



Strengthening Effectiveness in Tackling Non-Tariff Barriers (NTBs): The Role of the Private Sector

IN THE CONTEXT OF AFRICAN CONTINENTAL FREE TRADE AREA

Kuena Molapo¹





Introduction

THE AfCFTA OPPORTUNITY

When it becomes operational in July 2020², the AfCFTA will establish a market of 1.2 billion people with a combined GDP of US\$2.5 trillion³. It holds the potential to boost intra-African trade by 52.3 per cent. This prospect could double if non-tariff barriers are eliminated.⁴

Expected benefits of the AfCFTA include expanded market access, with access to raw materials of different kinds and intermediate goods. Consumers will benefit from access to a more affordable and wide range of products. The AfCFTA will also facilitate value addition and participation in various regional and global value chains, hence stimulating innovation and technology transfer in these sectors. Provided that all other factors such as political stability, peace, security, infrastructure and structural transformation improve, the AfCFTA is expected to foster job creation, economic growth, alleviate poverty and ensure prosperity for Africa.

To take full advantage of these opportunities, Africa must overcome a myriad of challenges such as weak infrastructure, restrictions on free movement of people, complex and diverse regulatory regimes and non-convertible currencies, to mention but few. One of the biggest challenges that could potentially sabotage success of the AfCFTA is the numerous NTBs encompassed in a wide range of restrictive regulations and

procedures, imposed by government authorities, making cross border trade more costly.

According to UNCTAD, NTBs are non-tariff measures (NTMs) imposed by governments on imports and exports which are discriminatory and/or restrictive in nature. Non-tariff measures on the other hand are defined as policy measures (See Box 1), other than customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both.⁵ NTMs include all policy-related trade costs incurred from production to final consumption, with the exclusion of tariffs.⁶ This concept in itself is neutral and must not be construed to imply negative impact on trade. It is however important to understand that NTBs are a subset of NTMs that have a protectionist or discriminatory intent. They are also that subset in which trade restrictiveness exceeds what is needed for the measure's non-trade objectives, implying a negative impact on trade.⁷

¹ The author is a Programme Management Officer working on Non-Tariff Barriers at the UNCTAD Regional Office for Africa. This paper does not represent the views of the membership of UNCTAD. It is prepared for the ITC World Export Development Forum, as a technical contribution to the SheTrades Workshop, to raise private sector awareness of their role in strengthening intra African trade through enforcement of mechanisms for elimination of NTBs.

² The African Continental Free Trade Area Agreement came into force on 31st May 2019, the operational phase was launched by the 12th Extra-Ordinary Summit on 7th July 2019 and official trading is scheduled for 1st July 2020.

³ <https://www.uneca.org/publications/african-continental-free-trade-area-questions-answers>

⁴ <https://www.tralac.org/resources/by-region/cfta.html>

⁵ UNCTAD (2018). UNCTAD TRAINS: The Global Database on Non-Tariff Measures User Guide (2017, Version 2). United Nations. Geneva

⁶ UNCTAD (2012). Non-Tariff Measures to trade: Economic and Policy Issues for Developing Countries. Developing countries in international trade studies. United Nations. Geneva. Online available:

⁷ Ibid. p.1

BOX 1 **INTERNATIONAL CLASSIFICATION OF NTMs⁸**

CHAPTER A	deals with sanitary and phytosanitary measures. The chapter outlines measures such as those restricting substances, ensuring food safety and preventing the dissemination of diseases or pests. Chapter A also includes all conformity-assessment measures related to food safety, such as certification, testing and inspection, and quarantine.
CHAPTER B	provides a collection of technical measures, also called technical barriers to trade. The chapter describes measures relating to product characteristics such as technical specifications and quality requirements; related processes and production methods; and measures such as labelling and packaging in relation to environmental protection, consumer safety and national security. As in the case of sanitary and phytosanitary measures, chapter B includes all conformity-assessment measures related to technical requirements, such as certification, testing and inspection.
CHAPTER C	the last chapter in the technical measures section, classifies the measures related to pre shipment inspections and other customs formalities.
CHAPTER D	groups contingent measures, that is, those measures implemented to counteract the adverse effects of imports in the market of the importing country, including measures aimed at tackling unfair foreign trade practices. These include anti-dumping, countervailing and safeguard measures.
CHAPTER E	feature the “hard” measures that are traditionally used in trade policy. Chapter E includes licensing, quotas and other quantity-control measures, including tariff-rate quotas. Chapter F lists the price-control measures that are implemented to control or affect the prices of imported goods. Among the examples are those measures designed to support the domestic prices of certain products when the import prices of these goods are lower, to establish the domestic prices of certain products because of price fluctuation in domestic markets or price instability in a foreign market and to increase or preserve tax revenue. This category also includes measures other than tariffs measures that increase the cost of imports in a similar manner (para-tariff measures).
CHAPTER F	
CHAPTER G	lists the finance measures. The chapter outlines measures restricting the payments of imports, for example when the access and cost of foreign exchange is regulated. It also includes measures imposing restrictions on terms of payment.
CHAPTER H	includes those measures affecting competition – those that grant exclusive or special preferences or privileges to one or more limited group of economic operators. They are mainly monopolistic measures, such as State trading, sole importing agencies or compulsory national insurance or transport.
CHAPTER I	deals with trade-related investment measures and groups the measures that restrict investment by requiring local content or requesting that investment be related to export in order to balance imports.
CHAPTER J	relate to the way products – or services connected to the products – are marketed after being imported. They are considered non-tariff measures because they could affect the decision to import such products or services. Chapter J, on distribution restrictions, describes restrictive measures related to the internal distribution of imported products. Chapter K deals with restrictions on post-sales
CHAPTER K	

⁸ UNCTAD (2019). International Classification of Non-Tariff Measures - 2019 Version. United Nations. Geneva



Opportunities And Challenges

CHALLENGES FOR WOMEN ENTREPRENEURS - A CLOSER LOOK AT WHY NON-TARIFF BARRIERS COULD ROB US OF THE AFCFTA PROMISE

NTBs equals hampered trade, profit losses and unrealized profits.

Governments do not have a coherent approach to dealing with NTBs, within their institutions. Bureaucracy, red tape and resistance to change, coupled with limited capacity to influence quick resolution and/or enforcement of resolved NTBs makes it difficult to effectively address these barriers. Further, limited decision-making powers by National Monitoring Committees on NTBs, capacity to analyze and therefore address some key NTBs also hampers effective resolution of NTBs. Private Sector, in this context women entrepreneurs, have not fully used their capacity to influence change for a variety of reasons including limited possession of information on legislations that affect trade.

There could be a thin line between the objective of attaining legitimate policy objectives (such as protecting public health and safety) and stifling trade. The burden of regulatory compliance on businesses is further complicated in situations of lack of good regulatory practice, transparency or stringent and unreasonable requirements. In this case, potentially harmless legitimate measures become serious impediments to trade.

These challenges are exacerbated for women entrepreneurs in the micro, small and medium size enterprise category, including cross border traders, many of whom also operate in the informal sector due to constrained resources to address the burden of compliance. NTBs are widely understood to raise *the cost of doing business and are more challenging to remove than tariffs*.⁹ Data from ITC Business Surveys on NTMs suggests that a good percentage of businesses in all fourteen African countries covered reported encountering burdensome NTMs and procedural obstacles.¹⁰

⁹ USAID (2013). NONTARIFF BARRIERS TO TRADE - Regional Agricultural Trade Environment (RATE) Summary. USAID Regional Development Mission for Asia

¹⁰ <https://ntmsurvey.intracen.org/ntm-survey-data/country-analysis/>



OPPORTUNITIES FOR WOMEN ENTREPRENEURS IN THE RESOLUTION OF NON-TARIFF BARRIERS WITHIN THE AfCFTA

Annex 5 of the AfCFTA Protocol on Trade in Goods provides a legal framework for identification, reporting, monitoring and elimination of NTBs. It provides an opportunity for the women entrepreneurs to take part in the identification, reporting, monitoring, resolution and elimination of NTBs through a web-based AfCFTA NTB Online Mechanism.¹¹ The Annex also contains a mandatory resolution process outside the web-based mechanism.

To resolve NTBs, governments have appointed National Focal Points for NTBs (government officials mandated to receive NTB complaints in real-time and to resolve them within given deadlines). They are also expected to establish National Monitoring Committees which are representative of all relevant stakeholders including the women entrepreneurs. Other institutional arrangements for resolution of NTBs are regional NTB Coordination Units within Regional Economic Communities Secretariats and continental NTB Coordination Units within the AfCFTA Secretariat.

Any company can register and report an NTB that it faces in its day-to-day operations in intra-African trade. To complement the online tool and allow small traders to also submit complaints, an offline short-messaging-service (SMS) feature is also ready for deployment.

It is an unprecedented opportunity for women entrepreneurs to forge strategic alliances and partnerships with governments to resolve NTBs.

A TESTED APPROACH THAT BUILDS ON THE ACQUIS...

With the support of UNCTAD, the African Union Commission designed the AfCFTA NTB Online Mechanism building on experiences and lessons learnt from regional economic communities such as the TRIPARTITE FTA (COMESA, EAC, and SADC) and ECOWAS.¹² The AfCFTA NTB Online Mechanism has been built to address the specific needs of the formal private sector, SMEs, informal traders, truck drivers, women and youth – by introducing appropriate reporting and monitoring tools such as electronic submission, text messaging and others.¹³

The Mechanism builds on and is technically compatible with existing tool in the Tripartite SADC-COMESA-EAC Tripartite (www.tradebarriers.org; with over 600 resolved NTBs) and Borderless Alliance in ECOWAS (www.tradebarrierswa.org; with over 190 resolved NTBs). This makes the AfCFTA tool very easy to use for all existing users of the Tripartite/Borderless tools.

Anchoring the NTB mechanism in the AfCFTA's legal architecture bodes well for ownership. Further, the strong approval process that characterized its creation: through REC experts, technical experts, chief negotiators, senior trade officials, ministers responsible for trade and its final adoption by Heads of State creates a solid grounding for its implementation.

¹¹ www.tradebarriers.africa

¹² Strength and weaknesses of the different existing NTB Mechanisms were assessed through an UNCTAD study on the establishment of a mechanism for reporting, monitoring and eliminating non-tariff barriers in the African Continental Free Trade Area

¹³ Ibid

What does the AfCFTA mean for business?

PRIORITIES FOR WOMEN ENTREPRENEURS - HOW CAN THE PRIVATE SECTOR LEVERAGE THE OPPORTUNITY IN THE AFCFTA NTB ONLINE MECHANISM?

In the context of the AfCFTA, effective resolution of NTBs must be a priority for women entrepreneurs. It is critical to understand therefore that effective resolution of NTBs rests in the processes outside of the mechanism itself. It will rely on the power of women entrepreneurs to create accountability for all relevant government institutions. In order to do this well, they must know what NTBs are (identify), take action (report) and follow through for results (resolve) NTBs as a matter of priority.



The following actions are proposed for consideration in this context:

01

Bridging the knowledge gap on NTMs and NTBs – It is critical that private sector understands the NTBs within the intra- African trade market. The role of the African Union technical partners such as UNCTAD, UNECA, ITC and others, in strengthening this is critical.

02

Forging strategic alliances – Women entrepreneurs must coalesce in groups and numbers to have stronger impact in their calls for accountability. Effective participation in the resolution of NTBs through harnessing of institutional cooperation with the various government departments and institutions for effective private/public dialogues is critical.

03

Enhancing regulatory transparency – Women entrepreneurs must insist on having their say in the processes that shape technical regulations and NTMs in general. Because legitimate policy objectives can be attained by sound regulations without hindering trade.

04

Investing in Compliance Management Programmes – Proactive initiatives to know and comply with all relevant laws applicable in all markets of interests will go a long way in curbing losses associated with non-tariff measures. Compliance management is designed to keep organizations and businesses on the right side of the law.

Looking Forward and Recommendations

For the benefit of discussions Table 1 below highlights topics of importance in the resolution of NTBs in the AfCFTA, recommendations and possible implications for women entrepreneurs.

TABLE 1 TOPICS TO BE ADDRESSED IN THE RESOLUTION OF NON-TARIFF BARRIERS IN THE AFCFTA				
TOPIC TO BE ADDRESSED	RECOMMENDATION	OBJECTIVE	IMPLICATIONS FOR WOMEN	RELEVANT ACTOR(S)
Knowledge and understanding of NTMs/NTBs	Training on NTMs/ NTBs, Training on the AfCFTA NTB Online Mechanism and associated processes	Knowledge of NTMs/ NTBs and their impact on businesses and the ability to effectively address them	Collective assessment of training needs and proactive call for technical assistance from institutions such as African Union, UNCTAD, ITC, UNECA etc	Women Entrepreneurs through Associations and Government Institutions and Technical Partners
Strategic Partnerships with key institutions	Forge strong linkages and relationships with key institutions implementing non-tariff measures	Create opportunities to influence processes and garner quick responses to critical issues	Identification of key institutions and contact persons (National Focal Points in Departments of Trade, Customs Authorities, Standards Bodies ets) and fostering of relationships and frequent public private dialogues to build trust and accountability	Women Entrepreneurs through Associations, Regulators, National Standards Bodies, Customs Authorities etc.
Participation in Regulatory processes	Training on regulatory processes	Knowledge of how to effectively influence regulatory processes and enforce good regulatory practices such as regulatory impact assessments	Understanding of national regulatory processes and how they can be influenced	Women Entrepreneurs through Associations, Regulators, National Standards Bodies, Customs Authorities etc.
Proactive Compliance Management	Set up compliance management systems within businesses	Equip businesses with prior knowledge of existing laws, regulations and standards for enhanced compliance and avoidance of	Knowledge of laws and regulations and associated measures and requirements. Use of web tools for identification of existing measures in markets of interest	Women Entrepreneurs through Associations and Government Institutions and Technical Partners



#SheTrades

Women's economic empowerment is not a matter for government policy, the private sector, or social change alone. All have critical roles to play. This is why the International Trade Centre (ITC) launched the SheTrades Initiative, which seeks to connect three million women entrepreneurs to market by 2021.



Contact details

Judith
Fessehaie

Senior Programme Officer

/ Policy & Data Lead

ITC SheTrades Initiative

womenandtrade@intracen.org

For more information on SheTrades, visit our [website](#)