



Non-tariff barriers and 'complaints' in the East African Community's reporting process

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Key messages

- Despite efforts made by the East African Community (EAC) to eliminate non-tariff barriers (NTBs), many have proven hard to solve and new ones continue to emerge.
- Around a third of NTBs reported since 2009 were resolved in less than three months, which suggests they were simple 'complaints', requiring straightforward administrative acts for their resolution.
- With the exception of the private sector, there is very little space for outside actors (such as academics) to raise issues around additional barriers and regulations that affect trade and integration. NTBs associated with the provision of services are seldom reported.
- There should be two separate reporting mechanisms in place: one to deal with complaints, which should be resolved quickly; and another to deal with real NTBs, which should involve the participation of specialists to identify where trade integration needs further work.

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Introduction

In 2000, the East African Community (EAC) partner states came together to form a regional trading bloc in order to ‘widen and deepen economic, political, social and cultural integration ... to improve the quality of life of the people of East Africa through increased competitiveness, value added production, trade and investment’ (EAC, 2016). To this end, the EAC has since recorded a number of milestones, including the creation of a customs union and a common market. The common market came into force in 2010 on the signing of the East African Common Market Protocol, in which the partner states agreed to maintain a liberal position on free movement of factors of production, goods and services.

Despite these high-level commitments, trade barriers continue to affect the free flow of goods and services amongst EAC states. Although tariffs have been eliminated in trade among members, non-tariff barriers (NTBs) are common and constitute a major hurdle to the establishment of the common market. The UN Conference on Trade and Development (UNCTAD) (2013) defines NTBs as restrictions, unrelated to tariffs, that result from quotas, import licensing systems, prohibitions, regulations, conditions or specific market requirements that make the importation or exportation of products difficult and/or costly. Additionally, the EAC defines NTBs as laws, regulations and administrative and technical requirements (other than tariffs) imposed by a partner state, whose effect is to impede trade (EALA, 2015). In response to the persistence of NTBs in the region, the EAC Secretariat in partnership with the East African Business Council (EABC) established a monitoring mechanism to deal with NTBs as they arise.

The EAC’s NTBs reporting mechanism

In 2009, the EAC launched the Time-Bound Programme for the Elimination of Identified/Reported NTBs to improve trade in the region. Under this programme, monitoring and reporting of NTBs is facilitated at national and regional levels and is conducted at various stages by relevant trade officials. The monitoring and reporting of NTBs begins with companies that identify and report their experiences of trading in the EAC to their business associations, or even directly through online or SMS-based tools. The business associations, which act as watchdogs for the process of elimination of NTBs, then forward the

reports to National Monitoring Committees (NMCs). These NMCs meet regularly to discuss reported cases and actions taken, and report the information gathered to their line ministries or the agency responsible for taking further action. NMCs also participate in regional fora where they are able to share experiences of NTBs and of the elimination process.

NMCs escalate reported NTBs to the EAC Secretariat through the EAC Directorate of Trade. The EAC Secretariat then forwards these reports to the EAC Coordination Committees and the EAC Trade, Industry and Investment Committee for discussion and decision-making (EAC and EABC, 2016). The EABC is then responsible for disseminating the information on NTBs’ elimination progress to members. The EABC also has the duty of producing the annual business climate index, which gives information on the progress of the NTBs’ elimination.

Instances of NTBs’ resolution in the reporting process

In 2015, the EAC passed the East African Community Elimination of Non-Tariff Barriers Act to provide a legal framework for monitoring and addressing NTBs in the region. This Act details three mechanisms for resolving reported NTBs. The first mechanism relies on mutual agreements among concerned partner states to eliminate reported NTBs. The second mechanism involves the implementation of the EAC Time-Bound Programme for the Elimination of Identified/Reported NTBs. The third mechanism utilises regulations, directives, decisions or recommendations made by the EAC Council of Ministers.

The first mechanism, mutual agreement, is the preferred mechanism for resolving reported NTBs. With this approach, the concerned partner states are encouraged to hold discussions and jointly agree on a strategy to eliminate reported NTBs (EALA, 2015). The problem that can arise with this mechanism is that partner states do not always agree on the best strategy for the elimination of NTBs. Although in the main, mutual agreement is the fastest way to resolve NTBs, discussions may sometimes take a long time to be concluded, thereby allowing NTBs to persist, negatively impacting intra-EAC trade.

Partner states can also initiate the elimination of an identified NTB through the Time-Bound Programme, by presenting a written notification to the country responsible for said NTB. The NMC of the responsible country is expected to investigate the impact of the reported NTB, as well as the required time and potential challenges to eliminating it. However, reports indicate that some NMCs are weak, owing to lack of skills and/or capacity to evaluate the impact of NTBs and determine appropriate solutions (MTIC, 2016). This problem is exacerbated by insufficient information, or delays in

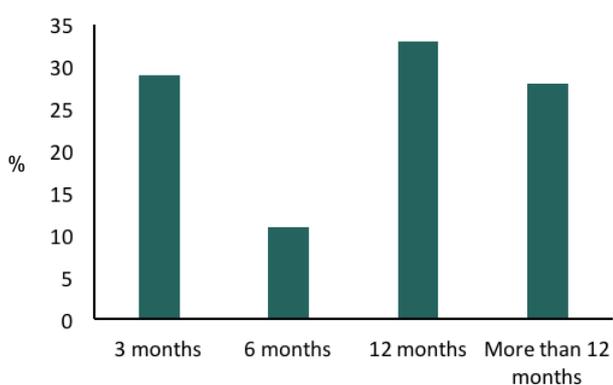
dissemination of information, concerning changes in import/export procedures and requirements in the region. If the responsible country fails to resolve a reported NTB, the Secretary-General convenes a meeting between the concerned states to resolve it.

If the reported NTBs cannot be resolved through mutual agreement or the Time-Bound Programme, they are escalated to the Council of Ministers. The Council may make a directive or decision concerning the best way to resolve a reported NTB. Alternatively, it can escalate the reported NTB to the EAC Committee on Trade Remedies for guidance. A major challenge with this mechanism is that directives, such as a recommendation to impose a sanction on non-complying parties, can be ignored as a result of political goodwill between partner states (Mathieson, 2016). Therefore, a legally binding mechanism that provides for sanctions that can be imposed by the Council should be adopted to ensure compliance.

NTBs and ‘complaints’ reported to the EAC Secretariat

Since 2012, the EAC Secretariat has published quarterly reports on the status of NTB elimination in the region. These reports detail information on the nature of reported NTBs, their sources and the affected countries. Based on an analysis of reported and unreported NTBs, some of them seem to reflect complaints on the application of agreed rules or regulations rather than actual NTBs. This is reflected in the short time required for the NTBs to be resolved. Almost one third of the NTBs reported were resolved in less than three months (see Figure 1 below), which constitutes a very short period of time. Complaints, in this sense, can be defined as instances where there is an incorrect implementation of the agreed commitments in terms of NTBs.

Figure 1: Resolved NTBs by time taken for resolution



Source: Overseas Development Institute calculations based on EAC data.

Although the time taken for resolution of NTBs varies depending on the degree of political will in the imposing countries, in the main, NTBs take some considerable time to resolve. The various stages involved in the resolution of specific barriers require bilateral and internal negotiations in the affected and imposing countries.

Many reported NTBs require only simple administrative acts to be resolved. For example, in the June 2016 meeting of the EAC Committee, the Tanzanian Government confirmed that its Rail Development levy would no longer be applied. However, in the months that followed, customs officers were not properly informed about the change. This suggests that the reported NTB, in reality, was simply a complaint about the existing procedure or the result of a lack of information. Examination of other NTBs that were resolved relatively quickly also reveals the presence of multiple cases of complaints that affected a single firm in a particular country.

At the June 2016 EAC Committee meeting, of the 26 NTBs reported, six were found to be complaints. In one example, Kenya complained that Rwanda, Tanzania and Uganda did not provide adequate information on changes to their export procedures. This led to an increase in the cost of doing business in Kenya. The accused countries agreed to investigate the evidence provided by Kenya and report back at the next meeting. In another example, Tanzania complained that Rwanda and Uganda did not give preferential treatment to rice originating from Tanzania as per the EAC rules of origin, thereby denying them market entry.

The presence of complaints within the NTB reporting mechanism diverts resources and time away from the resolution of real NTBs that have remained unresolved for years – for example, that affecting beef exporters to Uganda. These complaints should be handled through a different mechanism that allows for a faster and more direct approach. In fact, there are existing bilateral and informal mechanisms in place that could be used for this purpose.

When complaints are excluded, the number of reported NTBs is quite small. To date, there have been very few reported NTBs associated with services provision, despite the high level of regulations of services in EAC countries. This suggests the existing NTB reporting mechanism is not adequately reflecting and addressing the multiple barriers affecting trade in the EAC.

To tackle this, the NTB forum should seek to gather experts in trade and regulation from EAC countries, in addition to other relevant stakeholders and government officials. These actors will be in a position to identify additional issues that can contribute to improving trade and the integration of partner states’ markets. They could also bring attention to related overlooked issues that would help to build the common market.

Conclusions and policy suggestions

Resolving NTBs usually takes a longer time than resolving simple complaints. Complaints, in this sense, can be defined as instances where there is an incorrect implementation of the agreed commitments around NTBs. Many complaints arise from ineffective communication by the relevant authorities to those enforcing EAC regulations and rules at borders.

It is important to have a separate reporting and resolution mechanism for complaints, using a more straightforward consultation process at the bilateral level. This would be more economical for the concerned parties, given that the resources channelled into addressing complaints would be redirected into dealing with actual NTBs, which are both resource- and time-consuming to resolve.

The EAC should improve the capacity of NMCs to investigate reported NTB complaints and develop

appropriate solutions through training and capacity-building programmes. This will help prevent cases of complaints being reported as NTBs, as well as reduce the emergence of new NTBs and the persistence of existing ones. Additionally, an efficient and effective mechanism for communicating information on changes in import/export rules and procedures in EAC partner states should be developed. This could help to reduce or eliminate the information asymmetries that lead to the emergence of new complaints in the reporting process.

Finally, the mechanism for addressing actual NTBs needs to be augmented by bringing in trade and regulatory specialists who can highlight and identify additional unreported issues that hinder trade between EAC partner countries.

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