightful information about the possible problems that members of SADC and COMESA may face. This research is shaped by Ghosh's focus on enhancing capacity and resource allocation to assist SADC and COMESA member states in transparency review procedures. More studies are necessary to fully comprehend the unique effects of transparency mechanisms on trade policy development within SADC and COMESA to improve their efficacy and encourage member-state participation. This research will fill this gap by examining how SADC and COMESA address the specific challenges of their member states, particularly regarding capacity building and resource allocation for effective participation in transparency mechanisms.

Focusing on the TPRM within the context of the WTO, Ghosh emphasises the necessity for additional research on mechanisms akin to these found in regional trade agreements such as COMESA and SADC. Ghosh highlights developing nations' experiences within the TPRM framework through case studies and theoretical data and assesses the TPRM's effectiveness in addressing the concerns of developing countries by fostering transparency and facilitating capacity development.

This dissertation will also evaluate the effectiveness of the transparency review procedures in SADC and COMESA. This paper evaluates the impact of transparency mechanisms on trade policy development and execution within regional agreements by utilising Ghosh's insights. Specifically, it will examine member states' challenges in participating in these mechanisms. To this end, a thorough analysis of the transparency review mechanisms within SADC and COMESA will be provided, focusing on their ability to promote transparency and accountability.

1.5. Objectives of the Study and Research Questions

The objectives and research questions of the study are as follows:

1. To define transparency in multilateral trade by examining how it is conceptualised and implemented under GATT and the WTO.
2. To evaluate the integration of transparency mechanisms within the African regional trade framework, with a focus on Agenda 2063 and the SADC development plan.

3. To compare the application and impact of transparency mechanisms across African regional trade agreements, specifically COMESA and the SADC.
4. To develop actionable recommendations for enhancing the effectiveness of transparency mechanisms in African regional trade agreements.

Thus, the thesis seeks to analyze the following research questions:

1. How is transparency defined within the multilateral trade framework, and what are the key mechanisms for its implementation and development under GATT and the WTO?
2. To what extent are transparency mechanisms integrated into the African regional trade framework, particularly concerning Agenda 2063 and the SADC development plan?
3. How have transparency principles and mechanisms been applied in COMESA and the SADC, and what are the comparative effects across these regions?
4. Based on the study's findings, what actionable recommendations can be made to enhance the effectiveness of transparency mechanisms in African regional trade agreements?

1.6. Chapter outline

Chapter 1: Introduction

Chapter one introduces the study of transparency mechanisms in regional trade agreements, particularly focusing on the SADC and COMESA. This chapter outlines the research objectives and questions, providing a foundation for analyzing how transparency mechanisms are defined and implemented in these regional agreements.

Chapter 2: Transparency Mechanisms within the Multilateral Trading System (Institutional and Legal Framework)

Chapter 2 delves into transparency mechanisms within the multilateral trading system by focusing on the institutional and legal frameworks established under GATT and the WTO. It addresses the first research question by defining transparency within the context of these global trade frameworks and examining the key mechanisms for its implementation and development.

Chapter 3: Transparency Mechanisms in SADC and COMESA

Chapter 3 transitions to an in-depth examination of transparency mechanisms within the SADC and COMESA. It aligns with the second research objective by evaluating the impact of these mechanisms on governance and stakeholder engagement within these regional trade agreements.

Chapter 4: Comparative Analysis with Global Transparency Systems

Chapter 4 provides a detailed comparative analysis of transparency mechanisms in the SADC and COMESA in relation to global systems, with a particular focus on the WTO TPRM.

Chapter 5: Conclusion and Recommendations

Chapter 5 concludes the thesis by synthesizing the findings from the preceding chapters and offering actionable recommendations to enhance the transparency and effectiveness of RTA's in Africa. This chapter addresses the fourth research question by developing practical recommendations derived from the study's theoretical insights and best practices. It reflects on the effectiveness of transparency mechanisms in SADC and COMESA, evaluating their impact on governance and stakeholder engagement as discussed in earlier chapters.

1.7 Conclusion

In conclusion, transparency policy review mechanisms are essential for promoting accountability, fairness, and predictability in international trade. By fostering transparency, facilitating peer review, and promoting dialogue among member countries, these mechanisms contribute to the stability and integrity of the global trading system. As trade continues to play a crucial role in driving economic growth and development, ensuring the effectiveness of transparency policy review mechanisms remains paramount in sustaining a rules-based and inclusive international trading environment.⁵⁷

⁵⁷ Hsieh, P.L., 2016. Reassessing the trade-development nexus in international economic law: The paradigm shift in Asia-Pacific regionalism. *Nw. J. Int'l L. & Bus.*, 37, p.321.

CHAPTER 2

The Evolution of Transparency Mechanisms in Multilateral Trade: A Critical Analysis of GATT and the WTO

2.1. Introduction

Transparency has become a cornerstone of effective governance, especially in complex international systems such as trade.⁵⁸ The notion of transparency in the multilateral trade framework, encompassing the General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO), is foundational for ensuring that trade rules are clear, accessible, and predictable.⁵⁹ However, despite the established norms and mechanisms intended to promote transparency, both the GATT and the WTO have faced criticism regarding the effectiveness of their implementation of transparency. This dissertation examines transparency within the multilateral trade framework, focusing on its implementation under the GATT and the WTO. Initially established in 1947, GATT aimed to reduce trade barriers and foster economic recovery.⁶⁰

In 1995, the WTO replaced the GATT, significantly broadening the scope of international trade regulation.⁶¹ While GATT primarily addressed trade in goods, the WTO expanded its framework to include services through the General Agreement on Trade in Services (GATS) and intellectual property protection via the Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁶² Moreover, the WTO introduced key agreements such as the Sanitary and Phytosanitary Measures (SPS) Agreement and the Technical Barriers to Trade (TBT) Agreement, which set standards for health and safety and product regulations.⁶³ The SPS

⁵⁸ Wang, H. and Rosenau, J.N., 2001. Transparency International and corruption are issues of global governance. *Global Governance*, 7(1), pp.25-49.

⁵⁹ Ala'i, P. and Beshkardana, K., 2021. The limits of transparency: China, the United States and the World Trade Organization. *Cultures of Transparency*, pp.135-153.

⁶⁰ McKenzie, F., 2014. Free Trade and Freedom to Trade: The Development Challenge to GATT, 1947–1968. In *International Organizations and Development, 1945–1990* (pp. 150-170). London: Palgrave Macmillan UK.

⁶¹ Goldstein, J.L., Rivers, D. and Tomz, M., 2007. Institutions in International Relations: Understanding the Effects of the GATT and the WTO on World Trade. *International organization*, 61(1), pp.37-67.

⁶² Correa, C.M. and Yusuf, A.A. eds., 2016. *Intellectual property and international trade: The TRIPS agreement: The TRIPS agreement*. Kluwer Law International BV.

⁶³ Ibid.

Agreement ensures food safety and animal and plant health standards, while the TBT Agreement addresses technical regulations and standards that may affect trade.⁶⁴

Additionally, as mentioned in chapter 1 the WTO established a more effective and structures dispute and resolution system to resolve trade disputes between members. This transition is particularly relevant to the discussion on transparency, as the expanded scope of the WTO required more robust transparency mechanisms. The establishment of the Trade Policy Review Mechanism (TPRM) and the specific provisions under the SPS, TBT, and TRIPS agreements ensures that WTO member states comply with their commitments and provide clear, accessible information about their trade policies. Emphasizing transparency in these areas is essential for fostering trust and cooperation among member nations, ultimately contributing to a more stable and predictable trading environment.⁶⁵ The key focus of the chapter is to determine how transparency is defined within the multilateral trade framework and critically discuss the key mechanisms for its implementation and development under GATT and the WTO. In order to do so the chapter will firstly examine the transition from the GATT to the WTO, with a focus on key transparency mechanisms, including the TPRM. It further analyses the transparency of the WTO's decision-making processes, examining how these procedures are managed and perceived.

The chapter also evaluates how WTO's dispute Settlement Understanding implemented transparency mechanisms, assessing the extent of openness in judicial procedures and the implications of this openness. The chapter also critically reviews strategies to improve internal and external transparency, which will be discussed in detail later in the chapter.

2.2. Institutional and Legal Frameworks Established under GATT and WTO

I. Expansion of Scope from GATT to WTO

The GATT, signed in 1947 by 23 countries at various levels of development, was an international agreement designed to reduce barriers to international trade by eliminating or lowering quotas, tariffs, and subsidies, to foster economic recovery in the aftermath of World War II.⁶⁶ Over time, GATT was expanded and refined, culminating in the creation of the WTO, which officially commenced its operations on January 1, 1995, in accordance with the 1994

⁶⁴ Silverglade, B.A., 2000. The WTO agreement on sanitary and phytosanitary measures: weakening food safety regulations to facilitate trade?. *Food and Drug Law Journal*, 55(4), pp.517-524.

⁶⁵ McKenzie op cit note 60.

⁶⁶ Linden, A., 1992. The general agreement on tariffs and trade (GATT). In *National trade policies* (pp. 13-30). North-Holland.

Marrakesh Agreement, thereby replacing the GATT.⁶⁷ By that point, GATT had been ratified by 125 nations⁶⁸ and covered approximately 90% of global trade.⁶⁹

Under the WTO framework, the trade-in goods agreement is primarily represented by GATT 1994.⁷⁰ This agreement continues to address key aspects of trade in goods, including tariff reductions and the regulation of non-tariff barriers such as import quotas and licensing requirements.⁷¹ However, the WTO broadens the scope of trade governance by incorporating agreements on trade in services (GATS), intellectual property (TRIPS), and dispute resolution (Dispute Settlement Understanding).⁷² Further, the WTO enforces fundamental principles such as the Most-Favored-Nation (MFN) and National Treatment.⁷³

II. Most-Favored-Nation (MFN)

The MFN principle treatment is central to the GATT and WTO frameworks, emphasising non-discrimination among trading partners.⁷⁴ Under this principle, any advantage granted to one member nation must be extended to all, ensuring equitable treatment in international trade relations.⁷⁵ This principle is enshrined in GATT's foundational articles. It extends to the GATS and intellectual property rights TRIPS agreement, albeit with nuanced variations to accommodate specific trade sectors and circumstances.⁷⁶

Transparency plays a crucial role in the application of the MFN principle. First, the requirement for members to disclose their trade policies and agreements ensures that preferential treatment

⁶⁷ Linden, op cit note 5.

⁶⁸ Developed countries like the US, UK, and Japan benefited from expanded trade opportunities. Developing countries such as India, Brazil, and South Africa faced challenges like trade imbalances but gained market access. Least-developed countries (LDCs) like Bangladesh, Haiti, and Chad struggled with weak industrial capacity and limited benefits from trade liberalization.

⁶⁹ Kennedy, K.C., 1997. The GATT-WTO system at fifty. *Wis. Int'l LJ*, 16, p.421.

⁷⁰ Wolfrum, R., Stoll, P.T. and Hestermeyer, H. eds., 2010. *WTO-trade in Goods* (Vol. 5). Brill, 84.

⁷¹ Alazzam, F.A.F., 2021. The importance of non-tariff barriers in regulating international trade relations. *Public Administration and Law Review*, (1), pp.92-104.

⁷² Guzman, A.T., 2004. Global Governance and the WTO. *Harv. Int'l LJ*, 45, p.303.

⁷³ Cone III, S.M., 2004. The Promotion of Free-Trade Areas Viewed in Terms of Most-Favored-Nation Treatment and Imperial Preference. *Mich. J. Int'l L.*, 26, p.563.

⁷⁴ Srinivasan, T.N., 2005. Non-discrimination in GATT/WTO: was there anything to begin with, and is there anything left? *World Trade Review*, 4(1), pp.69-95.

⁷⁵ Hyder, K. and Lissitzyn, O.J., 1968. *Equality of treatment and trade discrimination in international law* (pp. 23-n). Martinus Nijhoff.

⁷⁶ Cottier, T., 2005. The agreement on trade-related aspects of intellectual property rights. *In The World Trade Organization: legal, economic and political analysis* (pp. 1041-1120). Boston, MA: Springer US.

cannot be secretly extended to a specific nation.⁷⁷ All WTO members must make their trade policies publicly known, which fosters a transparent trading environment.⁷⁸

Moreover, the WTO has established mechanisms such as Trade Policy Reviews and the WTO Notification System, which require countries to report trade policies, agreements, and practice changes.⁷⁹ These reports are reviewed regularly, allowing other members to scrutinize whether the MFN principle is being adhered to. This transparency helps reduce uncertainty in international trade by providing consistent information about the trade environment across member countries.

Transparency is further embedded in GATS and TRIPS.⁸⁰ For instance, under GATS, countries must file any MFN exemptions, clearly stating which sectors or circumstances allow deviation from the MFN principle.⁸¹ These exemptions must be published and justified, ensuring that such exceptions are transparent and known to all members. Similarly, in TRIPS, members must notify the WTO of intellectual property laws and policies, ensuring transparent treatment of intellectual property rights globally, even when flexibility is granted to developing countries.⁸² Transparency is fundamental to the MFN principle as it ensures that all members are fully informed of each other's trade practices, reducing the risk of preferential treatment and fostering trust in the multilateral trading system.

III. National treatment

National Treatment obligates that imported goods and locally produced goods be accorded equal treatment once the foreign goods have entered the domestic market.⁸³ This principle applies equally to services, trademarks, copyrights, and patents. Despite slight variations in implementation across GATT, GATS, and TRIPS agreements, the core objective remains to

⁷⁷ Vandenborre, I., 2015. The role of market transparency in assessing MFN clauses. *World Competition*, 38(3).

⁷⁸ Weiss, F. and Steiner, S., 2006. Transparency as an Element of Good Governance in the Practice of the EU and the WTO: Overview and Comparison. *Fordham Int'l LJ*, 30, p.1545.

⁷⁹ Ghosh, A., 2010. Developing countries in the WTO trade policy review mechanism. *World Trade Review*, 9(3), pp.419-455.

⁸⁰ Steiner, S. and Weiss, F., 2014. Transparency is an element of good governance in the practice of the WTO. In *International Law and Developing Countries* (pp. 262-287). Brill Nijhoff.

⁸¹ Richards, J., 1990. Trade Related Intellectual Property Issues (TRIPS). *J. Pat. & Trademark Off. Soc'y*, 72, p.906.

⁸² Correa, C.M., 2000. *Intellectual property rights, the WTO and developing countries: the TRIPS agreement and policy options*. Zed books.

⁸³ Mattoo, A., 1997. National Treatment in the GATS. *J. World Trade*, 31, p.107.

prevent discrimination against foreign products and services post-market entry, fostering fair competition domestically and globally.⁸⁴

For the implementation of National Treatment principle, transparency is key. To ensure non-discriminatory practices, countries are required to openly disclose their domestic regulations, taxes, and standards that apply to both foreign and domestic goods and services.⁸⁵ This openness prevents governments from secretly imposing unfavourable conditions on imported goods while favouring local products.⁸⁶

Under the WTO framework, members must notify changes in domestic laws and regulations that affect the treatment of foreign goods, services, and intellectual property.⁸⁷ This notification process allows other members to review and assess whether National Treatment is being respected.⁸⁸ For instance, if a country modifies its tax system or standards that could disproportionately affect foreign products, it must be transparent about these changes to prevent hidden forms of protectionism.⁸⁹

In the context of GATS and TRIPS, transparency is also crucial. Under GATS, member countries are required to provide details of their service regulations and any limitations that might affect Foreign Service providers, ensuring that domestic policies are communicated and non-discriminatory.⁹⁰ Similarly, TRIPS mandates the publication and transparency of intellectual property regulations, ensuring that foreign and domestic holders of patents, copyrights, and trademarks are treated equally.⁹¹

Transparency under the National Treatment principle ensures that countries cannot covertly disadvantage foreign goods, services, or intellectual property once they have entered the

⁸⁴ Palmer, T.G., 1990. Are patents and copyrights morally justified-the philosophy of property rights and ideal objects. *Harv. JL & Pub. Pol'y*, 13, p.817.

⁸⁵ Abuseridze, G. 2021. The Role of the WTO in the Development of International Trade: History, Problems and Perspectives of International Trade Law: Summary of the Doctoral Thesis: Sub-Sector – International Law. Rīga: Rīga Stradiņš University. https://doi.org/10.25143/prom-rsu_2021-15_dts

⁸⁶ Polanco, R.J. and Torrent, R., 2016. Analysis of the upcoming Modernisation of the Trade Pillar of the European Union-Mexico Global Agreement.

⁸⁷ Dinwoodie, G.B. and Dreyfuss, R.C., 2009. Designing a Global Intellectual Property System Responsive to Change: The WTO, WIPO, and Beyond. *Hous. L. Rev.*, 46, p.1187.

⁸⁸ Wilkinson, R., 2013. *The WTO: Crisis and the governance of global trade*. Routledge.

⁸⁹ Busch, M.L. and Reinhardt, E., 2003. The evolution of GATT/WTO dispute settlement. *Trade Policy Research*, 143, p.2003.

⁹⁰ Roseman, D., 2003. Domestic regulation and trade in telecommunications services: experience and prospects under the GATS. *Domestic regulation and service trade liberalization*, p.83.

⁹¹ Helfer, L.R., 2004. Regime shifting: the TRIPs agreement and new dynamics of international intellectual property lawmaking. *Yale J. Int'l L.*, 29, p.1.

domestic market. It requires open and regular reporting of domestic regulations, fostering a fair and predictable environment for international trade.

2.3. Transparency within the Context of Global Trade Frameworks

Transparency in international trade is a critical principle that mandates clarity, accessibility, and public availability of trade regulations and policies.⁹² This principle ensures that all stakeholders' governments, businesses, and the general public can access the information to understand and navigate trade rules effectively.⁹³ By enhancing the predictability and visibility of trade measures, transparency aims to reduce uncertainty and prevent arbitrary or discriminatory practices.⁹⁴

Historically, the principle of transparency in trade has been embedded in international agreements such as the GATT, specifically through Article X.⁹⁵ This article requires that all "trade-related laws, regulations, judicial decisions, and administrative rulings" be published promptly by each member state. Such requirements ensure that trade measures are accessible to all governments and traders, thereby providing a level playing field and promoting fair competition. This mandate extends to various aspects of trade, including customs duties, taxes, and import and export restrictions.⁹⁶

The WTO has built upon this foundational principle, expanding and enhancing the transparency provisions initially established under GATT. Within the WTO framework, transparency is manifested through several mechanisms improve the openness of the trading system.⁹⁷ This concept of transparency within the WTO can be understood through two principles though interrelated, dimensions: the transparency of its decision-making procedures and the openness of its dispute settlement mechanism, as detailed in the DSU, which will be discussed in detail below.⁹⁸

⁹² Collins-Williams, T. and Wolfe, R., 2010. Transparency as a trade policy tool: the WTO's cloudy windows. *World Trade Review*, 9(4), pp.551-581.

⁹³ Collins op cit note 92.

⁹⁴ Karttunen, M.B., 2016. *Transparency and dispute settlements: a study of the agreements on sanitary and phytosanitary measures and technical barriers to trade* (Doctoral dissertation, European University Institute).

⁹⁵ Ostry, S., 2002. Article X and the Concept of Transparency in the GATT/WTO. In *China and the Long March to Global Trade* (pp. 139-224). Routledge.

⁹⁶ Glick, L.A., 2008. Guide to United States customs and trade laws.

⁹⁷ Collins op cit note 92.

⁹⁸ Mercurio, B., 2004. Improving dispute settlement in the World Trade Organization: the dispute settlement understanding review-making it work. *J. World Trade*, 38, p.795.

2.4. Transparency in the WTO Decision-making Processes

The transparency of the WTO's decision-making processes is vital for ensuring that the interactions among member states are open and accountable.⁹⁹ This aspect of transparency is essential for fostering trust among members and legitimising the organisation's decisions and policies. Similarly, the transparency of the WTO's dispute settlement system is crucial for maintaining the credibility and effectiveness of the process through which trade disputes are adjudicated and resolved.¹⁰⁰ The openness of this system underpins its legitimacy and fairness, ensuring that the resolution of disputes is conducted in a manner that is both transparent and equitable.¹⁰¹

These two dimensions of transparency, decision-making and dispute settlement reflect broader concerns about the WTO's accountability and inclusiveness. The ongoing focus on enhancing transparency in these areas underscores the need for greater openness and participation in the governance of international trade.¹⁰²

The legitimacy and effectiveness of the WTO are inherently linked to the transparency of its decision-making processes.¹⁰³ The efficiency of the organization as a whole may be jeopardized if the legislative process is seen as illegitimate or opaque.¹⁰⁴ As mentioned in the previous chapter the WTO has legal personality that grants explicit authority to develop and maintain relationships with other international entities.¹⁰⁵ According to Article III (5) of this agreement, the WTO is tasked with cooperating particularly with international organisations responsible for monetary and financial matters, thereby achieving coherence in global economic governance.¹⁰⁶ This "coherence mandate" has led to formal agreements with institutions such as the International Monetary Fund (IMF)¹⁰⁷ and the World Bank.¹⁰⁸

⁹⁹ Delimatsis, P., 2014. Transparency in the WTO's Decision-Making. *Leiden Journal of International Law*, 27(3), pp.701-726.

¹⁰⁰ Delimatsis op cit note 99.

¹⁰¹ Alter, K.J., 2003. Resolving or exacerbating disputes? The WTO's new dispute resolution system. *International Affairs*, 79(4), pp.783-800.

¹⁰² Delimatsis op cit note 99.

¹⁰³ Delimatsis op cit note 99.

¹⁰⁴ Luo, Y., 2005. An organisational perspective of corruption1. *Management and Organization Review*, 1(1), pp.119-154.

¹⁰⁵ Lamy, P., 2006. The Place of the WTO and its Law in the International Legal Order. *The European Journal of International Law*, 17(5), pp.969-984.

¹⁰⁶ Auboin, M., 2007. *Fulfilling the Marrakesh mandate on coherence: ten years of cooperation between the WTO, IMF and World Bank (No. 13)*. WTO Discussion Paper.

¹⁰⁷ IMF-WTO Cooperation Agreement (1996), World Bank-WTO Cooperation Agreement (1997), Integrated Framework for Trade-Related Technical Assistance to Least Developed Countries (1997).

¹⁰⁸ Auboin op cit note 106.

In addition to engaging with international organisations, the WTO agreement authorises the organisation to consult and cooperate with non-state actors, including non-governmental organisations (NGOs).¹⁰⁹ The General Council adopted guidelines in 1996 on relations with NGOs, recognising their role in increasing public awareness of WTO activities.¹¹⁰ NGOs occasionally file amicus curiae papers in WTO dispute settlements and have over time exerted considerable influence in specific sectors, such as the debates on fisheries subsidies.¹¹¹

The WTO's supreme organ, the Ministerial Conference, is responsible for making decisions on all WTO agreement matters.¹¹² Traditionally, the Ministerial Conference meets at least once every two years.¹¹³ However, following the 2005 Hong Kong Conference, members have refrained from organising ministerial meetings due to stalemates in negotiations and divergent positions.¹¹⁴ Divergent views exist between developed and developing nations.¹¹⁵ Developed countries support transparency because they argue it fosters assurance and accountability, better informs stakeholders, and encourages adherence to WTO agreements. Further developed countries frequently have more opportunities to influence discussions, thereby further solidifying power disparities favourably skewing the results. Developing nations, on the other hand, are concerned that greater transparency would subject them to unfair pressure from influential parties. They contend that concentrating on transparency at the expense of substantive discussions can weaken their negotiating position and undermine their aspirations for progress. The Conference reconvened in 2009 in Geneva during a severe financial crisis, yet it failed to adopt a declaration, highlighting the ongoing divisions among members.¹¹⁶

The Ministerial Conference decides on a pre-established agenda prepared by the General Council and regular meetings of heads of delegations.¹¹⁷ Publicly available and informal papers are frequently used in these preparations; however, not all documents are available to the public

¹⁰⁹ Van den Bossche, P., 2008. NGO involvement in the WTO: A comparative perspective. *Journal of International Economic Law*, 11(4), pp.717-749.

¹¹⁰ Van den Bossche op cit note 109.

¹¹¹ Hernández-López, E., 2001. Recent trends and perspectives for non-state actor participation in World Trade Organization disputes. *Journal of World Trade*, 35(3).

¹¹² Krajewski, M.M., 2001. Democratic legitimacy and constitutional perspectives of WTO law. *Journal of World Trade*, 35(1).

¹¹³ Ansong, A., 2012. The WTO decision-making process: Problems and Possible Solutions. *Available at SSRN 2180230*.

¹¹⁴ Fergusson, I.F., 2006. World trade organisation negotiations: the Doha development agenda. Congressional Research Service, the Library of Congress.

¹¹⁵ Lang, A. and Scott, J., 2009. The hidden world of WTO governance. *European Journal of International Law*, 20(3), pp.575-614.

¹¹⁶ Fergusson op cit note 114.

¹¹⁷ Ibid.

at the time of distribution.¹¹⁸ Members may restrict access to documents for up to ninety days and sometimes opt for informal meetings where minutes only reflect main positions without attributing them to specific members.¹¹⁹ Transparency and inclusion are significant challenges to the WTO Ministerial Conference preparation processes. Member state morale is weakened when certain records are restricted for up to ninety days, which disproportionately disadvantages developing nations that may already feel disadvantaged. Furthermore, informal meetings that record key positions without assigning recognition weaken accountability and give more powerful countries the freedom to control dialogues without being held accountable. The thesis puts forward that the WTO should increase transparency by providing prompt access to all relevant records and accurately representing the contributions of all member nations in order to promote a more equitable negotiation environment. This would increase the credibility of the WTO and make it easier to resolve issues pertaining to global trade challenges.

Similarly, the General Council, the WTO's daily decision-making body, ensures the organisation's smooth operation.¹²⁰ Its competencies often overlap with those of the Ministerial Conference. For instance, although the Ministerial Conference is theoretically responsible for granting waivers under Article IX (3) of the WTO agreement:

‘In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements’

The General Council frequently assumes this role.¹²¹ Similarly, while the Ministerial Conference is designated to approve WTO accessions, the General Council has occasionally taken on this responsibility.¹²² The WTO's General Council and Ministerial Conference overlap because prompt decision-making and operational efficiency are essential.¹²³ The Ministerial Conference meets less frequently than the General Council, which can respond to pressing matters like confirming accessions or granting exceptions under Article IX(3) more rapidly.¹²⁴

¹¹⁸ Menne-Haritz, A., 2005. The Historical Shift from Committee to Paper Based Decision Making. *Business Processes: An Archival Science Approach to Collaborative Decision Making, Records, and Knowledge Management*, pp.25-98.

¹¹⁹ Fergusson op cit note 114.

¹²⁰ Ehlermann, C.D. and Ehring, L., 2005. Decision-making in the World Trade Organization: is the consensus practice of the World Trade Organization adequate for making, revising and implementing rules on international trade? *Journal of International Economic Law*, 8(1), pp.51-75.

¹²¹ Ehlermann op cit note 120.

¹²² Ibid.

¹²³ Steger, D.P., 2009. The future of the WTO: the case for institutional reform. *Journal of International Economic Law*, 12(4), pp.803-833.

¹²⁴ Lewis, J., 1998. Is the ‘hard bargaining’ image of the Council misleading? The Committee of Permanent Representatives and the local elections directive. *JCMS: Journal of Common Market Studies*, 36(4), pp.479-504.

The complex nature of trade negotiations, where the General Council's exhaustive discussions enable well-informed decisions, provides greater credibility to this practicality.¹²⁵ In addition, the General Council generally assumes these responsibilities by historical precedent, particularly in circumstances where ministerial consensus is challenging. This adaptability allows the WTO to conduct operations as usual and satisfy member demands amidst shifting political circumstances.

Consensus is the predominant form of decision-making within the WTO.¹²⁶ The WTO agreement mandates the continuation of the GATT 1947 practice of consensus, which does not require unanimity but is achieved when no member formally objects to a decision.¹²⁷ In the absence of consensus, qualified majority voting procedures may apply, although consensus remains the informal rule.¹²⁸ This approach favours the lowest-common-denominator outcomes and discourages attempts to hijack decision-making processes. Historically, the GATT and WTO have relied on this consensus-based approach, exemplified by the ongoing Doha negotiations.¹²⁹ The informal rule governing decision-making in the WTO is consensus, while qualified majority voting processes may be used if consensus is not reached. This method prefers results supported by the most significant number of members rather than those reached by consensus. This is made clear by the WTO's "Rules of Procedure for the Ministerial Conference and the General Council," which permit voting when needed even though consensus is preferable.¹³⁰ One prominent instance is the Doha Development Round, in which lengthy discussions on agricultural subsidies caused member nations to become deeply divided. The failure to reach a unanimous consensus sparked conversations about different approaches to decision-making, and the final solutions were compromises rather than radical changes.

In practice, however, consensus often involves a "Green Room" process, where a like-minded minority among the members leads negotiations¹³¹ despite the WTO's one-country-one-vote

¹²⁵ Hoekman, B.M. and Mavroidis, P.C., 2021. Preventing the Bad from Getting Worse: The End of the World (Trade Organization) As We Know It? *European Journal of International Law*, 32(3), pp.743-770.

¹²⁶ Ehlermann op cit note 120.

¹²⁷ Steinberg, R.H., 2002. In the shadow of law or power? Consensus-based bargaining and outcomes in the GATT/WTO. *International organisation*, 56(2), pp.339-374.

¹²⁸ Steinberg op cit note 127.

¹²⁹ Kennedy, K.C., 2001. Why Multilateralism Matters in Resolving Trade-Environment Disputes. In *Widener L. Symp. J.* (Vol. 7, p. 31).

¹³⁰ Footer, M.E., 2006. V Subsidiary Rulemaking. In *An Institutional and Normative Analysis of the World Trade Organization* (pp. 271-326). Brill Nijhoff.

¹³¹ Mogomotsi, G.E.J., 2013. Exclusive greenroom meetings of the WTO: an examination of the equality Principle in the decision-making process of the multilateral trading system.

principle, which theoretically grants each member a veto right.¹³² According to Kaufmann, the agenda is frequently pre-determined through early meetings among countries deemed essential for reaching consensus at the plenary sessions.¹³³ The author also notes that the countries are typically powerful in terms of trade volume or represent positions likely to be supported by broader coalitions.¹³⁴

The Green Room process initially involved only major developed countries but has expanded to include a wider range of members, including key developing countries like Brazil, China, and India.¹³⁵ Often conducted informally, this process highlights the power dynamics within the WTO and reflects ongoing negotiations among influential members and coalitions, such as the Cairns Group,¹³⁶ and the G-20.¹³⁷ ¹³⁸ Including varied coalitions, like the G-20 and the Cairns Group, guarantees a broader range of interests are represented and improves the transparency of WTO decision-making by involving nations at varying stages of development. Because of its inclusion, developing nations are actively determining the negotiating agenda and can resist the dominance of major developed economies. These coalitions support a fair dialogue by taking a stand on important topics for their members. The participation of NGOs monitors the process, holds parties responsible, and encourages transparency, all of which lead to a more transparent and representative framework for negotiations.¹³⁹

2.5. Transparency in WTO Dispute Settlement

In light of the evolving challenges facing the multilateral trading system, the transparency of the WTO dispute settlement mechanism has become an area of significant scrutiny.¹⁴⁰ As the Doha Round negotiations have stalled and the WTO's role in developing international trade

¹³² Kaya, A., 2016. Designing the multilateral trading system: Voting equality at the international trade organisation. *World Trade Review*, 15(1), pp.25-49.

¹³³ Kaufmann, J., 1980. *United Nations: Decision Making*. Martinus Nijhoff Publishers.

¹³⁴ Kaufmann op cit note 133.

¹³⁵ Patel, M., 2007. *New faces in the green room: developing country coalitions and decision-making in the WTO* (No. 2007/33). GEG Working Paper.

¹³⁶ The Cairns Group is an interest group of 19 agricultural exporting countries, composed of Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand, Ukraine, Uruguay, and Vietnam.

¹³⁷ The Group of Twenty (G20) comprises 19 countries (Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Türkiye, United Kingdom and United States) and two regional bodies: the European Union and the African Union

¹³⁸ Deere Birkbeck, C. and Harbour, M., 2011. *Developing country coalitions in the WTO: Strategies for improving the influence of the WTO's weakest and poorest members* (No. 2011/63). GEG Working Paper.

¹³⁹ Dombrowski, K., 2010. Filling the gap? An analysis of non-governmental organisations responses to participation and representation deficits in global climate governance. *International environmental agreements: politics, law and economics*, 10, pp.397-416.

¹⁴⁰ Cottier, T., 1998. Dispute settlement in the World Trade Organization: characteristics and structural implications for the European Union. *Common Market Law Review*, 35(2).

law has intensified, calls for greater transparency within the dispute resolution process have gained prominence.¹⁴¹ The dimensions of transparency in the WTO's adjudicative processes will be examined, highlighting both improvements and persistent issues.

Firstly, the DSB¹⁴² is a cornerstone of the WTO, tasked with resolving trade disputes between member states.¹⁴³ Established under the WTO framework, the DSB ensures that trade conflicts are addressed based on the rules agreed upon by its members.¹⁴⁴ When a member state believes that another has violated WTO agreements, it can bring the issue before the DSB, which facilitates a structured process involving consultations, panel decisions, and, if necessary, appeals.¹⁴⁵ The Appellate Body, a key component of the DSB, reviews panel rulings to ensure consistency and provide final judgments on disputes.¹⁴⁶ This mechanism is crucial for upholding the rule of law in international trade, ensuring that disputes are resolved fairly and according to established principles.¹⁴⁷ The DSB also monitors the implementation of its rulings, requiring member states to comply within specified timeframes, thus maintaining the credibility of the dispute resolution process and contributing to a stable and predictable trading environment.¹⁴⁸

The WTO dispute settlement system, established by the DSU, operates under a framework that prioritises confidentiality and discretion.¹⁴⁹ It is a State-to-State mechanism characterised by a two-instance adjudicative process, which is available exclusively to WTO members. This dispute settlement system is available exclusively to its members because it resolves state-level trade concerns under legally binding agreements among sovereign states.¹⁵⁰ By ensuring that only parties who have agreed to uphold the WTO's obligations may exercise or defend their rights, this protects the integrity of the system and keeps outsiders from interfering.¹⁵¹ This

¹⁴¹ Jones, K., 2010. *The Doha blues: Institutional crisis and reform in the WTO*. Oxford University Press, USA.

¹⁴² WTO Agreement on Dispute Settlement Understanding (DSU), Article 2.

¹⁴³ Zimmermann, T.A., 2005. WTO dispute settlement at ten: evolution, experiences, and evaluation. *Aussenwirtschaft*, 60(1), pp.27-61.

¹⁴⁴ Zimmermann op cit note 143.

¹⁴⁵ WTO Agreement on Dispute Settlement Understanding (DSU), Article 2.

¹⁴⁶ Van den Bossche op cit note 109.

¹⁴⁷ Cameron, J. and Gray, K.R., 2001. Principles of international law in the WTO Dispute Settlement Body. *International & Comparative Law Quarterly*, 50(2), pp.248-298.

¹⁴⁸ World Trade Organization (WTO), 1994. *Understanding of Rules and Procedures Governing the Settlement of Disputes*. Article 21.3.

¹⁴⁹ Mercurio, B., 2004. Improving dispute settlement in the World Trade Organization: the dispute settlement understanding review-making it work. *J. World Trade*, 38, p.795.

¹⁵⁰ Article 3.2 of the DSU provides that the dispute settlement system of the WTO: "serves to preserve the rights and obligations of the Members under the covered agreements".

¹⁵¹ Mavroidis, P.C., 2022. *The WTO dispute settlement system: how, why and where?* Edward Elgar Publishing.

structure permits the judicial process to proceed automatically, even if the respondent party is opposed, and decisions are reached under the reverse consensus principle.¹⁵²

A key component of this system is the General Council, which oversees the administration of the dispute settlement process, including the approval of Panel and Appellate Body reports.¹⁵³ This introduces a significant political element into the judicial process. Panels are ad hoc bodies constituted for individual disputes, while appeals are handled by a standing Appellate Body.¹⁵⁴ Although procedural transparency is generally maintained, with specific provisions in Appendix 2 of the DSU addressing aspects such as the selection of experts, several challenges remain.¹⁵⁵ For example, the delay in finalising panel reports, which often exceed the prescribed six-month deadline, and the complexity of the issues involved contribute to ongoing concerns about the transparency of the process.¹⁵⁶

Transparency mechanisms in the WTO dispute settlement procedure gained notable consideration in the late 1990s, particularly with the *United States – Import Prohibition of Certain Shrimp and Shrimp Products* case.¹⁵⁷ This case underscored the role of non-NGOs in the dispute settlement process. Initially, the panel declined to consider amicus curiae briefs submitted by environmental NGOs, citing that;

“While it had the authority to seek information under Article 13.1 of the DSU, it had not actively solicited such input”.¹⁵⁸

The panel indicated that parties could include such briefs in their submissions.¹⁵⁹

The Appellate Body subsequently overturned this decision, asserting that panels possess discretionary authority to accept or reject unsolicited amicus curiae briefs, regardless of whether they were specifically requested.¹⁶⁰ This interpretation was further clarified in the

¹⁵² Mavroidis op cit note 68.

¹⁵³ Petersmann, E.U., 1994. The dispute settlement system of the World Trade Organization and the evolution of the GATT dispute settlement system since 1948. *Common Market Law Review*, 31(6).

¹⁵⁴ Smith, J.M., 2003. WTO dispute settlement: the politics of procedure in Appellate Body rulings. *World Trade Review*, 2(1), pp.65-100.

¹⁵⁵ Wauters, J.M., 2021. The Role of the WTO Secretariat in WTO Disputes—Silent Witness or Ghost Expert? *Global Policy*, 12, pp.83-91.

¹⁵⁶ Kennedy, M., 2011. Why are WTO Panels taking longer? And what can be done about it? *Journal of World Trade*, 45(1).

¹⁵⁷ Perkins, N.L., 1999. World Trade Organization: United States-Import Prohibition of Certain Shrimp and Shrimp Products. *International Legal Materials*, 38(1), pp.118-175.

¹⁵⁸ United States — Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58.

¹⁵⁹ Op cit note 158.

¹⁶⁰ Op cit note 158.

United States – Lead and Bismuth II case, where the Appellate Body reaffirmed its authority under the DSU to consider amicus curiae briefs in appeals if deemed relevant and beneficial.¹⁶¹

In the *EC – Asbestos* case, the Appellate Body introduced a procedural mechanism to manage the potential influx of amicus curiae submissions.¹⁶² This procedure required entities wishing to submit a brief to seek permission by a specified deadline.¹⁶³ Despite this attempt to streamline the process, significant opposition emerged, particularly from developing countries.¹⁶⁴ It is argued that this procedure conferred rights to non-members that were not available to WTO Members and could disrupt the equilibrium of rights within the WTO framework.¹⁶⁵

Debates regarding transparency have persisted since 1997, focusing primarily on the regulation and acceptance of unsolicited amicus curiae briefs.¹⁶⁶ Some WTO Members advocate for a blanket prohibition on such briefs, arguing that it aligns with the intergovernmental nature of the dispute settlement system.¹⁶⁷ Conversely, others support regulatory measures to manage the timing, length, and admissibility of amicus curiae briefs, aiming to balance transparency and procedural integrity.¹⁶⁸ The tension between advancing transparency and preserving the intergovernmental nature of dispute resolution is brought to light by the discussion around unsolicited amicus curiae submissions in the WTO DSB.¹⁶⁹ While some members call for limited acceptance to improve inclusivity and legitimacy by reflecting multiple interests, others support prohibiting such briefs to protect confidentiality and avoid undue influence from non-state entities. Clear procedural rules on briefs' format, duration, and admissibility allow for a

¹⁶¹ Kim, E.Y. and Mavroidis, P.C., 2018. Dissenting opinions in the WTO appellate body: drivers of their issuance & implications for the institutional jurisprudence. *Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS, 51*.

¹⁶² WTO Panel, Report of the Panel: European Communities — Measures Affecting Asbestos and Asbestos-Containing Products, WTO Doc WT/DS135/R (18 September 2000) and WTO Appellate Body, Report of the Appellate Body: *European Communities — Measures Affecting Asbestos and Asbestos-Containing Products*, WTO Doc WT/DS135/AB/R (12 March 2001)

¹⁶³ Chazournes, L.B.D. and Mbengue, M.M., 2003. The Amici Curiae and the WTO dispute settlement system: The doors are open. *Law & Prac. Int'l Cts. & Tribunals*, 2, p.205.

¹⁶⁴ Chazournes op cit note 163.

¹⁶⁵ Chazournes op cit note 163.

¹⁶⁶ Puig, G.V. and Al-Haddab, B., 2011. The Transparency Deficit of Dispute Settlement in the World Trade Organization. *Manchester J. Int'l Econ. L.*, 8, p.2.

¹⁶⁷ Marsden, S., 2006. Dispute Resolution at the World Trade Organization and the Action and Influence of Transnational Advocacy Actors. P.9.

¹⁶⁸ Shah, A.H., Adnan, S.M. and Raza, M., Role of Amicus Curiae in Balancing Public Interest and Investor Rights in ICSID Arbitrations: An Empirical Analysis. *Journal of Law & Social Studies (JLSS)*, 6(2), pp.197-218.

¹⁶⁹ Mercurio, B., 2004. Improving dispute settlement in the World Trade Organization: the dispute settlement understanding review-making it work. *J. World Trade*, 38, p.795.

balanced approach that increases transparency without jeopardizing member autonomy or procedural integrity.

While the dispute settlement system has significantly enhanced transparency, considerable challenges remain. The tension between maintaining procedural integrity and incorporating diverse perspectives, including those from civil society, continues to be a critical issue.¹⁷⁰ Addressing these challenges through reforms that promote transparency and accountability is essential for preserving the system's legitimacy and effectiveness.¹⁷¹ Enhanced openness and inclusivity are necessary to uphold the principles of fairness and impartiality in WTO adjudication while balancing the interests of all stakeholders involved.¹⁷²

2.6. Key Mechanisms for Implementation and Development

I. The Trade Policy Review Mechanism (TPRM)

The TPRM plays an important part in the WTO as it is responsible for overseeing and evaluating member states trade policies and practices.¹⁷³ Established under the TPRM, which was introduced in 1989 and formally integrated into the WTO framework in 1995 because the WTO itself was established in 1995, succeeding the GATT, the TPRB conducts systematic and periodic reviews of each member's trade policies.¹⁷⁴

The TPRM focuses on enhancing transparency and accountability of WTO members' trade practices.¹⁷⁵ The review process involves a comprehensive peer review mechanism where trade policies of one member are scrutinised by other member states.¹⁷⁶ The comprehensive peer review under the TPRM entails an in-depth study of WTO members' trade policies by other members, aiming at promoting transparency and accountability.¹⁷⁷ The WTO Secretariat and the member being reviewed prepare reports first, and then the member must reply in total to a thorough questionnaire. Other participants in the review meeting ask questions and offer

¹⁷⁰ Edwards, M. ed., 2013. *The Oxford handbook of civil society*. Oxford University Press. P.114.

¹⁷¹ Lodge, M., 2004. Accountability and transparency in regulation: critiques, doctrines and instruments. *The politics of regulation*, pp.124-144.

¹⁷² Ahmed, M.S.A., Alsaed, B.K., Ajmal, M.Z. and Junxiang, Z., 2024. Neutrality Principles of WTO Dispute Settlement Mechanism: Legal and Moral Dimensions. *Valley International Journal Digital Library*, pp.455-472.

¹⁷³ Chaisse, J. and Matsushita, M., 2013. Maintaining the WTO's supremacy in the international trade order: a proposal to refine and revise the role of the trade policy review mechanism. *Journal of International Economic Law*, 16(1), pp.9-36.

¹⁷⁴ Chaisse op cit note 173.

¹⁷⁵ Qureshi, A.H., 2022. The Trade Policy Review Mechanism. In *The World Trade Organization* (pp. 108-125). Manchester University Press."

¹⁷⁶ Rosendorf, O, (2017). *The Trade Policy Review Mechanism: Shedding light on non-compliance?* [Master's dissertation, Univerzita Karlova].

¹⁷⁷ Qureshi op cit note 49.

comments, which promotes fruitful discussion.¹⁷⁸ The reviews are conducted during public sessions, and the outcomes are documented in detailed reports that are subsequently published on the WTO's official website promoting transparency. Reviews occur every three, five, or seven years, contingent on the economic importance of the member, encouraging transparency and compliance with WTO agreements while resolving possible trade disputes.¹⁷⁹ These reports provide in-depth insights into the trade practices of member states, assessing their alignment with WTO agreements and identifying areas requiring improvement. This peer review process not only fosters a culture of openness but also facilitates constructive dialogue among members, which is crucial for addressing any trade-related concerns that arise.¹⁸⁰

By ensuring that trade policies are transparent and accountable, the TPRM supports a more predictable and equitable global trading system, thereby reinforcing the integrity of the international trading framework.¹⁸¹

II. Notification Requirements

The WTO requires members to notify the organisation of various trade measures and policies, ensuring that these measures are transparent and subject to scrutiny.¹⁸² Notification requirements cover a range of issues, including changes in tariffs, subsidies, and trade remedies. By mandating that members inform the WTO of their trade policies and practices, these requirements contribute to the overall transparency of the system.¹⁸³

Notifications are reviewed by other members, and any concerns or questions can be raised during meetings of relevant WTO committees.¹⁸⁴ This process helps ensure that trade measures are consistent with WTO rules and allows members to address any issues related to transparency.¹⁸⁵ The review of China under the TPRM often addresses concerns from members like the United States and the European Union (EU) regarding its industrial policies, subsidies, and transparency, urging greater alignment with WTO rules, particularly on intellectual

¹⁷⁸ Lang, A. and Scott, J., 2009. The hidden world of WTO governance. *European Journal of International Law*, 20(3), pp.575-614.

¹⁷⁹ Scott, J., 2004. International trade and environmental governance: Relating rules (and standards) in the EU and the WTO. *European Journal of International Law*, 15(2), pp.307-354.

¹⁸⁰ Rosendorf op cit note 176.

¹⁸¹ Altamimi, A., 2018. The WTO's practice of legality ensures transparency for self-enforcing trade. *Journal of International Trade Law and Policy*, 17(3), pp.132-155.

¹⁸² Marceau, G. and Pedersen, P.N., 2018. Is the WTO open and transparent? In *International Economic Regulation* (pp. 443-488). Routledge.

¹⁸³ Wolfe, R., 2013. Letting the sun shine in at the WTO: How transparency brings the trading system to life. *World Trade Organization, Staff Working Paper ERSD-2013-03, March*.

¹⁸⁴ Wolfe op cit note 183.

¹⁸⁵ Collins-Williams & Wolfe, op cit note 92.

property and state influence.¹⁸⁶ The review of the EU frequently focuses on its regulatory framework and agricultural subsidies, with developing countries criticizing the Common Agricultural Policy (CAP) for trade distortion and limited market access.¹⁸⁷ Despite its role in fostering transparency, the TPRM's non-binding nature and unequal pressure on larger versus smaller economies reduce its effectiveness in ensuring compliance.¹⁸⁸ Nonetheless, it remains valuable for promoting dialogue and insights into trade practices.

III. Public Access to Documents and Meetings

The WTO strives to improve transparency by providing public access to its documents and meetings.¹⁸⁹ Key documents, including reports from the TPRM, panel and Appellate Body reports, and other official communications, are available on the WTO's website.¹⁹⁰ This practice allows stakeholders, including businesses, researchers, and the general public, to access information about the WTO's activities and decisions.¹⁹¹

Additionally, the WTO holds meetings and discussions that are often open to observers, providing an opportunity for external stakeholders to participate and contribute to the dialogue.¹⁹² This openness helps to foster greater understanding and trust in the organisation's processes.

IV. Enhanced Consultations and Stakeholder Engagement

In response to criticisms regarding limited participatory opportunities, the WTO has taken steps to engage with stakeholders more effectively.¹⁹³ Initiatives such as public forums, consultations, and outreach programs are designed to involve various stakeholders, including NGOs, academia, and the private sector, in discussions about trade policy and the functioning of the WTO.¹⁹⁴ These engagements aim to provide a platform for diverse perspectives and enhance the inclusivity of the WTO's decision-making processes.¹⁹⁵ By involving a broader

¹⁸⁶ Shaffer, G. and Gao, H., 2021. How China took on the United States and Europe at the WTO. *Emerging powers and the world trading system: The past and future of international economic law*, pp.174-221.

¹⁸⁷ Matthews, A., 2013. The European Union's common agricultural policy and developing countries: The struggle for coherence. In *Policy Coherence and EU Development Policy* (pp. 59-77). Routledge.

¹⁸⁸ Kende, M., 2018. *The trade policy review mechanism: a critical analysis*. Oxford University Press.

¹⁸⁹ Marceau, op cit note 182.

¹⁹⁰ Ala'i, P., 2023. The WTO as a forum for regulatory cooperation: Transparency and open plurilateral agreements. In *The Future of Trade* (pp. 252-275). Edward Elgar Publishing.

¹⁹¹ Ala'i op cit note 190.

¹⁹² Wolfe op cit note 183.

¹⁹³ Bonzon, Y., 2008. Institutionalising public participation in WTO decision making: Some conceptual hurdles and avenues. *Journal of International Economic Law*, 11(4), pp.751-777.

¹⁹⁴ Charnovitz, S., 2000. Opening the WTO to non-governmental interests. *Fordham Int'l LJ*, 24, p.173.

¹⁹⁵ Charnovitz op cit note 194.

range of voices, the WTO seeks to address concerns about transparency and participation. In response to criticisms regarding low participation, the WTO has implemented initiatives to increase inclusivity and stakeholder engagement. Notable initiatives include the WTO Public Forum, held annually, which offers a forum for diverse stakeholders to discuss trade-related issues, including academics, NGOs, and the private sector.¹⁹⁶ Consultations with civil society guarantee that NGOs and other stakeholders can offer feedback on trade negotiations, and outreach programs, like regional workshops and seminars, are intended to educate and involve more participants, including small businesses and academic institutions.¹⁹⁷

Although these initiatives point in the right direction toward increased involvement and transparency, their efficacy varies. The Public Forum's influence on decision-making is limited because, while encouraging discourse, it is not legally binding.¹⁹⁸ Consultations with civil society are helpful, but they frequently favour organizations with resources, primarily those from developed nations, which impacts inclusivity. Outreach initiatives help improve capability, but their reach is limited by financial constraints, which might impede meaningful participation, especially from impoverished countries. The WTO may need to strengthen its procedures to guarantee fair representation and for varied stakeholder input to more effectively impact decision-making to address participation and openness concerns better.

2.7. Conclusion

Transparency within the multilateral trade framework is crucial for ensuring that trade rules are clear, accessible, and predictable. The GATT framework included provisions aimed at enhancing transparency in international trade practices. The WTO has built upon these foundations with the use of the TPRM, notification requirements, and public access to documents and meetings.

While these mechanisms represent significant strides towards greater transparency, challenges and criticisms persist. The WTO must continue to address these concerns by enhancing its transparency practices and ensuring meaningful participation from a diverse range of stakeholders. By doing so, the WTO can strengthen its role in promoting an open and

¹⁹⁶ Hannah, E., Scott, J. and Wilkinson, R., 2017. Reforming WTO-civil society engagement. *World Trade Review*, 16(3), pp.427-448.

¹⁹⁷ Orbie, J., Martens, D., Oehri, M. and Van den Putte, L., 2018. Promoting sustainable development or legitimising free trade? Civil society mechanisms in EU trade agreements. In *Sustainable Development in Africa-EU relations* (pp. 96-116). Routledge.

¹⁹⁸ Steele, J., 2001. Participation and deliberation in environmental law: exploring a problem-solving approach. *Oxford Journal of Legal Studies*, 21(3), pp.415-442.

accountable international trading system. Having discussed the transparency mechanisms of the WTO, the next chapter provides an in-depth examination of transparency mechanisms within the SADC and COMESA.

CHAPTER 3

TRANSPARENCY MECHANISMS IN SADC AND COMESA

3.1. Introduction

Africa's journey toward economic integration relies heavily on REC's and RTA's, both of which are essential but distinct tools in this process.¹⁹⁹ REC's are regional groupings of African states that form the building blocks of the African Union (AU). The AU is a continental organization uniting Africa's 55 states²⁰⁰ to promote peace, economic development, and integration. It works through REC's like SADC and COMESA, which serve as building blocks for its goals. Guided by frameworks like Agenda 2063, the AU emphasizes transparency, governance, and harmonization of regional policies to drive sustainable development and integration across the continent.²⁰¹ SADC and COMESA were established before the AU and have developed independently, each with its roles and structures.²⁰² The primary purpose of REC's is to promote economic integration between member states at a regional level, ultimately facilitating broader African integration through the African Economic Community AEC, which was created under the Abuja Treaty (1991).²⁰³ This Treaty, operational since 1994, aims to create an African Common Market, using REC's as the pillars of this transformation.²⁰⁴

As such, the SADC and COMESA aim to foster regional trade integration, but they face several challenges. Issues like overlapping memberships, complex rules of origin, and varying levels of political commitment among member states hinder their progress.²⁰⁵ Despite these challenges, REC's remain critical to Africa's long-term economic integration and development goals.

¹⁹⁹ Oyejide, T.A., 2000. *Policies for regional integration in Africa*. African Development Bank, p30.

²⁰⁰ These include Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, and Chad. *Member states (2024) Member States | African Union*. Available at: https://au.int/en/member_states/countryprofiles2 (Accessed: 29 November 2024).

²⁰¹ Opong, R.F., 2009. Redefining the relations between the African Union and regional economic communities in Africa. *Monitoring Regional Integration in Southern Africa Yearbook*, 9, pp.5-25.

²⁰² Asgedom, M., 2019. The African Union (AU) and intergovernmental authority on development (IGAD) partnership in peace and security: achievements and challenges. *Journal of Citizenship and Morality*, 2(1), pp.80-100.

²⁰³ Njoroge, RJ, 2022. Integration of African Regional Communities into the African Economic Community (AEC) and The African Union (AU). *Research Associate-Worcester Polytechnic Institute*. p7.

²⁰⁴ Njoroge, op cite note 4.

²⁰⁵ Kimeu, U., 2020. *The challenges of regional integration: case study of EAC (2000-2019)* (Doctoral dissertation, University of Nairobi), p10.

In contrast, RTA's are treaties signed between two or more countries to encourage the free movement of goods and services across borders.²⁰⁶ RTA's provide internal rules that govern trade among member countries and external rules that regulate how these countries trade with non-members.²⁰⁷ By reducing or eliminating trade barriers such as tariffs and quotas, RTA's promote economic co-operation and integration.²⁰⁸

This chapter explores the role of transparency mechanisms in fostering regional integration within SADC and COMESA, aligning with the goals of Agenda 2063. It begins by focusing on specific RTA's and their distinct levels of economic integration, thereby providing context for applying transparency policies within these agreements.²⁰⁹ As per previous discussions, this chapter briefly defines transparency as more than information sharing, emphasizing stakeholder involvement in decision-making processes. The chapter then examines the institutional structures of SADC and COMESA, highlighting differences in how they implement transparency. Finally, the chapter connects these transparency mechanisms to Agenda 2063, positioning them as essential tools for addressing trade barriers and enhancing Africa's participation in multilateral trade. Despite ongoing challenges, Transparency is critical for driving Africa's economic development and achieving Agenda 2063 goals.

3.2. Regional Trade Agreements

RTA's are central to Africa's Agenda 2063, serving as frameworks for reducing trade barriers and fostering economic co-operation.²¹⁰ Transparency mechanisms within RTA's enhance trust and accountability, enabling SADC and COMESA to pursue effective integration. Understanding the types and functions of RTA's is essential for assessing how transparency initiatives can reinforce these structures, ultimately contributing to Africa's broader developmental aspirations.

²⁰⁶ Lynch, D.A., 2010. *Trade and globalization: An introduction to regional trade agreements*. Rowman & Littlefield Publishers, p.261.

²⁰⁷ Choi, W.M., 2005. Legal problems of making regional trade agreements with non-WTO-member states. *Journal of International Economic Law*, 8(4), pp.825-860.

²⁰⁸ Ratna, R.S. and Huang, J., 2016. Regional Comprehensive Economic Partnership (RCEP) FTA: Reducing Trade Cost through Removal of Non-Tariff Measures: Reducing Trade Cost through Removal of Non-Tariff Measures. *Korea and the World Economy*, 17(2), pp.213-242.

²⁰⁹ Preferential trade arrangements (PTA's), Free trade agreements (FTA's).

²¹⁰ Aniche, E.T., 2023. African continental free trade area and African Union Agenda 2063: The roads to Addis Ababa and Kigali. *Journal of Contemporary African Studies*, 41(4), pp.377-392.

Based on the degree of economic commitment between member nations, RTA's come in a variety of forms. Preferential trade arrangements (PTA's)²¹¹ involve the lowest level of commitment, where countries reduce but do not entirely remove trade barriers, and there are no standard external trade policies.²¹² Free trade agreements (FTA's)²¹³ eliminate trade barriers among members, but each country maintains its policies for trade with non-members.²¹⁴ In Customs Unions, member states remove internal trade barriers and adopt standard external tariffs and policies.²¹⁵ Common Markets go further by allowing the "free movement of resources, such as labour and capital", between member states while maintaining standard external trade policies.²¹⁶ Economic unions represent an even deeper level of integration, with member countries eliminating internal trade barriers, adopting shared external trade policies, allowing free movement of resources, and often harmonizing their economic policies, including a common currency.²¹⁷ The final stage is Full Integration, where member states fully unify their economies, functioning almost as a single entity.

As such, RTA's offer several benefits to member countries as they stimulate economic growth by expanding markets, creating jobs, and lowering unemployment rates. Investors are also more likely to invest in member countries due to investment protections that minimize political risks and RTA's increase trade volumes by creating favorable trading conditions and enhancing competition. This competition pushes businesses to improve the quality of their products, benefiting consumers with a wider variety of high-quality goods at better prices.

3.3. Defining Transparency in the Context of RTA's

In RTA's, transparency refers to the availability, openness, and accessibility of information regarding trade policies, regulations, guidelines, and decision-making processes.²¹⁸ This transparency ensures that critical trade information is timely, accurate, and accessible to various stakeholders, including governments, businesses, civil society, and the general

²¹¹ Involve one government providing trade preferences to another government without receiving anything in return. PTA's are unilateral agreements, meaning they are one-sided.

²¹² Limão, N., 2016. Preferential trade agreements. In *Handbook of commercial policy* (Vol. 1, pp. 279-367). North-Holland.

²¹³ Are treaties between two or more countries that reduce or eliminate trade barriers among the members, while each country maintains its own trade policies with non-members

²¹⁴ Ajibo, C.C., 2019. African continental free trade area agreement: the euphoria, pitfalls and prospects. *Journal of World Trade*, 53(5).

²¹⁵ Hanson, B.T., 1998. What happened to fortress Europe? External trade policy liberalization in the European Union. *International organization*, 52(1), pp.55-85.

²¹⁶ The SADC Protocol on Trade (1996), as amended in 2010.

²¹⁷ Collins, R.B., 1988. Economic Union as a Constitutional Value. *NYUL Rev.*, 63, p.43.

²¹⁸ Lejarraga, I., 2013. Multilateralising regionalism: Strengthening transparency disciplines in trade, p11.

public.²¹⁹ By sharing such information openly, transparency helps reduce uncertainty and allows for better decision-making and compliance with trade regulations.²²⁰

Transparency also involves actively engaging stakeholders in both the formulation and execution of trade policies.²²¹ This could include public hearings, consultations with industry representatives, and open communication about tariffs, standards, and the implementation of non-tariff measures.²²² Such efforts ensure that trade agreements are inclusive and reflect the interests of various groups, thereby promoting trust and co-operation between member states.²²³ Transparency also lessens the uncertainty around trade prohibitions, which facilitates international cooperation and commercial operations within regional frameworks.²²⁴

For instance, in SADC and COMESA, transparency mechanisms often include providing detailed and up-to-date information on tariff schedules and rules of origin, allowing member states and their businesses to make informed decisions.²²⁵ This ensures that regional trade flows smoothly without being hindered by unexpected regulatory barriers or opaque processes.²²⁶

Transparency in RTA's goes beyond sharing information—it also means ensuring that policy-making processes are inclusive.²²⁷ Transparency promotes policies that are more reflective of regional and national interests by incorporating feedback from civil society, businesses, and governments.²²⁸ This inclusivity fosters a sense of ownership and accountability, which are critical to successfully implementing RTA's and regional integration efforts.²²⁹ Transparency is vital for building confidence among member nations.²³⁰ Ensuring all stakeholders have equal

²¹⁹ Darbshire, H., 2010. *Proactive Transparency: The future of the right to information?* World Bank, p.3.

²²⁰ Darbshire, op cit note 219.

²²¹ Mejía Acosta, A., 2013. The impact and effectiveness of accountability and transparency initiatives: The governance of natural resources. *Development Policy Review*, 31, pp. s89-s105.

²²² Mejía Acosta, op cit note 221.

²²³ Prévost, D. and Alexovičová, I., 2019. Mind the compliance gap: managing trustworthy partnerships for sustainable development in the European Union's free trade agreements. *International journal of public law and policy*, 6(3), pp.236-269.

²²⁴ Gardner, T.A., Benzie, M., Börner, J., Dawkins, E., Fick, S., Garrett, R., Godar, J., Grimard, A., Lake, S., Larsen, R.K. and Mardas, N., 2019. Transparency and sustainability in global commodity supply chains. *World Development*, 121, pp.163-177.

²²⁵ Mukucha, E., 2013. *The Regulation and Impact of Non-Tariff Barriers to Trade in SADC Free Trade Area*. University of Pretoria (South Africa).

²²⁶ Mukucha, op cit note 225.

²²⁷ Lejarraga, op cit note 218.

²²⁸ Brown, L.D., 2008. *Creating credibility: Legitimacy and accountability for transnational civil society*. Kumarian Press.

²²⁹ Chakraborty, D. and Dey, O., 2024. RTA's and Trade Integration. In *Influence of WTO and Global Dynamics on Trade Flows: A Machine-Generated Literature Overview* (pp. 349-488). Singapore: Springer Nature Singapore.

²³⁰ Robinson, J., 2010. The role of transparency and confidence-building measures in advancing space security. *ESPI Report*, 28.

access to information and transparency levels the playing field reduces the risk of unfair advantages being exploited by more powerful countries or interest groups.²³¹ Furthermore, transparent practices help mitigate the risks associated with corruption and rent-seeking behavior, such as exploiting regulatory environments for personal or political gain without creating economic value.²³² When trade rules and policies are clear and accessible, it becomes more difficult for individuals or groups to manipulate the system for their benefit at the expense of broader economic growth.²³³

3.4. Transparency's Impact on SADC, COMESA, and African Integration

Overall, transparency in RTA's contributes to a more equitable distribution of the benefits of regional integration.²³⁴ Transparency promotes a more balanced and fair integration process by ensuring that all member nations, regardless of their size or level of development, have access to the information needed to participate meaningfully in trade agreements.²³⁵ This ultimately supports the broader goals of Agenda 2063, where inclusivity and sustainable economic development are central pillars.²³⁶ Building on examining the importance of regional economic integration mentioned above, transparency is critical in ensuring that RTA's within SADC and COMESA function effectively. As discussed, transparency mechanisms are essential for promoting accountability, openness, and trust among member states, which are factors crucial to achieving the broader goals of African economic integration and transformation.²³⁷

The SADC and COMESA are central to Africa's economic cooperation and growth strategy.²³⁸ These RECs work towards fostering deeper economic integration, and their efforts are strongly aligned with the principle of transparency. In this respect, transparency ensures that member states remain accountable for their commitments while providing clarity and

²³¹ Kolstad, I. and Wiig, A., 2009. Is transparency the key to reducing corruption in resource-rich countries? *World development*, 37(3), pp.521-532.

²³² Dincă, G., Dincă, M.S., Negri, C. and Bărbuță, M., 2021. From a public choice approach, corruption and rent-seeking behaviour affect economic wealth in the European Union. *Sustainability*, 13(12), p.6870.

²³³ Stiglitz, J.E., 2015. *Rewriting the rules of the American economy: An agenda for growth and shared prosperity*. WW Norton & Company, p263.

²³⁴ Lejárraga, op cit note 218.

²³⁵ Delimatsis op cit note 99.

²³⁶ Sparks, DL, 2016. The sustainable development goals and Agenda 2063: implications for economic integration in Africa. *Research in Applied Economics*, 8(4), pp.45-73.

²³⁷ Armstrong, E., 2005. Integrity, transparency and accountability in public administration: Recent trends, regional and international developments and emerging issues. *United Nations, Department of Economic and Social Affairs*, 1(10), pp.1-10.

²³⁸ Mulat, T., 1998. Multilateralism and Africa's regional economic communities. *J. World Trade*, 32, p.115.

predictability in economic policies.²³⁹ This is particularly important for maintaining cooperation across diverse political and economic systems.²⁴⁰

The SADC and COMESA have incorporated transparency mechanisms into their institutional frameworks.²⁴¹ These mechanisms require member states to share information on trade policies, regulations, and economic data.²⁴² This level of openness ensures that all parties are informed about each other's actions, minimizing misunderstandings and fostering smoother collaboration.²⁴³ Moreover, transparency mechanisms allow monitoring and evaluating compliance with trade agreements, ensuring that commitments are upheld and regional integration efforts stay on track.²⁴⁴

Importantly, transparency is a procedural tool and a core principle emphasized in Agenda 2063, the AU's strategic framework for Africa's socio-economic development.²⁴⁵ As highlighted above, Agenda 2063 aims to transform Africa into a global economic powerhouse, with equitable economic growth, sustainable development, and sound governance at its center.²⁴⁶ Transparency is critical to achieving these goals, as it helps create an environment where trust and mutual accountability between nations can flourish.

By implementing robust transparency measures, SADC and COMESA align themselves with the broader objectives of Agenda 2063.²⁴⁷ Transparent governance structures within these REC's not only promote trust but also help address specific challenges faced by African nations, such as unequal economic development and political instability.²⁴⁸ These transparency mechanisms ensure that all member states are informed and can actively participate in regional decision-making, fostering a sense of ownership and collaboration.²⁴⁹

²³⁹ Stasavage, D., 2003. Transparency, democratic accountability, and the economic consequences of monetary institutions. *American Journal of Political Science*, 47(3), pp.389-402.

²⁴⁰ Stasavage, op cit note 239.

²⁴¹ This will be elaborated in chapter 4.

²⁴² Khandelwal, P., 2004. COMESA and SADC: Prospects and challenges for regional trade integration.

²⁴³ Jerab, D., 2024. The Impact of Communication on Organisational Performance: A Comprehensive Analysis. Available at SSRN 4809789.

²⁴⁴ Lejarraga, I., 2014. Deep provisions in regional trade agreements: How multilateral-friendly? An overview of OECD findings.

²⁴⁵ Ackers, B. and Adebayo, A., 2022. Governance of African state-owned enterprises (SOEs)–towards agenda 2063. *Accounting Profession Journal (APAJI)*, 4(2), pp.125-145.

²⁴⁶ Ackers, op cit note 245.

²⁴⁷ Ackers, op cit note 245.

²⁴⁸ Meyer, N. and Auriacombe, C., 2019. Good urban governance and city resilience: An Afrocentric approach to sustainable development. *Sustainability*, 11(19), p.5514.

²⁴⁹ Tömmel, I., 1998. Transformation of governance: The European commission's strategy for creating a 'Europe of the regions. *Regional & Federal Studies*, 8(2), pp.52-80.

Transparency within SADC and COMESA facilitates regional integration by promoting openness, accountability, and co-operation.²⁵⁰ These mechanisms are relevant for achieving these specific REC's goals and critical to realizing Africa's broader aspirations as outlined in Agenda 2063.

3.5. Institutional Frameworks and Legal Instruments: A Comparative Overview of SADC and COMESA

To better understand the transparency mechanisms within SADC and COMESA, examining the distinct institutional frameworks underpinning these two regional economic communities is essential. Although both organizations aim to foster economic growth and regional integration, their structures and operational mechanisms vary, affecting how transparency is implemented within their respective trade agreements.

I. The Structure of SADC

The SADC operates through a well-defined institutional structure to promote economic co-operation and integration across its member states.²⁵¹ The primary organs of SADC include the Summit of Heads of State or Government, the Council of Ministers, and the Secretariat.²⁵² The Summit is the highest decision-making authority, composed of the heads of state or government from member countries.²⁵³ It sets broad policy directions and approves strategic initiatives to foster regional integration.²⁵⁴ The Council of Ministers oversees the implementation of Summit decisions, ensuring that member states adhere to their commitments within SADC.²⁵⁵ This body is also responsible for coordinating regional economic and social policies, which is critical in promoting transparency in trade practices.²⁵⁶

²⁵⁰ Nyirongo, R., 2017. *The role of law in deepening regional integration in Southern Africa-a comparative analysis of SADC and COMESA*, p.108. (Masters Dissertation, Faculty of Law ,Department of Commercial Law University of Cape Town.)

²⁵¹ Savenije, H.H. and Van der Zaag, P., 2000. Conceptual framework for the management of shared river basins; with special reference to the SADC and EU. *Water policy*, 2(1), pp.9-45.

²⁵² Meyns, P., 2002. The ongoing search for a security structure in the SADC Region: The re-establishment of the SADC Organ on Politics, Defence and Security. *Gamsberg Macmillan*, p.153.

²⁵³ Johansson, K.M. and Tallberg, J., 2010. Explaining chief executive empowerment: EU summitry and domestic institutional change. *West European Politics*, 33(2), pp.208-236.

²⁵⁴ Johansson, op cit note 253.

²⁵⁵ Saurombe, A., 2011. Southern African Development Community (SADC) trade legal instruments compliance with certain criteria of GATT Article XXIV1. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 14(4).

²⁵⁶ Saurombe, op cit note 255.

II. The Structure of COMESA

The Secretariat functions as the executive arm of SADC, managing the organization's day-to-day administration.²⁵⁷ It executes the policies and decisions made by the Summit and Council while facilitating the distribution of information on trade policies and agreements to member states and other stakeholders.²⁵⁸ Through this centralized role, the Secretariat ensures that information is accessible and timely, an essential aspect of SADC's transparency efforts.²⁵⁹

In comparison, COMESA is structured to support the economic integration of its member states, though its institutional arrangements differ slightly from those of SADC.²⁶⁰ The central bodies within COMESA include the Authority, the Council of Ministers, and the Secretariat, alongside specialized bodies such as the COMESA Court of Justice and technical committees that enforce trade agreements.²⁶¹ The authority, comprising heads of state and government, acts as COMESA's highest policy-making organ.²⁶² It provides strategic guidance on regional integration efforts and ensures that member states work towards common trade, development, and economic cooperation goals.²⁶³

The Council of Ministers in COMESA is responsible for implementing decisions made by the authority and monitoring the progress of regional integration efforts.²⁶⁴ This body coordinates economic policies and ensures that trade agreements are upheld by all member states, thus being central to the organization's transparency initiatives. Meanwhile, the Secretariat in COMESA manages the organization's day-to-day operations, similar to SADC, but with an added emphasis on legal enforcement through the Court of Justice.²⁶⁵ This court has the authority to interpret and enforce compliance with the region's trade agreements, ensuring that transparency is not merely an administrative function but also a legally enforceable principle.²⁶⁶

²⁵⁷ Bischoff, P.H., 2013. How much its own and to what end? SADC and the culture of security and regional organization in Southern Africa. In *Regional Organisations and Security* (pp. 59-77). Routledge.

²⁵⁸ Dür, A. and De Bièvre, D., 2007. Inclusion without influence? NGOs in European trade policy. *Journal of Public Policy*, 27(1), pp.79-101.

²⁵⁹ Dür, op cit note 258.

²⁶⁰ Khandelwal, P., 2004. COMESA and SADC: Prospects and challenges for regional trade integration.

²⁶¹ Yadeta, E., 2017. *The impact of the Court of Justice of Common Market for Eastern and Southern Africa (COMESA) on member states legal systems; lessons for Ethiopia*. (Masters Thesis, Haramaya University)

²⁶² Yadeta, op cit note 261.

²⁶³ Yadeta, op cit note 261.

²⁶⁴ Kalaba, M., Kirsten, J. and Sacolo, T., 2016. Non-tariff measures affecting agricultural trade in SADC. *Agrekon*, 55(4), pp.377-410.

²⁶⁵ Van der Vleuten, A. and Hulse, M., 2013. Governance transfer by the Southern African Development Community (SADC). *SFB-Governance Working Paper Series*, 48.

²⁶⁶ Hafner-Burton, E.M., 2005. Trading human rights: How preferential trade agreements influence government repression. *International Organization*, 59(3), pp.593-629.

The technical committees within COMESA provide expertise in trade facilitation, further enhancing transparency through clear dissemination of tariff information and non-tariff measures.²⁶⁷

Transparency in COMESA is anchored in the COMESA Treaty, which mandates member states to report on their trade policies and practices regularly.²⁶⁸ This ensures that both governments and businesses have access to current and accurate information, facilitating smoother cross-border trade and reducing the likelihood of trade disputes.²⁶⁹

III. Comparing Transparency Mechanisms in SADC and COMESA.

While both SADC and COMESA are committed to enhancing transparency in trade agreements, their approaches differ due to their unique institutional setups.²⁷⁰ SADC relies heavily on its Secretariat and Council of Ministers to distribute trade-related information and monitor compliance. COMESA incorporates a judicial element through its Court of Justice, adding a layer of accountability.²⁷¹

Both organizations emphasize stakeholder engagement and the accessibility of information, but COMESA's legal mechanisms provide more robust enforcement capabilities, ensuring that transparency remains a fundamental aspect of regional trade integration.²⁷² Conversely, SADC emphasizes the importance of collaborative decision-making and policy implementation among its member states, fostering a more consultative approach to transparency.²⁷³ While the structures of SADC and COMESA share common elements in their pursuit of regional integration, their distinct institutional frameworks shape how transparency mechanisms are

²⁶⁷ Mudzonga, E., 2009. Overview of the trade policy and non-tariff barriers in the COMESA-EAC-SADC regional economic communities. *FROM CAPE TO CAIRO*, p.32.

²⁶⁸ Article 13(e) requires reports and recommendations to be submitted to the Council on the implementation of the Finance and Monetary Co-operation Programme, while Article 14(e) allows submissions either on the initiative of the reporting body or at the Council's request. Similarly, Article 16(d) obliges Technical Committees, except for the Committee on Finance and Monetary Affairs, to submit their reports through established mechanisms. Under Article 17(3), the Secretariat is tasked with providing operational and progress reports on the activities of the Common Market to member states, ensuring continuous updates. Additionally, Article 139 establishes the Common Market Information System to facilitate the dissemination of operational and progress reports, recommendations, and updates on treaty implementation.

²⁶⁹ Qoto, L., 2018. *The COMESA-SADC-EAC free trade area: Rules of origin—an impediment to regional trade and economic integration* (Masters dissertation), p36.

²⁷⁰ Bienen, D., The Tripartite Free Trade Area and its Implications. *COMESA*, p.154.

²⁷¹ Nyambe, J.M., 2007. *Evaluating two international agreements for consistency with GATT/WTO rules: a methodological study with regard to EU/RSA trade, development and co-operation agreement and southern African development community agreements*. University of Pretoria (South Africa).

²⁷² Nyirongo, op cit note 250.

²⁷³ Nyathi, M., 2015. *Exploring Shared Governance as an Alternative Institutional Model for the Southern African Development Community*. University of Pretoria (South Africa).

developed and implemented.²⁷⁴ Understanding these differences is critical to appreciating how these REC's contribute to Africa's broader goals of economic integration and development.

3.6. Provisions for Transparency in SADC and COMESA.

Transparency is deeply embedded in the legal frameworks and operational guidelines of the SADC and COMESA. These regional organizations' founding treaties and protocols set out explicit obligations for member states, particularly regarding exchanging information on trade measures, regulatory changes, and dispute resolution processes.²⁷⁵ These provisions promote openness, consistency, and accountability, which are essential for fostering trust among member states and enhancing regional trade integration.

I. Transparency in the SADC Protocol on Trade.

Transparency within the SADC framework is principally guided by Article 4 of the SADC Protocol on Trade.²⁷⁶ According to Kamau, the provision mandates member states to provide comprehensive and accurate information on critical trade matters such as tariffs, non-tariff barriers, and customs regulations.²⁷⁷ This requirement is not merely procedural; it reflects a commitment to creating a stable and reliable trading environment, which is essential for economic integration and co-operation.

The Protocol's alignment with WTO customs valuation standards further emphasizes its commitment to transparency.²⁷⁸ By requiring SADC member states to adopt uniform customs valuation systems consistent with the WTO's standards, the Protocol ensures that valuation practices are transparent, equitable, and simplified.²⁷⁹ This harmonization minimizes discrepancies in customs procedures across member states, reducing the likelihood of misinterpretation or manipulation of trade information and enhancing the clarity and fairness of trade exchanges within the region.²⁸⁰

²⁷⁴ Nyirongo, op cit note 250.

²⁷⁵ Petersmann, E.U., 1994. The dispute settlement system of the World Trade Organization and the evolution of the GATT dispute settlement system since 1948. *Common Market Law Review*, 31(6).

²⁷⁶ The SADC Protocol on Trade (1996), as amended in 2010.

²⁷⁷ Kamau, NW, 2014. The regulation on trade barriers under SADC and EAC: assessing the effectiveness of their legal framework.

²⁷⁸ Widdowson, D., Blegen, B.C., Short, G., Lewis, G., Garcia-Godos, E. and Kashubsky, M., 2019. Single window in the context of the WTO Trade Facilitation Agreement. *World Customs Journal*, 13(1), pp.101-128.

²⁷⁹ Gourdon, J., Kniahin, D., De Melo, J. and Mimouni, M., 2021. Rules of Origin across African Regional Trading Agreements: A landscape with measures to address challenges at Harmonization. *Journal of African Trade*, 8(1), pp.96-108.

²⁸⁰ Escap, U., 2018. Facilitating compliance to food safety and quality for cross-border trade.

Transparency under the Protocol serves multiple purposes: it enhances predictability for businesses operating in multiple SADC countries, mitigates the risks associated with hidden trade barriers, and fosters a culture of openness conducive to investor confidence.²⁸¹ The availability of detailed trade-related information also plays a critical role in facilitating compliance and accountability, as it allows stakeholders to monitor and evaluate trade policies across member states effectively.²⁸² This openness strengthens regional cooperation and trust among member countries, laying the groundwork for addressing trade-related disputes based on shared and accessible information.²⁸³

Chapter 4 will expand on this discussion by examining the specific mechanisms and notification requirements that operationalize transparency within SADC. It will explore how these procedural elements uphold transparency commitments and evaluate their effectiveness in aligning SADC's practices with global standards, thereby shedding light on any gaps or challenges in the implementation process.

II. Transparency Provisions in COMESA.

Similarly, in COMESA, transparency is enshrined as a foundational principle to guide trade policy formulation and implementation, as emphasized in the provisions of its founding Treaty.²⁸⁴ Article 4 of the COMESA Treaty mandates member states to publish relevant trade measures and notify the Committee on Customs Valuation/Customs Co-operation and International Assistance and the public of any policy changes within 30 days.²⁸⁵ This requirement serves a dual purpose: it promotes accountability by making regulatory changes accessible to all stakeholders. It supports businesses by enabling them to anticipate and adapt to shifts in trade policy, which is crucial for stable investment planning.²⁸⁶

Article 5 of the Treaty extends this transparency imperative to the investment domain, reinforcing the need for consistency and openness in enforcing investment-related laws.²⁸⁷ By promoting transparency in these laws, COMESA aims to create an equitable environment

²⁸¹ Ofodile, U.E., 2016. Food law and policy in Africa: emerging legal framework, key issues, major gaps and challenges. *International Food Law and Policy*, pp.1011-1059.

²⁸² Prévost, D. and Alexovičová, I., 2019. Mind the compliance gap: managing trustworthy partnerships for sustainable development in the European Union's free trade agreements. *International journal of public law and policy*, 6(3), pp.236-269.

²⁸³ Prévost, op cit note 282.

²⁸⁴ Treaty establishing the Common Market for Eastern and Southern Africa; Short title: COMESA Treaty (1993).

²⁸⁵ Treaty establishing the Common Market for Eastern and Southern Africa; Short title: COMESA Treaty (1993).

²⁸⁶ Limenta, M., 2012. Open trade negotiations as opposed to secret trade negotiations: From transparency to public participation. *New Zealand Yearbook of International Law, The*, 10, pp.73-95.

²⁸⁷ Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA), 1994.

where investors from all member states operate on a level playing field.²⁸⁸ This minimizes risks related to arbitrary or unpredictable regulatory decisions, which can often discourage cross-border investments and trade.²⁸⁹ Thus, transparency in both trade and investment policies acts as a cornerstone of COMESA's approach to economic integration, fostering a climate of reliability and trust among member states and investors alike.²⁹⁰

In Chapter 4, we will delve deeper into the practical mechanisms and notification requirements within COMESA that operationalize these transparency commitments. This analysis will examine the effectiveness of these mechanisms in achieving policy coherence and alignment with broader global transparency standards.

III. Dispute Resolution and Transparency.

Article 9 of the COMESA Treaty strengthens transparency in dispute resolution procedures by mandating that arbitration documents be made publicly available unless they contain confidential information.²⁹¹ This provision underlines the importance of open proceedings, which enhance the legitimacy of dispute resolution mechanisms and promote fairness and accountability within the regional trading system.²⁹²

A crucial aspect of both SADC and COMESA is their commitment to transparency in dispute resolution mechanisms.²⁹³ Open and accessible dispute resolution processes are fundamental to ensuring that decisions, incentives, and reports are available for scrutiny by all stakeholders.²⁹⁴ Both organizations mandate that the initiation and development of disputes be communicated to all relevant parties and, where appropriate, to the general public.²⁹⁵ This aligns with broader efforts to maintain transparency and inclusivity, as many dispute resolution procedures allow for public hearings or the submission of external interventions such as amicus

²⁸⁸ Cheluget, K. and Wright, S., 2017. COMESA and the tripartite free trade area: Towards an African economic community? *South African Journal of International Affairs*, 24(4), pp.481-499.

²⁸⁹ Cheluget, op cit note 288.

²⁹⁰ Fanjanirina, J.K., 2023. The Effect of Cultural Differences on the Implementation of the African Continental Free Trade Area. *Open Journal of Business and Management*, 12(1), pp.51-78.

²⁹¹ Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA), 1994.

²⁹² Smith, S. and Martinez, J., 2009. An analytic framework for dispute systems design. *Harv. Negot. L. Rev.*, 14, p.123.

²⁹³ Siziba, C., 2016. Trade Dispute Settlement in the Tripartite Free Trade Area. *SECO/WTI Academic Co-operation Project Working Paper Series*, 2.

²⁹⁴ Sturm, S. and Gadlin, H., 2007. Conflict resolution and systemic change. *J. Disp. Resol.*, p.1.

²⁹⁵ Sturm, op cit note 294.

curiae briefs.²⁹⁶ Such practices ensure that interested parties, including civil society and businesses, can engage in and influence the dispute resolution process.²⁹⁷

IV. Digital Platforms for Enhanced Transparency.

To further promote transparency, SADC and COMESA have adopted digital platforms where information regarding disputes, rulings, and legal records is made accessible to the public.²⁹⁸ These online repositories serve as essential tools for enhancing accountability and providing regular updates on the status of ongoing disputes.²⁹⁹ By ensuring that all stakeholders can access up-to-date information about dispute resolution processes, SADC and COMESA help to foster trust and legitimacy in their legal frameworks.³⁰⁰ These open and transparent procedures are a critical component of the broader good governance agenda that underpins both organizations' efforts to promote regional integration. The legal provisions for transparency within SADC and COMESA are designed to ensure that trade policies, regulations, and dispute resolution mechanisms are implemented in an open and accessible manner.³⁰¹ By mandating public access to trade information via digital platforms and dispute proceedings, these regional organizations promote a culture of transparency vital for regional economic cooperation's success.³⁰² These provisions support the effective implementation of RTA's and help create a stable and predictable environment for businesses and governments.

3.7. Comparative Overview of Transparency Mechanisms in SADC and COMESA

This captures the introductory and foundational analysis of transparency within each REC, focusing on structural similarities and differences.

I. Similarities in Approaches to Transparency.

SADC and the COMESA rely heavily on institutional frameworks, as discussed earlier, to promote stakeholder involvement and disseminate trade-related information.³⁰³ Their legal

²⁹⁶ Mbengue, op cit note 163.

²⁹⁷ Mbengue, op cit note 163.

²⁹⁸ Hove, V.S., 2015. An analysis of how the online non-tariff barriers mechanism facilitates reporting, monitoring and elimination of NTBs in the COMESA, EAC and SADC Region, p.21. (Masters Dissertation, University of Cape Town).

²⁹⁹ Hove, op cit note 298.

³⁰⁰ Hove, op cit note 298.

³⁰¹ Hove, op cit note 298.

³⁰² Haftel, Y.Z., 2013. Commerce and institutions: Trade, scope, and the design of regional economic organizations. *The Review of International Organizations*, 8, pp.389-414.

³⁰³ Wolfe, R., 2018. Is World Trade Organization information good enough? How a systematic reflection by members on transparency could promote institutional learning. *How a Systematic Reflection by Members on Transparency Could Promote Institutional Learning (July 10, 2018)*.

frameworks mandate that member states exchange relevant trade data, inform stakeholders about regulatory changes, and ensure that the decision-making process remains open and accessible.³⁰⁴

Another common feature in both organizations is using digital platforms and information portals. These digital resources are designed to improve access to trade-related data, ensuring that businesses, governments, and civil society organizations can engage with the trade policies in real time.³⁰⁵ The emphasis on digital transparency tools helps build predictability in trade policies and fosters confidence among member states, encouraging compliance with regional trade agreements.³⁰⁶

II. Differences in Institutional Structures and Implementation Challenges.

Despite these commonalities, SADC and COMESA diverge significantly in their institutional structures and implementation of transparency mechanisms.³⁰⁷ One of the key differences lies in COMESA's more comprehensive institutional framework, which includes a Court of Justice.³⁰⁸ This judicial body plays a crucial role in ensuring transparency by providing legal oversight and transparently settling disputes.³⁰⁹ On the other hand, SADC lacks a similar judicial structure and relies more on intergovernmental cooperation, which may leave gaps in accountability and transparency enforcement. This distinction becomes particularly evident in cases like the *Campbell case*.³¹⁰ The absence of judicial oversight in SADC's structure was highlighted as a weakness.³¹¹ SADC's reliance on political negotiations and member-state consensus can sometimes hinder the enforcement of transparency commitments, especially when disputes arise.³¹²

³⁰⁴ Elsig, M., 2010. European Union trade policy after enlargement: larger crowds, shifting priorities and informal decision-making. *Journal of European Public Policy*, 17(6), pp.781-798.

³⁰⁵ Mishra, N., 2019. Building bridges: international trade law, internet governance, and the regulation of data flows. *Vand. J. Transnat'l L.*, 52, p.463.

³⁰⁶ Igbinenikaro, E. and Adewusi, O.A., 2024. Policy recommendations for integrating artificial intelligence into global trade agreements. *International Journal of Engineering Research Updates*, 6(01), pp.001-010.

³⁰⁷ Qoto, op cit note 22.

³⁰⁸ Yadeta, E., 2017. *The impact of the Court of Justice of Common Market for Eastern and Southern Africa (COMESA) on member states legal systems; lessons for Ethiopia*. (Masters Thesis, Haramaya University)

³⁰⁹ Fenster, M., 2005. The opacity of transparency. *Iowa L. Rev.*, 91, p.885.

³¹⁰ The *Campbell case* marked the SADC Tribunal's first human rights ruling, ordering Zimbabwe to compensate for confiscated farms. Zimbabwe's non-compliance led to the Tribunal's suspension, undermining SADC's integration goals. This dissertation examines the Tribunal and *Campbell case* to recommend ways to strengthen SADC's judicial framework.

³¹¹ *'Mike Campbell (Pvt) Ltd et al v The Republic of Zimbabwe: Zimbabwe's land reform programme held in breach of the SADC Treaty'* (2009) 53 *Journal of African Law*.

³¹² *'Mike Campbell (Pvt) Ltd et al. v. Republic of Zimbabwe: Zimbabwe's land reform programme held in breach of the SADC Treaty'* (2009) 53 *Journal of African Law*.

Moreover, the challenges COMESA and SADC face in implementing transparency differ in scope and nature. SADC's major hurdle lies in the unequal administrative capacity of its member states, which complicates the effective implementation of transparency measures.³¹³ In contrast, COMESA's challenges are more related to its diversity in languages, legal systems, and the sheer geographical span of its member states, making harmonizing transparency practices more complex.³¹⁴

III. Lessons for Strengthening Transparency in Regional Integration.

COMESA and SADC provide valuable lessons for enhancing transparency in future regional integration efforts.³¹⁵ One important takeaway is the need for capacity building across member states to ensure that all countries have the resources and expertise to collect, manage, and disseminate information efficiently.³¹⁶ Investments in digital infrastructure, technical support, and specialized training programs are essential for improving regional transparency.³¹⁷ These regional bodies can create a more consistent and transparent trade environment by ensuring that all member states are equipped with the proper tools and knowledge.³¹⁸

This research agrees with this view, particularly concerning the need for comprehensive capacity building across member states to address existing gaps in resources and technical expertise. It highlights that without sufficient investment in digital infrastructure and specialized training, the consistent implementation of transparency mechanisms in COMESA and SADC will remain challenging. Moreover, this research views fostering a culture of accountability as crucial for motivating member states to adhere to transparency obligations. Linking compliance to tangible incentives, such as regional funding or trade benefits, could serve as an effective tool to enhance transparency. Additionally, the research acknowledges the importance of aligning regional efforts with global best practices, ensuring that transparency mechanisms support regional integration and meet international standards. Another critical lesson is the importance of political commitment. Transparency requires not only technical

³¹³ Mukucha, E., 2013. *The Regulation and Impact of Non-Tariff Barriers to Trade in SADC Free Trade Area*. University of Pretoria (South Africa), p9.

³¹⁴ Murithi, T., 2008. Towards a union government for Africa: challenges and opportunities. *Institute for Security Studies Monographs*, 2008(140), p.189.

³¹⁵ Tanyanyiwa, V.I. and Hakuna, C., 2014. Challenges and opportunities for regional integration in Africa: The case of SADC. *IOSR Journal of Humanities and Social Science*, 19(12), pp.103-115.

³¹⁶ Boin, A., Busuioac, M. and Groenleer, M., 2014. Building European Union capacity to manage transboundary crises: Network or lead-agency model? *Regulation & governance*, 8(4), pp.418-436.

³¹⁷ Ndou, V., 2004. E-government for developing countries: Opportunities and challenges. *Electron. J. Inf. Syst. Dev. Ctries.*, 18(1), pp.1-24.

³¹⁸ Abbott, K.W. and Snidal, D., 2021. The governance triangle: Regulatory standards institutions and the shadow of the state. In *The spectrum of international institutions* (pp. 52-91). Routledge.

solutions but also the willingness of governments to engage openly and consistently in transparent practices.³¹⁹ SADC and COMESA must work towards cultivating a political culture where member states are encouraged and motivated to uphold transparency as a shared value.³²⁰ This can be achieved through regular dialogue, trust-building measures, and creating mechanisms that make transparency advantageous for all parties involved.³²¹ Mutual accountability is critical to maintaining long-term transparency and fostering a cooperative regional environment.³²²

While both SADC and COMESA have made significant strides in promoting transparency, they face distinct challenges due to differences in institutional frameworks and the specific nature of their regional structures.³²³ However, the experiences of both organizations offer valuable insights for improving transparency in regional integration, emphasizing the importance of capacity building and political commitment.³²⁴

3.8. Addressing Regional Challenges through Transparency Mechanisms

I. Transparency and Development Goals under Agenda 2063

The AU's Agenda 2063 aims to create

"a prosperous Africa based on inclusive growth and sustainable development," ensuring that the continent becomes "a strong, united, resilient, and influential global player and partner."³²⁵

Transparency is critical in achieving these goals, supporting economic development through strengthened regional trade and integration.³²⁶ Alongside accountability, inclusivity, and subsidiarity, transparency is foundational to realizing Africa's regional economic ambitions.³²⁷

³¹⁹ Fenster, M., 2005. The opacity of transparency. *Iowa L. Rev.*, 91, p.885.

³²⁰ Qoto, L., 2018. *The COMESA-SADC-EAC free trade area: Rules of origin—an impediment to regional trade and economic integration* (Masters dissertation), p36.

³²¹ Gausdal, A.H., 2018. Managing trust-building in public–private strategic alliances. *Managing Trust in Strategic Alliances*, p.273.

³²² Qoto, op cit note 320.

³²³ Nyirongo, op cit note 250.

³²⁴ Stiglitz, J.E., 2002. Participation and development: Perspectives from the comprehensive development paradigm. *Review of development economics*, 6(2), pp.163-182.

³²⁵ Muchunguzi, S., 2023. Participatory management of natural resources in Africa: an imperative policy direction for sustainable development. *Management of Environmental Quality: An International Journal*, 34(3), pp.704-720.

³²⁶ Armstrong, E., 2005. Integrity, transparency and accountability in public administration: Recent trends, regional and international developments and emerging issues. *United Nations, Department of Economic and Social Affairs*, 1(10), pp.1-10.

³²⁷ Muzekenyi, M., Nyika, F. and Hoque, M., 2022. Decentralization of Authority and its Implications for Inclusive Economic Development strategies in South Africa: A critical review. *Journal of Nation-Building and Policy Studies*, 6(3), p.47.

Agenda 2063 is a revived strategy for addressing the political, social, and economic challenges historically hindering Africa's progress.³²⁸ It seeks to overcome non-tariff barriers, restricted market access, and developmental obstacles that impede regional economic engagement.³²⁹ Transparency within RTA's is emphasized as a mechanism for fostering accountability, predictability, and stakeholder participation, key drivers of the economic growth envisioned in Agenda 2063.³³⁰

II. Challenges in Trade and Regional Transparency Solutions

African nations, particularly within SADC and COMESA, face significant obstacles in participating in multilateral trade due to underdevelopment, trade barriers, and high non-tariff measures.³³¹ Restricted market access exacerbates these challenges. Historically, the reliance on "one-size-fits-all" solutions from organizations like the WTO has failed to address the unique economic circumstances of African countries.³³²

Agenda 2063 provides an alternative by emphasizing regional cooperation and an African-led approach to development, considering the continent's unique socio-economic needs.³³³ Transparency mechanisms within trade agreements are vital for clarifying trade policies, reducing non-tariff barriers, and ensuring that member countries are well-informed, allowing for better alignment with national and regional development objectives.³³⁴

3.9. Agenda 2063 and the Right to Development

This section on Agenda 2063 and the Right to Development explores how the vision for Africa's future, as outlined in Agenda 2063, is deeply intertwined with the Right to Development. The relevance of this discussion to regional integration (RI) lies in the fact that transparent governance and accountable decision-making processes are vital for realizing the full potential of Agenda 2063 and the Right to Development. By ensuring transparency within

³²⁸ Gebrihet, H.G. and Eidsvik, E., 2024. African Democracy in the Context of Agenda 2063: Examining Progress and Challenges. *Social Sciences*, 13(8), p.429.

³²⁹ Keane, J., Kennan, J., Page, S. and Stevens, C., 2014. Dealing with Non-tariff Barriers in South Asia. *Regional Integration in South Asia*, p.119.

³³⁰ Kwesiga, A. and Aduda, L., Tax Co-operation in Curbing Illicit Financial Flows from Africa. *Right to Development and Illicit Financial Flows from Africa*, p.67.

³³¹ Mulat, T., 1998. Multilateralism and Africa's regional economic communities. *J. World Trade*, 32, p.115.

³³² Stewart, M., 2003. Global trajectories of tax reform: the discourse of tax reform in developing and transition countries. *Harv. Int'l LJ*, 44, p.139.

³³³ Froehlich, A., Siebrits, A., Froehlich, A. and Siebrits, A., 2019. Africa and the Space Arena. *Space Supporting Africa: Volume 1: A Primary Needs Approach and Africa's Emerging Space Middle Powers*, pp.1-99.

³³⁴ Weerakoon, D., Thennakoon, J. and Weeraratne, B., 2005. Multilateral agreement on trade facilitation-important but complex agenda for South Asia. *South Asian Positions in the WTO Doha Round-in Search of a True Development Agenda*, pp.249-296.

regional bodies like COMESA and SADC, this chapter aims to show how regional integration can support the broader human rights and economic objectives of Agenda 2063, fostering social cohesion, economic equity, and sustainable growth. The analysis highlights the challenges in realizing the right to development and calls for a more integrated, transparent approach to regional development policies to meet these aspirations.

According to Article 1 of the Right to Development Declaration, the right is inalienable. It belongs to "every human person and all peoples," establishing that development is an entitlement as much as it is a duty of states.³³⁵ Agenda 2063 envisions the right to development as multidimensional, embracing social, cultural, and political aspects alongside economic progress.³³⁶ This vision is reinforced by Article 22 of the African Charter on Human and Peoples' Rights,³³⁷ which asserts that every person has the right to economic, social, and cultural development, and states must fulfil this right.³³⁸ This broader, holistic approach defines development as a "cluster right," encompassing all civil, political, economic, social, and cultural rights.³³⁹ This right, which encompasses civil, political, economic, social, and cultural rights, underscores the need for a holistic approach to development that ensures inclusivity, equity, and participation for all African citizens. Agenda 2063 seeks to align these human rights with economic progress, recognizing that sustainable development can only be achieved when these dimensions are addressed.

I. Operationalizing the Right to Development.

This section is relevant to transparency and Regional Integration because it shows how REC's like SADC and COMESA can use transparent trade policies to foster inclusive growth and operationalize the Right to Development. By ensuring that development is equitable and accessible, REC's can contribute to regional integration efforts while upholding the principles of Agenda 2063. Transparent governance within REC's helps to create a fair and sustainable

³³⁵ The Declaration on the Right to Development is A/RES/41/128. The United Nations General Assembly adopted the Declaration on December 4, 1986.

³³⁶ Bassey, O.B., 2023. leadership and the success of African integration and development agenda: juxtaposing the African Continental Free Trade Area-AfCFTA and agenda 2063.

³³⁷ The African Charter on Human and Peoples' Rights, also known as the Banjul Charter, went into effect on October 21, 1986.

³³⁸ Odinkalu, A.C., 2001. Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights Under the African Charter on Human and Peoples' Rights. *Human Rights Quarterly*, 23(2), pp.327-369.

³³⁹ Stevens, C., 2019. Reviving the right to development within the multilateral trade framework affecting (African) countries to actualize Agenda 2063. *African Human Rights Law Journal*, 19(1), pp.470-493.

economic environment, reinforcing trust among member states and supporting the overarching goal of a self-reliant and prosperous Africa.

The African Charter and Agenda 2063 underscore that development should not be compartmentalized.³⁴⁰ Instead, it must be understood as encompassing all human rights, facilitated through collective participation and state commitment.³⁴¹ The framework encourages African states to uphold Article 22³⁴² by ensuring access to resources, reducing inequalities, and promoting inclusive growth within RECs such as SADC and COMESA.³⁴³ By establishing transparent and cohesive trade policies, RECs can effectively operationalize the right to development, fulfilling their duty to create a sustainable and equitable economic environment.³⁴⁴

Agenda 2063's commitment to development as a collective and universal right underscores the importance of treating it as a central tenet for achieving prosperity across Africa.³⁴⁵ Its holistic approach recognizes that transparent governance, regional cooperation, and equitable trade policies are essential for advancing development as an enforceable right, thereby contributing to a prosperous and self-reliant Africa envisioned by Agenda 2063.³⁴⁶

II. Overcoming Challenges to Transparency through Agenda 2063.

Despite the roadmap provided by Agenda 2063, significant barriers to transparency remain. Political resistance to disclosing sensitive information, differences in institutional capabilities among COMESA and SADC member states, and inadequate infrastructure challenge

³⁴⁰ Odusola, A., 2017. Achieving the Sustainable Development Goals in Africa in the context of complex global development co-operation. *8th Annual Ibadan Sustainable Development Summit, Ibadan, Nigeria*, pp.22-24.

³⁴¹ Ladan, M.T., 2018. Achieving sustainable development goals through effective domestic laws and policies on environment and climate change. *Envtl. Pol'y & L.*, 48, p.42.

³⁴² The African Charter on Human and Peoples' Rights, also known as the Banjul Charter, went into effect on October 21, 1986.

³⁴³ Ogutu, MO, 2024. Implementation and Enforcement of Sustainability Provisions in Regional Trade Agreements in Africa. *Environmental Security in Africa: Conflicts, Politics, and Development*, p.154.

³⁴⁴ Douma, W.T., 2017. The promotion of sustainable development through EU trade instruments. *European Business Law Review*, 28(2).

³⁴⁵ Douma, W.T., 2017. The promotion of sustainable development through EU trade instruments. *European Business Law Review*, 28(2).

³⁴⁶ Bassingthwaighe, J., 2022. *Towards achieving sustainable economic development through the African Continental Free Trade Area: a legal analysis* (Doctoral dissertation, North-West University (South Africa)).

transparency initiatives.³⁴⁷ The complexity of navigating regional and international commitments further complicates the implementation of transparent policies.³⁴⁸

Agenda 2063 addresses these challenges by focusing on accountability, reducing reliance on foreign aid, and enhancing capacity building within regional trade blocs.³⁴⁹ It stresses the need for "the right strategies to finance development" and reduce dependency on external assistance, promoting long-term economic independence.³⁵⁰ Strengthening institutional capacity within RTA's to implement transparency measures effectively is crucial for aligning these initiatives with broader developmental goals.³⁵¹ To fully actualize the transformative ambitions of Agenda 2063, transparency is critical across economic, social, and political spheres.³⁵² In the context of regional trade, transparency mechanisms in SADC and COMESA, offer essential pathways toward equitable and sustainable development by addressing disparities that African countries historically faced within the global trade regime.³⁵³ Transparency mitigates information asymmetry—often exploited by more economically powerful actors—and provides African countries with an empowering foundation for informed decision-making and negotiation.³⁵⁴

i. Promoting Equity through Transparency

Agenda 2063's focus on transparent practices within SADC and COMESA aims to dismantle structures that contribute to inequity.³⁵⁵ In trade negotiations, transparency mechanisms allow African countries to address issues of unequal bargaining power.³⁵⁶ This is critical, as historically, a lack of transparency has often disadvantaged African nations, contributing to

³⁴⁷ Byiers, B., Karkare, P., Golooba-Mutebi, F., Nkuba, B. and Balegamire, C., 2023. *Security through market integration? The political economy of the DRC's accession to the EAC*. Discussion paper. Maastricht: ECDPM 341 P.

³⁴⁸ Byiers, op cit note 347.

³⁴⁹ Sparks, op cit note 236.

³⁵⁰ Sparks, op cit note 236.

³⁵¹ ESCAP, U., 2023. Evaluation of the project on Capacity Building on Trade Facilitation and the Asia-Pacific Trade Agreement Promotion to Strengthen Intra-Regional Co-operation (Phase III).

³⁵² Ndizera, V. and Muzee, H., 2018. A critical review of Agenda 2063: Business as usual? *African Journal of Political Science and International Relations*, 12(8), pp.142-154.

³⁵³ Kuhlmann, K. and Agutu, A.L., 2019. The African Continental Free Trade Area: Toward a new legal model for trade and development. *Geo. J. Int'l L.*, 51, p.753.

³⁵⁴ Wilson, E. and Van Alstine, J., 2017. The Extractive Industries Transparency Initiative in Africa: Overcoming the resource curse and promoting sustainable development. In *Natural Resources and Sustainable Development* (pp. 50-74). Edward Elgar Publishing.

³⁵⁵ Sparks, op cit note 236.

³⁵⁶ Narlikar, A., 2006. Fairness in international trade negotiations: Developing countries in the GATT and WTO. *World Economy*, 29(8), pp.1005-1029.

economic inequities and limiting growth potential.³⁵⁷ By requiring member states to disclose trade policies, procedures, and commitments, transparency mechanisms reduce the potential for unilateral or inequitable adjustments by powerful actors, fostering a more balanced trade environment.³⁵⁸

ii. Enhancing Stakeholder Participation and Accountability

Transparency mechanisms within RTA's also promote stakeholder participation, a key component of Agenda 2063's people-centered development framework.³⁵⁹ When trade policies and negotiations are accessible, they empower a broader range of stakeholders, including civil society organizations, local businesses, and community leaders, to participate actively in decision-making.³⁶⁰ Increased stakeholder engagement holds member states accountable and ensures that trade policies reflect national and regional priorities, reinforcing the agenda's commitment to inclusive, sustainable development.³⁶¹

iii. Building Predictability and Trust in Regional Trade

Enhanced transparency improves trade predictability by standardizing information disclosure and establishing trust among trading partners.³⁶² By adopting harmonized reporting systems and predictable customs practices, SADC and COMESA align more closely with global standards such as those in the WTO's TPRM.³⁶³ Predictable and transparent trade policies build investor confidence, reduce administrative barriers, and encourage intra-African trade, which is crucial for the economic integration envisioned by Agenda 2063.³⁶⁴

³⁵⁷ Ndulu, B.J., 2007. *Challenges of African growth: Opportunities, constraints, and strategic directions*. World Bank Publications.

³⁵⁸ Mungiu-Pippidi, A., 2018. Fostering good governance through trade Agreements: An evidence-based review.

³⁵⁹ Makanga, F.I., 2021. *An Assessment of the Implementation of Free Movement of Persons in East Africa Community-a Case of Kenya* (Doctoral dissertation, University of Nairobi).

³⁶⁰ Brock, K. and McGee, R., 2004. Mapping trade policy: understanding the challenges of civil society participation.

³⁶¹ Van Zanten, J.A. and Van Tulder, R., 2018. Multinational enterprises and the Sustainable Development Goals: An institutional approach to corporate engagement. *Journal of International Business Policy*, 1(3), pp.208-233.

³⁶² Turnes, P.B. and Ernst, R., 2015. A framework for transparency in international trade. *Investigaciones Europeas de Dirección y Economía de la Empresa*, 21(1), pp.1-8.

³⁶³ Nkhoma, K., 2024. *Regional integration: The impact of cross-border co-operation and intergovernmental relations on micro-, small and medium enterprises in Southern Africa* (Doctoral dissertation, Stellenbosch University).

³⁶⁴ Ajewumi, O.E., Afolabi, J.A. and Joe-Akunne, I., 2024. Regional trade agreements and economic integration in Africa: assessing the impact of the African Continental Free Trade Area (AFCFTA).

iv. Promoting Knowledge Transfer and Capacity Building

Transparency mechanisms serve as educational tools, enabling African nations to adopt best practices from more established economies.³⁶⁵ RTA's facilitate knowledge sharing and capacity building among member states by integrating comprehensive disclosure requirements and monitoring systems.³⁶⁶ This approach not only elevates the trade capacity of less experienced members but also strengthens the collective bargaining power of African nations in multilateral trade settings.³⁶⁷

v. Empowering National and Regional Policy Making

Transparency further empowers policymakers by providing access to accurate and timely information. Agenda 2063 envisions African nations equipped with the autonomy to determine their developmental path; transparency in trade agreements provides the data necessary for informed, sovereign policy-making.³⁶⁸ This knowledge base helps member states identify trade opportunities, assess potential risks, and tailor policies to support national economic goals within a regional framework, enhancing sovereignty and collective development.³⁶⁹

vi. Aligning Transparency with Africa's Global Trade Aspirations

As African countries aim to assert a stronger voice in the global trade arena, Agenda 2063 recognizes transparency as a strategic tool to achieve this ambition.³⁷⁰ By fostering transparency within SADC and COMESA, the agenda strengthens Africa's ability to navigate and influence the rules-based global trading system.³⁷¹ Transparent practices that meet international standards position African nations as credible, reliable trading partners, enhancing their leverage in negotiating fairer terms on the global stage.³⁷² Transparency within SADC and COMESA is not merely a procedural tool but a transformative instrument that underpins

³⁶⁵ Hale, T.N., 2008. Transparency, accountability, and global governance. *Global governance*, pp.73-94.

³⁶⁶ George, C., 2011. Regional trade agreements and the environment: Monitoring implementation and assessing impacts: Report on the OECD workshop.

³⁶⁷ George, op cit note 366.

³⁶⁸ African Union Commission, 2019. Africa's productive transformation in a changing world.

³⁶⁹ Hettne, B. and Söderbaum, F., 2006. Regional co-operation: a tool for addressing regional and global challenges. In *International Task Force on Global Public Goods, Meeting Global Challenges: International Co-operation in the National Interest, Final Report, Stockholm* pp.179.

³⁷⁰ Ndizera, V. and Muzee, H., 2018. A critical review of Agenda 2063: Business as usual? *African Journal of Political Science and International Relations*, 12(8), pp.142-154.

³⁷¹ Biliwita, C., 2015. Perspectives from the private sector on the trade facilitation tools and instruments being implemented in SADC and COMESA: a case of Malawi, p.12.

³⁷² Albin, C., 2003. Negotiating international co-operation: global public goods and fairness. *Review of International Studies*, 29(3), pp.365-385.

Agenda 2063's vision of a prosperous, equitable Africa.³⁷³ By embedding transparency at the heart of regional trade mechanisms, African countries can foster greater economic resilience, bolster governance, and ensure that trade becomes a powerful vehicle for realizing the continent's long-term developmental objectives.³⁷⁴

3.10 Conclusion

This chapter examined the role of transparency mechanisms in SADC and COMESA, linking these frameworks to Agenda 2063's vision of inclusive and sustainable development. Transparency emerges as a critical component of RTA, not only as a governance tool but also as a means to build trust, foster accountability, and ensure effective implementation of integration goals.³⁷⁵ It is central to realizing Africa's regional economic ambitions and global standing.³⁷⁶

In both SADC and COMESA, transparency is operationalized through robust institutional frameworks and legal provisions.³⁷⁷ These tools ensure that trade-related information is shared and made accessible to stakeholders, allowing for better-informed decision-making processes.³⁷⁸ However, significant challenges remain, such as institutional capacity disparities, political reluctance, and infrastructural limitations, hindering the full realization of transparency mechanisms in these regional trade agreements.³⁷⁹ Despite these challenges, the experiences of SADC and COMESA highlight the importance of transparency in strengthening regional governance and supporting economic integration. By involving stakeholders in decision-making and providing access to necessary information, transparency fosters cooperation and a sense of ownership among member states, which is essential for successful regional integration.³⁸⁰

The emphasis on transparency within RTA's aligns directly with the broader goals of Agenda 2063. Transparency can help address systemic barriers historically preventing Africa from fully

³⁷³ Singo, MC, 2023. South Africa's role in the promotion of democracy and good governance in Africa to drive economic development.

³⁷⁴ Khلیل, B., 2024. *The United Nations in a Multipolar World: Assessing Its Role and Relevance in Africa's Future* (No. q3nbz). Center for Open Science.

³⁷⁵ Lejarraga, op cit note 218.

³⁷⁶ Lejarraga, op cit note 218.

³⁷⁷ Shinyekwa, I. and Othieno, L., 2011. Prospects and Challenges in the formation of the COMESA-EAC and SADC Tripartite Free Trade Area.

³⁷⁸ Shinyekwa, op cit note 377.

³⁷⁹ Gathii, J.T., 2011. The neoliberal turn in regional trade agreements. *Wash. L. Rev.*, 86, p.421.

³⁸⁰ Singo, MC, 2023. South Africa's role in the promotion of democracy and good governance in Africa to drive economic development.

participating in multilateral trade.³⁸¹ Moving forward, the success of these initiatives will require continued political will, strengthened institutional capacity, and the active participation of all stakeholders across the continent.³⁸² Chapter 4 will address this comparative dimension by investigating how SADC and COMESA's transparency mechanisms align with international frameworks, specifically the WTO's TPRM.

³⁸¹ Elmardi, M., 2024. *South Africa and the African Continental Free Trade Area: Assessing the opportunities and risks* (Doctoral dissertation, North-West University (South Africa)).

³⁸² Seppälä, O.T., 2002. Effective water and sanitation policy reform implementation: need for systemic approach and stakeholder participation. *Water Policy*, 4(4), pp.367-388.

CHAPTER 4

COMPARATIVE ANALYSIS OF PARTICULAR SADC & COMESA TRANSPARENCY SYSTEMS AGAINST THE TPRM OF THE WTO

4.1 Introduction

Building on the exploration of transparency mechanisms within the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) in Chapter 3, this chapter examines how these mechanisms align with or diverge from the global standards set by the World Trade Organization (WTO) Trade Policy Review Mechanism (TPRM). By situating SADC and COMESA's transparency practices in the context of the TPRM, this chapter analyses whether these regional economic communities align with international best practices in promoting transparency, accountability, and predictability in trade.

In Chapter 3, it was established that SADC and COMESA integrate transparency to foster regional cooperation, promote trust, and advance Agenda 2063's goals of sustainable and inclusive growth.³⁸³ However, institutional limitations, capacity constraints, and varying degrees of political commitment have created inconsistencies in implementing these mechanisms.³⁸⁴ Transparency in trade agreements ensures that all parties understand their rights and obligations, promoting a fair trading environment.³⁸⁵ This chapter aims to examine the transparency mechanisms established within SADC and COMESA, assessing their effectiveness in the context of Africa's economic integration, particularly concerning the WTO TPRM.

4.2 Transparency Mechanisms in SADC

As defined in Chapter 3, transparency mechanisms in trade agreements are defined as processes and practices that facilitate disclosing relevant information about trade policies, regulations, and practices among member states.³⁸⁶ The TPRM is a benchmark for global transparency practices, involving periodic reviews to enhance accountability.³⁸⁷ The TPRM is designed to

³⁸³ Bassey, O.B., 2023. Leadership And the Success Of African Integration And Development Agenda: Juxtaposing The African Continental Free Trade Area-AfCFTA And Agenda 2063.

³⁸⁴ Broz, J.L., 2002. Political system transparency and monetary commitment regimes. *International Organization*, 56(4), pp.861-887.

³⁸⁵ Weiss, F. and Steiner, S., 2006. Transparency as an Element of Good Governance in the Practice of the EU and the WTO: Overview and Comparison. *Fordham Int'l LJ*, 30, p.1545.

³⁸⁶ Rodrik, D., 2018. What do trade agreements really do?. *Journal of economic perspectives*, 32(2), pp.73-90.

³⁸⁷ Kebonang, Z., 2005. African Peer Review mechanism: an assessment. *India quarterly*, 61(2), pp.138-168.

foster a greater understanding of member countries' internal and external trade policies and promote constructive dialogue to dissuade trade conflict and other obstacles to the trade system.³⁸⁸

I. SADC's Transparency Mechanisms

Within the SADC, transparency helps ensure that trade benefits are accessible to all member states, especially those with less developed economies.³⁸⁹ This focus on transparency promotes predictable trade relations, aids in preventing disputes, and strengthens trust across the region.³⁹⁰ As such, the transparency mechanisms in SADC are inspired by international standards, such as the WTO TPRM, but have been tailored to the region's unique needs.³⁹¹ The following sections evaluate SADC's transparency framework, including notification and reporting requirements, policy reviews, institutional frameworks, and dispute resolution mechanisms.

II. Notification and Reporting Requirements

The SADC Protocol on Trade mandates that member states notify the SADC Secretariat of any changes in trade policies or regulations that could impact the regional market.³⁹² Furthermore, the Trade Negotiation forum³⁹³ is responsible for trade negotiations and reports to the Committee of Senior Officials.³⁹⁴ By standardising this process, SADC aims to maintain an environment of trust and reduce unexpected disruptions in trade.³⁹⁵ However, practical implementation has faced challenges, particularly with inconsistent compliance by member states. Delays in reporting and omissions are often observed among smaller member states, such as Eswatini and Lesotho.³⁹⁶ These challenges stem from limited administrative capacity, resource constraints, and inadequate institutional frameworks to ensure timely and

³⁸⁸ Kende, op cit note 188.

³⁸⁹ Kamau, N.W., 2014. The regulation on trade barriers under SADC and EAC: assessing the effectiveness of their legal framework.

³⁹⁰ Turnes, P.B. and Ernst, R., 2015. A framework for transparency in international trade. *Investigaciones Europeas de Dirección y Economía de la Empresa*, 21(1), pp.1-8.

³⁹¹ Turnes, op cit note 390.

³⁹² Erasmus, G., 2011. Is the SADC trade regime a rules-based system? *SADC Law Journal*, 1, pp.17-34.

³⁹³ it is a forum for governments to negotiate trade agreements/ place for them to settle trade disputes. Section one Understanding the WTO, P 8. accessible at:

https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep11_chap1_e.pdf

³⁹⁴ SADC Protocol On Trade, Article 31 Institutional Arrangements p14. A technical advisory committee to the Council of Ministers that meets twice a year. The committee includes a chairperson and vice-chairperson, a permanent/principal secretary, and an official from each member state.

³⁹⁵ Maree, J., 2020. *An impact analysis of customs risk management processes in South Africa* (Doctoral dissertation, North-West University (South Africa), P 46-47.

³⁹⁶ Dlamini, D.C., 2021. *The Application of Public International Law in Eswatini: A Comparative Perspective*. University of Johannesburg (South Africa).

comprehensive reporting. As a result, such gaps hinder the overall effectiveness of transparency mechanisms within SADC and undermine the uniformity of trade policies across the region have occasionally disrupted the information flow, affecting trade relations and increasing the risk of disputes.³⁹⁷ According to the SADC Trade Report (2020), inconsistent compliance has hindered the region's transparency goals, with capacity constraints in certain states being a significant factor.³⁹⁸

III. Institutional Frameworks and Capacity Building

SADC's institutional framework supports transparency by tasking the Trade, Industry, Finance, and Investment (TIFI) Directorate³⁹⁹ and the SADC Secretariat with monitoring transparency standards and ensuring national policy alignment.⁴⁰⁰ However, the TIFI Directorate and the Secretariat face substantial financial and human resource constraints, limiting their effectiveness.⁴⁰¹ These resource issues impact the Secretariat's ability to enforce compliance, reducing the monitoring capacity necessary to uphold transparency and accountability.⁴⁰²

IV. Evaluation of Effectiveness and Compliance Issues

While SADC's framework for transparency is well-structured, implementation challenges persist.⁴⁰³ Former Mozambican President Joaquim Chissano, at a SADC Lawyers Association conference, highlighted the need for political commitment and adequate resources to make these mechanisms effective, noting that:

“Africa is still in ideas, but there is a serious problem in implementing some of the decisions either because of a lack of funding or political will.”⁴⁰⁴

Limited administrative capacities in certain member states can complicate compliance with reporting and notification processes.⁴⁰⁵ Additionally, member-state driven by socio-economic

³⁹⁷ Kamara, J.K., Agho, K. and Renzaho, A.M., 2020. Combating recurrent hazards: evidence from rural Lesotho and Eswatini—a qualitative study. *Environmental Hazards*, 19(5), pp.421-441.

³⁹⁸ SADC Trade Report (2020).

³⁹⁹ A regional body that coordinates trade and financial liberalization, industrial development, and investment in the Southern African Development Community (SADC).

⁴⁰⁰ van der Vleuten, A. and Hulse, M., Governance Transfer by Regional Organizations: The Southern African Development Community.

⁴⁰¹ Munyua, S.M., 2010. Consultant April 2010. *Consultant*.

⁴⁰² Munyua, op cit note 15.

⁴⁰³ Secretariat, S., The Regional Poverty Reduction Framework.

⁴⁰⁴ Whittle, B., 2014. SADC lawyers urged to monitor accountability, transparency and implementation: news. *De Rebus*, 2014(546), pp.14-19.

⁴⁰⁵ Tallberg, J., 2002. Paths to compliance: Enforcement, management, and the European Union. *International organisation*, 56(3), pp.609-643.

and political factors, which create trade inequalities and undermine regional cohesion, lead to uneven application of transparency mechanisms, which can create trade inequalities and affect regional cohesion.⁴⁰⁶ In SADC and COMESA, several cases illustrate how national interests can impact the implementation of regional transparency commitments, especially when these interests diverge from regional goals.

In South Africa, a key example is the government's stance on tariffs and subsidies within its agricultural sector.⁴⁰⁷ While SADC's integration objectives aim to reduce trade barriers and promote transparency, South Africa has maintained policies designed to protect its farmers from external competition.⁴⁰⁸ For instance, subsidies on agricultural products like wheat and maize are implemented to safeguard domestic production and food security.⁴⁰⁹ However, these subsidies can be viewed as inconsistent with SADC's regional transparency goals, as they create trade imbalances by making South African products more competitive than imports from other SADC countries.⁴¹⁰

Egypt, a member of COMESA, similarly demonstrates the tension between regional transparency and national priorities in its agricultural and trade policies.⁴¹¹ Egypt has frequently imposed trade restrictions on imports of essential goods, such as cereals, to protect local farmers and stabilise food prices.⁴¹² These protectionist measures are critical for ensuring Egypt's food security, especially in times of global price volatility.⁴¹³ However, such actions can appear opaque to other COMESA members and limit the transparency of Egypt's trade policy, sometimes creating friction within COMESA's broader transparency initiatives. This dissertation views Egypt's trade restrictions as emblematic of the tension between regional

⁴⁰⁶ Bongardt, A. and Torres, F., 2023. Eu Governance and Trade Dynamics In The Context Of Globalization Challenges 2. *Globalization and EU Trade Policy at the Time of Crises: governance and sustainability challenges*, p.27.

⁴⁰⁷ Ashra, S. and Chakravarty, M., 2007. Input subsidies to agriculture: Case of subsidies to fertiliser industry across countries. *Vision*, 11(3), pp.35-58.

⁴⁰⁸ Williams, G., Ewert, J., Hamann, J. and Vink, N., 1998. Liberalising markets and reforming land in South Africa. *Journal of Contemporary African Studies*, 16(1), pp.65-94.

⁴⁰⁹ Liebenberg, I. and De Wet, F., 2018. Food security, wheat production and policy in South Africa: Reflections on food sustainability and challenges for a market economy. *TD: The Journal for Transdisciplinary Research in Southern Africa*, 14(1), pp.1-11.

⁴¹⁰ Lewis, J.D., 2001. *Reform and opportunity: The changing role and patterns of trade in South Africa and SADC* (p. 22). World Bank.

⁴¹¹ Kheir-El-Din, H., 2006. Issues paper on the assessment of implementation of regional trade agreements in the Arab countries and the economic and regulatory policy implications of their overlapping: the case of Egypt, Jordan, Morocco, Tunisia. In *Research report series/Economic Research Forum; no. 0424*. Economic Research Forum, Cairo, EG.

⁴¹² El-Dukheri, I., Elamin, N. and Kherallah, M., 2011. Farmers' response to soaring food prices in the Arab region. *Food Security*, 3, pp.149-162.

⁴¹³ El-Dukheri, op cit note 412.

transparency and national priorities within COMESA. While these measures are essential for addressing domestic food security and stabilizing local markets, they often bypass the transparency obligations required under COMESA frameworks. This challenges regional cohesion, as unilateral actions can undermine the trust and predictability necessary for effective economic integration. Zimbabwe, facing economic instability and hyperinflation, has adopted policies that prioritise immediate national concerns over long-term regional transparency goals.⁴¹⁴ For instance, Zimbabwe has frequently enacted currency control measures and fluctuating tariffs on essential goods like fuel and food to stabilise its economy.⁴¹⁵ These measures are sometimes implemented with limited communication with its regional partners, leading to gaps in transparency and compliance with SADC and COMESA's commitments.⁴¹⁶ The situation with currency reforms in 2019, where Zimbabwe introduced the Zimbabwean dollar while restricting the use of foreign currencies, exemplifies such a move.⁴¹⁷ This measure, meant to control inflation, complicated regional trade and transparency, as SADC and COMESA members had little warning or recourse.

Kenya, a significant player in COMESA, balances its commitments to regional transparency with a strong national interest in fostering its industrial and agricultural sectors.⁴¹⁸ For example, Kenya has occasionally imposed export bans on staple foods such as maize during periods of drought or poor harvests to protect local food supplies.⁴¹⁹ While understandable from a national policy perspective, these export bans can reduce the predictability and transparency expected within COMESA's frameworks, affecting member states such as Uganda and Rwanda that rely on Kenya for these imports.⁴²⁰

Tanzania's agricultural policy within SADC further illustrates this balance between regional transparency obligations and national priorities.⁴²¹ In line with its focus on self-sufficiency,

⁴¹⁴ Chitongo, L., Chikunya, P. and Marango, T., 2020. Do economic blueprints work? Evaluating the prospects and challenges of Zimbabwe's transitional stabilisation programme. *African Journal of Governance and Development*, 9(1), pp.7-20.

⁴¹⁵ Robertson, J., 2011. A macroeconomic policy framework for economic stabilization in Zimbabwe. In *Zimbabwe: picking up the pieces* (pp. 83-105). New York: Palgrave Macmillan US.

⁴¹⁶ Nyirongo, R., 2023. *Navigating compliance challenges in African regional integration*. (Masters Dissertation, Faculty of Law ,Department of Commercial Law University of Cape Town.)

⁴¹⁷ Imam, P.A., 2022. De-dollarisation in Zimbabwe: What lessons can be learned from other sub-Saharan countries? *International Journal of Finance & Economics*, 27(1), pp.770-801.

⁴¹⁸ Kariuki, J.K., 2013. Peace And Security in Regional Integration In Africa; A Case Study Of COMESA.

⁴¹⁹ Ariga, J., Jayne, T.S. and Njuki, S., 2010. Staple food prices in Kenya.

⁴²⁰ Otiende, I.E., 2022. *Impact Of Kenyan and EAC Legal Regimes on Kenya'S Participation and Investment In Global Value Chains* (Doctoral dissertation, University of Nairobi).

⁴²¹ Amani, H.K.R., 2004. Agricultural development and food security in sub-Saharan Africa Tanzania Country report. *Economic and Social Research Foundation (ESRF)*.

Tanzania has implemented high tariffs on certain agricultural imports to protect local farmers and promote import substitution.⁴²² While these policies support Tanzania's agricultural sector, they complicate regional transparency and market openness, as the high tariffs can deter trade with other SADC members and limit access to Tanzania's market.⁴²³

These cases show how national priorities whether protecting key industries, securing food supplies, or stabilising local economies, can diverge from regional transparency goals, sometimes creating friction within SADC and COMESA. These examples also highlight the complexity of harmonising transparency standards in regions where economic disparities and varied policy priorities exist among member states.

V. Practical Implications and Case Studies

Of concern, challenges related to delayed notifications and unreported trade measures within SADC demonstrate the consequences of inconsistent transparency. During the 2021 SADC Summit, several member states reported unreported tariff changes, leading to trade disruptions and disputes.⁴²⁴ Such cases illustrate the critical need for a timely and uniform reporting process to support seamless regional trade. As such, the failure of some countries to communicate tariff modifications in advance resulted in confusion and retaliatory measures, creating an environment of uncertainty and suspicion. This lack of transparency hampers effective trade negotiations and escalates tensions, potentially leading to long-term economic repercussions for all involved parties.⁴²⁵

Moreover, more transparency is needed to affect economic planning and investment decisions, as businesses rely on accurate information for informed choices.⁴²⁶ When member states do not adhere to notification protocols, it compromises the integrity of the SADC and COMESA

⁴²² Morrison, J. and Sarris, A., 2007. Determining the appropriate level of import protection consistent with agriculture led development in the advancement of poverty reduction and improved food security. *WTO rules for agriculture compatible with development*, pp.13-58.

⁴²³ Kamau, N.W., 2014. The regulation on trade barriers under SADC and EAC: assessing the effectiveness of their legal framework.

⁴²⁴ The 41st Ordinary Summit of the Heads of State and Government of the Southern African Development Community (SADC).

⁴²⁵ Hauser, H. and Zimmermann, T.A., 2003. The challenge of reforming the WTO dispute settlement understanding. *Intereconomics*, 38(5), pp.241-245.

⁴²⁶ Fung, A., 2013. Infotopia: Unleashing the democratic power of transparency. *Politics & society*, 41(2), pp.183-212.

trade framework and detracts from the broader goals of economic integration and cooperation.⁴²⁷

Addressing these challenges requires strengthening the existing notification system to ensure compliance. Enhanced monitoring by the SADC Secretariat and capacity-building initiatives for less developed member states can improve adherence, fostering a culture of accountability and transparency that mitigates risks associated with delayed notifications and unreported trade measures.⁴²⁸

VI. Addressing Transparency through Accountability and Citizen Engagement

Transparency within SADC is closely linked to accountability.⁴²⁹ During the 15th SADC Lawyers Association conference, Zambian lawyer Kondwa Sakala-Chibiya emphasised that:

“There can be no transparent and accountable leadership without the people of our respective countries holding our leaders to account.”⁴³⁰

Advocating for citizen involvement in governance. However, SADC's record on public engagement has raised concerns. One example is the 2010 suspension of the SADC Tribunal without sufficient public consultation, which restricted the Tribunal's ability to represent citizen interests and limited its independence in enforcing transparency.⁴³¹ Citizen participation is critical in reinforcing transparency, as it empowers people to hold leaders accountable and fosters trust in regional institutions.⁴³² However, SADC has received criticism for limited citizen engagement, particularly regarding decisions that impact transparency and governance.⁴³³

⁴²⁷ Barnekow, S.E. and Kulkarni, K.G., 2017. Why regionalism? A look at the costs and benefits of regional trade agreements in Africa. *Global Business Review*, 18(1), pp.99-117.

⁴²⁸ Liza, L., Ndonga, D. and Mupanduki, N., 2021. The Effects of Emerging Issues on the Role of Customs and Trade: 3rd WCO ESA Regional Research Conference. In *3rd WCO ESA Regional Research Conference*. Regional Office for Capacity Building, East and Southern Africa Region.

⁴²⁹ Lungu, A.E.G. and Malzbender, D., 2008. Mapping of integrity and accountability in water activities and relevant capacities in the SADC-Region.

⁴³⁰ Whittle, B., 2014. SADC lawyers urged to monitor accountability, transparency and implementation: news. *De Rebus*, 2014(546), pp.14-19.

⁴³¹ Bartels, L., 2011, March. Review of the Role, Responsibilities and Terms of Reference of the SADC Tribunal. In *Final report presented to the SADC Member State Ministers of Justice and Attorneys-General Meeting (14-15 April 2011 Swakopmund, on file with author)*.

⁴³² Arkorful, V.E., Lugu, B.K., Hammond, A. and Basiru, I., 2021, May. Decentralisation and citizens' participation in local governance: Does trust and transparency matter? –An empirical study. In *Forum for development studies* (Vol. 48, No. 2, pp. 199-223). Routledge.

⁴³³ Hulse, M., Gürth, L., Kavsek, H., Stauber, V., Wegner, D. and Weinreich, J., 2018. *Civil society engagement in regional governance: A network analysis in Southern Africa* (No. 30/2018). Discussion Paper.

4.3. COMESA's Transparency Framework and Corporate Governance Regime

COMESA's transparency framework and corporate governance regime are shaped by a comprehensive legal and institutional architecture to enhance regional cooperation and economic integration among its member states. This framework draws from foundational documents, key components, and global best practices while being tailored to the unique socio-economic context of the region.

I. Legal Foundations

At the core of COMESA's structure is the COMESA Treaty of 1993⁴³⁴, which serves as the primary legal instrument establishing the organisation and outlining its objectives. This treaty emphasises the importance of transparency, accountability, and good governance as fundamental principles for achieving economic integration. Complementing the treaty are various protocols and agreements providing specific requirements for trade and corporate governance transparency. For instance, the COMESA Competition Regulations,⁴³⁵ and the COMESA FTA detail the obligations of member states regarding trade practices and regulatory oversight.⁴³⁶

II. Transparency Initiatives within COMESA

COMESA's transparency framework emphasises structured reporting and notification requirements,⁴³⁷ although it does not have a formal TPRM like the WTO. Instead, COMESA documents encourage member states to adhere to transparency obligations through regular notifications and submissions of trade-related policy changes to the Secretariat.⁴³⁸ This approach is designed to keep member states informed about each other's policies, reduce trade disruptions, and promote compliance with COMESA agreements.

⁴³⁴ *Treaty establishing the Common Market for Eastern and Southern Africa*; Short title: COMESA Treaty (1993).

⁴³⁵ *COMESA Competition Regulations*, 2004 (the "COMESA Regulations") January 2013.

⁴³⁶ For example, the COMESA Competition Regulations require member states to prevent anti-competitive practices like monopolies and cartels, as outlined in Regulation 3, which addresses anti-competitive agreements and practices, and Regulation 8, which mandates the establishment of national competition authorities. Kenya has aligned its national competition law with these regulations. The COMESA Free Trade Area Agreement includes provisions for reducing tariffs and barriers in Article 2 (on trade liberalization) and ensuring trade transparency in Article 9, which requires member states to report trade-related information and eliminate non-tariff barriers. Zambia and Malawi have benefited from these provisions by increasing trade through lower tariffs and clearer policies. These frameworks help promote regional integration, good governance, and transparency.

⁴³⁷ Bienen, D., *The Tripartite Free Trade Area and its Implications*. *COMESA*, p.154.

⁴³⁸ Hove, V.S., 2015. An analysis of how the online non-tariff barriers mechanism facilitates reporting, monitoring and elimination of NTBs in the COMESA, EAC and SADC Region, p.21. (Masters Dissertation, University of Cape Town).

By requiring updates on trade practices, tariffs, non-tariff barriers, and legislative changes, COMESA fosters accountability among its members, promoting transparency and openness within the region.⁴³⁹ Additionally, COMESA's Strategy for Capacity Building (2020-2025)⁴⁴⁰ aims to enhance member states' administrative and technical capacities, ensuring consistent transparency practices across the region.⁴⁴¹ These efforts collectively strengthen regional trust, enhance policy alignment, and support COMESA's broader goals of economic integration and cooperation.

i. Reporting Requirements

Reporting requirements are integral to the transparency framework. Member states must submit trade policy reviews, statistical data, and other relevant information that helps COMESA assess their adherence to transparency standards.⁴⁴² This robust reporting system enables the organisation to maintain oversight and ensures that information is accessible to all member states, facilitating informed decision-making and fostering regional cooperation.

ii. Capacity-Building Initiatives

Recognising that effective implementation of these transparency requirements often hinges on the capacity of member states, COMESA has initiated various capacity-building initiatives such as training programs and workshops are organised to enhance the skills of trade officials and policymakers.⁴⁴³ These programs focus on the intricacies of transparency reporting, data collection, and the broader implications of governance practices.⁴⁴⁴ Thus, by equipping officials with the necessary knowledge and skills, COMESA aims to strengthen compliance and foster a culture of accountability across its member states.

⁴³⁹ Olayiwola, W., 2020. Governing the interface between the African continental free trade area and regional economic communities' free trade areas: Issues, opportunities and challenges. *Opportunities and Challenges*.

⁴⁴⁰ The 2021-2025 Medium Term Strategic Plan is COMESA's roadmap to achieving its vision, mission and objectives for the next 5 years.

⁴⁴¹ Ibid.

⁴⁴² Hove, op cit note 298.

⁴⁴³ Samunderu, E., 2024. Challenges and Complexities Affecting African Air Transport Market Development: A Skills, Competency, and Capacity-Building Perspective. In *The Economic Effects of Air Transport Market Liberalisation: A Perspective Analysis of the Single African Air Transport Market (SAATM)* (pp. 499-639). Cham: Springer Nature Switzerland.

⁴⁴⁴ Lecomte, H.B.S., 2001. *Building Capacity to Trade: A Road Map for Development Partners*. European Centre for Development Policy Management

iii. Lessons from Global Experiences

COMESA's transparency framework also draws upon global benchmarks and best practices. Historical events, such as the East Asian financial crisis (1997-1998) and the early 2000s United States corporate scandals, underscored the importance of robust governance frameworks, transparency, and regulatory oversight.⁴⁴⁵ The East Asian crisis, triggered by rapid capital outflows and currency devaluations, revealed systemic vulnerabilities like excessive debt, weak corporate governance, and lack of transparency, resulting in severe economic downturns and prompting IMF intervention.⁴⁴⁶ Similarly, U.S. scandals like Enron⁴⁴⁷ and WorldCom⁴⁴⁸ Exposed financial misreporting and regulatory inadequacies, as companies used deceptive accounting to hide debt and inflate profits, eroding public trust.⁴⁴⁹ These events highlighted the risks of governance failures, leading to significant reforms, including the U.S. Sarbanes-Oxley Act,⁴⁵⁰ to improve financial accountability and protect stakeholders.

While cases like *Enron*⁴⁵¹ and *WorldCom*⁴⁵² in the U.S. underscore the importance of transparency in governance, this lesson is equally relevant in Africa. A comparable example is Mozambique's "hidden debt" scandal, where \$2 billion in undisclosed loans led to economic fallout and loss of investor trust.⁴⁵³ This case highlights the critical need for transparent governance frameworks within SADC and COMESA to safeguard economic stability. These crises revealed the dire consequences of poor management practices, lack of transparency, and inadequate regulatory oversight. By examining these lessons, COMESA and SADC can prioritise establishing strong governance structures emphasising accountability and transparency. However, while global best practices provide a valuable reference, COMESA

⁴⁴⁵ Arnold, P.J., 2012. The political economy of financial harmonisation: The East Asian financial crisis and the rise of international accounting standards. *Accounting, Organisations and Society*, 37(6), pp.361-381.

⁴⁴⁶ Furman, J., Stiglitz, J.E., Bosworth, B.P. and Radelet, S., 1998. Economic crises: evidence and insights from East Asia. *Brookings papers on economic activity*, 1998(2), pp.1-135.

⁴⁴⁷ Enron, an energy company, used complex financial structures and off-the-books partnerships to hide debt and inflate profits, ultimately leading to its bankruptcy in 2001. Kahn, F.S., 2001. Bombing markets, subverting the rule of law: Enron, financial fraud, and September 11, 2001. *Tul. L. Rev.*, 76, p.1579.

⁴⁴⁸ WorldCom, a telecommunications giant, engaged in similar deceit, using fraudulent accounting entries to overstate its earnings by approximately \$11 billion. Petra, S. and Spieler, A.C., 2020. Accounting scandals: Enron, Worldcom, and global crossing. In *Corporate Fraud Exposed: A Comprehensive and Holistic Approach* (pp. 343-360). Emerald Publishing Limited.

⁴⁴⁹ Brewster, M., 2003. *Unaccountable: How the accounting profession forfeited a public trust*. John Wiley & Sons.

⁴⁵⁰ H.R.3763 - Sarbanes-Oxley Act of 2002.

⁴⁵¹ *In re Enron Corp.*, 419 F.3d 115: This case was decided by the United States Court of Appeals, Second Circuit on August 16, 2005.

⁴⁵² *SEC v. WorldCom, Inc.*, 273 F. Supp. 2d 431 (S.D.N.Y. 2003).

⁴⁵³ Cortez, E., Orre, A., Fael, B., Nhamirre, B., Banze, C., Mapiisse, I., Harnack, K. and Reite, T., 2021. Costs and consequences of the hidden debt scandal of Mozambique.

recognises the necessity of adapting these principles to the region's unique socio-economic contexts.⁴⁵⁴ A one-size-fits-all approach may not be practical; thus, the organisation must evaluate existing governance structures within its member states and consider cultural nuances when tailoring policies.⁴⁵⁵

iv. Implementation Challenges

Despite the comprehensive framework that COMESA has established, several implementation challenges still need to be addressed. Resource limitations are a significant barrier for many member states, often hindering their ability to participate fully in transparency initiatives.⁴⁵⁶ COMESA promotes resource-sharing initiatives to address these challenges and seeks external funding and support to bolster capacity.⁴⁵⁷ Additionally, variations in compliance levels among member states pose another challenge. Only some member states consistently meet the deadlines for submitting their trade policy reviews. To mitigate this, COMESA encourages collaborative efforts and peer reviews to foster accountability and shared learning among member states.⁴⁵⁸

v. Ongoing Revisions and Stakeholder Engagement

COMESA acknowledges the need for ongoing revisions and updates to its transparency framework.⁴⁵⁹ It undertakes periodic reviews to ensure its policies remain relevant and effective in the face of evolving economic landscapes and emerging global best practices.⁴⁶⁰ Furthermore, engaging several stakeholders, such as the private sector, civil society, and academic institutions, is crucial for refining the transparency framework.⁴⁶¹ This engagement allows for diverse perspectives, ensuring that the framework aligns with regional development goals and addresses member states' specific challenges.

⁴⁵⁴ Kariuki, J.K., 2013. Peace And Security In Regional Integration In Africa; A Case Study Of COMESA.

⁴⁵⁵ Kariuki, op cit note 454.

⁴⁵⁶ Hove, op cit note 298.

⁴⁵⁷ Chavula, P., Lungu, G., Abdi, E., Umer, Y. and Phiri, T., 2024. Reflections on Regional Integration and Food Security in Developing Sub-Saharan African Countries. *Asian Research Journal of Current Science*, 6(1), pp.139-151.

⁴⁵⁸ Celestin, M., Kumar, A.D. and Vasuki, M., 2024. Regional Value Chains in COMESA: Opportunities for Procurement Optimization. *International Journal of Computational Research and Development*, 9(2), pp.58-66.

⁴⁵⁹ Baruti, R., 2017. Investment facilitation in regional economic integration in Africa: The cases of COMESA, EAC and SADC. *The Journal of World Investment & Trade*, 18(3), pp.493-529.

⁴⁶⁰ Cunningham, A.B., German, L., Paumgarten, F., Chikakula, M., Barr, C., Obidzinski, K., van Noordwijk, M., de Koning, R., Purnomo, H., Yatich, T. and Svensson, L., 2008. Sustainable trade and management of forest products and services in the COMESA region. *An Issue Paper CIFOR*.

⁴⁶¹ Cunningham, op cit note 460.

COMESA's transparency framework and corporate governance regime are rooted in a solid legal foundation, characterised by specific requirements for reporting and evaluation, and supported by capacity-building initiatives.⁴⁶² By integrating lessons learned from global experiences with region-specific adaptations, COMESA aims to create a governance environment that promotes transparency, accountability, and sustainable economic integration.⁴⁶³ This framework is essential for fostering trust among member states, enhancing investor confidence, and ultimately supporting the broader objectives of regional cooperation and development.

4.4 Comparative Analysis of Transparency Mechanisms: SADC vs. COMESA

The SADC and the COMESA have established transparency mechanisms to enhance regional cooperation and trade integration. While they share several similarities, notable differences distinguish their approaches and effectiveness.

Both regions emphasise the importance of notification procedures and periodic reviews of trade policies.⁴⁶⁴ This focus reflects a mutual commitment to ensuring member states adhere to agreed-upon trade agreements, fostering transparency and accountability within their economic frameworks. Additionally, both SADC and COMESA face challenges that impede the full realisation of their transparency objectives.⁴⁶⁵ Resource limitations hinder the capacity of some member states to engage fully in the review processes while varying levels of commitment among member states can lead to inconsistent application of transparency principles.⁴⁶⁶

However, the differences between the two REC's are striking. SADC primarily focuses on broad trade agreements and policy coordination, adopting a more generalised approach to transparency that lacks the specificity found in COMESA's framework. In contrast, COMESA has developed a more structured approach, as it regularly mandates detailed assessments of member states' trade policies. This systematic evaluation allows for a more rigorous monitoring process, ensuring that COMESA member states are accountable for their commitments.

Furthermore, COMESA has made significant strides in capacity building, whereas SADC has yet to implement comprehensive initiatives fully. The COMESA Strategy for Capacity

⁴⁶² Kariuki, op cit note 454.

⁴⁶³ Bienen, D., The Tripartite Free Trade Area and its Implications. *COMESA*, p.154.

⁴⁶⁴ Walkenhorst, P., 2013. *Indicators to monitor regional trade integration in Africa*. World Bank, Washington, DC.

⁴⁶⁵ Hove, op cit note 298.

⁴⁶⁶ Mejía Acosta, A., 2013. The impact and effectiveness of accountability and transparency initiatives: The governance of natural resources. *Development Policy Review*, 31, pp. s89-s105.

Building (2020-2025)⁴⁶⁷ outlines a systematic approach to address the capacity gaps among its member states. Through targeted training programs and workshops, COMESA seeks to enhance the skills of officials involved in trade policy and transparency reporting, thereby fostering a culture of accountability and competence.⁴⁶⁸ This proactive investment in capacity building is pivotal for strengthening compliance with transparency requirements and ensuring that all member states can effectively engage in regional trade.

In summary, while SADC and COMESA share common goals regarding transparency in trade policy, their differing approaches reveal essential insights into the effectiveness of regional governance mechanisms. COMESA's structured and capacity-building-focused framework provides a more robust model for ensuring accountability and fostering sustainable economic integration among its member states.

4.5 Comparative Evaluation: SADC and COMESA vs. WTO TPRM

Several key points of alignment and divergence emerge when evaluating the transparency mechanisms employed by SADC and COMESA concerning the WTO's TPRM. While both RECs strive to enhance transparency and accountability among their member states, the effectiveness of their approaches differs significantly from the more established framework of the TPRM established by the WTO.

The alignment between SADC and COMESA mechanisms and the TPRM is evident in their emphasis on notification procedures and periodic reviews of trade policies. These features reflect a shared commitment to transparency, whereby member states must clearly communicate their trade measures. However, the effectiveness of implementation varies significantly. The TPRM benefits from a well-defined and formalised process that promotes systematic evaluations of member states' trade practices. In contrast, the more flexible frameworks utilised by SADC and COMESA often need more rigour and consistency to foster a strong culture of accountability.

One of the key advantages of the TPRM is its structured approach, which cultivates a culture of accountability among its members. The peer review process allows trade policies of one member state to be scrutinised by others, encouraging constructive dialogue and openness.⁴⁶⁹

⁴⁶⁷ Mejía Acosta, op cit note 466.

⁴⁶⁸ Ibid.

⁴⁶⁹ Scott, J., 2004. International trade and environmental governance: Relating rules (and standards) in the EU and the WTO. *European Journal of International Law*, 15(2), pp.307-354.

The outcomes of these reviews are meticulously documented in reports that are made publicly available, providing a comprehensive overview of each member's adherence to WTO agreements.⁴⁷⁰ This level of transparency creates an environment where members are held accountable for their trade practices, a facet that is often less pronounced in regional frameworks.

From the lessons learned perspective, SADC and COMESA need to recognise the importance of enhanced capacity building, more robust institutional frameworks, and the critical role of political will in ensuring compliance with transparency obligations. Iza Lejárraga states that:⁴⁷¹

“A commitment to transparency at the highest political levels is crucial for the success of any regional trade agreement.”

This emphasis on political will echoes the experiences of the WTO, where member engagement and leadership significantly influence the effectiveness of the TPRM.⁴⁷² In Chapter 2⁴⁷³, we examined the TPRM in detail, discussing its fundamental components, including notification requirements, public access to documents and meetings, and enhanced stakeholder consultations. In Chapter Two⁴⁷⁴ it was discussed how the TPRM mandates that members notify the WTO of various trade measures and policies, ensuring transparency and subjecting these measures to scrutiny.⁴⁷⁵ For example, countries like Brazil and India have been scrutinised under the TPRM, with their trade policies reviewed in public sessions that foster transparency and accountability.⁴⁷⁶

The WTO's commitment to providing public access to its documents and meetings further strengthens its transparency framework. Critical reports, including those generated from the TPRM, are accessible on the WTO's official website, allowing businesses, researchers, and the public to engage with the organisation's decisions. This open-access model contrasts with the more limited public engagement seen in SADC and COMESA, where transparency mechanisms may only sometimes ensure comprehensive stakeholder participation.

⁴⁷⁰ Lang, A. and Scott, J., 2009. The hidden world of WTO governance. *European Journal of International Law*, 20(3), pp.575-614.

⁴⁷¹ Lejárraga, op cit note 218.

⁴⁷² Lejárraga op cite note 218.

⁴⁷³ Lejárraga, op cit note 218, p.25.

⁴⁷⁴ Ibid.

⁴⁷⁵ Zahrnt, V., 2011. Transparency of complex regulation: how should WTO trade policy reviews deal with sanitary and phytosanitary policies? *World Trade Review*, 10(2), pp.217-247.

⁴⁷⁶ Rosendorf, op cit note 87.

Moreover, the WTO has made efforts to enhance stakeholder engagement through public forums, consultations, and outreach programs.⁴⁷⁷ These initiatives aim to involve a diverse range of stakeholders, including non-governmental organisations (NGOs), academia, and the private sector in trade policy discussions. By facilitating these interactions, the WTO attempts to address concerns about transparency and participation, fostering a more inclusive decision-making process. Examples include the annual Public Forum, where stakeholders can voice their opinions on global trade issues, contributing to a broader dialogue on transparency and accountability.⁴⁷⁸ In contrast, while SADC and COMESA have made strides in promoting transparency, their mechanisms often need more engagement and institutional support, as seen in the TPRM. The absence of systematic reviews and comprehensive stakeholder involvement can hinder the effectiveness of their transparency initiatives.

4.6. Conclusion

This chapter has provided a comparative analysis of the transparency mechanisms in SADC and COMESA, set against the backdrop of the WTO's TPRM. It underscores the essential role of transparency in promoting regional trade integration and accountability. It highlights the need for both SADC and COMESA to enhance their frameworks to align more closely with WTO standards.

While SADC and COMESA share certain similarities with the WTO's TPRM in their pursuit of transparency, significant differences remain in the effectiveness and accountability of their mechanisms. The structured approach of the TPRM, with its robust notification requirements and commitment to public access and stakeholder engagement, fosters a more effective environment for transparency than the more flexible and less formalised structures found in SADC and COMESA.

To enhance their transparency mechanisms, SADC and COMESA must draw valuable lessons from the WTO, particularly regarding building institutional capacity, ensuring political commitment, and fostering inclusive stakeholder engagement. The subsequent chapter will provide specific recommendations, and a concluding analysis based on the insights gathered in this chapter.

⁴⁷⁷ Perez-Esteve, M., 2012. WTO rules and practices for transparency and engagement with civil society organisations.

⁴⁷⁸ Hale, T.N., 2008. Transparency, accountability, and global governance. *Global governance*, pp.73-94.

CHAPTER FIVE

FINDINGS AND RECOMMENDATIONS

5.1. Introduction

This dissertation explored transparency mechanisms within the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) in the context of Africa's regional economic integration under Agenda 2063. It examined the application of transparency principles in these regional economic communities (RECs), analyzed their comparative effects, and assessed their alignment with the WTO Trade Policy Review Mechanism (TPRM).

Guided by three key research questions, the study investigated how transparency is defined and implemented under GATT and the WTO, the integration of transparency mechanisms in Africa's regional trade framework, particularly under Agenda 2063 and the SADC development plan; and the comparative application and effectiveness of transparency mechanisms in COMESA and SADC, with a focus on accountability and alignment with global standards like the TPRM.

The study analyzed primary legal instruments, scholarly literature, and official reports to evaluate the legal and policy frameworks underpinning transparency in SADC and COMESA. This chapter synthesizes the findings, addresses the research questions, and offers final reflections and recommendations.

I. Chapter One

Chapter one examines transparency mechanisms within RTA's, focusing on SADC and COMESA.⁴⁷⁹ It highlights their foundational role in promoting predictability, accountability, fairness, and equity in trade relations.⁴⁸⁰ These principles build trust among member states and ensure alignment with international trade norms.⁴⁸¹

The chapter begins by exploring the contribution of transparency to global trade governance, focusing on the WTO's Trade Policy Review Mechanism (TPRM).⁴⁸² It illustrates how

⁴⁷⁹ Chapter 1, P 1 – 11.

⁴⁸⁰ Scott, J., 2004. International trade and environmental governance: Relating rules (and standards) in the EU and the WTO. *European Journal of International Law*, 15(2), pp.307-354.

⁴⁸¹ Scott, op cit note.

⁴⁸² Trommer, op cit note 5, p.2.

transparency enhances the legitimacy and effectiveness of multilateral trade rules, supporting a predictable and non-discriminatory trading environment.⁴⁸³ This discussion also emphasizes the Most-Favored Nation (MFN) and National Treatment principles, which require equal treatment of all trade partners in areas such as tariffs and subsidies.⁴⁸⁴

The chapter then examines how transparency mechanisms are integrated into African RTA's, particularly SADC and COMESA, which are vital for regional integration and economic cooperation. Transparency is identified as key to ensuring smooth operations, promoting fairness, and avoiding trade distortions. The discussion highlights challenges in implementing transparency, such as disparities in economic development, governance structures, and infrastructure among member states.

Finally, the chapter underscores the growing importance of RTA's in the global trade system and the need for effective transparency measures to maintain coherence with WTO rules. While RTA's offer opportunities for regional integration, they also face challenges in balancing national sovereignty with regional commitments, making transparency mechanisms essential for preventing conflicts between national interests and global trade norms.⁴⁸⁵

II. Chapter Two

Research Question one explores the definition of transparency within the multilateral trade framework, focusing on its implementation and development under GATT and the WTO. Transparency in this context requires member states to ensure openness and clarity in their trade policies, providing accurate, timely, and accessible information on regulations, practices, and changes affecting international trade.

Key mechanisms for promoting transparency include notification requirements, where member states inform the WTO of trade policy changes, and the Trade Policy Review Mechanism (TPRM), which conducts periodic peer reviews of member states' trade policies to ensure compliance and accountability. Public access to WTO documents and stakeholder consultations further enhances openness, fostering broader participation and trust among businesses, academics, and civil society.

⁴⁸³ Ghosh, A., 2010. Developing countries in the WTO trade policy review mechanism. *World Trade Review*, 9(3), pp.419-455.

⁴⁸⁴ Series, U.N.C.T.A.D., 1999. Most-Favoured-Nation Treatment.

⁴⁸⁵ Ojha, S., 2020, August. The Rise of Exceptions and the Eclipse of the Elemental Principle of Most-Favoured-Nation. In *Proceedings of the 18th International RAIS Conference on Social Sciences and Humanities* (pp. 133-142). Scientia Moralitas Research Institute.

Chapter two critically examines these mechanisms, with a focus on the dispute settlement process and the TPRM. The chapter highlights the role of the Dispute Settlement Body (DSB) in ensuring fairness and consistency in resolving trade conflicts, supported by the Appellate Body's oversight. It emphasizes the importance of public access to dispute rulings and systematic reviews under the TPRM in fostering a transparent and predictable global trading system.

Key case studies, such as *US – Import Prohibition of Certain Shrimp and Shrimp Products*⁴⁸⁶ and *EC – Asbestos*,⁴⁸⁷ illustrate the importance of transparency. In *US – Shrimp*, the lack of transparent multilateral consultations led to findings of arbitrary discrimination under GATT Article XX, while *EC – Asbestos* showcased the importance of procedural clarity and scientific evidence in justifying public health measures.⁴⁸⁸ Despite these advancements, challenges persist, such as political influences, delays in panel rulings, and limited stakeholder participation. The chapter discusses the WTO's growing efforts to engage civil society and NGOs through forums and consultations to address criticisms and promote inclusivity.

In conclusion, Chapter 2 provides a comprehensive overview of the WTO's transparency mechanisms, their evolution, and their challenges. It underscores the need for ongoing reform to enhance the inclusivity, accountability, and legitimacy of the WTO's operations in an evolving global trade environment.

III. Chapter 3

The chapter examines how transparency mechanisms are integrated into Africa's regional trade framework, focusing on Agenda 2063 and the SADC development plan. The SADC Trade Protocol mandates the disclosure of trade policies, and the adoption of customs valuation systems aligned with WTO standards to promote transparency, fairness, and predictability. However, uneven implementation across member states due to limited capacity and political will remain challenging.

⁴⁸⁶ Perkins, op cit note 157.

⁴⁸⁷ WTO Panel, Report of the Panel: *European Communities — Measures Affecting Asbestos and Asbestos-Containing Products*, WTO Doc WT/DS135/R (18 September 2000) and *WTO Appellate Body, Report of the Appellate Body: European Communities — Measures Affecting Asbestos and Asbestos-Containing Products*, WTO Doc WT/DS135/AB/R (12 March 2001).

⁴⁸⁸ Foster, C.E., 2012. Adjudication, arbitration and the turn to public law 'standards of review': putting the precautionary principle in the crucible. *Journal of International Dispute Settlement*, 3(3), pp.525-558.

Agenda 2063 calls for transparency to achieve a prosperous and integrated Africa. While it encourages the adoption of transparent policies, the lack of effective coordination and institutional capacity impedes full integration of these mechanisms.

Chapter 3 highlights transparency as a critical driver for sustainable development, economic integration, and social equity in Africa. It discusses how transparency reduces information asymmetry, empowers trade negotiations, and promotes inclusive growth, which is in line with Agenda 2063's objectives. By facilitating stakeholder participation and harmonizing trade practices with global standards like the WTO's TPRM, transparency fosters intra-African trade and regional stability. Ultimately, the chapter stressed that overcoming the challenges of implementing transparency mechanisms is vital for achieving the goals of Agenda 2063. This sets the foundation for the comparative analysis of SADC and COMESA in Chapter 4.

IV. Chapter Four

The chapter explores how transparency principles and mechanisms are applied in COMESA and SADC, highlighting their comparative effects. COMESA has been more proactive in strengthening transparency through a structured framework, periodic assessments, and capacity-building initiatives. It also emphasizes transparency in dispute resolution, ensuring public access to arbitration documents and using digital platforms for wider information access.

In contrast, SADC faces challenges with inconsistent implementation, limited capacity, and insufficient public access to trade policy documents. The SADC Protocol on Trade mandates information disclosure, but enforcement varies across member states, and there is no established system for regular monitoring or peer review.

Despite these differences, both regions aim to enhance transparency, but COMESA's approach has been more successful due to its structured framework and capacity-building efforts. SADC needs further development in terms of enforcement and institutional capacity.

Chapter 4 compares these regional efforts to the WTO's TPRM, noting that while the TPRM's structured reviews, peer evaluations, and public access foster transparency, SADC and COMESA lack the same level of institutional support and public engagement. Both regions need stronger political commitment and institutional reforms to align their transparency mechanisms more closely with the WTO's standards.

5.2. Recommendations

In light of the issues identified throughout the dissertation, several recommendations can be made to enhance the effectiveness of transparency mechanisms in the African regional trade frameworks and their alignment with international standards. These recommendations address the challenges observed in implementing transparency principles and mechanisms in SADC and COMESA and the broader context of the African regional integration agenda.

A primary issue in COMESA and SADC is the need for more institutional capacity to effectively implement and enforce transparency mechanisms. To address this, it is recommended that both regional organizations invest in building the institutional capacity of their member states. This includes providing technical assistance, training, and resources to help countries comply with notification requirements, reporting obligations, and other transparency mechanisms. Creating specialized regional bodies or teams focusing exclusively on transparency-related issues could help centralize efforts and improve coordination.

Secondly, transparency mechanisms must be consistently applied across member states, particularly within SADC. To address this, regional bodies should work towards harmonizing and standardizing regional transparency mechanisms. This could involve adopting uniform guidelines on disclosing trade-related information, customs valuation systems, and trade policy notification processes.⁴⁸⁹ Standardization would help ensure that all member states are held to the same level of transparency, promoting fairness and predictability in regional trade.⁴⁹⁰ The dissertation highlights the importance of transparency in fostering public trust and engagement with trade policies. COMESA and SADC could improve transparency by enhancing stakeholder consultations and ensuring that trade policy documents are easily accessible to the public, including businesses, civil society organizations, and the general public. Using digital platforms to share trade policy documents, updates on trade negotiations, and other relevant information could promote openness and accountability. SADC and COMESA should also consider hosting more public forums, webinars, and consultations to involve non-governmental organizations and other stakeholders in decision-making.⁴⁹¹

⁴⁸⁹ Jiang, Z., 2017. Trade facilitation and customs compliance for cost-saving and efficiency: Policies, practices and proposals—A China case study. *Global Trade and Customs Journal*, 12(11/12).

⁴⁹⁰ Scott, J., 2004. International trade and environmental governance: Relating rules (and standards) in the EU and the WTO. *European Journal of International Law*, 15(2), pp.307-354.

⁴⁹¹ McTernan, L., 2021. *Scaling the Summit: but is there more to Global Civil Society-Intergovernmental Organisation engagement?* (Doctoral dissertation, University of York).

Thirdly while SADC and COMESA have established transparency mechanisms, enforcing these mechanisms must be more vigorous in many cases. To improve the effectiveness of transparency policies, both regions should establish more robust enforcement mechanisms that hold member states accountable for non-compliance. This could involve creating monitoring and evaluation systems that track the progress of transparency implementation and penalize member states that fail to meet their obligations. Additionally, creating independent oversight bodies that monitor transparency practices and compliance reports would increase accountability within regional organizations. Agenda 2063 stresses the need for greater regional cooperation and integration, yet transparency remains a barrier to fully realizing these goals.⁴⁹² The focused regional groups should work towards strengthening cooperation in areas related to trade policy transparency. Joint initiatives, such as establishing regional transparency working groups or platforms that share best practices and collaborate on capacity-building, could help address challenges more effectively. A collaborative approach also allows for the pooling of resources and expertise to address transparency issues in a more unified manner.⁴⁹³

Another important recommendation is the establishment of a more robust peer review system. COMESA's TPRM has shown promise, but SADC lacks a similar, structured peer review process. These regions could benefit from adopting regular peer reviews where member states assess each other's trade policies and transparency practices. This approach would create a system of mutual accountability and encourage member states to align their practices with regional and international standards. Cross-regional learning between SADC, COMESA, and other regions with effective transparency mechanisms could provide valuable insights and ideas for improvement.⁴⁹⁴ To ensure that African regional trade systems are aligned with international best practices, particularly those set by the WTO, the regions should continue to work towards harmonizing their transparency practices with global standards. By ensuring that regional mechanisms are consistent with global standards, African countries can better integrate into the global economy and increase their credibility on the international stage.

⁴⁹² Raza, M.A. and Khan, A.B., 2024. Socio-Economic Development through Regional Organizations: A Study of the Implementation of Agenda 2063 by the African Union (AU) in Collaboration with China. *Annals of Human and Social Sciences*, 5(3), pp.355-371.

⁴⁹³ Lumineau, F., Wang, W. and Schilke, O., 2021. Blockchain governance—A new way of organizing collaborations? *Organization Science*, 32(2), pp.500-521.

⁴⁹⁴ Kariuki, J.K., 2013. Peace And Security In Regional Integration In Africa; A Case Study Of COMESA.

Finally, it is essential to recognize the role of political will and commitment in successfully implementing transparency mechanisms.⁴⁹⁵ Both COMESA and SADC governments must prioritize transparency as a fundamental element of their regional integration agendas. This could involve political leaders publicly committing to strengthening transparency and promoting a culture of openness within their respective countries. Additionally, ensuring transparency policies are enshrined in national laws and regional agreements would help create the legal and political foundation necessary for sustained transparency efforts. SADC and COMESA must, therefore, prioritize building institutional capacity and ensuring political commitment to transparency. This includes strengthening their notification systems to guarantee the timely and accurate exchange of trade policy information and adopting more systematic, formalized review processes similar to the WTO's peer review model. Furthermore, both regional bodies should enhance their public access to trade policy documents and outcomes, involving diverse stakeholders such as NGOs, academia, and the private sector in trade policy discussions. This would create a more inclusive and transparent decision-making process.

In conclusion, the recommendations focus on building institutional capacity, standardizing transparency practices, enhancing stakeholder engagement, improving enforcement mechanisms, fostering regional cooperation, aligning with global standards, and promoting political commitment. By addressing these challenges, SADC and COMESA can improve their transparency mechanisms, contributing to greater regional integration and sustainable economic development.

⁴⁹⁵ Broz, J.L., 2002. Political system transparency and monetary commitment regimes. *International Organization*, 56(4), pp.861-887.

Appendix A

Organization	Country
SADC	Angola
SADC	Botswana
SADC	Lesotho
SADC	Mozambique
SADC	Namibia
SADC	South Africa
SADC	Tanzania
COMESA	Burundi
COMESA	Comoros
COMESA	Djibouti
COMESA	Egypt
COMESA	Eritrea
COMESA	Ethiopia
COMESA	Kenya
COMESA	Libya
COMESA	Rwanda
COMESA	Sudan
COMESA	Uganda
COMESA and SADC	Democratic Republic of the Congo
COMESA and SADC	Madagascar
COMESA and SADC	Mauritius
COMESA and SADC	Malawi
COMESA and SADC	Seychelles
COMESA and SADC	Swaziland
COMESA and SADC	Zambia
COMESA and SADC	Zimbabwe

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Ms Kudzai Cathrine Nyika (219039366)
School Of Law
Pietermaritzburg

Dear Ms Kudzai Cathrine Nyika,

Original application number: 00026202

Project title: Analysis of the transparency policy review mechanisms within particular Regional Trade Agreements: A specific focus on the Common Market for Eastern and Southern Africa and the Southern African Development Community.

Exemption from Ethics Review

In response to your application received on 11 October 2024, your school has indicated that the protocol has granted **EXEMPTION FROM ETHICS REVIEW**.

Any alteration/s to the exempted research protocol, e.g., Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through an amendment/modification prior to its implementation. The original exemption number must be cited.

For any changes that could result in potential risk, an ethics application including the proposed amendments must be submitted to the relevant UKZN Research Ethics Committee. The original exemption number must be cited.

In case you have further queries, please quote the above reference number.

PLEASE NOTE:

Research data should be securely stored in the discipline/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Yours sincerely,



Mr Matthew Blain Kimble
pp Academic Leader Research
School Of Law

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Website: <http://research.ukzn.ac.za/Research-Ethics/>