KENYA: COMPANY PERSPECTIVES

AN ITC SERIES ON NON-TARIFF MEASURES

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Country report, part of a series of publications assessing the impact of Non-Tariff Measures (NTMs) on the business sector, based on a large-scale survey conducted in Kenya with companies directly reporting burdensome NTMs and the reasons why they consider them to be trade obstacles; analyses survey findings and compares them to other sources on NTMs to identify regulatory, procedural and infrastructural obstacles in Kenya and its partner countries; gives trade and trade policy overview of Kenya; covers food and agro-based products including tea and horticultural products, manufacturing sectors such as chemicals, metal and non-electric machinery, plastics and rubber products, and textiles and clothing; outlines policy options discussed at stakeholder meeting; includes NTM classification, and bibliographical references (pp.93-96).

Descriptors: **Kenya, Non Tariff Measures, SMEs, Agricultural Products, Manufactured Products, Trade Policy.**

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English

The International Trade Centre (ITC) is the joint agency of the World Trade Organization and the United Nations.

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Contents

Acronyms

Unless otherwise specified, all references to dollars ($) are to United States dollars, and all references to tons are to metric tons.

The following abbreviations are used:

ACP	African, Caribbean and Pacific
AGOA	African Growth and Opportunity Act
AKI	Association of Kenya Insurers
CBK	Coffee Board of Kenya
CET	Common external tariff
COMESA	Common Market for Eastern and Southern Africa
COO	Certificate of Origin
EAC	East African Community
EATTA	East African Tea Trade Association
ECTS	Electronic Cargo Tracking System
EPA	Economic Partnership Agreement
EPC	Export Promotion Council
EPZ	Export processing zone
EU	European Union
FPEAK	Fresh Produce Exporters Association of Kenya
FTA	Free trade area
GAP	Good Agricultural Practices
GDP	Gross domestic product
GFSI	Global Food Safety Initiative
GNTB	Group of Eminent Persons on Non-Tariff Barriers
GPS	Global positioning system
GSP	Generalized System of Preferences
HCDA	Horticultural Crops Development Authority
ICD	Inland container deport
IDF	Import declaration form
ILO	International Labour Organization
ITC	International Trade Centre
JKIA	Jomo Kenyatta International Airport
KAA	Kenya Airports Authority
KAM	Kenya Association of Manufacturers
KEBS	Kenya Bureau of Standards
KeNHA	Kenya National Highways Authority
KEPHIS	Kenya Plant Health Inspectorate Services
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KNBS	Kenya National Bureau of Statistics
KPA	Kenya Ports Authority
KRA	Kenya Revenue Authority
KSB	Kenya Sugar Board
KTDA	Kenya Tea Development Authority
MAST	The Multi-Agency Support Team
MFN	Most-favoured-nation
MRL	Maximum residue level
MUB	Manufacturing-under-bond
NCWTO	National Committee on World Trade Organization
n.e.s.	not elsewhere specified
NTB	Non-tariff barrier
NTM	Non-tariff measure
NTP	National Trade Policy
OECD	Organisation for Economic Co-operation and Development
PCPB	Pest Control Products Board

PO	Procedural obstacle
RFID	Radio frequency identification
SGS	Société Générale de Surveillance
SME	Small and medium-sized enterprise
SPS	Sanitary and phytosanitary measures
TBE	Trade-related business environment
TBT	Technical barriers to trade
TFDA	Tanzania Food and Drug Authority
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
VAT	Value-added tax
WDI	World Development Indicators (World Bank)
WTO	World Trade Organization

Executive summary

Introduction

Compliance with NTMs at reasonable cost is a cornerstone of export success.

In a global context of increasing economic liberalization and a widespread tendency to eliminate or reduce tariffs, the relative importance of trade barriers resulting from non-tariff measures (NTMs) has risen in recent decades. With consumers demanding more information on products, importing countries are implementing more regulations. Most of these regulations do not have protectionist objectives, but rather look for preserving health or the environment. However, sometimes compliance with those requirements may be beyond the reach of companies seeking to export, particularly for small and medium-sized enterprises (SMEs) in emerging and developing countries. Therefore, multilateral rules in the World Trade Organization (WTO) and most of the recent regional and bilateral trade agreements include provisions on NTMs. In this context, the analysis of the commercial impact of NTMs as well as technical cooperation with developing countries to build government and business capacities are becoming increasingly important.

ITC surveys companies to learn about NTM related issues.

The International Trade Centre is actively engaged in this research and cooperation. ITC is conducting large-scale NTM surveys of exporting and importing companies in developing countries. Gathering information about NTMs from companies addresses business people who deal with trade impediments on a day-to-day basis.

Surveys look at NTMs as well as procedural obstacles.

NTMs cover a wide range of policies such as technical regulations, sanitary and phytosanitary measures (SPS), quantitative restrictions, additional charges, financial measures, certification requirements and other conformity assessments. ITC surveys not only focus on NTMs imposed by governments, but also look at procedural obstacles (POs) that may hamper compliance with these NTMs. Delays, institutional costs, excessive paperwork and lack of testing facilities are among the most common POs. The surveys also consider inefficiencies in the trade-related business environment (TBE).

Surveys cover 30 countries.

In close cooperation with local partners, ITC is conducting NTM surveys in about 30 countries around the world, with least developed countries in sub-Saharan Africa among the main target regions. Kenya has been among the first countries in the region to benefit from this programme, followed by Malawi, Rwanda, Mauritius, United Republic of Tanzania and Madagascar.

Country context

Trade is vital for Kenya's development.

The Kenyan economy has been growing steadily since 2003, reaching its highest growth rate of 7% in 2007, only to be interrupted by a series of internal and external shocks in 2008. Kenya's long-term development strategy, the Vision 2030, considers trade to be vital and aims at achieving sustained economic growth of at least 10%. This would allow Kenya to become a middle-income country by 2030.

Agriculture is an important contributor to trade and GDP.

Services is the biggest sector contributing to almost half of gross domestic product (GDP), but agriculture still remains one of the most important sectors providing 18% of the formal employment and up to 70% of informal employment in rural areas. Agricultural exports contribute close to two-thirds of Kenya’s exports, which are fairly concentrated on few products. Tea, coffee and horticulture products are the main agriculture exports, with Europe being the largest market. Most Kenyan manufactured exports are bound for the regional East African Community (EAC) and Common Market for Eastern and Southern Africa (COMESA) countries. Kenya also relies heavily on imports of manufactured goods, importing around US$ 7.8 billion worth of goods in 2010.

Regional integration and trade relations with EU are paramount.

Kenya is a founding member of WTO and an active member of two regional trade agreements, EAC and COMESA. Kenya is also involved in cross-regional trade arrangements including the Economic Partnership Agreement (EU-EPA) with the European Union (EU) and benefits from the US African Growth and Opportunity Act (AGOA) and Generalized System of Preferences (GSP). Under the GSP, a wide range of Kenya's manufactured products are entitled to preferential duty treatment in countries granting unilateral GSP preferences.

NTM survey methodology and implementation in Kenya

Sustaining Kenya’s economic success requires close attention to NTMs.

Supported by the Ministry of Trade of Kenya, the ITC NTM survey was carried out between January and September 2011. Prior to implementing the survey, the general methodology had been adjusted to the needs and requirements of Kenya in close collaboration with the Ministry of Trade, Business Associations, the Chamber of Commerce and other stakeholders. Using various sources, ITC compiled a business registry containing listing of exporting and importing companies.

The survey was implemented by the local survey company Ipsos Synovate Kenya Ltd. and the results were analysed in close collaboration with the Kenya Institute for Public Policy Research and Analysis (KIPPRA).

In Kenya 764 phone screen interviews and 312 in-depth face-to-face interviews were conducted.

Interviews with exporting and importing company representatives were conducted in two stages. First, short telephone interviews collected essential information about company characteristics and whether they were affected by burdensome regulations or procedures in the past 12 months. In total, the survey comprised 764 telephone interviews with exporting and importing companies out of which 563 reported they were affected. Second, face-to-face interviews were conducted with those companies that experienced barriers to trade and were willing to participate in subsequent detailed interviews. For every product and partner country, companies provided detailed information on the NTMs and procedural obstacles (POs) they encountered. In Kenya, the survey included 312 face-to-face interviews.

The survey covered 10 geographic regions and all major non-extractive sectors.

The survey has wide geographic and sector coverage. The interviews were conducted in 10 locations across the country. Corresponding to the export composition of Kenya, most interviews with agricultural exporters focused on fresh food and agro-based products, followed by processed agro-based products. The survey also included manufacturing sectors such as metal, basic manufacturing and chemicals.

Aggregate results and cross-cutting issues

74% of the surveyed companies are affected by trade barriers.

Initial phone screen interviews revealed that 74% of the exporters faced burdensome NTMs and other obstacles to trade. Among exporting companies in other countries surveyed by ITC only Malawi had a higher share of affected companies (80%). Rwanda (71%) and Madagascar (67%) have slightly lower rates while Egypt (37%) and Mauritius (31%) have a significantly lower share of companies affected by trade barriers.

Exporters of agro-food products are the most affected group.

The results indicate that significant differences exist across sectors. Agricultural importing and exporting companies experience more impediments to trade than manufacturers. This result is expected, as importing countries are usually very vigilant about the health and safety of its citizens from food consumption, and potential environmental damages that can arise due to the introduction of foreign flora and fauna. Furthermore, importers in the agricultural sector are more affected by burdensome regulations (85%) compared to exporters (76%). This suggests that Kenya itself imposes many regulations that make it difficult to import agro-food products.

Two-thirds of burdensome NTMs are imposed by partner countries; the remaining ones are domestic.

The export destination is a good determinant of companies' experience with NTMs. Over two-thirds of trade impediments reported by companies are linked to NTMs applied by partner countries and the remaining one-third is caused by the domestic regulations.

EAC and COMESA remain difficult destinations despite trade agreements.

Membership of EAC has not insulated Kenyan exporters from barriers to trade. While the EAC countries imported approximately 24% of Kenyan exports, they attracted around 30% of the total NTM cases reported by the exporters, particularly the United Republic of Tanzania and Uganda with 65 complaints (13%) reported for each country. Around 14% of burdensome regulations are applied by COMESA countries with Ethiopia being the most frequently mentioned. Kenya's major Western partners, the European Union and the United States, were reported in 110 cases (22%) and 55 cases (11%) respectively.

Most problems in partner countries are caused by conformity assessment and technical requirements.

The majority of difficult regulations applied by partner countries on Kenyan exports are related to technical regulations or conformity assessment. Technical regulations define specific properties of a product and can include requirements related to quality standards, safety and production process among others. In contrast, conformity assessment includes mandatory testing and certification requirements that determine whether a product or a process complies with a given technical regulation.

Kenyan exporters can produce high standard products but have difficulties demonstrating conformity.

In Kenya, exporters reported three times as many NTM cases related to conformity assessment than the technical regulation itself, usually due to high costs and administrative hurdles involved with testing and certification or a lack of proper certifying facilities. This result indicates that Kenyan exporters have the capacity to produce up to the standards required by importing countries, but face obstacles in demonstrating conformity with these requirements.

Exporters find it cumbersome to obtain certificates of origin and export certificates and permits.

Among domestic impediments to trade, the most frequent categories for exporters are burdensome procedures for obtaining certificates of origin (more than a quarter of all cases), as well as export inspection and certification requirements, followed by licensing and permit requirements, and taxes and charges stipulated by Kenyan regulations.

Kenyan exporters are required to produce a certificate of origin for their products to benefit from duty-free or preferential access to the EAC and COMESA, and countries offering GSP preferences. The certificate of origin is requested by importing countries but is issued in Kenya. Similar to the case of conformity assessment, the main problem is not the certificate of origin per se but administrative obstacles in Kenyan agencies, such as delays and high fees.

The prevailing domestic problems for importers stem from procedural obstacles and not from the regulations per se.

The complaints of importers mostly focus on Kenya’s legislation regulating imports. This result is expected as it is the suppliers that generally ensure the compliance with the requirements of the exporting countries. Over one-third of the reported cases are related to conformity assessment followed by pre-shipment inspection, and charges and taxes. Unlike exporters, importers reported much fewer cases of technical requirements. Similarly to exporters, delays in administrative procedures in Kenyan agencies were the primary cause of concern to the importers.

It is difficult to obtain timely and accurate information on partner country regulations.

Exporters reported inconveniences caused by a lack of prior information about partner countries’ regulations. For instance, the exporters were not aware of the 60% import quota of industrial adhesive in the United Republic of Tanzania. The interviewed companies suggested that the Ministry of Trade publish such information.

Roadblocks and weighbridges add costs to already expensive transport.

Another obstacle that has been highlighted multiple times is trucks having to go through multiple weighbridges when transporting the goods to the port. As the goods have to be unloaded and unpacked at each weighbridge, exporters were concerned about the cost involved with repacking and the time lost. Roadblocks and checkpoints across the region remain an issue, adding extra costs to already expensive transportation.

Problems specific to agro-food exports

Strict technical standards imposed by the EU on agricultural imports represent a challenge for Kenyan exporters.

Kenya exported agricultural products in excess of US$ 3 billion in 2010. The European Union imported goods valued at US$ 1.2 billion (39% of total agricultural export), out of which around 35% were cut flowers and plants, followed by tea and coffee (29%) and vegetables (18%). Technical measures and related conformity assessment were the main types of NTMs faced by the exporters of agriculture to the European Union. Most NTMs reported in by exporters to the European Union were technical in nature. The European Union imposes very strict conditions on imports of plants and flowers and has zero tolerance for any type of pests. These measures are intended to prevent the introduction and spread of pests and organisms harmful to plants or plant products across EU boundaries.

Exporters do not have an easy access to information on EU requirements.

Vegetable and fruit exporters routinely faced problems with the strict EU requirements on the level of pesticides residuals and other contaminants, such as nitrates, aflatoxins and heavy metals allowed in the product. There were several incidents of shipments being denied entry, which eventually had to be destroyed. As the exporters struggled to get adequate information on the type and level of residuals allowed in the European Union, they urged the Kenyan Government to take a more active role in informing the producers about the rules and regulations in foreign markets.

Product inspection, testing and certification done in Kenyan agencies require a long time and high fees.

Surveyed exporters have emphasized that the difficulties with conformity assessment do not stem solely from the requirements of the importing countries. They are also caused by the burdensome process of getting the product inspected, tested or certified in Kenyan agencies. Slow administrative procedures, red tape and high fees charged for the services offered by agencies such as the Kenya Revenue Authority (KRA), the Kenya Plant Health Inspectorate Services (KEPHIS), the Kenya Bureau of Standards (KEBS) and the Horticultural Crops Development Authority (HCDA) increase the costs for exporters and thus undermine their competitiveness.

In EAC the major problem for agricultural exports is the lack of standards' harmonization and recognition.

The importance of regional trade to the Kenyan economy is demonstrated by the US$ 771 million worth of agricultural products Kenya exports to neighbouring EAC and COMESA countries. However, the NTM survey reveals that EAC membership does not insulate Kenya from the issues related to regional NTMs. EAC member countries applied more burdensome NTMs compared to its share of Kenyan exports. Around 9% of Kenyan agricultural exports are bound for the EAC countries but they account for 12% of NTMs. A major reported cause of problems in the EAC region is a lack of harmonization – standards and certificates of conformity issued in one country are not recognized in the others. Exporters signalled cases when they had to undergo inspections at the customs of importing EAC countries even for products already tested and certified by KEBS.

Multiple duplicating licenses and documents are required to export within EAC.

Companies exporting to the EAC countries are also required to obtain licences of various types, including business licences, import/export licences, road transport licences and municipal council licences from each individual country, whereby a single common EAC license could be sufficient. In addition to these regulatory requirements, exporters faced difficult circumstances when transporting goods through EAC countries. For example, Kenyan drivers are required to obtain a permit to drive transport trucks in United Republic of Tanzania, forcing companies to hire Tanzanian drivers or to pay bribes for driving without this permit.

Checkpoints and harassment aggravate transportation conditions.

Exporters also reported that roads in EAC countries are barred with roadblocks and checkpoints. These constant checks together with harassment from police officers soliciting bribes in these locations made transportation conditions difficult for the exporters. These factors highlight that more effort and coordination is required among EAC member countries to harmonize their regulations in order to facilitate intra-regional trade.

GlobalG.A.P. became de facto compulsory for exports to the EU, but is too expensive for smallholders.

In addition to mandatory official regulations, exporters of vegetables and cut flowers also indicated difficulties complying with voluntary standards such as GlobalG.A.P. While GlobalG.A.P certification is entirely voluntary, finding buyers without being GlobalG.A.P certified remains difficult especially in the European Union, Kenya's biggest market. The main concern among the exporters is the high fee charged by private inspecting and certification agencies, such as Bureau Veritas. For a small farmer the certification cost is reported to be approximately US$ 1,400. The interviewed companies suggested that the Kenyan Government should support the exporters by financing some of the cost.

Agricultural exporters suffer from domestic challenges.

Agricultural exporters revealed that they face more difficulties in Kenya than with the requirements of importing countries. In most cases, these difficulties are related not to the regulations themselves, but with delays in the administrative processes (40% of cases). Delays and other bureaucratic hurdles are most often reported in relation to services provided by KEPHIS, KRA and HCDA.

Delays and administrative hurdles are most frequently reported to take place in KEPHIS, KRA and HCDA

Delays at KEPHIS during the inspection process are frequently reported. These delays could potentially be very damaging to the exporters as the fresh horticulture products are perishable. Some exporters had to resort to hiring local custom agents to deal with the inspection. KEPHIS acknowledges that delays occur during export certification and clearance. This is because exporters may not understand online certification well or there are system downtimes. Exporters of fresh products were required to be licensed by the Horticultural Crops Development Authority (HCDA), which frequently took a long time.

Export quotas and prohibitions keep domestic prices low but undermine profits and survival of agricultural exporters.

A number of exporters also reported that the government imposed an export quota of 65% to 70% on some fruits and seeds to ensure an adequate supply for the domestic market. The government has imposed a ban on the export of raw macadamia nuts and cashew nuts to support value addition. However, the exporting companies believe that prices for their products are much higher in the international market and that the government-imposed quota is restricting their profit margins. The government prohibited the export of raw macadamia nuts citing the low international price of raw nuts compared to the processed ones. While it is understandable that the government is trying to increase the value of its exports, this puts producers at a disadvantage.

Infrastructure, especially cooling facilities, remains insufficient.

Infrastructural issues are another challenge facing Kenyan exporters. Around 15% of the reported obstacles are experienced due to limited or inappropriate facilities. For example, exporters believe that the cooling facilities currently available at the port and KEPHIS are inadequate. Poor facilities for fumigation have also been highlighted. KEPHIS is encouraging the private sector to participate in offering this service.

To sum up, 65% of the surveyed companies identified slow operations and delays in Kenyan agencies to be a problem, followed by lack of infrastructure (62%) and corruption in Kenyan agencies (59%)

Barriers to manufacturing exports

The manufacturing sector is small but dynamic with exports bound mostly to the EAC and COMESA.

The output value of the manufacturing sector is equivalent to around 10% of GDP. The sector has improved significantly in the last decade and has witnessed a steep increase in exports. In 2010, exports of manufactured products were worth over US$ 1.85 billion, or around 37.4% of total Kenyan exports. The regional EAC and COMESA markets continue to absorb a large proportion (69%) of Kenya's exports, with Uganda (24%) and United Republic of Tanzania (17%) being the biggest importers. Most of the countries reported to apply burdensome NTMs to Kenyan exports are also from these regions.

Exporters find it difficult to comply with the following types of NTMs imposed by importing countries:

Companies report three major sources of export impediments, including import regulations applied by partner countries, export regulations applied by Kenya and domestic procedural obstacles.

Conformity assessment (EAC and COMESA)

Similar to the agricultural sector, exporters of manufactured products experience many more problems with conformity assessment than with technical requirements. A large proportion of measures applied by the EAC countries are also related to conformity assessment. The NTM survey finds that standard requirements and certifications are still not fully harmonized among the EAC member states. As a result, Kenyan products already certified by KEBS are not easily accepted in the Tanzanian and Ugandan customs. This usually leads to redundant testing or inspection at the border, which takes several days. In addition, some exporters also reported their goods being stolen and custom officials demanding bribes to speed up the process at the Tanzanian and Ugandan borders.

Fumigation and restrictive use of substances (United States)

Among technical requirements, fumigation is a challenge for a number of exporters. Respondents pointed to the requirement to fumigate wooden products and leather, while the availability of such services in Kenya is limited. Some exporters also find the United States' regulation on the maximum limit of the amount of lead content too difficult to comply with.

Anti-competitive measures, especially on transport (EAC and COMESA)

Kenyan exporters are also affected by anti-competitive measures implemented by other countries. For instance, Ethiopia does not allow trucks that are not registered in Ethiopia or foreign ships to transport goods into the country, forcing the Kenyan exporters use Ethiopian vehicles. This creates an additional hurdle in the already-expensive transportation process.

Price controls (Ethiopia)

Ethiopia is also the only country reported to apply price control measures. For example, Kenyan exporters complained about the price limit on bathing soap and detergents set by the Ethiopian authorities to control inflation in the country. This policy reduces the profit margins of exporters.

Rules of origin (procedural obstacles in KRA)

The United States, which imports most of Kenyan clothing goods, was mentioned in 19% of the reported NTM cases, most of which are related to rules of origin. To enjoy preferential access to the market in the United States companies are required to obtain certificates of origin from KRA, but usually face long delays and other red tape.

Companies can comply with export regulations imposed by Kenya, but find the administrative process burdensome.

Among the export regulations applied by Kenya, the most reported issues were export licensing, quotas and related quantitative restriction measures. Companies are required to obtain the relevant export permits or licences primarily from KRA or the Ministry of Trade. In general, exporters do not find the conditions regarding licensing and permits difficult to comply with. However, the major issues companies have with these requirements are the time taken to obtain all the required documents and clearance from the authorities.

Export quotas also affected manufacturing exporters.

According to interviewed companies, their earnings are being affected due to the export quota imposed by the government on selected products. For instance, a producer of agricultural lime was permitted to export only 60% of its production. A clothing company reported that it was permitted to export a maximum of 80% of its production. The rest of the production was required to be sold in the local market to ensure adequate supply. However, the companies maintain that the demand in the local market is not high enough and that the prices in the international market are much better.

Companies find electronic cargo tracking system too expensive.

When exporting to the EAC countries, transportation trucks are required to be fitted with an electronic cargo tracking system (ECTS). Based on the response from the surveyed company, this was required by the government to ensure that the shipment crossed the border so that the company qualifies for the 10% excise duty refund. The company's main concern was the high cost of installing the system.

Obstacles to imports

Importers are primarily concerned with administrative procedures.

Importers of both agriculture and manufacturing products most frequently reported conformity assessment measures applied by Kenya as burdensome. To ensure the imported products comply with the Kenyan quality and hygienic requirements, the products are inspected by KEBS once they arrive at the port.

Inspections are slow. Products are not handled carefully.

In general, congestion at the port and slow processing means that the products are held up in the port for a long time. The surveyed companies requested better handling of the products by officials during inspection. Importers of electronics and IT products, in particular, expressed concerns of products being damaged due to mishandling by officials during inspection. In addition, there were claims by importers that officials at KRA and KEBS were taking multiple samples of the product for inspection that were not returned.

KRA's online Simba system is down frequently.

Another issue frequently mentioned by importers was KRA's online Simba system breaking down too frequently. Importers are required to submit the import declaration form (IDF) with full details of their shipment to the KRA. The IDF is submitted and approved through the Simba system. Frequent breakdowns of the online platform seem to be causing delays in import clearance.

Overlapping systems of importers' licenses and import permits per consignment are viewed as unnecessary.

The survey also reveals the existence of overlapping licenses, permit and quantitative restrictions. For instance, sugar and chemical importers are required to have an import permit for every consignment in addition to a yearly license. The importers believe that this dual system of approval is inconvenient and unnecessary. To foster the domestic industry, the government also imposed import quotas on selected products such as rice and garlic.

Conclusions and policy options

Difficulties with foreign NTMs are often rooted in domestic inefficiencies.

Most of the conformity assessment requirements faced by Kenyan exporters are imposed by partner countries, but a closer inspection reveals that the majority of the problems are rooted in the process of getting the product inspected, tested or certified by Kenyan agencies. Slow administrative procedures, red tape and high fees charged for these services offered by agencies such as KRA, KEPHIS, KEBS and HCDA are major issues that require the attention of Kenyan authorities.

Streamlining procedures in Kenyan agencies can reduce the cost of compliance with NTMs and improve competitiveness of Kenyan companies.

Almost half of all reported procedural obstacles concern delays, with the majority of them in KRA. Exporters faced similar obstacles when obtaining certificates of origin for their products, which are needed to benefit from preferential market access through the GSP scheme and regional FTAs. The constant breakdowns of KRA's online system also inconvenience the surveyed companies.

Improvements are necessary in IT and physical infrastructure and training of the personnel.

Harmonization of documentation and streamlining procedures in agencies that are in charge of clearing imports and exports are necessary to reduce compliance costs with NTMs. Trade facilitation can be enhanced if the clearing agencies work together and each has a clear and non-overlapping mandate. Improving the IT and physical infrastructure together with capacity building of the personnel working in these agencies can solve the bottleneck problems faced by most companies.

Easier and faster access to KEPHIS facilities, e.g. through setting up additional branches, can significantly benefit companies, especially exporters of horticulture.

A key recommendation to the government from horticulture exporters is to set up an inspection and certification branch of KEPHIS in all major towns. As delays in KEPHIS during inspection are usually due to congestion, companies were adamant that KEPHIS requires additional staff to deal with the large number of inspection, certification and related services. KEPHIS must also be more transparent and publish up-to-date information on its fee structure to ensure that companies do not face unexpected costs later. According to KEPHIS, the fees and charges are a cost recovery levy and the tests conducted are usually always the sensitive ones. It is only after reviewing the law that charges can be amended.

There is scope for improvement in regional integration.

Regional barriers to trade have been reduced considerably due to the EAC regional integration processes, the Customs Union and the Common Market protocols. However, the NTM survey shows there is still scope for improvement as Kenyan exporters face a relatively high number of obstacles when trading with the EAC member countries.

The EAC countries need to foster harmonization of standards, streamline licensing requirements and improve procedures related to transport.

Most of the regional NTMs are related to conformity assessment. Kenya, with its strong position within the region, can push for harmonization of standards across the EAC countries and non-conditional acceptance of national certification in every member country. Multiple licensing requirements in different countries should also be replaced by a single licence, allowing exports to any EAC country without the need for further documentation. EAC countries, including Kenya, must also address the issue of multiple weighbridges, roadblocks and check points, with officials sometimes soliciting bribes.

Government support is required for the provision of market access information to exporters.

Kenyan exporters suffered from a series of technical requirements and related conformity assessment problems due to regulations applied by partner countries. These issues range from phytosanitary certification requirements to Kenyan products being denied entry due to the presence of pesticide residues. The Kenyan Government can help exporters by providing a single access point for information on procedures and requirements for exports.

Improvements in export-related infrastructure, especially cold storage and fumigation facilities are vital for promoting agricultural exports.

For companies exporting fresh food and plants, it is vital to have cold storage available at all stages of the export cycle. Limited availability of cooling facilities, especially during inspection at KEPHIS or while awaiting transportation, is a major concern. Similarly, companies exporting wooden products or products in wooden boxes or pallets are required to fumigate their products. However, the limited availability of these services makes the process difficult and expensive for the companies. Investment in export-related infrastructure will help companies to ensure the quality of their products and retain their competitiveness.

Investigate the welfare impact of quantitative restrictions.

A thorough investigation of the welfare impact on the Kenyan economy of quantitative restrictions is required. The study should estimate the benefits of quotas and bans for the Kenyan economy and society as large and weigh them against the losses endured by the companies.

Accelerate VAT refund procedures.

The government must also expedite and streamline the value-added tax (VAT) refund process it offers for exporters of some products. Some companies complained the refund can take up to two years. Exporters should also lodge their VAT refunds with KRA on time to avoid delays as the refunds are paid once a year.

Support voluntary certification of small-holders.

Kenyan companies struggle to export their products to lucrative markets without private standards' certification such as GlobalG.A.P. The main reported problem, especially for SMEs, is the high cost of these schemes. The Fresh Produce Exporters Association of Kenya (FPEAK) has already created Kenya-GAP to counter these problems and the government has to continue its outreach programmes to help small farmers with GAP certifications. Furthermore, Kenya-GAP should also be benchmarked to the Global Food Safety Initiative (GFSI), which may enable exporters to find new retailers.

Kenyan companies often face NTM-related problems, but most of them can be addressed relatively easy.

Through its relevant agencies such as KEPHIS, KEBS and KRA the government should sensitize exporters and officers dealing with export and imports. Sensitization in general within the agro-based export sector should be given prominence, which would benefit small-scale farmers. This will allow for awareness at the production level and provide mechanisms for dealing with compliance issues. Related to this, the Ministry of Trade should consider setting up an online one-stop shop address detailing information on markets, certification requirements and other important issues. Equally important is the need for capacity building of officers in these agencies. ITC can be useful in this regard.

Market access begins at home: there is a large scope for improving companies' competitiveness through increased efficiency of domestic institutions and trade conducive business environment.

In conclusion, the situation in Kenya is more favourable than in other surveyed countries. Despite the fact that many companies report to be affected by regulatory and procedural barriers to trade (the second highest rate among surveyed countries), many of the reported problems can be solved relatively easily and can be addressed by Kenya without recourse to international negotiations.

First, independently of the type of NTMs imposed by partner countries, problems are often caused by inefficiencies in Kenyan agencies. This is easier to tackle than trying to change the regulatory environment in partner countries. Second, Kenyan exporters can produce up to the strict standards of lucrative markets, but require assistance and streamlined procedure for demonstrating compliance. Kenya has successful tea and coffee export sectors that can share their experience with other agricultural exporters.

Finally, behind-the-border problems primarily happen in EAC countries, for example the lack of standards' harmonization and transportation issues. Kenya is in a position to address these issues, either by ensuring the implementation of existing regional provisions or by fostering further regional integration.

Introduction to non-tariff measures

The growing role of non-tariff measures in trade

Over several decades, trade liberalization has emerged as a key development tool based on evidence that benefits accrue to countries actively engaged in world trade. Notwithstanding the global setbacks resulting from the 2008 financial crisis, developing, least developed and emerging economies have begun to realize gains through actively participating in the multilateral trading system. Concessions through a series of multilateral, regional and bilateral trade instruments, North-South and South-South, as well as non-reciprocal concessions, have led to extraordinary reductions in the use of average global tariffs for protectionist interests. Many developing countries dependent on tariff revenue have benefitted from liberalization. This groundbreaking market access success has led to unprecedented growth in international trade, leading to shared welfare gains and a higher quality of life.

However, the positive effects of lower tariffs have been overshadowed by a shift towards misuse of non-tariff measures (NTMs). While some NTMs are important to guarantee consumer health, environmental protection or national security, evidence suggests that countries are reverting to NTMs as alternative protectionist instruments to control access to their markets. NTMs' reduction and disciplines have been negotiated within the General Agreement on Tariffs and Trade (GATT), now the World Trade Organization (WTO), since the Tokyo Round (1973 - 1979). NTMs are here 'defined by what they are not'[1] and comprise an array of policy measures other than tariff measures. For example, technical barriers to trade (TBT), sanitary and phytosanitary (SPS) measures, certification or testing requirements, quotas, import or export licenses, additional taxes and surcharges, financial measures, rules of origin, and many others, may be considered NTMs. Depending on how they are applied, these measures may or may not amount to trade barriers.

Exporters and importers in developing and least developed countries have raised concerns about NTMs. These traders have registered challenges to sometimes-complex requirements and administrative obstacles. At the same time, developing and least developed firms often face inadequate domestic trade-related infrastructure obstacles. As a result, while NTMs may not pose problems as such, some can still seriously hinder trade. Inadequate access to information about applicable regulations and other services to promote exports impact on the international competitiveness of enterprises. Consequently, NTMs applied by partner countries as well as domestically can have a negative impact on market access and keep firms from seizing the opportunities created by globalization.

NTMs, their classification and other obstacles to trade

Because the concept of trade obstacles is complex and diverse, it is useful to consider the terminology and classification of NTMs before proceeding to a more detailed analysis in the context of this study.

First, the term NTM can be defined as: 'policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices or both'.[2] NTM is a neutral concept and does not necessarily imply a particular direction of impact. Second, an NTM is not synonymous with the frequently used term, non-tariff barrier (NTB). NTB implies a negative impact on trade. The Multi-Agency Support Team (MAST) and the Group of Eminent Persons on Non-Tariff Barriers (GNTB) propose that NTBs are a subset of NTMs that have a 'protectionist or discriminatory intent'.[3] Given that trade policies may be applied for legitimate reasons, such as protection of human, animal and plant health, this report does not make any a priori judgement about intentions and broadly uses the term NTMs. By the nature of its design, the survey captures only NTMs that cause major impediments for trading companies. Consequently, NTMs examined in this report refer to 'burdensome NTMs'.

[1] Deardorff and Stern (1998).

[2] Multi-Agency Support Team (2009).

[3] Ibid.

The diverse and growing nature of NTMs across countries requires a unique classification system. The ITC survey is based upon an international classification developed by MAST, with some minor adaptations to the ITC business survey approach.[4] Before proceeding to further expand on the classification itself and data collection, it is important to clarify some broad distinctions.

NTMs applied by importing countries are divided into technical and non-technical measures, as follows:

- Technical measures refer to product-specific requirements such as tolerance limits of certain substances, labelling standards or transport conditions. Such measures comprise technical requirement (TBT or SPS) and conformity assessment, for example, certification or testing procedures to verify compliance with the underlying requirement.

- Non-technical measures mostly include the following categories: charges, taxes and other quasi-tariff measures in addition to ordinary customs duties; quantity control measures such as non-automatic licences or quotas; pre-shipment inspections and other formalities, e.g. automatic licences; rules of origin; finance measures, e.g. terms of payment or exchange rate regulations; and price control measures.

Other than the foregoing import-related measures, measures applied by exporting countries are categorized differently.

To go beyond government-imposed NTMs and to provide a better understanding of the problems that companies face, the survey also examines procedural obstacles (POs) and the trade-related business environment (TBE).[5] POs refer to practical challenges directly associated with implementation of NTMs. For example, typical POs are problems caused by a lack of adequate testing facilities to comply with technical measures and excessive documentation in the administration of licences. POs are always linked to a specific NTM regulation.

Problems not related to any NTM regulations, for instance delays and costs resulting from poor infrastructure or unpredictable behaviour of customs officials at the ports, are referred to as TBEs in this report.

Understanding the company perspective on NTMs and POs

In the past, different methods of evaluating NTM measures have been employed. One early and very simple approach has been the use of mere incidence and NTM coverage ratios. For example, Laird and Yeats (1990) found a dramatic increase in the incidence in NTMs in developed countries between 1966 and 1986. There was a 36% increase in the incidence of NTMs for food products and an 82% increase for textiles. Such studies relied on extensive databases that mapped NTMs per product with applying countries. Formerly the largest database in terms of official government-reported NTMs, the Trade Analysis and Information System, published by the United Nations Conference on Trade and Development (UNCTAD), contains incomplete data and updates are irregular. Coming together in a major multiagency initiative, the ITC, UNCTAD and the World Bank currently collect data for a new global NTM database with a particular focus on TBT and SPS. However, completeness of an NTM incidence database does not reveal much about the actual impact of NTMs on the business sector. Such databases also do not furnish information about related POs.

Quantification techniques and direct assessment are two approaches to estimating the impact of NTMs. A number of academic studies have estimated the quantitative impact of NTMs on either trade quantities or prices. The studies either target very specific measures and individual countries[6] or statistically estimated the average impact emerging from large samples of countries and NTMs[7]. Deardorff and Stern (1998) and

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[4] For further details about the MAST NTM classification, see Appendix II.

[5] For further details about the systematic classification of POs and problems caused by an inefficient TBE, which are used for the survey, refer to Appendix III.

[6] For example see: Calvin and Krissoff (1998); Yue, Beghin and Jensen (2006).

[7] For example see: Disdier, Fontagné and Mimouni (2008); Dean et al. (2009); Kee, Nicita and Olarreaga (2008); Kee, Nicita and Olarreaga (2009).

Ferrantino (2006[8]) conducted excellent surveys that together with other academic studies present useful insight into the quantitative effects of NTMs. Nonetheless, some studies at times are too specific or too general to provide a precise and realistic sense of NTM protection to the business sector and national policymakers. At the same time, when quantitatively estimating the effects of NTMs, it is difficult to distinguish the impact of the NTM itself from related POs or inefficiencies of the TBE.

Through large-scale company surveys on NTMs, POs and the TBE, this report establishes results based on the alternative direct assessment approach. Consequently, it fills gaps in methods mentioned earlier, presents a detailed qualitative impact analysis and directly addresses key stakeholder experiences. The survey is designed to allow companies to specifically report the most burdensome NTMs and the particular way in which the NTMs impact company export performance or restrict imports of needed inputs.

Because exporters and importers are challenged by NTMs and other obstacles on a daily basis, they are in the best position to communicate the specific difficulties they confront. A business perspective on the issue of NTMs is essential. It is also important to understand key government-level concerns with NTMs, POs and TBEs. This can assist in elaborating national strategies capable of addressing and surmounting obstacles to trade.

A number of earlier business perspectives on NTMs were collected in a study by the Organisation for Economic Co-operation and Development.[9] The study reflects the consensus that technical measures, additional charges and general customs procedures are the most burdensome trade restrictions. Quotas and other quantitative restrictions that were prevalent several years ago ranked only fifth out of 10 evaluated categories in the study. While this comprehensive survey gives a useful overall sense of business sector NTM concerns, the core 23 surveys largely cover only a restricted set of partner countries and products. Also, the share of surveys in developing countries is small. The surveys conducted as a part of ITC's NTM programme, funded by the United Kingdom Department for International Development (DFID), examine all major export sectors, all importing partners, and strive to progressively cover a great number of developing countries.

The ITC survey allows companies to directly report the most burdensome NTMs and the way in which these impact their business. Exporters and importers deal with NTMs and other obstacles on a day-to-day basis. Therefore, they know best the challenges they face, rendering a business perspective on NTMs indispensable. At the government level, an understanding of companies' key concerns with regard to NTMs, POs and TBEs can help define national strategies geared to overcome obstacles to trade. This report presents results from a large-scale company survey on NTMs, POs and inefficiencies in the TBE in Kenya. It fills the gap left by the aforementioned studies since it provides detailed qualitative impact analysis and directly addresses key stakeholders. The report is structured as follows: Chapter 1 provides an overview of Kenya's economy with particular focus on trade and trade policy. Chapter 2 then presents the methodology and implementation of the ITC survey in Kenya. Chapter 3 analyses the aggregate results and cross-cutting results in the first section, followed by an analysis on challenges faced by exporters and importers in agriculture and manufacturing sectors. Chapter 4 presents policy options that were discussed at a public-private stakeholders meeting in Nairobi, Kenya, in February 2013.

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[8] Ferrantino (2006).

[9] Organisation for Economic Co-operaton and Development (2005): Looking Beyond Tariffs: The Role of Non-Tariff Barriers in World Trade.

Chapter 1 Trade and trade policy overview of Kenya

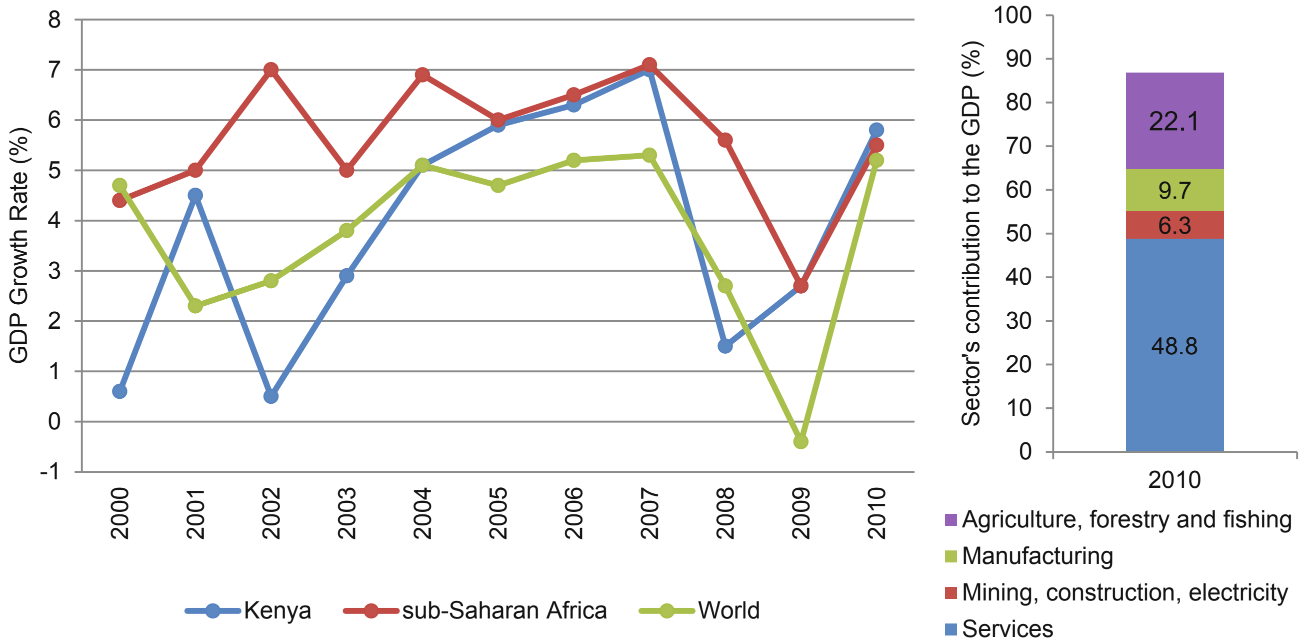
1. Country snapshot

1.1. Economic situation

Located in sub-Saharan Africa, the Republic of Kenya is home to 43 million people. With a per capita gross domestic product (GDP) of US$ 864, Kenya is classified as a low-income country.[10] The GDP of Kenya is valued at around US$ 32 billion (2010)[11] and had been growing at the rate of around 5% per annum on average in the five years prior to 2008 (Figure 1). A series of internal and external shocks dampened growth momentum in 2008. The internal shocks were related to the post-election violence, high food and fuel prices, and drought. The external shocks were mainly the result of the global financial crisis. By 2010, the economy recovered and grew by 5.8%.

Improvements in the country's economic performance can be attributed to various factors, including favourable weather conditions that led to improved agricultural output. It was also helped by the government's stimulus programme, which increased funding for public projects in agriculture, services, infrastructure, health and education. Furthermore, the Central Bank of Kenya reduced the central bank rates from 8.5% to 6%, facilitating affordable credit to the private sector.[12] According to the country's Vision 2030 strategy, economic growth must be at least 10% and be sustained for a long period for Kenya to become a middle-income country by 2030. The main risks to economic growth, among others, include the global economic slowdown, the European Union (EU) debt crisis, high inflation rates, exchange rate volatility and insecurity.

Figure 1: Kenya's real GDP growth rate and composition of GDP, 2000 to 2010



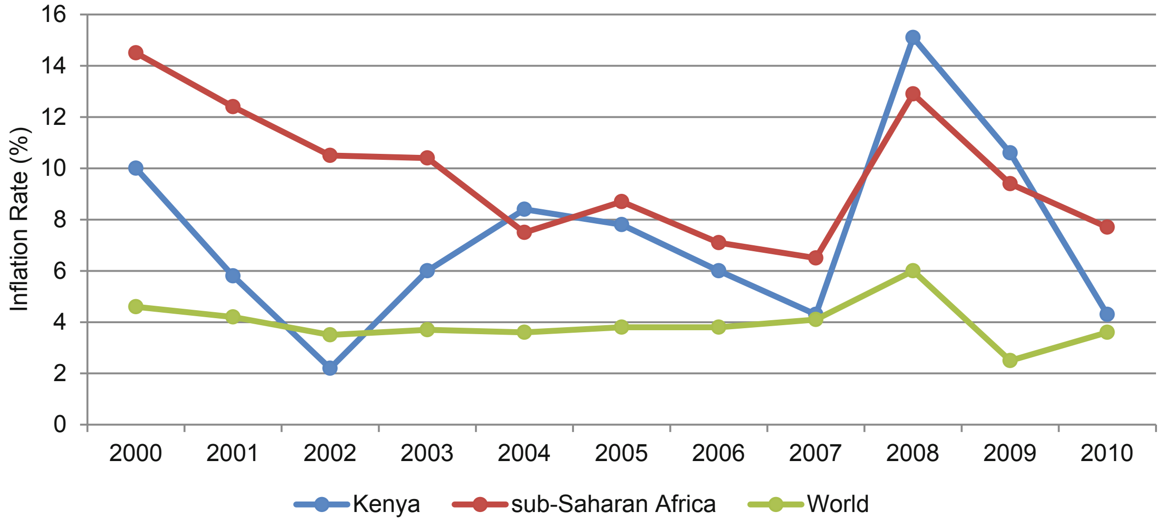
Source: International Monetary Fund (IMF), 2012; and World Trade Organization, 2012.

The inflation rates in Kenya and sub-Saharan Africa have been relatively high compared to the world average (Figure 2). Inflation rates in the last decade in Kenya have varied between a low of 2% in 2002 to a high of 15% in 2008. Inflation remains a major challenge to the Kenyan economy due to high oil prices,

[10] World Bank (2012). World Development Indicators.
[11] Ibid.
[12] WTO (2012). Trade Policy Review: East African Community, p. A2-189.

declining exchange rates and unreliable rainfall, which is likely to have a negative impact on food production.

Figure 2: Kenyan inflation of consumer prices, 2000 to 2010



Source: IMF, 2012.

The agricultural sector is the mainstay of the Kenyan economy and contributes to approximately 22% of GDP. It accounts for 62.6% of Kenya's total exports[13] and provides for more than 18% of formal employment.[14] The majority of the people residing in the rural areas derive their livelihood from the agricultural sector.[15] The sector grew by 6.3% in 2010, but remains vulnerable to weather-related shocks, which can have multiplier effects on other sectors of the economy that rely on agriculture.[16]

Services contribute to almost half of the Kenyan GDP (48.8%). Other sectors such as manufacturing, and mining and construction represented 9.7% and 6.3% of GDP respectively in 2010. In terms of contribution to GDP, the services sector is the most important. From 2005 to 2010, the service sector's contribution to GDP has gone up by roughly 2 percentage points. The agricultural sector's share has gone down by around 4 percentage points, while the manufacturing sector's share has remained fairly stable.

Most of the economic activity in Kenya is concentrated in Nairobi, the Rift Valley and the central regions of the country. According to the 2009 census, 68% of the Kenyan population reside in rural areas.[17] The National Human Development Report of 2009 showed that youth aged 15 to 35 constitute 36% of the total population. Even though young people account for about 60% of the total active labour force, unfortunately youth unemployment is estimated to be 75%.

1.2. International trade patterns in Kenya

International trade has played an important role in Kenya's economic and social development since the country attained sovereignty in 1963. Trade is a major contributor to the GDP and plays a significant role through its linkages with other sectors of the economy, such as manufacturing, agriculture and the service industry. Between 2001 and 2010, there has been a steady increase in Kenyan exports with an average growth of 15% per year (Figure 3).[18] However, imports during the same period have been growing at a

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[13] ITC calculation based on Trade Map (2012). The calculation excludes export of minerals (including petroleum) and arms.

[14] Government of Kenya (2010). Agricultural Sector Development Strategy 2010 – 2020.

[15] Ibid.

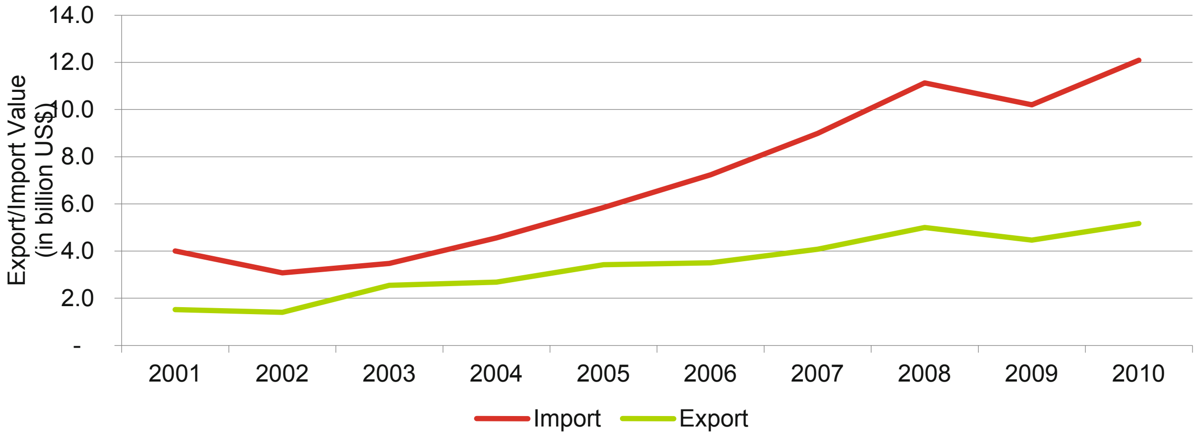
[16] Kenya Institute for Public Policy Research and Analysis (2011). Kenya Economic Report 2011.

[17] Kenya National Bureau of Statistics (2010). Kenya 2009 Population and Housing Census Highlights.

[18] ITC calculations based on Trade Map data (2012).

much faster rate (17% per annum on average, Figure 3),[19] resulting in a widening trade deficit. The leading export commodities in 2010 were tea, coffee, and horticulture products; the leading imports included mineral oils, machineries and electronic equipment.

Figure 3: Kenya's export and import figures, 2001 to 2010



Source: ITC Trade Map, 2012.

1.2.1. Export destinations and diversification

Besides the dip in exports during 2008 and 2009 due to the global economic crisis, exports from Kenya have been on a steady rise over the last decade. Following the crisis, the export sector recovered quickly in 2010 posting a growth rate of 16.1% and valued at US$ 5.4 billion. Almost half of Kenyan exports, worth US$ 2.6 billion, were exported to East African Community (EAC) and EU countries (Figure 4). The exports to the COMESA markets and the United States are valued at US$ 888 million and US$ 290 million respectively.

Tea, horticultural products and coffee are the main export commodities of Kenya. Agricultural products such as tea and horticulture are mainly exported to the EU market, while manufactured products are mainly exported to the markets in EAC and COMESA countries. Kenya's agriculture exports are relatively concentrated on a few products. For instance in the European Union, Kenya's biggest market, 20 products (at HS6 level) comprise 95% of the total agricultural exports. Kenya's manufactured exports are much more diversified.[20]

Tea is one of Kenya's most important export products and is mainly exported to Pakistan, Egypt, United Kingdom, Afghanistan, Yemen and Sudan.[21] The top three buyers alone account for 55% of the export. As 95% of the country's total tea production is exported, the government has urged stakeholders and the Tea Board of Kenya to diversify markets to avoid risks in case of bilateral disagreements or instabilities in the markets. As a result, efforts are being made to promote tea exports in emerging markets largely in the Middle East, the Far East, the United States and Africa.

Horticultural products are also very important to the Kenyan economy, being among the leading contributors to agricultural GDP at 33%.[22] A large portion of this is comprised of cut flowers. The export markets for horticultural products are mainly the Netherlands, United Kingdom, Germany, Sweden, Switzerland, Belgium and France. South Africa and the Middle East are also important markets for Kenya's horticultural export production.

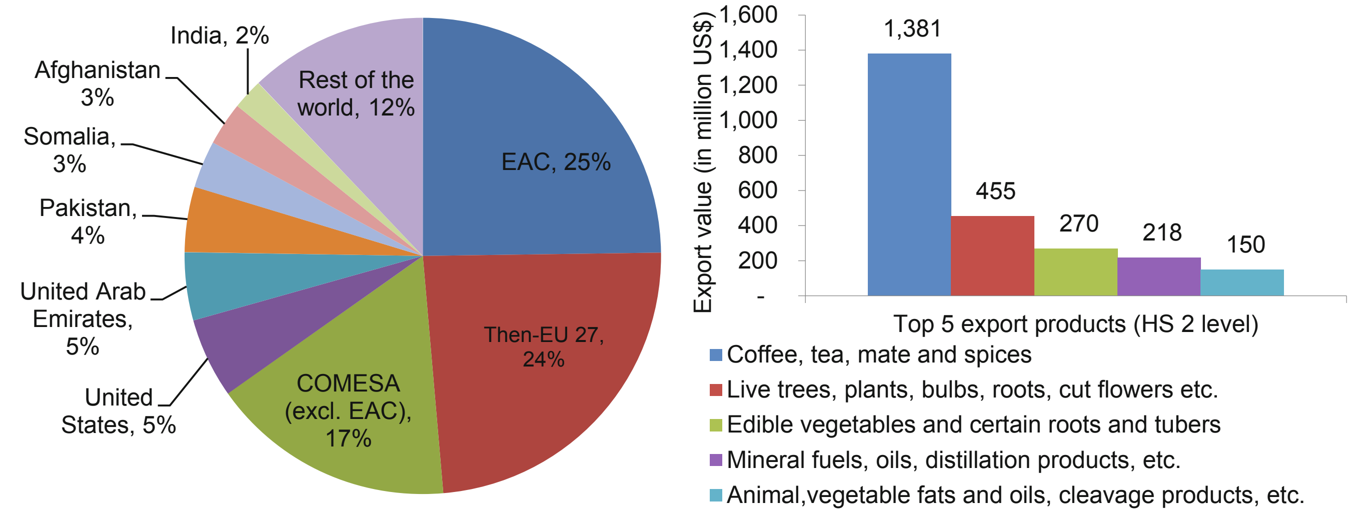
[19] ITC calculations based on Trade Map data (2012).

[20] WTO (2012).

[21] Export Promotion Council (2011); ITC Trade Map (2012).

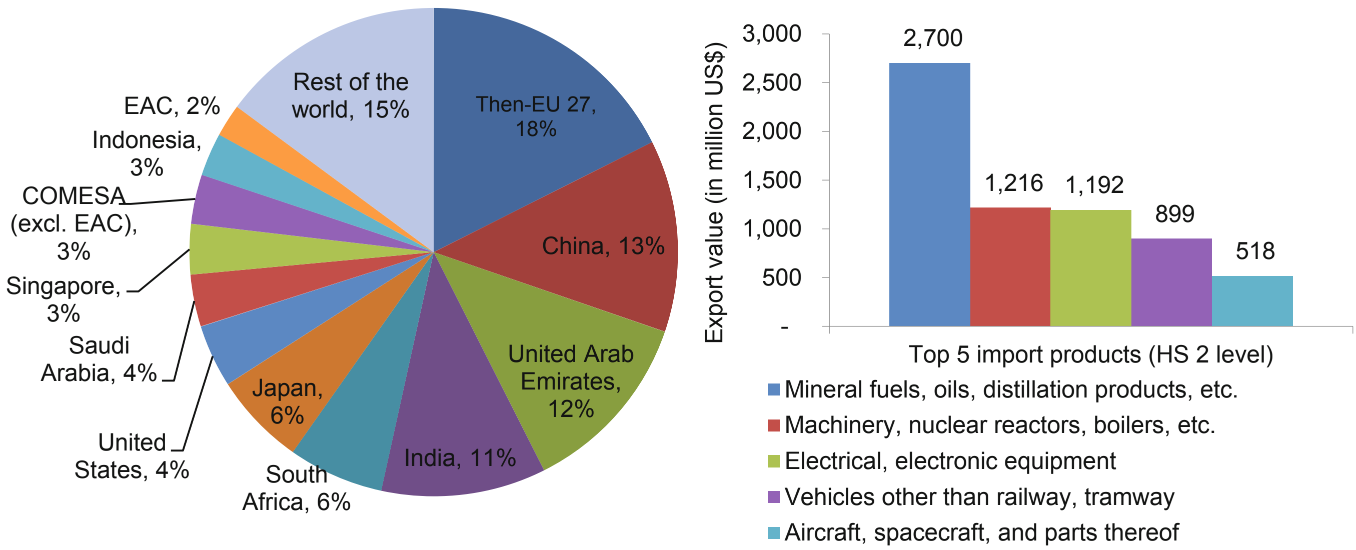
[22] Government of Kenya (2012). National Horticulture Policy.

Figure 4: Markets for Kenyan exports and top five export products, 2010



Source: ITC Trade Map, 2012.

Figure 5: Supplying markets of Kenyan imports and top five import products, 2010



Source: ITC Trade Map, 2012.

1.2.1. Kenya's imports

Kenya's imports have grown from around US$ 4 billion in 2001 to more than US$ 12 billion in 2010, which include US$ 2.7 billion worth of fuel alone. Fuel and machinery are Kenya's biggest imports, which accounted for 22% and 10% respectively of total import value in 2010 (Figure 5). The country's high fuel bill has prompted the government to examine other energy sources.[23] Electrical equipment (10%) and vehicles (7%) are other major Kenyan imports. Cumulatively, EU countries are the biggest exporters to Kenya, accounting for 18% of Kenya's total imports (Figure 5). Other major suppliers include China (13%), the United Arab Emirates (12%) and India (11%).

[23] United Nations Conference on Trade and Development (2012). An Investment Guide to Kenya – Opportunities and Conditions.

2. Trade policy

Kenya's trade policy has evolved over time starting with an import substitution industrialization strategy immediately after independence in 1963, followed by an export promotion strategy and the structural adjustment programmes in the 1990s. Following formation of the World Trade Organization (WTO) in 1995, of which Kenya is a founding member, Kenyan trade policy has been guided by the principles of liberalization and driven by free market policies.

Trade policy objectives include moving towards a more open trade regime, strengthening and increasing overseas market access for Kenyan goods and services, and further integration into the world economy. These policy objectives have been pursued through unilateral, regional and bilateral trade negotiations, in particular within the African region, as well as through participation in the multilateral trading system at the WTO.

2.1. International trade and regional integration agreements

Kenya actively participates in many regional and international trading blocs. The agreements reached in these trading blocs and their implementation are often factored into the government's external trade policy measures. As a WTO member, the government has amended some of Kenyan legislation, including anti-dumping, countervailing and intellectual property rights to bring them into conformity with the WTO agreements. The country also offers most-favoured-nation (MFN) treatment to most trading partners. Kenya is implementing all the WTO agreements related to trade facilitation, such as the customs valuation agreement and agreement on pre-shipment inspection, rules of origin, import licensing procedures, technical barriers to trade (TBTs) and sanitary and phytosanitary (SPS) measures. The National Committee on World Trade Organization (NCWTO) is the national body in Kenya responsible for providing technical guidance to the government on WTO matters. The NCWTO is coordinated by the Ministry of Trade[24] and is comprised of representatives from various government agencies, the private sector and non-state actors.

Kenya's participation in the WTO largely revolves around agriculture as it forms the backbone of the economy and produces the country's major export commodities. A key concern is that market access for agricultural products is constrained by export subsidies, which means Kenyan products are not able to compete in the international trade arena. Other issues of great concern include dumping of counterfeit products in the country. Due to the deteriorating terms of trade, the increase in the value of trade is not matched by a corresponding increase in export earnings. Kenya acknowledges that concrete steps should be taken to appropriately integrate developing countries into the multilateral trading system, a position that is supported by the African Group in the ongoing WTO discussions.

2.2. Regional trade agreements

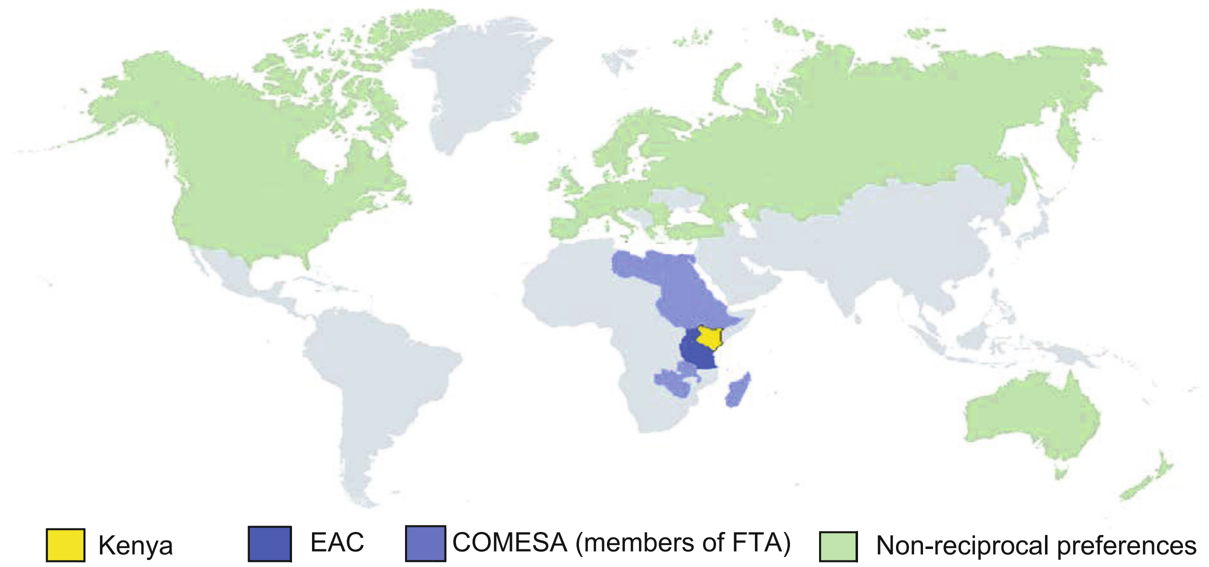
In addition to its obligations in the WTO, Kenya is an active member of two regional trade agreements: EAC and COMESA. EAC is comprised of Burundi, Kenya, United Republic of Tanzania, Rwanda and Uganda. The treaty was ratified in July 2000. A Customs Union was signed in March 2004 and commenced on 1 January 2005. Kenya, the region's largest exporter, continued to pay duties on goods entering the two countries on a declining scale until 2010. With the signing of the Customs Union, Kenya's trade to EAC countries increased tremendously by 2010. Kenya's exports to EAC accounted for 53% of the country's total exports to Africa and 24% of total exports to the world. The EAC common market protocol was signed in November 2009 and its implementation began in July 2010. It established a common external tariff and zero rating of customs duties for intra-regional trade. EAC members are now working to liberalize other sectors of their economies across the common market including access to higher education, the airline industry, and securities markets, as well as cross-border television broadcasting.

COMESA is comprised of 19 member states, has a population of over 389 million and an annual import and export bill of US$ 32 billion and US$ 82 billion respectively. The COMESA Free Trade Area (FTA) and

[24] Since May 2013 the Ministry of Trade has become part of the Ministry of Foreign Affairs and International Trade. As the NTM survey and the related stakeholder meeting were implemented before this change, the remainder of this paper will continue to refer to 'Ministry of Trade'.

Customs Union were launched in 2000 and 2009 respectively. The launch of the COMESA Customs Union means that countries that join the union must adopt the agreed common external tariff to be charged to third parties of 0% on capital goods, 0% on raw materials, 10% on intermediate goods and 25% on finished goods. This same common external tariff applies to EAC members as well. Through Kenya's steadfast implementation of COMESA programmes, COMESA has become Kenya's leading export destination, accounting for approximately 28.5% of total export products by 2010. Similarly, there has been an increasing trend of COMESA imports into Kenya, primarily products such as sugar, tobacco, wheat flour and steel bars.

Figure 6: Kenya's trade agreements



Source: ITC illustration based on ITC Market Access Map data, 2013.

2.3. Non-reciprocal preferential trade agreements

Kenya's active participation in regional integration agreements is complemented by involvement in international non-reciprocal and preferential trade arrangements, including the Economic Partnership Agreement (EU-EPA) with the European Union, the US African Growth and Opportunity Act (AGOA) and Generalized System of Preferences (GSP).

In 2002, the European Union and African, Caribbean and Pacific (ACP) countries began negotiations to establish the EPAs according to the Cotonou Agreement criteria. The EPA is a scheme to create a free trade agreement (FTA) between the European Union and ACP countries. EPAs were meant to fully open up EU markets by January 2008, but allowed ACP countries 15 to 25 years to open up to EU imports, while providing protection for the sensitive 20% of imports. Kenya is negotiating the EPA under the EAC configuration. The current regime ensures that Kenyan exports entering the European Union are entitled to duty reductions and freedom from all quota restrictions. Trade preferences include duty-free entry of all industrial products and a wide range of agricultural products including beef, fish, dairy products and cereals, as well as fresh and processed fruits and vegetables.

AGOA, enacted in 2000, is a US Domestic Act aimed at removing tariffs on imports from eligible African countries that satisfy certain political and economic conditions. Kenya's major products that qualify for export under AGOA include textiles, apparels and handicrafts. For textiles and garment products, 17 countries (Kenya included) are qualified for duty-free exports up to 7% of total US imports. It has a distinctive feature in the rule of origin provision that allows less developed countries among those qualified to use fabrics and yarn made in a third country. Most of the Kenyan exports to the United States are in the textiles sector and are processed through export processing zones (EPZs). According to AGOA statistics, during 2010 Kenya's textiles sector exported to the United States a value of US$ 311.1million, which accounted for 90% of all Kenyan exports to the United States. AGOA was set to expire in 2008, but the US Congress passed the AGOA Acceleration Act of 2004, which extended the legislation to 2015.

The GSP is a formal system of exemption from the more general rules of the WTO. Specifically, it is a system of exemption from the MFN that obliges WTO member countries to treat the imports of all other WTO member countries no worse than they treat the imports of their 'most favoured' trading partner. Through the GSP, the developed countries (also known as preference giving countries or donor countries) extend a preferential tariff system to developing countries (also known as preference receiving countries or beneficiary countries). It involves reduced MFN tariffs or duty-free entry of eligible products exported by beneficiary countries to the markets of donor countries. Under the GSP, a wide range of Kenya's manufactured products are entitled to preferential duty treatment in the United States, Japan, Canada, New Zealand, Australia, EFTA and EU countries. In addition, no quantitative restrictions are applicable to Kenyan exports on any of the 3,000-plus items currently eligible for GSP treatment.

3. National trade and development strategies

3.1. Trade policy

The EAC Protocol, which established the EAC Customs Union, came into force 1 January 2005. Since then, the EAC common external tariff (CET) has been Kenya's main instrument of import policy. The EAC Custom Union Protocol establishes a three-band common external tariff with 0% on raw material imports, 10% on intermediate goods imports and 25% on finished imports. Goods imported from EAC partners receive a treatment of zero tariffs. EAC members charge CET on sensitive products[25] originating from third countries, which are lower than WTO tariff bindings. The lists under COMESA and EPAs are still under negotiation.

Kenya's tariff bindings cover 14.9% of its total tariff lines. Tariffs are bound at a ceiling rate of 100% for all agricultural products. In the case of non-agricultural products, Kenya has bound six tariff lines (at the HS 4-digit level), equivalent to 1.6% of non-agricultural tariff lines; at 62% on fresh, chilled, or frozen fish (HS 03.02 and 03.03), excluding fish fillets and other minced fish meat; 35% on medications (HS 30.03); 18% on pharmaceutical goods (HS 30.06); 62% on mineral or chemical fertilizers (HS 31.05) containing two or three of the fertilizing elements, potassium, phosphorus, and nitrogen; and 31% on polymers of ethylene in primary form (HS 39.01). The tariff on 'other tractors' (HS 87.01.90) is bound at 62%.

Kenya grants tariff preferences on a reciprocal basis to EAC members under the establishment of the EAC Customs Union and to COMESA members. The preferential bands applied by Kenya under COMESA are 0%, 4% and 6% on inputs, intermediate goods, and final goods respectively. Internal taxes include a value-added tax (VAT) levied at a standard rate of 16% on the sale price of locally produced goods and services, or on the customs value (plus border charges) of imports.

The EAC Customs Management Act of 2004 provides for quantitative restrictions and controls on some imports on grounds of national security, health, morals and the environment. The act also provides flexibility to member countries to impose export taxes and charges on a selected range of products for the development of sectors that are critical in addressing key national issues of industrial development, income inequalities and unemployment.

Kenya maintains an export tax of 25% on hides and skins and scrap metal to encourage local processing and discourage their export. The Kenya Tax Remission for Exports office, part of the Ministry of Finance, allows companies a drawback for both excise tax and VAT on raw materials for the manufacture of exports. Companies must pay import duty on raw materials, but can later receive a remission. That provision was to expire in 2009 for goods destined for the EAC market, but it was extended to 2011 to give manufacturers more time to prepare.

[25] Maize and maize products, dairy products, wheat, rice, sugar, cigars, cigarettes, cement, matches, batteries, khanga fabrics, bed linen, sacks, bags, used clothes, crown corks and jiggery.

There are also prohibitions of the exportation of certain products such as the firearms and ammunition. The special licences to ensure that the country remains self-sufficient in agricultural and food products are required for export of those products. Other requirements for export exist, such as a phytosanitary certificate from the Kenya Plant Health Inspectorate Services (KEPHIS) for plant export, while export of animals and animal products require a health and sanitary certificate from the Department of Veterinary Services.

3.2. Trade promotion and facilitation

To encourage export-oriented activities, Kenya initiated various incentive schemes, listed and explained in the following paragraphs.

Export processing zones

Established in 1990, export processing zones (EPZs) are an incentive package that includes a corporate tax holiday for an initial period of 10 years and a guarantee that the tax rate will not exceed 25% for the subsequent 10 years. It also includes a VAT and duty waiver on imports of equipment and raw materials.

The sale volumes to the domestic market are limited to 20%, although they are regarded as imports that attract regular duties and taxes. Enterprises located in EPZs enjoy expedited licensing at reduced fees and are exempted from rent and tenancy controls. The operating enterprises are engaged in producing garments, pharmaceuticals, printing, computer assembly and horticultural processing. According to the Export Processing Zone Authority, by 2010 Kenya had 42 zones with some 95 companies operating within them. Of these, 58% were wholly foreign owned and 28% were joint ventures between foreign and local investors. The remaining 14% were domestic companies. As a result of the EPZs' initiative, Kenya has emerged as a leading African exporter of textiles to the United States, overtaking Mauritius.

Manufacturing-under-bond

The manufacturing-under-bond (MUB) Scheme was introduced in 1989. It offers foreign and domestic investors a similar array of incentives to those that are operating in an EPZ, but without requiring an enterprise to locate in a predetermined zone. Under this scheme, firms exporting their total output are exempted from payment of import duties and VAT on inputs, including plant, equipment, and raw materials. The exemption is subject to the posting of a customs bond. Eligible firms also enjoy an investment allowance of 100% on immovable fixed assets. To be eligible, investors must provide documentary evidence showing financial ability, technical know-how, and market availability, as well as the ability to generate significant employment. MUB companies may sell their products on the domestic market, subject to the approval of the Commissioner of Customs and Excise, and upon payment of normal duties and taxes plus a 2.5% surcharge on the dutiable value. Other incentive schemes are available to foreign companies that invest in rural or other poorly developed regions of the country.

Duty Remission Scheme

The Duty Remission Scheme has been operational since 1990. Through this scheme the government grants remission of duties and VAT on goods imported for use in the production of manufactured goods for export or for the production of raw materials for use in manufactured products for export, or for the production of duty-free items for sale in the domestic market.

Export Promotion Council

The Export Promotion Council (EPC) was established in 1992. Its activities revolve around five pillars: export market development, product development and adaptation, trade information and delivery services, trade policy facilitation and development of export skills. It is registered as a limited company although its funding is from the government. Half of the EPC board members are from the private sector.

Other agencies involved in export promotion and marketing include the Kenya National Chamber of Commerce and Industry and sectoral producer and exporter associations such the Horitucultural Crops Development Authority (HCDA).

3.3. National trade and development strategies – Vision 2030

Vision 2030 is the country's development blueprint covering the period 2008 to 2030. It aims at making Kenya a newly industrialized, 'middle-income country providing a high quality of life for all its citizens in a clean and secure environment by the year 2030'. Vision 2030 was developed through an all-inclusive stakeholder consultative process, including the NCWTO.[26]

Recognizing trade as a key sector in delivering the 10% economic growth rate per annum to transform the country, an important element of Kenya's overall economic policy is its 2011 National Trade Policy (NTP).[27] NTP is expected to play an important role by contributing to the development of a competitive economy. NTP has two broad objectives: to pursue more open, competitive, and export-oriented policies that are compatible with the country's national development objectives; and to create an enabling environment for trade and investment to thrive.

Vision 2030 places the highest premium on a stable macroeconomic environment, which depends on governance reforms, enhanced equity and wealth creation opportunities for the poor, infrastructure development, energy, science, technology and innovation, land reforms, and human resource development.

The key sectors identified to contribute to the 10% economic growth because of their export potential include tea, coffee, horticulture, livestock and livestock products, fish and fish products, food and beverages, textiles and clothing, and commercial crafts.

[26] WTO (2012). Trade Policy Review: EAC, p. A2-189.

[27] Ibid.

Chapter 2 NTM survey methodology and implementation in Kenya

In the framework of the ITC programme on non-tariff measures (NTMs) and in cooperation with local partners in Kenya, ITC conducted a large-scale company survey on NTMs and related obstacles to trade. The objectives of the NTM survey were to increase transparency and a better understanding of the trade impediments faced by the Kenyan business sector.

This chapter provides information on country-specific survey implementation, sampling methodology, basic characteristics of the survey sample and course of analysis. Appendices cover further details.

- Appendix I provides a thorough explanation of the global methodology, which is the core part of the analysis, identical in all surveyed countries.
- Appendix II explains the NTM classification.
- Appendix III lists procedural obstacles, thus presenting the taxonomy to arrange reported measures into an organized hierarchical system.
- Appendix IV lists interviewed experts and stakeholders.
- Appendix V presents the agenda of the stakeholders' consultation held in Nairobi, Kenya in February 2013.

1. Survey implementation and sampling methodology

1.1. Timeline and principal counterparts

Supported by the Ministry of Trade of Kenya, the ITC NTM survey took place between January and September 2011. Prior to the implementation of the survey, the general methodology was adjusted to the needs and requirements of Kenya in close collaboration with the Ministry of Trade, business associations, the Chamber of Commerce and other stakeholders. The survey was implemented by Kenyan survey company Synovate Kenya Ltd. The project managers, supervisors and interviewers of Synovate Kenya were trained by ITC staff on NTMs, the NTM survey methodology and the questionnaires in December 2010. The survey was implemented in two phases: from 25 January to 27 April 2011 and from 17 August to 26 September 2011.

The Kenyan business registry, which contains information on the type of products exported or imported by the company together with contact details, was compiled by ITC using various sources provided by the ministry and business associations. This business registry was used to select a stratified random sample of 764 firms that were interviewed by telephone.[28] This served to identify those companies that experienced burdensome regulations that seriously affected their export or import operations. Subsequently, 312 companies reporting such challenges were interviewed face-to-face.

1.2. Survey process and modalities

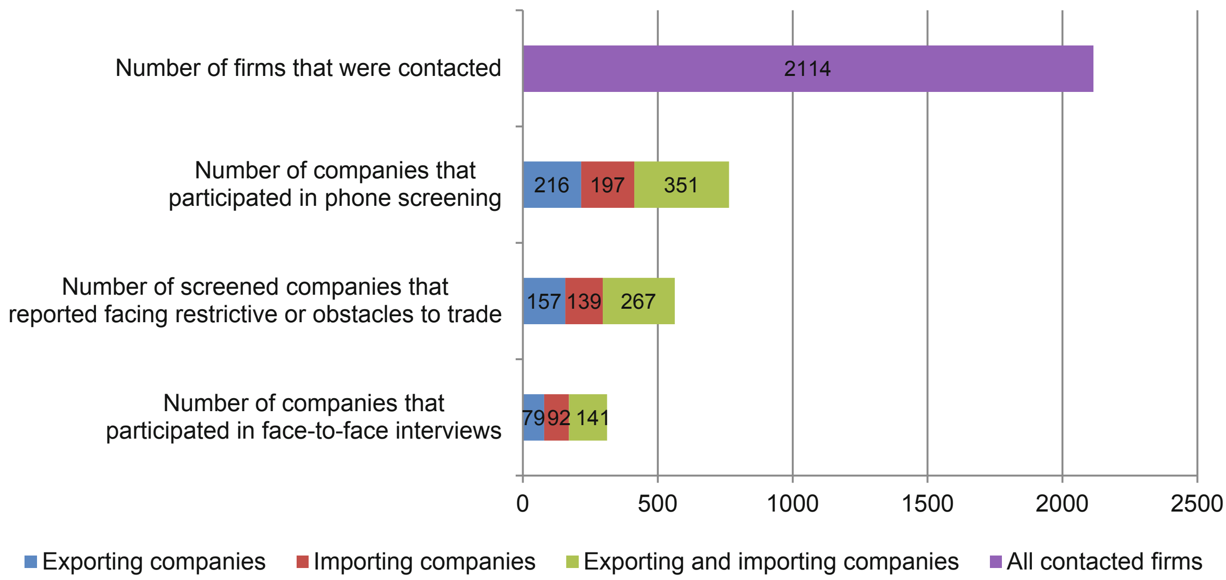
The survey consisted of two steps (figure 7). The first step involved screening of exporting and importing companies through a basic telephone interview (see section 1.2.1). The aim of the telephone interviews was to confirm the main sector of activity, the direction of trade and whether the company experienced difficulties with NTMs. The second step involved detailed face-to-face interviews with companies that reported having experienced obstacles to trade and were willing to participate (see section 1.2.2).

Interviews were conducted based on generic ITC questionnaires that were adjusted to local requirements. The questionnaires were in English and when required questions were asked in Kiswahili. Typically, the

[28] See appendix I for more methodological details.

survey respondents were general managers or the company's employee responsible for the export and import process.

Figure 7: Number of companies screened by telephone and interviewed face-to-face



Source: ITC NTM Business Survey in Kenya, 2011.

1.2.1. Telephone interviews

As per the NTM survey sampling methodology, the telephone interviews are designed to cover a representative share of Kenya's export sectors. The survey does not cover companies trading arms and minerals as export of minerals is generally not subject to trade barriers due to high demand and the specificities of trade undertaken by large multinationals. The export of arms is out of the scope of ITC activities. Companies trading in services are also excluded, as covering the service sector would require a different approach and methodology.

When minerals, arms and services are excluded, the NTM survey aims to capture at least 90% of Kenya's exports. Generally, sectors whose export value is less than 2% of the total export value of the country are excluded for being too small. Representative sampling methodology for Kenya required around 600 exporting companies to be interviewed by telephone. During the survey 567 exporting companies were interviewed by telephone, including 351 companies that were also importing. In addition, 197 companies participated that were involved only with importing.

The telephone screen interviews were representative by sector. As a result, more companies from Kenya's most important sectors were interviewed. For instance, around 44% of the interviewed companies were from the fresh or processed food sector (Figure 8), Kenya's biggest export sector. Among the 567 exporting companies interviewed, 253 were from agricultural sector while 314 were from manufacturing sector out of which 76% and 73% of the companies respectively were affected by burdensome NTMs.

Among the importing companies a vast majority of the interviewed companies were from the manufacturing sector (Table 1) out of which 85% of the agricultural companies and 71% of the manufacturing companies were affected.

In terms of size, 73% of the interviewed companies were micro- or small-sized companies, 9% were mid-sized and 18% were large companies (Figure 9). The size of the companies is based on the number of employees. Micro-sized companies have fewer than 10 employees, small-sized companies between 11 and 50 employees, medium-sized companies between 51 and 100 employees, while large companies employ more than 100 employees. Geographically, the NTM survey covered companies located in Nairobi, Mombasa, Eldoret, Kisumu, Nakuru, Thika, Kitale, Kiambu, Naivasha and Magadi.

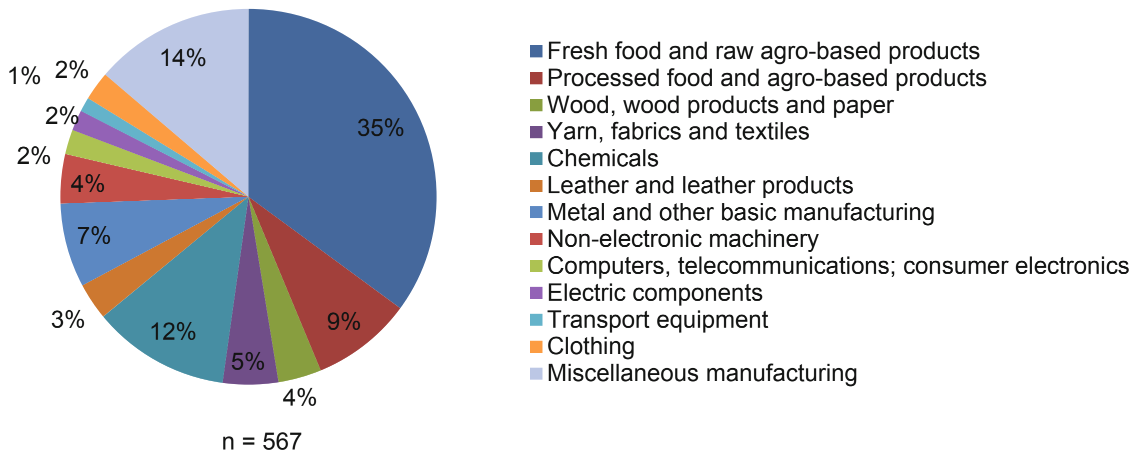
Table 1: Companies affected by restrictive regulations or obstacles to trade, based on telephone interviews

Company type	Sector	Number of companies interviewed by telephone	Number of companies that face restrictive regulations or related obstacles to trade	Share of companies facing restrictive regulations or related obstacles to trade
Exporting	Agro-food	253	193	76.3%
	Manufacturing	314	231	73.6%
	Subtotal	**567**	**424**	74.8%
Importing	Agro-food	74	63	85.1%
	Manufacturing	456	326	71.5%
	Subtotal	**530**	**389**	73.4%
Total		**1097**	**813**	**74.1%**

Source: ITC NTM Business Survey in Kenya, 2011.

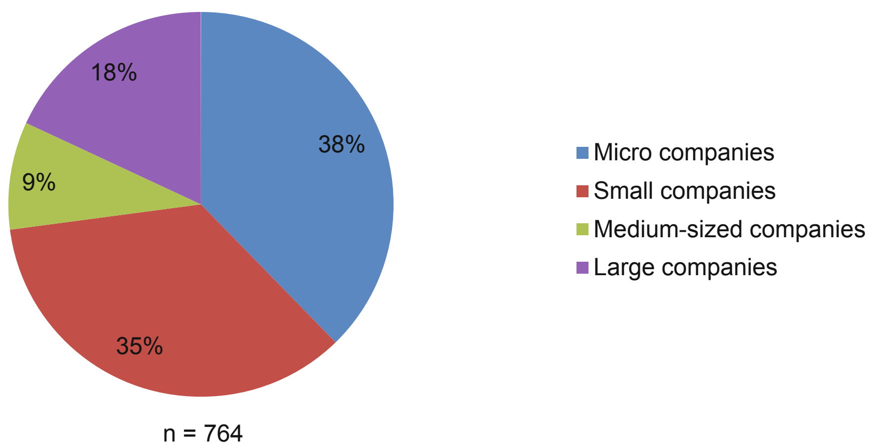
* Companies that are active in both exporting and importing are interviewed about both activities. In the sample of Kenyan companies 351 companies are both exporting and importing and are hence presented twice in the table: once for exporting and once for importing. A total of 764 companies participated in telephone interviews.

Figure 8: Number of exporting companies interviewed by telephone, by sector



Source: ITC NTM Business Survey in Kenya, 2011.

Figure 9: Survey coverage by company size: number of exporting and importing companies that participated in telephone interviews



Source: ITC NTM Business Survey in Kenya, 2011.

1.2.2. Face-to-face interviews

The selection of companies for face-to-face interviews was based on the results of the telephone interviews. Only companies that reported to be facing burdensome NTMs in the telepone interviews and were willing to participate in face-to-face interviews were selected. Detailed information on the NTMs experienced by the companies was gathered during the interviews. The telephone interviews identified 563 companies that experienced burdensome NTMs and other obstacles, of which 312 participated in the face-to-face interviews. Out of these firms, 79 were exporting, 92 importing, and 141 exporting and importing (Figure 7). On average it took 45 to 60 minutes to interview face-to-face depending on the number of challenges and barriers that a company faced. The low participation rate in face-to-face interviews can be explained by the fact that some companies were concerned about confidentiality; they were concerned about information reaching the authorities or competing firms. The face-to-face interviews were conducted in English or Kiswahili.

1.3. Implementation challenges

Most of the implementation challenges were encountered in the field. Some of these challenges included:

- Failure to locate some of the offices due to the wrong directions given in the telephone interview;
- Being turned away due to mistrust even after producing identification documents;
- The relevant persons were not available for interview even after making an appointment;
- Some respondents kept postponing the interview date until it was too late to hold the interview;
- Mistrust that interviewers were working for the government or competing firms;
- Some complained that the interview was long and requested five-minute interviews, which were insufficient;
- Some firms complained that they were too small and that more emphasis should be placed on larger ones;
- Some firms complained that questionnaires were long and that they should be mailed, which was not possible. A guided discussion is necessary to ensure a detailed and complete information on the difficulties faced by companies is captured;
- Some firms did not feel comfortable disclosing demographics of their companies.

2. Survey representativeness and coverage

2.1. Captured data and evaluation approach

The telephone interviews collected information on the characteristics of firms, including size, operational age, foreign ownership, main product and sector affiliation. Firms were further classified as either ‘producing’ or ‘forwarding’ companies and as exporting or importing enterprises. During the face-to-face interviews, companies who reported to be facing difficulties with NTMs were also asked to provide information on all their exports and imports at the product or HS 6-level,[29] the destination country of exports or their imports’ country of origin. Each pair of product and partner country is referred to as a ‘product-partner trade flow’.

For each product-partner trade flow, company representatives were asked to provide detailed information on the NTMs and procedural obstacles (POs) they encounter. This includes the type of the NTM as classified in appendix II, the country applying the measure and the authorities causing POs. Company representatives are asked whether POs are associated with a reported NTM or if general inefficiencies in the trade-related business environment (TBE) are the ones posing a challenge.

[29] In several cases products are inaccurately reported at the HS 6 level, but may be traced to the HS 4 level.

The final phase of data analysis consisted of calculating frequency and coverage statistics along several dimensions, including product and sector, main NTM category (e.g. technical measures, quantity control measures, etc.) and company characteristics (e.g. size).

Most frequency and coverage statistics are based on ‘cases’. A case is the most disaggregated unit of analysis. Every company participating in face-to-face interviews reports at least one case of burdensome NTMs and, if relevant, POs and challenges associated with the TBE.

The type of NTM and the country applying it, the product affected by it and a company reporting the measure, defines a ‘case’ of NTM. For example, if one company reports that an NTM applied by a partner country affects three products, the results would include three NTM cases. If two different companies report the same problem for a given product and partner country, it would count as two cases.

However, the counting of cases differs depending on whether the NTM is applied by the exporting or importing country. The scenario where several importing partner countries apply the same type of measure to Kenya’s exports is recorded as several cases. The details of each case, including the actual name of government regulation and its strictness, may vary as regulations mandated by different countries are likely to differ.

When the exporting country applies an NTM to a product exported by one company to several countries, this is recorded as a single NTM case because it is considered to be the result of a single policy. Following the same logic, if a company imports the same product from several different countries and faces difficulties with NTMs imposed by Kenyan authorities, it will be counted as a single case.

Cases of POs and problems with the TBE are counted in the same way as NTMs. PO and TBE statistics are provided separately from those of NTMs, even though in certain instances they are closely related. For example, extended delays may result from pre-shipment inspection requirements. While POs are directly related to a given NTM, inefficiencies in the TBE occur irrespective of NTMs.

Chapter 3 Survey results on companies' experiences with NTMs

This chapter provides a detailed analysis of the ITC NTM survey findings in Kenya. It starts with an aggregated country-level overview of NTMs focusing on affected sectors, major problems and locations where the problem occurs (section 1). The chapter then provides a detailed sector-specific analysis of the problems reported by exporters and importers (sections 2 and 3). Chapter 3 concludes with recommendations for the agricultural and manufacturing sectors.

1. Aggregate results

1.1. Cross-country comparison and affected sectors

The overall share of Kenyan companies affected by NTMs is relatively high. During the initial telephone interviewing phase, a total of 563 companies (74%) reported facing hindrances to trade, in Kenya or abroad, due to various regulations (Table 2).

Table 2: Share of companies affected by burdensome NTMs or related obstacles to trade, based on phone screening results

	Main sectors	Total export value in 2010 (US$ '000)	Sector's share in total exports	Number of companies screened on the phone	Number of companies affected by NTMs or related obstacles	Share of affected companies
Export	Agro-food	3,098,998	62.6%	253	193	76.3%
	Manufacturing	1,854,320	37.4%	314	231	73.6%
	Subtotal	**4,953,318**	**100%**	**567**	**424**	**74.8%**
Import	Agro-food	1,645,237	17.3%	74	63	85.1%
	Manufacturing	7,847,418	82.7%	456	326	71.5%
	Subtotal	**9,492,655**	**100%**	**530**	**389**	**73.4%**
Total				**1097***	**813**	**74.1%**

Source: ITC Trade Map, 2012; and ITC NTM Business Survey in Kenya, 2011.

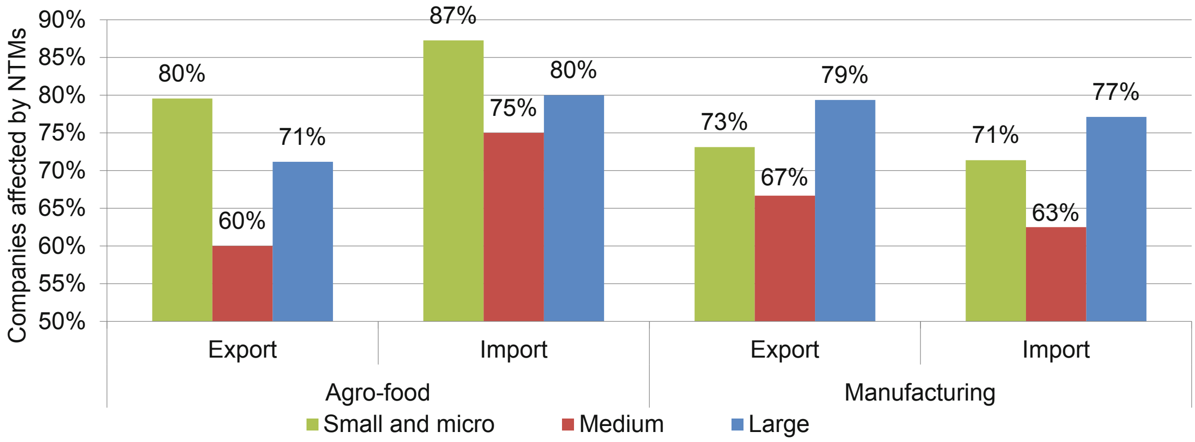
*Companies that both export and import were interviewed about both activities and are hence represented twice in the table. In the Kenya survey, 351 companies were interviewed about both export and import processes. As a result, the sum of the subtotals in the table amounts to 1,097 instead of the actual 764 firms that participated in the phone screening. Similarly, while 813 companies are shown to be affected in the table, the actual number of affected companies is 563.

Among other countries ITC surveyed in the COMESA region, only Malawi has a higher rate of affectedness among exporters (80%), while Rwanda (71%) and Madagascar (67%) have slightly lower rates. In Egypt and Mauritius significantly fewer companies reported to be affected by burdensome NTMs (37% and 31% respectively). Also relative to countries from other regions such as Jamaica (42%), Peru (42%) and Morocco (34%) Kenyan traders reported many more difficulties in dealing with regulations when exporting their products.

Similar to the results in other countries, the survey results in Kenya show that for both exporters and importers, the agricultural sector is more affected than the manufacturing sector (table 2). This is to be expected as importing countries usually regulate food products very vigilantly for reasons of consumer and environmental protection. Within the agricultural sector, importers are much more affected by burdensome regulations (85%) than exporters (76%). This suggests that Kenya itself applies many regulations that importers struggle to comply with. Section 2.6 presents a detailed analysis of this issue.

The affectedness rate among companies may also depend on the size of the company. Survey results show that the smaller firms in agricultural sector find it harder to export and import than medium-sized or large companies. This is usually due to the costs associated with strict conformity assessment procedures countries have in place when importing agricultural and food items from abroad. Larger firms can generally absorb this cost better than smaller firms. However, in the manufacturing sector, the proportion of large firms facing problems with regulations at home and abroad is higher than the share of small and medium-sized enterprises (SMEs) affected.

Figure 10: Percentage of companies affected by NTMs by sector and trade flow, identified in telephone interviews



Source: ITC NTM Business Survey in Kenya, 2011.

It is important to note that according to the methodology, a company is considered to be affected by an NTM if at least one of its products is affected by a regulation applied by Kenya or one of its partner countries. Given that larger companies tend to have bigger portfolio of goods and a larger number of trading partners compared to smaller companies, they are more likely to face impediments in at least one of these transactions. Smaller companies tend to have their trade focused on few products and with fewer partners. This implies a lower likelihood to experience NTMs or POs.

It is also important to consider that the impact of being affected is likely to be much higher for smaller firms than for larger firms. For a small firm the burden of facing an NTM or PO in one or more of its few markets can be huge. In contrast, a more diversified large company can compensate for difficulties in some markets with other established business partners.

1.2. Major problems with NTMs and related POs

To have a better understanding of the nature of problems faced by Kenyan exporters and importers, the ITC methodology for NTM surveys classifies these problems into three categories: burdensome NTMs, POs and inefficiencies in the TBE. NTMs are official regulations implemented by competent authorities in the exporting or importing country that traders must comply with (see appendix II for the different types of NTMs). In contrast, POs are hindrances that companies face due to the manner in which the regulation is applied or implemented (see appendix III for examples). Inefficiencies in the TBE are generic problems not related to specific regulations, but affecting companies' ability to export or import.

In the following section, the nature and type of problems will be discussed in detail, which is based on the results of the face-to-face interviews. A total of 312 companies that reported to be facing burdensome NTMs were willing to discuss their experiences in face-to-face interviews.

1.3. Most common problems faced by exporters

Among the exporters in Kenya affected by NTMs, 220 companies participated in detailed face-to-face interviews. These companies reported 755 cases of burdensome NTMs (see appendix I for a definition of NTM cases) and 765 POs faced when exporting. More than 68% of these reported NTM cases concern regulations applied by partner countries, while 32% relate to NTMs applied by Kenya. In contrast, 55% of the reported POs occurred in Kenyan institutions while the remaining 45% were encountered in the destination market.

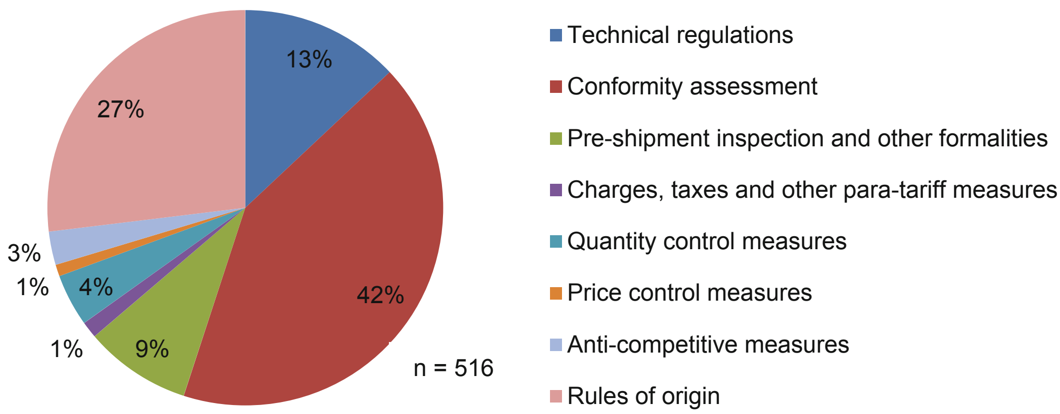
Import-related measures are regulations applied by the importing country (either Kenya or partner country depending upon the trade flow) on products that are being imported into the country, while export-related measures are regulations applied by the exporting country on products being exported. Cases of NTMs for import-related measures are defined at the product and destination market level for each company, which means that a single type of NTM reported by an exporter may be counted multiple times depending upon the number of partner countries applying the same measure. In contrast, NTM cases for export-related measures are defined only at the product level irrespective of the destination market as the regulations are applied by the domestic authority and its implementation is likely to be the same for products intended for any destination market.

1.3.1. NTMs applied by partner countries

Partner (importing) countries were responsible for 516 of the 755 cases of burdensome NTMs faced by Kenyan exporters. Among these, more than half are related to either technical regulations (13%) or conformity assessment (42%, Figure 11). Technical regulations, i.e. regulations that relate to product-specific properties, include regulations related to quality standards, safety, production process and sanitary requirements and are usually implemented to protect the consumer or animal health, environmental protection or national security. Conformity assessments are measures that determine whether a product or a process complies with a given technical regulation.

It is noteworthy that conformity assessment measures represent a greater obstacle to Kenyan exporters than technical requirements. This is consistent with survey results from other developing countries. This implies that for most of the Kenyan exporters the problem lies in proving that the products meet the given criteria rather than satisfying the technical requirements itself. This is usually due to high costs and administrative hurdles involved with testing and certification or a lack of proper certifying facilities. Refer to sections 2.3.1 and 3.3.1 for specific issues in the agricultural and manufacturing sectors.

Figure 11: Burdensome NTMs faced by Kenyan exporters in partner (importing) countries



Source: ITC NTM Business Survey in Kenya, 2011.

Another important NTM category with over 25% of the reported cases concerns rules of origin. As a developing country, Kenya enjoys preferential tariff rates for a range of products from a number of developed countries, including its major markets in the United States and the European Union (see chapter 1, section 2 for more information on Kenya's trade preferences). As a COMESA member, Kenya can also export to other member countries duty free. To benefit from these preferential tariffs, exporters must certify that their product was made in Kenya or that adequate value addition has taken place in Kenya. Proving origin turns out to be a challenge for Kenyan exporters due to high cost and delays involved in getting the relevant documents. Refer to sections 2.3.3 and 3.3.2 for specific issues in the agricultural and manufacturing sectors.

Other important types of regulations applied by partner countries include pre-shipment inspections and other formalities (45 cases), quantity control measures (22 cases) and anti-competitive measures (14 cases).

A large portion of these measures is applied by Kenya's regional partners (Table 3). EAC and COMESA countries together account for around 42% of the reported burdensome measures applied by partner countries. One-quarter of NTM cases originate from two of Kenya's most important export markets: the United Republic of Tanzania and Uganda. The high number of cases reported for big export markets is not surprising given that trade flows to these markets are captured more frequently in the sample. Consequently, a higher absolute number of NTM cases does not necessarily indicate more restrictive import policies in these countries.

Table 3: Partner countries applying burdensome NTMs on Kenyan exports

	Partner country or territory (export destination for Kenyan products)	Kenyan export value in 2010, US$ ’000**	Share in total Kenyan export value	Number of companies that export to this country*	Share of affected companies among those exporting to this country	Number of NTM cases reported to be applied by this country	Share in total NTM cases
EAC countries	United Republic of Tanzania	419,536	8.5%	90	24.4%	65	12.6%
	Uganda	575,242	11.6%	89	20.2%	64	12.4%
	Rwanda	115,955	2.3%	71	9.9%	12	2.3%
	Burundi	68,473	1.4%	31	9.7%	5	1.0%
	EAC subtotal	**1,179,206**	**23.8%**	**281**	**17.8%**	**146**	**28.3%**
COMESA (excluding EAC)	Sudan	242,003	4.9%	34	5.9%	5	1.0%
	Egypt	238,495	4.8%	13	46.2%	17	3.3%
	Zambia	60,747	1.2%	18	16.7%	15	2.9%
	Malawi	55,371	1.1%	9	22.2%	7	1.4%
	Ethiopia	52,365	1.1%	27	14.8%	27	5.2%
	Rest of COMESA	219,977	4.4%	27	0.0%	0	0.0%
	COMESA subtotal	**868,958**	**17.5%**	**128**	**13.3%**	**71**	**13.8%**
European Union (then-27)	United Kingdom	524,120	10.6%	47	25.5%	23	4.5%
	Netherlands	352,767	7.1%	31	38.7%	27	5.2%
	Germany	98,722	2.0%	33	33.3%	23	4.5%
	France	67,816	1.4%	22	22.7%	14	2.7%
	Belgium	54,574	1.1%	7	28.6%	7	1.4%
	Italy	39,993	0.8%	11	36.4%	7	1.4%
	Sweden	31,398	0.6%	6	16.7%	1	0.2%
	Spain	26,715	0.5%	10	30.0%	7	1.4%
	Cyprus	2,377	0.0%	1	100.0%	3	0.6%
	Denmark	2,363	0.0%	6	66.7%	11	2.1%
	Greece	1,732	0.0%	1	100.0%	1	0.2%
	Romania	1,007	0.0%	1	100.0%	1	0.2%
	Rest of then-EU27	67,408	1.4%	7	0.0%	0	0.0%
	EU (then-27) subtotal	**1,270,992**	**25.7%**	**183**	**31.1%**	**125**	**24.2%**
Rest of the World	United States	257,929	5.2%	40	37.5%	58	11.2%
	Pakistan	237,249	4.8%	11	9.1%	3	0.6%
	United Arab Emirates	129,031	2.6%	29	24.1%	24	4.6%
	Russian Federation	59,328	1.2%	6	33.3%	4	0.8%
	South Africa	30,121	0.6%	26	15.4%	7	1.4%
	China	27,716	0.6%	16	18.8%	5	1.0%
	Japan	26,185	0.5%	11	36.4%	10	1.9%
	Saudi Arabia	22,810	0.5%	11	45.5%	16	3.1%
	Switzerland	20,975	0.4%	1	100.0%	1	0.2%
	Israel	20,166	0.4%	4	50.0%	7	1.4%
	Norway	14,851	0.3%	6	16.7%	1	0.2%
	Thailand	14,315	0.3%	1	100.0%	1	0.2%
	Turkey	11,174	0.2%	5	60.0%	5	1.0%
	Australia	7,886	0.2%	6	16.7%	1	0.2%
	Malaysia	6,405	0.1%	2	50.0%	1	0.2%
	Qatar	2,155	0.0%	6	50.0%	10	1.9%
	Namibia	1,814	0.0%	3	33.3%	1	0.2%
	Syria	1,307	0.0%	1	100.0%	3	0.6%
	Lebanon	1,252	0.0%	1	100.0%	3	0.6%
	Bahrain	1,100	0.0%	4	50.0%	5	1.0%
	Mexico	778	0.0%	2	50.0%	3	0.6%
	Tunisia	16	0.0%	1	100.0%	5	1.0%
	Other ROW	739,599	14.9%	68	0.0%	0	0.0%
	Rest of the world subtotal	**1,634,162**	**32.9%**	**261**	**23.2%**	**174**	**33.7%**
Global total		**4,953,318**	**100%**	**855***	**21.6%**	**516**	**100%**

Source: ITC NTM Business Survey in Kenya, 2011; and ITC Trade Map, 2012.

*Companies exporting to several destinations are counted once for each destination. Therefore, the total in this table is higher than the total number of companies interviewed.

**Excluding services, minerals and arms.

Comparing the share of NTM cases to the share of Kenyan exports allows for a better understanding of the situation. EAC turns out to be a relatively difficult market to access, accounting for 28% of reported NTM cases but only 24% of exports. Despite the free trade agreement, around 24% and 20% of the companies exporting to the United Republic of Tanzania and Uganda, respectively, reported to be facing burdensome NTM applied by these countries (table 3, column 5). The Kenyan exporter perception is echoed by similar findings for EAC trading partners from the NTM surveys in Rwanda and the United Republic of Tanzania. The COMESA market seems comparably easier to access, although there is a high affectedness reported by companies exporting to Egypt and relatively numerous NTM cases reported for Ethiopia. The survey results show that even though regional trade agreements are formed to promote and facilitate trade among member countries, it is still fairly common to see exporters facing problems with regulations of other members.

The EAC is conscious of the impact that NTMs have on intra-regional trade and explicitly aims for greater trade facilitation and the elimination of non-tariff barriers. Article 13 of the EAC protocol on the establishment of the Customs Union[30] states:

'[E]ach of the partner states agrees to remove, with immediate effect, all existing non-tariff barriers to the importation into their respective territories of goods originating in the other partner states and, thereafter, not to impose any new non-tariff barriers.' It also states that 'the partner states shall formulate a mechanism for identifying and monitoring the removal of non-tariff barriers'.

Each EAC member state has a national monitoring committee on non-tariff barriers (NTBs) that is expected to report every quarter to allow emerging issues to be addressed. The survey results presented in this report can contribute to the EAC efforts to facilitate trade by highlighting the burdensome NTMs and related POs that render intra-community trade inefficient.

The United States, which mainly imports textile and garments from Kenya and accounts for 5.2% of Kenyan exports, is responsible for more than 11% of the reported NTM incidents with more than one-third of interviewed companies exporting to this destination reporting cases of burdensome regulations. With over twice the share of Kenyan exports (10.6%) and less than half the share of NTM cases (4.5%), the United Kingdom turns out to be less problematic to access than the United States. It is also relatively easier to access than other big markets in the European Union, including Germany, France, Italy and Spain.

From the less important trading partners, relatively high rates of reported NTMs concern United Arab Emirates (4.7% of cases), Saudi Arabia (3.1%), Qatar (1.9%) and Japan (1.9%).

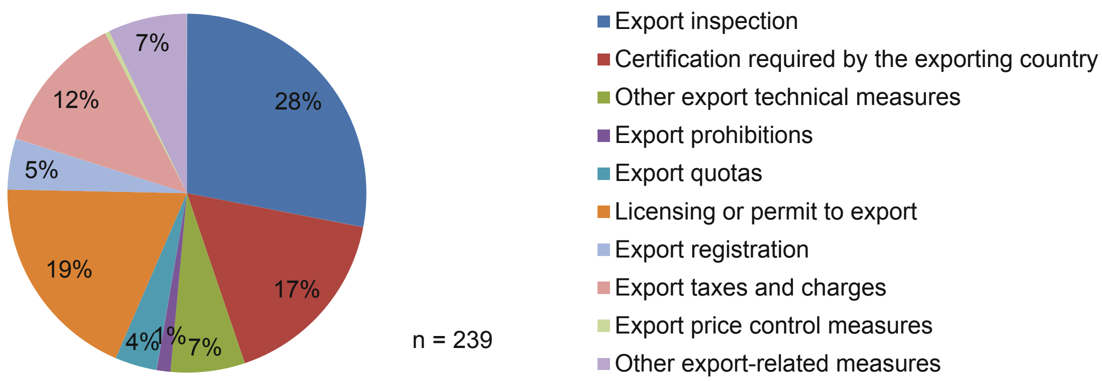
1.3.2. Non-tariff measures applied by Kenyan authorities

Kenyan exporters reported 239 cases of burdensome regulations applied by Kenyan authorities. Export inspections, certification requirements and other technical measures together account for more than half of these cases (Figure 12), most of which were reported by exporters from the agricultural sector who are subject to phytosanitary inspections carried out by KEPHIS. A common complaint among exporters related to time-consuming and expensive inspection and certification procedures due to insufficient facilities and human resources at KEPHIS. This issue is discussed in more detail in section 2.3.1.

Export licensing or permits are another major issue reported by Kenyan exporters with 45 recorded cases (19%, Figure 12). Exporters appear to be facing difficulties with time constraints and high fees associated with obtaining export permits from the Kenyan authorities. They face further difficulties due to various charges imposed by the Kenya Revenue Authority (KRA), which account for 12% of reported cases. Some companies complained about the lengthy process to obtain VAT refunds, which although intended to facilitate exports, appears to be a cumbersome procedure that takes up to two years.

[30] The Protocol on the EAC Customs Union was signed in March 2004 and came into affect in January 2005 in Kenya and Uganda. Burundi and Rwanda joined in July 2007.

Figure 12: Burdensome NTMs applied by Kenyan authorities on exports



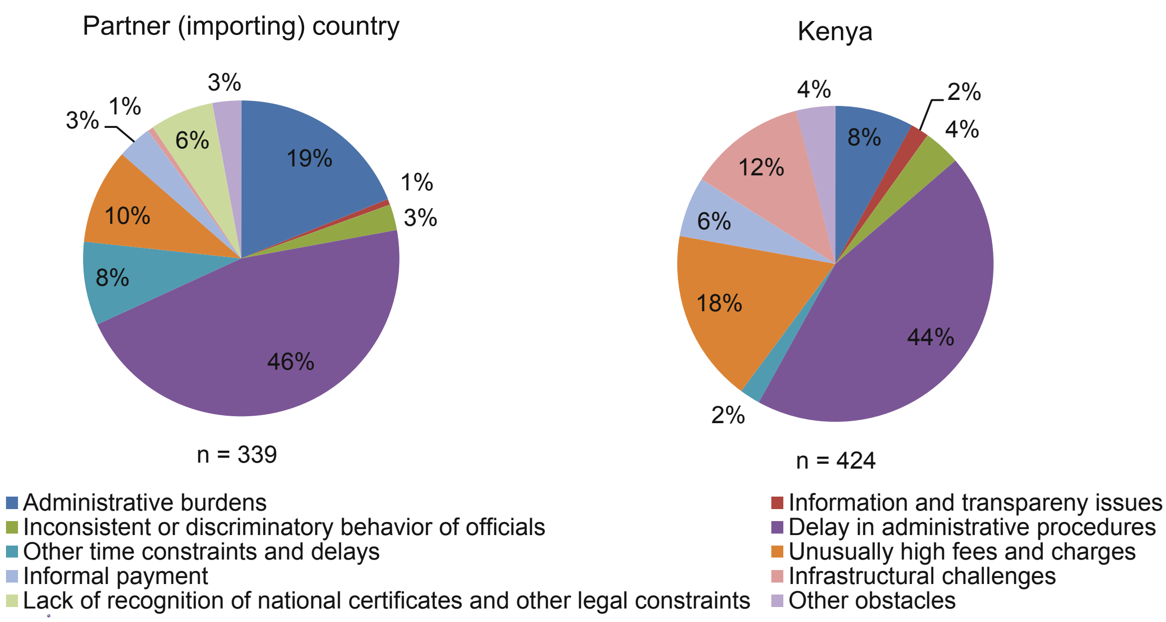
Source: ITC NTM Business Survey in Kenya, 2011.

1.3.3. Procedural obstacles and inefficiencies in the trade-related business environment

Kenyan exporters reported 765 cases of POs – 339 cases occurred in partner countries, 424 in Kenyan institutions, and 2 in transit countries. Long delays in administrative procedures were the most frequent obstacle, both domestically and abroad (Figure 13). In Kenya, KRA and KEPHIS are the most frequently mentioned institutions, in particular due to delays associated with inspection and certification. However, almost all agro-food products exports must go through KRA and KEPHIS, which is why exporters are more likely to report obstacles faced in these two agencies compared to others. Delays in partner countries occurred mostly in neighbouring United Republic of Tanzania, Uganda and Ethiopia with 35, 32 and 20 reported cases respectively.

In addition to delays, there are some clear differences in the type of POs encountered in Kenya and in partner countries. For exporters, administrative procedures appear a more common concern in partner countries (19% of reported POs) than in Kenya (8%, Figure 13). This may be linked to a lack of information on other countries' trade-related rules and procedures.

Figure 13: Cases of POs and inefficient TBE faced by exporters in Kenya and partner countries



Source: ITC NTM Business Survey in Kenya, 2011.

Note: Two additional cases of POs were reported to be occuring in a transit country. A total of 765 cases of POs were reported by Kenyan exporters occurring in all locations.

On the Kenyan side of the border, exporters were much more concerned about fees charged by Kenyan institutions for various inspections and certifications, including the certificate of origin (COO), and numerous phytosanitary and health safety standards. Around 18% of the reported PO cases in Kenya are related to this issue compared to only 10% of the cases in partner countries (Figure 13). Although most of the certification requirements are applied by importing partner countries, this finding is not surprising given that certificates are usually issued by government authorities or recognized agencies in the exporter's home country.

Lack of adequate infrastructure and facilities is another concern for exporters and accounts for around 12% of the reported PO cases in Kenya (Figure 13). Exporters, mainly from the agricultural sector, are concerned about the poor road infrastructure and inadequate cooling facilities at customs, which can damage goods before they reach the destination market.

Exporters also reported that occasionally they face the problem of certificates issued in Kenya not being recognized in the partner country (6% of the cases). Furthermore, they faced difficulties in road transport system in Kenya and EAC countries, including a series of roadblocks, weighbridges and checkpoints (Figure 13). This has been confirmed by other studies that show traders face around two, five and seven roadblocks per 100 kilometres in United Republic of Tanzania, Uganda and Kenya respectively.[31] These constant checks together with harassment from police officers soliciting bribes in these locations make transportation conditions difficult for traders.[32] Another study found that at each roadblock in Kenya, the cargo trucks had to spend an average of one hour waiting and pay a non-official fee of K Sh 1,000 to the police officers.[33] Companies also report that thefts and insecurity on Kenyan and Ugandan roads are a problem that must be addressed.[34]

Multiple weighbridges across Kenyan highways, operated by Kenya National Highways Authority (KeNHA) to control damages to the road from heavy overloaded trucks, is also reported to be problematic to the traders. The first issue is that the trucks must be weighed numerous times. One study finds that between Mombasa and the border towns of Malaba and Namanga, a cargo truck must pass through seven weighbridges and spend and average of one hour in each.[35] Another study by the Kenya Association of Manufacturers (KAM) reports that weighbridge stations in Mariakani, Mlolongo and Juja were plagued by corruption and theft. In addition, companies reported waiting time of up to 10 hours in Mlolongo, Gilgil and Webuye stations.[36]

To address the high cost and delays associated with multiple weighbridges the Kenyan Government and other EAC countries have committed to reduce the number of weighbridges.[37] Three weighbridges would be operational in Kenya and the United Republic of Tanzania, while in other EAC countries there would be only two.

The Kenyan Government has also recently increased the maximum gross vehicle weight from 48 tonnes to 56 tonnes to align with other EAC countries.[38] This is expected to lower the transportation costs for companies. However, the main obstacle faced by the exporters was time spent in multiple weighbridges rather than the maximum weight of the vehicle.

1.4. Most common problems faced by importers

Face-to-face interviews with 233 importers resulted in 587 cases of burdensome NTMs. The majority of these regulations are applied by Kenyan authorities (550 cases) while the remaining 37 cases concerned exporting partner country regulations. This is in line with findings in other countries and is to be expected. Under most common commercial contract terms, importers are responsible for complying with domestic

[31] Karugia et al. (2009).

[32] Muluvi et al. (2012).

[33] Kiriti-Nganga (2012).

[34] ITC NTM Business Survey in Kenya (2011); Kenya Association of Manufacturers (2012).

[35] Ibid; Kiriti-Nganga (2012).

[36] KAM (2012).

[37] This decision was taken only after the survey was completed.

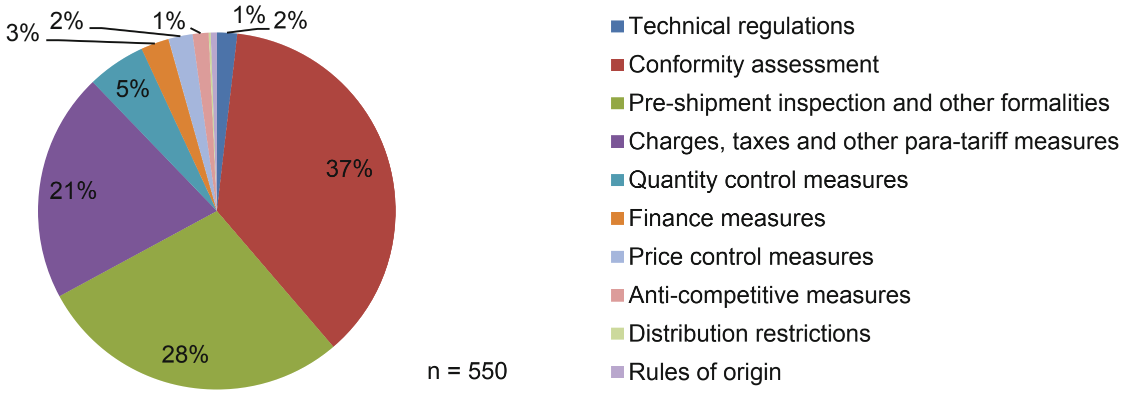
[38] Standard Digital News, Transporters' relief as axle limit increased, article from 3 June 2013, available at http://www.standardmedia.co.ke/business/article/2000085098/transporters-relief-as-axle-limit-increased, accessed on 10 June 2013.

regulations and exporting companies abroad usually take care of complying with partner country regulations.

Compared to the problems faced by exporters, where technical regulations are a major issue, importers appear to be facing fewer incidents of technical regulations (10 cases, Figure 14). This is not surprising as most importers are trade agents or companies importing products as raw material. Because they are not the actual producers of the imported good they have little or no control over the technical aspects of the goods.

However, importers are required to prove that the imported goods comply with Kenyan regulations. This is well documented in the survey results with 37% of NTM cases relating to conformity assessment. With 156 cases of pre-shipment inspection and import monitoring, it is evident that the Kenyan authorities are vigilant on the quality, quantity and type of products being imported into the country. While these measures exist for legitimate reasons, importers complained about a number of POs related to delays and cost.

Figure 14: Burdensome NTMs faced by importers in Kenya



Source: ITC NTM Business Survey in Kenya, 2011.

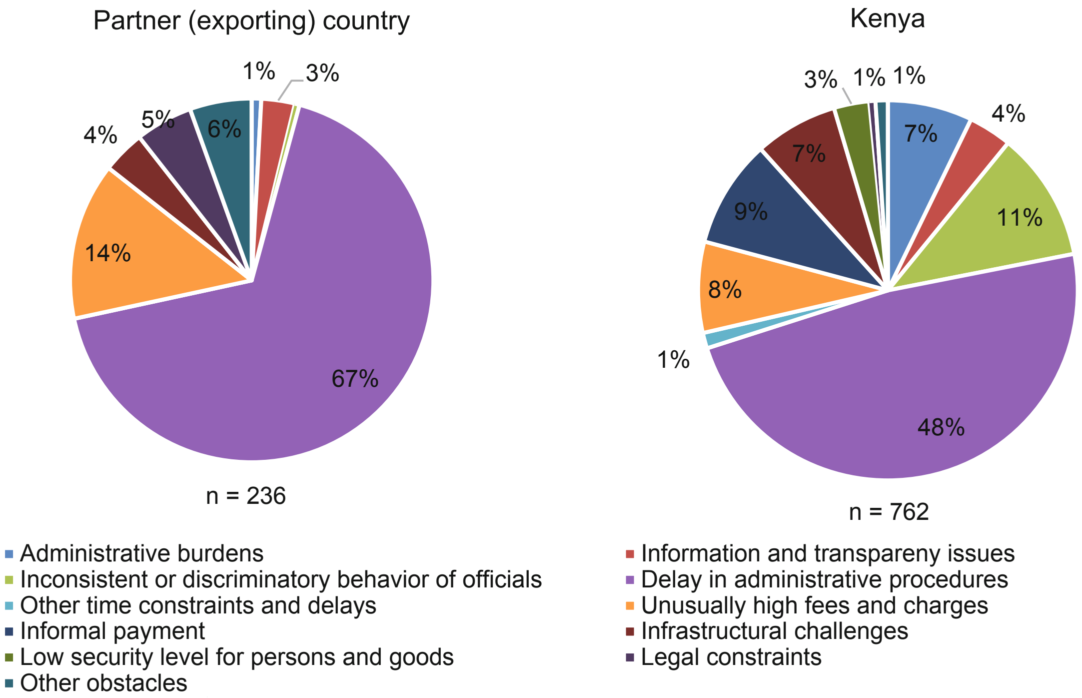
Another important issue highlighted by the survey is the incident of charges, taxes and other para-tariff measures applied by Kenyan authorities, which account for around one-fifth of the cases reported by importers. Importers expressed their concern that inspection and merchandise handling fees can cause a significant financial burden. In addition, in numerous cases the importer and the customs official could not agree on the value of the goods, which is the basis for tariff. This often leads to products being held up at customs from a few days to over a week or the importer having to pay a higher tariff. Furthermore, importers have to pay daily extra storage fees for shipments that are not cleared due to disputes in valuation.

Similarly, importers also perceive general sales taxes and VAT as a burden. VAT paid for input material is refunded if the final good is exported. However, importers from sectors such as chemicals who import capital goods or materials for the production of export goods mirror the complaint of exporters that the lengthy refund process takes more than a year.

Most of the 37 NTM cases reported by importers for exporting partner country regulations concerned export inspections or verification of paper works which sometimes delay the shipment (29 cases).

In terms of POs faced by importers, 236 cases in partner countries and 762 cases in Kenya were recorded. It is important to note that even if an NTM is applied by Kenya on imports the real problem may lie on the related POs that occur in Kenya or partner (exporting) country. Delays in administrative procedures, both in Kenya and abroad, appear to be the main cause of concern (Figure 15). Other administrative hurdles, in particular inconsistent classification of products or other arbitrary behaviour of officials were reported in relation to Kenyan authorities. In addition, informal payments constitute 9% of reported POs in Kenya (70 incidents), while technological constraints, such as unstable IT infrastructure used by KRA for custom clearance, account for 6% of problems. In contrast, obstacles other than delays encountered in partner countries are mostly linked to unusually high fees and charges, limited facilities and legal constraints.

Figure 15: Cases of POs and inefficient TBE faced by importers in Kenya and partner countries



Source: ITC NTM Business Survey in Kenya, 2011.

1.4.1. Kenya-based agencies and procedural obstacles

The Kenyan agencies mentioned by exporters and importers in relation to POs are listed in table 4. Importers encounter more POs in Kenya than exporters, but both face the highest number of POs at the customs department, which is under KRA, 42% and 51% of POs for exporters and importers respectively. This is linked to the fact that all trading companies must deal with customs officials, whereas other agencies may only be relevant for exporters and importers of a specific subset of products. As a result, these other agencies may be mentioned less frequently. The main cause for concern was slow administrative procedures at KRA, followed by high fees charged for inspection and informal payments demanded by KRA officials.

Exporters from the agro-food sector also face significant hurdles dealing with KEPHIS (24% of cases) and HCDA (10%) when certifying their products. Importers face considerable obstacles in KBS (18%) and the Kenya Port Authority (16%).

The following sections contain a more in-depth analysis of the survey results by sector. In both the agro-food and manufacturing sectors, the analysis covers both the export and import perspectives.

Table 4: Procedural obstacles reported to take place in Kenya-based agencies

POs/TBE affecting exports			POs/TBE affecting imports		
Agency	**Number of times the agency was reported in relation to POs**	**Share in total obstacles**	**Agency**	**Number of times the agency was reported in relation to POs**	**Share in total**
Kenya Revenue Authority (customs)	228	41.9%	Kenya Revenue Authority (customs)	497	51.2%
Kenya Plant Health Inspectorate Services	130	23.9%	Kenya Bureau of Standards	179	18.4%
Horticultural Corporation Development Authority	52	9.6%	Kenya Ports Authority	152	15.7%
Kenya Ports Authority	23	4.2%	Insurance Regulatory Authority	15	1.5%
Kenya Bureau of Standards	20	3.7%	Intertek	14	1.4%
Kenya Airports Authority	8	1.5%	Ministry of Agriculture	14	1.4%
Ministry of Health	7	1.3%	Kenya Plant Health Inspectorate Services	13	1.3%
Ministry of Trade	7	1.3%	Mines and Geology Department	12	1.2%
Kenya National Highway and Roads Authority	6	1.1%	Criminal Investigation Department	10	1.0%
Ministry of Public health	6	1.1%	Pest Control Products Board	8	0.8%
Ministry of Roads	6	1.1%	Horticultural Corporation Development Authority	6	0.6%
Coffee Board of Kenya	4	0.7%	Kenya Airports Authority	6	0.6%
Chamber of commerce	4	0.7%	Ministry of Trade	6	0.6%
Fisheries department	4	0.7%	Police	6	0.6%
Shinace Garments Ltd	4	0.7%	Central Bank of Kenya	4	0.4%
Veterinary department	4	0.7%	Container Freight Stations	4	0.4%
Ministry of Agriculture	3	0.6%	Société Générale de Surveillance	4	0.4%
Post Office	3	0.6%	Kenya Wildlife Service	3	0.3%
Clearing Agents	2	0.4%	Pharmacy and Poison Board	3	0.3%
Fumigation companies	2	0.4%	Insurance companies	2	0.2%
Kenya Tea Development Authority	2	0.4%	Kenya Poisons Board	2	0.2%
Ministry of Livestock	2	0.4%	Kenya Sugar Board	2	0.2%
Société Générale de Surveillance (SGS)	2	0.4%	Ministry of Health	2	0.2%
Treasury/inland container depot	2	0.4%	Ministry of Trade	2	0.2%
Mines and Geology Department	1	0.2%	Ministry of Fisheries Development	1	0.1%
Ministry of Commerce	1	0.2%	Ministry of Roads	1	0.1%
Ministry of Foreign Affairs	1	0.2%	Ministry of Transport	1	0.1%
Pharmacy and Poison Board	1	0.2%	Not specified	1	0.1%
Wood and metal traders	1	0.2%			
Not specified	8	1.5%			
Total	**544**	100%	**Total**	**970**	100%

Source: ITC NTM Business Survey in Kenya, 2011.
Note: The total number of times the agencies were reported in relation to POs can be higher than the total number of POs because companies often report more than one agency involved in each case.

2. The agro-food sector

This section presents an overview of the agricultural sector and its importance to the Kenyan economy, followed by a detailed analysis of the burdensome regulations and obstacles to trade faced by Kenyan businesses.

2.1. The role of the sector

The agriculture sector is a major contributor to the Kenyan GDP, second only to the services sector. Agricultural production in 2010 was valued around US$ 7 billion or around 25% of GDP.[39] The government has identified the agriculture sector as key to economic growth. It has increased its investment and set up various agencies to support the sector.[40] As a result, the value of agricultural production has been rising steadily over the last decade. The sector suffered a setback during 2008 and 2009 due to dry weather conditions, escalating global food and fuel prices, and the global financial crisis.[41] The sector recovered sufficiently in 2010 to record a growth of 6.3% according to the Kenya Bureau of National Statistics (KNBS).[42] This growth was primarily due to favourable weather conditions, government subsidies for seeds and fertilizers, and improved prices for major products such as tea and coffee. Between 2009 and 2010, products such as tea, wheat and rice recorded impressive growths of 27%, 55% and 95% respectively.[43]

Agriculture is important to the Kenyan economy as it provides 18% of formal employment and more than 70% of informal employment in the rural areas.[44] Around 70% of marketed agricultural produce in Kenya originates from small-scale farmers using traditional means of farming. The government believes that productivity in these small-scale farms can be enhanced if the farmers adopt modern production techniques.[45] Large-scale farming accounts for the remaining 30% of marketed agricultural produce and has witnessed increased productivity with the adoption of improved farming technologies and better farm management.

Export of agricultural products from Kenya reached US$ 3.1 billion in 2010, which is 63% of the country's total exports.[46] Kenya exported products worth over US$ 1.2 billion (39% of total agricultural export) to the European Union (figure 16), out of which approximately 35% were cut flowers and plants, followed by tea and coffee (29%), and vegetables (18%).

The export of agricultural products worth US$ 771 million to the neighbouring EAC and COMESA countries (Figure 16) highlights the importance of regional trade to the Kenyan economy. Tea (US$ 297 million) and various types of animal and vegetable fat (US$ 150 million) are the major Kenyan exports to countries in these regions.

Kenyan agricultural exports are dominated by coffee, tea and spices (45.9%), followed by plants and cut flowers (15.3%), and vegetables (9.1%). Following the export downturn in 2009, agricultural exports recovered in 2010. Over the past decade, export of tea and coffee grew faster than any other products (Figure 17).

[39] World Bank (2010), World Development Indicators. Note: the definition of agricultural sector used in the World Development Indicators (WDI) and the ITC NTM Survey report is not exactly the same. The WDI definition is based on International Standard Industrial Classification (ISIC) and includes forestry, hunting, and fishing, cultivation of crops and livestock production (Division 1-5). In addition to these categories, the ITC report also includes ISIS division 15 and 16: 'manufacture of food products and beverages' and 'manufacture of tobacco products' under the agricultural sector. Figures from WDI are used only as an approximate reference.

[40] Government of Kenya (2010). Agricultural Sector Development Strategy 2010 – 2020.

[41] Ibid; World Bank (2010), World Development Indicators.

[42] Note: the composition of agriculture sector is not exactly the same as used in this report and KNBS. For example, processed food is included in agriculture sector in this ITC report while it is included in manufactured sector in KNBS.

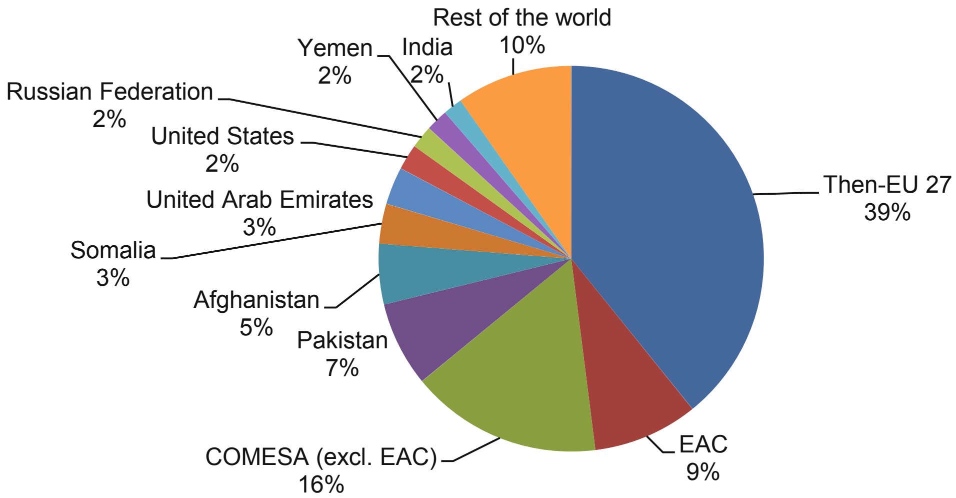
[43] KNBS (2011), Kenya Economic Survey 2011: Highlights.

[44] Government of Kenya (2010), Agricultural Sector Development Strategy 2010 – 2020.

[45] Ibid.

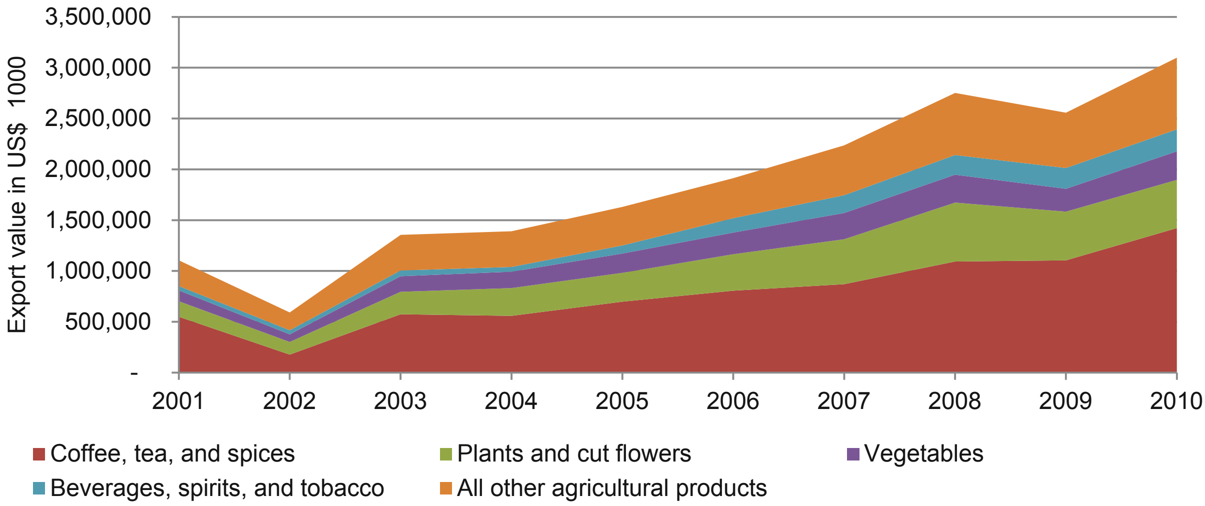
[46] ITC Trade Map (2012). Note: Total export excludes export of minerals and arms.

Figure 16: Kenyan agricultural exports: major markets, 2010



Source: ITC calculation based on Trade Map, 2012.

Figure 17: Export growth of major Kenyan agricultural products, 2001 to 2010



Source: ITC calculation based on Trade Map, 2012.

2.1.1. Tea

Kenya is the world's third largest producer of tea after India and China, with an output of 399,000 metric tons in 2010.[47] In the same year, Kenya exported 417,661 tons of tea worth US$ 1.2 billion, making it the largest tea exporter in the world in terms of quantity and the second largest in terms of value.[48]

The tea industry is a vital component of the economy as it provides livelihoods for a large share of the population and is the main source of foreign exchange earnings. Despite the adverse weather conditions in 2009 that hampered growth, tea exports have risen steadily. In 2010, tea accounted for 24% of Kenya's total exports.

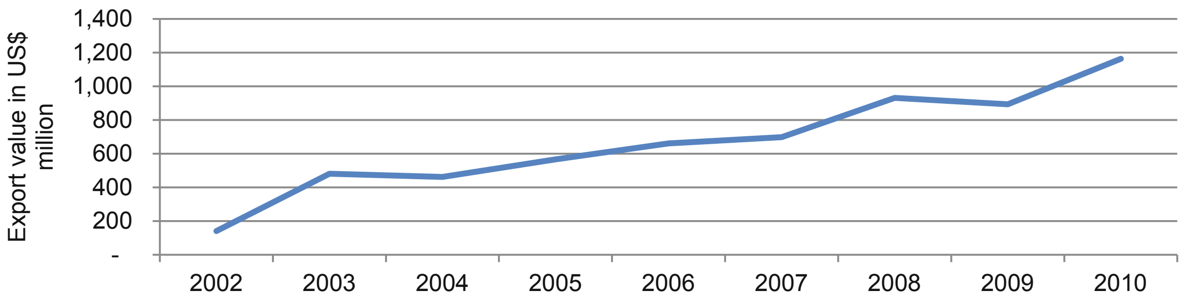
Kenya exported an estimated US$ 208 million worth of tea each to its two biggest markets, Pakistan and Egypt. Other important and growing markets for Kenyan tea include the United Kingdom, Afghanistan,

[47] Food and Agricultural Organization of the United Nations (2012); and the Tea Board of Kenya (2012).

[48] ITC Trade Map (2012).

Sudan, United Arab Emirates and Yemen. Cumulatively, exports to these seven countries amount to 80% of the tea export from the country. Kenyan tea exporters have also benefited from better prices in the world market. Between 2007 and 2010, the price per ton of Kenyan tea has risen from US$ 1,865 to US$ 2,786 per ton. However, this is still lower than the price of Sri Lankan and Indian tea, which command prices of US$ 4,368 and US$ 3,176 per ton respectively.[49]

Figure 18: Tea exports from Kenya, 2002 to 2010



Source: ITC calculation based on Trade Map, 2012.

2.1.2. Horticulture

Horticulture is one of the fastest growing Kenyan exports. With a growth rate of more than 7% annually, the sector is becoming a major foreign exchange earner. Similar to the tea industry, horticultural exports were depressed in 2010 largely due to the continued recession in its main market, the European Union. This situation was exacerbated by the temporary closure of the European air space following the volcanic eruption in Iceland in May 2011. Overall, the total volume of marketed fresh horticultural produce declined from 181,000 tons in 2009 to 147,100 tons in 2010, a decline of 18.6%.

Cut flowers are by far the most important product constituting 45% by volume and 57% by value of total horticultural exports. Kenya exports over 60% of its cut flowers to the Netherlands while the rest are exported directly to wholesalers and retail outlets in Europe. Major cut flower and plant exports from Kenya include roses, carthamus, cuttings, cut foliage, carnations, statice and alstroemeria. In 2010, the export value of flowers declined by 20% leading to an overall decline in horticultural export earnings. The quantity of the cut flower export dropped from 87,000 tons in 2009 to 68,000 tons in 2010.

Vegetables are the second biggest product group within the horticultural industry and contribute to about 35% of total fresh produce exports by volume. French green beans are the main product followed by other vegetables such as sugar snap peas and snow peas. Fresh fruits are the third largest category of the fresh horticultural exports and are also growing steadily. Major fruit export products include avocados, mangos, pineapples, passion fruits, bananas and strawberries.

2.2. Affected companies

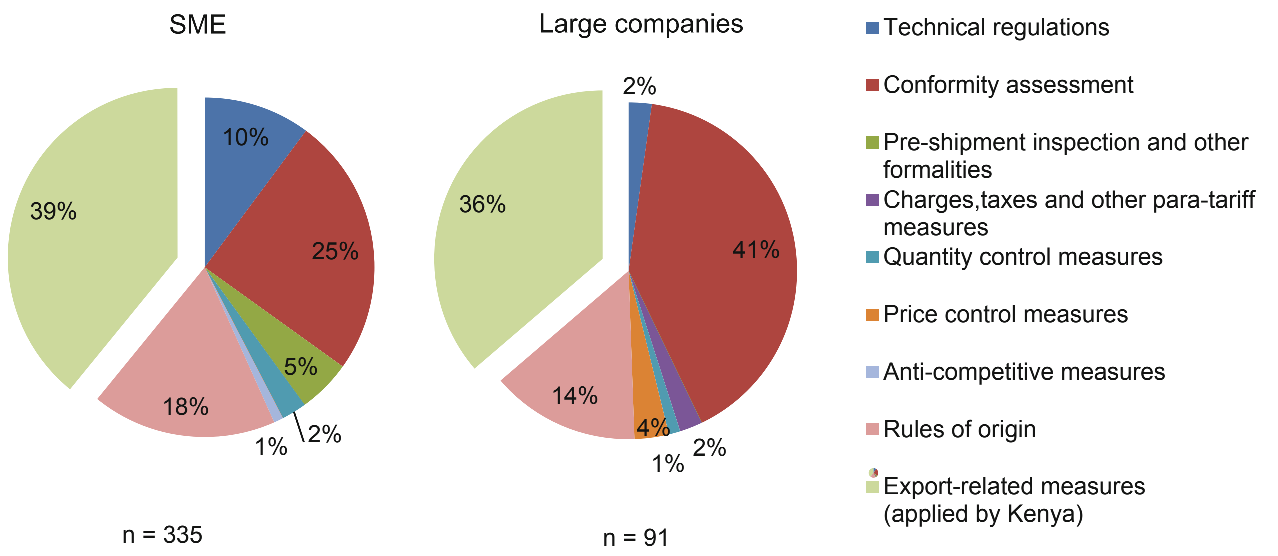
ITC interviewed 253 exporting companies from the agricultural sector during the initial telephone interview phase. Among these companies, 76% reported to be affected by burdensome regulations or related obstacles to trade. Subsequently, 97 of these affected companies were further interviewed in detail to understand the comprehensive nature of problems they faced. These affected companies reported 432 cases of difficult regulations, out of which 266 were applied by importing partner countries and 166 by Kenya.

SMEs and large exporters experienced approximately the same proportion of NTMs applied by Kenya (export-related measures), 39% and 36% respectively (Figure 19). The main contrast among companies of different size is that SMEs face more problems related to technical regulations (10%) compared to large companies (2%). Large companies face many more problems with conformity assessment (41%)

[49] ITC Trade Map (2012).

compared to SMEs (25%). Regulations concerning rules of origin are a common issue with the SMEs and large companies, with 18% and 14% of the reported cases respectively.

Figure 19: Types of NTMs faced by agricultural exporters, by company size



Source: ITC NTM Business Survey in Kenya, 2011.

Note: For six cases, the size of the affected company was unknown. SMEs (less than 100 employees) include micro, small and medium-sized enterprises as captured during the telephone interviews. Company size is based on the number of employees as defined by the government.

2.3. Exporters' experience with NTMs applied by partner countries

The European Union is the biggest market for the Kenyan agriculture sector, accounting for 39% of the exports. Survey results show it is also the export market that applies the highest number of burdensome NTMs (109 cases, Figure 20). According to the survey methodology, sample size is determined by the size of the sector and randomized in terms of export market. As a result, reported NTMs tend to originate from countries where companies export the most. In the case of exports to European Union, the share of burdensome regulations experienced by exporters (41%) is slightly higher than the share of exports to these countries (Figure 20). Most of these regulations are related to strict EU regulations on food safety and related conformity assessments.

Kenya is an EAC member; however, the NTM survey reveals that EAC partners apply more burdensome NTMs compared to their share of Kenyan exports. Around 9% of Kenyan agricultural exports go to EAC countries, but they account for 12% of NTM cases. A major cause of concern in the EAC region is the lack of harmonization of standards and that certificates of conformity issued in one country are not recognized in the other. Exporters complain of products having to undergo inspection for quality by the customs of importing EAC countries even if they are already tested and certified at home by the Kenya Bureau of Standards (KEBS) or KEPHIS.

Companies exporting to EAC countries are also required to obtain various types of licences including business licences, import or export licences, road transport licences and municipal council licences[50] from each individual country instead of obtaining one common EAC licence. In addition to these regulatory requirements, exporters experience difficult conditions when transporting goods through these countries. For example, the surveyed companies have reported cases of Kenyan drivers being required to obtain permits to drive transport trucks in the United Republic of Tanzania. Companies that were unable to obtain

[50] Muluvi et al. (2012).

permits for their drivers usually resorted to hiring Tanzanian drivers or paying bribes to Tanzanian authorities to drive without the permit.

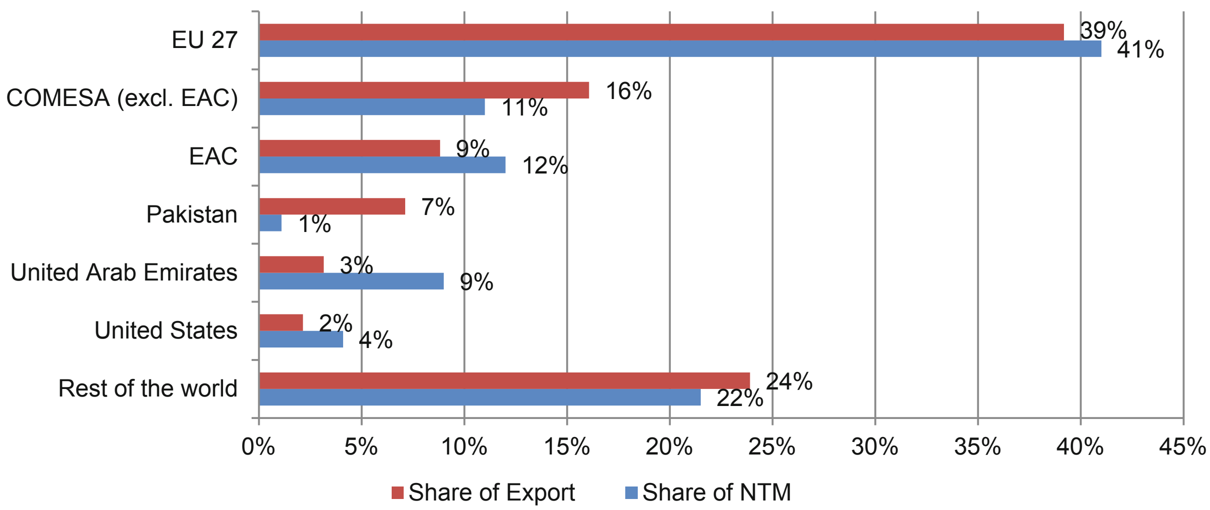
Compared to EAC, COMESA countries (excluding EAC members) appear to be more favourable export destinations. These countries account for 16% of exports but were responsible for only 11% of the NTM cases experienced by Kenyan exporters. However, exporters are still affected by conformity assessment regulations applied by countries in the COMESA region.

Pakistan and United Arab Emirates are also important markets for Kenyan agricultural products. Kenyan exporters have different experiences when exporting to these two countries. Exports to Pakistan seem more encouraging as it imports more than 7% of Kenyan agricultural exports, primarily tea, but only 1% of the burdensome regulations is experienced with Pakistan. In contrast, United Arab Emirates imports less than 3% of Kenyan exports, but is responsible for 9% of reported NTMs.

Most exporters of agricultural products, besides tea and coffee, are affected by partner countries' regulations. Products such as plants, cut flowers and vegetables make up around one-quarter of total agricultural exports and account for 109 cases (41%) of NTMs encountered. Other items such as dairy, animal products and fruits together make up less than 3% of the agricultural exports, but account for 105 cases (40%). Fruit exporters, in particular, were concerned with difficulties involved in exporting to EAC member countries as they were required to obtain licences from each country separately, which resulted in additional cost and delays.

Exporters of products such as animal and vegetable oil, sugar confectionery and cocoa products were only affected by regulations from EAC and COMESA (18 cases) as most of the exports went to these regions. Beverages and tobacco products, which account for around 7% of total agricultural exports, were mostly exported to EAC and COMESA countries, but exporters did not report facing burdensome regulations.

Figure 20: Share of agricultural export and share of NTMs applied by partner countries, 2010



Source: ITC NTM Business Survey in Kenya, 2011; and ITC Trade Map, 2012.

2.3.1. Difficulties with technical requirements and related conformity assessment

Agricultural exporters faced the highest number of difficulties with technical measures applied by importing partner countries. These technical measures or product-specific regulations include both technical requirements and conformity assessment. Technical requirements are specifications of a product or the production process and post-production treatment that exporters must comply with. Conformity assessments are measures to determine whether a product or a process complies with a technical requirement.

Overall, 60% of all the burdensome regulations cases faced by agricultural exporters were technical measures (table 5). Exporters faced more problems with conformity assessment (124 cases) compared to technical requirements (36 cases). This observation is consistent with results of ITC NTM surveys in other African countries. For instance, in Rwanda, Malawi and Mauritius the share of NTM cases due to technical requirements ranged between 5% and 21%, while the share of conformity assessment cases ranged between 60% and 65%. This underscores the fact that exporters across the region face many more problems proving compliance with technical requirements rather than the product-specific requirement itself.

Table 5: Export of agro-food products – burdensome NTMs applied by partner countries

Subsector	Export to the world		Number of reported NTM cases								
Subsector description	Export value in 2010, $ '000	Share in sector's export value	Technical requirements	Conformity assessment	Pre-shipment inspection and formalities	Charges, taxes and other para-tariff measures	Quantity control measures	Price control measures	Anti-competitive measures	Rules of origin	**Subtotal**
Dairy and other animal products	18,405	0.6%	2	19						14	**35**
Plants and cut flowers	474,743	15.3%	3	22						29	**54**
Edible vegetables	280,829	9.1%	5	29	8					13	**55**
Edible fruit	63,501	2.1%	11	30	9		8			12	**70**
Coffee, tea, mate and spices	1,421,827	45.9%	2	1							**3**
Oil seed, oleagic fruits, grain, seed, fruit, etc., n.e.s.	16,134	0.5%	1	7						2	**10**
Animal and vegetable fats and oils	155,781	5.0%		8		2		2			**12**
Sugars and sugar confectionery	61,047	2.0%	2						1		**3**
Cocoa and cocoa preparations	7,154	0.2%	2						1		**3**
Vegetable, fruit, nut and miscellaneous food preparations	142,842	4.6%	3	7			1	1	1	2	**15**
Beverages, spirits and vinegar; Tobacco and manufactured tobacco substitutes	216,069	7.0%									**0**
Rubber and articles thereof	579	0.02%									**0**
All other agri-food products[1)]	240,087	7.7%	5	1							**6**
TOTAL	**3,098,998**	**100%**	**36**	**124**	**17**	**2**	**9**	**3**	**3**	**72**	**266**

Source: ITC NTM Business Survey in Kenya, 2011.

1) This subsector includes the following subsectors: live animals; meat and edible meat offal; fish, crustaceans, molluscs, aquatic invertebrates n.e.s.; cereals and milling products, malt, starches, inulin, wheat gluten; and cereal, flour, starch, milk preparations and products.

With the exception of tea and coffee exporters, most other agricultural exporters faced a variety of issues related to technical measures of importing countries. The European Union is responsible for almost half of these cases. Exporters of plants and cut flowers highlighted some key issues faced by the industry. The European Union imposes very strict conditions on imports of plants and flowers and has zero tolerance for any types of pests on the product. These measures are intended '…to prevent the introduction and/or spread of pests and organisms harmful to plants or plant products across the EU boundaries'.[51]

Exporters of vegetable and fruits also routinely faced problems with the strict EU requirements on the level of pesticide residual and other contaminants such as nitrates, aflatoxins and heavy metals allowed in the product.[52] The survey captured several incidents of shipments being denied entry into the EU on this basis and eventually having to be destroyed. Exporters report that they struggle to get adequate information on the type and level of residuals allowed by the European Union. To counter this problem they urged the

[51] European Commission (2012), EU Export Helpdesk – Plant Health Control (Revision: 01/06/2012).

[52] A detailed description on the type and level of residuls in foodstuffs allowed is available European Commission Regulation (EC) No. 1881/2006, and Commission Regulation (EC) No. 396/2005.

Kenyan Government to take a more active role in informing the producers about the rules and regulations in foreign markets.

In 2011, the European Union rejected K Sh 20 billion worth of fresh food shipments from Kenya treated with dimethoate. Dimethoate is a pesticide widely used by Kenyan vegetable producers because of its effectiveness and low price. It is also thought to be carcinogenic. Due to its harmful nature 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 meet.[53] To safeguard its position in its biggest market the Kenyan Government banned the use of the chemical in early 2012 and has since been informing farmers across the country on alternate safe pesticides.[54]

In a more positive development, the United States Department of Agriculture approved the import of Kenyan French green beans and snow peas after a series of risk analyses and negotiation with Kenyan authorities. To meet the hygienic requirements demanded by the United States authorities, French green beans now must be shredded or cut into small pieces of 2 cm to expose any pests and the snow peas must be dipped in chlorinated water to be disinfected from pathogens. In addition, companies must pack the products in facilities approved and registered by KEPHIS and be accompanied by a phytosanitary certificate.[55]

Interviews with exporters also revealed that products such as makuti (dried coconut palm leaves) must be fumigated to ensure they are pest free before being exported. However, there are only a few legal institutions in Kenya capable of fumigating the products for export. This forces exporters to hire professionals from other cities, which eventually led to higher costs and delays. The exporters believe the government should set up more fumigation facilities across the country. However, KEPHIS and HCDA believe that inadequate fumigation services must be addressed by encouraging private sector investment because providing these services is not the mandate of public agencies.

The survey also captured multiple cases of fresh food exporters having to be registered in the official register of each EU member state before their products were allowed to enter the market. Exports to the EU must be accompanied by an official phytosanitary certificate or phytosanitary certificate for re-export if the consignment has been stored, repacked or split up in a non-EU transit country.[56] These official certifications are issued by various agencies including KEPHIS, HCDA and KEBS. Getting these certificates issued resulted in considerable cost to the exporters in terms of fees and time delays. Most of these technical NTMs were burdensome to the exporters not because they were too strict to comply with, but because of the related POs. Among the burdensome regulations related to conformity assessment, 50 cases were considered difficult because of delays in administrative procedures and 40 cases were difficult due to high fees and charges (Table 6). In response to claims of high fees and charges by the companies, the public agencies remarked that the request for lower fees is not tenable as the government mandates them and the current fees are set on a cost recovery basis. However, despite these structural constraints public agencies can still facilitate the companies by making the fee structure more transparent and visible by making such information available in a one-stop website and handbooks.

Exporters also report that Egypt and Zambia require Kenyan dairy products to be certified by the Dairy Board of Kenya to ensure the products are free from disease. To obtain this certification companies are required to provide information about the location and details of each individual farm where the milk is sourced. Dairy companies that source their milk from different parts of the country find it time consuming to obtain this certification. Exporters of dairy products also complain that Zambia prohibits the import of long-life milk from Kenya, citing the spread of foot-and-mouth disease in the country even though the disease has already been curbed. Prior to the launch of this survey, Zambia had imposed a ban on the import of all

[53] Business Daily Africa, EU fruit rejection forces chemical ban, article from 30 January 2012, available at: http://www.businessdailyafrica.com/EU+fruit+rejection+forces+chemical+ban+/-/539546/1317052/-/upv48l/-/index.html, accessed on 1 February 2013.

[54] Capital FM, Dimethoate Banned to Meet EU Standards, article from 30 January 2012, available at: http://www.capitalfm.co.ke/business/2012/01/dimethoate-banned-to-meet-eu-standards/, accessed on 1 February 2013.

[55] Daily Nation, Kenya gets US approval to export French beans and peas, article from 28 April 2012, available at: http://www.nation.co.ke/business/news/Kenya+gets+US+approval+to+export+French+beans+and+peas+/-/1006/1395792/-/qeigm9z/-/index.html , accessed on 1 February 2013.

[56] European Commission (2012), EU Export Helpdesk – Plant Health Control (Revision: 01/06/2012).

dairy products. The ban was imposed following complaints from the Zambian Dairy Processors Association (ZDPA) claiming that Kenyan raw milk did not meet the required health standards.[57] The ban, which lasted five years, was lifted in December 2010.

2.3.2. Difficulties with voluntary standards

In addition to mandatory official regulations, exporters of vegetables and cut flowers also indicate difficulties complying with voluntary standards such as GlobalG.A.P.[58] GlobalG.A.P. is a Good Agricultural Practice pre-farm gate standard that covers all production process from certification of feed or seedlings and all farming activities. It is designed to reassure consumers about how food is produced on the farm by minimizing detrimental environmental impacts of farming operations and reducing the use of chemical inputs, as well as ensuring a responsible approach to worker health and safety and animal welfare.[59] This standard remains voluntary; however, finding buyers without GlobalG.A.P certification is difficult. Among the top food retail chains in Europe, seven require their suppliers to be GlobalG.A.P. compliant. These seven retailers alone account for 76% of fresh fruit and vegetables sales and between 70% and 90% of fresh produce imports from Africa.[60]

GlobalG.A.P. requires producers to comply with certain environmental, social and economic criteria that are assessed by third-party auditors.[61] The main concern among exporters is the high fees charged by private inspecting and certification agencies such as Bureau Veritas and Société Générale de Surveillance (SGS). A study of 11 exporters found the certification cost of a small farmer to be over US$ 1,400. On average, 36% of the cost was borne by the farmer, 40% by the exporter and 20% by external agencies. A further study of 439 small-scale vegetable farmers in Kenya concluded that initial and recurrent cost of GlobalG.A.P. certification amounted to one-third of farmers' annual income.[62]

Kenya has recognized the importance of good agricultural practices (GAP) certification for Kenyan horticultural products in the international market and has developed its own quality assurance scheme: the Kenya-GAP. Kenya-GAP is based on the principles of GAP, Hazard Analysis Critical Control Point principles for food handling and marketing, local regulations and the International Labour Organization conventions ratified by Kenya.[63] The Fresh Produce Exporters Association of Kenya (FPEAK) owns this scheme, which is managed by an industry-wide technical committee.[64] Kenya-GAP is benchmarked to the international GlobalG.A.P. and is adjusted to the local conditions. Introducing a local standard benchmarked to the internationally recognized scheme is certainly a practical move in the right direction, enabling more Kenyan producers to access the international market at a reasonable cost.

2.3.3. Difficulties with rules of origin

Kenya is a beneficiary country of the GSP, which aims to promote economic growth in developing and least developed countries by allowing goods produced in these countries preferential access to markets in the developed countries.[65] Most developed countries, including Kenya's major trade partners, the European Union and the United States, grant GSP preferences to Kenya. In addition to the GSP preferences, Kenyan exporters also benefit from preferential access to markets in EAC and COMESA countries (see chapter 1, section 2 for more information on Kenya's trade agreements).

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[57] Business Daily Africa, Milk exporters regain Zambia market after 5-year lockout, article from 9 December 2010, available at: http://www.businessdailyafrica.com/Corporate%20News/Milk%20exporters%20regain%20Zambia%20market%20after%205%20year%20lockout/-/539550/1068692/-/n0dtsh/-/index.html, accessed on 1 February 2013.

[58] Formerly know as the EUREPGAP.

[59] ITC (2012). Standards Overview: GlobalG.A.P.

[60] Webber and Labaste (2009), Building Competitiveness in Africa's Agriculture.

[61] GLOBALG.A.P. website: http://www.globalgap.org/uk_en/who-we-are/, accessed on 1 July 2013.

[62] ITC (2012), Market Access, Transparency and Fairness in Global Trade: Export Impact for Good.

[63] The Fresh Produce Exporters Association of Kenya (2007).

[64] Ibid.

[65] The exact number of products and the nature of preferences differ from one country to another. For a complete list of countries granting GSP preferences to Kenya and details for the agreement refer to the ITC Market Access Map: http://www.macmap.org/QuickSearch/TariffRegimes/TariffRegimesResults.aspx?country=SCC404%7cKenya&isimporter=E

Exporters have to comply with the rules of origin of each scheme and obtain certification to attest their goods are produced in Kenya or that adequate value addition has taken place in Kenya to benefit from preferential treatment. For example, to benefit from the GSP preferences granted by the European Union, each consignment must be accompanied by a EUR.1 certificate that certifies the country of origin of the product. This certificate is issued by the national authorities of the exporting company and is done by KRA in Kenya.

The NTM survey shows that these schemes, which are intended to improve market access, sometimes create an additional hurdle for exporters. Agricultural exporters report 72 NTM cases related to rules of origin. A closer inspection of these reported problems reveals that exporters have no difficulties complying with the conditions set out in the rules of origin. However, they find the process of applying and obtaining the certificate from KRA to be tedious and time consuming. This is a major bottleneck in the export process, considering that an original certificate must accompany most consignments.

Companies interviewed in the survey stressed the need to streamline the process of obtaining the certificates from KRA. According to the exporters, the process of obtaining the certificates usually takes three to five days. The exporters also pointed out some instances when the KRA did not have adequate certificates to issue. These delays are especially problematic to exporters of horticultural products (cut flowers, vegetables and fruits) that have a short lifespan and can perish if the market is not reached in time.

When made aware of these issues, KRA acknowledged that at times it may not have been able to carry out inspection in the scheduled time. It recommended that companies request inspection early enough to avoid delays. KRA also stated that it is standard procedure to inspect new companies and products before issuing a COO and that the exporters must make the effort to study the booklet on rules of origin that describes all relevant issues.

2.3.1. Trouble-free tea and coffee exports

The NTM survey found the exporters from the tea and coffee sector, which combined make up the largest export share, to be experiencing very few problems complying with partner countries' regulations. The export of tea and coffee from Kenya is worth US$ 1.4 billion and in 2010 made up roughly 46% of total agricultural exports. However, exporters of these products reported only three cases of burdensome foreign regulations, all being applied by the United States. This is surprising considering that most of the exports go to the European Union, which has some of the strictest safety and quality control regulation on the import of food products.

The low level of affectedness in the tea and coffee industry may be credited to internal control and the network of various support agencies. Being the top foreign currency earner for the country, Kenyan authorities have emphasized the development of tea production and processing. The Tea Board of Kenya, established by the government, is the apex body of the tea industry and is responsible for regulating and promoting the industry. It regulates registration of growers and management agents, and licensing of tea processing factories. In addition, it monitors compliance on all aspects of tea regulations, control and manufacturing.[66] The government has created the Tea Research Foundation of Kenya, which is responsible for research on various aspects of tea including productivity, quality, diversification, sustainable production and branding.[67]

The Mombasa Tea Auction system also plays a critical role in the export of Kenya's tea to the international market. Tea auctions are held weekly, on Mondays and Tuesdays, with producing countries such as Uganda, United Republic of Tanzania, Rwanda, Burundi, Democratic Republic of Congo, Malawi, Madagascar and Zambia. Importing countries including the United Kingdom, Pakistan, Sudan, Egypt, Afghanistan, United Arab Emirates and Singapore pay close attention to the weekly activities in Mombasa to gauge market trends and develop benchmarks for international prices. The East African Tea Trade Association (EATTA), in collaboration with government agencies, has helped to attract more tea producing countries to the Mombasa Tea Auction. EATTA regularly works on the efficiency of warehousing, handling,

[66] The Tea Board of Kenya website: http://www.teaboard.or.ke, accessed on 1 July 2013.

[67] Tea Research Foundation of Kenya website: http://www.tearesearch.or.ke, accessed on 1 July 2013.

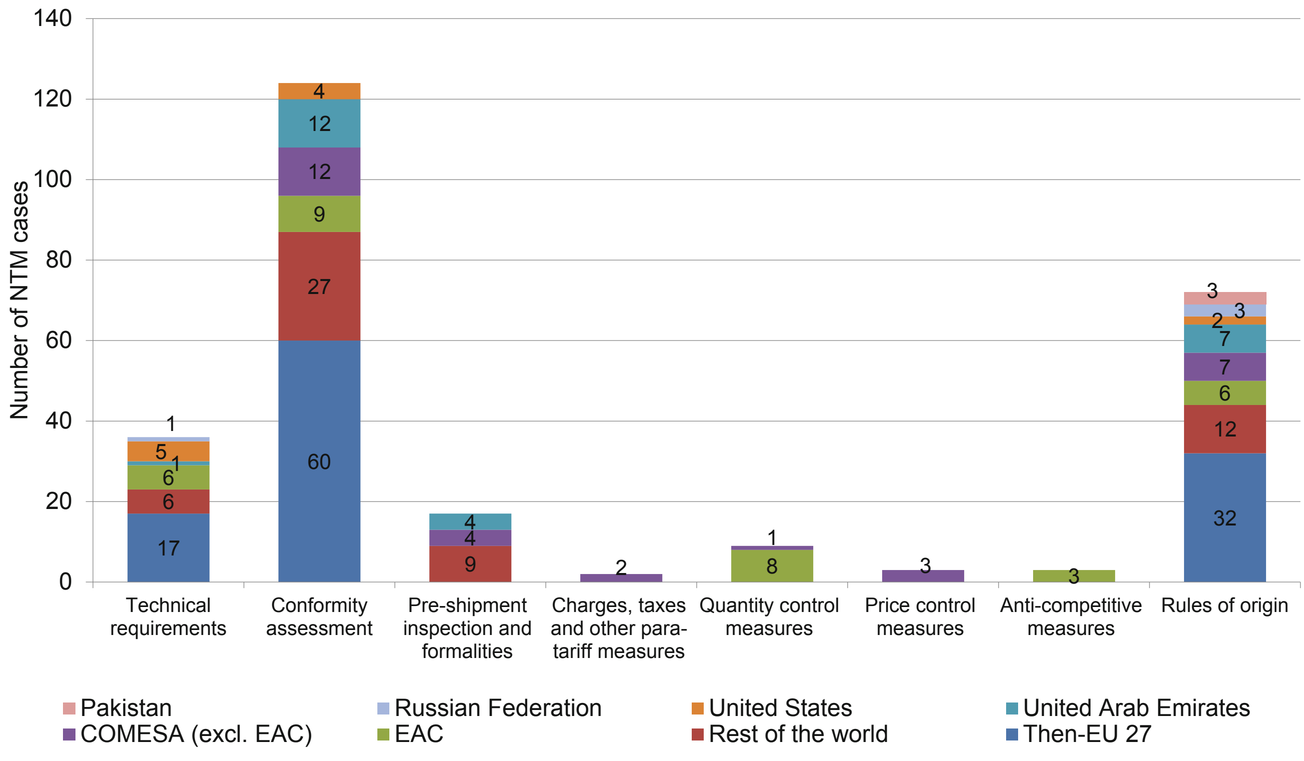
shipping and communication to attract international buyers. Mombasa has earned a reputation as a centre for some of the best crush, tear and curl (CTC) grades in the world as well as an international blending floor with teas from Kenya and other parts of the world. The efficiency of these systems likely contributed to fewer experiences with burdensome regulations.

Participants at the stakeholder meeting in Nairobi agreed that the importance of tea and coffee exports to the Kenyan economy has led to a high level of investment and development in this sector for many years. As a result, Kenyan tea and coffee exports meet high international standards and face very few SPS- or TBT-related issues in partner countries.

The coffee subsector has also received considerable support from the government in the form of writing off debts owed to the government by the cooperative societies, creating a Coffee Development Fund, allowing direct sales as opposed to auction, training of the cooperative society's staff on good governance, and the review of Coffee Act aimed at reducing the number of licences that millers, marketers and godowns must comply with.

A representative from the Coffee Board of Kenya (CBK) explained that the initial registration process and requirements for first-time exporters could be tedious and costly, which could potentially be a barrier to small-scale companies. After the initial hurdle, the rest of the procedure was fairly smooth for the exporters. CBK also noted that it issues the International Coffee Organization certificate, which is required for companies to export, on the same day. Delays usually occur when the companies do not submit the correct documentation.

Figure 21: Export of agro-food products – types of NTMs applied by partner countries



Source: ITC NTM Business Survey in Kenya, 2011.

Table 6: Export of agro-food products – NTMs applied by partner countries and reasons making them burdensome

NTM Chapter	Number of NTM cases	POs and inefficient TBE making NTMs difficult	Number of cases in home country	Number of cases in partner country	Subtotal of PO cases
Technical regulations	36	Delay in administrative procedures	1	1	**2**
		Delay during transportation		2	**2**
		Limited/Inappropriate facilities	2		**2**
		Information is not adequately published and disseminated		1	**1**
		Unusually high fees and charges		1	**1**
Conformity assessment	124	Delay in administrative procedures	7	43	**50**
		Unusually high fees and charges	14	26	**40**
		Difficulties with translation of documents from or into other languages		12	**12**
		Large number of different documents	6		**6**
		Numerous administrative windows/organizations involved	4		**4**
		Limited/Inappropriate facilities		2	**2**
		Other inconsistent or arbitrary behaviour of officials		1	**1**
Pre-shipment inspection and other formalities	17	Delay in administrative procedures	4		**4**
Charges, taxes and other para-tariff measures	2	Requirements of the regulation are too strict			**0**
Quantity control measures	9	Numerous administrative windows/organizations involved		8	**8**
		Delay in administrative procedures		8	**8**
		Lack of recognition, e.g. of national certificates		8	**8**
Price control measures	3	Requirements of the regulation are too strict			
Anti-competitive measures	3	Informal payment, e.g. bribes		3	**3**
Rules of origin	72	Delay in administrative procedures	16	6	**22**
		Numerous administrative windows/organizations involved	3	4	**7**
		Other inconsistent or arbitrary behaviour of officials	4		**4**
		Informal payment		3	**3**
		Technological constraints	3		**3**
		Lack of recognition		3	**3**
		Information is not adequately published and disseminated	2		**2**
		Unusually high fees and charges	2		**2**
Total	**266**		**68**	**132**	**200**

Source: ITC NTM Business Survey in Kenya, 2011.

2.4. Exporters' experiences with regulations in Kenya

This section investigates regulations applied by the Kenyan authorities that are deemed burdensome by the exporters of agricultural products. In the agricultural sector, 58 companies faced difficulties with Kenyan regulations compared to 36 companies affected by partner country regulations. This can be partly explained by the fact that almost all home country regulations have to be directly dealt with by the exporters themselves. In cases of regulations applied by partner countries, some of the regulations are dealt with by the importing company in the partner country.

Concerning NTM cases, the 58 affected exporters reported a total of 166 cases of burdensome regulations applied by Kenyan authorities. In contrast, 36 companies reported 266 cases of NTMs applied by partner countries. It is important to consider that the way an NTM case is defined and counted differs depending on whether the regulation is applied by Kenya or the partner country. For export cases, if the home country is applying the regulation a case is defined at a company and product level. However, if the importing partner country is applying the regulation, a case is defined at the company, product and partner country levels. For more information on how NTM cases are counted, please refer to appendix I.

2.4.1. Export inspection and certification

Kenyan authorities apply the export inspection and certification requirements that together make up more than one-half of the reported burdensome regulations experienced by agricultural exporters. Exporters of horticultural products[68], which together account for over one-quarter of total agricultural exports, were the most affected by these regulations.

The most frequently cited problem is the requirement to have the products inspected and certified by KEPHIS before export to ensure they are pest free and meet sanitary standards. Delays due to the large bureaucracy at KEPHIS during the inspection process are a common concern among exporters (61 incidents out of 166). These delays are especially problematic to exporters because fresh agro-food products are perishable. These findings about delays at KEPHIS are complemented by another survey-based study conducted by KAM.[69] The KAM study also reports that two-thirds of the surveyed companies faced delays at KEPHIS. KEPHIS claims that problems often arise when companies and agents attempt to contravene procedures or have unrealistic expectations regarding immediate clearance.[70]

According to KEPHIS, the best practices and SPS framework provide that SPS risks are better managed from the source rather than the destination. KEPHIS claims that its efforts to determine compliance before certifying exports is the key to competitiveness in the international market, but is often viewed as an unwelcome restriction by the business sector. While the effort made by KEPHIS to ensure quality of the exports is encouraging, there is still room for improvement to increase its efficiency without compromising on the quality of services.

Some exporters pointed out that they had to resort to hiring local custom agents to deal with the cumbersome process of inspection. In addition, some of the exporter testimonials suggest that the delays at KEPHIS are intentional, as officials demand bribes to expedite the process. In almost all cases the exporters duly complied and paid the officials to avoid any damage to their products due to delay.

During the stakeholder meeting, it was evident that the two sides have different opinions on the use of agents for custom clearance. Representatives from the public sector were of the opinion that much of the delays and claims of unofficial payment demanded by officials to expedite the process were made up by the agents to make their services relevant to the exporting companies. The authorities recommended that companies hire only registered agents or ideally do the clearance procedure in-house, which is also more cost efficient. In contrast, the private companies find the use of agents a necessity as they do not have a clear idea on the regulations and procedures and find it more efficient if the agents deal with the public agencies.

[68] Includes plants and cut flowers, vegetables and fruits.

[69] KAM (2012), The study on trade hinderances/non-tariff barriers by Kenya's main regulatory bodies/agencies and their impact on manufacturing sector and businesses.

[70] According to KEPHIS, Kenyan law allows them three hours to clear a shipment.

These issues clearly highlight an information and communication gap between the public and private sectors. The public sector agencies believe all information about the procedures are publicly available and it is the duty of companies to be familiar with it; the private companies find it difficult to get the required information and deal with the public agencies. Based on this observation more effort on public-private dialogue is required from both parties. The public agencies should also organize regular and more frequent workshops to inform the new as well as established exporters about their regulations and procedures. Companies, especially new ones, must ensure that they attend these seminars and take them seriously. One of the concerns expressed by public agencies is the low participation of private companies in these events. Companies that do participate send lower-level employees instead of managers who are actually involved with the export and import process. The public agencies believe that lack of adequate interest from exporting companies in these workshops has led to limited impact and as a result, miscommunication between the public and private sectors continue to exist.

2.4.2. Export licences and quantitative restrictions

Requirements for exporters to have licences or permits to export and similar restrictions was the second most reported type of NTMs applied by Kenyan authorities, representing 23% of the cases. Most of these regulations concerned export licensing. Exporters of fresh products were required to be licensed from the HCDA. Similar to the cases of inspection and certification, delays in the administrative procedure in Kenyan agencies was the primary grievance.

Tea and coffee exporters expressed a few concerns with additional fees required to register the products. According to exporters, this is done to ensure the quality and value of the products being exported, but they were required to pay a 1% ad valorem levy to have their tea and coffee products registered at the Kenya Tea Development Authority (KTDA) and CBK.

The survey also captured seven cases of export quotas applied by Kenyan authorities on fruit and seeds (buckwheat, maize, sorghum and sunflower seeds) producers. The government imposed an export of quota of 65% to 70% of total produce on exporters to ensure an adequate supply for the domestic market. The exporting companies believe prices for their products are much higher in the international market and that the government-imposed quota is restricting their profit margins.

Some exporters find the government’s prohibition of raw macadamia nuts exports negatively affects their businesses. The government defends this policy by citing that in the international market raw nuts command a much lower price compared to processed nuts. It is reasonable that the government is trying to maximize the value of its exports; however, it is putting the producers of macadamia nuts in a disadvantaged position compared to the processors. The producers are compelled to sell their raw nuts to domestic processers, which mean the processors have an ample supply of raw nuts without any competition from international buyers. For the producers, the overall impact is negative due to the drop in prices of raw nuts. Companies complained that the price they receive for the raw macadamia nuts from Kenyan processors is much lower than the prices in the international market.

Kenyan authorities view this issue differently and believe that because intermediaries control the export of raw macadamia nuts they are the ones that make most of the profit. Hence, an export ban would affect only the intermediaries and not the producers. However, it is difficult to rule out that the drop in prices due to this ban will not impact the producers. The exporters strongly believe that the government should not interfere in such a direct manner and that encouraging the export of processed products should be done through promoting the processing industry rather than completely banning the export of raw products. As the government goes ahead and enforces this policy, it must also consider the producers’ concerns and ensure that business for raw nuts producers remains viable.

2.4.3. Taxes and charges

The survey in Kenya also identified 23 NTM cases of taxes and charges being applied by Kenyan authorities on horticultural producers. Kenya applies VAT on consumption of taxable goods and services supplied or imported into Kenya. Companies in Kenya are legally required to submit their monthly returns with details of input and output taxes.[71] Input taxes are charges for procurement of goods and services that are to be used as inputs in the business, while output taxes are taxes on the company's sale of products. When input taxes charged to a company are higher than the output tax, the company may qualify for a VAT refund.

According to the VAT Act,[72] there are three tax rates on goods traded in Kenya: 0%, 12% or 16%. Products subject to 0% tax rates are referred to as zero-rated goods. The aim of this scheme is to enable exporters, manufacturers and suppliers of zero-rated goods to reclaim refund of tax paid on inputs incurred in dealing with zero-rated supplies.[73] In principle, the VAT refund scheme benefits the exporters because refunds on the VAT paid for inputs contribute to lower operational cost for companies. However, the survey uncovered exporters' concerns with the refund process.

The exporters' primary concern is the time-frame of the entire process. According to the Export Promotion Council (EPC), the VAT refund to the exporters has been plagued by problems owing to the nature of their production processes. The exporters are expected to use all of the materials before they claim for a refund and at the same time export all materials from the consignment. The refund is done annually. This is especially problematic to exporters when they have made significant investment but are unable to sell their consignment in the given year. In this situation, they are unable to reclaim VAT for their input purchases.

The other problem is the time taken by KRA to validate the request to refund the companies. Companies interviewed during the survey complained that the VAT refund is a tedious process as KRA requires companies to submit detailed financial statements and takes a lot of time to review the documents. Usually the refund process takes over a year with some exporters reporting a time-frame of two years. These delays have blocked the companies' cash flow, which affects business. According to the Kenya Flower Council, the amount of VAT refunds owned by KRA to flower exporters is in excess of K SH 2 billion, attracting interest charges of over K SH 2 million every day.[74]

KRA responded that the companies share part of the blame for the delays because exporters often fail to follow or skip custom procedures that are critical for the refund. These procedures include inspection by customs on exports, confirmation of exportation and issuance of certificates of export. The VAT law allows the refund to be done within 12 months. Often over the 12 months, the exporter may misplace critical documentation resulting in the process being delayed.[75] The delay is also caused by KRA receiving refund claims that are inconsistent with figures posted in companies' financial statements, as well as unscrupulous traders using various methods to evade taxes. As some auditors were not deemed credible, KRA now also requires a pre-audit of companies.[76]

2.5. Procedural obstacles and inefficient trade-related business environment

Most of the problems faced by the exporters relate to the way regulations are applied rather than the regulations themselves being too strict to comply with. POs seem to be a major bottleneck to exporters from the agricultural sector. Even in some of the most frequently reported NTMs, such as technical regulations and conformity assessment, the real problem was obstacles such as delays in administrative procedures and high fees, both at home and abroad.

Exporters reported a total of 438 cases of POs involving agencies in Kenya as well as importing partner countries. A very high proportion of these obstacles (65%) involve domestic agencies and institutions. Delays in administrative procedures were by far the most reported cause of concern to the exporters (40%). These delays usually occurred during inspection or while certificates and permits were being issued. In Kenya, KEPHIS, KRA and HCDA are the three agencies with the most number of complaints

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[71] Kenya Revenue Authority, What is Value Added Tax, online information available at: http://www.kra.go.ke/index.php/domestic-taxes/vat/about-vat, accessed on 10 February 2013.

[72] Value Added Tax Act, Cap. 476 of the Laws of Kenya.

[73] Kenya Revenue Authority, How VAT works, online information available at: http://www.kra.go.ke/vat/vatworking.html, accessed on 10 February 2013.

[74] Karanja, Mwangi, and Rwaro (2012). Kenya Flower Council AGM 2012.

[75] Based on a written statement provided by KRA to ITC.

[76] Karanja, Mwangi, and Rwaro (2012). Kenya Flower Council AGM 2012.

over slow administrative procedures. There are also incidents of bribes being demanded in these agencies by officials to expedite the process (12 cases). Delays in addition to the large number of documents required (11 cases) and the need to deal with multiple administrative windows (11 cases) have compelled some exporters to hire local customs agents to unblock shipments.

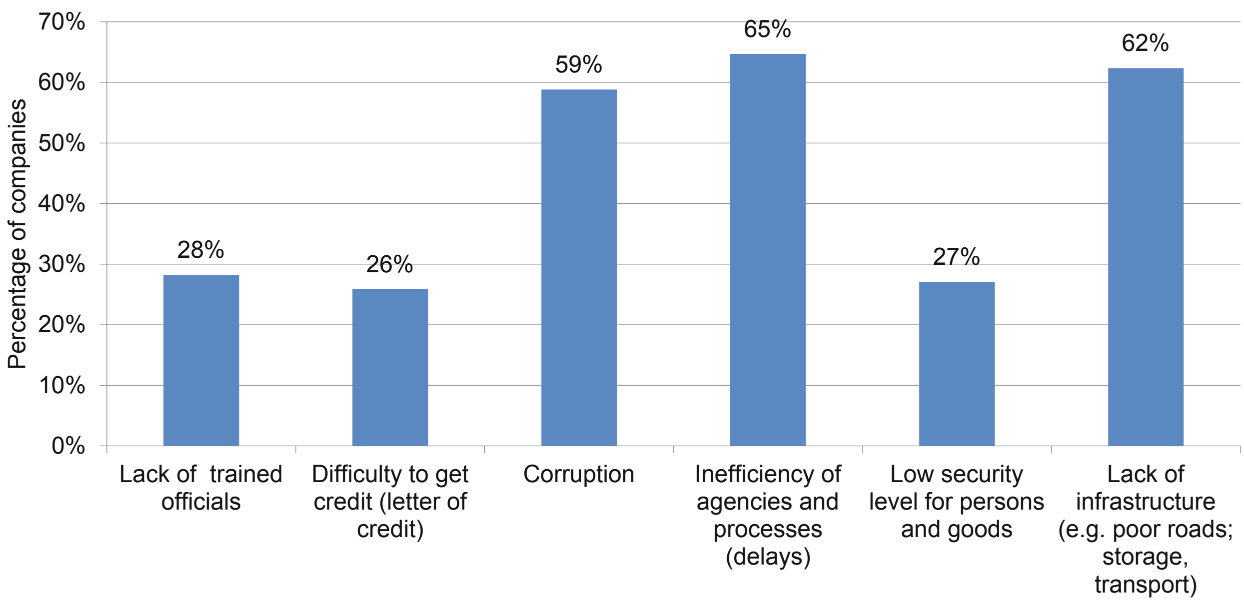
Infrastructural deficiencies in Kenya are another challenge facing exporters. Around 15% of the obstacles reported are due to limited or inappropriate facilities. Due to the nature of the product, it is vital for fresh food to be stored in a cooling facility. However, exporters believe the facilities currently available at the port and KEPHIS are inadequate. This could be potentially damaging to the exporters if their shipment is delayed during inspection or certification. Also of concern are inadequate fumigation facilities.

Questions regarding the general business environment conditions in Kenya, which is also covered by the NTM survey, complement the result of NTM and PO cases. As figure 22 shows, 65% of the surveyed companies identified slow operations and delays in Kenyan agencies as a problem. Similarly, lack of infrastructure and corruption in Kenyan agencies was considered as a problem by 62% and 59% of the surveyed companies respectively.

Kenyan agricultural exporters reported 154 cases (35% of total) of POs occurring in partner countries. Most of these obstacles (28%) occurred in the neighbouring EAC countries. Major types of POs faced in EAC countries include delays, multiple checks and numerous administrative windows, and lack of recognition of each other's certificates (table 9). These types of obstacles indicate that even within a regional free trade agreement such as EAC, more coordination in administrative issues and mutual recognition of each other's standards and certifications are necessary to reap the full benefits of free trade.

In addition to EAC countries, exporters faced POs in the European Union (26%), mostly due to high fees and delays, followed by obstacles in COMESA countries (15%).

Figure 22: Percentage of agricultural companies facing significant hurdles due to the existing business environment



Source: ITC NTM Business Survey in Kenya, 2011.

Table 7: Export of agro-food products – burdensome NTMs applied by Kenyan authorities

Subsector	Export to the world		Number of reported NTM cases					
Subsector description	Export value in 2010, US$ '000	Share in sector's export value	Export Inspection, certification and other technical specification of products and conformity systems	Export licences, quotas, prohibitions and other quantitative restrictions	Export taxes and charges	Export price control measures	Other export related measures	**Subtotal**
Live animals	3,830	0.1%	1	1				**2**
Meat and edible meat offal	14,226	0.5%	1	1				**2**
Fish, crustaceans, molluscs, aquatic invertebrates, n.e.s.	54,112	1.8%	6					**6**
Dairy products, eggs, honey, edible animal product, n.e.s.	18,405	0.6%	2	4				**6**
Live trees, plants, bulbs, roots, cut flowers, etc.	474,743	15.3%	14	7	5			**26**
Edible vegetables and certain roots and tubers	280,829	9.0%	32	11	5			**48**
Edible fruit, nuts, peel of citrus fruit, melons	63,501	2.0%	25	5	6		1	**37**
Coffee, tea, mate and spices	1,421,827	45.9%	1	4	4		1	**10**
Cereals and milling products, malt, starches, inulin, wheat gluten	34,454	1.1%	3	3				**6**
Oil seed, oleagic fruits, grain, seed, fruit, etc., n.e.s.	16,134	0.5%	4	1	2		2	**9**
Animal, vegetable fats and oils, cleavage products, etc.	155,781	5.0%						**0**
Sugars and sugar confectionery	61,047	2.0%		1		1		**2**
Cocoa and cocoa preparations	7,154	0.2%	2					**2**
Cereal, flour, starch, milk preparations and products	16,674	0.5%						**0**
Vegetable, fruit, nut and miscellaneous food preparations	142,842	4.6%						**0**
Beverages, spirits and vinegar; Tobacco and manufactured tobacco substitutes	216,069	7.0%	3				4	**7**
Rubber and articles thereof	579	0.0%						**0**
All other agro and food products	116,791	3.8%			1			**3**
TOTAL	**3,098,998**	**100%**	**96**	**38**	**23**	**1**	**8**	**166**

Source: ITC NTM Business Survey in Kenya, 2011.

Table 8: Export of agro-food products – NTMs applied by Kenya and reasons making them burdensome

NTM sub-chapter	Number of NTM cases	POs and inefficient TBE making NTMs difficult	Number of cases in home country	Number of cases in partner or transit country	Subtotal of PO cases
Export inspection, certification and other technical specification of products and conformity systems	96	Delay in administrative procedures	61		**61**
		Limited/Inappropriate facilities	25		**25**
		Large number of checks		18	**18**
		Informal payment	17		**17**
		Inaccessible/limited transportation system	10		**10**
		Need to hire a local customs agent to get shipment unblocked	9		**9**
		Other inconsistent or arbitrary behaviour of officials	6		**6**
		Unusually high fees and charges	6		**6**
		Large number of different documents	5		**5**
		Deadlines set for completion of requirements are too short	3		**3**
		Other obstacles	2		**2**
Export licences, quotas, prohibitions and other quantitative restrictions	38	Delay in administrative procedures	18		**18**
		Unusually high fees and charges	8		**8**
		Numerous administrative windows/organizations involved	4		**4**
		Large number of checks	2		**2**
		Regulations change frequently	2		**2**
		Deadlines set for completion of requirements are too short	2		**2**
		Other obstacles	2		**2**
Export taxes and charges	23	Unusually high fees and charges	15		**15**
		No due notice for changes in procedure	2		**2**
		Inconsistent classification of products	2		**2**
		Delay in administrative procedures	1		**1**
Export price control measure	1	Requirements of the regulation are too strict	0		**0**
Other export related measures	8	Delay in administrative procedures	4		**4**
		Other inconsistent or arbitrary behaviour of officials	2		**2**
		Delay during transportation	2		**2**
Cases with only PO but not related to any NTMs	n/a	Delay in administrative procedures	2	1+1(t)	**4**
		Technological constraints	2		**2**
		No due notice for changes in procedure	1		**1**
		Inconsistent classification of products	0	1	**1**
		Unusually high fees and charges	1		**1**
		Limited/Inappropriate facilities	0	1(t)	**1**
Total	**166**		**216**	**20+2(t)**	**238**

Source: ITC NTM Business Survey in Kenya, 2011.

(t) POs that occur in transit countries.

Table 9: Export of agro-food products – POs at domestic institutions and in partner or transit countries

POs and inefficient business environment	Number of PO cases				
	In Kenya (and agencies involved, if specified)		In partner or transit countries		Subtotal
Large number of different documents	11	KEPHIS, KRA (customs), HCDA, Ministry of Agriculture, Ministry of Public Health			**11**
Difficulties with translation of documents from or into other languages			12	Israel (3), Lebanon (3), Saudi Arabia (3), Syrian Arab Republic (3)	**12**
Large number of checks	2	Ministry of Agriculture	18	Burundi (2), Eritrea (2), Ethiopia (2), Malawi (2), Rwanda (2), Sudan (2), United Republic of Tanzania (2), Uganda (2), Zambia (2)	**20**
Numerous administrative windows/organizations involved	11	KRA (customs), KEPHIS, HCDA, KEBS, Ministry of Commerce, CBK	12	Burundi (2), Israel (2), Rwanda (2), United Republic of Tanzania (2), Uganda (2), United States (2)	**23**
Information is not adequately published and disseminated	2	KRA (customs)	1	Then-EU 27 (1)	**3**
No due notice for changes in procedure	3	KRA (customs), KAA, KPA			**3**
Regulations change frequently	2	HCDA			**2**
Inconsistent classification of products	2	KRA (customs)	1	United Republic of Tanzania (1)	**3**
Other inconsistent or arbitrary behaviour of officials	12	KRA (customs), KAA, KEPHIS	1	Then-EU 27 (1)	**13**
Delay in administrative procedures	114	KEPHIS, KRA (customs), HCDA, Ministry of Health, Veterinary Department, KAA, KPA, CBK, Ministry of Agriculture, Ministry of Foreign Affairs, Unknown	59+1[(t)]	Then-EU 27 (15), United Republic of Tanzania (6), Zambia (6), Israel (5), Uganda (5), United States (4), Egypt (3), Lebanon (3), Saudi Arabia (3), Syrian Arab Republic (3), Burundi (2), Rwanda (2), United Arab Emirates (2), Qatar (1)[(t)]	**174**
Delay during transportation	2	KPA	2	United States (2)	**4**
Deadlines set for completion of requirements are too short	5	Ministry of Health, KRA (customs), HCDA			**5**
Unusually high fees and charges	46	KRA (customs), KEPHIS, HCDA, KEBS, KPA, CBK, Ministry of Public health, KTDA, Ministry of Agriculture	27	Then-EU 27 (23), Israel (2), United States (2)	**73**
Informal payment	17	KRA (customs), KEPHIS, KPA, Ministry of Health	6	Egypt (3),United Republic of Tanzania (3)	**23**
Need to hire a local customs agent to get shipment unblocked	9	KRA (customs), Clearing agents			**9**
Limited/inappropriate facilities	27	KEPHIS, KRA (customs), HCDA, KPA, Fisheries Department, Unknown	2+1[(t)]	United Arab Emirates (2), Qatar (1)[(t)]	**30**
Inaccessible/limited transportation system	10	KEPHIS, Ministry of roads, HCDA, Kenya			**10**
Technological constraints	5	KRA (customs)			**5**
Lack of recognition			11	Egypt (3), Burundi (2), Rwanda (2), United Republic of Tanzania (2), Uganda (2)	**11**
Other obstacles	4	HCDA, KEPHIS			**4**
Total	**284**		**152+2[(t)]**		**438**

Source: ITC NTM Business Survey in Kenya, 2011.
Note: Agencies or countries with the highest number of PO cases are listed first.
[(t)] Indicates that the PO case occurred in the transit country.

2.6. Regulations affecting imports

Kenya imported more than US$ 1.6 billion worth of agro-food products in 2010 with animal and vegetable oil (31% of total agricultural import) and cereal products (27%) being the main imports. Overall, the surveyed agricultural importers faced difficulties with regulations applied by Kenyan authorities in 47 cases. A large number of these cases were product-specific conformity assessment requirements (18 cases, Table) such as inspection, testing and certification requirements, mostly carried out by KEBS. These measures are imposed to ensure the products comply with the Kenyan quality and hygienic requirements. Most of importers interviewed are concerned about the slow procedure for approval when the goods arrive at the port in Mombasa.

Kenyan importers are also required to submit the import declaration form (IDF) to KRA with full details of their shipment before being allowed to import, and must pay a processing fee of minimum K Sh 5,000 or 2.25% of the cost insurance and freight value of the shipment.[77] The IDF provides a summary of information provided in the supporting documents such as the invoice, packing list, COO and company details.[78] The concerned companies questioned the need to pay 2.25% charge for an IDF in addition to paying separately for pre-shipment inspections. During the stakeholder meeting in Nairobi, KRA officials clarified that the IDF was necessary to notify the customs authority of the incoming cargo and the expected arrival date, and that the 2.25% charge was not for the purpose of pre-shipment inspection. According to the KRA, the Ministry of Finance sets the charges in the national budget and KRA cannot eliminate them. KRA recommended that trade associations request the Kenyan Treasury to review the procedure while the budget is being prepared, if these charges were indeed a burden to the companies.

KRA's online 'Simba' system allows the IDF to be submitted electronically. However, according to company testimonials the KRA online system goes down occasionally and hinders the submission process. According to KAM, 95% of surveyed companies indicated frequent breakdown of the Simba system, and 84% reported delays in processing documents.[79] When the system is not working, importers must submit the IDF in person and usually takes three to four days for an approval.

One of the surveyed companies shared the setback it experienced when the KRA's Simba system was not working. This particular company, like all other importers, was required to login to the Simba system to request documents to clear its imports. However, as the online system was not working during that time the company could not present the required documents to the authority. At the same time, the authorities insisted that the company present all documents before its shipment of fish could be cleared from the airport. Delays in getting the documents ready manually caused the entire shipment to be damaged leading to huge financial losses for the company.

There were only few incidents of agro-food products facing import restriction by the Kenyan authorities. One of the incidents involved a ban on import of genetically modified (GM) oranges pending the outcome of the Biosafety Act. The Act, which has been approved by the Kenyan parliament, allows the importation of GM food subject to written approval from the authorities.[80] Imported GM foods are also subject to labelling regulations to ensure that consumers are aware the product has been genetically modified and to facilitate the traceability of the product.[81] The National Biosafety Authority has been mandated to oversee the regulations regarding GM food.

Several companies, as well as the Kenya International Freight and Warehouse Association, reported to have regular disputes with KRA officials on the valuation of imported products, which is needed to calculate customs duty. Complementing the findings of this survey, a study by the University of Nairobi also revealed that 83% of private businesses were moderately or severely impacted by lengthy classification and valuation of imports.[82] According to the exporters, most problems arise due to higher

[77] Ministry of Trade and Industry (2005), Handbook on Importing and Exporting in Kenya.

[78] Ibid.

[79] A separate survey was conducted by the Kenya Association of Manufacturers (KAM) in 2012. A total of 58 private companies were interviewed for the study. The methodology is different to the one used in this ITC study.

[80] National Biosafety Authority (2011). Import, Export and Transit Regulations 2011.

[81] National Biosafety Authority (2012). Labelling Regulations 2012.

[82] Kiriti-Nganga (2012).

reference prices indicated in KRA's database for a given product and KRA officials' unwillingness to accept importers' valuation, even when paperwork certifying the purchase price is presented.

During the stakeholder meeting in Nairobi, it was pointed out that KRA's product price database is not extensive and that KRA field officers often relied on prices available on the internet for the product in question. As the prices listed on the Internet are inclusive of all charges, while the products at customs are not, it leads the officials to quote higher prices. Furthermore, stakeholders noted that KRA field officers have high discretionary powers, which has been contributing to corruption at KRA. These disputes result in products being held at the port for extended periods, potentially damaging the goods and eventually resulting in higher costs for the importers.

During the survey, six cases of quantity control measures applied by the Kenyan authority were recorded. For example, sugar importers were required to have an import permit for every consignment in addition to a yearly licence issued by the Kenya Sugar Board after paying K Sh 100,000. The importers believe this dual system of approval is inconvenient and unnecessary.

Importers of products such as rice also expressed concern on the restrictive import measures applied by the Kenyan Government on certain products to foster domestic production. There have been various reports of rice shipments being held up at the customs by KRA for extended periods, including those from its biggest supplier, Pakistan.[83] Incidents of products being mishandled by KRA staff have also been raised.[84] While a certificate from KEBS was sufficient for custom clearance before, the KRA now grants access to rice shipments only after the laboratory analysis reports (LAR) on key aspects such as grading have been presented.[85]

Kenya currently has the lowest tariff among EAC countries for rice imports. Rice is among the products on EAC's list of 'sensitive items' and subject to a common 75% import duty. However, Kenya has been granted exemption by the EAC and can apply a tariff rate quota of 35% on rice imports up to 300,000 tons.[86] There are indications that Kenya may increase the tariff back up to 75% in the near future, which is likely to hurt imports from countries such as Pakistan.[87]

Because Kenyan importers typically do not have to deal with export regulations of the partner exporting countries, the NTM survey does not adequately capture regulations imposed by exporting partner countries on products being imported to Kenya.

[83] For example: Dawn, Kenya bans import of rice from Pakistan, article from 15 September 2010, available at: http://www.dawn.com/news/563006/kenya-bans-import-of-rice-from-pakistan, accessed on 2 March 2013.

[84] Ibid.

[85] Business Daily, KRA releases Pakistani rice imports, article from 12 October 2010, available at: http://www.businessdailyafrica.com/Corporate-News/-/539550/1030830/-/v9b8eo/-/index.html, accessed 2 March 2013.

[86] WTO (2012). Trade Policy Review: EAC, p. A2-189; Agritrade (2012). USDA review of policy constraints on competitive EAC rice production.

[87] The Express Tribune. Kenya erecting barriers to limit rice imports, article from 5 June 2013, available at http://tribune.com.pk/story/558824/kenya-erecting-barriers-to-limit-rice-imports/, accessed on 10 June 2013.

Table 10: Import of agro-food products – burdensome NTMs applied by Kenyan authorities

Subsector	Import from the world		Number of reported NTM cases						
Subsector description	Import value in 2010, US$ ’000	Share in sector’s import value	Technical requirements	Conformity assessment	Pre-shipment inspection and formalities	Charges, taxes and other para-tariff measures	Quantity control measures	Finance measures	**Sub-total**
Live animals	1,807	0.1%							**0**
Meat and edible meat offal	739	0.1%							**0**
Fish, crustaceans, molluscs, aquatic invertebrates, n.e.s.	7,266	0.4%							**0**
Dairy products, eggs, honey, edible animal product, n.e.s.	15,697	1.0%							**0**
Live trees, plants, bulbs, roots, cut flowers etc.	10,802	0.7%							**0**
Edible vegetables and certain roots and tubers	35,721	2.2%			1		1		**2**
Edible fruit, nuts, peel of citrus fruit, melons	11,658	0.7%	1	1	3	1		1	**7**
Coffee, tea, mate and spices	20,378	1.2%		1					**1**
Cereals and milling products, malt, starches, inulin, wheat gluten	444,321	27.0%		2	1	1	1		**5**
Oil seed, oleagic fruits, grain, seed, fruit, etc., n.e.s.	34,978	2.1%	1	5			1		**7**
Animal, vegetable fats and oils, cleavage products, etc.	505,336	30.7%		2		1			**3**
Sugars and sugar confectionery	189,767	11.5%			1		2	2	**5**
Cocoa and cocoa preparations	14,445	0.9%			3				**3**
Cereal, flour, starch, milk preparations and products	55,189	3.4%			1				**1**
Vegetable, fruit, nut and miscellaneous food preparations	52,830	3.2%			1				**1**
Beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes	108,268	6. 6%			1				**1**
Rubber and articles thereof	16,698	1.0%		2	2				**4**
All other agro and food products	119,337	7.3%		5		1	1		**7**
TOTAL	**1,645,237**	**100%**	**2**	**18**	**14**	**4**	**6**	**3**	**47**

Source: ITC NTM Business Survey in Kenya, 2011.

Table 11: Import of agro-food products – NTMs applied by Kenya and the reasons making them burdensome

NTM chapter	Number of NTM cases	POs and inefficient business environment making NTMs difficult	Number of cases in home country	Number of cases in partner country	Sub-total
Technical requirements	2	Requirements of the regulation are too strict			**0**
Conformity assessment	18	Delay in administrative procedures	9	2	**11**
		Large number of different documents	3		**3**
		Unusually high fees and charges	3		**3**
		Numerous administrative windows/organizations involved	2		**2**
		Other inconsistent or arbitrary behaviour of officials	2		**2**
Pre-shipment inspection and other formalities applied by the importing country	14	Delay in administrative procedures	6		**6**
		Technological constraints	4		**4**
		Numerous administrative windows/organizations involved	3		**3**
		Limited/inappropriate facilities	3		**3**
		Low security level for persons and goods	3		**3**
		Information is not adequately published and disseminated	2		**2**
		Unusually high fees and charges		2	**2**
		Delay during transportation	1		**1**
Charges, taxes and other para-tariff measures	4	Delay in administrative procedures	4		**4**
		Regulations change frequently	1		**1**
		Low security level for persons and goods	1		**1**
Quantity control measures	6	Delay in administrative procedures	3		**3**
		Large number of different documents	1		**1**
		Large number of checks	1		**1**
Finance measures	3	Delay in administrative procedures	3		**3**
		Large number of different documents	2		**2**
		No due notice for changes in procedure	1		**1**
Total	**47**		**58**	**4**	**62**

Source: ITC NTM Business Survey in Kenya, 2011.

Table 12: Import of agro-food products – POs at domestic institutions and in partner or transit countries

POs and inefficient business environment	Number of PO cases				
	In Kenya (and agencies involved, if specified)		In partner countries		Sub-total
Large number of different documents	6	KEPHIS, KRA, Central Bank of Kenya, Insurance Companies, KPA			**6**
Large number of checks	1	KSB, Ministry of Agriculture			**1**
Numerous administrative windows/organizations involved	5	KRA, KEPHIS, PCPB, KEBS, Ministry of Agriculture			**5**
Information is not adequately published and disseminated	2	KRA			**2**
No due notice for changes in procedure	1	KRA			**1**
Regulations change frequently	1	KRA			**1**
Inconsistent classification of products	2	KRA, KPA			**2**
Other inconsistent or arbitrary behaviour of officials	2	KEBS			**2**
Delay in administrative procedures	28	KRA, KEPHIS, Kenya Wildlife Service, KPA, Central Bank of Kenya, KEBS, KSB, Ministry of Agriculture, Ministry of Fisheries Development, Ministry of Health	2	India (1), Malaysia (1)	**30**
Delay during transportation	1	KPA			**1**
Unusually high fees and charges	3	KEPHIS	2	Egypt (1), Pakistan (1)	**5**
Limited/inappropriate facilities	3	KRA, HCDA			**3**
Technological constraints	4	KRA			**4**
Low security level for persons and goods	4	HCDA, KRA			**4**
Total	**63**		**4**		**67**

Source: ITC NTM Business Survey in Kenya, 2011.

Note: The agencies or countries with the highest number of PO cases are listed first.

2.7. Summary and policy options

Agriculture is an integral part of the Kenyan economy. The importance of the sector is huge in terms of its GDP contribution, foreign earning potential and employment figures. While the sector has been growing steadily over the last decade, setbacks in 2008 and 2009 due to the global crisis exposes its vulnerability. Tea, coffee and horticultural products are the main agricultural exports of Kenya, while the European Union and countries in the EAC and COMESA are its biggest markets.

A very large proportion of companies (76%) in the agricultural sector reported to be affected by at least one type of burdensome NTM during the survey. In-depth interviews with 97 of the affected companies identified 266 cases of NTMs applied by partner countries and 166 cases applied by Kenya itself. Most of the burdensome regulations applied by partner countries are related to technical measures. High standards demanded by the European Union with regards to food safety and MRL of pesticides are two of the problems Kenyan exporters face. A much bigger problem for the exporters is proving the compliance of their products to these technical requirements.

Over the years, Kenyan horticulture products have been well recognized in the international market for their quality. Efforts made by public agencies such as KEPHIS, HCDA and FPEAK in quality assurance; support and marketing have contributed significantly to this recognition. Kenya also has one of the better product quality infrastructures compared to other countries in the region, in areas such as product standards, laboratories for analysis and standards bodies. However, in addition to having the infrastructure in place, Kenyan authorities must recognize that efficient operation of public agencies is equally as important. The NTM survey results indicate that the majority of the problems reported by the companies are related to procedural issues within these public agencies.

Partner countries impose most of the burdensome conformity assessment requirements. However, a closer inspection reveals that most of the problems do not concern satisfying the compliance requirements. The problems arise at home in the administrative processes involved in inspection, testing and certification in Kenya. Slow administrative procedures, red tape and high fees charged for these services offered by agencies such as KRA, KEPHIS, KEBS and HCDA are major issues Kenyan authorities must investigate. These problems can be addressed by increasing efficiency and streamlining processes in these key agencies, even without investing more in additional infrastructure.

Given the large number of complaints received from the business sector concerning KEPHIS, it is of utmost importance that KEPHIS address these issues adequately. KEPHIS must review its operations and explore various avenues to improve its efficiency and reduce the waiting time for customers. Private sector representatives have suggested that KEPHIS upgrade its infrastructure, employ more professionals and streamline processes in hotspots such as Jomo Kenyatta International Airport (JKIA) to ensure a smooth operation, including during peak hours. KEPHIS should also ensure that it is effectively communicating its requirements and processes to the business community.

The surveyed companies' testimonies also suggest that the relationship between companies and KRA, KEPHIS and KEBS officers must be improved. In addition to complaints of products being damaged or lost during inspection, very often the companies claimed the officers were indifferent to their concerns. The public agencies must continuously evaluate the quality of services provided by their officers and sensitize them on correct procedures for inspection and sampling, client relationships, and the demerits of corrupt practices.

A general information and communication gap exists between the private companies and the public agencies. The private companies have higher expectations from the public agencies than the services that are currently provided, and request better dissemination of information on processes and fees for services. The public agencies believe the private sector must be better informed about the regulations and processes involved. While this is a reasonable requirement for exporting companies, the public sector can play a big role in mitigating these challenges. Currently, information relevant for export and import processes are spread out in different publications and websites of various agencies. Companies find it a challenge to accumulate and internalize all the information relevant to them. One practical solution would be for the public agencies to liaise with the business associations and develop a one-stop shop for information on regulations and processes.

The government should also liaise with business associations to continue to provide regular sector-specific workshops to company representatives on export and import processes, and to encourage the private sector to actively participate. These information sessions would be an extremely important source of information, especially for new companies. Representatives of public agencies claim that part of the problem faced during clearance procedures is due to clearing agents attempting to bypass procedures or giving impressions of difficulties in order to claim higher remuneration from their clients. If this is a prevalent problem, the authorities must consider regulating this industry by requiring the agents to be certified by a third party, and to attend periodic workshops on new clearance procedures and regulations. In this way, only certified agents would be allowed to engage in clearance activities. From the perspective of exporters and importers, clearance agents still provide a valuable service in terms of know-how and cost. It is important to ensure that the agents facilitate rather than obstruct the process.

Harmonization of documentation and streamlining procedures in agencies in charge of clearing imports and exports might be necessary if the government is to reduce obstacles related to NTMs. Trade facilitation can be enhanced if public agencies work together on their roles to avoid overlapping and improve operations. Capacity building of the personnel working in these agencies and sensitizing them on issues such as proper handling of products during inspection, accountability, transparency and measures against corruption can alleviate the problems most companies report to be facing.

Frequent breakdown of KRA’s online Simba system is another problem for the surveyed companies. In principle, implementing the online system has made clearance procedures easier and faster than before. However, during the system breakdowns that occasionally occur, the goods are stranded for extended periods while the owners and the KRA officials attempt to clear the goods manually. KRA’s Orbus and Simba systems are a valuable asset to both KRA and the companies, and it is of high importance that these systems are well maintained to avoid any such breakdowns in the future. A more stable online platform is necessary to prevent unfortunate delays and financial losses. It is also necessary to update the system so that it can function on all platforms at the user’s end. Currently, Simba can be accessed only through Internet Explorer and not through other popular browsers such as Firefox and Chrome. In addition to ensuring a reliable online service, KRA must also have a clear, manual backup procedure in place in cases of system breakdown to minimize delays and product damage.

The exporters faced also faced obstacles obtaining COOs for their products. COOs are needed to benefit from preferential market access through the GSP scheme and regional free trade agreements. Clearance procedures can further be streamlined by linking KEPHIS’s stand-alone system with KRA’s. This will ensure the documents can be simultaneously processed and will save time.

The survey also identified infrastructural shortcomings, such as limited fumigation services and inadequate cooling facilities at KEPHIS and customs. Being a major exporter of fresh horticultural products, this infrastructure is critical to Kenya. While it is understandable that providing such services is not the mandate of public agencies, finding ways to encourage private sector investment in this area to address the shortcomings is key.

With the EAC regional integration processes and the Customs Union and Common Market protocols coming into effect, barriers to trade are expected to be reduced. However, compared to the export share, Kenyan exporters still face a higher number of NTM-related trade obstacles applied by EAC member countries. Most of these NTMs relate to conformity assessment due to lack of harmonized standards and procedures among EAC countries. Kenya with its strong position, accounting for 42% of intra-EAC trade,[88] should push for a faster harmonization and adoption of standards across EAC countries. As full harmonization can take considerable time, products of high importance to EAC countries must be prioritized and standards for these products be harmonized. Kenya and EAC countries must also strengthen cooperation with organizations such as TradeMark East Africa and USAID Compete for their technical expertise and their work on standard harmonization of niche products. If lack of funds continues to be a major issue hindering progress, Kenya should encourage the private sector and business associations to fund part of the cost. Until a full harmonization can be realized in the region, mutual recognition of each other’s certification should be considered. Multiple business and trading licence requirements in different countries should be replaced by a single licence for exports to any EAC country without the need for further documentation.

EAC countries must also address the issue of constant roadblocks and checkpoints that encourage rent-seeking behaviour. While these checks are in place for national security, they have significantly increased transportation time and cost for the traders. In addition, these checkpoints have been plagued with reports of corruption. Similar to checkpoints, multiple weighbridges along the highway are another concern. Since the completion of this survey, EAC countries have agreed to reduce the number of weighbridges in their respective countries and to harmonize the maximum allowed gross vehicle weight. These two positive decisions are expected to increase efficiency in road transportation in EAC countries. It is vital that these decisions are adopted and correctly implemented. Even with the reduced number of weighbridges, it is necessary to ensure that vehicle inspections do not create a bottleneck at these points. The government must take steps to ensure that processes in the remaining weighbridges are fast and efficient. Increasing the number of weighing machines and officers, and upgrading the equipments in each station is one way to reduce the long queues and waiting time.

[88] ITC calculation based on Trade Map (2012). Note: This figure represents trade in all products.

Kenyan horticulture exporters have suffered a series of technical and related conformity assessment problems due to regulations applied by its biggest market, the European Union. These issues range from phytosanitary certification requirements to Kenyan products being denied entry due to presence of pesticide residues in the product. The Kenyan Government must set up institutional support to exporters to inform them about all the procedures and requirements to export to the European Union as well as other partner countries. The government must ensure farmers do not use potentially dangerous chemicals and pesticides that are closely monitored by target markets. The Ministry of Trade should take the lead in collating the requirements and procedures for export to various partner countries and make the information available to the public.

In addition to NTMs, exporters of agricultural products also faced difficulties with the high cost of voluntary standards certification such as GlobalG.A.P. To remedy this problem, FPEAK has already introduced the KenyaGAP certification scheme, which is benchmarked to the GlobalG.A.P. and adapted to local Kenyan conditions. To maximize the benefits of this scheme, FPEAK should continue with its outreach programmes to farmers and train them on good agricultural production practices. The farmers must be sensitized about the availability and potential benefits from KenyaGAP certification. FPEAK must also contribute to the capacity building of auditors who can inspect and certify the farmers.

FPEAK must also ensure all information related to GlobalG.A.P. and KenyaGAP are easily accessible to the producers. Information on various aspects of good agricultural practices, evaluation criteria, a list of certification bodies, and the fee structure are of critical importance to the producers and must be readily available. Enforcing price transparency for audit and certification by the certification bodies for KenyaGAP or GlobalG.A.P. can improve competition and lower the costs for farmers.

FPEAK should also consider having the KenyaGAP certification benchmarked to the Global Food Safety Initiative (GFSI). The GFSI, managed by The Food Business Forum, aims to achieve continuous improvement in food safety management systems to ensure confidence in the delivery of safe food to consumers. It promotes convergence between food safety standards through benchmarking processes for food safety management schemes.[89] GFSI encourages retailers worldwide to accept certificates issued during third party audits against the GFSI recognized schemes, thus enabling their suppliers to work more effectively through fewer audits.

Under the GFSI umbrella, many major retailers, manufacturers and food service companies have come to a common acceptance of the GFSI recognized food safety schemes.[90] While GlobalG.A.P. is already benchmarked to the GFSI and KenyaGAP is benchmarked to the GlobalG.A.P., KenyaGAP still needs to be benchmarked to the GFSI separately. Being benchmarked to GFSI is likely to open new business opportunities for Kenyan producers certified by KenyaGAP with large retailers worldwide.

The VAT refund on import of inputs used to produce goods for export, is in principle expected to promote exports. The VAT refund is a good incentive by the Kenyan Government to the companies to promote exports. However, in its current design and time-frame, companies are facing difficulties and long delays in receiving their refunds. The process for refunding VAT must be re-evaluated and streamlined. Private companies, especially new ones, must be made aware about the requirements, the procedures and the time-frame. This must be done to ensure they do not lose critical documents, as claimed by KRA.

From the perspective of importers, regular disputes with custom officials about the valuation of goods have been highlighted. To tackle these problems, participants at the stakeholder meeting insited that the KRA have a clear policy and guidelines on valuation to reduce ambiguity and misuse of authority by field officials. It is recommended that KRA follow the WTO Customs Valuation Agreement[91] and accept the transaction value as laid out in Article VII, provided that importers present the invoice documenting the price paid for the product. In cases where no documentation of transaction value is provided or if the prices have been distorted because of certain condition, KRA should valuate the price of the shipment based on

[89] CIES – The Food Business Forum (2009). The Global Challenge: CIES Food Safety Report 2009.

[90] Global Food Safety Initiative, GFSI and Benchmarking, online information available at: http://www.mygfsi.com/gfsi-benchmarking-general.html, accessed on 8 August 2013.

[91] WTO Agreement on Implementation of Article VII of the GATT 1994.

the transaction value of identical or similar goods, as laid out in the Agreement. For this, it is important that KRA maintain an extensive database of products with fair prices.

3. Manufacturing sector

This section discusses the role of the manufacturing sector and the perceptions of exporters and importers from the sector concerning NTMs and related trade obstacles.

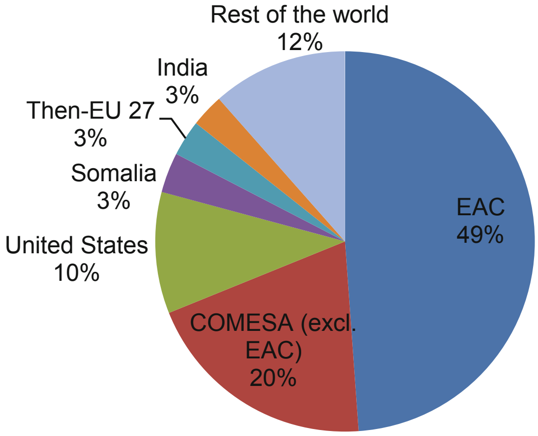
3.1. The role of the sector

Manufacturing is an important sector in the Kenyan economy with its contribution to output, exports and employment. The Kenyan Government considers the manufacturing sector an important part of its development process. Most policy plans since 1963 have reinforced the need to strengthen the manufacturing sector. This is also reaffirmed in Kenya's current blueprint for growth, Vision 2030. According to Vision 2030, the manufacturing sector is critical to support the social and economic development agenda by creating jobs, generating wealth and attracting foreign direct investment. Being trade intensive, the sector is also important in helping to achieve Millennium Development Goals in both the medium and long term.[92]

While Kenya is the most industrialized country in East Africa, manufacturing still accounts for less than 10% of the country's GDP.[93] The sector accounts for around 13% of formal employment, but is constrained by low value addition and diversification, low productivity, slow investment growth, low research and development, a narrow export base, an influx of counterfeit and substandard goods, high production costs associated with poor physical infrastructure, and the high cost of energy.[94]

According to figures from KNBS, the sector grew by 4.4% in 2010. This growth is attributed to a more reliable power supply, favourable tax policies that removed duties on capital equipment and some raw materials, a low inflationary trend that boosted local consumption, and declining interest rates that attracted new investment. The sector also benefited from an increase in credit, the availability of raw materials and growth in the regional market.[95]

Figure 23: Kenyan manufactured goods exports – major markets, 2010



Source: ITC calculation based on Trade Map, 2012.

[92] Government of Kenya (2007). Kenya Vision 2030.

[93] WTO (2012). Trade Policy Review: EAC, p. A2-189; KIPPRA (2011). Kenya Economic Report 2011.

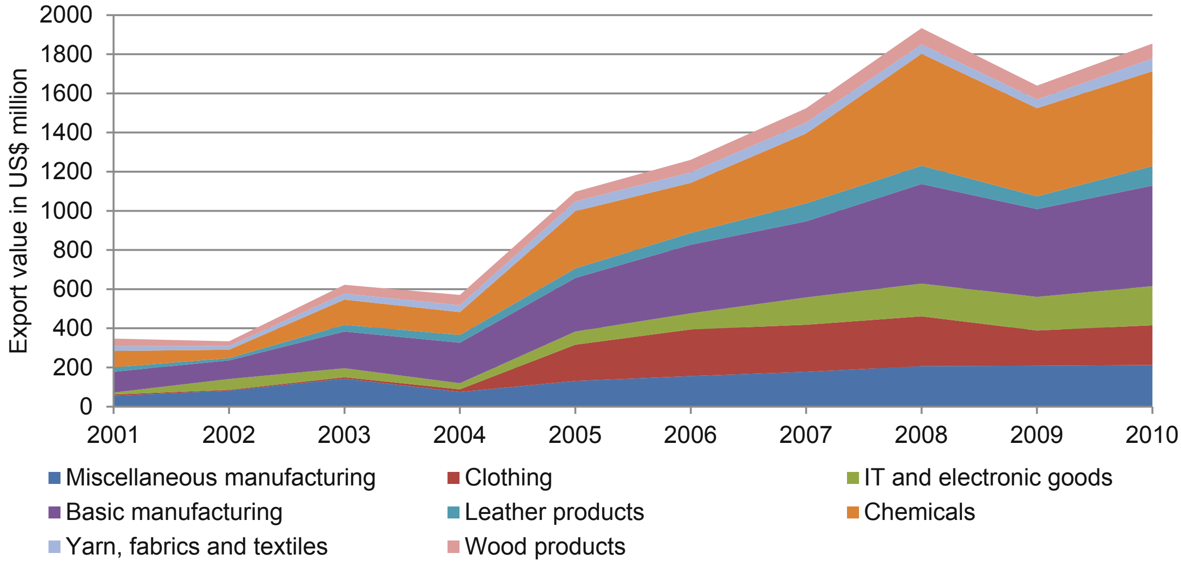
[94] KIPPRA (2011). Kenya Economic Report 2011.

[95] KNBS (2011). Kenya Economic Survey 2011; KIPPRA (2011). Kenya Economic Report 2011.

The sector's contribution to GDP has remained fairly stable at around 10% since 2005.[96] The performance of the manufacturing sector has improved compared to the 1990s and early 2000s, when the industry's performance was at its lowest ebb due to the macroeconomic instability that gripped the country. Since 2005, Kenya has witnessed a steep increase in manufactured exports (Figure 24*)* due to increased participation in regional trade. By 2010, manufactured exports were worth US$ 1.85 billion, or around 37.4% of total exports.[97] The regional EAC and COMESA markets continue to absorb a large share (69%) of Kenya's manufactured exports, with Uganda (24%) and the United Republic of Tanzania (17%) being the biggest importers (Figure 23). Most countries that apply reported NTMs to Kenyan exports are from these regions.

The leading manufacturing subsectors include chemicals, metal and non-electric machinery, plastics and rubber products, and textiles and clothing.

Figure 24: Export growth of major Kenyan manufactured products, 2001 to 2010



Source: ITC calculation based on Trade Map, 2012.

3.1.1. Chemicals

The chemicals and allied industries account for 26% of total manufactured exports (Figure 24). The industry registered a growth of 3.2% in 2010 and employed approximately 12,000 people or about 5% of the total employment in manufacturing.[98] The industry relies on large imports of raw chemical materials for production and imported over 592,000 tons of assorted chemicals valued at over K Sh 100 million in 2010.[99] The major products of this sector include industrial chemicals such as fertilizers and pesticides; cosmetics, including soap and cleaning preparations; perfumes and cosmetics; and paints.

The export of locally manufactured chemicals has been increasing in recent years. By 2010 annual exports were worth US$ 484 million (Table 13). Over half of the Kenyan chemical exports go to EAC countries and around 22% to the COMESA region. Export to these markets is dominated by medicines and cosmetic items, such as soap. In addition, export of carbonates and peroxocarbonates to India accounts for around 7% of Kenyan chemical export.

[96] WTO (2012). Trade Policy Review: EAC, p. A2-189.

[97] ITC calculation based on Trade Map (2012). Note: Figures do not include export of minerals and arms.

[98] KNBS (2011). Kenya Economic Survey 2011.

[99] Ibid.

Exporters from the chemical industry report 50 incidents of burdensome regulations. Ten of these cases were related to regulations applied by Kenyan authorities. The other 40 cases were regulations applied by EAC and COMESA countries with the United Republic of Tanzania and Uganda being responsible for 14 cases each. Exporters in this industry experienced difficulties with regulations primarily related to inspection and certification requirements (19 cases).

3.1.2. Basic manufacturing

Kenya's basic manufacturing industry includes metal products and non-electric machinery. Together they account for the largest share of Kenya's manufactured exports (27.7%) with over US$ 513 million goods exported in 2010 (Table 13). In 2010, the production of the metal products grew by 9.5%. This was partly attributed to the removal of import duties on flat rolled products of iron or non-alloy steel coated or plated with tin, which are key imported raw materials.

The industry is heavily dependent on imported raw materials. The country imports steel billets, coils, wire rod and wires, steel plates, sheets, steel scrap and pig iron. Exports from this industry are concentrated in the EAC (64%) and COMESA (23%), where over US$ 182 million worth of iron and steel products (HS 72 and 73) and US$ 98 million worth of cement (HS 2523) were exported.[100] Other major export products from this industry include machinery, aluminium and glass products.

Exporters from this industry reported facing burdensome regulations of importing partner countries in 58 cases. Most of these were EAC countries. The exporters also reported difficulties with Kenyan regulations in 8 cases. Regulations regarding conformity assessment are the major cause of concern among Kenyan exporters (23 cases), and the slow process and delays involving testing and obtaining certificates from KEBS.

3.1.3. Miscellaneous manufacturing

Miscellaneous manufacturing industry product exports totalled US$ 212 million in 2010, which is equivalent to 11% of total manufactured exports. Exports from this industry are dominated by articles manufactured from plastic (US$ 91 million), books and printed material (US$ 34 million).

Exports in this subsector include curios such as paintings and drawings, wooden sculptures and statuary, dartboards and darts, jewellery made of bones, traditional jewellery, bags and baskets, and hair braids.

3.1.4. Clothing

Kenya's clothing industry constitutes around 11% of the total value of manufactured exports (Table 3). This subsector recorded a 6.6% growth in production in 2010 after a decline of 19.6% in 2009.[101] Kenya's inclusion among the beneficiaries of the United States African Growth and Opportunity Act (AGOA) has boosted manufacturing in recent years. Since AGOA took effect in 2000, Kenya's clothing sales to the United States increased from US$ 44 million to US$ 179 million in 2010, representing over 88% of export.

3.2. Affected exporting companies

During the telephone interview phase, ITC interviewed 314 companies involved in the export of manufactured products, with 231 companies (73.6%) affected by burdensome regulations. Among these affected companies, 72 were interviewed face-to-face about the exact nature of problems they faced. Overall, exporters report 323 incidents of problematic NTMs, with 250 of the cases being applied by importing partner countries and 73 by Kenyan authorities.

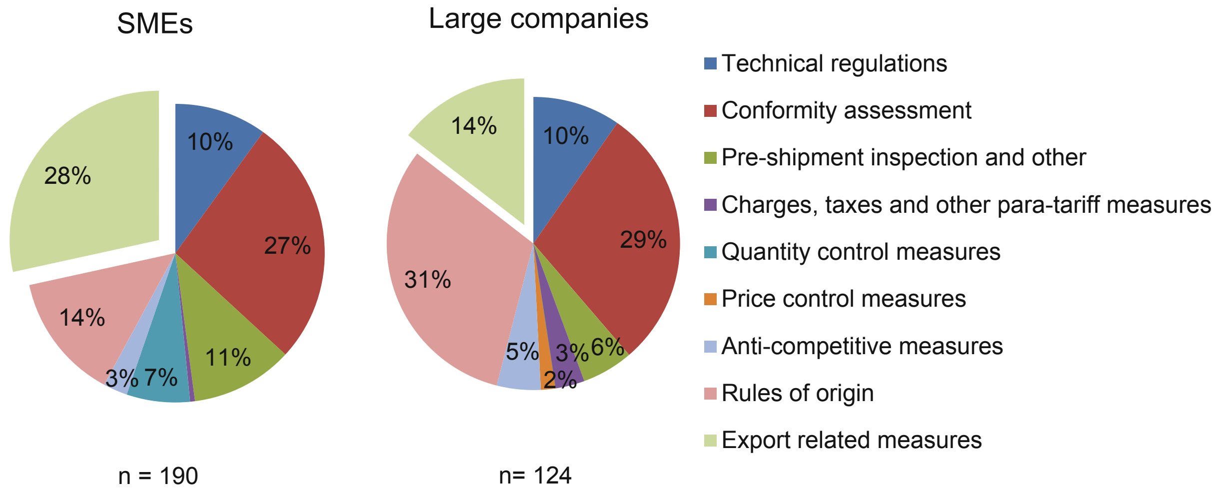
Large companies and SMEs faced a similar proportion of technical measures, with around 10% of the problems being technical regulations and 28% related to conformity assessment (figure 25). A major contrast between SMEs and large companies is the number of NTM cases related to rules of origin. Large companies faced more problems with regulations related to rules of origin (31%) compared to SMEs

[100] ITC Trade Map (2012).

[101] KNBS (2011). Kenya Economic Survey 2011.

(14%). In contrast, SMEs were much more affected by export regulations applied by Kenyan authorities (28%) compared to large firms (14%).

Figure 25: Types of NTMs face by manufacturing exporters, by company size[102]



Source: ITC NTM Business Survey in Kenya, 2011.

3.3. Companies' experiences with partner country regulations

Over three-quarters of the regulations exporters of manufactured products found burdensome were importing partner country regulations. EAC countries together are the largest importers of Kenyan manufactured goods (49% of total exports) and are also responsible for the largest share of burdensome regulations faced by Kenyan exporters (over 45% of reported NTM cases, Figure 26). The majority of them are Tanzanian and Ugandan regulations, 54 and 50 cases respectively. Around half of the cases in these countries are related to conformity assessment measures followed by rules of origin.

Forty-two incidents of burdensome NTMs reported by exporters were regulations applied by COMESA countries. Most of these regulations concerne rules of origin and conformity assessment. Among COMESA member states, most of the difficult NTM cases reported by exporters were Ethiopian (23). Ethiopia is also the only country reported to have been applying anti-competitive measures (11 cases) and price control measures (2 cases).

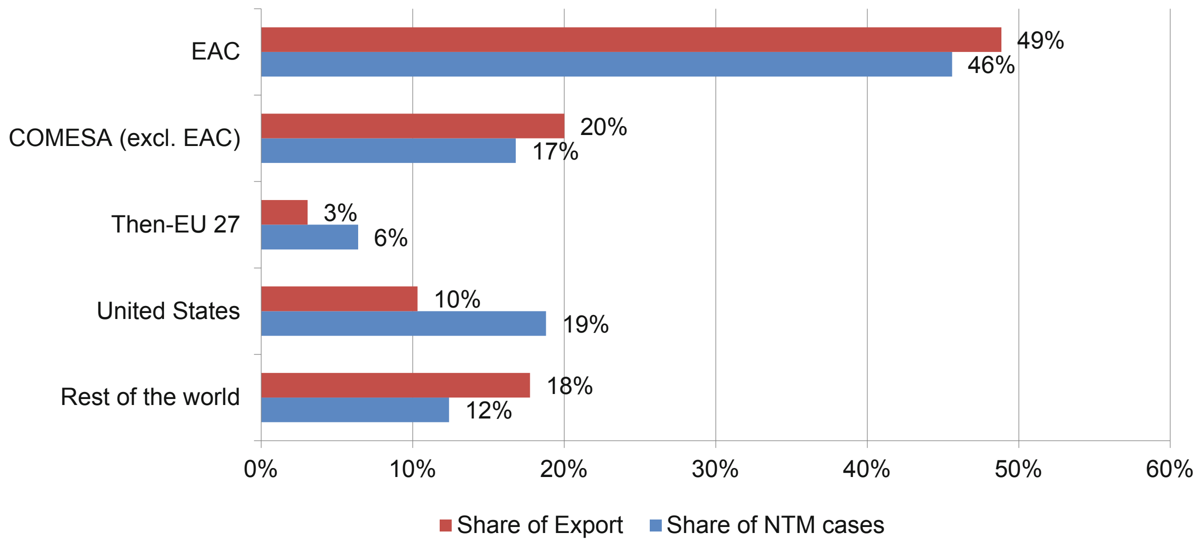
Beyond the regional bloc, most of the other cases concern the United States (47). Compared to the share of Kenyan exports to the United States (10% of total manufactured product exports), it is responsible for a disproportionately high share of burdensome NTMs (19%, Figure 26). Rules of origin and conformity assessment measures are the major obstacles faced by Kenyan exporters in the United States. Under AGOA, Kenya enjoys preferential access to the United States market for certain categories of products, including clothing. However, of the 27 NTM cases reported in the clothing industry, 12 were related to the United States (44%). The United States was also responsible for the largest number of burdensome regulations to exporters in the miscellaneous manufacturing industry, with 21 cases of 61 reported.

The European Union imports only a small share of Kenyan manufactured exports. Sixteen cases of NTMs reported by exporters from the manufacturing sector concern the European Union. The share of burdensome regulations originating from EU member states (6%) is high when compared to the share of

[102] For nine cases, the size of the affected company was unknown. SMEs include micro, small and medium-sized companies as captured during the telephone interviews. Company size is based on the number of employees as defined by the Kenyan Government.

manufactured products it imports from Kenya (3%, Figure 26). The United States and the European Union appear to be more restrictive than EAC and COMESA countries when the share of NTM cases is compared with the share of export.

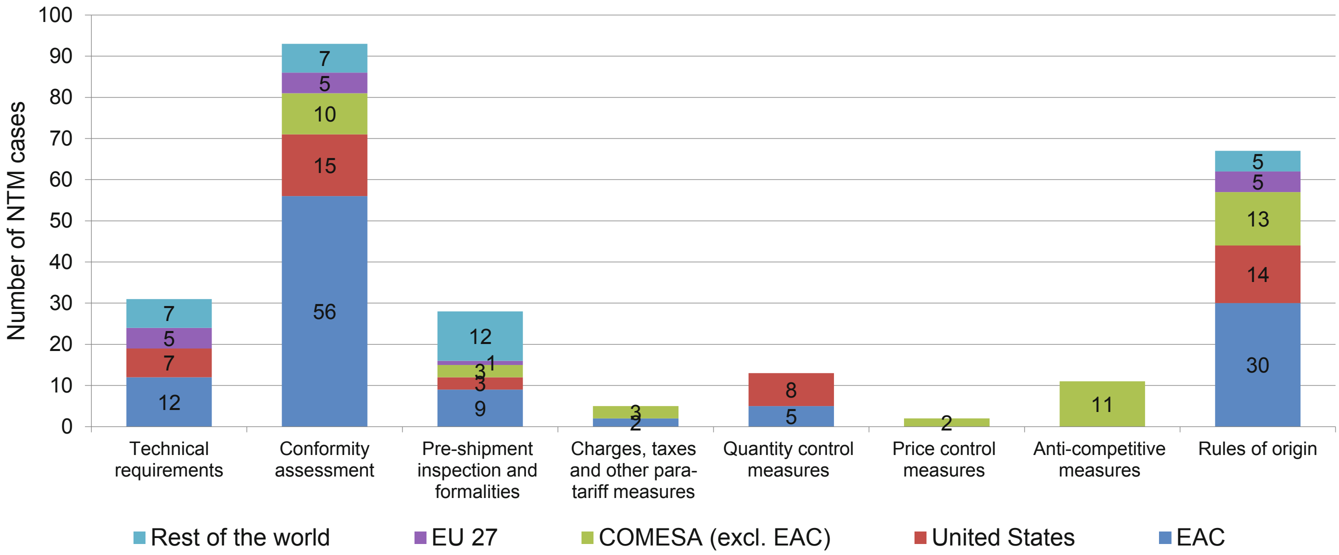
Figure 26: Share of manufactured export and share of NTMs applied by partner country, 2010



Source: ITC NTM Business Survey in Kenya, 2011, and Trade Map, 2012.

Miscellaneous manufacturing (61 cases), basic manufacturing (58 cases), chemicals (40 cases) and clothing (27 cases) exporters report the most number of difficult regulations faced in partner countries, with conformity assessment and rules of origin being the main cause of concern (Table 3*)*. Wood and textile products, which account for a fairly low percentage of export value, still account for 34 and 16 cases of burdensome regulations respectively. In contrast, IT and electronics products, which account for almost 11% of the export, experienced very few problems with NTMs (9 cases, Table 3).

Figure 27: Export of manufactured products – types of burdensome NTMs applied by partner countries



Source: ITC NTM Business Survey in Kenya, 2011.

3.3.1. Technical regulation and conformity assessment

This section discusses in detail some of the major types of problematic NTMs faced by Kenyan exporters from the manufacturing sector. Evidence from the ITC NTM survey suggests that exporters of manufactured products face many more difficulties in proving compliance to technical regulations (conformity assessment), such as inspection, testing and certification, than they do with meeting the technical requirements themselves. Exporters reported 31 cases of difficult technical regulations, but the number of conformity assessment cases was three times as high (93). EAC countries, Kenya's biggest market for manufactured products, apply most of these measures.

Exporters were among other concerned about the requirement to fumigate products. The companies interviewed cited that countries such as Japan, China, South Africa and countries in the European Union require wooden products to be fumigated to destroy insects or microorganisms. However, the lack of adequate fumigation companies and the excessive fees charged by the few existing facilities have made it difficult for exporters to comply with the partner country's requirements. As a result, this makes doing business difficult for Kenyan exporters.

Other technical regulations pointed to by exporters include the restriction on lead content of products when exporting to the United States. Being a poisonous and heavy metal, long-term exposure to lead can damage many human organs, including the nervous system. Children, in particular, are vulnerable to lead exposure. Because of its harmful affects, 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%.[103] The interviewed exporters find this regulation too strict to comply with.

Leather products are also subject to specific requirements. For example, South Africa requires imported leather products to be conditioned during a process called crusting. During this process, the leather product is dyed and a surface coat is applied. According to South Africa regulations, this process enhances the durability and quality of leather products. However, this is a challenge to Kenyan producers facing a lack of facilities to carry out the crusting process. Exporters also referred to several cases of Kenyan leather products not being allowed to enter or being destroyed in Australia. The reason for this prohibition remains unclear to exporters, who lament the lack of information on such issues.

The majority of the difficult conformity assessment cases faced by exporters of manufactured goods concern meeting the regulations of EAC countries (53 cases). High incidents of similar cases are also experienced in Zambia. These import markets require Kenyan exporters to have their products tested or certified by KEBS for quality assurance and compliance. This takes around four work days and the cost of certification is high, according to exporters. Exporters also experience delays at EAC borders when custom officials verify the authenticity of the documents.

Officials in these countries also insist on checking products at the border, even though they have already been certified by KEBS. This creates redundancy and duplication of effort. For example, Uganda and the United Republic of Tanzania insist on inspecting products, in particular agricultural chemicals such as fertilizers and insecticides. This process takes up to five days in Uganda and up to three weeks in the United Republic of Tanzania, thus creating further delays. Exporters complained that some of their products are damaged due to poor handling by customs officials. Multiple cases of goods being lost due to theft during the inspection process are also reported. In addition, the exporters cite numerous cases where they are forced to bribe customs officials to speed up the process.

Some exporters complain that KEBS quality assurance stickers on the products are inadequate for Ugandan and Tanzanian officials, who insisted on having a letter from the issuing authority, in this case KEBS, to confirm that the company has the permit to use the stickers on the products. KEBS officials confirmed that a quality assurance sticker is accompanied by a permit, which allows its use. As the stickers could be easily counterfeited, the sticker alone cannot guarantee acceptance by customs officials. The

[103] US Consumer Product Saferty Commission, Total Lead Content, online information available at: http://www.cpsc.gov/info/toysafety/lead.html, accessed on 10 August 2013.

permit provides documentary evidence of the sticker, which is traceable within the KEBS system. The sticker without a permit is not traceable.

Some exporters also claim the United Republic of Tanzania does not conform to the rules set out in the EAC Customs Management Act. Before products are allowed into the Tanzanian market, the country requires them to be registered by the Tanzania Food and Drug Authority (TFDA), irrespective of the products being registered and having met the required set standards in Kenya. Registering products with TFDA is expensive, at about US$ 500 per brand, and the process takes up to six months. Another example is Uganda, which charges an inspection fee of US$ 500 before allowing imports of cement.

Based on these incidents experienced by Kenyan exporters, streamlining clearance procedures, removing redundancies, and ensuring safety of the products in customs of neighbouring EAC countries must be one of Kenya’s top priorities. During the NTM stakeholder meeting, representatives of both the public and private sectors agreed that harmonizing product standards among EAC countries is vital to promote intraregional trade. This is especially important to Kenya, as EAC is the biggest market for its manufactured products.

Lack of product harmonization across EAC countries is one of the major factors affecting Kenyan exporters by creating redundancies, additional costs and delays. While it is understandable that harmonization of product standards among multiple countries is a painstaking process, the business community is not satisfied with the pace and progress made to date. In addition to national authorities of the EAC countries, non-profit organisations such TradeMark East Africa and USAID Compete have also supported standard harmonization processes for products such cereals, pulses, cosmetics and steel, with 47 standards harmonized so far. However, even for niche standards like these that have already been harmonized, it takes considerable time for them to be gazetted and adopted though the EAC institutional framework. It is expected to take another 24 months for these standards to be declared harmonized. The issue of sovereignty seems to be one factor delaying the process as member states still opt for their own standards, even if significant work has already been done on harmonization.

Clearly, the ongoing standards harmonization and adoption processes must be expedited. Governments also need to prioritize issues within EAC to address the harmonization of the most important product standards. Participation of the private sector as well as consumer groups in the harmonization process is critical to ensure their interests are taken into consideration. According to KEBS, there is also a lack of sufficient funds available to finance experts in the harmonization processes. KEBS suggests that the private sector should consider funding some of the associated costs. Given that harmonization is a lengthy procedure, it is also worthwhile considering mutual recognition of each other’s standards in the short term. In addition to standards, it is important to consider harmonization of custom procedures, testing requirements and procedures, and inspection procedures to improve efficiency in clearance and to avoid duplication of efforts.

3.3.2. Rules of origin

Regulations related to rules of origin account for 27% (67 cases) of the problems exporters of manufactured products face with countries' regulations (Table 13). The largest number of these cases concern export to EAC countries (30), followed by the United States (14) and COMESA countries (13). Kenya enjoys preferential market access in all these countries. Exporters find almost all of these cases of rules of origin problematic not because of the regulations themselves, but because of the related POs (Table 144). Delays in KRA in issuing COOs were the primary cause of the problem (Table 177), followed by a few cases where the certificates issued by KRA were not accepted by custom authorities in Egypt and Namibia. Exporters also complained in a few cases that the fees paid to obtain the certificates were high because each product or consignment must be accompanied by an original certificate.

To avoid delays, KRA recommended that companies request early inspection of their products. It is a standard procedure to inspect new companies and products before issuing a COO. KRA stressed that the exporters must make the effort to study the booklet on rules of origin, which explains all relevant issues, to avoid misunderstandings between the agency and companies and subsequent delays.

3.3.3. Other issues

In addition to technical regulations and rules of origin, exporters reported 59 other cases of difficult partner country regulations, 28 of which are related to general pre-inspection of goods (Table 3), which usually causes the goods to be held in the port for extended periods. Similarly, 13 cases of NTMs are related to quantity control measures. One company involved in basic manufacturing reported the need to obtain a trading licence from each of the EAC countries, despite having an EAC licence. As a result, the company had to spend a significant amount of time and money to obtain all of the required documents.

Exporters also reported that the United Republic of Tanzania imposes an import quota on industrial adhesive to protect its domestic industry, thus allowing Kenya to supply just 60% of the total adhesive demanded. Kenya's Ministry of Trade is tasked with the responsibility of ensuring that exporters comply with this requirement. However, the exporters complained that such information is not properly published and disseminated by the ministry, which leads to inconveniences.

Ethiopia is the only country reported to be applying anti-competitive measures (11 cases, Table 3). According to the exporters, Ethiopia has several regulations in place that make transportation of the goods difficult. For example, the government does not allow trucks that are not registered in Ethiopia to enter the country. As a result, Kenyan exporters are required to offload their goods at the border and load on to Ethiopian registered trucks. Similarly, the Ethiopian government only allows the use of Ethiopian owned ships to transport goods into the country. Hence, Kenyan exporters must book ships well in advance to ensure timely delivery of goods. If no ships are available, the exporter must wait for the next available state-owned ship, which sometimes took up to three months.

Ethiopia is also the only country reported to be applying price control measures on Kenyan imports. Kenyan exporters of bathing soap and detergents reported that the Ethiopian authorities have imposed a maximum price limit on their products, making the Ethiopian market unattractive. However, this action by Ethiopian authorities is not targeted at Kenyan products, it is to control inflation.

Table 13: Export of manufactured products – burdensome NTMs applied by partner countries

Subsector	Export to the world		Number of reported NTM cases								
Subsector description	Export value in 2010, $ '000	Share in sector's export value	Technical requirements	Conformity assessment	Pre-shipment inspection and formalities	Charges, taxes and other para-tariff measures	Quantity control measures	Price control measures	Anti-competitive measures	Rules of origin	**Subtotal**
Wood products and paper	76,054	4.1%	9	5	7		1			12	**34**
Yarn, fabrics and textiles	65,039	3.5%	2	2			2			10	**16**
Chemicals	484,715	26.1%		19	3	3	1	2		12	**40**
Leather products	99,759	5.4%	1	2	1		1				**5**
Metal and Basic manufacturing	513,363	27.7%	5	23	5	2	4		9	10	**58**
IT, electronics; transport equipment	199,905	10.8%		7					2		**9**
Clothing	202,936	10.9%	3	10			2			12	**27**
Miscellaneous manufacturing	212,549	11.5%	11	25	12		2			11	**61**
TOTAL	**1,854,320**	**100%**	**31**	**93**	**28**	**5**	**13**	**2**	**11**	**67**	**250**

Source: ITC NTM Business Survey in Kenya, 2011.

Table 14: Export of manufactured products – NTMs applied by partner countries and reasons making them burdensome.

NTM chapter	Number of NTM cases	POs and inefficient business environment making NTMs difficult	Number of cases in home country	Number of cases in partner country	Subtotal of PO cases
Technical regulations	31	Delay in administrative procedures	6		**6**
		Other obstacles		2	**4**
		Limited/inappropriate facilities	3		**3**
		Delay during transportation	-	2	**2**
		Unusually high fees and charges	1		**1**
Conformity assessment	93	Delay in administrative procedures	5	56	**61**
		Large number of checks		12	**12**
		Unusually high fees and charges	2	6	**8**
		Low security level for persons and goods		8	**8**
		Other inconsistent or arbitrary behaviour of officials		6	**6**
		Informal payment		6	**6**
		Poor intellectual property rights protection		2	**2**
		Lack of recognition		2	**2**
		Large number of different documents		1	**1**
		Numerous administrative windows/organizations involved		1	**1**
		Delay during transportation		1	**1**
Pre-shipment inspection and other formalities applied by the importing country	28	Deadlines set for completion of requirements are too short		18	**18**
		Large number of different documents		4	**4**
		Delay in administrative procedures	1	1	**2**
		Delay during transportation	2		**2**
		Other inconsistent or arbitrary behaviour of officials		1	**1**
Charges, taxes and other para-tariff measures	5	Requirement of the regulations were too strict			**0**
Quantity control measures	13	Delay in administrative procedures		12	**12**
		Numerous administrative windows/organizations involved		4	**4**
		Lack of recognition		4	**4**
		Information is not adequately published and disseminated		1	**1**
Price control Measures	2	Requirements of the regulations were too strict			**0**
Anti-competitive measures	11	Delay in administrative procedures		10	**10**
		Delay during transportation		6	**6**
Rules of origin	67	Delay in administrative procedures	12	18	**30**
		Unusually high fees and charges	10		**10**
		Documentation is difficult to fill out	6		**6**
		Lack of recognition		3	**3**
		Other obstacles			**3**
		Large number of different documents	2		**2**
		Other inconsistent or arbitrary behaviour of officials	1		**1**
		Informal payment	1		**1**
		Need to hire a local customs agent to get shipment unblocked	1		**1**
Total	**250**		**53**	**187**	**240**

Source: ITC NTM Business Survey in Kenya, 2011.

3.4. Exporting companies' experiences with regulations in Kenya

During the NTM survey, 37 of the 73 interviewed exporters of manufactured products reported they were facing problems with Kenyan regulations, compared to 41 companies facing problems with partner country regulations. Overall, the affected exporters reported experiencing 73 cases of difficult Kenyan export regulations.

Exporters of miscellaneous manufacturing industry products, which account for 11.5% of the manufactured export value, experienced the most number of difficulties with Kenyan regulations (17 cases), followed by leather industries (11 cases), chemical (10 cases) and clothing industry (10 cases). The basic manufacturing industry, which has the highest export share (27.7%), experienced 8 incidents of difficulties with Kenyan regulations (table 15).

Overall, export licensing, quotas and related quantitative restrictions are the most reported type of NTM (30 cases). As per the Kenyan regulations exporters are required to obtain relevant export permits or licences from the KRA or the Ministry of Trade. In general, exporters do not find the conditions regarding licensing and obtaining permits difficult to comply with. However, one major issue companies have with these requirements is the time it takes to obtain all of the required documents and clearance from the authorities (Table 166). Exporters recommended a faster processing arrangement from the Kenyan authorities.

General export conformity assessments, such as inspection and certification requirements, are the second most reported type of burdensome regulation, with 27 cases. Similar to the cases of export licensing and other quantitative restriction measures, exporters have problems with compliance mainly because of the delays in administrative procedures.

Table 15: Export of manufactured products – burdensome NTMs applied by Kenya

Subsector	**Export to the world**		**Number of reported NTM cases**				
Subsector description	Export value in 2010, US$ '000	Share in sector's export value	Export inspection, certification and other technical specification of products and conformity systems	Export licences, quotas, prohibitions and other quantitative restrictions	Export taxes and charges	Export price control measures	**Subtotal**
Wood, wood products and paper	76,054	4.1%	1	2	1	1	**5**
Yarn, fabrics and textiles	65,039	3.5%	5	1		1*	**7**
Chemicals	484,715	26.1%	4	4	1	1	**10**
Leather and leather products	99,759	5.4%	6	2		3	**11**
Metal and other basic manufacturing, non-electric machinery	513,363	27.7%	5	2		1*	**8**
Computers, telecommunications, consumer electronics, electronic components; transport equipment	199,905	10.8%		4	1		**5**
Clothing	202,936	10.9%		9	1		**10**
Miscellaneous manufacturing	212,549	11.5%	6	6	3	2	**17**
TOTAL	**1,854,320**	**100 %**	**27**	**30**	**7**	**9**	**73**

Source: ITC NTM Business Survey in Kenya, 2011.

*Measures reported by trading agents are marked by an asterix (*); all other NTMs were reported by producing companies.

Exporters also complained about the difficulties faced during transportation due to many weighbridges along the transport corridor. This has resulted in delays and increased transport costs. A soapstone sculpture exporter was concerned about the need to obtain a mines and geology certificate, which shows the origin of the soapstone for every consignment. This is a hindrance to the exporter due to the increased delays and costs.

Only a few cases of export restriction through quotas were reported during the survey. A producer of agricultural lime reported that the Kenyan authorities permit the company to export only 60% of their product. The remaining 40% must be sold in the local market to promote the local farming industry. The company emphasizes that to achieve its full potential, the government should remove these export quotas and identify other ways to promote local agriculture. Another company from the clothing industry also reported that the Ministry of Trade allows the company to sell only 80% of its production abroad. The remainder had to be sold in the local market to ensure an adequate supply of garments. The company claims that local demand is low and unable to absorb the remaining 20% of its production that has to be sold domestically. The company also claims that a vast majority of its revenue comes from exports to attractive markets such as the United States. As a result, this policy is impacting the company's revenue.

Seven cases of difficult Kenyan regulations were related to export taxes and charges. Companies believe that high export taxes imposed on their products reduces their profit margins and makes their products less competitive in the international market. Further, some companies revealed that there is a lack of transparency regarding the taxes they had to pay. They were either unsure about the exact amount required to be paid or were faced by changes in the rates without prior notice.

Table 16: Export of manufactured products – NTMs applied by Kenya and reasons making them burdensome

NTM subchapter	Number of NTM cases	POs and inefficient business environment making NTMs difficult	Number of PO cases in home country
Export inspection, certification and other technical specification of products and conformity systems.	27	Delay in administrative procedures	**21**
		Informal payment	**4**
		Unusually high fees and charges	**3**
		Technological constraints	**2**
		Large number of different documents	**1**
		Inaccessible/limited transportation system	**1**
		Other obstacles	**1**
Export licences, quotas, prohibitions and other quantitative restrictions	30	Delay in administrative procedures	**17**
		Unusually high fees and charges	**9**
		Informal payment	**4**
		Numerous administrative windows/organizations involved	**1**
		Technological constraints	**1**
Export taxes and charges.	7	Delay in administrative procedures	**2**
		Unusually high fees and charges	**2**
		Regulations change frequently	**1**
Other export related measures	9	Delay in administrative procedures	**7**
		Unusually high fees and charges	**2**
		Other obstacles	**2**
Cases with only POs, but not related to any NTMs		Delay in administrative procedures	**3**
		Technological constraints	**2**
		Inconsistent classification of products)	**1**
Total	**73**		**87**

Source: ITC NTM Business Survey in Kenya, 2011.

Since June 2010, KRA requires cargo trucks operating in the country to be fitted with an electronic cargo tracking system (ECTS) with the purpose of ensuring the safety of the cargo, combating illicit trade, and easing the administrative procedures involved with tax and duty collection. KRA also expects this new system to combat theft of cargo on the road, one of the problems highlighted in this survey. Companies also reported that they were required to use trucks equipped with ECTS to qualify for excise duty refund.

The system makes use of global positioning systems (GPS) and radio frequency identification (RFID) to enable real-time tracking of the cargo.[104] To implement this system, the vehicle must first be licensed and the tracking devices installed by the owner. When the cargo is loaded and ready to be transported, KRA field officials seal the containers with an electronic seal that is only unlocked when the pre-defined destination is reached. Any deviation from the route or unauthorized tampering of the electronic seal is reported automatically to the rapid response unit, which then take action against the truck owners.[105]

This attempt by KRA to track cargo transportation in the country using some of the most advanced technology available is an approach in the right direction and can increase the efficiency of cargo transportation, enhance the safety of goods, and improve collection of taxes and duties. However, exporters and freight operators are concerned about the implementation of this policy. One of the main concerns is the cost of installation. According to companies interviewed in the survey, each truck would have to be installed with the devices at a cost of K Sh 77,000 per unit plus a monthly fee of K Sh 2,900. Companies find this cost of implementation high and note that the cost will eventually be passed on to consumers.

KRA has licensed only two private companies, SGS and Cotecna, to provide installation services to local companies. Some companies believe that lack of competition for this service has also resulted in high prices. KRA made the decision to implement ECTS after consulting with custom officials, port operators and others. However, some companies believe the KRA did not consult adequately with private sector stakeholders.

The Kenya Transporters Association has challenged KRA in court over the legality of these measures. Until the ruling of the court is known, the requirement for all truck operators to implement ECTS or risk losing their licences has been suspended. According to KRA, the organizations involved are seeking to settle the matter out of court and reaching an amicable solution is still a possibility.

Some of the recommendations provided by the companies include: KRA bearing some of the cost to cushion the impact on individual companies, KRA to communicate more with private stakeholders, provide an adequate time-frame for companies to gradually implement the system, and create more competition among ECTS installation service providers.

3.5. Companies' experiences with procedural obstacles affecting the manufacturing trade

A large proportion of difficult regulations faced by Kenyan exporters appear to be burdensome because of the related POs in Kenyan institutions and partner countries rather than the regulation being too strict or difficult to comply with. These POs, which range from administrative delays to high fees, can significantly hinder the export process. Overall, NTMs faced by Kenyan exporters were accompanied by 327 PO cases (Table 177).

Exporters experienced 140 cases of POs in Kenyan institutions and 187 in partner countries. The 140 cases of POs that occurred in Kenyan institutions are related to either Kenyan or partner country regulations (Table 144 and Table 177). The 187 cases of POs that occurred in partner countries were only related to regulations applied by partner countries (Table 144). It is not unusual for exporters to be facing POs in Kenya even if partner countries apply the regulations. This is because some foreign regulations, such as testing or certification, must be complied with in Kenya before products are exported.

By a large margin, delays in administrative procedures were the most common PO faced by exporters in both Kenyan and partner-country institutions. Exporters report 74 incidents of delays in Kenyan institutions and 97 in partner countries. This was a primary concern to exporters, particularly regulations involving inspection, testing and certification. KRA, Kenya Ports Authority (KPA) and KEBS are the agencies with

[104] Kenya Shippers Council (2010). Implementing Electronic Cargo Tracking System in Kenya.

[105] Standard Digital, Truckers, tax collector lock horns, article from 4 January 2011, available at: http://www.standardmedia.co.ke/?articleID=2000025915&story_title=truckers-tax-collector-lock-horns&pageNo=1, accessed on 06 July 2013.

which exporters report experiencing the most number of delays (Table 177). Delays in partner countries were concentrated mostly in EAC member states.

Table 17: Export of manufactured products – POs at domestic institutions and in partner or transit countries

POs and inefficient business environment	Number of PO cases				
	In Kenya (and agencies involved)		In partner countries		Sub-total
Large number of different documents	3	KRA (customs), KEBS, post office	5	United Republic of Tanzania (4), United States (1)	8
Documentation is difficult to fill out	6	KRA (customs)			6
Large number of checks			12	United Republic of Tanzania (6), Uganda (6)	12
Numerous administrative windows/organizations involved	1	KEBS, Ministry of Trade	5	Uganda (2), Burundi (1), Rwanda (1), United Republic of Tanzania (1)	6
Information is not adequately published and disseminated			1	United Republic of Tanzania (1)	1
Regulations change frequently	1	KRA (customs)			1
Inconsistent classification of products	1	KRA (customs)			1
Other inconsistent or arbitrary behaviour of officials	1	KRA (customs)	7	Tunisia (5), Egypt (1), Then-EU 27 (1)	8
Delay in administrative procedures	74	KRA (customs), KPA, Chamber of Commerce, KEBS, keNHA, Ministry of Trade, KEPHIS, post office	97	United Republic of Tanzania (29), Uganda (27), Ethiopia (20), Burundi (2), United States (12), Rwanda (3), Zambia (2), Egypt (1), Namibia (1)	171
Delay during transportation	2	Treasury, inland container depot (ICD)	9	Ethiopia (6), Japan (2), Uganda (1)	11
Deadlines set for completion of requirements are too short			18	China (3), Egypt (3), Japan (3), South Africa (3), Turkey (3), United States (3)	18
Unusually high fees and charges	29	KRA (customs), Shinace Garments Ltd, KEBS, fumigation companies, Mines and Geology Department, Ministry of Trade, Pharmacy and Poison Board, SGS, wood and metal traders	6	Then-EU 27 (4), United Republic of Tanzania (2)	35
Informal payment	9	KRA (customs), Ministry of Trade, Post Office	6	United Republic of Tanzania (6)	15
Need to hire a local customs agent	1	KRA (customs)			1
Limited/inappropriate facilities	3	Fumigation companies,			3
Inaccessible/limited transportation system	1	KEPHIS, Ministry of Roads			1
Technological constraints	5	KRA (customs)			5
Low security level for persons and goods			8	United Republic of Tanzania (4), Uganda (4)	8
Poor intellectual property rights protection			2	Japan (2)	2
Lack of recognition			9	United Republic of Tanzania (3), Rwanda (2), Burundi (1), Egypt (1), Namibia (1), Uganda (1)	9
Other obstacles	3	KRA (customs)	2	Japan (2)	5
Grand Total	**140**		**187**		**327**

Source: ITC NTM Business Survey in Kenya, 2011.
Note: Agencies and countries with the highest number of PO cases are listed first.

One of the key improvements that can be made to facilitate trade in the EAC region is to ensure mutual recognition of each other's standards in practice. The survey shows that customs authorities in EAC countries are sometimes not satisfied with certification issued by KEBS, which means the Kenyan products are subject to additional tests or registration requirements. In addition, a large number of checks at the Tanzanian and Ugandan borders contribute to further delays. Exporters of chemical products also stated that their products are sometimes damaged due to mishandling and exposure during inspections in these countries.

The survey also finds a large number of complaints (29 cases) from exporters regarding high fees and charges levied by Kenyan institutions. These fees are levied on exporters primarily when they request certification, permits or licences to export. The companies noted that the fees are expensive because they must be renewed annually. This increases their cost of export, resulting in less competitive products.

Some exporters also reported that obtaining the AGOA form from the KRA costs K Sh 405 per product and per export. The form, which contains specific details of the product and quantity exported, must be filled by the exporters and submitted to the KAM. KAM then processes the export request in collaboration with KRA. Exporters also expressed concern over the high fees for fumigation services. Fees are high because there are few providers of the service in the private sector. There is need to increase the number of fumigation companies operating in the country. This will facilitate not only easier access for exporters, but will drive down the cost, making compliance more affordable.

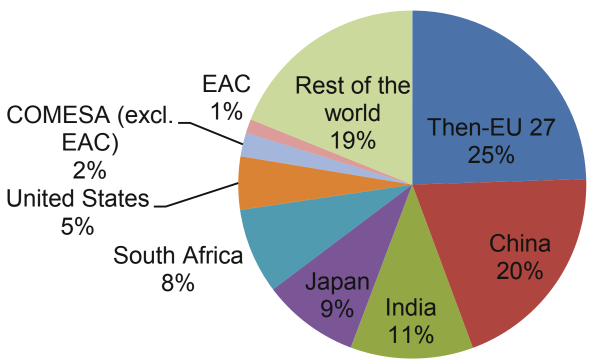
There were few PO cases of corruption in Kenyan institutions reported. The few mainly occurred during the process of acquiring permits or certification where exporters believed they needed to speed up the process. Among the cases of corruption in partner countries, the most cases involved custom authorities in the United Republic of Tanzania. The exporters find it necessary to pay bribes to speed up the inspection process.

3.6. NTMs and other obstacles to manufactured imports

Kenya relies heavily on imports of manufactured goods. The total value of imported manufactured goods exceeded US$ 7.8 billion in 2010. This figure does not account for import of petroleum products, which alone is valued in excess of US$ 2.6 billion. Electronics, transport and IT equipment (33.4%), basic manufacturing products (29.1%) and chemicals (22.6%) were the three biggest import sectors.

EU countries together are the biggest supplier to Kenya, supplying 25% of the manufacturing imports. China supplies 20% of imports, followed by India (11%), Japan (9%) and South Africa (8%, Figure 28).

Figure 28: Kenyan manufactured goods imports – main suppliers, 2010



Source: ITC calculation based on Trade Map, 2012.

Kenyan importers experienced a total of 538 cases of burdensome regulations out of which 503 were import-related measures applied by the Kenyan authorities, while 35 cases were related to measures applied by partner countries on their respective exports. The number of cases of difficult regulations experienced in Kenya according to sector is proportional to the import share of the corresponding sector. The three largest imports, IT and electronics products, basic manufacturing, and chemicals, together with an import share of 85%, account for 84% of the NTM cases (Table 18).

Only eight reported NTM cases applied by Kenya relate to technical requirements. The only major technical issue identified is the restriction imposed by the Kenyan Government on the import of motor vehicles that are more than eight years old. The low number of technical regulation cases does not imply that the product standards requirement in Kenya are low, but that the responsibility of ensuring compliance lies with the foreign companies producing or exporting to Kenya. However, as foreign exporters are not covered by the survey, such incidents of difficulties with Kenyan technical regulations are not adequately highlighted. The survey covers only Kenyan importing companies, which usually do not have to handle the technical aspects of the commodities they are importing.

Nevertheless, the importing company must prove that the imported products comply with Kenyan regulations. This is supported by the results of the survey, which reports 185 cases of difficult Kenyan import regulations related to conformity assessments. This includes requirements such as inspection and certification. Most of these cases are related to quality checks or inspection requirements at KRA customs, KPA and KEBS where the importers experience delays due to congestion or slow administrative processes
(

Table 19*)*. Importers also reported delays due to KRA's online Simba system going down frequently (see also section 2.6). In light of these testimonials, it is important that KRA upgrades its IT infrastructure and streamlines import clearance procedures.

KEBS, which usually verifies the quality standard of the product, appears to suffer from delays. In addition, there also appear to be some transparency issue in KEBS with regard to the fees for services. Several importers reported that they were unsure of the exact fees they would be charged until they were actually charged, sometimes more than anticipated. They requested that KEBS be more transparent with its fee structure to avoid any misunderstandings. One of the surveyed companies reported that KEBS fees were charged in US dollars, with fluctuations that sometimes led to higher charges when converted into local currency.

Mishandling of merchandise by officials is another issue highlighted by importers. Importers of electronics and IT products expressed concerns about products being damaged due to mishandling by officials during inspection. There are complaints of KRA and KEBS officials taking multiple samples of the product for inspection and not returning them after testing. In response to these findings, KRA stressed that it is the responsibility of the owner to supervise the offloading and reloading of goods for inspection. With regards to inspection and sampling, KRA claimed that its officers are obliged to follow procedures and that all samples taken are well documented. In light of claims by importers regarding products not being returned or damaged by officials, KRA has indicated that it will sensitize its staff on inspection and sampling of products.

Importers of medicines report several hindrances due to conformity assessment requirements. According to importers, medicines must be tested by the Kenya Poisons and Drugs Board, which results in additional expenses for the importers. Some companies reported that the products also had to be inspected by KEBS, a slow process that causes problems for the companies. The entire process in KEBS takes about five days, and further delays are experienced when dealing with KPA. The companies are required to pay storage cost for the days the shipment is held in the port awaiting approval.

In addition, the Pharmacy and Poisons Board issues certificates to import a specific drug. It also restricts the number of companies allowed to import a particular variety of drug. According to interviewed companies, the government is using this strategy to track down importers in case there are problems with the drugs in question. However this registration certificate must be renewed annually and is usually accompanied by delays. Because of such delays, legitimate companies cannot import drugs. As a result, drugs are imported illegally by other companies, which according to the interviewed companies can be substandard. As a result, these delays are leading to revenue losses for the legitimate companies and are flooding the market with substandard illegal drugs.

Pre-shipment inspection and other formalities such as import declaration and monitoring is the second most reported NTM applied by Kenya, involving 142 cases. The primary problems concern involves delays due to slow administrative procedures, port congestion and KRA's online system going down.

Quantity control measures such as licences, permits and prohibition were reported in 25 cases. Companies importing chemicals, in particular, are concerned about the required special permits and licences needed for import. They need to apply for a permit for each shipment in addition to having a licence, which they find redundant. Furthermore, to obtain the permit and licence a company needs approval from multiple agencies. They questioned the need to have a dual approval process, which requires additional time and is costly.

Other quantitative restrictions captured in the survey include a ban on the import of motor vehicles whose capacity range from 1500 cc to 3000 cc (HS 870323) and those exceeding 3000 cc (HS 870324).

With the increasing number of pirate attacks on cargo ships in recent years, companies indicated that it is more important than ever to insure their products against such risks. However, companies importing electronics and vehicles voiced their opposition because they are obliged to purchase insurance from a Kenyan insurer. Eight such cases were reported during the survey. According to the importers, the Kenyan companies charged a much higher premium compared to others in the international market. They argued that they should be free to choose the insurance company offering the best value. The Association of Kenya Insurers (AKI) confirmed that the Kenyan companies are not allowed to be insured by foreign insurers. According to AKI, this is done for the company's own protection from fraud and to have the insurer and the client under the same jurisdiction. AKI also stressed that there were 46 insurance companies operating in Kenya providing marine insurance at competitive prices.

Only a few cases of NTMs (13) were reported for fabrics and textiles (Table 18). This is because most firms exporting fabrics and textiles are located in EPZs, where the government has reduced barriers in acquiring raw materials and equipment. The subsectors least affected by NTMs were clothing (1); leather and leather products (2); and wood, wood products and paper (11). The least problematic NTMs include distribution restriction (1), rules of origin (3), technical requirements (8) and anti-competitive measures (8).

Table 18: Import of manufactured products – burdensome NTMs applied by Kenyan authorities

Subsector	Import from the world		Number of reported NTM cases										
Subsector description	Import value in 2010, US$ '000	Share in sector's import value	Technical requirements	Conformity assessment	Pre-shipment inspection and formalities	Charges, taxes and other para-tariff measures	Quantity control measures	Finance measures	Price control measures	Anti-competitive measures	Distribution restriction	Rules of origin	**Subtotal**
Wood, wood products and paper	372,990	4.8%		4	5	2							**11**
Yarn, fabrics and textiles	298,667	3.8%		7	4	1						1	**13**
Chemicals	1,776,755	22.6%	2	38	28	27	16	1	1	1	1	1	**116**
Leather and leather products	48,389	0.6%		1	1								**2**
Metal and other basic manufacturing, non-electric machinery	2,286,320	29.1%		44	31	29	1	4	2	1		1	**113**
Computers, telecommunications, consumer electronics; electronic components; transport equipment	2,621,416	33.4%	6	70	61	40	4	3	4	6			**194**
Clothing	60,819	0.8%				1							**1**
Miscellaneous manufacturing	382,062	4.9%		21	12	10	2	3	5				**53**
TOTAL	**7,847,418**	**100%**	**8**	**185**	**142**	**110**	**23**	**11**	**12**	**8**	**1**	**3**	**503**

Source: ITC NTM Business Survey in Kenya, 2011.

Table 19: Import of manufactured products – NTMs applied by Kenya and the reasons making them burdensome

NTM chapter	Number of NTM cases	POs and inefficient business environment making NTMs difficult	Number of PO cases in home country	Number of PO cases in partner country	Sub-total
Technical regulations	8	Information is not adequately published and disseminated	1		**1**
		Delay in administrative procedures	1		**1**
		Informal payment	1		**1**
		Limited/inappropriate facilities	1		**1**
Conformity assessment	185	Delay in administrative procedures	124	50	**174**
		Informal payment	29		**29**
		Other inconsistent or arbitrary behaviour of officials	18		**18**
		Numerous administrative windows/organizations involved	15		**15**
		Unusually high fees and charges	14		**14**
		Low security level for persons and goods	13		**13**
		Technological constraints	9		**9**
		Inconsistent classification of products	8		**8**
		Delay during transportation	2		**2**
		Large number of different documents	1		**1**
		Large number of checks	1		**1**
		Deadlines set for completion of requirements are too short	1		**1**
Pre-shipment inspection and other formalities applied by the importing country	142	Delay in administrative procedures	88	59	**147**
		Unusually high fees and charges	19	25	**44**
		Technological constraints	31		**31**
		Other inconsistent or arbitrary behaviour of officials	17		**17**
		Other obstacles		13	**13**
		Large number of checks	11		**11**
		Limited/inappropriate facilities		9	**9**
		Informal payment	8		**8**
		Information is not adequately published and disseminated	6		**6**
		Low security level for persons and goods	5		**5**
		Delay during transportation	2		**2**
		No due notice for changes in procedure	1		**1**
		Inconsistent classification of products	1		**1**
Charges, taxes and other para-tariff measures	110	Delay in administrative procedures	72		**72**
		Informal payment	21		**21**
		Inconsistent classification of products	10		**10**
		Unusually high fees and charges	10		**10**
		Other inconsistent or arbitrary behaviour of officials	4		**4**
		Poor intellectual property rights protection	4		**4**
		Regulations change frequently	1		**1**
		Need to hire a local customs agent to get shipment unblocked	1		**1**
		Technological constraints	1		**1**
Quantity control measures	23	Delay in administrative procedures	12	15	**27**
		Numerous administrative windows/organizations involved	6		**6**
		Other inconsistent or arbitrary behaviour of officials	2		**2**
		E2 Informal payment	2		**2**

NTM chapter	Number of NTM cases	POs and inefficient business environment making NTMs difficult	Number of PO cases in home country	Number of PO cases in partner country	Sub-total
		Large number of different documents	1		**1**
		Unusually high fees and charges	1		**1**
Finance measures	11	Delay in administrative procedures	7		**7**
		Informal payment	7		**7**
		Other obstacles	7		**7**
		No due notice for changes in procedure	2		**2**
		Regulations change frequently	2		**2**
		Unusually high fees and charges	2		**2**
Price control measures	12	Delay in administrative procedures	6		**6**
Anti-competitive measures	8	Unusually high fees and charges	8		**8**
		Large number of different documents	6		**6**
		Delay in administrative procedures	1		**1**
Distribution restrictions	1	Inaccessible/limited transportation system	1		**1**
Rules of origin	3	Delay in administrative procedures	3		**3**
		Information is not adequately published and disseminated		1	**1**
		Other inconsistent or arbitrary behaviour of officials		1	**1**
Total	**503**		**628**	**173**	**801**

Source: ITC NTM Business Survey in Kenya, 2011.

Table 20: Import of manufactured products – burdensome NTMs applied by partner countries

Subsector	Import from the world		Number of reported NTM cases				
Subsector description	Import value in 2010, US$ '000	Share in sector's import value	Export inspection, certification and other conformity systems	Export price control measures	Other export related measures	**Subtotal**	Country reported to apply burdensome NTMs (number of cases)
Chemicals	1,776,755	22.6%			2	**2**	Republic of Korea (1), United States (1)
Leather and leather products	48,389	0.6%					
Metal and other basic manufacturing, non-electric machinery	2,286,320	29.1%	7	1	1	**9**	Then-EU 27 (4), India (2), Japan (1), Republic of Korea (1), Viet Nam (1)
Computers, telecommunications, consumer electronics; electronic components; transport equipment	2,621,416	33.4%	21			**21**	China (7), Then-EU 27 (6), Japan (2), South Africa (3), Republic of Korea (3)
Clothing	60,819	0.8%				**0**	
Other manufacturing[1)]	1,053,719	13.4%	1		2	**3**	Then-EU 27 (2), India (1)
TOTAL	**7,847,418**	**100%**	**29**	**1**	**5**	**35**	

Source: ITC NTM Business Survey in Kenya, 2011.

[1)] This subsector includes the following subsectors: wood, wood products and paper; yarn, fabrics and textiles; and miscellaneous manufacturing.

Table 21: Import of manufactured products – NTMs applied by partner countries and the reasons making them burdensome

NTM sub-chapter	Number of NTM cases	POs and inefficient business environment making NTMs difficult	Number of cases in home country	Number of cases in partner country	Sub-total
Export inspection, certification and other technical specification of products and conformity systems	29	Delay in administrative procedures		29	29
		Unusually high fees and charges		5	5
Export price control measures	1	Requirements of the regulation are too strict			0
Other export related measures	5	Information is not adequately published and disseminated		3	3
		Regulations change frequently		3	3
		Unusually high fees and charges		1	1
Cases with only POs, but not related to any NTMs		Delay in administrative procedures	25	4	29
		Inconsistent classification of products	18		18
		No advance binding ruling procedure		12	12
		No due notice for changes in procedure	8		8
		Deadlines set for completion of requirements are too short	4		4
		Technological constraints	4		4
		Requirements and processes differ from information published	3		3
		Large number of different documents	2		2
		Difficulties with translation of documents from or into other languages		2	2
		Other inconsistent or arbitrary behaviour of officials	2		2
		Unusually high fees and charges	2		2
		Informal payment	2		2
		Low security level for persons and goods	1		1
Total	**35**		**71**	**59**	**130**

Source: ITC NTM Business Survey in Kenya, 2011.

Table 22: Import of manufactured products – POs at domestic institutions and in partner or transit countries

POs and inefficient business environment	Number of PO cases				
	In Kenya (and agencies involved, if specified)		In partner countries		Sub-total
Large number of different documents	10	IRA, KRA (customs), Intertek, PCPB			**10**
Difficulties with translation of documents from or into other languages			2	China (1), Japan (1)	**2**
Large number of checks	12	KEBS, PCPB			**12**
Numerous administrative windows/organizations involved	21	KRA (customs), KEBS, Mines and Geology department, Ministry of Agriculture, KBS, CID, KPA, INTERTEK, KEPHIS, PCPB			**21**

POs and inefficient business environment	**Number of PO cases**				
	In Kenya (and agencies involved, if specified)		**In partner countries**		**Sub-total**
Information is not adequately published and disseminated	7	KEBS, KPA, KRA (customs), Ministry of Health, KEBS	4	Then-EU 27 (3), United Arab Emirates (1)	**11**
No due notice for changes in procedure	11	KRA (customs)			**11**
Regulations change frequently	3	KRA (customs)	3	Then-EU 27 (3)	**6**
Requirements and processes differ from information published	3	KRA (customs)			**3**
Inconsistent classification of products	37	KRA (customs), KEBS, KPA			**37**
Other inconsistent or arbitrary behaviour of officials	43	KRA, KEBS, KPA, CFS	1	United Arab Emirates (1)	**44**
Delay in administrative procedures	339	KRA (customs), KPA, KEBS, Ministry of Trade, CID, Ministry of Agriculture, Intertek, KAA, KBS, SGS, Pharmacy and Poison Board, POLICE, PCPB, IRA, Kenya Poisons Board, Kenya Wildlife Service, KEPHIS, Ministry of Transport, unknown	157	Then-EU 27 (61), China (35), India (13), Japan (11), South Africa (9), Republic of Korea (7), United States (4), Egypt (3), Malaysia (3), United Arab Emirates (3), Saudi Arabia (2), Australia (1), Brazil (1), New Zealand (1), Singapore (1), Chinese Taipei (1), Thailand (1)	**496**
Delay during transportation	4	KPA, KRA (customs)			**4**
Deadlines set for completion of requirements are too short	5	KRA (customs), KPA			**5**
Unusually high fees and charges	56	KRA (customs), KEBS, IRA, KPA, Ministry of Trade, PCPB	31	Then-EU 27 (8), China (7), Japan (4), India (3), United Arab Emirates (3), United States (2), Australia (1), Egypt (1), Malaysia (1), Republic of Korea (1)	**87**
Informal payment	70	KRA (customs), KEBS, KPA, POLICE, KAA, Kenya Poisons Board, CID			**70**
Need to hire a local customs agent to get shipment unblocked	1	KPA			**1**
Limited/inappropriate facilities	1	KEBS	9	Japan (3), United Arab Emirates (3), China (2), Egypt (1)	**10**
Inaccessible/limited transportation system	1	Ministry of Roads			**1**
Technological constraints	45	KRA (customs), KPA, KEBS, INTERTEK			**45**
Low security level for persons and goods	19	KRA (customs), KEBS, CFS, KPA, Intertek			**19**
No advance binding ruling procedure			12	China (4), then-EU 27 (4), Singapore (4)	**12**
Poor intellectual property rights protection	4	KRA (customs)			**4**
Other obstacles	7	KRA (customs)	13	Then-EU 27 (8), United States (2), Brazil (1), China (1), Japan (1)	**20**
Total	**699**		**232**		**931**

Source: ITC NTM Business Survey in Kenya, 2011.

Note: The agencies or countries with the highest number of PO cases are listed first.

3.7. Summary and policy options

The proportion of manufactured exports is small compared to agricultural exports; however, they have been growing at a much faster rate. The Kenyan economy also depends on a large number of imported manufactured goods for consumption as well as for further processing in its industries. As a result, growth in the manufacturing sector remains critical for the country's future economic development.

Chemicals and basic manufacturing products are the biggest exports, while clothing exports, most of which go to the United States, have also grown significantly in the last few years. The regional EAC and COMESA markets continue to remain the biggest for manufactured products, accounting for close to 70% of manufactured exports. Around 10% of the exports go to the United States.

The telephone screening interviews determined that about 73% of the companies from the manufacturing sector faced regulatory obstacles to trade. This represents some of the highest figures recorded so far in ITC's NTM surveys, which have been conducted in close to 25 countries to date. Face-to-face interviews revealed that the majority of the NTMs companies faced were due to partner country regulations, most of which were applied by EAC member states.

The majority of NTMs are related to conformity assessment requirements of partner countries. A closer inspection reveals that most of these requirements are problematic due to the related obstacles in EAC countries. Lack of common product standards or the lack of standards' implementation among EAC countries has led the exporters to suffer unnecessary delays and costs. Therefore, it is recommended that Kenya push for a faster harmonization and adoption of standards across EAC countries. As full harmonization can take a considerable amount of time, products of high importance to EAC countries must be prioritized and standards harmonized.

Kenya and EAC countries should also strengthen cooperation with organizations such as TradeMark East Africa and USAID Compete for their technical expertise and their work on standard harmonization of niche products. Furthermore, if lack of funds continues to be a major issue hindering progress, Kenya should encourage the private sector and business associations to fund part of the cost. Until a full harmonization can be realized in the region, mutual recognition of each other's certification should be considered. Multiple business and trading licence requirements in different countries should be replaced by a single licence allowing exports to any EAC country without the need for further documentation.

A lack of adequate or appropriate infrastructure facilities or services, such as fumigation, has made it difficult to comply with partner country regulations. To resolve these issues, Kenyan authorities must work with the private sector to provide exporters easy access to these essential services.

The Ministry of Trade should also ensure that exporters are fully aware of technical requirements as well as other restrictions such as prohibitions or quotas applied by partner countries. This would avoid incidents of exported goods being rejected at the border for non-compliance.

Kenyan exporters benefit from preferential access to numerous markets for which they are required to have a COO. Numerous exporters reported difficulties at KRA to obtain these certificates, usually due to the time taken by KRA to issue them.

Among the export regulations applied by Kenyan authorities, most are related to quantitative restrictions such as licence requirements and quotas. While it has been argued that these regulations are in place to ensure there is adequate supply for the domestic market, the government must reassess these claims to ensure they are having the desired effect in the domestic economy. The exporters believe these regulations are hindering their ability to compete and profit in the international market.

Most of the importers' concerns are related to conformity assessment and institutional inefficiencies at domestic agencies. In light of these concerns, KRA and KEBS must upgrade their online infrastructure to ensure processing can be done without any delays and that their staff is honest and committed. Both Kenyan exporters and importers can benefit a great deal by improvements in institutional efficiencies.

Kenya, together with other EAC countries, must also address the issue of constant roadblocks and checkpoints. While these checks are in place for national security, they have significantly increased transportation time and cost for the traders. In addition, these checkpoints have been plagued with alleged corruption. Multiple weighbridges along the highway are another concern. Since the completion of this survey, EAC countries have agreed to reduce the number of weighbridges in their respective countries and to harmonize the maximum allowed gross vehicle weight. These two positive decisions are expected to increase efficiency in road transportation in EAC countries. It is vital that these decisions are adopted and duly implemented. Even with the reduced number of weighbridges, it is necessary to ensure that vehicle inspections do not create a bottleneck at these points.

The requirement to have all cargo trucks operating in the country to be fitted with ECTS has also caused concern among companies, which believe that the installation and running cost of the system is too high. KTA has already challenged this requirement in court. Some of the affected companies recommended that the authorities bear some of the cost to cushion the impact on individual companies. KRA should communicate more with private stakeholders; an adequate time-frame is needed for companies to gradually implement this system; and more competition is needed among ECTS installation service providers.

Chapter 4 Conclusion and policy options

The non-tariff measure survey in Kenya

NTMs have become a major concern in international trade for developing and least developed countries. While NTMs may be applied for legitimate purposes, they can still impede trade. Given their nature and complexity, NTMs are often difficult to evaluate. The ITC NTM survey in Kenya has been implemented to review the perspective of the business community on NTMs and their effects. To provide a more accurate picture of the issue in hand, the survey also analyses procedural obstacles (POs) and inefficiencies in the TBE. This approach identifies not only the NTMs the business community find difficult, but also the underlying reasons why they face difficulties complying with NTMs – allowing for more precise policy recommendation and government action.

The NTM survey in Kenya finds a high share of exporters as well as importers affected by burdensome NTMs and related obstacles to trade. Overall, close to three-quarters of companies find it difficult to comply with regulations in Kenya or its trading partners. Exporters and importers from the agricultural sector were slightly more affected by burdensome regulations compared to companies from the manufacturing sector. Technical regulations, which include both product-specific requirements as well as related conformity assessments, are a major source of concern to Kenyan companies. These technical regulations are mostly applied by developed markets such as the European Union and highly affected companies in the horticulture industry.

In recent years much progress has been made in regional integration in the form of EAC and COMESA. However, trade among these countries is still hindered by lack of product harmonization and related processes. In addition to these issues, a significant proportion of the reported problems are domestic, originating from inefficiencies in public agencies. These hindrances have affected the Kenyan companies' ability to compete in the international market. As a result, to further enhance Kenya's trade performance, it is necessary to address specific trade policies with its foreign partners, especially those in the regional EAC and COMESA markets, as well as to tackle unnecessary costs and frictions at home.

Public-private dialogue at the stakeholder meeting

The aim of the NTM Survey is to identify obstacles to trade faced by the business community in Kenya and to liaise with national stakeholders to identify concrete and realistic policy options. For this purpose, analysis of the survey data was complemented with discussions with experts and representatives from various Kenyan institutions and associations.

ITC, together with its national partner, the Kenyan Ministry of Trade, organized a full-day stakeholder meeting in Nairobi, Kenya, on 26 February 2013. The purpose of the meeting was to present and validate the results of the survey, discuss the public sector's perspective and identify policy recommendations. More than 70 participants from government agencies, the business sector, research institutes and international organizations attended the meeting. For details of the agenda and a list of speakers and discussants, please refer to appendix V.

The following list presents concrete options for action at the national and international level, which were discussed at the stakeholder meeting based on the survey analysis. Sector-specific policy options can be found in the respective sections in chapter 3.

Streamline procedures and improve infrastructure in public agencies

The ITC NTM survey in Kenya has found that technical regulations in general are the major cause of concern. Conformity assessment rather than the technical requirements themselves is the main obstacle faced by Kenyan exporters. While the majority of the requirements are imposed by importing countries, most of the problems are rooted in the process of getting the product inspected, tested or certified for export in Kenyan agencies. Slow administrative procedures, red tape and high fees are the main bottlenecks that exist in public agencies, especially KRA and KEPHIS.

Almost half of all reported procedural obstacles in these agencies concern delays. Exporters face delays in obtaining COOs, which are required to benefit from preferential market access through the Generalized System of Preferences scheme and regional free trade agreements.

Based on these observations, KRA and KEPHIS should prioritize improving procedural efficiency in their respective agencies. Additional human resources may be required if these delays are due to inadequate staff to handle growing Kenyan exports. Furthermore, companies often find the time required for certification or testing in these agencies unpredictable. While the public agencies pointed out that they already have a timeframe in place, most surveyed companies were either unaware of it or claimed that the agencies rarely adhere to the timeframe. To counter this uncertainty faced by companies, all public agencies should publish the estimated time required for specific procedures and comply with the time-frame.

Furthermore, given that fresh horticulture exports are a major Kenyan export, a quick clearance procedure is essential to ensure products are not damaged. Long waiting times for testing and clearance at KEPHIS due to congestion have been reported by exporters, which occasionally have caused the fresh food or horticulture products to spoil. More investment in the existing infrastructure at KEPHIS laboratories, especially in hotspots such as JKIA, may be required to cut down on waiting times and ensure smooth operation.

Similarly, KRA's online 'Simba' export-import clearance system has made the clearance procedure more efficient, but the system seems to be plagued by frequent breakdowns causing delays and chaos among exporters. As the current online clearance system when working has already proven to be very efficient, upgrading and proper maintenance of the system to avoid such crashes is critical. KRA must also have clearly defined procedures in place for manual clearance during incidents of online system breakdown.

In addition, delays and inefficiencies were caused due to KRA's system not being integrated with systems of other agencies such as KEPHIS and Kenya Ports Authority (KPA) among others. Harmonization of documentation and streamlining procedures in agencies that are in charge of clearing imports and exports is necessary to reduce compliance costs with NTMs. However, these issues are expected to be resolved with the government's plan to introduce a single window system at the end of 2013, which integrates KRA's system with KPA (Kwatos system), KEBS, and KEPHIS, among others. This single window system is expected to improve Kenya's competitiveness by reducing cost and clearance time. Trade facilitation can be enhanced if the concerned agencies collaborate and have clear and non-overlapping mandates.

Improve information dissemination

During the NTM stakeholder meeting in Nairobi, representatives of both the private and public sectors agreed that a significant number of obstructions are caused by lack of information or misunderstanding between the public agencies and private companies. While a variety of factors in the public agencies play a part in hindering the export process, exporters not being fully aware of existing regulations and procedures is also a major factor. Public agencies have pointed out that many exporters still lack awareness of their system and the processes involved, resulting in additional time and work for both parties. Likewise, exporters have also found it difficult to find information on the requirements of importing countries, which sometimes has led to shipments being rejected, causing losses to the exporters.

Taking these issues into consideration, improvements in disseminating information regarding procedures, requirements, fees and time estimates are important. Currently, some of this information is available on websites of individual and trade support agencies. One possible way to improve information sharing is to create a specialized online portal that details the requirements and processes involved in all relevant agencies for each type of product. This could be further complemented by having the same information disseminated in printed form. In addition to the regulations and procedures in domestic agencies, the online portal could include information about the regulations of partner countries.

The public agencies should also continue with their respective public outreach programmes through regular and updated workshops to sensitize exporting and importing companies on the relevant regulations and procedures involved. Possible improvements can be made by collaborating with trade and business associations to organize specialized workshops for exporters of specific products or sectors. These interactive workshops could be especially beneficial to new and potential exporters. The private sector must take these workshops seriously for them to have the desired outcome.

Improve the domestic support infrastructure

Companies exporting fresh food and plants rely on the availability of cold storage facilities at all stages of the export cycle. Exporters are concerned about limited availability of cooling facilities during inspection at KEPHIS and while awaiting transportation at the port. Exporters have also reported limited availability of fumigation facilities, especially outside of Nairobi. The export process has been lengthy and expensive due to inadequate availability of these essential services. While the public agencies do not have a mandate to provide these services, the government must make an effort to ensure that there is a sufficient supply of these services in Kenya by encouraging private sector investment.

The government must also expedite and streamline the VAT refund process it offers for exporters of some products. Exporters reported that the refund process in KRA is complicated and can take up to two years, while KRA claim that these delays are due to exporters not understanding the procedures properly. There are reported cases of companies experiencing cashflow problems partly due to VAT not being refunded in time. While it is understandable that the VAT refund is a tedious process involving many documented proofs and verifications, KRA should review this process to make it more efficient. KRA must also continue to sensitize exporters about customs procedures.

Expedite implementing harmonized standards in the EAC

Regional barriers to trade have been reduced considerably because of the EAC regional integration processes and the Customs Union and Common Market protocols. Yet, the survey results show that there is still a scope for improvement as Kenyan exporters face a relatively high number of burdensome NTMs applied by EAC member countries. Different product standards and multiple permit or licence requirements in EAC countries continue to be a hindrance to the exporters. The ongoing harmonization process has been slow and has faced many difficulties, including lack of funds. Furthermore, implementing standards that have been harmonized remains a challenge as they have to be gazetted through the EAC institutional framework and adopted by member states. The adoption process can take up to two years.

Expediting the harmonization and adoption of standards by all EAC partner countries remains key to further integration and increased regional trade. Kenya, considering its strong economic position and trade interest in the EAC market, should push for a faster adoption of harmonized standards in the EAC. Given the large variety of products that are traded in the EAC, harmonization should first focus on the important products. If lack of funds to employ experts in harmonizing the standards continues to be a problem, the government should encourage the private sector and business associations to fund part of the cost. International organizations working in product standards can also assist the government. The government should also work with NGOs and other organizations that can help with the harmonization of niche products.

In the immediate future, before the full harmonization is achieved, Kenya should also push for mutual recognition of national standards where EAC partner countries recognize unconditionally the national certification of other member countries. This should have an immediate impact on Kenyan exporters who would benefit from lower regulatory hindrance in the EAC market. In addition, it is important to replace numerous licences and permits required to trade in different EAC countries with a single EAC licence that should be recognized and accepted in all partner countries.

Remove obstacles to road transportation

Numerous factors have contributed to difficulties with road cargo transportation in Kenya and EAC countries. At the time of this survey, multiple police checkpoints and weighbridges along the highways were causing long delays for vehicles queuing to be inspected or weighed. Corruption was rife at these critical points. Since the completion of this survey, EAC countries have decided to reduce the number of weighbridges to two in each country. This change when fully adopted should allow for a smoother movement of cargo trucks along the highway. The Kenyan Government must ensure this is fully implemented without delay. The Kenyan Government must also upgrade weighbridges currently in operation that require each truck to stop and be weighed individually. This process is usually slow and results in long queues of a few kilometers. The High Speed Weighing in Motion (HSWIM) system of weighing that is being introduced by KeNHA should be extended to all truck weighing points. This system enables quicker weighing of trucks as they move along the road without having to stop. The government must also initiate measures to curb corruption and harassment of drivers at checkpoints along the highway.

Review valuation procedures and merchandise handling of imported products

Importing companies have been disputing with customs officials regarding the valuation of imported goods. There are reported cases of KRA officials not accepting the importers' declared price of the products even when necessary invoices are presented. The officials instead refer to prices of similar goods in their database or on the Internet, which are usually higher. The Kenya International Freight and Warehouse Association and surveyed importers find it is important to control this arbitrary behaviour of customs officials, which at times has led to malpractices. KRA must ensure that customs officials adhere to the WTO Agreement on Customs Valuation and accept the declared value of the goods, provided that necessary invoices and documents are presented. The WTO allows for use of reference prices of similar goods as well as other methods to value products only if the necessary conditions are not met.

The government should also make a request to the Technical Committee on Customs Valuation (under the terms of Article 20.3 of the WTO Agreement on Customs Valuation) to implement a technical assistance programme, including training of custom officers, assistance in establishing measures of implementation, access to sources of information and methodology for valuation, and advice about the provisions of the Agreement.

Importing companies also appear to be facing problems with handling of imported goods by authorities at customs. Importers of electronics and IT goods, in particular, complain of samples being damaged or not being returned after being taken for inspection or testing by KRA or KEBS officials. It is important that KRA and KEBS take necessary steps to sensitize their staff on proper handling of goods and sampling procedures, as well as provide prior notice to companies if samples have to be destroyed or are unusable after testing.

Benchmark KenyaGAP to the Global Food Safety Initiative

In addition to the mandatory requirements, horticulture exporters also faced some difficulties complying with voluntary standards such as GlobalG.A.P, which is usually demanded by retailers in the European Union and the United States. These difficulties were mostly related costs associated to audit and certification by third-party auditors. Recognizing this issue, FPEAK has already introduced its own quality assurance scheme, KenyaGAP, which is benchmarked to the GlobalGAP. This has enabled Kenyan exporters to comply with the necessary GAP at a relatively lower cost. FPEAK should continue with its outreach programme to producers and train them on good agricultural practices and sensitize them on the availability and benefits of such quality assurance schemes. FPEAK must also ensure that such information, including lists of certification bodies, evaluation criterias and associated costs, is easily accessible.

FPEAK should also benchmark KenyaGAP to the Global Food Safety Initiative (GFSI), which is managed by the Food Business Forum. GFSI encourages retailers worldwide to accept certificates issued during third-party audits against the GFSI recognized schemes, enabling suppliers to work effectively through fewer audits. This is likely to open new business opportunities for Kenyan exporters with large retailers worldwide.

Kenya in a favourable situation

In conclusion, the situation in Kenya is more favourable than in other surveyed countries. Despite the fact that many companies report to be affected by regulatory and procedural barriers to trade (the second highest rate among surveyed countries), many of the reported problems can be solved relatively easily and can be addressed by Kenya without recourse to international negotiations.

First, independently of the type of NTMs imposed by partner countries, problems often result from inefficiencies in Kenyan agencies. This is easier to tackle than the regulatory environment in partner countries.

Second, Kenyan exporters can produce up to the strict standards of lucrative markets, but require assistance and streamlined procedure for demonstrating compliance. Kenya has successful tea and coffee export sectors that can share their experience with other agricultural exporters.

Finally, behind-the-border problems mostly happen in the EAC countries, such as lack of standard harmonization and transportation issues. Kenya is in position to address these issues, either by ensuring the implementation of existing regional provisions or by fostering further regional integration.

Outlook

The NTM survey analysis provides a comprehensive picture of the challenges encountered by Kenyan exporters and importers. The stakeholder meeting built on this analysis by initiating a public-private dialogue leading to concrete policy options. The implementation of such options requires that ministries, public agencies and the private sector continue to work together. Cooperation needs to be close, continuous and institutionalized so as to ensure that policy actions are well defined and their outcome regularly monitored and evaluated.

ITC has develeloped local capacities in survey implementation, which would facilitate the repetition of the project in the future. This would allow evaluating progress over time; identifying new challenges; and carrying out a smiliar examination at the regional level. ITC will continue to support Kenya in its effort to mitigate trade obstacles, improve trade facilitation and achieve its goals of the Vision 2030.

Appendix I Global methodology of the non-tariff measure surveys

Non-tariff measure surveys

From 2008 to 2013,[106] ITC completed large-scale company-level surveys on burdensome non-tariff measures and other barriers to trade (NTM surveys hereafter) in 23 developing and least-developed countries on all continents.[107] The main objective of the survey is to capture how businesses perceive burdensome NTMs and other obstacles to trade at a most detailed level – by product and partner country.

All surveys are based on a global methodology consisting of a core part and a country-specific part. The core part of the NTM survey methodology described in this appendix is identical in all survey countries, enabling cross-country analyses and comparison. The country-specific part allows flexibility in addressing the requirements and needs of each participating country. The country-specific aspects and the particularities of the survey implementation in Kenya are covered in chapter 2 of this report.

Scope and coverage of the non-tariff measure surveys

The objective of the NTM survey requires a representative sample allowing for the extrapolation of the survey results to the country level. To achieve this objective, the survey covers at least 90% of the total export value of each participating country, excluding minerals and arms. The economy is divided into 13 sectors; all sectors with more than a 2% share in total exports are included in the survey.

The NTM survey sectors are defined as follows:

1. Fresh food and raw agro-based products
2. Processed food and agro-based products
3. Wood, wood products and paper
4. Yarn, fabrics and textiles
5. Chemicals
6. Leather
7. Metal and other basic manufacturing
8. Non-electric machinery
9. Computers, telecommunications; consumer electronics
10. Electronic components
11. Transport equipment
12. Clothing
13. Miscellaneous manufacturing

Companies trading arms and minerals are excluded. The export of minerals is generally not subject to trade barriers due to a high demand and the specificities of trade undertaken by large multinational companies.

[106] The work started in 2006, when the Secretary-General of the United Nations Conference on Trade and Development (UNCTAD) established the Group of Eminent Persons on Non-Tariff Barriers (GNTB). The main purpose of GNTB is to discuss definition, classification, collection and quantification of non-tariff barriers – to identify data requirements, and consequently advance understanding of NTMs and their impact on trade. To carry out the technical work of the GNTB, a Multi-Agency Support Team (MAST) was also set up. Since then, ITC is advancing the work on NTMs in three directions. First, ITC has contributed to the international classification of non-tariff measures (NTM classification) that was finalized in October 2009. Second, ITC undertakes NTMs Surveys in developing countries using the NTMs classification. Third, ITC, UNCTAD and the World Bank jointly collect and catalogue official regulations on NTMs applied by importing markets (developed and developing). This provides a complete picture of NTMs as official regulations serve as a baseline for the analysis, and the surveys identify the impact of the measures on enterprises, and consequently, on international trade.

[107] The first NTM surveys were carried out in cooperation with UNCTAD in 2008–2009 in Brazil, Chile, India, the Philippines, Thailand, Tunisia and Uganda. The pilot surveys provided a wealth of materials allowing for the significant improvement to both the NTMs classification and the NTMs survey methodology. Since then, ITC has implemented NTMs surveys based on the new methodology in Burkina Faso, Hong Kong SAR, Peru and Sri Lanka.

The NTM surveys are undertaken among companies exporting and importing goods. Companies trading services are excluded, as a survey on NTMs in services would require a different approach and methodology. Yet, the NTM survey includes companies specializing in the export-import process and services, such as agents, brokers, forwarding companies (referred to as 'trading agents' for brevity). These companies can be viewed as service companies as they provide trade logistics services. The answers provided by trading agents are in most cases analysed separately from the answers of the companies that export their own products.

The NTM surveys cover legally registered companies of all sizes and types of ownership. Depending on country size and geography, one to four geographic regions with high concentrations of economic activities (high number of firms) are included in the sample.

Two-step approach

The representatives of the surveyed companies, generally export/import specialists or senior-level managers, are asked to report trade-related problems experienced by their companies in the preceding year and representing a serious impediment for their operations. To identify companies that experience burdensome NTMs, the survey process consists of telephone interviews with all companies in the sample (step 1) and face-to-face interviews undertaken with the companies that reported difficulties with NTMs during the telephone interviews (step 2).

Step 1: Telephone interviews

The first step includes short telephone interviews. Telephone interviews consist of questions identifying the main sector of activity of the companies and the direction of trade (export or import). The respondents are then asked whether their companies have experienced burdensome NTMs. If a company does not report any issues with NTMs, the telephone interview is terminated. Companies that report difficulties with NTMs are invited to participate in an in-depth face-to-face interview, and the time and place for this interview is scheduled before ending the telephone interview.

Step 2: Face-to-face interviews

The face-to-face interviews are required to obtain all the details of burdensome NTMs and other obstacles at the product and partner country level. These interviews are conducted face-to-face due to the complexity of the issues related to NTMs. Face-to-face interactions with experienced interviewers help to ensure that respondents correctly understand the purpose and the coverage of the survey and accurately classify their responses in accordance with predefined categories.

The questionnaire used to structure the face-to-face interviews consists of three main parts. The first part covers the characteristics of the companies: number of employees, turnover and share of exports in total sales, whether the company exports their own products or represents a trading agent providing export services to domestic producers.

The second part is dedicated to exporting and importing activities of the company, with all trade products and partner countries recorded. During this process, the interviewer also identifies all products affected by burdensome regulations and countries applying these regulations.

During the third part of the interview, each problem is recorded in detail. A trained interviewer helps respondents identify the relevant government-imposed regulations, affected products (6-digit level of the Harmonized System – HS), the partner country exporting or importing these products, and the country applying the regulation (it can be partner, transit or home country).

Each burdensome measure (regulation) is classified according to the NTMs classification, an international taxonomy of NTMs consisting of more than 200 specific measures grouped into 16 categories (see appendix II). The NTMs classification is the core of the survey, making it possible to apply a uniform and systematic approach to recording and analysing burdensome NTMs in countries with very idiosyncratic trade policies and approaches to NTMs.

The face-to-face questionnaire captures not only the type of burdensome NTMs, but also the nature of the problem (so-called procedural obstacles [POs] explaining why measures represent an impediment), the place where each obstacle takes place, and the agencies involved, if any. For example an importing country can require the fumigation of containers (an NTM applied by the partner country), but fumigation facilities are expensive in the exporting country, resulting in a significant increase in export costs for the company (POs located in the home country). The companies can also report generic problems not related to any regulation, but affecting their export or import, such as corruption and lack of export infrastructure. These issues are referred to as problems related to business environment or TBE (see appendix III).

Local survey company

Both telephone and face-to-face interviews are carried out by a local partner selected through a competitive bidding procedure. The partner is most often a company specializing in surveys. Generally, the NTM surveys are undertaken in local languages. The telephone interviews are recorded either by a Computer Assisted Telephone Interview system, computer spreadsheets or on paper. The face-to-face interviews are initially captured using paper-based interviewer-led questionnaires that are then digitalized by the partner company using a spreadsheet-based system developed by ITC.

Open-ended discussions

During the surveys of companies and preparing the report, open-ended discussions are held with national experts and stakeholders, for example trade support institutions and sector/export associations. These discussions provide further insights, quality check and validation of the survey results. The participants review the main findings of the NTM survey and help to explain the reasons for the prevalence of the certain issues and their possible solutions.

The open-ended discussions are carried out by the survey company, a partner in another local organization or university or by graduate students participating in the special fellowship organized in cooperation with Columbia University in the United States.

Confidentiality

The NTM survey is confidential. Confidentiality of the data is paramount to ensure the greatest degree of participation, integrity and confidence in the quality of the data. The paper-based and electronically captured data is transmitted to ITC at the end of the survey.

Sampling technique

The selection of companies for the telephone interviews of the NTM survey is based on the stratified random sampling. In a stratified random sample, all population units are first clustered into homogeneous groups (‘strata’), according to some predefined characteristics, chosen to be related to the major variables being studied. In the case of the NTM surveys, companies are stratified by sector, as the type and incidence of NTMs are often product-specific. Then simple random samples are selected within each sector.

The NTM surveys aim to be representative at the country level. A sufficiently large number of enterprises should be interviewed within each export sector to ensure that the share of enterprises experiencing burdensome NTMs is estimated correctly and can be extrapolated to the entire sector. To achieve this objective, a sample size for the telephone interviews with exporting companies is determined independently for each export sector.[108]

[108] The sample size depends on the number of exporting companies per sector and on the assumptions regarding the share of exporting companies that are affected by NTMs in the actual population of this sector. The calculation of a sample size is based on the equation below (developed by Cochran, W. G. 1963. *Sampling Techniques*, 2nd Edition, New York: John Wiley and Sons, Inc) to yield a representative sample for proportions in large populations (based on the assumption of normal distribution).

For importing companies, the sample size is defined at the country level. The sample size for importing companies can be smaller than the sample size for exporters, mainly for two reasons. First, the interviewed exporting companies are often involved in the importation of intermediate products and provide reports on their experiences with NTMs as both exporters and importers. Second, problems experienced by importing companies are generally linked to domestic regulations required by the home country. Even with a small sample size for importing companies, the effort is made to obtain a representative sample by import sectors and the size of the companies.

Exporting companies have difficulties with both domestic regulations and regulations applied by partner countries that import their products. Although the sample size is not stratified by company export destinations, a large sample size permits a good selection of reports related to various export markets (regulations applied by partner countries). By design, large trading partners are mentioned more often during the survey, simply because it is more likely that the randomly selected company would be exporting to one of the major importing countries.

The sample size for face-to-face interviews depends on the results of the telephone interviews.

Average sample size

Based on the results of the NTM surveys in 10 countries, the number of successfully completed telephone interviews can range from 150 to 1,000, with subsequent 150 to 300 face-to-face interviews with exporting and importing companies. The number of telephone interviews is mainly driven by the size and the structure of the economy, availability and quality of the business register and the response rate. The sample size for the face-to-face interviews depends on the number of affected companies and their willingness to participate in the face-to-face interviews.

Survey data analysis

The analysis of the survey data consists of constructing frequency and coverage statistics along several dimensions, including product and sector, NTMs and their main NTM categories (e.g. technical measures, quantity control measures), and various characteristics of the surveyed companies (e.g. size and degree of foreign ownership).

The frequency and coverage statistics are based on 'cases'. A case is the most disaggregated data unit of the survey. By construction, each company participating in a face-to-face interview reports at least one case of burdensome NTMs, and, if relevant, related procedural obstacles and problems with business environment.

Each case of each company consists of one NTM (a government-mandated regulation, for example an SPS certificate), one product affected by this NTM, and partner country applying the reported NTM. For example, if there are three products affected by the same NTM applied by the same partner country and reported by one company, the results would include three cases. If two different companies report the same problem, it would be counted as two cases.

$$n_o = \frac{t^2 * p(1-p)}{d^2}$$

Where

n_o :	Sample size for large populations
t:	t-value for selected margin of error (d). In the case of the NTM survey 95% confidence interval is accepted, so t-value is 1.96.
p:	The estimated proportion of an attribute that is present in the population. In the case of the NTM survey, it is a proportion of companies that experience burdensome NTMs. As this proportion is not known prior to the survey, the most conservative estimate leading to a large sample size is employed, that is p=0.5.
d:	Acceptable margin of error for the proportion being estimated. In other words, a margin of error that the researcher is willing to accept. In the case of NTM survey d=0.1.

Source: Cochran, W. G. 1963. *Sampling Techniques*, 2nd Edition, New York: John Wiley and Sons, Inc.

The scenario where several partner countries apply the same type of measure is recorded as several cases. The details of each case (e.g. the name of the government regulations and its strictness) can vary, as regulations mandated by different countries are likely to differ. However, if the home country of the interviewed companies applies an NTM to a product exported by a company to several countries, the scenario will be recorded as a single NTM case. Furthermore, when an interviewed company both exports and imports, and reports cases related to both activities, it is included in the analysis two times: once for the analysis of exports and once for the analysis of imports. The distinction is summarized in the table below.

Dimensions of an NTM case

Country applying the measure / **Dimensions**	**Home country (where survey is conducted)**	**Partner countries (where goods are exported to or imported from) and transit countries**
Reporting company	X	X
Affected product (HS 6-digit code or national tariff line)	X	X
Applied NTM (measure-level code from the NTM classification)	X	X
Trade flow (export or import)	X	X
Partner country applying the measure		X

Cases of POs and problems with business environments are counted in the same way as NTM cases. The statistics are provided separately from NTMs, even though in certain instances they are closely related. For example, delays can be caused by PSI requirements. As many of the POs and problems with business environment are not product-specific, the statistics are constructed along two dimensions: type of obstacles and country where they occur, as well as agencies involved.

Enhancing local capacities

The NTM Surveys enhance national capacities by transmitting skills and knowledge to a local partner company. ITC does not implement the surveys, but guides and supports a local survey company and experts.

Before the start of the NTM survey, the local partner company, including project managers and interviewers, are fully trained on the different aspects of the NTMs, the international NTM classification, and the ITC NTM survey methodology. ITC representatives stay in the country for the launch of the survey and initial interviews and remain in contact with the local partner during the entire duration of the survey, usually around six months, to ensure a high quality of survey implementation. ITC experts closely follow the work of the partner company, providing a regular feedback on the quality of the captured data (including classification of NTMs) and the general development of the survey, helping the local partner to overcome any possible problems.

ITC also helps to construct a business register (list of exporting and importing companies with contact details), which remains at the disposal of the survey company and national stakeholders. The business register is a critical part of any company-level survey, but unfortunately it is often unavailable, even in the advanced developing countries. ITC puts much time, effort and resources into constructing a national business register of exporting and importing companies. The initial information is obtained with the help of national authorities and other stakeholders (e.g. sectoral associations). In cases where it is not available from government sources or a sectoral association, ITC purchases information from third companies and in certain cases digitalizes it from paper sources. The information from various sources is then processed and merged into a comprehensive list of exporting and importing companies.

As a result, upon completion of the NTM survey, the local partner company is fully capable of independently implementing a follow-up survey or other company-level surveys as it is equipped with the business register and has received training on the survey, trade and NTM-related issues.

Caveats

The utmost effort is made to ensure the representativeness and the high quality of the survey results, yet several caveats must be kept in mind.

First, the NTM surveys generate perception data, as the respondents are asked to report burdensome regulations representing a serious impediment to their exports or imports. The respondents may have different scales for judging what constitutes an impediment. The differences may further intensify when the results of the surveys are compared across countries, stemming from cultural, political, social, economic and linguistic differences. Furthermore, some inconsistency may be possible among interviewers (e.g. related to matching reported measures against the codes of the NTM classification) due to the complex and idiosyncratic nature of NTMs.

Second, in many countries, a systematic business register covering all sectors is not available or incomplete. As a result, it may be difficult to ensure random sampling within each sector, and a sufficient rate of participation in smaller sectors. Whenever this is the case, the survey limitations are explicitly provided in the corresponding report.

Finally, certain NTM issues are not likely to be known by the exporting and importing companies. For example, exporters may not know the demand-side constraints behind the borders, e.g. 'buy domestic' campaigns. Furthermore, the scope of the survey is limited to legally operating companies, and does not include unrecorded trade, e.g. shuttle traders.

Survey findings

The findings of each NTM Survey are presented and discussed at a stakeholder workshop. The workshop brings together government officials, experts, companies, donors, non-governmental organizations (NGOs) and academics. It fosters a dialogue on NTM issues and helps identify possible solutions to the problems experienced by exporting and importing companies.

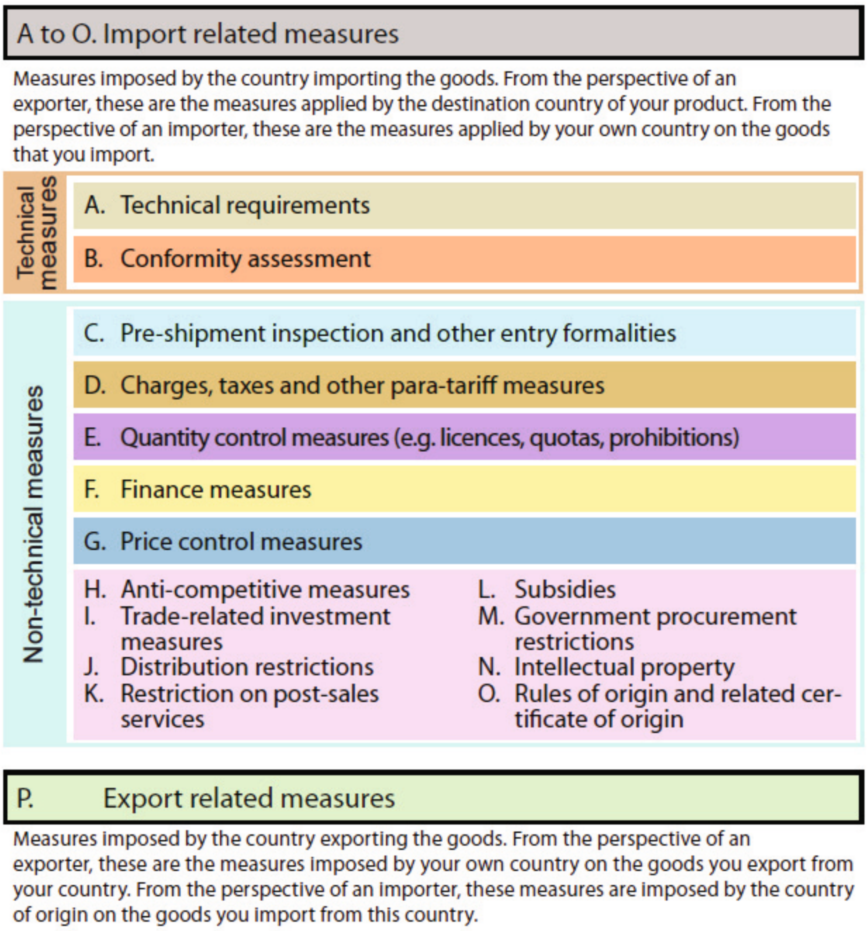
The NTM Survey results serve as a diagnostic tool for identifying and solving predominant problems. This can be realized at the national or international level. The survey findings can also serve as a basis for designing projects to address the problems identified and for supporting fundraising activities.

Appendix II Non-tariff measure classification

Importing countries are very idiosyncratic in the ways they apply non-tariff measures. This called for an international taxonomy of NTMs, which was prepared by a group of technical experts from eight international organizations, including the Food and Agriculture Organization, the International Monetary Fund, the International Trade Centre, the Organisation for Economic Co-operation and Development, the United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization, the World Bank and the World Trade Organization. This classification is used to collect, classify, analyse and disseminate information on NTMs received from official sources, e.g. government regulations; and for working with perception-based data, e.g. surveys of companies.

The NTM classification differentiates measures according to 16 chapters (denoted by alphabetical letters), each comprising 'sub-branches' (1-digit), 'twigs' (2-digits) and 'leaves' (3-digits). This classification drew upon the existing, but outdated, UNCTAD Coding System of Trade Control Measures, and has been modified and expanded by adding various categories of measures to reflect current trading conditions. The current NTM classification was finalized in November 2009.

Figure: The structure of the NTM classification for ITC surveys



Chapter A on technical regulations refers to product-related requirements. They are legally binding and set by the country where the product is exported to (or imported from). They define the product characteristics, technical specification of a product or the production processes and post-production treatment and also include the applicable administrative provisions, with which compliance is mandatory.

Chapter B on conformity assessment refers to technical procedures – such as testing, inspection, certification and traceability – which confirms and controls that product, fulfils the requirements laid down in technical regulations. Conformity assessments are requirements determining that a process or a product meets the relevant regulation and fulfils the relevant requirements.

Chapter C on pre-shipment inspection and other entry formalities refers to the practice of checking, consigning, monitoring and controlling shipment of goods before or at entry into the destination country - i.e. inspection, quarantine, etc.

Chapter D on charges, taxes and other para-tariff measures refers to measures other than customs tariffs that increase the cost of imports in a similar manner, i.e. by a fixed percentage or by a fixed amount, calculated respectively on the basis on the value and the quantity. Five groups are distinguished: customs surcharges; service charges; additional taxes and charges; internal taxes and charges levied on imports; and customs valuation.

Chapter E on quantity control measures refers to measures restraining the quantity of imports of any particular good, from all sources or from specified sources of supply, either through restrictive licensing, fixing of a predetermined quota or through prohibitions.

Chapter F on finance measures refers to measures that are intended to regulate the access to and cost of foreign exchange for imports and define the terms of payment. They may increase import costs in the same manner as tariff measures.

Chapter G on price control measures includes measures implemented to control the prices of imported articles in order to: support the domestic price of certain products when the import price of these goods is lower; establish the domestic price of certain products because of price fluctuation in domestic markets, or price instability in a foreign market; and counteract the damage resulting from the occurrence of ‘unfair’ foreign trade practices.

Chapter H on anti-competitive measures refers to measures that are intended to grant exclusive or special preferences or privileges to one or more limited groups of economic operators.

Chapter I on trade-related investment measures refers to measures that restrict investment by requesting local content, or requesting that investment be related to export to balance imports.

Chapter J on distribution restrictions refers to restrictive measures related to the internal distribution of imported products.

Chapter K on restrictions on post-sales services refers to measures restricting the provision of post-sales services in the importing country by producers of exported goods.

Chapter L on subsidies includes measures related to financial contributions by a government or government body to a production structure, be it a particular industry or company, such as direct or potential transfer of funds (e.g. grants, loans, equity infusions), payments to a funding mechanism and income or price support.

Chapter M on government procurement restrictions refers to measures controlling the purchase of goods by government agencies, generally by preferring national providers.

Chapter N on intellectual property refers to measures related to intellectual property rights in trade. Intellectual property legislation covers patents, trademarks, industrial designs, lay-out designs of integrated circuits, copyright, geographical indications and trade secrets.

Chapter O on rules of origin covers laws, regulations and administrative determinations of general application applied by the governments of importing countries to determine the country of origin of goods.

Chapter P on export-related measures encompasses all measures that countries apply to their exports. It includes export taxes, export quotas or export prohibitions, among others.

Appendix III Procedural obstacles

List of procedural obstacles (POs) related to compliance with non-tariff measures and to inefficient business environment and infrastructure

A.	Administrative burdens	A1. Large number of different documents A2. Documentation is difficult to fill out A3. Difficulties with translation of documents from or into other languages A4. Large number of checks (e.g. inspections, checkpoints, weighbridges) A5. Numerous administrative windows/organizations involved
B.	Information/transparency issues	B1. Information is not adequately published and disseminated B2. No due notice for changes in procedure B3. Regulations change frequently B4. Requirements and processes differ from information published
C.	Inconsistent or discriminatory behaviour of officials	C1. Inconsistent classification of products C2. Inconsistent or arbitrary behaviour of officials
D.	Time constraints	D1. Delay in administrative procedures D2. Delay during transportation D3. Deadlines set for completion of requirements are too short
E.	Payment	E1. Unusually high fees and charges E2. Informal payment, e.g. bribes*)* E3. Need to hire a local customs agent to get shipment unblocked
F.	Infrastructural challenges	F1. Limited/inappropriate facilities (e.g. storage, cooling, testing, fumigation) F2. Inaccessible/limited transportation system (e.g. poor roads, road blocks) F3. Technological constraints, e.g. information and communications technology
G.	Security	G1. Low security level for persons and goods
H.	Legal constraints	H1. No advance binding ruling procedure H2. No dispute settlement procedure H3. No recourse to independent appeal procedure H4. Poor intellectual property rights protection, e.g. breach of copyright, patents, trademarks, etc. H5. Lack of recognition, e.g. of national certificates
I.	Other	I1. Other obstacles

Appendix IV Experts and stakeholders interviewed

Experts and stakeholders who participated in the open-end discussions on non-tariff measures and related obstacles, during ITC's NTM stakeholder meeting in Nairobi, 26 February 2013.

Association of Kenya Insurers
Central Bank of Kenya
Coffee Board of Kenya
Export Processing Zones Authority
Export Promotion Council
Horticultural Corporation Development Authority
International Livestock Research Institute
Intertek International Ltd
Ipsos Synovate
Japan International Cooperation Agency
Kenya Association of Manufacturers
Kenya Bureau of Standards
Kenya Institute for Public Policy Research and Analysis
Kenya International Freight & Warehousing Association
Kenya Plant Health Inspectorate Services
Kenya Police Service
Kenya Revenue Authority
Kenya Sugar Board
Kenya Tea Development Agency
Ministry of Agriculture
Ministry of EAC Affairs
Ministry of Environment and Mineral Resources
Ministry of Finance
Ministry of Fisheries
Ministry of Fisheries Development
Ministry of Livestock Development – Department of Veterinary Services
Ministry of Trade
Ministry of Transport
National Environment Management Authority
Postal Corporation of Kenya
Trade Point Nairobi
TradeMark East Africa
United Nations Industrial Development Organization
University of Nairobi – School of Economics
Various private enterprises

Appendix V Agenda of stakeholder meeting

TUESDAY, 26 FEBRUARY 2013, 9 A.M. – 4 P.M.
NAIROBI, KENYA

NATIONAL WORKSHOP ON NON-TARIFF MEASURES

Programme:

08:30 **Registration**

09:00 **Welcome Remarks**

- Joseph Kosure, Senior Assistant Director of External Trade, Ministry of Trade

Opening Remarks

- Ambassador Leonard Ngaithe on behalf of Abdulrazaq Adan Ali, Permanent Secretary of the Ministry of Trade

- Olga Solleder, International Trade Centre

SESSION I BACKGROUND AND OVERALL RESULTS

09:30 **Project of the International Trade Centre (ITC) on non-tariff measures and its implementation in Kenya**

Speakers

- Olga Solleder, ITC
- Godwin Asiimwe, Senior Research Manager, Ipsos Synovate

Questions and Answers
Moderator: Joseph Kosure, Ministry of Trade

10:15 **Coffee break**

10:30 **General results of the survey: Trade barriers affecting Kenyan exporters and importers**

Speaker

- Augustus Muluvi, Policy Analyst, KIPPRA

Questions and Answers / Open discussion –
Moderator: Joseph Kosure, Ministry of Trade

SESSION II NON-TARIFF MEASURES AFFECTING KENYAN EXPORTS

11:15 **Perception of exporters on measures applied by partner countries**

Speaker
- Olga Solleder, ITC

Discussants:
- Carol Muumbi, Marketing Officer, HCDA
- David Mwongela, Assistant Commissioner, KRA
- Fredrick K. Gitahi, Deputy Director of Economic Affairs, Ministry of EAC Affairs
- David Nganyi, KEBS

Open discussion
Moderator: Joseph Kosure, Ministry of Trade

12:30 **Lunch**

14:00 **Perception of exporters on Kenyan export regulations and related obstacles**

Speaker
- Samidh Shrestha, ITC

Discussants:
- Kennedy Onchuru, Office-in-Charge, KEPHIS
- Carol Muumbi, Marketing Officer, HCDA
- Julius Bett, Export Promotion Council (EPC)

Open discussion
Moderator: Joseph Kosure, Ministry of Trade

SESSION III NON-TARIFF MEASURES AFFECTING KENYAN IMPORTS

14:45 **Perception of importers on Kenyan import regulations and related obstacles**

Speaker
- Samidh Shrestha, ITC

Discussants:
- David Mwongela, Assistant Commissioner, KRA
- David Nganyi, KEBS

Open discussion
Moderator: Joe Gitau, Ministry of Agriculture

15:30 **Concluding remarks and final recommendations**

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