



East African Community

EAC NTB

Factbook & Toolkit

Final Draft

Prepared for the EAC Secretariat
Arusha, Tanzania
August 2022

CONTENTS OF THE EAC NTB FACTBOOK & TOOLKIT

1. WHAT IS A NON-TARIFF BARRIER (NTB) IN THE EAC?	1
2. WHAT ARE THE CATEGORIES OF NTBS IN THE EAC?	2
2.1. The General Categorization of Potential Non-tariff Barriers.....	2
2.2. Any Other General Categorization and Subcategories as may be Determined and Prescribed by the Council.....	2
2.3. Certain Activities by Public Officers and Institutions.....	3
3. WHY ARE NTBS HARMFUL?	4
3.1. To Traders	4
3.2. To Producers	4
3.3. On Trade and Development Objectives	4
4. THE PROCESS OF IDENTIFYING, REPORTING AND MONITORING THE RESOLUTION OF NTBS IN THE EAC INSTITUTIONAL ARRANGEMENT	6
4.1. Who and Where to Report a Complaint?	6
4.2. How to Report a Complaint.....	6
4.3. Assessing if a Reported Complaint is an NTB	6
4.4. The Mechanisms for the Resolution of NTBS	7
4.5.1 Resolution at the Technical Level.....	7
4.5.2 Resolution at the Policy Level	8
5. THE ROLE OF THE PRIVATE SECTOR IN NTB REMOVAL	9
6. COMPENSATION	9
7. REFERENCE TO THE EAST AFRICAN COURT OF JUSTICE.....	9
8. WANT TO KNOW MORE?	9

WHAT IS A NON-TARIFF BARRIER (NTB) IN THE EAC?

According to the **East African Community Elimination of Non-Tariff Barriers Act 2017** “Non-tariff barriers” means laws, regulations, administrative and technical requirements other than tariffs imposed by a Partner State, whose effect is to impede trade.”

Many of the regulations and technical requirements that affect trade – rising from Non-Tariff Measures (NTMs) - serve legitimate policy objectives to protect public health or the environment. **The East African Community Elimination of Non-Tariff Barriers Regulations, 2017** highlights that one aspect of what makes an NTM an NTB is **whether a “measure is discriminatory and restricts trade directly or indirectly”**.



WHAT ARE THE CATEGORIES OF NTBS IN THE EAC?

The EAC Elimination of NTBs Act 2017, provides for four main categories of NTBs. These categories locate the NTBs within the policy area that is helping to create it, and therefore where an action will need to be taken if the barrier is to be removed. These categories are as follows:

THE GENERAL CATEGORIZATION OF POTENTIAL NON-TARIFF BARRIERS

The general categorisation for potential NTBs are set out in the Schedule 1 of the NTB Act.

Table 1 Schedule 1 of the NTB Act

PARTS & SECTIONS	DESCRIPTION
Part I	Government Participation in Trade and Restrictive Practices Tolerated by Governments
A	Government aids, including subsidies and tax benefits
B	Countervailing duties
C	Government procurement
D	Restrictive practices tolerated by governments
E	State trading, government monopoly practices, etc.
Part II	Customs and Administrative Entry Procedures
A	Anti-dumping duties
B	Customs valuation
C	Customs classification
D	Consular formalities and documentation
E	Samples
F	Rules of origin
G	Customs formalities
H	Import licensing
I	Preshipment inspection
Part III	Technical Barriers to Trade
A	General
B	Technical regulations and standards
C	Testing and certification arrangements
Part IV	Sanitary and Phytosanitary Measures
A	General
B	SPS measures including chemical residue limits, disease freedom, specified product treatment, etc.
C	Testing, certification and other conformity assessment

ANY OTHER GENERAL CATEGORIZATION AND SUBCATEGORIES AS MAY BE DETERMINED AND PRESCRIBED BY THE COUNCIL

As circumstances can change, the Act provides for categories and subcategories to also change in a manner that may be determined and prescribed by the Council through Recommendations, Decisions and Directives.



CERTAIN ACTIVITIES BY PUBLIC OFFICERS AND INSTITUTIONS

The Act also prohibits public officers and institutions from engaging in activities that are not authorised by the laws of the Community or of the Partner States which:



Causes an additional cost to the business of an affected party;



Discriminative actions against any EAC goods that qualify under the EAC rules of origin”;



Results in wastage of time or loss of business or market including, delays in clearing imports & lengthy testing & certification procedures;



Leads to ban on market entry & loss of potential markets;



Amounts to the imposition of unprescribed fees or charges or consideration in kind



Restricts business transactions in the Partner State;



Does not recognize the East African Rules of Origin & which leads to additional cost for verification of the goods & loss of business;



Causes any other impediment to trade within the Community, as may be determined by the Council;



Does not recognize product certification marks, calibration certificates, test certificates/reports & inspection reports awarded by National Institutions in accordance with provisions of EAC SQMT Act & which results into additional costs &/or loss of business; &



Denies entry of goods originating from other EAC Partner States



WHY ARE NTBS HARMFUL?



TO TRADERS

NTBs can increase costs for traders and sometimes prevent them from trading the goods that they would wish to trade. Additional costs that arise from NTBs make traders goods less competitive, which decreases their incomes. When these costs rise to the level where profit is no longer possible, traders will either seek new markets (where they are likely to see lower profits) or stop trading. Some NTBs, such as bans or standards that are not reasonable, will prevent traders from trading in certain goods as well.

In estimating the impact of NTBs on Traders, the most direct approach is to use border surveys (also including transporters). These identify the NTBs they face and the “additional” time and cost of trade as a result of NTBs (such as paying tariffs because a product is not recognised as originating in the EAC). The surveys also capture the average value of a consignment and the average value of trade within a day, week or month, (depending) and quantify what the trader earns. With these estimates, it is possible to calculate the costs of NTBs to the Traders, made up of additional monetary costs such as tariffs, and also the cost of lost time. By capturing the income of traders, the “additional” hours spent at the border or at roadblocks can be given a monetary value.

For large scale traders, the cost of time lost is often calculated on the basis of estimates of the costs of transport – for example, the amount the trader must pay per hour or day for a truck unnecessarily waiting at a border or held up at a roadblock.



TO PRODUCERS

NTBs affect producers in a similar manner to traders. They result in higher costs during production and transport, and as a result lower profits. For many firms, stringent NTBs will prohibit their ability to export to certain markets, or even export at all.

The impact of NTBs on producers can be estimated at firm level and at sector level. At the firm level, an NTB can result in higher direct costs – for example when tariffs are incorrectly applied to a product originating in the EAC. But NTBs can also affect the profitability and operations of a firm - key indicators include volume of sales, additional costs of trading, output, profits and employment. In assessing impact, the analysis needs to develop a counterfactual of what the firm’s performance would have been in the absence of an NTB.

An NTB can also have an impact on the reputation of a firm, for example when an NTB results in a company not being able to fulfil contracts with customers in the destination market. This impact is difficult to quantify.

However, the impact is not just on the firm directly affected but also suppliers of goods and services to that firm. For example, an NTB on fruit juice exports will not only affect the juice producer but also fruit and sugar producers that provide raw materials.



ON TRADE AND DEVELOPMENT OBJECTIVES

NTBs have a negative impact on trade flows, both imports and exports. In the context of a region such as the EAC, this means that they act as an inhibitor to both growth and closer integration. NTBs are generally an impediment to development objectives, and can have significant effects on GDP growth, and by extension poverty, due to how they prevent gains from trade.

It is possible for a single NTB to have a sector wide, even economy wide impact on trade. For example, a wheat import ban by a specific country will affect trade in the entire sector. And



inappropriate road user charges will affect all goods traded by road transport, potentially affecting nearly all trade in the Community.

The direct impact of sector-wide NTBs can be captured directly: customs data will reveal the reduction in trade in the sector (though the assessment would need to take into account what trade would have been in the absence of the NTB). For an NTB affecting all e.g., road transport, the direct impact on the percentage increase in the cost of trade can be assessed using information from transporters.

However, while a single NTB can have a significant impact on trade, specific NTBs are often short-lived. The issue is that often when one NTB is removed another is imposed elsewhere. NTBs are “death by a thousand cuts” on trade.

To capture the aggregate impact of NTBs, intercept surveys of traders and transporters can be used to capture the increase in cost and time of trading as a result of NTBs, as a percentage of the value of export consignments. In this way the NTB can be seen as converted into a tariff rate equivalent.

There are two options to assess the impact of the tariff rate equivalent of the NTBs. One approach involves using the established relationships (estimated using time series or panel data) between changes in trade and changes in economic growth and changes in poverty rates. An alternative approach to the analysis of the impact of NTBs on trade and development is to use economic models to estimate the impact on consumer welfare and how economic activity shifts from less efficient and productive sectors to more efficient and productive ones to capture changes in trade, GDP and poverty; whereas in the first approach the impact is calculated using multipliers estimated on time series data.



THE PROCESS OF IDENTIFYING, REPORTING AND MONITORING THE RESOLUTION OF NTBS IN THE EAC INSTITUTIONAL ARRANGEMENT

The National Focal Points (NFPs) of each Partner State are responsible for the oversight of the process of the identification, reporting and monitoring of NTB elimination in collaboration with the National Monitoring Committees (NMCs) established in each Partner State and the Regional Monitoring Committee (RMC).

The NFP is the Ministry of Trade (or as designated by the Partner State) while Members of the NMC are drawn from Government institutions and the Private Sector. The RMC on the other hand, is made up of representatives of the NMCs.

WHO AND WHERE TO REPORT A COMPLAINT?

Government representatives, National Focal Points, members of the National Monitoring Committees and any economic operator can register a complaint in a number of ways:

- a) With the National Focal Point,
- b) With the National Monitoring Committee members,
- c) With the EAC Secretary General, and
- d) via the available online mechanisms such as the NTBs Module in the East African Monitoring System, the NTBs App, the tripartite online mechanism www.tradebarriers.org, or SMS reporting system where applicable.

HOW TO REPORT A COMPLAINT

While reporting a complaint, the affected party should among others provide the following details:

- Name of the Reporter,
- Location where the incident is happening,
- Partner State imposing the NTB,
- Give a description of the Complaint,
- Date of the incident, and
- Submit evidence showing the breach of the EAC Laws.

The information will form part of the regional monitoring tool known as the EAC Time Bound Programme on the Elimination of NTBs in the Region. In addition to the institutional structures for monitoring, the status of complainants – whether they are active or resolved – is available on the online monitoring mechanisms.

ASSESSING IF A REPORTED COMPLAINT IS AN NTB

The NMC, upon receipt of the complaint, will within 5 days consider the submitted evidence and investigate the complaint to “satisfy itself that it is not vexatious or frivolous” and falls into the categories provided in 2. If the complaint is “tenable” the imposing Partner State shall begin the resolution process. If the complaint is rejected by the imposing Partner State, the affected Partner State can relodge the complaint together with additional information and new evidence for it to be reconsidered.



Examples of NTBs reported in the EAC can be found at www.tradebarriers.org.



THE MECHANISMS FOR THE RESOLUTION OF NTBS

There are two mechanisms for the resolution of NTBs in EAC

- a) Technical Level, and
- b) Policy Level.

RESOLUTION AT THE TECHNICAL LEVEL

(i) National Monitoring Committees (NMCs) established in all Partner States

- NMC's play an important role in reporting, outlining, monitoring, and advising on the removal of NTBs in their Partner States.
- They receive complaints and reports from affected parties on the existence of NTBs.
- When a complaint is reported, NMCs have 5 days to investigate it and consider evidence to "satisfy itself that it is not vexatious or frivolous" and then notify the imposing Partner States NFP.
- The imposing Partner State's NMC will then have 15 days to conduct its own investigation (rising to 30 days in exceptional circumstances), which is then reported to the SG and Council.
- They also play a role in facilitating the removal of NTBs through bilateral missions with other Partner States.

(ii) Mutual Agreement (Bilateral approach) of the Concerned Partner States

- A meeting between the reporting and imposing partner states should be convened within 10 working days of the imposing state being notified.
- If the NTB is resolved, the NFP from the Partner State of the affected party notified the SG, other Partner States, and the affected party.
- If the matter is not resolved the Partner State of the affected party notifies the Secretary General. If they do not do this within 30 days, the affected party may notify the SG themselves.
- The affected party will also have the option to submit the matter to the EACJ if the Secretary General has not responded to them in 14 days.
- The process for the resolution of NTBs by mutual consent is intended to take place within 10 days for perishable product and within 30 days for other products.

(iii) Regional Monitoring Committee (RMC); through the Implementation of the EAC Time Bound Program on the Elimination of NTBs.

- Upon receipt of the TBP the NMCs shall prepare a plan for elimination of NTBs, including a timeline.
- If an NTB persists longer than the proposed elimination timeframe, the NMC or NFP from the affected Partner State will notify the NMC from the imposing Partner State.
- The NMC will then provide a response in 5 days, but this can rise to 20 working days if necessary.
- Within 15 days a meeting between the concerned Partner States will be convened to resolve the NTB by mutual agreement.
- If this is unsuccessful, the matter will be referred to the council.

RESOLUTION AT THE POLICY LEVEL

(i) Sectoral Committees (Trade, Customs and Standards)

Sectoral Committees are established by the Council of Ministers, on recommendation of the Coordinating Committee.

- Sectoral Committees conceptualise and monitor programmes to implement the directives, decisions etc of Council and Sectoral Councils, within their sector (such as Trade, Customs, or Standards).

(ii) Sectoral Councils (Trade and EAC Affairs)

The Sectoral Council on Trade, Industry, Finance, and Investment (SCTIFI) gives partner states a platform to discuss the resolution of NTB

- NTBs can be referred to the SCTIFI from the RMC and by the Secretariat.
- The resolution of challenging NTBs can be discussed at meetings of the SCTIFI, and the SCTIFI can instruct the Secretariat to take additional steps needed for the resolution of particular NTBs.

(iii) Council of Ministers

The Council) is the central decision-making and governing Organ of the EAC. Its membership constitutes Ministers or Cabinet Secretaries from the Partner States whose dockets are responsible for regional co-operation.

- Matters that are unresolved after the above processes may be referred to the Council for a decision. Council may issue decisions, directives or guidance to resolve NTBs.
- The Council may also refer a matter that comes to it to the EAC Committee on Trade Remedies for them to investigate the issue and report back to Council within 30 days for Council to issue its decision in the form of a directive.
- If Council cannot reach consensus, the matter can be referred to the EACJ.

(iv) East African Court of Justice (EACJ)

The EACJ is a judicial body that ensures the adherence to law in the interpretation and application of and compliance with the Treaty.

- The EACJ has recently provided rulings on the removal of Non-Tariff Barriers and compensation for affected parties.

(v) Summit of Heads of State

The Summit of Heads of Government of Partner States gives strategic direction towards the realisation of the goal and objectives of the Community



THE ROLE OF THE PRIVATE SECTOR IN NTB REMOVAL

The Private Sector plays a key role in the identification, reporting and monitoring the resolution of NTBs in the EAC. The Regulations mandate the Private Sector to co-chair the NMCs and in this role they are not only central to ensuring that reported NTBs are resolved as quickly as possible, they also have the scope to identify NTBs on their own initiative and to make recommendations.

COMPENSATION

The affected party of an NTB will be compensated for their loss by the Partner State that caused the NTB. The value of compensation will be calculated by the Committee for Trade Remedies.

If the imposing Partner state fails to compensate within 14 days, the aggrieved party can take their case to the East African Court of Justice.

REFERENCE TO THE EAST AFRICAN COURT OF JUSTICE

Affected parties have recourse to the EACJ if:

- a) The Secretary General has not responded to their complaint in 14 days.
- b) They have not received the compensation determined by the East African Committee on Trade Remedies within 14 days.
- c) The Council fails to reach consensus on the matter.

WANT TO KNOW MORE?



East African Community
EAC Close, Afrika Mashariki Road
P.O. Box 1096
Arusha, United Republic of Tanzania



Tel: +255 (0)27 216 2100
Fax: +255 (0)27 216 2190



Email: eac@eachq.org | sgoffice@eachq.org



<https://www.eac.int/>

