



Background paper

Non-Tariff Barriers (NTBs) monitoring systems in Africa: possible approaches for HoAI countries



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ABBREVIATIONS

AfCFTA	African Continental Free Trade Area
BMOs	Business Membership Organizations
CESARE	Cooperation for Enhancement of SADC Regional Economic Integration
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
EBMM	Export Barriers Monitoring Mechanism
ECOWAS	Economic Community of West African States
HoAI	Horn of Africa Initiative
ICPALD	IGAD Centre for Pastoral Areas and Livestock Development
IGAD	Intergovernmental Authority on Development
ITC	International Trade Centre
NFP	National Focal Points
NMC	National Monitoring Committees
NTB	Non-Tariff Barriers
NTM	Non-Tariff Measures
OPA	Observatory of Abnormal Practices
REC	Regional Economic Communities
SADC	Southern African Development Community
SPS	Sanitary and Phyto-Sanitary
TBT	Technical Barriers to Trade
TOAM	Trade Obstacles Alert Mechanism
TRAINS	UNCTAD Trade Analysis Information System
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
WAEMU	West African Economic and Monetary Union
WTO	World Trade Organization

1. Non-Tariff Measures (NTBs) and their incidence in Africa

The term Non-Tariff Barriers (NTBs) refer to a wide range of discriminatory (protectionist) measures consisting in prohibitions, conditions, or specific market requirements that make importation or exportation of products particularly difficult and/or costly. As the term suggests, they may include any policy measures other than tariffs that can impact trade flows¹. Among them, there are import quotas, licenses and other border formalities, discriminatory taxes or excessive document requirements applied to imports, inspection and certification requirements, quarantines, complex or discriminatory rules of origin, extensive use of trade remedies (ex. antidumping or safeguard measures), or the unjustified and/or improper use of health, safety regulations or quality standards to discriminate against products imported from other countries or that make particularly hard their access to the national market. NTBs are usually distinguished from “Non-Tariff Measures” (NTMs), which include a wider set of measures that despite aimed at achieving non-trade objectives (such as the protection of the environment or of the health and consumer safety), they may have an indirect restrictive effect on trade flows.² Differently from NTBs, NTMs therefore do not necessarily have a protectionist intent and do not always entail an adverse impact on trade. An example are the Sanitary and Phyto-Sanitary (SPS) measures and the Technical Barriers to Trade (TBT) which, respectively, are aimed at protecting human, plant and animal health, and to ensure product quality and safety. However, sometimes it can happen that national governments overstate consumer health and safety requirements, using SPS and TBT as a measure to protect domestic producers from fair competition from similar entities in other countries. In this case the NTM ends up in creating trade-distortive effects, turning into an NTB.³

UNCTAD has recently developed the **TRAINS database** as an interactive tool for monitoring NTMs worldwide (see figure 1). At the moment, however, there are a few African countries that are listed in the database, mostly from the North-West regions, even though their number is expanding. Among HoAI countries, at present only Ethiopia has been included in the database.

¹ It is particularly difficult to give a comprehensive picture of possible NTBs. An impressive collection of studies compiled by the OECD provides an overview of the range, complexity and diversity of such barriers (OECD. 2005. Looking Beyond Tariffs: The Role of Non-Tariff Barriers in World Trade. OECD Trade Policy Studies). Another classification of NTBs is given by UNCTAD, which has recently developed a database of such measures, currently in the process of being populated with the relevant data: <https://unctad.org/topic/trade-analysis/non-tariff-measures/NTMs-data>

² Disdier, A. C., Fugazza, M., A Practical Guide to the Economic Analysis of Non-Tariff Measures, Vol. 3, WTO/UNCTAD, December 2020

³ See Lopez, A. O., Protectionism and Trade in Renewable Energy Infrastructure, Asian Infrastructure Investment Bank, 2020.

Figure 1: UNCTAD TRAINS Database



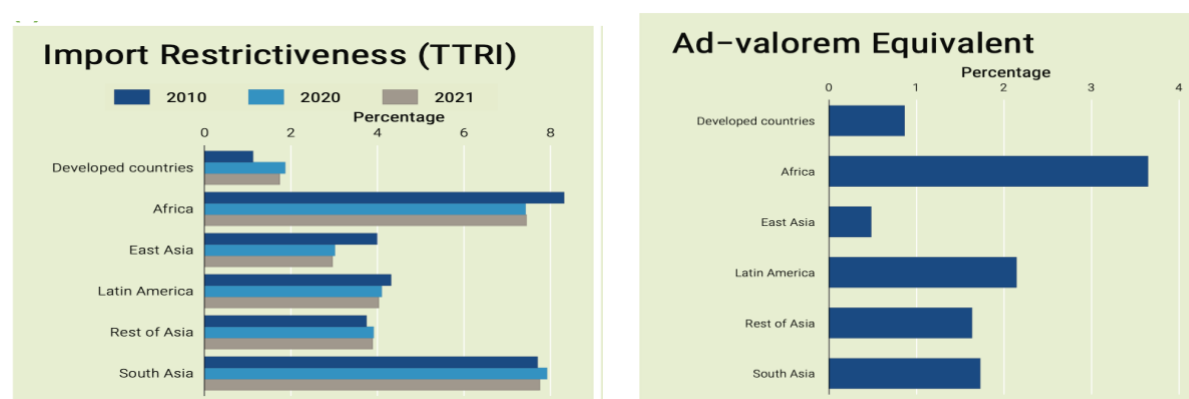
Source: <https://trainsonline.unctad.org/home>

The World Trade Organization (WTO) plays a large role in monitoring the use of NTBs by States and Customs Unions that are member to such Organization. At present, only Kenya and Djibouti are WTO members, while Ethiopia, Somalia and South Sudan are in the accession phase, holding a status of observers. Despite the lack of a comprehensive regulation at multilateral level that specifically governs NTBs, two main Agreements have been concluded at WTO level to address two sets of measures that if used instrumentally by States and Customs Unions to protect their markets can turn into critical barriers to trade. WTO members must strictly follow the rules of such Agreements to ensure that the above two categories of measures do not represent an unnecessary and unjustified obstacle to trade. The Sanitary and Phytosanitary measures Agreement (“SPS Agreement”), the first of such Agreements, aims at ensuring that food safety and animal and plant health laws and regulations are scientifically supported, fair in their application, and transparent. The Agreement on Technical Barriers to Trade (“TBT Agreement”) covers instead all those measures aimed at protecting the consumer safety, the environment, or the national security, and aims at ensuring that such measures are technically justified and applied consistently to all their trade partners. To this end, both Agreements set an obligation for WTO members **to notify all SPS and TBT measures or regulations that might affect trade**, so that a compliance review can be conducted to ensure that such measures are transparent, non-discriminatory, and that they minimize trade restrictiveness, avoiding that they become an NTB.

NTBs are costly, because complying with particularly strict policies or regulations (and associated procedural requirements) requires extra time and money not only for traders, but also for the governments that have imposed the measure. These costs undercut the competitiveness of local businesses and prevent their integration into global and regional value chains, leading to increased levels of bureaucracy that none of the HoA governments can afford.

According to the UNCTAD publication “Key Statistics and Trends in Trade Policy”, 2022⁴, despite Africa having registered during the last decade a generalized reduction of tariffs on imports (especially in the agriculture sector), NTBs are among the higher in the world. The ad-valorem equivalent of NTBs, an index that measures the additional costs that such obstacles generate for the importer, shows that such barriers in Africa are the highest among developing regions (Figure 2).

Figure 2: Average duty tariffs in Africa vs. ad valorem equivalent of NTBs



Source: UNCTAD, *Key Statistics and Trends in Trade Policy*, 2022

NTBs thus remain a challenge for integration in Africa, as they contribute to the high cost of doing business, inhibiting intra and inter-regional trade. A research paper published by UNCTAD in 2017 explains that African countries could gain US\$ 20 billion each year by tackling such barriers at the continental level, much more than the US\$ 3.6 billion they could gain by eliminating tariffs⁵. Similarly, the United Nations Economic Commission for Africa (UNECA) indicates that African countries are not only victims of the growing prevalence of NTBs, but they are also particularly prone to using NTBs against each other⁶. In 2014, a study carried out in ten Sub-Saharan Africa (SSA) countries revealed that exporters consider the administrative costs of compliance to NTBs as a key factor that makes their shipments particularly onerous, especially for exports of manufactured goods⁷. This is the reason why most of States and Regional Economic Communities (RECs) in Africa have put in place rule-based monitoring mechanisms that give traders the possibility to report NTBs in order to have them eliminated or have them minimized, at least.

All being considered, the impact of NTBs on trade is largely unknown in some regions, either because there are no clear mechanisms or procedures for their identification and resolution, or because economic operators make a limited or no use of the existing reporting tools, due to their limited knowledge of such means. This is particularly the case of the Horn of Africa, which has been so far neglected by programs launched by international donors and

⁴ https://unctad.org/system/files/official-document/ditctab2023d2_en.pdf

⁵ https://unctad.org/system/files/official-document/ser-rp-2017d14_en.pdf

⁶ Mold, A., Non-Tariff Barriers – Their Prevalence and Relevance for African Countries, UNECA, African Trade Policy Centre, Work in Progress No. 25, October 2005.

⁷ Available at: <https://www.tralac.org/images/docs/6719/bridges-africa-volume-3-issue-10.pdf>

Development Partners aimed at promoting the use of platforms for NTBs reporting and resolutions. Moreover, NTBs in this region have a recurring nature, tending to re-emerge once eliminated, sometimes even after a short period of time. In most cases, this is justified by the need to protect the financial interests of the States against illicit behaviors put in place by traders and/or their agents.

The objective of this paper is to analyze the various tools adopted in Africa for identifying and solving NTBs (including their legal basis), and to recommend some solutions for the Horn of Africa Initiative countries based on the lessons learnt from these experiences, considering the prevalence of such barriers in the region.





2. Continental and regional NTB monitoring systems

In Africa many platforms are currently available at continental and regional levels (and more limitedly, at national levels) to identify and solve NTBs. The main advantages of all such platforms are that they offer an easy and free access, via an online interface, to information concerning all NTBs existing in a given region, which helps both economic operators and policymakers to plan their interventions and strategies. In addition, such solutions eliminate any “paper steps” in the NTBs reporting process. The “user-friendly” design of the various electronic platforms for NTBs reporting makes the submission of complaints by operators easy and their resolution process quicker. Continental and regional tools for monitoring and resolution of NTBs are described in the next Sections. Their analysis does not aim at proposing the development of a similar mechanism for the HoAI countries (as several platforms are already available for economic operators in this region to report trade barriers), but to identify possible constraints and limitations to their use that can be overcome through specific support activities.

2.1. The AfCFTA NTBs monitoring system

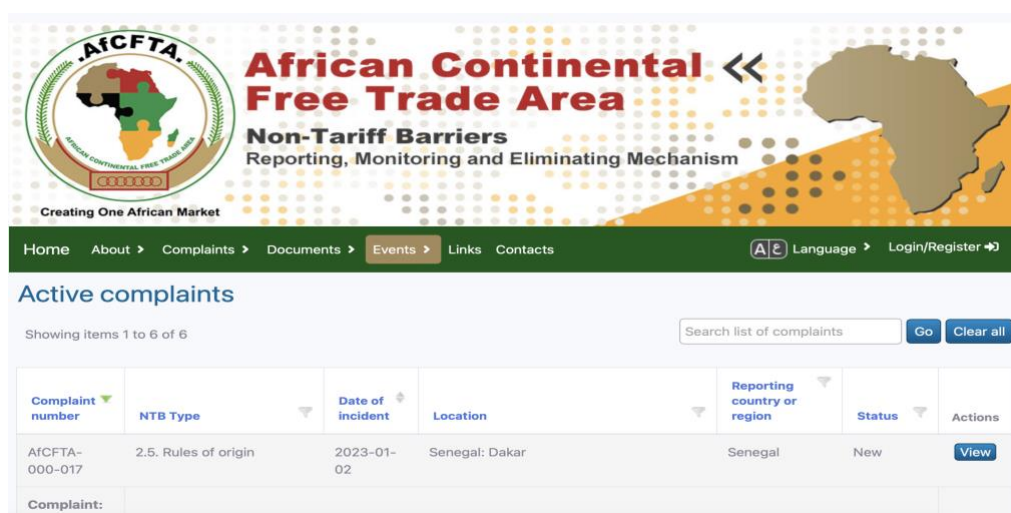
The Protocol on Trade in Goods of the African Continental Free Trade Area Agreement (AfCFTA), dedicates a specific Annex (Annex V) to NTBs, considered the strong impact they have on African trade, as seen in Section 1. This Annex foresees the establishment of a Sub-Committee on Non-Tariff Barriers composed of duly designated representatives from the AfCFTA State Parties, and of a Unit for the coordination of NTBs elimination. To this end, State Parties are mandated (art. 6.2) to establish **National Monitoring Committees (NMCs)** and **National Focal Points (NFPs) on NTBs** and to communicate their details to the AfCFTA Secretariat, so that the latter can share their details with all States Parties to the Agreement. The main function of the NTB Coordination Unit is to oversee the process for elimination of NTBs by working together with other structures listed in the art. 7 of Annex V (Figure 3).

Figure 3: AfCFTA Institutional Framework for the Elimination of NTBs

INSTITUTION	COMPOSITION	FUNCTIONS
 Sub-Committee on NTBs	representatives of State Parties	responsible for monitoring the implementation of Annex 5
 NTB Coordination Unit	unit in the AfCFTA Secretariat	established by the AfCFTA Secretariat; manages NTB elimination; works with NTB Sub-Committee, REC NTB Units & National Focal Points
 National Monitoring Committees	representatives of the public and private sector	identify, resolve and monitor NTBs; confirms dates for action; define process for elimination at national levels
 National Focal Points	government department, ministry or body designated to deal with NTBs	coordinate the implementation of the AfCFTA NTB mechanisms; provide secretarial services to the National Monitoring Committees; sensitise stakeholders on the NTB mechanism

Art. 2 of Annex V also foresees the establishment of a mechanism for the identification, categorization and progressive elimination of NTBs at continental level. This tool was developed in 1999 by the African Union, in collaboration with UNCTAD, and has become operational since 13th January 2020. It consists of a platform, accessible via internet⁸ (see Figure 4), which allows economic operators to register online and report the NTBs, by filling a specific form where they analytically describe the obstacles to trade in which they incurred. Once submitted, the system provides the information to an NTB Coordination Unit in the AfCFTA Secretariat, to NTB Units in the concerned Regional Economic Community (REC), as well as to designated NTB National Focal Points. All these bodies are mandated to follow-up through the NTB resolution process, by monitoring the activities of the national authorities responsible for the elimination of the barrier. To date, the platform only shows a limited number of registered complaints (19 in total, of which only 2 indicated as solved).⁹

Figure 4: AfCFTA NTBs Reporting, Monitoring and Eliminating Mechanism

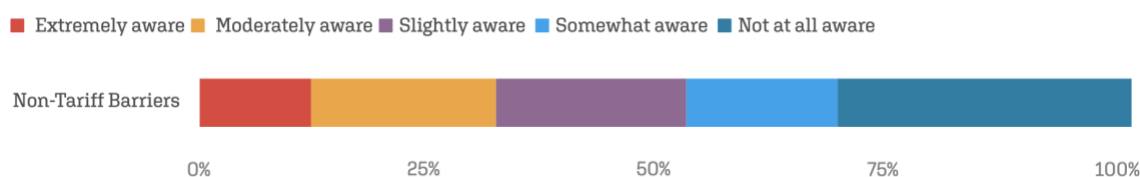


⁸ <https://tradebarriers.africa>

⁹ Date of consultation of the platform: 1th December 2023.

Even though it is expected that the number of such complaints will progressively increase in the next years, as meaningful trade under the AfCFTA just started¹⁰, it is surprising to note that since the launch of the platform, in January 2020 – after almost 3 years – the number of complaints is still so low, compared to other platforms that show a higher number of NTB reported and solved. In this regard, the latest PAFTRAC Africa CEO Trade Survey Report,¹¹ shows - based a survey conducted on more than 1,000 companies operating in 46 countries across the continent - that less than 10% of African businesses are fully aware of the existence of a monitoring system at continental level for reporting NTBs (figure 5).

Figure 5: Awareness level of the AfCFTA NTBs monitoring system



Among HoA countries, Kenya is the only one that has reported NTB through the AfCFTA NTBs monitoring system, with 2 complaints that are still active, respectively against Niger and Tanzania.

2.2. The Tripartite NTBs monitoring system

In 2008, the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC), jointly developed a freely accessible online platform¹² that enables economic operators to report and monitor the resolution of barriers encountered during the conduct of their business within these three regions. Identification, removal and monitoring of NTBs to trade by the Member States in the Tripartite Community is one of the priority areas for policy harmonisation and coordination under the Tripartite framework. Each one of such Regional Economic Communities has adopted specific regulations that provide the legal basis for the adoption of such mechanisms. These are the COMESA NTB regulations¹³, the SADC Protocol on Trade¹⁴ and the EAC Elimination of Non-Tariff Barriers Act, 2017¹⁵.

The Tripartite Reporting, Monitoring and Eliminating platform classifies NTBs into eight categories: 1) government participation in trade & restrictive practices tolerated by governments; 2) customs and administrative entry procedures; 3) Technical Barriers to Trade (TBT) measures; 4) Sanitary & Phyto-Sanitary (SPS) measures; 5) specific limitations; 6)

¹⁰ In October 2022, the AfCFTA launched the Guided Trade Initiative as a pilot project amongst 8 participating countries (Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia) to test documents and operational procedures required to trade preferentially under the terms of the Agreement.

¹¹ PAFTRAC is the acronym of Pan-African Private Sector Trade and Investment Committee, an organization that gathers a series of stakeholders from both the public and private sector to deliberate on policy issues, like trade across the continent, so to help to guide the formation of these policies at continental level. The third edition of the PAFTRAC Africa CEO Trade Survey Report was published end of November 2023 and is available at: <https://events.african.business/8OS5Jy>

¹² <https://www.tradebarriers.org>

¹³ Not available online.

¹⁴ <https://www.mcci.org/media/133297/sadc-protocol-on-trade-july-2014.pdf>

¹⁵ <https://www.eala.org/documents/view/eac-elimination-of-non-tariff-barriers-act-2017>

charges on imports; 7) other procedural problems; and 8) restrictions to transport, clearing and forwarding services.

Similar to the AfCFTA NTB Reporting, Monitoring and Eliminating Mechanism, the Tripartite platform dispatches each complaint raised by operators to one or more designated NTBs National Focal Point/Points in both the country imposing the barrier and in the concerned REC/RECs, who will follow-up through the relevant resolution process.

To submit a trade barrier complaint, economic operators must register on the platform and provide details of the trade barrier that they have encountered by filling out an online form. Supporting documents can be uploaded as part of the registration process. Once submitted, users can track the status of their complaints directly on the website. The Tripartite NTBs reporting, monitoring and eliminating mechanism also offers economic operators the possibility to send a complaint also via a SMS/Text message by submitting a request through their mobile phones to a specific number. The platform (Figure 6) shows a total of **880 complaints** treated since its establishment, of which 792 indicated as solved and 88 as still active¹⁶.

It should be noted that a number of the above-mentioned complaints - albeit minimal – have been reported **more than a decade ago**, with their resolution process indicated as still “in progress”. Moreover, the platform does not show which of these NTBs are recurrent in nature, although specific reports available in the 'documents' section provide information on this. Concerning the most active countries in reporting NTB through this platform, these are the SADC member countries. These countries have benefitted from the GIZ Cooperation for Enhancement of SADC Regional Economic Integration (CESARE) program¹⁷, that has been instrumental in promoting the use of the Tripartite NTB monitoring platform, providing direct assistance and coordination to countries in the resolution of specific reported NTBs, also through Business Membership Organizations (BMOs) such as the SADC Business Council, which played a pivotal role in resolving some NTBs. Kenya is the only country in the Horn of Africa Region whose operators use this tool more widely, while the other countries in the region have so far not lodged any complaint on the portal.

Figure 6: Tripartite NTBs Reporting, Monitoring and Eliminating Mechanism



¹⁶ Date of consultation of the database: 1 December 2023.

¹⁷ <https://www.sadc.int/project-portfolio/cooperation-enhancement-sadc-regional-economic-integration-cesare>

2.3. The WAEMU OPA and the TOAM system

In 2005, the West African Economic and Monetary Union (WAEMU), better known with its French acronym, UEMOA), established an “Observatory of Abnormal Practices” (*Observatoire des Pratiques Anormales* - OPA) with a funding of the West Africa Trade Hub USAid. Its purpose was to monitor the performance, initially, of six main inter-State West African corridors, subsequently expanded to three additional corridors, as shown in Figure 7. The regulatory framework that governs the use of such tool is the Decision N. 16/2005 of the WAEMU Council of Ministers¹⁸, which also defines the monitoring activities to be carried out along such corridors and the procedure for the removal of the identified abnormal practices.

Figure 7: Corridors in the WAEMU region covered by the monitoring of abnormal practices mechanism



Corridor monitoring activities are based on the analysis of three indicators: 1) the number of checks; 2) the time spent on controls; and 3) requests of illicit payments to truck drivers. The outcomes of such activities are documented in **quarterly reports** issued by the OPA that are transmitted to a Technical Monitoring Committee for the removal of NTBs. This Committee is made up by representatives for Customs, Police, Gendarmerie, Water and Forestry Services, Land Transport Services, the National Facilitation Committees and two representatives of the private sector in each WAEMU member State.

The OPA was recently discontinued due to problems of lack of funding. The Technical Committee - which used to meet at least once a year on convocation of the WAEMU Commission - was the body responsible to make concrete proposals for the removal of all obstacles on the basis of the recommendations included in the quarterly reports, whose last edition was issued in late 2020¹⁹.

All of the above being considered, the OPA was not a full-fledged NTBs-monitoring mechanism, as data collected were limited to the number of checkpoints, illicit payments asked by the control authorities and delays caused by these practices. For this reason, in 2018, WAEMU decided to adopt the **Trade Obstacles Alert Mechanism (TOAM)**, an online

¹⁸ DECISION N°16/2005/CM/UEMOA, available at:

http://www.uemoa.int/sites/default/files/bibliotheque/decision_16_2005_cm_uemoa.pdf

¹⁹ <http://news.alome.com/h/137652.html>

platform²⁰ designed and developed by the International Trade Centre (ITC) which allows businesses and private sector associations to report online NTBs, trade obstacles, and other challenges they face in their export and import operations - including restrictions to provision of services - so that they can be addressed and solved by the relevant government agencies. The platform currently shows a total of 326 obstacles, of which 155 indicated as not yet solved and six as ‘special cases’²¹ (i.e., cases whose resolution requires the involvement of several government structures and the conclusion of a specific study).²² Moreover, the TOAM system has a categorization system that allows some NTBs to be elevated to the AfCFTA (and transmitted to the AfCFTA NTB portal for publication) in case the barrier conflicts with the provisions of this agreement and its purposes. Nevertheless, none of the NTBs notified through this portal has been escalated to the AfCFTA platform so far, even though most (if not all) of them have a restrictive effect on trade that is relevant for the application of this agreement, since they restrict traffic flows among African States. The resolution process of these cases - 6 in total - is indicated as still “ongoing”, despite some of them were already existing prior to the adoption of the platform, and almost a **decade old**.

The WAEMU-TOAM has a regionally-designed interface where all the complaints lodged by economic operators are categorized according to the type of obstacle (see Figure 8 below).

Figure 8: Trade Obstacle Alert Mechanism (TOAM) - WAEMU



An NTB regional focal point at the WAEMU Commission and a network of National Focal Points in each WAEMU member State are responsible for the transmission of complaints received by economic operators to the authorities competent for the NTBs elimination, as well as for the applicable monitoring process. Once it has received the alert with the



²⁰ <https://www.tradeobstacles.org/uemoa>

²¹ Date of consultation of the database: 1 December 2023.

²² Date of consultation of the database: 1 December 2023.

description of the obstacle, the competent national authority is expected to forward a Trade Obstacle Report to the agency/agencies responsible for follow-up action which, in turn, must report to the focal point/points on the status of resolution. The action taken is finally communicated to the user who reported the obstacle in a final Trade Obstacle Report which can include some conclusive remarks and recommendations aimed at avoiding that the barrier will reoccur (see Figure 9).

Figure 9: Example of trade obstacle alert


TRADE OBSTACLE ALERT


Trade Obstacle Report

Id
1721

Status
Answered - Info (Days published: 501)

Trade flow
Exporting from Nigeria to Ghana

Date and location
30/09/2021 - Nigeria

Description
Certification, bureaucracy, high costs of processing and documentation

Trade obstacle
Numerous administrative windows/organizations involved, redundant documents

Trade regulations involved
No regulation at the origin of the obstacle

Related sector
Processed food and agro-based products

Additional product details
Food spices

Conclusive remarks and recommendations
There is need to sensitise operatives at the borders. They are not aware of most products to be exported under AGOA. Air & Sea freighting should be looked into and reduced to the minimum. Tariffs should be reduced.

Complaint history		
Date	Status	Details
18/10/2021	New	
18/10/2021	Ongoing resolution	Your obstacle has been validated and we are working to solve it. Thank you.
13/10/2022	Answered - Info	The obstacle has been forwarded to NCS for resolution on AGOA exportable products while issue of Air and sea freighting has been noted for the Ministry of Trade and will be taken up with Federal Airports Authority of Nigeria (FAAN), Nigerian Shippers' Council and Nigerian Ports Authority (NPA) in the next available discussion forum.

A TOAM Mobile Application was also launched on 29 September 2022, as an additional tool to further facilitate operators in reporting trade obstacles through the use of their mobile phones (see Figure 10), even though no data is available about its utilization.

Figure 10: NTBs reporting process (left) and TOAM mobile application

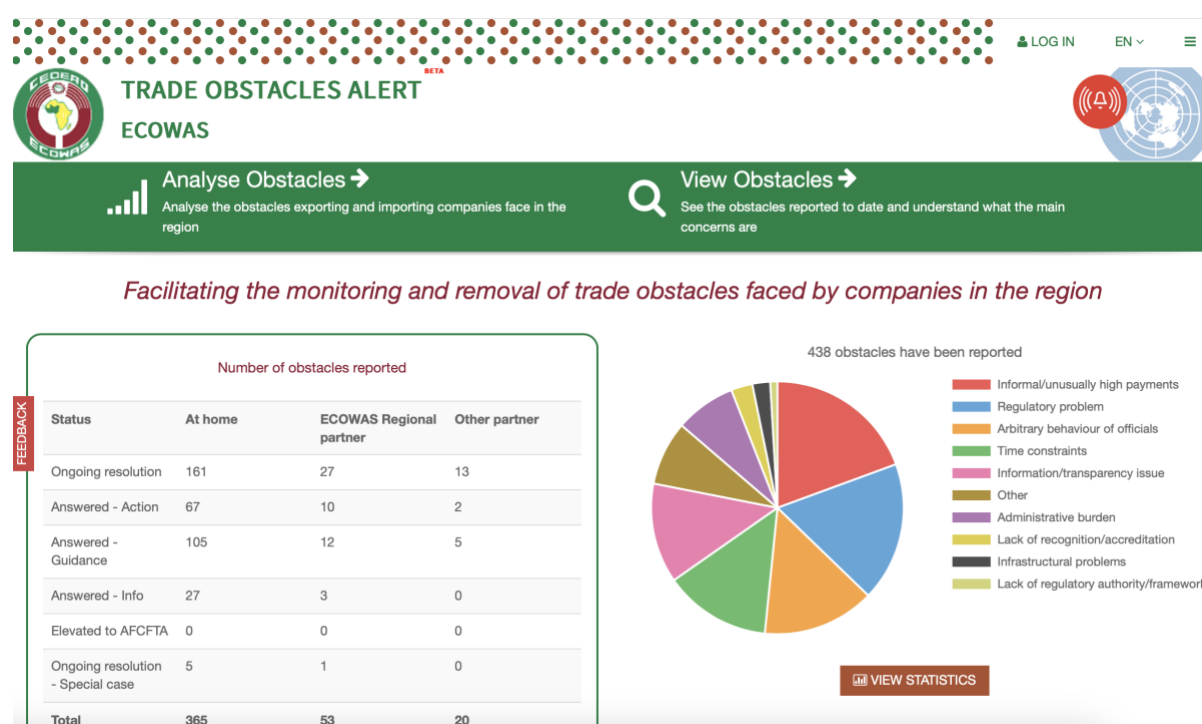


The TOAM also allows economic operators registered to the system to receive personalized alerts on obstacles for the type of products and markets they deal, via email. In addition to the central TOAM platform, national websites have been developed in each WAEMU member country that are implementing or in course of implementing the system. To date, the TOAM has also been adopted by other African countries outside West Africa, such as Zambia, Mauritius and Seychelles.

2.4. The ECOWAS-TOAM system

The ECOWAS Revised Treaty²³ at art. 3.d sets an obligation for Member States to remove NTB that constrain the free movement of goods in the region. Similar to WAEMU, in November 2022 ECOWAS accessed, with a funding of the European Union under the West Africa Competitiveness Program (WACOMP), to the Trade Obstacles Alert Mechanism (TOAM) of the International Trade Centre (ITC)²⁴. The platform, whose access page has been customized with an ECOWAS-branded interface (Figure 11), shows 438 obstacles of which 201 indicated as not yet solved and 6 being ‘special cases’.²⁵ However, it must be noted that as some of the member States of ECOWAS are also members of WAEMU²⁶, many of the NTBs listed on this platform are the same reported on the WAEMU-TOAM. The functionalities of the ECOWAS-TOAM, including the categorization of NTBs, are the same of the WAEMU-TOAM and like in the case of the latter, so far, no NTB has been escalated at the level of the AfCFTA NTBs resolution platform. Obstacles reported by economic operators are transmitted to National Focal Points established in each ECOWAS member State (at the moment, however, the focal points in Ghana and Liberia have not yet been appointed). In turn, each National Focal Point transmits the complaints received to the authorities competent for their elimination, including to a regional unit that monitors the whole process to this same end.

Figure 11: Trade Obstacle Alert Mechanism (TOAM)-ECOWAS



²³ <https://ecowas.int/wp-content/uploads/2022/08/Revised-treaty-1.pdf>

²⁴ <https://www.tradeobstacles.org/ecowas/Home.aspx>

²⁵ Date of consultation of the database: 1 December 2023.

²⁶ Members of WAEMU are Benin, Burkina Faso, Côte D'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo. Members of ECOWAS are Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

2.5. The Borderless Alliance NTB monitoring system

Another trade barriers monitoring system adopted in West Africa has been developed by Borderless Alliance, a multilateral partnership of private and public sector stakeholders that aims at increasing and eliminate barriers to trade in West Africa. Similar to the other platforms described above, the Borderless Alliance NTBs monitoring system allows the consultation of all complaints submitted by traders, including those already resolved (Figure 12). At the moment this tool only covers Ghana and Burkina Faso, where specific mobile numbers have also been activated to facilitate the reporting process of NTBs by economic operators. The total number of complaints submitted through this platform is 410, of which 369 indicated as resolved.²⁷ In order to report a complaint, a registration must be made on the website where the complainant submits some basic data on his profile (this is common to all the NTBs reporting systems analyzed in this paper). After the registration, a form needs to be filled out directly online with the description of the NTB.

NTBs are categorized in eight types: 1) Government participation in trade & restrictive practices tolerated by governments; 2) Customs and administrative entry procedures; 3) Technical barriers to trade (TBT); 4) Sanitary & Phyto-Sanitary (SPS) measures; 5) Specific limitations; 6) Charges on imports; 7) Other procedural problems; 8) restrictions in Transport, Clearing and Forwarding services.

Figure 12: Borderless Alliance NTBs reporting platform



Active operational related complaints

Showing items 1 to 20 of 38

Search list of complaints

Complaint number	NTB Type	Date of incident	Location	Reporting country or region	Status	Actions
NTB-000-426	8.8. Issues related to transit	2023-11-23	Ghana: Paga Customs	Burkina Faso	In process	<input type="button" value="View"/>
<p>Complaint: Customs at the Paga border claimed the driver bears the name of another driver whose truck has not exited Ghana, according to the Customs system. This driver drives a tanker, while the one whose truck is still in the Customs system drives a flat body.</p> <p>Progress: The Representative of the Burkinabe drivers union reported the matter to GSA. GSA staff at the Head Office liaised with their colleague in Paga so as to verify the claim and assist in resolving the issue.</p> <p>The GSA Officer in Paga came in and helped both the Customs and the driver. The driver was released.</p>						
NTB-000-	Unnecessary delay and extortion	2023-10-23	Ghana: Police between	Burkina Faso	In	<input type="button" value="View"/>

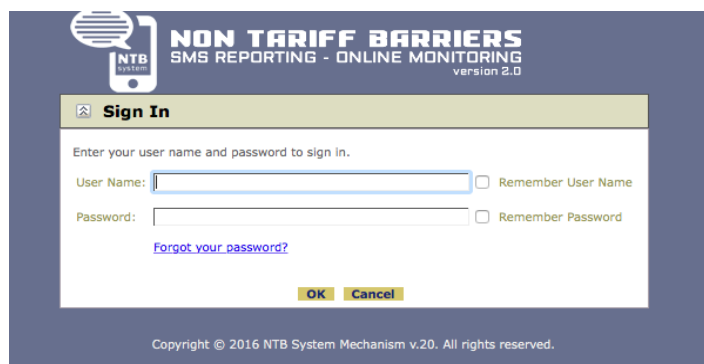
2.6. The EAC program to eliminate NTBs

In the East African Community (EAC), the elimination of NTB occurs through joint consultations of National Monitoring Committees (NMCs) currently established in all Partner

²⁷ Date of consultation of the database: 1 December 2023.

States, except in the Democratic Republic of Congo (and Somalia, which recently acceded to the EAC)²⁸. NMCs are responsible for identifying, monitoring and facilitating the elimination of NTBs by leveraging, in some cases, on integrated web and SMS platforms through which economic operators can report obstacles to trade. Such platforms have been developed in Kenya, Rwanda, Tanzania and Uganda, while South Sudan, Burundi and Democratic Republic of Congo have not adopted them yet (see Figure 13 below).

Figure 13: Web/SMS platform for NTB reporting to NMCs in the EAC



The NTBs identification and monitoring process starts with business associations receiving complaints from their members through paper-based applications or through the above-described online or SMS-based tools. The business association then notifies (usually via electronic means, such as email) the complaint to the NMC of the country where the economic operator raising the NTB is established who, in turn, has at disposal three (3) options for eliminating the barrier. These options are regulated by articles 10, 11 and 12 of the EAC Elimination of Non-Tariff Barriers Act, 2017²⁹, and are the following:

- a) **Mutual agreement (art. 10):** the NMC of the country from which the party affected by the barrier originates, start consultations with the NMC of the country who imposed the barrier aimed at developing a joint strategy to eliminate it. The relevant procedure includes the establishment of a timeline for its elimination which usually does not exceed 30 days;
- b) **The EAC Time-Bound Programme for the Elimination of Identified/Reported NTBs (art. 11):** The EAC Time-Bound program for the Elimination of Identified/Reported NTBs was launched in 2009 to improve intra-EAC trade through the reduction of NTBs in the region. Under this program, the NMC of the country imposing the barrier, upon receipt of a written notification from a reporting country, starts an investigation to assess the impact of such barrier, with a plan for its elimination which identifies the required timeframe, the authorities competent to solve the barrier and the monitoring mechanisms to be used to verify its effective dismantlement. The elimination plan also identifies the challenges that may be encountered in the process of eliminating the NTB and the recommended solution to the challenge. Where the NMC fails to resolve a matter relating to a NTB within ten days from the receipt of

²⁸ The Democratic Republic of Congo signed the Treaty of accession to East African Community on April 8, 2022 and deposited its instrument of ratification to the Secretary-General of the Organization on 11 July 2022. On the other hand, Somalia was officially admitted as a member of the EAC on 24 November 2023, during the 23rd Ordinary Summit of the EAC Heads of States held in Arusha, Tanzania.

²⁹ https://www.eala.org/uploads/EAC_Elimination_of_Non-Tar_Act_.pdf

the notification (or within twenty-five days, in case the resolution of the barrier is particularly challenging), a meeting of the concerned Partner States is organized to resolve the matter. According to the EAC Secretariat (2023), NTBs in this region reduce trade by 58 percent. Since 2017, 89.5 percent of the reported NTBs have been resolved through the Time-Bound Programme for the Elimination of NTBs. In recent years, from 2021 to 2023, the number of reported NTBs complaints has remained stable, ranging between 8 and 11 cases annually, with a significant improvement in the resolution of NTBs reported to an average of 88.3 days.³⁰ Between June 2022 and June 2023, a total of 16 NTBs complaints were reported within the EAC. Out of these, nine of them have been resolved, while seven complaints remain still in progress. A significant number of NTB complaints were addressed (56.25 percent) and resolved within the given timeframe. A notable portion of complaints (43.75 percent) were still in progress by end of June 2023.

- c) **Referral to the EAC Council of Ministers (art. 12):** if the NMCs of the country where the party affected by the barrier originates, and of the country who imposed the barrier fail to reach an agreement, the case can be referred in the last instance to the EAC Council of Ministers, who can issue a directive, decision or recommendation describing the actions to be taken to eliminate the NTB in question. Alternatively, the EAC Council of Ministers can refer the matter to the EAC Committee on Trade Remedies that will address the issue with a decision that is binding for concerned States.

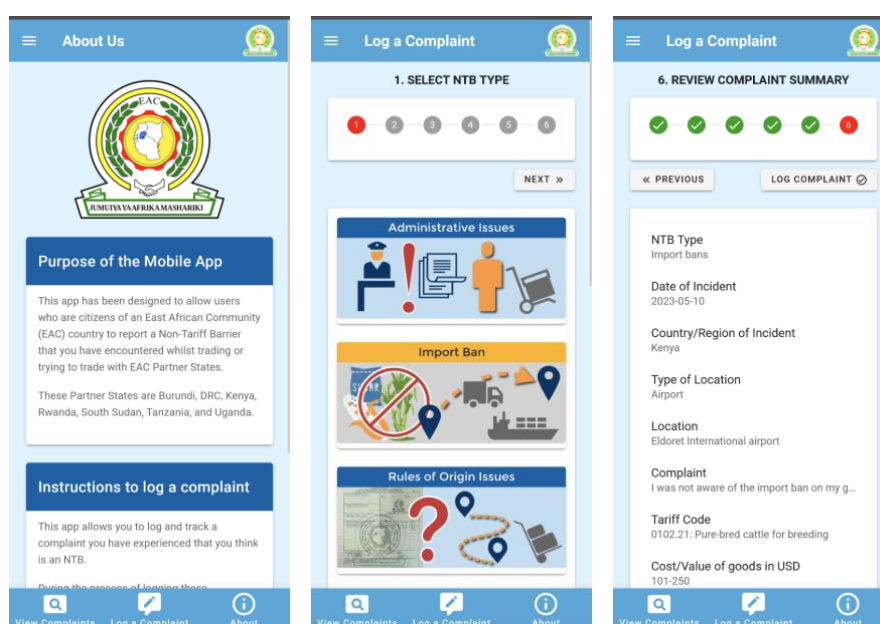
National NMCs also participate in a periodically-organized regional forum where they deal, through consultations, with the elimination of NTBs having a regional dimension, reporting them to the EAC Secretariat through the EAC Directorate of Trade. Moreover, during such sessions, members of national NMCs share their respective experiences and strategies on NTBs identification and monitoring processes, including the associated actions taken for eliminating barriers reported by economic operators.

The results of the NTBs resolution processes in the region are reported to the EAC Secretariat through periodic reports on the status of NTBs elimination in the region, which include recommendations and the next steps to be taken to improve the NTBs resolution process.

In December 2023, the EAC Secretariat - with the support of TradeMark Africa - launched a mobile app that offers economic operators a one-stop solution for reporting NTBs to trade in the EAC as well as in the COMESA and SADC regions. This app, which is also available to traders in the HoA region, sends the complaint directly to National Focal Points and National Monitoring Committees (NMCs) in the countries affected by the barrier so that they can quickly activate the resolution mechanisms. The app is available in one of the three (3) EAC official languages, i.e., English, Swahili and French (Figure 14).

³⁰ TradeMark Africa, EAC and TradeMark Africa Unveil Innovative App to Revolutionise Trade by Eliminating Non-Tariff Barriers, December 8, 2023.

Figure 14: EAC NTB mobile app



NTBs arising in the EAC can also be notified through the Tripartite Free Trade Area and the African Continental Free Trade Area web platforms described in the Sections 2.1 and 2.2.

2.7. The COMESA NTBs regulations

The COMESA NTBs regulations are constituted by a set of rules and procedures adopted at the 33rd Meeting of the Council of Ministers held in Lusaka, Zambia from 8th - 9th December 2014, that provide a mechanism for the identification, categorisation, and elimination of NTBs within the COMESA region. These regulations, most recently revised in 2020³¹, envisage the establishment of two institutional structures in each member State for monitoring and resolution of NTBs. These are the **National Monitoring Committees (NMCs)** and **Focal Points**. However, in its meeting of 23 November 2023, the COMESA Council of Ministers observed that these structures are particularly slow in undertaking internal consultations to resolve NTBs, urging member States to ensure a quick response of such bodies for a more immediate resolution of such barriers. On the other hand, an **NTBs Monitoring Unit** located in the COMESA Secretariat in Lusaka, has the responsibility to monitor and follow up all reported NTBs, to support their prompt resolution in COMESA member States.

The COMESA revised NTB Regulations have also introduced a procedure for addressing longstanding NTBs with precise timelines for their resolution. This procedure, which applies to cases where a member State persistently maintains an NTB, is articulated in three (3) phases: Stage 1 (consultation), Stage 2 (facilitation), and Stage 3 (decision by competent policy organs). According to COMESA,³² longstanding NTBs constitute 63,6% of total NTBs in the region, most of them remaining into effect for a period of 5-8 years before being solved.

³¹ The Revised COMESA NTB regulations were adopted by the 41st Meeting of COMESA Council of Ministers held on 26th November 2020 in Lusaka, Zambia.

³² Gakunga, M., Longstanding non-tariff barriers constitute 63% of those currently unresolved, COMESA news, 28/11/2023.

In 2019, COMESA launched a Short Messaging Service (SMS) reporting tool which is currently active in four Member States, namely Comoros, Malawi, Zambia, and Zimbabwe. In 2021 COMESA also established a Non-Tariff Barriers Regional Forum³³ which comprises the National Monitoring Committees and NTBs Focal Points in each member State. This new structure is aimed at further strengthening the pre-existing mechanisms for the elimination of NTBs in the COMESA region.

However, so far only 8 COMESA member States have formalized and notified the composition of their NMCs to the COMESA Secretariat (these are Burundi, Egypt, Eswatini, Madagascar, Malawi, Mauritius, Rwanda, Zambia, and Zimbabwe), while National Focal Points have been designated in all COMESA member States.

2.8. SADC

The SADC Protocol on Trade, at art. 6, requires Member States to adopt policies and implement measures eliminating all existing NTBs to intra-regional trade, refraining from adding any new ones. Differently from EAC and COMESA, SADC decided not to adopt a regional platform and/or regulations or procedures of for NTB identification and elimination. Using a practical approach, the SADC Secretariat decided to participate - in conjunction with these two RECs - to the Tripartite NTBs Reporting, Monitoring and Eliminating Mechanism described at the Section 2.2, focusing more on sensitization campaigns addressed to the private sector to increase the use of the platform. This resulted in economic operators in SADC countries becoming the main user of the Tripartite NTB mechanism.

3. Country-level NTB monitoring systems

As indicated in the previous Sections, cases of national systems, procedures or platforms used to report NTBs are limited in Africa. In most cases, existing tools are simply an interface that gives access to regional NTB systems for reporting, monitoring and solving, for instance like in the case of the TOAM system used in WAEMU and ECOWAS.

3.1. The South Africa EBMM

South Africa is an example of an African country that has developed a national procedure for reporting, monitoring and solving NTBs. The South African Department of Trade, Industry and Competition (DTIC), as part of a comprehensive programme aimed at addressing NTBs, launched in 2021 the **Export Barriers Monitoring Mechanism (EBMM)**³⁴, an initiative for monitoring all those barriers that reduce competitiveness of South African businesses. This tool however, is limited to the reporting of NTBs **to exports**. These barriers include export taxes, export subsidies, export quotas, export prohibitions, and voluntary export restraints. More specifically, the EBMM allows South African companies to receive assistance from the government in resolving all export barriers they encounter both locally and in foreign markets, included barriers to logistics and freight.

³³ The First Meeting of COMESA NTBs Regional Forum was held from 16-17 March 2021 via video conferencing. The main objectives of the meeting were to introduce the reviewed COMESA Regulations on Elimination of NTBs and the adopted Working Procedures for the implementation of the Regulations, consider outstanding Intra-COMESA NTBs and developed a regional work programme on implementation of the Regulations.

³⁴ <http://www.thedtic.gov.za/new-support-system-is-key-in-addressing-sas-export-barriers/?hilite=%27barriers%27%2C%27export%27>

The initiative is based on a close partnership between the government and the private sector, where businesses report export barriers through a dedicated email address at the DTIC³⁵. Afterwards, a dedicated focal point follows up on the matter by taking charge the request within three days from the day of receipt of the notification of the complaint. The focal point must contact the exporter who lodged the complaint within two weeks, to develop an agreed resolution plan, outlining the steps that will be taken to resolve the reported barrier.

The EBMM launch was preceded by a pilot project, where 28 key export barriers were identified and processed by the DTIC. Moreover, during the initial phase of the national lockdown, the EBMM methodology was used to process 76 barriers related to COVID-19.

4. Options for NTBs resolution for HoAI countries

As described in the previous sections, to-date, many platforms exist in Africa at both continental and regional (and more limitedly, at national) levels to identify and solve NTBs. The main advantages of such tools are that they offer to economic operators and policymakers an easy and free access to all NTBs existing in a given region, which can help them to plan their respective interventions and strategies. In addition, they eliminate any 'paper steps' in the NTBs reporting, monitoring and resolution process as all the relevant phases are administered through electronic communications among the involved stakeholders (which include: the economic operators who raise the complaints, the business associations that channel them to the authorities competent for their resolution, the authorities themselves and the regional NTBs coordination units).

Moreover, all the online NTBs reporting, monitoring and resolution mechanisms are designed in user-friendly manner, which makes the submission of complaints easy (also by small scale traders, who often are reluctant to approach directly the authorities competent for NTB resolution), and their resolution quicker. In some cases (such as in West Africa), interfaces have been developed at national level, interconnected to the regional platform, to facilitate access by traders to the reporting mechanisms. This solution, while widening the possibilities for traders to report NTBs, often leads to confusion on the type of tool to use for this purpose, also in the case where an automatism is created that allows a barrier notified through a national interface to be automatically displayed in the regional platform, like in the case of the TOAM.

Consequently, the development of national NTB reporting systems (both in the form of electronic tools interlinked to regional interfaces, or consisting in stand-alone procedures, as in South Africa), are solutions that are redundant and should be avoided, since they tend to disorient traders.

As for the major limitations of these platforms, it can be observed that none of them provides an analytical tool that shows which barriers, once removed, tend to resurface (i.e., have a recurring nature). On the other hand, all the NTB reporting systems analyzed in this paper do not allow economic operators to submit complaints if they are not registered to the relevant platform. The registration process requires such operators to provide very basic data regarding their nature and activity, while all NTBs are reported anonymously, without

³⁵ ExportBarriers@thedtic.gov.za

revealing the identity of complainants. This is aimed at protecting them against possible retaliatory actions by authorities that have been indicated in the complaint as responsible for the barrier's creation. The reduced set of information requested during the registration process prevents the development of statistics on complainant profiles that can be useful to better understand which categories are less active on these platforms, so to develop the necessary corrective measures to promote their use by these categories. Consequently, it would be advisable to broaden the range of information requested at the registration stage, avoiding asking them for too much personal information so to have the opposite effect of driving them further away from using these tools.

Economic operators in the HoA have at their disposal two online platforms to report barriers occurring into the region: 1) the **AfCFTA NTBs monitoring system** (Section 2.1) and, 2) the **Tripartite NTBs monitoring system** (Section 2.2).

For the time being, such platforms are used with regularity by Kenyan economic operators only, suggesting the need to increase awareness-raising activities in the remaining HoAI countries so to encourage local operators to use them. Also, such operators should be sensitized to the importance to notify all barriers encountered, either directly or virtually, including through the use of Short Message Service (SMS) or specific mobile apps. More importantly, **since traders in this region largely rely of customs intermediaries** for the fulfilment of their formalities with customs and other border agencies (e.g., customs clearing agents, shipping agents, freight forwarders or other types of agents), **awareness campaigns aimed at promoting the use of the above tools should primarily targeted to these categories (and their associations), as well as to Business Membership Organizations (BMOs) in the region.** Indeed, such organizations play a pivotal role in addressing NTBs, as they often initiate communications with the authorities competent for their resolutions on behalf of their members. This would help especially first-time or occasional exporters to report barriers, who are mostly unaware of the existence of such tools. Similarly, it is important that awareness campaigns are targeted towards **staff operating at Trade Information Desks**, so that specific assistance can be provided to informal cross-border traders, that are particularly numerous in the region. Lastly, it would be opportune to increase the use of the existing platform through the development of specific mobile apps to made available to economic operators in English, French and Arabic, as well as in the main endogenous African languages: in the case of HoAI countries, Swahili and Amharic, for instance.

HoAI countries also have the option to access to the TOAM mechanism developed by the ITC. This solution would allow them to have a dedicated regional platform with national access interfaces linking to it (similar to WAEMU and ECOWAS), through which complaints affecting the HoA region can be submitted. In any case, **the development of a new specific electronic tool for NTBs reporting in the HoAI region is not recommended**, as it would be redundant, given the availability of other already existing online reporting systems.

It is also important to consider that being all HoAI countries (except South Sudan) members of COMESA, they have the possibility to leverage on the COMESA NTBs Regulations (described in Section 2.7), which introduces additional procedures for solving NTBs based on the involvement of NFPs and NMCs in each State. In the case of South Sudan, the country could adopt a national regulation modeled on COMESA NTBs Regulations that introduces similar procedures for NTB resolution which are aligned to the ones used by the other COMESA members. The NFPs and NMCs, which are already operational in South Sudan, have the responsibility of notifying all the obstacles reported to the authorities competent for their

resolution and follow-up the relevant NTB elimination process. Lastly, Kenya and South Sudan have the possibility to use the existing EAC program for elimination of NTBs described in the Section 2.6 for solving their respective NTBs.

4.1. Possible approaches

In the light of the limited use of the current online platforms for reporting NTBs by the Horn of Africa Initiative countries' economic operators, two concurrent activities are needed to address the problem of identification and solution of such obstacles.

First, Development Partners should develop programs for **promoting a better exploitation of existing platforms** (in particular the AfCFTA NTBs monitoring system, that should become in future the only platform for solving NTBs in the continent, progressively abandoning the others that are currently in place). This can be done by financing communication and sensibilization activities addressed to the private sector (with a particular focus on customs intermediaries and their associations, as explained in the section above), and aimed at explaining them how to fully exploit such platform. It is particularly important that these initiatives also include cross-border small scale traders and women traders, who tend to be more affected by NTBs. In this regard, a report from Trademark East Africa³⁶ (now rebranded as "Trademark Africa") shows that in the EAC, sensitization among small-scale traders in relation to NTBs and their resolution mechanisms is insufficient, concluding that **more awareness campaigns are needed**, and that **manuals in local languages** are necessary in order to increase the use of the current NTBs monitoring systems. On the other hand, a series of interviews³⁷ conducted by Trademark East Africa in 2019 in Rwanda, Uganda and Tanzania, revealed that **SMS is the preferred means for informal traders to report NTBs**. Accordingly, the use of such modality of NTB reporting should be promoted through specific training activities.

In the IGAD Region, a Consultative Regional Meeting on the Status of Elimination of NTBs was recently held on September 2022 organized by the IGAD Centre for Pastoral Areas and Livestock Development (ICPALD)³⁸. The meeting concluded that in the Horn of Africa region there is a need to strengthen the existing NMC and NFPs **by offering them support through capacity building and training programs on how to facilitate the resolution of NTBs**. This is an important recommendation that is supported also in the context of this study, noting that these Committees should receive the highest political support by HoA governments for dismantling NTBs, whose incidence is particularly high in the region, as explained in Section 1. Other recommendations that emerged at the end of the meeting highlighted the need to **offer support to Somalia and Djibouti in setting up NMCs on NTBs** (it has been explained that such structures are now mandatory under art. 6.2 or Annex V to the Protocol on Trade of Goods of the AfCFTA), and to create awareness programs for cross-border traders and the

³⁶ Trademark East Africa, Formative Evaluation of TMEA Projects on Non-Tariff Barriers to Trade, 17 February 2016, available at: <https://www.tralac.org/images/docs/9533/formative-evaluation-of-tmea-projects-on-non-tariff-barriers-to-trade-february-2016.pdf>

³⁷ <https://www.trademarkafrica.com/stories/the-sms-reporting-system-impacting-informal-traders-including-women/>

³⁸ <https://icpald.org/consultative-meeting-ntb/>

private sectors on NTMs and NTBs, with the launch of sectoral studies to assess the impact of NTBs in particularly relevant sectors of the regional economy (e.g., livestock, poultry, etc.).

It is not by accident that the most successful platforms for NTB identification and solution (such the one developed by the Tripartite), have been populated with complaints from operators established from SADC countries. Such operators have benefited from the CESARE support programme offered by GIZ, as described in Section 2.2. that has sensitized them on the use of the platform. Similarly, the reason why the TOAM platforms adopted by WAEMU and ECOWAS have experienced such a rapid growth in the number of submitted notifications of complaints since their launch, is that West African countries has benefitted from large support from the EU, the African Development Bank and ITC. Indeed, all these organizations have conducted several sensitization campaigns, roundtables, workshops and NTB surveys³⁹ to promote the use of such tools by private operators, with results that are now tangible, given the high number of NTBs that have been notified through these platforms.

Sensitization campaigns are particularly important for economic operators of HoAI States, where (as indicated in Section 1), electronic mechanisms for NTB reporting are little used due to the fact that they have limited knowledge of such tools. In this regard, it would be also important to operationalize **Trade Information Desks** at HoAI borders to offer guidance to cross-border traders on the use of such platforms, especially the AfCFTA monitoring mechanism.

Second, the creation of NMCs and NFPs should be encouraged and supported in those HoAI countries that have not yet established such structures, as the success of the NTB Monitoring Mechanisms is predicated on the creation and efficient operation of such bodies, which are tasked with resolving the reported NTBs according to the COMESA, EAC and AfCFTA Regulations.

NMCs are currently active only in Kenya and South Sudan, while in Djibouti a Coordination and Monitoring Commission on the constitution, organization and functioning of the COMESA Regional Integration Program was established in 2013 with the arrêté (decree) n° 2013-422/PR/MDCC⁴⁰. This body, which has in its mandate the implementation of regional commitments arising from COMESA membership, is also responsible for the identification and resolution of NTBs affecting national economic operators engaging in trade operations with other COMESA States. The Commission however, meets intermittently and has not conducted any comprehensive assessment of NTBs impacting on Djibouti's traders thus far. In Somalia, on the other hand, a NMC has not been established yet. In Ethiopia, a recently operationalized National Trade Facilitation Committee, has among its responsibilities the identification of NTBs in the country, with the formulation of recommendations to the government for its improvement. Such a body, however, has not developed any rule-based mechanism for resolution of NTBs and has no formal mechanisms in place for receiving complaints from the private sector regarding NTBs related to obstacles to customs, trade and cross-border transport procedures in which they may incur (see next table).

³⁹ See, for example: <https://www.afdb.org/en/news-and-events/itc-afdb-to-hold-roundtable-on-non-tariff-measures-affecting-regional-trade-in-ecowas-15835>

⁴⁰ Published in the Official Journal of the Republic of Djibouti n° 14 of 31 July 2013.

Table 1: Active NMCs on NTB in HoAI States

Country	Status	Challenges
Djibouti	Not fully established	A Coordination and Monitoring Commission on the constitution, organization and functioning of the COMESA Regional Integration Program operates in Djibouti, whose responsibilities include the identification and resolution of NTBs affecting local traders. This body has a too wide mandate, being responsible of coordinating the implementation in Djibouti of all regional commitments arising from COMESA membership. There is a need to create a separate NMC dealing with NTBs identification and solution.
Ethiopia	Not fully established	An Ethiopian Trade Facilitation Committee has been recently established in the country at the Ministry of Trade and Regional Integration. In 2015, a similar body called 'Ethiopia National Logistic Council' (ENALCO) was established at the Ethiopian Maritime Affairs Authority (EMAA), whose mandate is to provide recommendations to the government on possible reforms and regulatory changes that can promote the development of the logistics sector in the country. Both bodies operate with a limited budget, and need to strengthen their competency through appropriate capacity building programs. In the country there is no NMC dealing with NTBs identification and solution.
Kenya	Established	The Kenyan NMC is the oldest (established in 2007) and the most successful among the NMC in the Horn of Africa region, having actively participated to the resolution on many NTBs since its creation. At the moment, the NFP is situated within the Ministry of East African Affairs. This creates significant delays to the NTBs resolution process, given that broader trade facilitation issues are under the competence of the Ministry of Trade. The Ministry of East African Affairs has proven to not have the capacity to analyze and review the identified NTB. On the other hand, the Ministry of Trade has this capacity, but it has not a specific mandate to make decisions on their removal. The Kenyan NMC has adopted a national strategy and an action plan on eliminating NTBs.
Somalia	Not established	There is a need to create an NMC dealing with NTBs identification and solution. Support needed in setting up this body and for developing the capacity of its members in NTBs identification, reporting and solution.
South Sudan	Established	South Sudan established a National Monitoring Committee on NTBs in 2019, after the conclusion of program for mapping NTBs funded by TradeMark Africa (formerly, TradeMark East Africa). This exercise also resulted in the adoption by the Ministry of Trade and Industry (MTI) of a national strategy for NTBs elimination and the activation of SMS-based platform through which economic operators can report NTBs. The South Sudan National Monitoring Committee on NTBs holds periodic joint consultations with similar Committees established in the other EAC partner States (at both regional and bilateral level), in order to address and solve NTBs having a multi-country dimension.

4.2. Lessons learnt from EAC and COMESA

The main lessons learnt from the EAC and COMESA States, which have a long experience in using NMCs and NFPs, are the following⁴¹:

⁴¹ OECD, Establishing a Regional Non-Tariff Barrier Reporting and Monitoring Mechanism, Aid-for-Trade case study, January 2011.

- In the absence of a transparent process for removing NTBs, NMCs risk becoming ineffective “talk shops”.
- Resolution processes are generally lengthy, as communication goes back and forth between focal points, REC NTB units and the reporting stakeholders. The average period it takes to resolve a NTB is three (3) months. However, urgent NTBs are resolved somewhat faster than this average. In the case of EAC, the decisions and recommendations on a particular course of action towards resolution of an identified NTB are often bureaucratic, as they need to be referred to a meeting of the REC policy organs (Council of Ministers) before they can be implemented.
- There is often a lack of commitment by Member States to prioritise the elimination of NTBs even though it is generally recognised that the removal of these trade barriers would benefit the regional economy.
- There is a lack of financial and technical capacity in Member States to adequately address the removal of NTBs.

In conclusion, NMCs have proven so far to be not very effective in both the EAC and the COMESA regions as a mechanism to solve NTB. This is largely due to a lack of political will of the concerned States to resolve NTBs created among themselves. Indeed, in order for NTBs to be effectively eliminated, rules-based or legally binding arrangements are insufficient. The necessary political and technical consensus is also needed to properly implement and enforce said rules. In its absence, only limited progress can be expected. Moreover, both the EAC and COMESA (as well as the AfCFTA) regulations⁴², do not foresee any enforcement mechanism on States to ensure they apply the solutions identified by NMCs to solve NTBs in case they fail to implement them.

4.3. Recommendations

In the light of what has been analyzed in the previous Sections, it is recommended to implement the following recommendations in the HoAI States:

- 1) Establish NMCs in Somalia, Ethiopia and Djibouti, assisting them in the development of **national strategies for NTB resolution** that are aligned with the HoAI priorities, as identified in the Horn of Africa Trade Facilitation Roadmap⁴³. The national strategies for NTB resolution of Kenya and South Sudan also need to be revised to ensure that they are aligned to such priorities.
- 2) Being all HoAI States members of COMESA (except for South Sudan), a transparent process for eliminating NTBs already exists within such Community that is applicable to most of HoAI countries. This process is governed by the COMESA NTBs regulations. South Sudan could adopt a national legislation modeled on such regulations which is in line with the AfCFTA provisions of the Annex on NTBs of the Protocol on Trade in Goods. It is important that NFPs will be seated at Ministries responsible for Trade, as

⁴² The IGAD Regional Trade Policy 2022-2026 clarifies that the role of such REC with respect to the removal of NTBs is just to assist its Member States to implement the AfCFTA Protocol on Trade in Goods Annex on Non-Tariff Barriers.

⁴³ <https://www.hoainitiative.org/wp-content/uploads/2022/06/HoAI-Trade-Facilitation-Roadmap-English.pdf>

these administrations have usually the necessary capacity to assess specific NTBs and the mandate to make decisions on their removal.

- 3) NMCs established in each HoAI country should meet at regular intervals (approximately, at least twice per year), also virtually, within a **regional forum** where they should exchange best practices in NTBs elimination and coordinate as much as possible their strategies and actions for NTBs resolution. The results of such activities should be documented in reports to be transmitted to the HoAI Secretariat, and should lead to the adoption of a **Regional strategy for NTBs resolution in the HoA**, with recommendations to be tabled for discussion within the appropriate HoAI Ministerial Meetings.
- 4) Key NTBs that affect trade in the region should be discussed by Ministries of Trade of HoAI countries - if necessary, with the participation of other national government authorities in the States affected by the barrier - within meetings to be arranged as side-events to the HoAI Ministerial Meetings at least once a year.
- 5) Capacity building programs are needed to reinforce the competences of NMCs and NFPs in monitoring and eliminating NTBs, for which specific assistance programs should be designed. It is important to remind that the establishment of such Committees is mandatory under the Annex V of the Protocol on Trade in Goods of the AfCFTA. Accordingly, programs aimed at supporting their establishment in the HoAI countries where they still do not exist, should be considered a priority. Such programs should also fund a certain number of site visits in key trade entry and exit points in the region (e.g., ports and border posts), so to allow NMCs members to have a holistic view of the most frequent NTBs in the region and their specificities, so that tailored solutions can be elaborated.

A typical program of reinforcement of competences for HoAI countries should focus on the following topics:

- NTB regulation and solving procedures within the COMESA, EAC and AfCFTA frameworks;⁴⁴
- The current situation with respect to NTBs in the Horn of Africa and the HoAI strategy and other studies related to NTBs and Trade Facilitation (e.g., HoAI Trade facilitation roadmap);
- Available mechanisms, procedures and platforms for NTBs reporting and solution in the region and type of NTBs that are most recurring in the region;
- Institutional and operational issues affecting NMCs;
- Methods and strategies for improving the effectiveness of NMCs in NTBs resolution;
- How to improve the collaborative components of the regional NTBs resolution ecosystem.

The program should last no longer than one (1) year and should foresee a support by an expert to facilitate the operationalization of the regional coordination forum among national NMCs in HoAI countries and the development/update of both the

⁴⁴ Regarding the role played by IGAD in the removal of NTBs in the region, see the note n. 42.

national and the regional strategies for NTBs resolution in the HoA, to ensure that they are aligned to the HoAI priorities.