# The Effects of Non-Tafiff Barrirers on Regional Trade in East Africa: The Case Study of Malaba Border

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**Abstract**

*Non-Tariff Barriers to trade have greatly affected the East African regional trade despite the EAC Customs Union advocating for elimination of all NTBs to trade between and among EAC partner states. The decline in Kenya's export to EAC region by 7.4 %; from Ksh 134 billion (2012) to Ksh 124 billion (2013) can for example be largely attributed to various NTBs to trade that still exist in the region. The aim of the study was to analyze the effects of NTBs on regional trade in East Africa; the case study being Malaba border.*

*The research used primary and secondary data collected using interview schedules, questionnaires and focused group discussions. The respondents were selected from traders at Malaba border, Malaba residents, Ministry and Department officials and officials from URA and KRA. The questions targeted the prices of exports and imports with NTBs at the border and without, cost of doing business across the border and the volume and value of traded goods. The rules of origin, labeling law, corruption, police road blocks, cumbersome inspection requirements, entry requirements and lengthy clearing procedures were common NTBs.*

*The research concluded that NTBs to trade at Malaba were responsible for the general negative impacts on trade. EAC should establish a competitive authority, increase the powers of EAC Committee on Trade Remedies, and harmonize some of the general laws guiding trade in the region so as to address the problem of NTBs to trade in the region accordingly.*

*The research findings will greatly assist the EAC stakeholders by establishing the best action and other legal frameworks for the purpose of enforcing the rules provided by the EAC Customs Union and the Common Market Protocol which are relevant in addressing the problem of NTBs to trade at Malaba and within the EAC region.*

**Key Words:** *Integration, International trade, Trade barriers, Non-Tariff barriers*

## Introduction

Economic growth and development through free and fair trade have been one of the central factors behind economic integration in the contemporary international system (Baldwin, 1970). Countries have formed various regional trading blocs for global competitiveness and the East African countries have not been left behind. The most successful regional trading blocs include the European Union (EU), Economic Community of West African States (ECOWAS), Common Market for East and South Africa (COMESA) Association of Southeast Asian Nations (ASEAN), South African Development Community (SADC) and East African Community (EAC). International trade involves the exchange of goods and services across national borders. International trade grew drastically in the second half of the 20$^{th}$ century. By the year 2000, total world trade was 22 times greater than it had been in 1950. This increase in multilateral international trade was attributed to the reduction or elimination of tariffs as well as the decrease of Non-Tariff Barriers (NTBs) across the globe (Cadot and Gourdon, 2012). Another contribution was the General Agreement on Tariffs and Trade (GATT), a series of trade agreements adopted in 1948.

Trade barriers are usually considered to be any restriction imposed on the free flow of trade (Deardorff and Stern, 1997; Salvatore, 2005). According to Article II of GATT, trade barriers can either be tariff barriers, which is levy of ordinary customs duties within the binding commitments undertaken by the concerned country or non-tariff barrier. EAC NTB inventory compiled in 2005/06 and validated in 2007 defined NTBs as "quantitative restrictions and specific limitations that act as obstacles to trade and which appear in form of rules, regulations and laws that have a negative impact to trade." World Trade Organization (WTO) describes NTB as an import targeting public policy intervention to protect domestic industries, national health, safety and security. SADC also describes NTBs as "any obstacles to international trade that is not an import or export duty. They may take the form of import quotas, subsidies, custom delays, technical barriers, or other systems preventing or impeding trade." NTBs are generally trade barriers that restrict imports or exports of goods or services through mechanisms other than the simple imposition of tariffs. A tariff on the other hand, also known as customs duty, refers to tax on imports or exports (Philippidis and Sanjuán, 2007a).

The EAC partner states have various laws and regulations regarding all trading activities within their borders, involving the issue of tariffs and NTBs. Article 13 of the protocol of the East African Community Customs Union (EACCU) however promotes the elimination NTBs to trade among EAC partner states. The implementation of Article 13 of EACCU has however not been achieved fully. A case study is Malaba Kenya, which shares the border with Uganda, where there is NTBs to trade between the two countries despite the EACCU advocating for their elimination.

This study has adopted the neo-functionalists' integration theory on state integration. The neo-functionalists defined integration as the process whereby political actors shift loyalties, expectations and political activities to a new centre that requires jurisdiction over the pre-existing national states, while creating a new political community (Haas, 1968, 16).

**Regional Economic Integration Process in East Africa**

Sub-Saharan Africa has historically had problems of integration efforts. Their major problem being that of economic integration since their focus was on exploring ways of how members of a regional grouping would benefit from the integration (Fliess and Lejarraga, 2005). Kenya, Tanzania and Uganda have a history of co-operation dating back to the early 20th century. The customs union between Kenya and Uganda was established in 1917, and later joined by Tanganyika in 1927. It was followed by the East Africa High Commission (EAHC) from 1948 to 1961, the East African Common Services Organization (EACSO) from 1961 to 1967, and East African Community (EAC) in 1967 to 1977. The treaty establishing the EAC comprising of Uganda, Kenya and Tanzania was signed in 1967, the integration however collapsed in 1977. Burundi and Rwanda joined later rejuvenated EAC on 2009. The overall objective of the EAC is to develop policies and programs aimed at widening and deepening cooperation among the partner states in economic, socio-political, cultural fields, research and technology, defense, security, and legal areas.

The treaty establishing the EAC has four pillars which include the Customs Union; the Common Market Protocol; the Monetary Union and the Ultimate Political Federation. Under the provisions of Articles 2 and 5 of the Treaty, partner states undertook to establish a Customs Union in recognition it would enhance economic growth and development of the Community. Article 13 of the Customs Union's Protocol greatly promotes the elimination of all forms of NTBs to trade within the EAC region. On 1 July 2010, the former President of Kenya, Mwai Kibaki, officially launched the Common Market Protocol, which was seen as a step towards implementation f the Common Currency.

**Non-Tariff barriers to Trade Globally, in East African Community and in Kenya**

The issue of NTBs to trade has been witnessed globally over a long period of time. Tariffs for goods production were reduced during the eight rounds of negotiations in the WTO and the General Agreement on Tariffs and Trade (GATT). After lowering of tariffs, the principle of protectionism demanded the introduction of new NTBs such as technical barriers to trade (TBT) (Walkenhorst and Fleiss, 2003). According to the statements made at the United Nations Trade and Development (UNCTAD,2005), the use of NTBs, based on the amount and control of price levels had decreased significantly from 45% in 1994 to 15% in 2004, but the use of other NTBs increased from 55% in 1994 to 85% in 2004.

There are many forms and types of NTBs that currently exist globally. According to WTO, NTBs to trade include import licensing, rules for valuation of goods at customs, pre-shipment inspections, rules of origin ('made in'), and trade prepared investment measures. The general types of NTBs to trade that have been witnesses globally include: Specific Limitations on Trade, Customs and Administrative Entry Procedures, Standards, Government Participation in Trade, Charges on Imports and others such as Voluntary Export Restraints (Ferrantino, 2006).

NTBs exist in almost all trading activities between and among the five EAC partner states (Ihiga, 2007). Article 13 (non-tariff barriers) of the protocol on the establishment of the East African Customs Union, advocates for the need of the partner states agreeing to remove, with immediate effect, all the 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 non-tariff barriers. There has been a very low level of commitment shown by EAC member countries towards the elimination of NTBs to regional trade, which relies on partner states (Gilson, 2011). The existing barriers include lengthy customs administrative documentation procedures; lengthy and duplicated immigration procedures; cumbersome inspection requirements; non-harmonized standards; police road blocks among others (Karugia et al., 2009). Kenya and Tanzania are for example noted to be the countries with the highest number of reported trade and non-trade barriers.

According to East African Business Council (EABC) study of 2005, there are a number of NTBs being applied to restrict trade in Kenya which violates the EAC Customs Union (CU) agreement on free trade. According to the World Bank (2012), Kenya's trade with Tanzania is the most affected by NTBs in East Africa; and their market share is declining. Persistent NTBS to trade in Kenya include: lengthy customs administrative documentation procedures; lengthy and duplicated immigration procedures, cumbersome inspection requirements, standards observation, corruption and police road blocks. According to EABC, the most notorious agencies and departments for example include Kenya Revenue Authority (KRA), Police and Kenya Bureau of Standards (KEBS) as well as the immigration and local government agencies.

**Statement of the research problem**

Kenya –Uganda border at Malaba has been experiencing congestion and many delays for years which have greatly affected trade and other socio-economic activities between the two countries (Osere 2009). Congestion, snarl-up and delays have been the common features at border point which have consequently left business with huge operational costs, losses and disruption due to delayed shipments and generally poor service delivery which was partly attributed to the construction of One Stop Border Post (OSBP). The OSBP is a concept that the EAC Partner States are currently pursuing to ease trade. OSBP at Malaba is however not functioning fully since the EAC OSBP Act is yet to be operational. The effects of these NTBs to trade cannot be under-estimated. It is against this background that the study aims to analyze the effects of NTBs on regional trade in East Africa: the case study being Malaba boarder.

**Research objectives, research questions and justification of the study**

The general objective of this study was to analyze the effects of NTBs on regional trade in East Africa; the case study being Malaba border. The study was guided by these specific objectives: to identify NTBs that affect trade between Kenya and Uganda at Malaba; to analyze the effects of NTBs on trade between Kenya and Uganda at Malaba; to suggest policy options that can be used to address the problem of NTBs to trade between Kenya and Uganda at Malaba. The research aimed to answer the following questions: what are some of the NTBs to trade between Kenya and Uganda at Malaba? What are the effects of NTBs to trade between Kenya and Uganda at Malaba? What are the policy options that Kenya should adopt to address the problem of NTBs affecting her trade with Uganda at Malaba?

The field of academia may use this information for further research on the implementation of EAC Customs Union and Common Market Protocols, which are relevant in addressing the problem of NTBs to trade and trade generally. The findings of the study are significant in influencing national and regional policies within the East African Community by developing actionable institutional and legal framework to enforce the Customs Union and Common Market Protocol. The EABC may use the findings to improve the business climate and reduce the cost of doing business by their members. Kenya and Uganda in their trading activities at Malaba border point will find the study relevant in formulating the relevant national policies required to address the problem of NTBs to trade.

**Research Methods**

The study used both quantitative and qualitative research approaches and relied on data collected from primary and secondary sources. A survey was carried out to collect the quantitative data (Mugenda, 1999). Primary data was collected through interviews, questionnaires and focused group discussions. The researcher used interview guides and questionnaires as the main instrument of data collection during research period.

The interviews were held with key government officials from both Kenya and Uganda in the departments such as immigration and the Ministry of trade and industrialization. KRA and URA (Uganda Revenue Authority) officials clearing officers and other officials from the Customs Unions, both at Malaba Kenya and Malaba Uganda, Kenya police officers, Uganda police officers contributed greatly to this study by willingly participating in interview sessions and focus group discussions. The participants were selected randomly based on their willingness to participate in the research study. 23 business persons at Malaba Kenya and Malaba Uganda, 31 cross-border traders, 62 truck drivers and 44 local residents participated in interview sessions, focused group discussions and answering of questionnaires were very vital in this research. They provided up-to-date information on NTBs affecting trade at the border point.

Data collected from secondary sources were used to supplement information collected through interviews. The secondary data was also collected from various books on regional integration and Customs Union, previous research papers, regional publications, reports of the EAC Council ministers, quarterly reports and other reports published by international agencies such as the United Nations, the World Bank, the WTO about the NTBs to trade. The data collected was analyzed through qualitative and quantitative approaches.

**The report of the findings**

**Non –Tariff Barriers that Affect Trade between Kenya and Uganda at Malaba**

Non-tariff barriers (NTBs) to trade between Kenya and Uganda at Malaba have been witnessed for so long (New Vision Online, 2009). Article 13 of the Protocol on the Establishment of the East African Customs Union provides for the elimination of all forms of NTBs to trade between and among EAC partner states but practically it happens not such as in the case of Malaba. In 2005, the East African Business Council (EABC) launched a major initiative in efforts to eliminate the existing NTBs in East Africa by commissioning the Business Index Climate Survey (BCI).The initiative has however not been fully implemented within the region and Malaba provides a case study because there are still NTBs to trade which have not been resolved. NTBs have often been justified on four main reasons: to safeguard health, safety, and security of human beings, animals and plants, and against environmental pollution; to protect home industries and consumers; to safeguard national security and to safeguard against revenue loss. This justification of NTBs has however not achieved the intended goals as such as in the case of Malaba.

**The General Forms of Non-tariff Barriers within the EAC Region**

Import Policy Barriers. One of the most common NTBs to trade within the EAC region is the prohibition or restrictions on imports maintained through the import licensing requirements. However, Article XI of the GATT Agreement requires members not to impose any prohibition or restriction other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures.

Standards, Testing, labeling and Certification Requirements. They are usually emphasized so as to ensure quality goods seeking access into domestic markets but many countries use them as protectionist measures. It has hindered regional trade among EAC partner states.

Anti-Dumping and Countervailing Measures. These measures are however permitted to be taken by the WTO Agreements in specified cases so as to protect domestic industries from serious effects arising from dumped or subsidized imports. If used as protectionist measures, they may act as some of the most effective NTBs to trade.
Export Subsidies and Domestic Support. Both export subsidies and domestic support within the EAC partner states.

Government Procurement. This practice is common among the EAC Partner states, can act as NTBs to trade. Service barriers among the EAC Partner States also act as a form of NTB to trade.

**The Categories of Non- Tariff barriers to Trade at Malaba**

The respondents at Malaba admitted of existence of multiple NTBs to trade. Several traders who were part of the respondents reported huge losses in their businesses across the border due to factors such as corruption (Kenya police and Uganda police), poor infrastructure, poor service delivery by immigration and customs officials and cumbersome inspection requirements at the border point. A number of truck drivers said that congestion and snarl up has been a problem at Malaba which is witnessed even up to the nearest town (Amogoro). Table 1.1 provides the general responses regarding the categories of NTBs to trade between Kenya and Uganda at Malaba and their dynamics.

In summary, even when treaties oblige member States to remove rules and regulations, their actual removal is often a long and difficult process as witnessed in the table 1.1 above. Experience from other regional groupings, such as the EU and ASEAN, points to the importance of establishing effective enforcement and compliance mechanisms (Cadot and Malouche, 2012). The existence of NTBs to trade at Malaba shows the need for political traction and administrative capacity among other aspects especially between Kenya and Uganda so as to rectify the situation.

Table 1.1: Categories of NTBs to trade between Kenya and Uganda at Malaba

| **NTBs Existing by 2016 based on field data** | | **2014** | **2015** | **2016** |
|---|---|---|---|---|
| 1 | Cumbersome inspection requirements | ✓ | ✓ | ✓ |
| 2 | Police road blocks | ✓ | ✓ | ✓ |
| 3 | Varying trade regulations | ✓ | ✓ | ✓ |
| 4 | Bulk procurement policies | ✓ | ✓ | ✓ |
| 5 | Business registration and licensing | ✓ | ✓ | ✓ |
| 6 | Duplicated functions of agencies involved in verifying quality, quantity and dutiable value of imports and exports | ✓ | ✓ | ✓ |
| 7 | Varying, cumbersome and costly transiting procedures | ✓ | ✓ | ✓ |
| 8 | Immigration procedures | ✓ | ✓ | ✓ |
| 9 | Customs and administrative documentation procedure | ✓ | ✓ | ✓ |
| 10 | Corruption | ✓ | ✓ | ✓ |
| 11 | Discriminatory charges | ✓ | ✓ | ✓ |
| 12 | Entry requirements | ✓ | ✓ | ✓ |
| 13 | Road consignment note required for transporters prior to packing of goods | ✓ | ✓ | ✓ |
| 14 | Import bans (milk, day-old chicks, beef and poultry) | ✓ | ✓ | ✓ |
| 15 | Cumbersome procedures for registering business across border | ✓ | ✓ | ✓ |
| 16 | Non-recognition of some EAC rules and certificates of origin | ✓ | ✓ | ✓ |
| 17 | Yellow fever requirements | ✓ | ✓ | ✓ |
| 18 | Fee charged for each truck entering another country | ✓ | ✓ | ✓ |
| 19 | Registration and licensing and issuance of import permits | ✓ | ✓ | ✓ |
| 20 | Non-harmonized road user charges/road tolls | ✓ | ✓ | ✓ |
| 21 | Poor physical and other infrastructure | ✓ | ✓ | ✓ |
| 22 | Import declaration fees | ✓ | ✓ | ✓ |
| 23 | Revenue authority and sector ministries check points | ✓ | ✓ | ✓ |
| 24 | Specific limitations such as quantitative restrictions | ✓ | ✓ | ✓ |
| 25 | Lengthy customs procedure | ✓ | ✓ | ✓ |
| 26 | Requirements by KRA for Transporters to have introductory letters from URA on certain products/consignment, e.g. tyres an spirits | ✓ | ✓ | ✓ |
| 27 | Labeling conditions, packaging conditions and product standards | ✓ | ✓ | ✓ |
| 28 | Lengthy procedures for issuing of work permits | ✓ | ✓ | ✓ |

*Source: Field Data*

The 9th EAC Regional Forum on NTBs updated the Time Bound Programme (TBP) taking into account the National Monitoring Committees (NMC) reports presented during the meeting. According to the TBP (2012 - 2013), thirty seven NTBs were unresolved, three NTBs were reported as new, and forty NTBs had been resolved in the region. Despite the TBP setting the time limits for achieving full elimination of some NTBs to trade in the EAC region such as 2013, the problem of NTBs to trade still persist such as in the case of Malaba.

**Analysis of the Effects of Non-Tariff Barriers on Trade between Kenya and Uganda at Malaba**

The general effects of NTBs on Kenyan trade within the East African region and the analyses the effects of the NTBS on trade between Kenya and Uganda at Malaba are discussed in this section. The effects of elimination of the NTBs to trade at Malaba are also analyzed.

**Effects of NTBS on Kenyan Trade in the EAC Region**

Most EAC partner states are still employing the use of NTBs in many of their trading activities with other members despite article 13 of the EACCU advocating for elimination of NTBs in the region. Kenya’s export in the region for example had declined over the years 2012 and 2013. A report from Trade Mark East Africa (TMEA) indicated that business leaders attributed the drop in export value to NTBs created by regulatory regimes in East Africa region. This contributed to increased cost of doing business along the region’s trade corridors. Secondly, the action on elimination of NTBs in the region largely depends on partner states willingness because of the absence of a legally binding framework.

The existence of NTBs in the region has led to increased cost of doing business and influences negatively on trade and cooperation. The table 1.2 shows Kenya’s intra- EAC trade (2007 – 20120 which can help in explaining the effects of NTBs on Kenyan Trade in the region.

The table illustrates the trade pattern between Kenya and other EAC partner states between 2007 and 2012. Trade between Kenya and other partner states can grow significantly if NTBs were addressed by the respective Partner States. Kenya’s exports for example to Uganda decreased from 855.4 million dollars (2011) to 789.9 million dollars (2012) and this can be explained by the existence of NTBs in both countries, this view is also supported by KNBS.

**Effects of NTBs on trade between Kenya and Uganda at Malaba**

Trade between Kenya and Uganda has been greatly affected by various NTBs. The general effects of NTBs to trade at Malaba as given by various respondents that were interviewed include; the increased cost of doing business at Malaba, time wastage (delays), trade interference, and various losses incurred while doing business among others. The table 1.3 summarizes the effects of NTBs to trade between Kenya and Uganda at Malaba given by various respondents interviewed.

The effects of NTBs in the Kenya- Uganda trade at Malaba are really large in the modern world of deepening economic integration and also shaped by complex cross –border trade which sometimes leads to some activities not being accounted for. According to World Economic Report, countries use NTBs to attempt to cure their balance of trade problems by practices that harm the economic interest of its trading partners. The effects of NTBs to trade at Malaba can however be not under-estimated as shown in the table above and the positive side of the effect is really minimal, based on the respondent’s view which mainly aim at protective and welfare realizations and generally intangible at Malaba border.

**Effects of Elimination of the NTBs to Trade at Malaba**

Establishment of NTBs to trade is advocated by the established Customs Union (CU) protocol. Kenya’s trade with Uganda especially at Malaba border has not been the same since the introduction of the CU and Common Market. Uganda for example after the introduction of the CU remains to be the largest destination of Kenyan products, accounting for 60% of total share of exports to the region. Most of Kenya’s exports to Uganda goods are usually transported through the major border points such as Busia and Malaba, hence underscoring the importance of Malaba in Kenya-Uganda trade.

The problem however is that some NTBs which are still present in the Kenya-Uganda trade at Malaba border. The elimination of all NTBs to trade in both countries can greatly improve trade at Malaba border. The introduction of CU Protocol has had positive impact on Uganda's trade performance; with positive impacts being realized as from 2006 and as well in Kenya , calling for the need to completely eliminate all NTBs to trade as advocated in Article 13 of the EAC CU.

**Policy options that can be used to address the Problem of Non-Tariff Barriers to trade between Kenya and Uganda at Malaba**

This section gives an overview of the rules on NTBs by the EAC Custom Union protocol and as well as the EAC Common Market Protocol's objectives which are necessary in understanding the need for elimination of NTBs to trade within the EAC region for the purpose of promoting free trade. The study then addresses the criteria for identifying and eliminating NTBs to trade between Kenya and Uganda at Malaba and other policy options available. The study also makes reference to the WTO Dispute Resolution Mechanism with regard to NTBs hence providing another option in the effort to reduce and eliminate NTBs to trade at Malaba.

**The Rules on NTBs by EAC Customs Union Protocol**

The East African Community Customs Union Protocol (EACCUP), under the provisions of Article 2 and 5 of the EAC treaty, was established for the purpose of addressing, reduction and elimination of barriers to trade within the East African region. Article 13 (1) of the EACCUP states that , "Except as may be provided for or permitted by this Protocol, each of the Partner States agrees to remove, with immediate effect , all the 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." Hence it provides rules for elimination of NTBs in the region.

Table 1.2: Kenya's intra – EAC trade: 2007 – 2012 (in Million US Dollars)

| **Partner States** | **Flow** | **2007** | **2008** | **2009** | **2010** | **2011** | **2012** |
|---|---|---|---|---|---|---|---|
| Uganda | Export | 498.5 | 611.2 | 596.6 | 657.6 | 855.4 | 789.9 |
| | Import | 88.8 | 75.5 | 57.1 | 116.4 | 116.4 | 179.4 |
| | Balance | 409.7 | 535.7 | 539.5 | 541.2 | 739.0 | 610.5 |
| Tanzania | Export | 331.5 | 422.4 | 388.2 | 419.2 | 470.0 | 539.1 |
| | Import | 99.2 | 105.0 | 100.8 | 133.1 | 176.5 | 169.7 |
| | Balance | 232.3 | 317.4 | 287.4 | 286.0 | 293.5 | 369.4 |
| Rwanda | Export | 86.2 | 129.4 | 123.0 | 133.0 | 152.7 | 189.1 |
| | Import | 1.3 | 0.4 | 3.1 | 5.4 | 4.8 | 9.0 |
| | Balance | 84.9 | 129.0 | 119.9 | 127.5 | 147.9 | 180.1 |
| Burundi | Export | 29.4 | 30.3 | 30.3 | 68.9 | 66.5 | 62.2 |
| | Import | 2.2 | 1.5 | 1.5 | 1.8 | 5.3 | 3.6 |
| | Balance | 27.2 | 28.8 | 28.8 | 67.1 | 61.2 | 58.6 |

Source: East African Community Facts and Figures, 2013

Important to note are the objectives of the East African Community Common Market Protocol (EACCMP) which help in understanding the need to reduce and eliminate non-tariff barriers to trade within the EAC region for the purpose of socio-economic development in the region. The implementation of some of EAC Common Market's objectives require reduction or elimination of NTBs to trade, which greatly rely on the willingness of the EAC Partner States.

Table 1.3: Impacts of NTBs on trade between Kenya and Uganda at Malaba

| | NTBs summary Description | Ministry/ Agency for Action | Impact to Businesses |
|---|---|---|---|
| 1 | Cumbersome inspection requirements | URA and KRA | Time wasted(delays |
| 2 | Police road blocks | EAC partner states Police Departments | Delays in transport |
| 3 | Varying trade regulations | Ministries of trade and industrialization | Increased cost of doing business |
| 4 | Bulk procurement policies | URA and KRA | Time wasted(delay) |
| 5 | Business registration and licensing | Kenya and Uganda immigration departments | Increased costs of doing business and market denial |
| 6 | Duplicated functions of agencies involved in verifying quality, quantity and dutiable value of imports and exports | Statutory agencies | Increased cost,<br>Loss of business time |
| 7 | Immigration procedures | Kenya and Uganda Immigration departments | Increased cost of doing business |
| 8 | Customs and administrative documentation procedures | URA and KRA | Loss of business time and delays |
| 9 | Corruption | Police, Customs, Anticorruption agencies | Increased cost of doing business |
| 10 | Discriminatory charges | KRA and URA | Increased cost of doing business |
| 11 | Entry requirements | Kenya and Uganda Immigration departments | Extra cost of doing business, Loss of business time |
| 12 | Road consignment note required from transporters prior to packing of goods | URA and KRA | Extra cost of doing business |
| 13 | Import bans (milk, day –old chicks , beef and poultry) | Uganda dairy board | Denial of market entry and loss of potential market |
| 14 | Cumbersome procedures for registering a business across borders | Kenya and Uganda immigration | Loss of Business time |
| 15 | Non – recognition of some of EAC rules and certificates of origin | URA and KRA | Loss of business and cost of organizing verification mission |
| 16 | Yellow fever requirements | Kenya and Uganda Immigration departments | Increased cost of doing business |
| 17 | Fee charged for each truck entering another country | Ministries of Transport and infrastructure | Increased cost |
| 18 | Registration and license issuance of import permits | Ministries of trade and industrialization | Lost business time, market access denial and extra cost |
| 19 | Revenue authority check points and sector ministries check points | URA and KRA | Lost business |
| 20 | Poor physical and other infrastructure | Ministries of transport and infrastructure | Increased cost of doing business and loss of business |
| 21 | Import licenses and import declaration fees | Ministries of trade and industrialization | Additional cost ,Lost business time and market denial |

| | | | |
|---|---|---|---|
| 22 | Specific limitations such as quantitative restrictions | URA and KRA | Lost business time |
| 23 | Numerous institutions involved in testing goods | Statutory agencies | Time wasted |
| 24 | Lengthy procedures for issuing work permits | Uganda and Kenya Immigration departments | Lost business time while waiting for processing of work permits |
| 25 | Non- harmonized road user charges /road tolls | Ministries of transport and infrastructure | Additional cost to doing business |
| 26 | Labeling conditions, Packaging conditions and product standards | KRA | Additional cost to doing business |
| 27 | Requirement by KRA for Transporters to have introductory letters from URA on certain products / consignments, e.g. tyres and spirits | KRA | Additional cost to doing business |
| 28 | Lengthy customer procedures | URA and KRA | Lost business time |
| 29 | Varying, cumbersome and costly transiting procedures | Ministries of trade and industrialization | Additional cost to doing business and delays |

**Policy Options**

*Criteria for Identifying and Eliminating NTBs*

Non-Tariff Barriers to trade have greatly proven to be one of the major challenges to trade between Kenya and Uganda at Malaba based on the interviewed respondents. This paper supports the adoption of the Association of Southeast Asian Nations (ASEAN) three categories of measures, using the red, amber and green box system (Non – Tariff Barriers to Trade – USAID Regional Development Mission for Asia, 2013). According to this approach, measures that are not transparent, discriminatory in application, without scientific basis, and for which a less restrictive measure is available should be eliminated (red box). Secondly measures that are transparent but are not discriminatory in application and that nullify or impair some benefits or obligations of the country, that affect highly traded products in the region or that are in the nine priority sectors, which cannot be clearly justified or identified as a barrier, are subject to negotiation (amber box). Finally measures that are transparent, applied without discrimination, have no alternative, have a scientific basis, are imposed for reasons of public health and safety, religion, and national security , and are WTO – consistently and may be maintained (green box)

*Harmonization of Standards and Certifications*

This would involve harmonizing national standards with international standards and implement Mutual Recognition Agreements (MRAs) on conformity assessment to achieve its goal of “One Standard, One Test, and Accepted Everywhere” (Beghin and Bureau, 2001). The respective National Committees on Trade Remedies of both Kenya and Uganda, in cooperation with the East African Community Committee, should also develop a work plan that incorporates good regulatory practice guide, which describes the best practices in making technical regulations consistent and transparent in order to reduce obstacles to trade. In addition setting up of a mutual recognition framework among the certification bodies by both Kenya and Uganda will eliminate NTBs arising from SPS and TBT measures, certification, laboratory testing and hygiene requirements.

*Review of the EAC Custom Union Protocol and Common Market Protocol*

The current EAC Customs Union Protocol (2005) and Common Market Protocol (2010) for example need to be reviewed accordingly for the purpose of addressing its inadequacies in solving the issue of NTBs to trade, which can help greatly in addressing the problem of NTBs to trade at Malaba border. For instance, the rules of origin in the EAC are too restrictive to market access hence causing unnecessary transaction costs as businesses are obliged to find their way around different trade regimes. Hence, there is need for harmonizing the existing rules of origin in the partner states is the only way forward. The review of EAC CU rules will help in promoting trade at Malaba (Mukwaya, 2008; Staiger, 2012).

*Making the EAC Committee on Trade Remedies more effective*

The Committee on Trade Remedies is the main focal point for arbitration with regards to discussions and dispute in the context of NTBs in the EAC. Steps should be taken to strengthen its capacity in terms of data generation on NTBs in the settlement of disputes. While periodic meetings are the institutional modalities of work of the Committee on Trade Remedies at present, more needs to be done to invest in it with appropriate capacities to deal with NTBs on a continuous and permanent basis. This will be a boost in addressing the issue of NTBs to trade at Malaba, between Kenya and Uganda.

*Use of WTO Disputes Settlement Mechanism (DSM)*

Kenya and Uganda can use WTO-DSM mechanism because EAC is not functioning fully since its inception which can prove to be challenging in addressing some NTBs in Kenya – Uganda trade at Malaba and generally in regional trade. The WTO disputes proceeds through three main stages: consultation; formal litigation; and, if necessary, implementation. All disputes start with a request for consultations where the member states bringing the case to the WTO (the complainant) sets out its objectives to trade measure(s) of another member state (the defendant). The two sides are then required to consult for 60 days with the goal of negotiating a mutually satisfactory solution to the dispute. Interestingly, a large proportion of cases are successfully resolved during consultations; 46% of all disputes brought to the WTO end at this stage, and three-quarters of those yield at least partial concessions from the defendant.

## Conclusion

The problem of Non-Tariff Barriers (NTBs) to trade at Malaba border require full economic integration within the EAC region, which can help in addressing it . The introduction of the EAC Customs Union Protocol (2005) has played a significant role in promoting the reduction and elimination of NTBs to trade at Malaba and generally within the EAC region. Its impact cannot be under- estimated such as in the case of trade at Malaba border because there are significant levels of trade improvement though a lot has to be done by both Kenya and Uganda and the Community in general for completely eliminating NTBs to trade as advocated by Article 13 of the EAC Customs Union Protocol. NTBs to trade have greatly accounted for poor trade at Malaba border.

The effects of NTBs to trade generally involved increased cost of doing business, loss of business time, increased organizational cost, cost delays, denial of access to certain markets, change of quantities of goods traded and general interference with trade. Based on objective one, the study observed that many NTBs to trade at Malaba border still exist which should be addressed accordingly. Secondly, based on objective two, the study established that the effects of NTBs to trade at the border are multiple and should not be under-estimated. Finally, based on objective three, better policy options under EAC umbrella such as review of the EAC customs union protocol to clearly define and provide tangible solutions to the problem of NTBs should be promoted by both Kenya and Uganda

## Recommendations

The problem of NTBs to trade at Malaba border have greatly affected trade hence Kenya and Uganda should take relevant steps so as to address this issue.

Based on the first objective, the study recommends both Kenya and Uganda to adopt the criteria for identifying and eliminating NTBs to trade that the Association of Southeast Asian Nations (ASEAN) uses which applies the three categories of measures, the red, amber, and green box system. According to this system, measures that are not transparent, discriminatory in application, without scientific basis, and for which a less restrictive measure is available should be eliminated immediately (red box). Second measures that are transparent but are discriminatory in application and that nullify or impair some benefits or obligations of the country, that affect highly traded products which cannot be clearly justified or identified as a barrier, are subject to negotiation (amber box). Finally, measures that are transparent, applied without discrimination, have no alternative, have a scientific basis, are imposed for reasons of public health and safety, religion, and national security and are WTO – consistent and may be maintained (green box).

Based on the second objective, the study recommends that both Kenya and Uganda should establish the best way of analyzing the effects of NTBs to trade at Malaba and the benefits associated with their elimination which can greatly help in answering the question of effects of NTBs to trade at the border point.

The two countries should however adhere to a legal framework governing the elimination of NTBs in the region and ensure it is properly enshrined in their respective national laws, which should be clearly understood by all the government agencies responsible for trade.

**References**

Baldwin, R., (1970), Non-Tariff Distortions in International Trade, Brookings Institution, Washington, DC

Beghin, J., and J.C. Bureau (2001), “Quantitative Policy Analysis of Sanitary, Phytosanitary and Technical Barriers to Trade”, Economie, Internationale, 87: 107-130

Cadot, O. and Gourdon J. (2012), “Assessing the price-raising effect of non-tariff measures in Africa,” mimeo.

Cadot and Malouche M., (2012) eds., Non-tariff measures: A fresh look at trade policy’s new frontier, Washington, DC/London: The World Bank/CEPR

Deardorff, A.V. and Robert M. Stern (1997), Measurement of Non-Tariff Barriers, Research Seminar in International Economics Discussion Paper No.395, School of Public Policy, University of Michigan

Ferrantino, M. (2006). “Quantifying the Trade and Economic Effects of Non-Tariff Measures,” OECD Trade Policy Working Paper No. 28

Flies, B. and I. Lejarraga (2005), “Analysis of Non-tariff Barriers of Concern to Developing Countries,” OECD Trade Policy Working Paper, No.16, OECD, Paris

Gillson, Ian (2011), Non-Tariff Barriers to Sub-Saharan Trade in Food Staples: Opening Regional Markets to Promote Food Security and Price Stabilization; Washington: The World Bank, 2011

Haas, Ernst (1968, first published in 1958): The Uniting of Europe. Stanford University Press, Stanford.

Ihiga, S., (2007), A survey of Non- Tariff Barriers that affect Kenyan Imports and Exports within EAC and COMESA Countries, <http: //ntb.africonnect.com/media/kenya_ntb_study.pdf >

Karugia, Joseph; J. Wanjiku, J. Nzuma, S. Gbegbelegbe, E. Macharia, S. Massawe, A. Freeman, M. Waithaka, and S. Kaitibie (2009), “ The Impact of Non- Tariff Barriers on Maize and Beef Trade in East Africa”

Mugenda M., (1999), Research Methods: Qualitative and Quantitative approaches, Acts Press, Nairobi

Mukwaya, R.G (2008), Trade Effect of a Single Currency in East Africa. Ph.D. Dissertation. Clemson University, Clemson Sc

New Vision Online (2009), “Roadblocks Dog East Africa Trade.7 Sep 2009.” New Vision Printing and Publishing Company, Kampala

Organization for economic Co-operation and Development (2002), “Analysis of Non-tariff Measures: The Case of Prohibitions and Quotas”, OECD Trade Policy Working Paper, No. 6, OECD, Paris

Osere E. (2009), “Non-Tariff Barriers Still Hurdle to Trade”- Report, Daily Monitor. Monday November, 30, Kampala Uganda

Philippidis, G. and Sanjuán, A.I. (2007), An examination of Morocco’s trade options With the EU, Journal of African Economics, 16(2), 259-300.

Robert W. Staiger (2012), Looking beyond international Co-operation on Tariffs: NTMs and Services Regulations in the 21st Century” WTO Staff Working Paper ERSD -2012-01

Salvatore, Dominick (2005), Introduction to International Economics (First ed.), Hoboken, NJ: Wiley,

Walkenhorst, P. and B. Fliess (2003), “Non-tariff Measures Affecting EU Exports: Evidence from a Complaints-inventory” Economics Department Working Papers, No. 373. OECD

Wilson, N. (2006). “Examining the Trade Effect of Certain Customs and Administrative Procedures,” Trade Policy Working Paper, No.2, OECD