

Research Study

# Non-Tariff Barriers on Selected Goods Faced by Exporters from the EAC to the EU and USA

By Françoise Guei and Famke Schaap



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## Author:

Françoise Guei  
Famke Schaap

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### CUTS INTERNATIONAL, GENEVA

37-39, Rue de Vermont  
1202 Geneva, Switzerland  
Ph: +41.22.734.6080  
Fax: +41.22.734.3914  
Email: [geneva@cuts.org](mailto:geneva@cuts.org)  
Web: [www.cuts-geneva.org](http://www.cuts-geneva.org)

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# About the Authors

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Françoise Guei is a legal expert specialized in international trade law, with a solid experience in the field of trade capacity building for developing countries with the support from development partners (World Bank, WTO, UNCTAD, African Development Bank, European Commission, etc.). Her areas of expertise includes the implementation of WTO agreements (trade in services, trade facilitation, intellectual property, anti-dumping), as well as multilateral trade negotiations, regional trading systems (economic partnership agreements, mega-regional agreements), and issues of market access (Non-Tariff Measures).

Famke Schaap is an Expert in the area of trade, market access and sustainability, with a focus on emerging markets. She has over 10 years of experience in working with private sector and business associations, governments and international organisations (ITC, UNCTAD, WTO, UNDP, others), and expertise in accessing and doing business in emerging markets, including business and regulatory environments.

# Introduction

For exporters and importers in countries of the East African Community (EAC)<sup>1</sup>, as in any other country, the trading of goods across borders demands secure and predictable access. However, exported goods in the global market remain hampered by trade barriers. On the one hand, trade barriers in the form of tariffs and customs related procedures *at the border* increase costs and delay trade. On the other hand, international trade is impeded by non-tariff barriers which are mainly active *beyond the border* in the domestic business environment, or in the target market.

Worldwide, the relatively low tariff levels are now less of a burden for exporters than non-tariff barriers, such as license requirements, standards, and sometimes arbitrary laws or regulations. Indeed, as emphasized by UNCTAD (2012) in their study on non-tariff measures to trade<sup>2</sup>, ‘the ability to gain reliable market access depends increasingly on compliance with trade regulatory measures that are beyond the realm of traditional trade policies’.

Over recent decades, substantial trade liberalization has made trade freer for EAC exporters and importers, mainly as a result of negotiation rounds in the context of the WTO, as well as unilateral liberalization. However, there remains much room for improvement. Despite the fact that exports of goods by EAC producers to target markets (such as the EU and US), benefit from preferential market access, the remaining tariff and non-tariff barriers continue to present challenges. Hence, it is no coincidence that EAC Governments are continuously looking to lower trade barriers at home and in target markets, as one of the most obvious means of encouraging trade.

The objective of this note is to analyze the implications of non-tariff barriers (NTBs) faced by EAC member exporters in target markets of the EU and US. Through a literature review, and two case-studies on exported products in the coffee sector and horticulture sector, the main challenges in dealing with the different NTBs are assessed. In addition, the opportunities for EAC governments to address NTBs with the EU and US in the context of WTO negotiations, as well as bilateral relations, are explored.

## 1. Definition of NTBs

To date, there is no clear definition of Non-Tariff Barriers (NTBs). In some literature, preference is given to the use of non-tariff measures (NTMs) in place of NTBs. Keeping in mind that governments may (in most cases) legitimately use measures other than tariffs, the identification of an NTB is subjective, as what appears as an NTB from one perspective is viewed as meeting a public policy objective from another.

Various definitions of Non-Tariff Barriers (NTBs) are maintained in the context of the EAC:

In the EAC Treaty (Article 1), a short definition of NTBs is maintained: ‘non-tariff barriers’ means administrative and technical requirements imposed by a Partner State in the movement of goods’.<sup>3</sup>

The EABC maintains the following definition: NTBs are defined as quantitative restrictions and specific limitations that act as obstacles to trade, and which appear in the form of rules, regulations and laws that have a negative impact on trade. The Agreement establishing the TFTA Treaty (2015) maintains the following definition and

1 EAC members are : Kenya, Tanzania, Uganda, Burundi, Rwanda

2 UNCTAD, ‘Non-Tariff Measures to Trade: economic and policy issues for Developing countries’ (2012), p. vii

3 Different definitions of NTBs figure in the trade agreements to which EAC Governments are party:

states; “non-tariff barriers” means any laws, regulations, administrative and technical requirements other than tariffs imposed by a partner state *whose effect is to impede trade*.

Well recognized for its country-wide business surveys on NTMs, the International Trade Centre (ITC) describes NTMs as follows: ‘NTMs are multifaceted policy instruments and actions that are layered on top of one another and/or applied concurrently. They can take a myriad of forms and involve a wide range of regulatory and enforcement authorities with varying institutional, technical and resource capacities to formulate, implement, monitor and review their use.

Non-Tariff Measures (NTMs) can be defined as policy measures, other than ordinary customs duties, which constitute all other measures than tariffs that can economically affect the international trade in goods, changing quantities traded, prices or both (UNCTAD).<sup>4</sup> NTMs can include a very diverse array of policies that countries apply to imports and exports. NTMs can take the form of laws, regulations, policies, conditions, restrictions or specific requirements, and private sector business practices, or prohibitions that protect the domestic industries from foreign competition.<sup>5</sup>

Governments use NTMs for different reasons. Sometimes, NTMs are instruments of commercial policy, such as quotas, subsidies, trade defence measures and export restrictions. In other cases, NTMs are initiated with wider, non-trade policy objectives, such as technical measures, serving valid concerns such as food safety and environmental protection. Whereas the policy intention of NTMs can be understood, the distortionary and restrictive effects on international trade are perhaps more relevant.

As follows from ITC’s description of NTMs, whereas they are initiated by governments and authorities, they can be perceived as a barrier (NTB) by enterprises, importers, exporters and the

like. However, no consensus exists in the literature as to what transforms an NTM into an NTB.

**TIP:** For trade negotiations and the formulation of policy responses, it is important to understand the underlying intent of the NTMs, as well as to present (empirical) findings on the potential effects to trade and welfare.

## 2. Categorization of NTBs

Over the past ten years, efforts have been undertaken to better understand the various forms of non-tariff measures and identify their occurrence as well as (possibly) their trade and welfare effects. Different approaches exist towards the identification of NTBs, including notifications (such as in the context of WTO), complaints on specific trade concerns at WTO, regional/bilateral, or domestic trade platforms, WTO Trade Policy Reviews, the UNCTAD Trade Analysis and Information System (TRAINS) database, and business surveys (such as the ITC NTM Surveys undertaken at country levels).

As a result, UNCTAD developed a detailed classification of NTMs and other obstacles to trade (see figure).

For the purpose of this study, which ultimately serves as inputs into Government-led consultations and negotiations (in the context of WTO, regional or bilateral trade relations with trading partners), the UNCTAD categorization of NTMs is used as the basis for assessing the restrictive effects of NTBs on trade and welfare.

Based on International Trade Centre (ITC) business surveys about NTMs, the lesson was learnt that the challenges of enterprises in complying with NTMs constitute a NTB in their own sense. Hence, an additional category of ‘procedural obstacles’ (POs), reflecting the practical challenges related to the implementation of NTMs was suggested by the ITC.

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4 UNCTAD Classification of Non-tariff measures, 2012. Accessible through: [http://unctad.org/en/PublicationsLibrary/ditctab20122\\_en.pdf](http://unctad.org/en/PublicationsLibrary/ditctab20122_en.pdf)

5 [http://www.tradebarriers.org/ntb/non\\_tariff\\_barriers](http://www.tradebarriers.org/ntb/non_tariff_barriers)

For the purpose of this study, the following classification is proposed (based on UNCTAD and ITC categorization of NTMs and NTBs, See Figure 1):

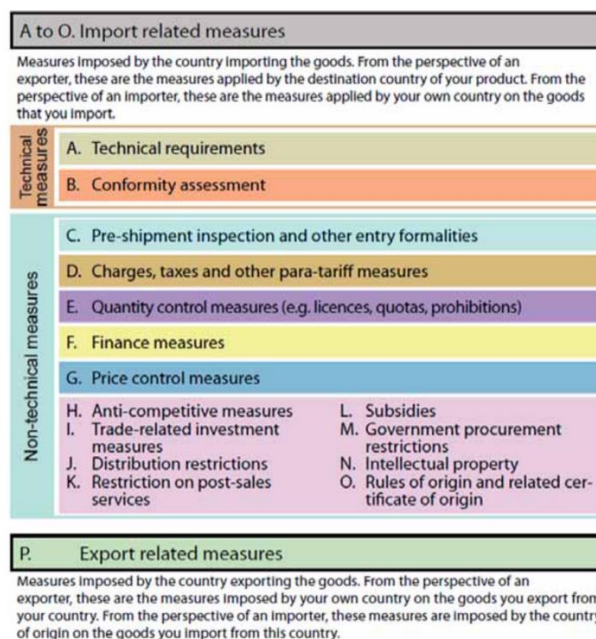
- Technical measures on imports, such as sanitary or environmental protection measures;
- Non-technical measures on imports, including quotas, price controls, export restrictions, as well as other behind-the-border measures, such as competition policy, trade-related investment measures, or government procurement;
- Measures on exports;
- Procedural obstacles and other inefficiencies related to trade;
- ‘Niche market requirements’, including voluntary and private standards.

Categories one to three are based on the UNCTAD classification. The fourth category comprises ‘Procedural obstacles and other inefficiencies impacting trade’, based on the ITC NTM Business Surveys which found that many enterprises face compliance challenges as a result of NTMs in target markets.<sup>6</sup>

Indeed, it is found that NTBs do not only stem from NTMs per se but may also be generated by administrative procedures related to NTMs implementation. This means that the way in which regulation is applied could in practice act as a procedural obstacle. Procedural obstacles can take the form of information not adequately published and disseminated, delays in administrative procedures, delays in transportation, unusually high fees and charges or other inconsistent arbitrary behavior of officials.<sup>7</sup>

Finally, a fifth category represents those NTBs that are the result of ‘niche market requirements’, including voluntary and private standards.

**Figure 1: NTM Classification based on ITC NTM Surveys.**



Source: ITC surveys on Non-Tariff Measures

6 See for example: ITC, ‘NTM Survey Tanzania’ (2015)

7 Based on ITC definition in Technical paper: ITC series on non-tariff measures,. Available at:

<http://www.intracen.org/itc/market-info-tools/non-tariff-measures/publications/>

### 3. NTBs in the context of WTO Agreements and on-going (DDA) negotiations

#### Are NTBs covered by WTO Agreements?

WTO rules and regulations govern some of the non-tariff measures classified, including all technical measures, and most other measures. Hence, not all non-tariff barriers (NTBs) are covered by WTO Agreements.

Whereas there remain forms of non-tariff measures which are not subject to international scrutiny or disciplines, many forms of NTMs, especially SPS measures and TBTs, are disciplined through international agreements such as WTO (and regional and bilateral agreements).

In the context of WTO membership, the use of specific trade measures that could potentially be harmful to exports or imports (and hence constitute a NTB) is regulated through different WTO Agreements (including on Goods, Services, Agriculture, Intellectual Property, Trade Facilitation). Similarly, all other WTO members are bound by all those agreements, owing an obligation to EAC countries to abide by the same rules. All WTO rules have been developed and agreed upon by all WTO members.

In practice, the WTO agreements allow countries to achieve legitimate objectives through the use of NTMs, but as a general rule, they should not be implemented in such a way as to pose unnecessary obstacles to trade. Hence, the WTO rules regarding technical NTMs such as TBTs and SPS measures are largely meant to prohibit 'regulatory protectionism'.<sup>8</sup>

Businesses need stable, transparent and predictable market access. As long-standing WTO members, the EAC Governments and their trading partners have undertaken commitments regarding the transparent, non-discriminatory and predictable use of tariffs and non-tariff barriers. Through the 'binding' of commitments, and transparency requirements in WTO Agreements, governments attempt to make the business environment stable and predictable.

WTO rules and commitments improve *transparency* by means of:

- **Notifications:** Most WTO agreements require governments to disclose their policies and practices publicly within the country or by notifying the WTO. Hence, governments notify the WTO of new non-tariff measures under the relevant agreements.
- All notifications in the area of SPS and TBT technical measures can be easily searched in the SPS and TBT Information Management Systems.<sup>9</sup>
- **WTO Trade Policy Review (TPR):** Trade Policy Reviews allow WTO members to monitor the national trade policies of members, allowing other governments to comment on potential trade concerns (including NTBs) which may run counter to WTO commitments of that member. For instance, in 2012, the EAC and their member countries were subject to a WTO Trade Policy Review.<sup>10</sup>

8 UNCTAD, 'Non-Tariff Measures to Trade: economic and policy issues for Developing countries' (2012), p. 55

9 SPS Information Management System:  
<http://spsims.wto.org>

TBT Information Management System:  
<http://tbtims.wto.org>

10 [https://www.wto.org/english/tratop\\_e/tpr\\_e/tp371\\_e.htm](https://www.wto.org/english/tratop_e/tpr_e/tp371_e.htm)



## Focus: Principles of the WTO applying to non-tariff measures

As the multilateral organization governing global trade, the WTO is essentially a complex set of rules dealing with the most important aspects of trade. The following areas of trade are covered under WTO Agreements: trade in goods (including agricultural and non-agricultural products), the trade in services and the protection of intellectual property rights. At the Tenth WTO Ministerial Conference in Bali in December 2013, a new multilateral Trade Facilitation Agreement (TFA) was agreed upon by Ministers, which is currently awaiting entry into force (upon domestic ratification by two-thirds of the WTO membership). The TFA is intended to address many customs related NTBs in EAC target markets, as well as in their domestic markets.

Even though the different agreements and sub-agreements provide rules pertaining to a large variety of issues, the basic rules and principles running through all agreements are applicable to all trade and trade measures in and out of EAC countries.

These are:

- The principles of non-discrimination – a country should not discriminate
- Between its trading partners (giving them equally ‘most-favoured-nation’ or MFN status)
- Between its own and foreign products, services or nationals (giving them ‘national treatment’);
- The rules on market access - bringing barriers down through negotiations;
- The rules on unfair trade - no arbitrary raising of trade barriers (incl tariffs, and non-tariff barriers) through ‘binding’ of commitments in the WTO, and no ‘unfair’ practices (export subsidies and dumping below cost);
- The rules on conflicts between trade liberalisation and other societal values (including rules on special and differential treatment for less developed countries)
- The rules promoting harmonisation of national regulation in specific fields.<sup>11</sup>

Ongoing and future WTO trade negotiations (‘rounds’) provide an avenue for devising better rules for the conduct of international trade and improving market access. Indeed, through continuous negotiations for the liberalisation of trade, barriers have been brought down substantially – both tariff and non-tariff barriers amongst WTO members – in developed and developing economies. Since 2001, WTO members have been re-negotiating many of the Uruguay agreements under the Doha Development Agenda.

## How can EAC countries address NTBs in the context of their WTO membership?

WTO members make binding commitments, which are subject to the WTO Dispute Settlement System (DSU). Hence, if a WTO member alleges that another member’s non-tariff measures cause serious trade loss and are a violation of WTO rules,

the WTO provides mechanisms to address the issue.

However, for those NTBs where strict WTO rules have not (yet) been agreed upon (for example as part of the DDA Round), the solving of perceived trade irritants is more difficult. Although obligations and rights pertaining to the use of NTBs are sometimes included in regional trade agreements (FTA’s), these arrangements often lack the mechanisms for dispute settlement as provided in the WTO.

<sup>11</sup> Lessons taken from Bossche, van den, 2013, p.32-38, and ‘Law and Policy of the WTO’

If a WTO member argues that another member's non-tariff measures cause serious trade loss and are a violation of WTO rules, the issue can be raised as a specific trade concern (STC) in the relevant committee. If the issue cannot be resolved, it can be brought for consultation and DSU settlement (e.g. SPS or TBT related cases have frequently been solved in DSU).

With regards to specific trade concerns (STC), the Committees on SPS and TBT keep close track of all concerns raised, including searchable databases.

Under the SPS Committee, in 2014, a total of 29 specific trade concerns were raised by WTO members in the SPS Committee, none of which were raised by a least-developed country Member. Three of the STCs raised resulted in a Panel proceeding in the context of the WTO dispute settlement resolution procedure.

Of all STCs raised in the Committee on SPS only one concern was raised by an EAC country: in 1998 Tanzania raised a concern about the measure installed by the EU on 'trade restrictions in response to cholera' (PR).<sup>12</sup>

Second, in the event that a trade concern over a non-tariff measure cannot be solved through the committees, WTO members can bring up the issue for consultation and DSU settlement.

When looking at coverage of WTO issues addressed by the DSU, the importance of NTBs has grown under the WTO.

In 2011, only 32 out of the 393 disputes on goods involved tariff-related issues, including tariff-rate quotas. About one third of disputes dealt with GATT core principles: national treatment, MFN clause or elimination of QRs.

More than half of the WTO disputes on goods involved NTBs: anti-dumping, subsidies, safeguards and countervailing duties (CVDs). Interestingly, it has been found that disputes on non-agricultural products most often entail border measures, whereas agricultural products related

disputes are increasingly dealing with 'behind the border' measures.<sup>13</sup>

The WTO DSU only deals with disputes where binding commitments under WTO Agreements are the joint reference framework for parties. Hence, for those NTM's where strict WTO rules have not been agreed upon (for example as part of the DDA Round), the solving of perceived trade irritants is more difficult. Although obligations and rights pertaining to the use of NTM's are sometimes included in regional trade agreements (FTA's), these arrangements often lack the mechanisms for dispute settlement as provided in the WTO.

The point has been made, that the disputes raised under the WTO DSU cannot be seen as representative of NTBs, as clearly a number of NTBs have gone unchallenged (mainly as a result of developing country WTO members not bringing disputes to the MTS as result of lack of technical capacity and resources).

## How are NTBs dealt with in on-going WTO negotiations in the context of the Doha Development Round (DDA)?

In the context of the Doha Development Round (DDA) negotiations, EAC governments and other WTO members have been engaged in talks to address non-tariff barriers since the beginning of 2009. At the same time, under different committees covering WTO Agreements (TRIPS, Trade Facilitation, Agriculture, etc), talks on the improvement of rules and market access equally address NTBs.

First, with regards to the NTB talks in the context of the DDA, there is no 'across the board' approach to negotiating NTBs, as the DDA mandate for discussing NTBs is limited to Negotiating Group on Market Access for Non-Agricultural Products (NAMA) through para 16 of the Doha Declaration.

<sup>12</sup> Note on 'Specific Trade Concerns', (G/SPS/GEN/204/Rev.15) WTO Committee on Sanitary and Phytosanitary Measures, 24 February 2015

<sup>13</sup> Santana and Jackson, 'Identifying NTBs: evaluation of multilateral instruments and evidence from disputes', 2012

So far, NGMA NAMA NTB talks have focused on both horizontal matters (relating to conformity assessment procedures, international standards, and transparency') as well as vertical proposals (relating to sector-specific proposals). In 2012, the WTO Secretariat prepared a 'guide' on all proposals under the NAMA talks on NTB.<sup>14</sup>

As reflected in the Chairperson report on the state of the NTB NAMA negotiations so far, discussions have taken place on:

- Development of a 'horizontal mechanism' - an inventory as a way of identifying the NTBs to be negotiated. A draft Ministerial Decision on Procedures for the Facilitation of Solutions on Non-Tariff Barriers (Horizontal Mechanism) has been circulated, but has not yet received sufficient support in the membership. Scope, role of committees and relationship between DSU and the procedure requires further consultation (see doc TN/MA/W/103/Rev.3/Add.1 Annex A).
- Vertical proposals - including on Remanufactured goods, on labelling of textiles, clothing, footwear and travel goods.
- Improvement of TBT-related transparency issues.
- International standards, with the idea to improve cooperation between standard setting bodies and the TBT Committee.
- Conformity assessment.

In the concluding remarks of the NGMA Chairperson in his 2011 report, he noted: 'Even though this NTB package is still work in progress, the whole chapter underlines the potential capacity of the WTO Members to update the rule-based system in an area which will have a growing importance in the context of future trade and therefore for the development of the rule-based system. The technicality of many issues and the number of specific cases which can hamper trade

in this area, as well as the often difficult balancing of governmental legitimate interests and trade interests may lead Members to analyze in an in-depth way the adequate methodologies to address NTBs and to strengthen the permanent structures to address them on a multilateral level. In the meantime, Members should pursue the negotiations in the Negotiating Group with a view to finalizing this package'.<sup>15</sup>

Second, WTO members equally continue improvement on rules and market access in dedicated committees. Hence, it can be said that WTO members opted for a 'piece-meal' approach to NTBs by continuing negotiations on NTBs in specific committees and not 'across the board'. For example, the recently agreed upon Trade Facilitation Agreement (TFA) covers important issues which are frequently mentioned as NTB (such as customs procedures, lack of border cooperation etc).

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14 WTO Document 'TN/MA/S/21/Rev.7)

15 WTO Document 'TN/MA/W/103/Rev.3/Add.1 (2011)

For example, on the issue of non-preferential Rules of Origin, the current 'jungle' and non-harmonization across trade blocs is seen as an important NTB. In 2013, as part of a LDC package, a Ministerial Decision was taken which sets out guidelines for members to develop their own rules of origin arrangements applicable to LDC imports with the aim of facilitating market access for LDC goods. For LDCs the 2013 decision on preferential Rules of Origin is a priority in the

Post-Bali work, and hence LDCs are keen to follow-up and monitor implementation of the decision on preferential rules of origin applicable to LDC imports.

With regards to non-preferential Rules of Origin negotiations continue in the WTO Committee on ROO, but progress has faced serious difficulties.

## 4. NTBs in the context of regional agreements and negotiations: EAC and TFTA

One of the objectives of the EAC, is the elimination of NTBs which is seen as an instrument to further integration of EAC countries into global markets, and realise economic growth and poverty reduction. The elimination of NTBs equally offers the potential for promoting intra-regional trade, towards economic and social development in the region.

In 2012, during the WTO Trade Policy Review of EAC, the following NTBs were highlighted as affecting intra-EAC trade the most: non-harmonized technical regulations, sanitary and phyto-sanitary requirements, customs procedures and documentation, rules of origin and police road blocks.

When the EAC became a customs union in 2005, the elimination of NTBs became a priority through the abolishment of intra-community tariffs and the adoption of a common external tariff (CET). In fact, in the context of the EAC and TFTA regional cooperation agenda, the elimination of tariffs and NTBs within the partner states is the main instrument for trade liberalization under the customs union.

Cooperation mechanisms for the elimination of NTBs have been agreed upon by EAC countries, and were taken one step further with the Tripartite Free Trade Area (TFTA). For example:

National Monitoring Committees (NMCs) have been established in all EAC member states to monitor NTBs impeding upon intra-EAC; The East African Business Council (EABC) is an active player in lobbying for NTB elimination. As part of the EAC time bound programme on elimination of NTBs, the EABC prepares updated reports on resolved/unresolved existing NTBs and new NTBs.<sup>16</sup>

As part of the Tripartite Free Trade Area (TFTA), the Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), and Southern African Development Community (SADC) are collectively aiming to reduce and eliminate NTBs.

Article 4 of the Agreement Establishing the TFTA clearly stipulates that TFTA members wish to 'progressively eliminate tariffs and non-tariff barriers (NTBs) to trade in goods'. TFTA members agreed to eliminate all existing Non-Tariff-Barriers to trade with each other and to not impose any new ones (Article 10.1).

In practical terms, as outlined in the separate annex on Non-Tariff Barriers, the TFTA NTB Elimination mechanism provides for:

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<sup>16</sup> The latest report from the 'Updated EAC time bound programme on elimination of NTBs', Dec 2014, is available at the website of EABC.

<http://www.eabc.info/resources/view/current-status-of-ntbs-in-the-eac-region>

Institutional structures for the elimination of NTBs (including: National Monitoring Committees and National Enquiry/Focal Points);  
 General Classification of Non-Tariff Barriers in EAC, COMESA and SADC;  
 Reporting and Monitoring tools (including: NTB Elimination Plans, and clarification of procedures on 'request and response' and 'resolution');

an online NTB reporting, monitoring and eliminating mechanism is created and operational: [www.tradebarriers.org](http://www.tradebarriers.org)  
 Facilitation of Solutions to identified Non-Tariff Barriers Penalty system.

# NTBs faced by EAC exporters in key export markets: EU and US

## 1. Trade data on EAC exports to EU and US

The European countries and United States continue to dominate exports from EAC countries, although their importance is declining. The European Union is the largest export market for the EAC products which takes the largest share of EAC trade accounting for 25% in 2013 against 5% for the United States, the second developed trading partner. Overall, in 2013, the EU export share represented USD 1,837 billion and the US represented USD 364 million.<sup>17</sup>

For Burundi, for example, 59 per cent of exports went to European countries in 2010, compared to 78 per cent in 2004 – a contraction of almost 20 percentage points. Exports to the United States equally declined between 2004 and 2010. For Kenya, the African markets have become the main export markets, whereas EU accounted for 24.8% in 2010. For Kenya, the preference granting

markets are also the principal export destinations: Uganda and Tanzania (as member of EAC), the EU (as signatory to the Interim EPA, and offering GSP-Plus preferences to EAC LDCs (e.g., EBA)), and Egypt (as a member of COMESA).

Hence, despite several preference granting schemes in place (AGOA offered by US since 2006 and renewed in 2015, and GSP and GSP-Plus schemes offered by the EU), the traditional export destinations of the EU and US have declined in importance. Instead, emerging export markets, such as China, India, African and regional EAC markets have increased in importance.

In terms of products, EAC trade with the EU is dominated by agricultural products including coffee, cut flowers, tea, tobacco, and vegetables which represent 73.8%.<sup>18</sup> Concerning the US, the figures for 2013 have shown that the five largest categories were knitted apparel (\$171 million), woven apparel (\$148 million), spices, coffee, and tea (mostly coffee) (\$119 million).<sup>19</sup> Therefore,

<sup>17</sup> European Commission, Directorate General for Trade, Statistic on East African Community, Source Eurostat IMF, 2013. Available at: [http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc\\_151901.pdf](http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151901.pdf). Last access on 27 September 2015

<sup>18</sup> Fishery products represent 7,6% and industrial products, 18,6%. Source Eurostat Comext - Statistical

regime 4. 2013. [http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc\\_151901.pdf](http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151901.pdf). Last access on 27 September 2015

<sup>19</sup> Office of the United States Trade Representative, East African Community. Available at: <https://ustr.gov/countries->

US imports from the EAC are essentially driven by textile and apparel products.

The structure of EAC exports also differs between the members. For example:

For Burundi, agriculture accounts for 76.8 per cent of exports in 2010 (with unroasted coffee representing 59.3 per cent, and tea representing 8.5 per cent);

For Kenya, agriculture accounts for 57.6 per cent of exports (with cut flowers and foliage representing 7.7 per cent, and tea representing 22.5 per cent in 2010), and manufactured goods accounting for 33.9 per cent (including machinery and raw materials).

## 2. Main NTBs in EU and US markets faced by EAC exporters

Whereas tariffs came down as a result of successive WTO trading rounds and unilateral trade liberalization, governments have resorted to the use of other types of measures to protect domestic industries, consumer health, or achieve alternative policy objectives. Currently, exporters in all markets (including the EAC) are more concerned about non-tariff barriers posing a threat to their exports than traditional tariffs (or: ordinary customs duties).

Against this background, the identification of the main NTBs facing EAC exporters on these targeted markets have been scrutinized by the ITC through their country-level business surveys of NTMs. The ITC carried out NTM Surveys in the following EAC countries: Tanzania (2015), Rwanda (2014), and Kenya (2014). The NTM Surveys especially focus

on perspectives of the private sector regarding burdensome Non-Tariff Measures (NTM) acting as barriers to trade (NTBs).<sup>20</sup>

**The general finding of the NTM Surveys in EAC countries has been that the most relevant NTBs to the EU and the US markets are the ones related to domestic regulation in respect of standards, i.e. TBT and SPS which are technical requirements and conformity assessment measures.**

Following the categorization used by the ITC in the NTM Surveys, the burdens imposed by NTBs vary according to sector. For the different sectors (agriculture, manufacturing), the following NTBs can be distinguished which are generally relevant for EAC exporters to US and EU markets.

Technical requirements are product specifications including regulations related to quality standards, safety, production process and sanitary requirements that exporters must comply with. Conformity assessments entail the application of standard measures that seek to determine whether a product or process complies with the mandatory technical requirements imposed by the importing country for health and safety reasons. In general, these measures take the form of certificates, inspections resulting in export licensing and permit requirements, excessive fees and charges, and packaging and storage requirements.<sup>21</sup>

In the **agricultural sector**, the ITC's NTM Survey in EAC countries have highlighted the major problems in target markets. In specific, EAC exporters have reported two major problems to overcome: first, to fulfil the *high standards* demanded by the EU with regards to food safety and, second, meeting the *maximum residue level (MRL) of pesticides*.<sup>22</sup>

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regions/africa/regional-economic-communities-rec/east-african-community

20 ITC, Technical paper: ITC series on non-tariff measures, <http://www.intracen.org/itc/market-info-tools/non-tariff-measures/publications/>

21 Based on ITC definition, Kenya: Company perspectives- An ITC Series on Non-tariff measures, 2014

22 European Commission (2005). Regulation (EC) No 396/2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC. Official Journal of the European Union, L 70/1–16.

European Commission (2006). Commission Regulation (EC) No 1881/2006. Setting maximum levels for certain contaminants in foodstuffs. Official Journal of the European Union, L 364/5–24.



For example, vegetable and fruit exporters have routinely faced problems with the strict EU limit on the level of pesticide residuals and other contaminants, as nitrates, aflatoxins and heavy metals allowed in the product. In 2011, the European Union rejected K Shillings 20 billion of fresh food shipments from Kenya because it contained the pesticide Dimethoate above the level recommended in the EU rules on food safety. In fact, due to its status as a carcinogen, which is considered to be harmful to human health, the European Union reduced the maximum residue level (MRL) of dimethoate from 0.2 mg/kg to 0.02 mg/kg, a level that is extremely difficult for Kenyan farmers to satisfy.<sup>23</sup>

With respect to the US market, EAC exporters are most exposed to burdensome measures related to *conformity assessment* (certification, testing and inspection requirements) followed to a lesser extent by *charges, taxes* and other *para-tariff measures*.

Regarding the **manufacturing sector**, conformity assessments, technical requirements and rules of origin are the three main categories of measures frequently reported by EAC exporters specifically in the textile sector, chemicals sector and miscellaneous manufacturing industries.

For instance, the requirement imposed on exporters by the EU and the US to fumigate wooden products and leather in order to destroy insects or microorganisms is costly for exporters due to the lack of availability of such services and facilities across EAC countries. This situation makes it difficult for exporters to comply with such requirements which impede their export capacities.

In the same vein, another example to be shown is the US' regulation on the maximum limit of lead

content of products when exporting to the US. Due to its scientifically proven harmful effects, the United States does not allow lead content to be greater than 100 ppm (0.01%) in any product intended for children. Paint and surface coatings of any product must not contain a concentration of lead greater than 0.009 per cent.<sup>24</sup> This regulation has been particularly too strict for many Kenyan exporters to comply with.

Furthermore, **procedural obstacles** are experienced as burdensome, and often more challenging to comply with than the technical regulation itself. As a result of compliance efforts required to deal with a specific measure, it makes the NTM burdensome.

In that context, EAC exporters have observed in the ITC survey that POs are a major bottleneck to exporters from agricultural sector. Furthermore, their exports faced POs in the markets of the EU, the US, Japan and Canada mostly due to high fees and delays in administrative procedures.

A concrete example of where a conformity assessment measure amounted to a procedural obstacle is the demand of Denmark, Germany and Norway to Tanzanian coffee exporters that a sample of coffee be sent to their country laboratories for testing. Exporters explained that it takes a long time for the sample to be tested. This is therefore a burdensome administrative procedure which causes costly delays to access of those markets.

Another example has been reported by Rwandan exporters of products classified as miscellaneous manufacturing which complained of high charges to obtain a Fair Trade license applied by importers in France, Germany and Italy. The exporters indicated that to minimize the certification costs,

European Commission (2013). Sanitary and phytosanitary requirements: plant health control, EU Export Helpdesk. Available at: [http://exporthelp.europa.eu/thdapp/display.htm?page=rt%2f%2f\\_SanitaryAndPhytosanitaryRequirements.htm](http://exporthelp.europa.eu/thdapp/display.htm?page=rt%2f%2f_SanitaryAndPhytosanitaryRequirements.htm)

Kareem (O), The European Union Technical Barriers to Trade and Africa's exports: Evidence from Sanitary and Phytosanitary Measures, European University Institute, October 2014. Available at: [http://cadmus.eui.eu/bitstream/handle/1814/33311/RSCAS\\_WP\\_2014\\_98.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/33311/RSCAS_WP_2014_98.pdf?sequence=1)

23 Business Daily Africa, EU fruit rejection forces chemical ban, article from 30 January 2012, Available at:

<http://www.businessdailyafrica.com/EU+fruit+rejection+for+ces+chemical+ban+/-/539546/1317052/-/upv48l/-/index.html>

24 United States Consumer Product Safety Commission, Total Lead Content. Available at: <http://www.cpsc.gov/en/business-manufacturing/business-education/lead/total-lead-content/>

they were compelled to team up with other exporters to transport their goods.

In addition to trading partners' requirements, EAC exporters face onerous 'niche market requirements', often voluntary and private standards imposed by private clients affecting mainly food products. Private standards have gained in importance over the last decade and are becoming mandatory (WTO report 2012). The costs and delays associated with these private standards cause serious burdens for EAC exporters.

For instance, Rwandan companies have frequently reported the presence of burdensome private standards, particularly when Fair Trade certificates are requested by clients in the European Union and in the US for a number of agricultural exports. In this regard, exporters explained that a pre-negotiated agreement must be concluded with the importer, which then necessitates hiring an expert to inspect the product in Rwanda and prepare a report. If the exporter passes the test, then a Fair Trade certificate is granted. A major consequence of this process is higher costs for the exporter. For example, one exporter reported having to pay €1,500 to hire an expert to inspect and issue the Fair Trade certificate, which was only valid for a limited period.

Another example of a costly private measure was the packaging required for coffee beans at RWF 2,300 (US\$ 3.80) per package imposed by EU and US clients.<sup>25</sup>

Clearly, compliance with private standards is an additional constraint imposed on EAC exporters limiting their market access to developed countries markets.

### 3. Addressing NTBs with strategic trading partners: United States and European Union

With regard to the existing NTBs posing a challenge for EAC exporters seeking to tap into the opportunities of the target markets EU and US, it is useful to explore whether bilateral trade frameworks offer the possibility to address those NTBs.

Indeed, with the expected renegotiation of (unilateral) trade preferences granted by US into a reciprocal agreement, and the EU-EPA being negotiated and providing mechanisms for collaboration, the offensive (and defensive) interests of EAC countries on NTBs may be put forward for discussing or negotiation at the right moment.

First, with regards to *specific trade concerns* (STCs), the existing dialogue mechanisms can be used as part of EU and US cooperation. If the EAC (or the trading partner) wishes to discuss the *ambition of across the board cooperation, harmonization or lowering of NTBs* in the context of trade relations with the EU and US, this requires preparation towards assessing common interests, and collective position development, so as to communicate EAC collective interests (offensive and/or defensive) in the context of these talks or negotiations.

#### EAC – EU (EPA) trade negotiations

EAC countries have long enjoyed unilateral trade preferences granted by the EU under the GSP (for non-LDCs) and GSP-Plus systems (for LDCs and other specified groups). The reciprocal EAC – EU

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<sup>25</sup> ITC, Rwanda : Company perspectives, An ITC series on non-tariff measures, 2014. Available at:



Economic Partnership Agreement replaces those unilateral trade preferences.

In European Union agreements, cooperation in the area of NTBs, and harmonization of technical regulations is common practice, sometimes even implying adoption of the European Union *acquis communautaire* by partners.

## EAC – US (AGOA) trade negotiations

Under the existing EAC – US AGOA Arrangement (2008), the US grants unilateral preferences to EAC countries, and about 40 African countries, for a 10 year period (recently renewed by US Congress until 2025).

Under the EAC – US AGOA Arrangement, the elimination of NTBs is mentioned as an area for cooperation, but not as a commitment as such. Indeed, the unilateral nature of the current AGOA arrangement did not require EAC governments to undertake any commitments. However, The current AGOA arrangement does foresee in a cooperation mechanism ('The Council') which shall (inter alia) 'identify and work to remove impediments to trade and investment between the US and the EAC and its Partner States' (Article Three)<sup>26</sup>. The other tasks of the US – EAC Council on Trade and Investment are to monitor trade and investment relations, to follow up on specific trade and investment matters, and to seek advice of the private sector and civil society.

Renegotiation of the AGOA arrangement for EAC is a preferred way forward in relations with US for EAC countries. Building on the talks for a deepened trade framework with EU, under the EPA negotiations, the EAC Governments have submitted a request to the United States Trade Representative (USTR) to re-negotiate the unilateral trade preferences granted by the US under the Africa Growth and Opportunity Act

(AGOA).<sup>27</sup> EAC Governments are seeking to replace the temporary and unilateral arrangement with a more predictable, long-term and reciprocal trade agreement (such as that agreed by EAC Governments with the EU in the EPA negotiations). Under the current EAC – US AGOA Agreement, unilateral trade preferences – which can be withdrawn by the US at any moment - are granted by the US to EAC countries for a period of 10 years (starting from 2008).

### What opportunities would re-negotiation of the current AGOA arrangement offer to EAC countries?

On the one hand, re-negotiation of AGOA into a reciprocal agreement will require EAC countries to (partly) open markets to goods, services and investments originating from the US. On the other hand, the negotiations towards a reciprocal trade agreement with US equally offer the opportunity for EAC Governments to *collectively* put forward their request on (offensive) interests in the US markets, and position on (defensive) interests in domestic markets. Apart from goods and services market access, negotiations will likely include cooperation in the area of rules, new areas of interest (from government procurement, to investment, to labour rights), and provide for technical assistance arrangements.

The elimination of NTBs through an *across the board* commitment could form part of the negotiations for a renewed and reciprocal AGOA arrangement with the US.<sup>28</sup> Hence, the timing is right for EAC Governments to assess trade relations with the US, and identify key areas (offensive and defensive) in NTBs as faced by EAC exporters in the US market (and vice versa).

With a view to the negotiations being led by the EAC as a trading bloc, there is a strong need for collective positioning on specific issues of interest. With a view to addressing NTBs facing EAC exporters for different product groups (or horizontally), development of collective positions

26 <http://agoa.info/images/documents/5190/US-EAC%20TIFA%20English.pdf>

27 <http://agoa.info/news/article/5835-eac-push-for-long-term-trade-pact-with-us-to-replace-agoa.html>

28 The current AGOA Trade and Investment Framework Agreement (2008) between US and EAC mentions

by EAC industries would be a strong advantage in the negotiations.

# Case Studies

## 1. Case study: NTBs faced by EAC exporters of products in the coffee sector

Agriculture is the mainstay of EAC economies although its contribution to GDP is declining (i.e. 23.6 per cent in 2010 down from 28 per cent in 2005) while services and manufacturing are becoming increasingly important. About 80 per cent of the EAC population live in rural areas and depend on agriculture for their livelihood; agriculture is therefore vital for the region.<sup>29</sup> Against this background, coffee is an important commodity in EAC countries both in terms of export earnings and generating income for smallholder farmers. Coffee is a vital part of the EAC economies and the most important exported product, with a large portion of the population working in coffee related industries. Uganda is the largest EAC coffee exporter as well as the second largest producer behind Ethiopia in Sub-Saharan Africa according to the latest statistics of the International Organization of Coffee (IOC).<sup>30</sup> The EAC is an important player in holding 25 per cent of the total market share of coffee production in Africa. However, the EAC has a small share of world coffee production accounting for an average of 3.92 per cent annually while Africa as a whole

accounted for 12.8 per cent which remains modest.<sup>31</sup>

### Trade data

World-wide, coffee consumption has grown extensively over the past years. Whereas global imported value of coffee was 13,056,056 (in dollar thousand) in 2005, that amount has more than doubled anno 2014 with total imported value of 30,801,268 (in dollar thousand)<sup>32</sup>.

Looking at EAC countries, Burundi, Kenya, Rwanda, Tanzania and Uganda are all coffee producing countries. At a continental level, these countries rank among the top 11 coffee producing countries. The three largest African coffee exporting countries so far for this decade are Ethiopia (2.9 per cent of the world total and 28.7 per cent of Africa), Uganda (2.7 per cent and 26.4 per cent) and Côte d'Ivoire (1.4 per cent and 13.4 per cent).<sup>33</sup>

The EAC market share represents less than 4 per cent of world coffee production. The exports are mainly driven by Uganda which exported in 2014 a total amount of USD 1,427,046 including unroasted and not decaffeinated coffee (HS code-090111), coffee husks and skins, coffee substitutes (HS code-090190), roasted and decaffeinated coffee (HS code-090122), roasted coffee and not decaffeinated (HS code-09121), unroasted and decaffeinated (HS code-090112).

<sup>29</sup> WTO, Trade Policy Review, Report by the Secretariat, East African Community, 31 May 2013, WT/TPR/271/Rev.1

<sup>30</sup> International Organization of Coffee (IOC), The Coffee sub-sector in Sub-Saharan Africa, seminar presentation, Dr Edward George, March 2014. Available at: <http://www.ico.org/documents/cy2013-14/presentations/seminar%20march%202014%20presentations/seminar-march2014-edward-george-e.pdf>

<sup>31</sup> ICO, Sustainability of the coffee sector in Africa, February 2015. Available at: <http://www.ico.org/documents/cy2014-15/icc-114-5e-overview-coffee-sector-africa.pdf>

<sup>32</sup> ITC Trademap

<sup>33</sup> ICO, Sustainability of the coffee sector in Africa, February 2015. Available at: <http://www.ico.org/documents/cy2014-15/icc-114-5e-overview-coffee-sector-africa.pdf>

Kenya is the second largest exporter, having exported USD 229,527 during the same period. Tanzania ranks third with estimated exports of USD 121,053. Rwandan exports are valued at USD 58,341 against USD 51,605 for Burundi.<sup>34</sup> In addition, these five countries export more than of 70 per cent of the total world exports of green unroasted coffee beans (HS code-090111). This means that these countries are at the bottom of the coffee value chain.

As shown in the below table, the EU remains the largest importer of coffee from the EAC region followed by the US.

**Table 1: Export by destination in export value in developed countries**

Importer Countries	Exported value 2014 (USD thousand)
European Union	447,10
United States	83,727
Switzerland	74,147
Japan	38,716
Canada	9,848
Australia	8,153
Norway	7,359
New Zealand	1,383

**Table 2: Top 11 African Coffee Producing Countries in 2010s and World Ranking**

Coffee Producing Countries (56)	2010s (Mn bags)	% Shares of World Production	
World	138,821	100%	
South America (8)	63,778	45.94 %	
Asia & Oceania (11)	40,696	29.32 %	
Central America & Mexico (12)	18,204	13.11 %	
African (25)	16,142	11.63 %	
Country		% Share	World ranking
Ethiopia	6,783	4.89	5
Uganda	3,330	2.40	11
Côte d'Ivoire	1,753	1.26	13
Tanzania	825	0.59	18
Kenya	756	0.54	20
Madagascar	556	0.40	22
Cameroon	440	0.32	25
Guinea	374	0.27	26
Congo Dem. Ref of	336	0.24	28
Burundi	281	0.20	29
Rwanda	270	0.19	30

## Market entry of coffee

Exports of green beans coffee benefit from duty-free entry (zero tariffs) into developed country markets. However, the EU and Switzerland impose different tariff rates on processed and ground coffee under three schemes, i.e. Most

<sup>34</sup> Based on ITC's trade map. Available at : [www.trademap.org](http://www.trademap.org)

Favoured Nation (MFN) rate, Generalized System of Preferences (GSP) and Duty Free Quota Free (DFQF).<sup>35</sup> By way of illustration, Kenyan exporters must pay 8% duty for coffee substitutes containing coffee.<sup>36</sup> This is a good example of tariff escalation which involves tariff rates that increase with the degree of processing. It is used by importing countries to protect their domestic industries but also results in limiting exporting countries in their progression up the coffee value chain. Kenyan exporters, therefore, face at both tariff barrier and potential NTBs. In this regard, another key challenge for coffee exporters is to overcome the obstacles to compliance with a range of governmental requirements related *inter alia* to sanitary measures, quality, labelling and packaging in force in partner countries. But in the context of coffee sector, meeting these requirements is not always sufficient to gain market entry. Indeed, exporters also have to comply with private standards which have gained significance in the coffee certification process.<sup>37</sup>

EAC coffee production is mainly targeted at developed country markets. One reason for this is that the chances for the EAC to diversify its trading partners toward developing and emerging countries are limited due to their high tariff barriers. It is not surprising that the highest tariffs to coffee exports (HS-Code 0901) are maintained mostly in coffee producing countries such as Brazil (10%), Vietnam (15%), Colombia (10%), Ecuador (12.5%), Costa Rica (12.33%) and India (100%). In addition, it has been observed that the total ad valorem equivalent (AVE) tariffs is higher on roasted coffee (HS-code 090122) with an average of 35% against 10% for raw and unroasted coffee (HS6 digit)<sup>38</sup>.

Concerning **non-tariff barriers**, EAC coffee exporters face different market and buyer requirements in different target markets. Often, these are challenging EAC exporters, and hence constitute an NTB, demanding additional efforts to comply and deal with the procedures of compliance.

Buyer requirements can be: (1) mandatory, requirements that must be satisfied in order to enter the market, such as legal requirements; (2) *common requirements*, namely those which competitors have already implemented, and therefore which must be complied with in order to effectively compete in the market; and (3) *niche market requirements* for specific segments.<sup>39</sup> All of the buyer requirements are considered as NTMs (either of a technical or a non-technical nature), and most are also perceived as NTBs.

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35 See HS-8 digit level: 0901.21.00 Roasted Coffee not Decaffeinated ; 0901.22.00 Roasted Coffee Decaffeinated.

International Coffee Organization, The effects of tariffs on the coffee trade, August 2011. Available at: <http://www.ico.org/documents/icc-107-7e-tariffs-trade.pdf>

36 See ICO, The effects of tariffs on the coffee trade, Table 1 p.3.

37 The State of Sustainability Initiatives Review 2014. Available at:

[https://www.iisd.org/pdf/2014/ssi\\_2014\\_chapter\\_8.pdf](https://www.iisd.org/pdf/2014/ssi_2014_chapter_8.pdf)

38 Based on ITC's Mac Map, [www.macmap.org](http://www.macmap.org)

39 Based on CBI Market Information, 'Coffee in the Netherlands', 2014. [www.cbi.eu](http://www.cbi.eu)

## Focus

For exporters wishing to target complex and demanding markets such as EU and US, a good understanding of different requirements is a necessity. Buyer requirements are sometimes a Government initiated measure (NTMs, either of a technical or a non-technical nature), and sometimes industry-led initiatives (such as voluntary standards).

Most buyer requirements require efforts to comply, and hence are perceived as NTBs.

Based on CBI's brochure 'Buyer requirements in the EU for Coffee', the following types of buyer requirements can be distinguished:

(1) musts, requirements you must meet in order to enter the market, such as legal requirements

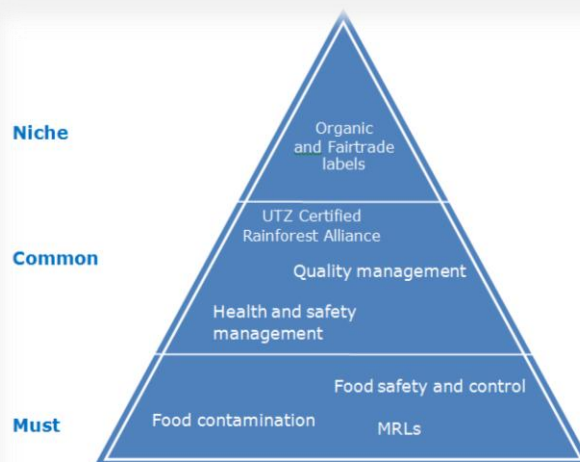
- Food safety and food control
- Control of contaminant in foodstuff
- Maximum Residue Levels (MRLs) of pesticides in food

(2) common requirements, which are those most of your competitors have already implemented, in other words, the ones you need to comply with in order to keep up with the market;

- Quality - ISO 9000
- Health & Safety- Food management and traceability

(3) niche market requirements for specific segments

- Sustainability certification



The main types of NTBs, which are encountered most frequently in developed markets, are:

- Food safety and sanitary requirement
- Testing and quality certification requirements;
- Pre-shipment inspection;
- Rules of origin;
- Procedural obligations to comply with the buyers requirements.

## NTBs facing the EU and US market

As already highlighted, the EU and US markets are the main export destinations of EAC coffee production. However, market access is largely affected by technical and sanitary requirements and numerous standards.

Food safety and sanitary requirements related to coffee trade is the key challenge an exporter will face if he seeks to export to the EU and the US markets. Food safety and sanitary requirements for coffee are designed to deliver coffee that is fit for human consumption and which does not present any public health problems. In most cases food safety requirements include complex conformity procedures, food laws and technical regulations, and multiple food safety standards – both public (mandatory) and private (voluntary) – imposed at or behind borders in importing markets. Concerning coffee, food safety and sanitary requirements are often expressed as sanitary and phytosanitary measures within the whole coffee value chain. In that context compliance with this measure has raised some concerns among coffee exporters due to its high cost with respect to conformity assessment procedures including testing and quality certification

The coffee sector has undergone transformation over the two last decades in shifting toward a sustainable coffee economy based primarily on environmental and social issues. As a result, this has generated sustainability requirements in mainstream markets and new variations in consumer demands. Indeed, consumers are becoming more receptive to traceability and food safety as well as labour conditions in their coffee consumption. In response to consumers concerns, the general trend observed in the EU and US markets has been the increase of stringent technical requirements and standards, and also in parallel the rapid development of certification initiatives for sustainable coffee led by private bodies. Many labels and certifications for coffee exist. The most important in terms of volumes certified include Nespresso AAA Sustainable Quality, 4C Association Starbucks Coffee And Farmer Equity (C.A.F.E.) Practices, Fairtrade, Organic (IFOAM is the standard-setting body), Rainforest Alliance (Sustainable Agriculture Network is the standard-setting body) and UTZ Certified. In this respect, the coffee sector is perceived as the pioneering industry for sustainability standards and certification.<sup>41</sup> In

practice, conformity with a sustainable standard is becoming a de facto requirement for market entry. Overall, all these requirements increase total cost for exporters and act as NTBs if exporters do not have technical, material and financial capacities to comply with.

In that respect, Annex Table 1 summarizes the main NTBs related to coffee export to the EU and the US markets.

Coffee shipments into the US involve three government agencies: US Customs & Border Protection (CBP), Food and Drug Administration (FDA) and US Department of Agriculture (USDA). Therefore, the exporter has to comply with the requirements of these three agencies. The information is not centralized on a unique website but it is dispersed. As a result it is difficult to know exactly what the conditions are to export coffee to the US. This could be interpreted as a procedural obstacle. In this regard, some Ugandan exporters raised concerns about pre-shipment inspection criteria imposed by the US administration, which requires that coffee is exported in a certain type of container. They perceived this measure as arbitrary as this requirement was not part of a legislation.

Technical measures related to SPS and TBT measures have been identified by EAC coffee exporters as affecting heavily their exports to the EU and US markets. The specific problem highlighted was compliance with conformity assessment requirements including certification and testing measures. Some exporters expressed their difficulties in meeting testing requirements imposed by importing countries, for example due to an inadequate testing equipment and facilities. In addition, it is relatively very time consuming for exporters to obtain results of samples sent in the EU for testing which adds to the costs of storage and can reduce the quality of the products. Certification costs have also been clearly identified as NTBs. This is certainly the biggest challenge they face in a sector which has the highest presence of sustainability standards among major agricultural commodity sectors in regards to both

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41 The State of Sustainability Initiatives Review 2014. Available at: [https://www.iisd.org/pdf/2014/ssi\\_2014\\_chapter\\_8.pdf](https://www.iisd.org/pdf/2014/ssi_2014_chapter_8.pdf)



supply and demand. For instance with respect to private standards some United Kingdom clients require Rwandan coffee exports to bear the Fair Trade label. The cost of inspection and to obtain a temporary label is said to be €1,500.

In the EU, certification is the most common way to show compliance with Corporate Social Responsibility criteria. It is still a niche market although the target is to mainstream certification. Various certifications focus on different issues and are popular in different countries or segments. Traditionally, certification focuses on either environmental or social issues. Today, these issues are increasingly integrated. The demand for certified CTC is driven by ambitious goals of industry players and consortia like the Sustainable Trade Initiative that aims to increase the amount of sustainable CTC on the Dutch and EU market. UTZ (coffee and cocoa) and Rain Forest Alliance (tea, coffee) are most commonly used by mainstream large and small retailers. Business-to-business (B2B) schemes (no logo on the final product) are also a good way to address sustainability issues. 4C is an important B2B-scheme used in the coffee sector.

## 2. Case study: NTBs faced by EAC exporters of cut flowers products in target markets EU and US

Given the importance of exports of cut flowers in the total exports from EAC countries, it has been deemed appropriate to include a sector-specific focus on NTBs in the export of cut flowers to target markets the EU and US.

The cut flowers industry is a sector where trade is characterised by a south-north trade flow, with Europe and North-America representing the main

consumer markets. The sector has become important for developing countries, mainly as a result of the widespread use of air-freight transport, together with increases in the use of logistical practices such as cold-chain management. These (technological and transport) changes have allowed a shift in production to countries that enjoy competitive advantages in land, labour and climate.<sup>42</sup> Whereas EAC countries (especially Kenya and to a lesser extent Tanzania) are amongst leading flower exporting countries, competition is fierce, with continued competition from countries such as Ecuador and Colombia, and newcomers such as Ethiopia which is keen to join the leading flower exporting countries.

The economic crisis has greatly impacted producers and, the flower industry has struggled to respond to the challenges posed by difficult economic conditions. Whereas supply of flowers is abundant, market demand is stagnating, putting margins under pressure. In addition, led by consumer demands, market requirements are becoming more demanding and differentiated, with demand for sustainably produced and distributed products rising.

In Western Europe, a moderate growth of only 2-4% annually is expected in the coming years.

### Trade data

As a trading bloc, the EAC is an important player in the world-wide cut flowers industry, representing almost 7.5% of world exports in cut flowers (HS-code 0603). This is mainly as a result of Kenya's (and to some extent Tanzania's) role as supplier of cut flowers (including roses). In total, Kenya exported USD 69, 846, 200 worth of 'Cut flowers and flower buds for bouquets, fresh or dried' (HS-code 0603), of which USD 588,358,000 worth of fresh cut roses (HS-code 060311) and USD 71,389,000 worth of fresh cut flowers (HS-code 060319). Tanzania equally exports cut flowers and is in the global top ten countries supplying fresh cut roses and buds (HS-

<sup>42</sup> SADC Trade Information Brief 'Cut Flowers and Foliage', p. 3

code 060311). In 2014, Tanzania exported a total value of USD 13,274,000 of ‘fresh cut roses and buds’ and USD 4,364,000 worth of ‘fresh cut flowers and buds’.<sup>43</sup> In the meantime, Rwanda is gearing up to become a horticulture exporter, based on priorities set in the National Export Strategy.<sup>44</sup>

In terms of **target markets**, exports of EAC cut flowers are largely destined for EU markets, representing a value of USD 535,111.000 in 2014. However, with growing competition from newcomers (such as Ethiopia), EAC countries are in a difficult position to maintain their market position (as reflected by the 2.5% loss of the EU market share by Kenya between 2009 and 2013, compared to a 4.6% growth in market share for Ethiopia).

Within the EU, the Netherlands is the lead importing country of EAC exports of cut flowers, followed by the United Kingdom, Germany, Austria, France and Belgium. As an export destination of EAC cut flowers, the United States is less important, mainly due to competition from Colombia and Ecuador, which are its traditional suppliers, providing 80% of US cut flowers.<sup>45</sup> Although Kenya’s exports of cut flowers to the United States have grown 16% in value (from USD 2,183,000 in 2010 to USD 4,352,000 in 2014), their share in total US imports of cut flowers only represents 0.4%.

**Table 3: Exports of Cut flowers from Kenya (2014), ITC Trade Map**

	Share in Kenya's exports %	Exported value 2014 (USD thousand)	Exported growth in value between 2010-2014 (%)
Total	100		
Netherlands	51.2	357,625	4
United Kingdom	13.5	94,019	1
Russian Federation	8.2	57,286	11
Germany	6.7	46,749	16
Norway	6.3	44,298	13
Australia	3.2	22,499	80
Switzerland	2.4	16,640	15
Japan	1.4	9,983	8
France	1.1	7,849	-5
United States	0.6	4,352	16

43 based on ITC's Trade Map, [www.trademap.org](http://www.trademap.org)

44 <http://www.intracen.org/blog/New-Initiative-to-Improve-Rwandas-horticulture-exports/>

45 based on ITC 'sources of cut flowers supply to EU', [http://www.intracen.org/uploadedFiles/intracen.org/Content/Exporters/Market\\_Data\\_and\\_Information/Market\\_information/Market\\_Insider/Floriculture/AIPH\\_2013\\_CutFlowers-Import\(1\).pdf](http://www.intracen.org/uploadedFiles/intracen.org/Content/Exporters/Market_Data_and_Information/Market_information/Market_Insider/Floriculture/AIPH_2013_CutFlowers-Import(1).pdf)

[t/Exporters/Market\\_Data\\_and\\_Information/Market\\_information/Market\\_Insider/Floriculture/AIPH\\_2013\\_CutFlowers-Import\(1\).pdf](http://www.intracen.org/uploadedFiles/intracen.org/Content/Exporters/Market_Data_and_Information/Market_information/Market_Insider/Floriculture/AIPH_2013_CutFlowers-Import(1).pdf)



## Market entry of cut flowers

For EAC exporters, market entry of cut flowers is challenged both by tariffs as well as different types of non-tariff barriers, ranging from Government imposed quality and packaging measures, to private standards raised by relevant market players.

In terms of tariffs, the cut flower sector faces relatively high tariffs maintained by Governments world-wide, and imports of cut flowers is considered a sensitive item. For example, total ad valorem equivalents (AVE) tariffs on imports of 'fresh cut flowers and flower buds, for bouquets or for ornamental purposes (HS-code 060310) are still high in India (60%), Turkey (46.8%) and Thailand (50%).<sup>46</sup>

However, Kenyan cut flowers face a zero duty rate in seven out of ten top ten export markets, including EU and US. Where preferential trade agreements are absent, Kenyan cut flowers face elevated customs duties in three out of ten top ten export markets: 22.5% (Russian Federation), 20.3% (Norway), or 12.9% (Switzerland).

In terms of non-tariff barriers, EAC exporters of cut flowers face different market and buyer requirements in different target markets. Often, these are challenging EAC exporters, and hence constitute an NTB, demanding additional efforts to comply and deal with the procedures of compliance.

### Focus

For exporters wishing to target complex and demanding markets such as EU and US, a good understanding of different requirements is a necessity. Buyer requirements are sometimes a Government initiated measure (NTMs, either of a technical or a non-technical nature), and sometimes industry-led initiatives (such as voluntary standards).

Most buyer requirements require efforts to comply, and hence are perceived as NTBs.

Based on CBI's brochure 'Buyer requirements in the EU for Cut Flowers', the following types of buyer requirements can be distinguished<sup>47</sup>:

- musts, requirements you must meet in order to enter the market, such as legal requirements
- common requirements, which are those most of your competitors have already implemented, in other words, the ones you need to comply with in order to keep up with the market;
- niche market requirements for specific segments<sup>48</sup>.



46 based on ITC's Mac Map, [www.macmap.org](http://www.macmap.org)

47 CBI Market Information, 'Buyer requirements for Europe cut flowers and foliage', 2014, [www.cbi.eu](http://www.cbi.eu)

48 Based on CBI Market Information, 'Buyer requirements for Europe cut flowers and foliage', 2014. [www.cbi.eu](http://www.cbi.eu)

## NTBs faced in target markets: EU and US

As target markets, the EU and US offer great potential for EAC exporters in the cut flowers sector, but at the same time are complicated markets to enter, mainly due to legislative requirements.

Over the past years, several trends have resulted in additional NTBs for exporters to the EU and US. First, the trend towards development of non-legislative requirements for environmental, social and safety standards demands additional compliance efforts. Although the non-legislative requirements are not legally required, they are important for potential exporters.

Another important trend is that corporate social responsibility (CSR) has become mainstream for European purchasers. Specifically, supermarkets are demanding that suppliers of flowers adhere to environmental, social and/or quality standards, and also demand participation in certain schemes (MPS-ABC on environment, Fairtrade on social standards). Various organisations and representative bodies are now also engaged in developing environmental and social standards (with a specific focus on labour conditions), with the aim to monitor conditions in which plants and flowers are grown and harvested.

Nowadays, EAC exporters are increasingly asked to produce their flowers 'sustainably', by taking part in CSR and other certification programmes. The environmental, social and safety aspects of products and production have become increasingly important in developed economies such as EU, US and Japan.

Example of voluntary and private standards: MPS-SQ (Floriculture quality and environmental and

social sustainability certification programme), Fair Flowers Fair Plants, Fair Trade, and others. Local standards and Codes of Practice (CoP) also constitute an NTB, such as the Kenya Flower Council (KFC) CoP (Silver/Gold), Florverde Sustainable Flowers, etc<sup>49</sup>.

Indeed, the flower industry has been the focus of extensive media attention regarding its impact on workers' livelihoods, and environmental sustainability. New standards (and NTBs) now increasingly take focus on the conditions in which plants and flowers are grown and harvested have become an important focus. As a result, more legislation (sometimes driven by consumer movements) is put in place and a number of organisations control and regulate these matters. In addition, trade agreements (including the US AGOA) now include references to labour standards and CSR.

In Kenya, flower farms have been accused of human and worker rights abuses, of diminishing Kenya's already scarce water resources, and for example poisoning water supplies through leaking of pesticides and chemicals<sup>50</sup>.

Annex Table 2 outlines for the EAC exporters to the EU markets the relevant NTBs in EU and US markets posing a challenge.

For EAC exporters, technical measures, specifically the phyto-sanitary requirements, are perceived as most burdensome, without a valid phytosanitary certificate that conforms to European or US standards, and the importing country's specific plant health import regulations, a shipment of floriculture products will not be allowed entry. The numerous regulations in EU and US, which are in most cases not harmonized, represent particular problems for EAC exporters.

In the EU, several EU plant health legislations apply, depending on the specific product being

<sup>49</sup> CBI Market Information, 'Trends in Europe for Cut Flowers and Foliage', 2014. [www.cbi.eu](http://www.cbi.eu)

<sup>50</sup> Leipold and Morgante, International Public Policy Review, 'The impact of the flower industry on Kenya's sustainable development' (2013)

imported. In addition, the types of requirements may differ per member states (27 in total). These phyto-sanitary measures are intended to prevent the introduction and/or spread of pests and organisms harmful to plants or plant products across the EU boundaries. Those measures enforce the International Plant Protection Convention (IPPC)–FAO, to which EU Member States are contracting parties. Each country is required to establish a national plant protection organization (NPPO) under the IPPC. The NTB consists of the requirement to obtain a ‘phyto-sanitary certificate’ from the NPPO, which certifies that the phytosanitary conditions of plants and plants products, and also that the shipment has been officially inspected, complies with statutory requirements for entry into the EU and is free of quarantine pests and other harmful pathogens.<sup>51</sup>

A finding of the ITC NTM Survey in Kenya, Kenyan companies in the horticulture industry have been affected by a series of technical and related conformity assessment problems due to the EU regulations <sup>52</sup>. These issues range from phytosanitary certification requirements to Kenyan products being denied entry which eventually had to be destroyed due to presence of pesticide residues in the product.

USDA has phytosanitary requirements which can be found at [www.fas.usda.gov/itp/ofsts/us.html](http://www.fas.usda.gov/itp/ofsts/us.html). In the US, all imported agricultural products are inspected by USDA’s Animal and Plant Health Inspection Services (APHIS). Inspection of a sample determines the presence of plant pests or contaminants in a commercial shipment. The paperwork provided to the officer is a key determinant of the sample size, which must include: PPQ368 Notice of Arrival, invoice with box count, weight, general, packing list and phytosanitary certificate.

Second, non-technical measures and procedural obstacles relevant to imports into the EU and US are manifold. First, EAC exporters need to keep track of those plant products subject to an import ban into EU or US. For example, both in the EU

and US, the CITES regulations apply ([www.cites.org](http://www.cites.org)), restricting international trade of endangered species of flora and fauna. In addition, some countries have R&D programmes in place to develop new varieties of flowers, which can be protected through the WTO TRIPS agreement (Intellectual Property Rights). The royalties or licences cover the breeders’ rights and allow for royalties to be collected.

In the EU, breeders’ rights regulations include: UPOV (International Union for the Protection of New Plant Varieties) and CPVO (Community Plant Variety Office), giving 25-year rights to breeders of new varieties. See: [www.upov.int](http://www.upov.int) and [www.cpvov.fr](http://www.cpvov.fr)

In the EU, EAC exporters also need to ensure that the importer of the cut flowers is listed in the importers register of the specific member state.

Third, procedural obligations (POs), resulting from the compliance efforts for exporters encompass all the ‘paperwork’ at home and abroad, for example to obtain the relevant certification.

Fourth, exporting into the EU or US equally entails dealing with ‘trade security requirements’, such as the EU and US container inspection, following certain security and risk-based measures. Some products listed are subject to customs inspection and plant health checks at the border equally constitute an NTB, consisting of documentary checks as well as plant health and (wood) packaging checks.

In the EU, due to increased inception of various harmful organisms, inspections have recently increased of cut flower varieties. Entry of varieties from non-European countries may now be checked at an inspection rate of 100%.

In the US, the Container Security Initiative (since 2002) resulted in the requirement of 100% scanning. In addition, the Import Security Filing requires exporters to the US to transmit information for security purposes at least 24 hours before goods are loaded onto an ocean vessel for shipment to the US. As the security and risk

<sup>51</sup> Relevant EU Plant health legislation is outlined in: [http://exporthelp.europa.eu/update/requirements/ehir\\_eu15\\_04v001/eu/auxi/eu\\_heaplant\\_legislation.pdf](http://exporthelp.europa.eu/update/requirements/ehir_eu15_04v001/eu/auxi/eu_heaplant_legislation.pdf)

<sup>52</sup> ITC, ITC, Kenya : Company perspectives, An ITC series on non-tariff measures, 2014. Available at:

measures in the US are experienced as burdensome, they have been subject to repeated lobbying efforts by US trading partners in different sectors.

Fifth, although the term 'voluntary standards' implies a 'choice', EAC exporters of flowers are more and more pressed towards compliance with private standards in the EU and US. Worldwide, over 130 different voluntary sustainability standards and other initiatives cover issues such as plant quality, safety etc. ITC Standards Map offers an online tool to search the relevant standards ([www.standardsmap.org](http://www.standardsmap.org))

For EAC exports to the EU, there are 28 different voluntary standards, some of which respond to the consumer demand for new niche markets such as 'organic flowers'. Voluntary standards on cut flowers include: Flowers & Ornamentals Sustainability Standards (Kenya Flower Council), MPS-GAP (Netherlands environmental standard), Fair Flowers Fair Plants (FFP, stimulating sustainable production), GLOBALG.A.P. Floriculture / Crops (certification), Unilever Sustainable Agriculture Code (sustainable sourcing), etc.

For EAC exports to the US, there are 34 different voluntary standards, some of which are also

relevant in the EU market. Including: Fair Trade USA, USDA National Organic Program, LEAF Marque, Fairtrade International.

Finally, imports of cut flowers may be subject to 'emergency measures', or the requirement to give an 'advance notice' to airport authorities, harbour authorities etc.

In conclusion, it is found that EAC exporters, face the following main types of NTBs to exporting cut flowers and foliage:

- Phytosanitary (plant health) control (SPS);
- Breeders' rights and intellectual property;
- Quality and grading standards (voluntary/private standards);
- Labelling requirements (TBT);
- Trade-related environmental and safety issues;
- The Convention on International Trade in endangered Species (CITeS) and other regulations on such trade
- Container inspections and other risk-based measures.

# NTBs: assessing costs and main challenges for exporters

## 3. Estimating costs of NTBs

Over the past years, attempts have been undertaken to assess and estimate the costs of NTBs. In 2012, conditions for intra-African trade were assessed by WB in a study on 'De-fragmenting Africa through deepening of regional integration in goods and services', finding that whilst tariffs have reduced within the sub-region, non-tariff barriers are inhibiting regional trade. However, to date there are no studies on the effects of NTBs in EU and US markets on African (or EAC) exporters.

Another World Bank study admitted that the cost of compliance with SPS and TBT was higher in low-income countries due to the weakness of infrastructure and because export services are often more expensive. In such an environment, SPS and TBT can practically erode the competitive advantage that developing countries have due to lower labour costs and preferential access.<sup>53</sup>

Whereas the implications of tariffs are relatively easy to quantify, the trade and welfare impacts of NTBs are more complex to determine. Over the past decade, several studies have been undertaken to identify NTBs in domestic and target

markets, and to examine the trade and welfare impacts of NTBs.

In the context of EAC, a first analysis of NTBs was undertaken in 2005 by the East African Business Council (EABC). The EABC study shed light on the main NTBs to EAC trade, without assessing the implications<sup>54</sup>.

In 2009, a further attempt was made to quantify the trade and welfare impacts of NTBs, in a study on NTBs on maize and beef undertaken by Karugia et al. Besides identifying the various types of NTBs applied, the study on maize and beef equally evaluated the costs and quantifying the impact of identified NTBs<sup>55</sup>. The study found that complete removal of all NTBs identified would bring positive welfare change in East Africa.

The main findings of these studies have contributed to improved awareness about (the impact of) NTBs within the region, the potential offered by elimination of NTBs, and supported the development of Government commitment to agree on regional mechanisms for elimination of NTBs within the EAC.

As NTBs are more and more taken up in preferential trade agreements, several studies have been dedicated to this new phenomenon.

For example, Disdier, Fotagne, and Cadot (2012) have showed that, as a result of harmonization efforts in preferential (North-South) free trade agreements, production costs may be raised of southern partners, which can therefore price the products out of other, southern markets that are

53 Cadot (O), (M) Malouche, Saez (S), Streamlining Non-Tariff Measures, World Bank, 2012. Available at: [http://siteresources.worldbank.org/INTRANETTRADE/Resources/Pubs/303936-1334932249017/SNM\\_Chapter1.pdf](http://siteresources.worldbank.org/INTRANETTRADE/Resources/Pubs/303936-1334932249017/SNM_Chapter1.pdf)

54 The EAC NTB inventory (which was validated in 2007) categorized the main NTBs including: Customs and Administration documentation procedures; Immigration procedures; Cumbersome inspection requirements; Police road blocks; Varying trade regulations among the three EAC countries; transiting procedures; duplicated functions

of agencies involved in verifying quality, quantity, and dutiable value of imports and exports; business registration and licensing. See also at: <http://www.eabc.info/policy/category/non-tariff-barrier>

55 The Karugia study (2009) found that the main Main NTBs are corruption through various bribes, roadblocks barrier, custom procedures and harassment or discrimination during licensing and permits. There are also numerous administrative requirements.

not in the same bloc. This so-called 'hub-and-spoke trade pattern' as a result of harmonization in North-South free trade agreements also entails the risk that it leads to different levels of 'strictness' of technical regulations<sup>56</sup>.

Nowadays, EAC Governments are as much interested in eliminating NTBs in the regional context, as addressing NTBs faced in international target markets.

## 4. NTB compliance challenges for EAC exporters

Complying with NTMs can be particularly challenging for importing and exporting SMEs in developing and least developed countries. Weak or deficient export- support services and insufficient access to information on NTMs, coupled with inherent structural weaknesses in the macroeconomic and microeconomic fundamentals add up to costly impediments that erode trade competitiveness for businesses. As a result, NTMs that would otherwise not be considered as restrictive pose a non-negligible burden on trade in the developing world.<sup>57</sup>

Against this background, technical assistance is the key tool to overcome NTMs compliance challenges by supporting both businesses and governments on NTMs related issues. By way of illustration, assistance could be provided by the Standards and Trade Development Facility (STDF) <sup>58</sup> and United Nation Industrial and Development Organization (UNIDO). One of their missions is to strengthen developing countries' capacities in setting and using positively technical requirements and standards. Through this trade capacity-building, they could also improve market access by communicating shared experience of best practices.

# Recommendations

In line with long-term development objectives of EAC Governments, improving market access for goods continues to be an instrument to enhance trade for growth and poverty reduction.

The study has confirmed that, whereas tariff peaks remain in specific sectors (such as coffee), it is non-tariff barriers that are the main challenge for EAC exporters in their efforts to enter preference granting markets such as EU and US.

First and foremost, EAC exporters need awareness and trade information on relevant NTBs in their sector. Here, a growing importance of EAC business support organizations in the area of NTBs is:

- To provide relevant information (sources) on NTBs in target markets and for target sector;

<sup>56</sup> UNCTAD, '

<sup>57</sup> ITC, 'Tanzania NTM Survey', 2015

<sup>58</sup> <http://www.standardsfacility.org/>

- To act as a facilitator in identifying NTBs and facilitating solution-seeking with Government at home and abroad to address the NTB;
- To liaise with regional business support organizations towards collective positioning on key (horizontal / vertical) NTBs of interest in target markets, for EAC Governments to formulate a collective position in trade negotiations or trade dialogue with specific countries/regional blocks (EU, US, Japan, etc).

Based on two case studies, this study found that the main NTBs for EAC Exporters in the cut flowers and coffee sectors, facing the EU and the US, are:

- Food safety and sanitary requirement
- Testing and quality certification requirements;
- Pre-shipment inspection;
- Rules of origin;
- Procedural obligations to comply with the buyers requirements.
- Phytosanitary (plant health) control (SPS);
- Breeders' rights and intellectual property;
- Quality and grading standards (voluntary/private standards);
- Labelling requirements (TBT);

## NTBs and WTO

Whereas PTAs have certainly gained importance, it is found that for EAC countries, the WTO remains the relevant and the only inclusive multilateral forum to address global trade challenges, including NTBs.

- Trade-related environmental and safety issues;
- The Convention on International Trade in endangered Species (CITES) and other regulations on such trade
- Container inspections and other risk-based measures.

As regional and bilateral trade agreements proliferate, this study has shown that the issue of streamlining and harmonizing NTMs across trading partners has become central to many trade agreements, specifically with regard to SPS and TBT measures. However, due to the complexity and 'behind the border' nature of many non-tariff measures, cooperation and streamlining of NTMs through trade agreements has proved to be difficult at times.

Clearly, the coverage of NTMs in preferential trade agreements often goes much beyond WTO Agreements.<sup>59</sup> For example, the EU and the US preferential agreements often contain measures which build on WTO commitments but go beyond those commitments ('WTO-Plus'), and in addition cover areas which are not yet covered by WTO ('WTO-X'), such as labour or environmental commitments.

This study confirmed that EAC Governments need to collaborate closely, and position collectively to address key NTBs and specific trade concerns in target markets and target sectors.

In the context of existing WTO Agreements, EAC Countries can collectively voice specific trade concerns with trading partners in dedicated WTO Committees (SPS and TBT).

In the context of on-going WTO DDA negotiations, EAC could pro-actively and collectively position and/or support NTB-related proposals priority issues of common interest. This demands a process of internal collaboration: seeking private

<sup>59</sup> See: Horn, H, Mavroidis, P C and Sapir, A (2009). Beyond the WTO? An anatomy of EU and US preferential trade agreements. Bruegel Blueprint VII, Brussels



sector inputs on NTBs in target markets, identifying issues of common EAC interest, and developing common positions on key NTBs of interest and where a 'window of opportunity' exists to gain WTO members support.

## NTBs and preferential trade agreements

The lack of progress in addressing NTBs in the context of WTO DDA negotiations has brought NTBs to the table of preferential trade agreements. The rationale for including NTBs in preferential trade agreement negotiations led by EAC Governments is clear: to make trade flow freer, more predictable and transparent within the region (EAC and TFTA), and with target markets (EU-EPA and US-AGOA).

The (re-)negotiation of trade relations with main trading partners, into reciprocal and long-term trade agreements, provides a window of opportunity to put forward specific proposals on NTBs in key sectors (vertical) or across the board (horizontal): addressing, collaboration and elimination.

In preparation of negotiations or consultations with bilateral/regional trading partners, the EAC Governments can stimulate the development of collective positions on core NTBs of interest to the EAC Exporters facing the specific market. However, this demands a strategic process of preparations: NTB-related awareness raising, issue-mapping, priority development and position development for strategic negotiations.

The study highlighted the importance of public-private dialogue for addressing NTBs in target markets. Whereas it is the private sector that experiences and identifies the NTB, it is the Government that has the power to consult, influence, and solve the specific trade irritant. In the case of NTBs in target markets EU and US, the EAC negotiating strategy should include collective positioning on key NTBs of interest to the wider (EAC) region in the specific target market.

Building collective EAC positions on NTBs in target markets demands nonetheless a bottom-up approach led by the private sector in partnership with their Governments:

- Raising awareness on NTBs at country-level and with private and public sector stakeholders (workshops; presentation of study and case-studies)
- Preparing solid NTB assessments faced by EAC exporters in key target markets and key export products and services will help to gather facts for building of positions for possible collective positioning in the context of on-going negotiations with key trading partners.
- Consultations with business support organizations at national levels and regional levels so as to identify priority NTBs in target markets and target products;
- Facilitate dialogue with regional partners and develop collective EAC positions / inputs for Government-led negotiations on NTBs.

## Annex 1



# Main NTBs Related to Coffee Export to EU and US markets

Type of NTB	EU market NTB's	US market NTB's
I. Technical measures on imports, such as sanitary or environmental protection measures	<p>EU regulation on control and contaminant product (SPS)<sup>60</sup></p> <p>EU directive on control of pesticide residues in plant and animal products intended for human consumption (SPS)<sup>61</sup></p> <p>EC Commission on food contaminants-Maximum Level Ochratoxine A<sup>62</sup></p> <p>EC regulation on health control of foodstuffs of non-animal origin (SPS)<sup>63</sup></p> <p>EC regulation on traceability, compliance and responsibility in food and feed (SPS)<sup>64</sup></p> <p>EU Labelling for foodstuffs (TBT)<sup>65</sup></p>	Marking requirements except for imports of roasted and instant coffee; <sup>66</sup>
II. non-technical measures on imports, including quotas, price control, export restrictions, as well as other behind-the-border measures, such as competition policy, trade-related investment measures, or Government procurement	Absence of harmonization at EU level of Value added Tax and excises duties related to coffee <sup>67</sup> .	<p>Inspections can result in additional charge if (i) A representative is required to accompany your shipment during inspection; (ii) inspection is not done in a timely manner and the delay incurs demurrage charges; (iii) Additional paperwork is requested.</p> <p>-At time of entry, inspection of the shipment and the bag will be sample based on size<sup>68</sup></p>

60 Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food (OJ L-37 13/02/1993). Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31993R0315>

61 Council Directive 96/23/EC (OJ L-125 23/05/1996).. Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31996L0023>

62 Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02006R1881-20140701>

63 Regulation (EC) No 852/2004 of the European Parliament and of the Council (OJ L-139 30/04/2004). Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004R0852>

64 Regulation (EC) No 178/2002 of the European Parliament and of the Council (OJ L-31 01/02/2002). Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002R0178>

65 Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers (OJ L-304 22/11/2011). Available at: [http://exporthelp.europa.eu/thdapp/taxes/show2Files.htm?dir=/requirements&reporterId1=EU&file1=ehir\\_eu15\\_04v001/eu/main/req\\_iblfood\\_eu\\_010\\_0612.htm&reporterLabel1=EU&reporterId2=FR&file2=ehir\\_fr15\\_04v001/fr/main/req\\_iblfood\\_fr\\_010\\_0612.htm&reporterLabel2=France&label=Labelling+for+foodstuffs&languageId=en&status=PROD](http://exporthelp.europa.eu/thdapp/taxes/show2Files.htm?dir=/requirements&reporterId1=EU&file1=ehir_eu15_04v001/eu/main/req_iblfood_eu_010_0612.htm&reporterLabel1=EU&reporterId2=FR&file2=ehir_fr15_04v001/fr/main/req_iblfood_fr_010_0612.htm&reporterLabel2=France&label=Labelling+for+foodstuffs&languageId=en&status=PROD)

66 Pursuant to rules promulgated in the marking statute, section 304, Tariff Act of 1930, as amended (19 USC 1304), and Part 134 of the Customs Regulations (19 CFR Part 134), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. In the case of coffee, the marking was considered suitable if the outer bags were marked. In US Customs and Border Protection, Coffee. Available at: [http://www.cbp.gov/sites/default/files/documents/icp085\\_3.pdf](http://www.cbp.gov/sites/default/files/documents/icp085_3.pdf)

67 European Commission, Export Helpdesk, Excise in the EU. Available at : [http://exporthelp.europa.eu/thdapp/taxes/show2Files.htm?dir=/taxes/notes&reporterId1=EU&file1=ehit\\_eu15\\_04v001/eu/main/vr\\_exc\\_eu\\_0612.htm&reporterLabel1=EU&label=&languageId=EN&status=PROD](http://exporthelp.europa.eu/thdapp/taxes/show2Files.htm?dir=/taxes/notes&reporterId1=EU&file1=ehit_eu15_04v001/eu/main/vr_exc_eu_0612.htm&reporterLabel1=EU&label=&languageId=EN&status=PROD)

68 How to import coffee into United States. Available at <https://learn.flexport.com/how-to-import-coffee-into-the-united-states/>

III.	measures on exports	Customs inspection of imported food of non-animal origin for health protection purposes (at entry into EU) <sup>69</sup>	Inspection of Food and Drug Administration (FDA) and US Department of Agriculture (USDA).
IV.	Procedural obstacles and other inefficiencies related to trade.		<ul style="list-style-type: none"> <li>-Registration requirements for all food facilities<sup>70</sup></li> <li>- Certificate of origin</li> <li>- Application for the permit to import plant or plant products (USDA PPQ587) must be completed and submitted to the USDA.</li> <li>-Quality inspection US\$300/day per inspector</li> </ul>
V.	Niche market buyer requirements	Voluntary / private standards <sup>71</sup> <ul style="list-style-type: none"> <li>- Consumer labels (Fairtrade International, Rainforest Alliance, UTZ certified, Unilever Sustainable Agriculture code, etc)</li> <li>- EU Organic farming</li> </ul>	Voluntary / private standards <ul style="list-style-type: none"> <li>- Consumer labels (Fairtrade International, Rainforest Alliance, UTZ certified, Unilever Sustainable Agriculture code, etc)</li> <li>-</li> </ul>

69 See EU Export Helpdesk. at the following address:

[http://www.exporthelp.europa.eu/thdapp/taxes/show2Files.htm?dir=/requirements&reporterId1=EU&file1=ehir\\_eu15\\_04v001/eu/main/req\\_heanahc\\_eu\\_010\\_0612.htm&reporterLabel1=EU&reporterId2=IT&file2=ehir\\_it15\\_04v001/it/main/req\\_heanahc\\_it\\_010\\_0612.htm&reporterLabel2=Italy&label=Health+control+of+foodstuffs+of+non-animal+origin&languageId=en&status=PROD](http://www.exporthelp.europa.eu/thdapp/taxes/show2Files.htm?dir=/requirements&reporterId1=EU&file1=ehir_eu15_04v001/eu/main/req_heanahc_eu_010_0612.htm&reporterLabel1=EU&reporterId2=IT&file2=ehir_it15_04v001/it/main/req_heanahc_it_010_0612.htm&reporterLabel2=Italy&label=Health+control+of+foodstuffs+of+non-animal+origin&languageId=en&status=PROD).

See Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, (OJ L-031 01/02/2002)

70 Information available at the following address : <https://learn.flexport.com/how-to-import-coffee-into-the-united-states/>

71 See ITC Standards Map for all labels standards relevant for coffee. 56 standards is identified under coffee: [www.standardsmap.org](http://www.standardsmap.org)

## Annex 2

# Main NTB's Faced by EAC Exporters of Cut Flower Products on the EU and US Markets<sup>72</sup>

Type of NTB	EU market NTB's	US market NTB's
<b>Technical measures on imports, such as sanitary or environmental protection measures;</b>	EU (phytosanitary) legislation on 'plant health' (SPS) (Directive 2000/29/EC)	US legislation on 'plant health' (SPS)
	EU Packaging requirements (mainly wood packaging)	US legislation on Packaging
	EU liability requirements	
	Intellectual Property Rights (IPR); awareness about breeders' rights preventing 'illegal products' exports	
<b>Non-technical measures on imports, including quotas, price control, export restrictions, as well as other behind-the-border measures, such as competition policy, trade-related investment measures, or Government procurement;</b>	CITES (on endangered species)	CITES (on endangered species)
	Breeders' rights (IPR): UPOV and CPVO	Breeders' Rights (IPR);
	Quality standards (EU Regulation 316/68, and VBN standards),	
	Import bans: are maintained in the EU on a list of plant products <sup>73</sup>	
	Packaging and marking: minimum standards for packaging cut flowers (EU Regulation 802/71)	
<b>Measures on exports;</b>	Customs inspection and plant health checks (at entry into EU) <sup>74</sup> 100% inspection rate for some varieties from non-European countries	
<b>Procedural obstacles and other inefficiencies related to trade.</b>	Importers register	
	Obtaining valid phytosanitary certificate (for export or for re-export' by domestic 'National Plant Protection Office (NPPO);	CITES and Endangered Species Act (ESA) (permit may be required)

<sup>72</sup> Information is based on desk research of relevant databases (ITC's Standard Map, EU Export Helpdesk, US Department of Agriculture (USDA), CBI Market Information).

<sup>73</sup> See EU Export Helpdesk. Annex I / II / III / IV to Council Directive 2000/29/EC.

<sup>74</sup> See EU Export Helpdesk. This applies to products listed in Annex V, Part B to Council Directive 2000/29/EC

	Obtaining CITES certificate etc <sup>75</sup>	
	Additional buyer demands, including 'cold chain management'	
	Trade security requirements:	Trade security requirements: Inspections by APHIS on plant pests or contaminants List of docs required <sup>76</sup> : PPQ368 Notice on Arrival, invoice, weight, genera, packing list, phytosanitary certificate APHIS permit required prior to release from Plant Quarantine Container Security Initiative requiring 100% scanning Import Security Filing
<b>Niche market buyer requirements</b>	Environmental, social and safety standards and consumer labels: <sup>77</sup> Floriculture Environment Programme (MPS) Flower Label Programme Fair Flowers and Plants Fairtrade international Exporting country labels: Kenyan Flower Council	Environmental, social and safety standards and consumer labels: <sup>78</sup> Floriculture Environment Programme (MPS) Flower Label Programme Fair Flowers and Plants Fairtrade international Exporting country labels: Kenyan Flower Council
	EUREPGAP (food safety and practices of farming flowers) ISO 9001 (quality assurance system)	
	Organic flowers Niche market certification	

<sup>75</sup> EU Council Directive 2000/29/EC

<sup>76</sup> Full list on: [www.fas.usda.gov/itp/ofsts/us.html](http://www.fas.usda.gov/itp/ofsts/us.html).

<sup>77</sup> See ITC Standards Map for all labels and standards relevant for cut flowers: [www.standardstmap.org](http://www.standardstmap.org)

<sup>78</sup> See ITC Standards Map for all labels and standards relevant for cut flowers: [www.standardstmap.org](http://www.standardstmap.org)

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