



ASSESSING COST-EFFECTIVENESS OF NON-TARIFF MEASURES - A TOOLKIT

A Case Study in Kenya



2020, United Nations Conference on Trade and Development

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1. INTRODUCTION

Over the years, non-tariff measures (NTMs) have become a key area of focus in trade policy, given the impact they can have on international trade, either through an impact on price, quantities traded, or both. NTMs can be technical measures or non-technical measures such as quotas and price control measures. In particular, the relevance of technical measures, including sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) has garnered a lot of significance. Embedded in national regulations to protect consumer safety, public health and national security, these measures are generally imposed to address market failures. However, they can be costly to design, implement and comply with. As such, they affect business costs and make it difficult for traders to access international markets. When imposed on imported intermediate goods, such NTMs can indirectly affect national export competitiveness. Further, they tend to affect small and medium-sized enterprises (SMEs) disproportionately. Yet, eliminating such NTMs can have serious ramifications for the environment, public health or even national security. This makes it critical to review and streamline such NTMs to attain a balance between costs and benefits, through adoption of good regulatory practices in NTMs design, implementation and compliance.

The *Non-tariff Measures Cost Effectiveness Toolkit* is designed to provide a framework to undertake such a review. Specifically, the toolkit focuses on reviewing NTMs applicable to *imported* intermediate inputs relevant to a strategic national value chain. It aims to encourage good regulatory practices and support the design and implementation of quality regulations that achieve public policy objectives at as-low-as-possible compliance costs. It is designed to provide governments and policymakers a framework in the form of a step-by-step deployment guide, including the tools needed for such an evaluation. These include a sample survey, in-depth interview guidelines, guidelines for focus group discussions, a detailed cost assessment spreadsheet, potential approaches for analyzing stakeholder input, and ways of generating suitable policy options. Built on three pillars – *Design, Implementation and Compliance*, findings from the toolkit should enable users to generate policy options towards implementing well-designed NTMs that meet economic and non-economic policy objectives.¹

This study shows the deployment of the toolkit in the Kenyan cotton, textiles and apparel (CTA) value chain. Following the step-by-step approach of the toolkit, this case study covers:

- Toolkit Step 1: Product selection and NTM mapping
- Toolkit Step 2: Stakeholder Identification
- Toolkit Step 3 & 4: Stakeholder Engagement and Input Analysis: Key Findings
- Toolkit Step 5: Policy Options

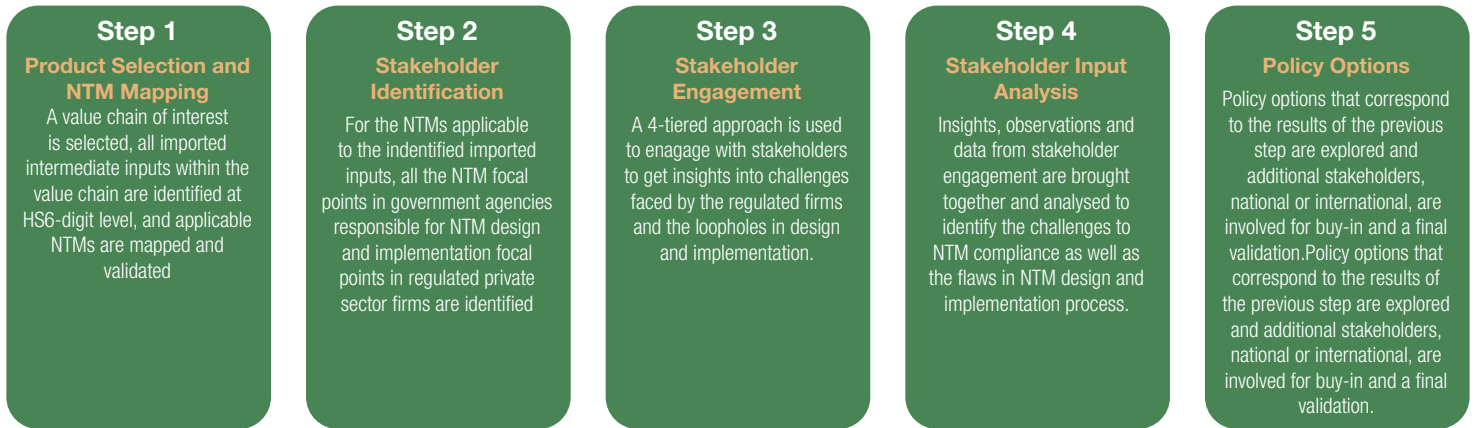
For each of the six policy options, the study also proposes “a way forward” for implementation, covering a list of potential national and international development partners who can help push forward the agenda through

¹ The toolkit itself can be accessed at: <https://unctad.org/webflyer/assessing-cost-effectiveness-non-tariff-measures-toolkit>

political and technical support, thus easing private sector burden, strengthening regional value chain (RVC) and enhancing Kenya's export competitiveness in the CTA sector – all through the adoption of good regulatory practices.

Figure 1

5-Step Approach to NTMs Toolkit Deployment



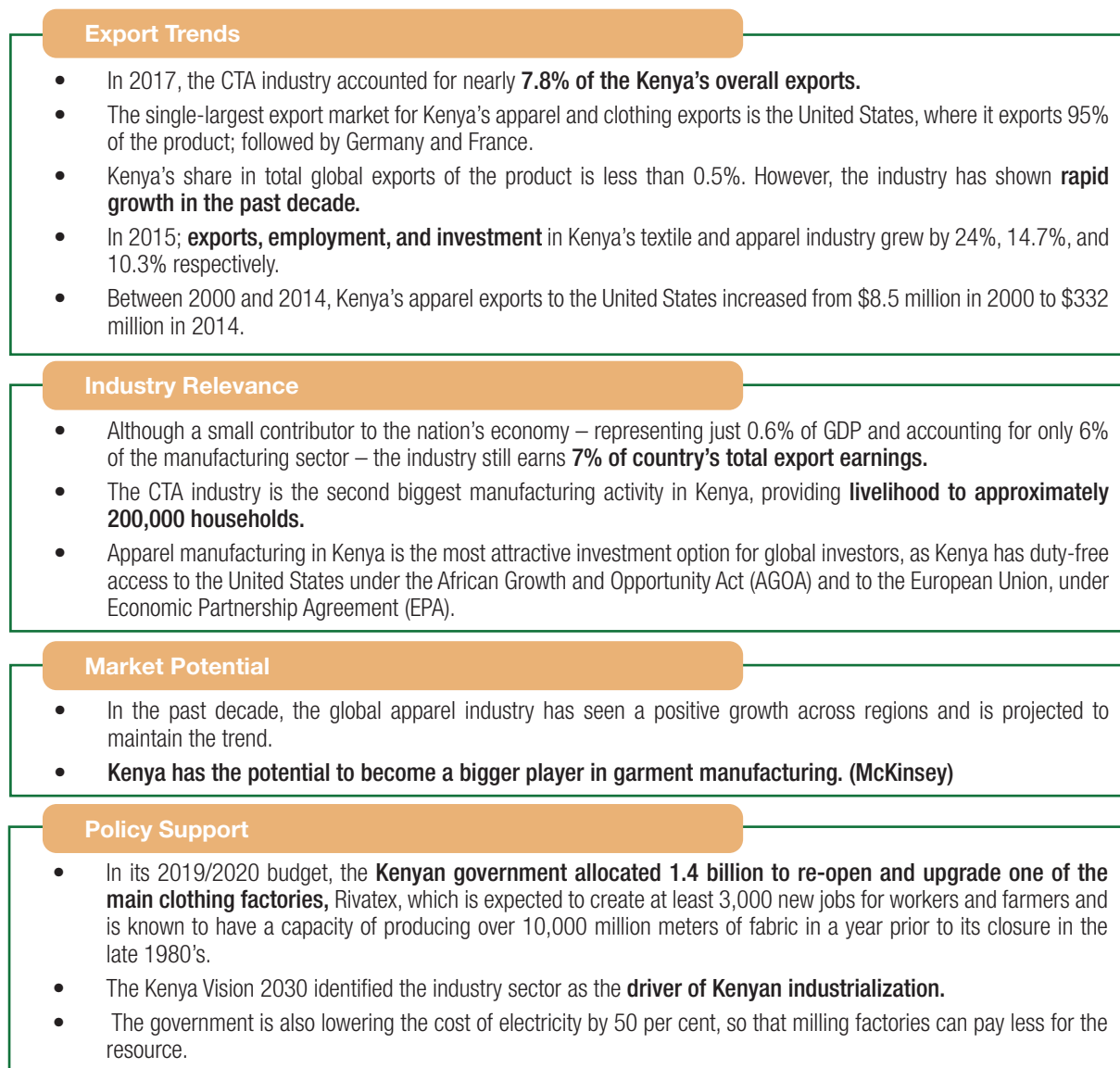
2. TOOLKIT STEP 1: PRODUCT SELECTION AND NTM MAPPING

In consultation with the Kenyan Ministry of East African Community (EAC) and Regional Development, the CTA value chain was selected for the deployment of the toolkit.

There is wide consensus in the government as well as the international development community that the CTA industry will be a critical contributor to Kenyan economic growth in the coming years, according to Kenya Vision 2030 – a “development blueprint” designed to “transform Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030), this sector holds significant promise for the Kenyan economy. “Kenya’s textile and apparel sector has the potential to play a key role in anchoring the country’s deeper movement into middle income status and in serving as a source of gainful employment for its fast growing, young population” (World Bank, 2015).

Figure 2

Kenya cotton, textiles and apparel value chain



Source: KenInvest - Kenya CTA Investment Profile; World Bank (2015); Kenya Vision 2030; Authors’ own calculations based on data from UNCTAD Stat.

Following the selection of the value chain, the three intermediate inputs within the CTA value chain were identified and shortlisted based on the following criteria as set forth in the toolkit -

- The overall import value is significant
- The regional import value is significant
- The input is subject to multiple NTMs by multiple agencies

Table 1 summarizes these intermediate inputs.

Table 1
Imported Intermediate Inputs for CTA Value Chain

HS6 Product (2017 Version)	HS6 Product	HS2 Sector	Import Value (US\$ Million)	Share of imports from EAC partner countries	Number of Import NTMs	NTM Codes*
310520	Mineral or chemical fertilizers containing the three fertilizing elements nitrogen, phosphorus, and potassium	Fertilizers	85.72	2.3%	11	A9, A14, A21, A22, A59, A83, A84
520300	Cotton, carded or combed	Cotton	3.54	99%	2	A84, A64
520100	Cotton, non-carded or combed	Cotton	0.25	100%	11	A14, A82, A84, A89, B7, B14, B15, B84, B85

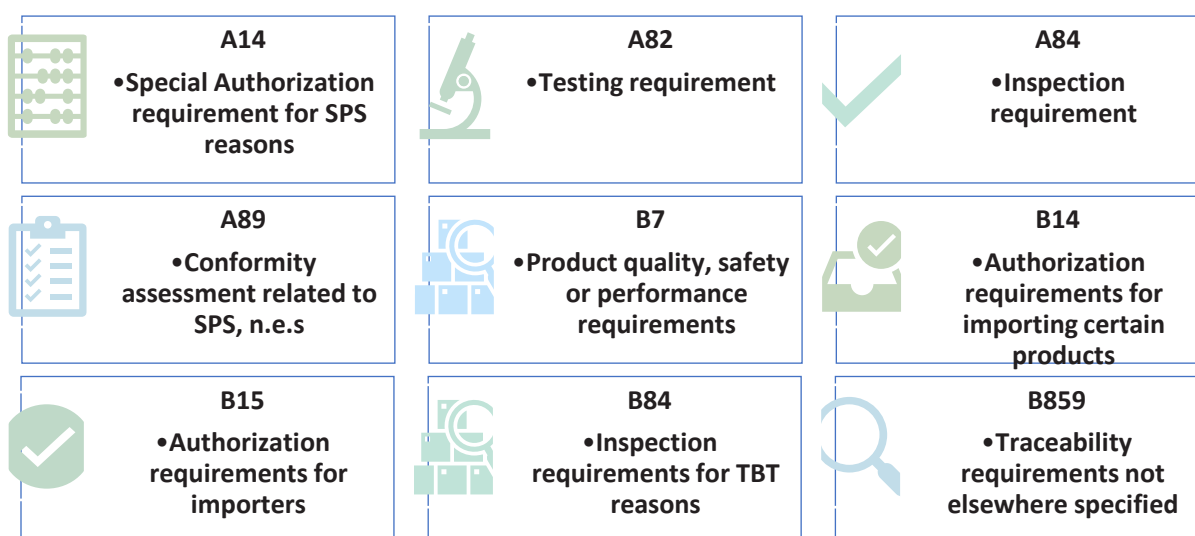
Source: Authors' calculations based on data from UNCTAD Stat. *All NTM codes are based on the MAST group classification for non-tariff measures available at: https://unctad.org/en/PublicationsLibrary/ditctab2019d5_en.pdf

From among the intermediate inputs identified, (i) Cotton, carded or combed (HS 520300) and (ii) Cotton, non-carded or combed (HS 520100) were selected. Mineral or chemical fertilizers containing the three fertilizing elements nitrogen, phosphorus, and potassium (HS 310520), was eliminated due to its limited use in the CTA value chain in Kenya. NTMs applicable to imports of these inputs were then mapped using UNCTAD TRAINS Database² for NTMs and validated with the help of Kenya Law. The types of NTMs applied by Kenya to the import of cotton are summarized in Figure 3.

² Available at: <https://trains.unctad.org/>

Figure 3

NTMs Applicable to Cotton Lint Imports

Source: UNCTAD TRAINS Database.³**Box 1. Kenya's Cotton Industry**

Cotton was once a highly valued cash crop in Kenya. In the 1970's Kenya was a major producer of seed cotton in East Africa, producing cotton for both local consumption and export (Better Cotton Initiative). The production was at its peak in the mid-80s, sustaining many livelihoods, and contributing significantly to Kenya's foreign exchange earnings. Following the liberalization of the sector in 1991, a massive influx of cheap second-hand clothes from abroad, and the subsequent withdrawal of Governmental support towards the sector, growth and output began to collapse (FAO, 2012). Despite availability of sufficient land suitable for cotton cultivation, only a small fraction is under cultivation. The current level of production of cotton lint is less than 10% of the production potential (KenInvest). Kenya's ginnery industry was operating at a mere 14 per cent of its capacity due to the reduced supply of cotton (The East African, 2016).

Following this period of decline due to limited policy support, weak farmer organizations, high costs of production, inadequate quality inputs and over-reliance on rain-fed production; revival of the cotton sector has now gained significant attention (FAO, 2012). With the adoption of Kenya Vision 2030, in 2008; and a new East African Community (EAC) Industrialization Policy outlawing importation of used clothes, all focus is on renewing Kenya's once vibrant cotton industry (The East African, 2016). *Kenya Vision 2030*, identifies cotton as a key sub-sector within the CTA value chain, with the potential to benefit 8 million people. The national government, international organizations as well as private sector organizations have been making investments, establishing centers of excellence, and drawing up plans to strengthen the sector.

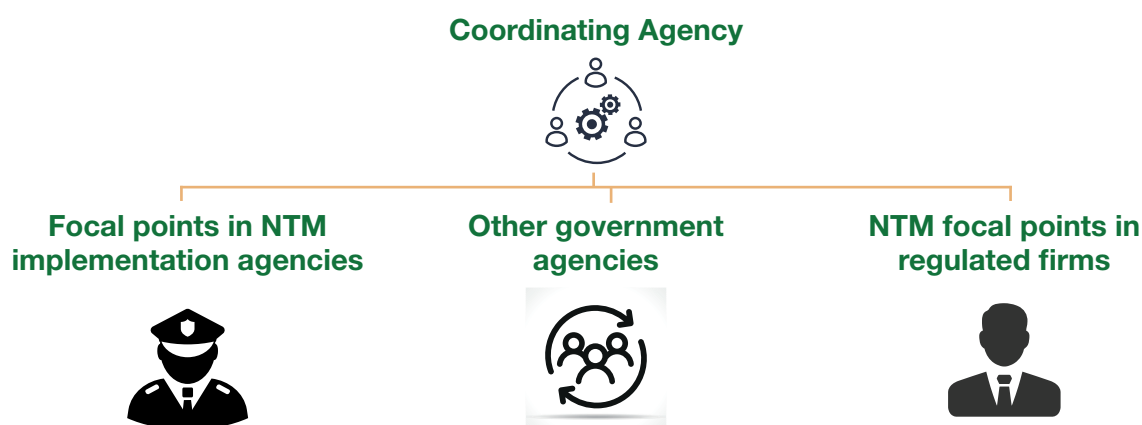
Yet there are gaps - Cotton lint production in Kenya stands at nearly 4,000 metric tons and falls short of domestic demand of about 10,000 metric tons (The EastAfrican, 2016). In the meantime, focusing on simplifying imports from Uganda and the United Republic of Tanzania can help meet the demand for cotton lint that the growing textiles sector is creating.

³ Available at <https://trains.unctad.org/>

3. TOOLKIT STEP 2: STAKEHOLDERS IDENTIFICATION

For the intermediate inputs identified, all relevant stakeholders, including public sector agencies and departments and private sector firms were identified (see Figure 4).

Figure 4
Key Stakeholders



i. Coordinating agency

The Ministry of EAC and Regional Development served as the coordinating agency for deployment of the toolkit. The Ministry is responsible for the development and execution of EAC policies and projects to boost regional integration. The Ministry was aligned with the goals and objectives of the toolkit deployment. It also carried the technical competence and political mandate, necessary for driving the deployment and conciliating with other stakeholders as well as for supporting reforms that emerge as priorities during its deployment.

ii. NTM focal points in regulated firms

There are three key importers of cotton lint in Kenya. The main NTM focal points in each were identified by the coordinating agency. These include (i) Rivatex East Africa Limited, (ii) Supra Textiles and (iii) Thika Cloth Mills. While Rivatex East Africa Limited is a large-scale manufacturer and exporters of textiles, Supra Textiles and Thika Cloth Mills are medium scale enterprises.

iii. Focal points in NTM implementation agencies

In Kenya, 3 key agencies are responsible for the design and implementation of NTMs applicable to cotton lint: (i) Kenya Bureau of Standards (KEBS) responsible for development and implementation of national/ regional standards; (ii) Fiber Crops Directorate, Agriculture and Food Authority (AFA) responsible for regulation, development and promotion of fibre crops including cotton lint; and (iii) Kenya Plant Health Inspectorate (KEPHIS), responsible for assurance on plant health and quality of agriculture inputs and produce. The focal points within each of these agencies were identified with support from the coordinating agency.

iv. Other government agencies

Apart from agencies responsible for design and implementation of NTMs, other government agencies with interest in the NTMs under consideration or trade in the sector at large were also identified. These include the State Department of Trade, the National Treasury, State Law Office, Kenya Revenue Authority, State Department of Agriculture and State Department of Industrialization.

4. TOOLKIT STEP 3 AND 4: STAKEHOLDER ENGAGEMENT AND INPUT ANALYSIS: KEY FINDINGS

The process of stakeholder engagement involved two key elements:

- i. an inception workshop held in Nairobi that saw all key stakeholders engage in group discussions on the NTMs on cotton lint imports in Kenya and challenges associated with designing, implementing and complying with these NTMs, and
- ii. face to face, in-depth interviews with representatives from each agency and firm.

The inception workshop and interviews were both followed the guidelines in the toolkit.

This section provides an in-depth examination of the array of challenges, obstacles and benefits associated with the NTMs applied to cotton lint imports. These findings are drawn from discussions with Kenyan importers of cotton lint as well the agencies responsible for implementation of NTMs. The findings are presented separately for the three pillars of the toolkit, i.e. design, implementation and compliance. For a descriptive analysis of the most striking issues is provided in the following subsections.

Box 2. Key Pillars of NTMs Cost-Effectiveness Toolkit

NTM Design

The benefits of an NTM critically depend on the design process. For an NTM to successfully attain policy objectives relating to health, safety or security, the design process should start with clearly defining the problem to be addressed. Considering policy options, international standards, views of experts and stakeholders is essential to ensure that an NTM achieves its objective and is beneficial for all parts of society. It may be hard to quantify the benefits of an NTM but following good regulatory practices in the process of designing NTMs will go a long way in ensuring that benefits are achieved at the lowest possible economic cost.

NTM Implementation

A well-designed NTM may still fail to meet the desired goals if it is not enforced well. Implementation agencies need to have a clear understanding of what the NTM objectives are and then plan its implementation by allocating the necessary resources – financial, human and technological. An ill planned approach to implementation and lack of proper monitoring of implementation processes can become a source of frustration for businesses. Sometimes, the implementation itself can be an expensive process requiring significant investment in infrastructure, technology or even day to day administration. At all points, the objective must be to ensure that the requirement to comply with an NTM does not become an unnecessary burden on those regulated i.e. the private sector, but also to the enforcing agency.

NTM Compliance

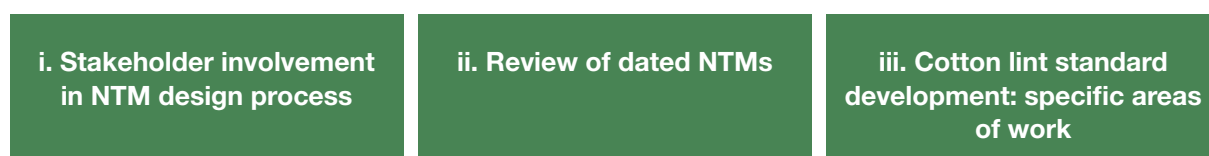
Compliance with an NTM can be demanding on businesses – financially and procedurally. Businesses may be required to buy new equipment, introduce new production processes, hire and train additional staff, or pay a high fee for obtaining a license or permit prior to import. In addition, the administrative costs for making notifications, publishing information and record keeping can become an added source of pressure for the private sector. As such, the need to assess these compliance related challenges becomes critical to improving NTM design and implementation and to ultimately eliminate procedural obstacles and minimize costs.

4.1 DESIGN

Interviews with the three main agencies responsible provided several insights into NTM objectives and rationale as well as the design process. All agencies were found to have clearly defined mandates and no overlaps in terms of NTM objectives were noted. They also had a good understanding of each other's mandates. Agencies were able to justify the rationale for each NTM and some were able to show alignment with relevant international standards. Three main areas where there seems to scope for further strengthening NTM design process are summarized below.

Figure 5

NTM Design – Summary of Key Areas of Improvement



i. Stakeholder involvement in NTM design process

The drafting process of the new regulations on fibre crops has taken over five years and these are expected to enter into force by 2021. The authority responsible for the draft regulations, Fibre Crops Directorate, mentioned that the design process was thorough and incorporated views of the private sector as well as other relevant agencies. The other agencies as well as the firms were noted to be aware of the regulations and acknowledged to have participated in the design process. While it is encouraging to see that the regulatory design process was inclusive, firms added that they participated only once, and several years ago, and that they were not aware of when these regulations would go into effect and the specific requirements they would impose on them. This indicates shortcomings in consultations with those who will ultimately be affected.

It is to be noted that these new regulations come at a time when Kenya is looking to revive its cotton sector. The regulations will mostly apply to the now dormant but soon-to-be revived ginneries. However, they will impose several additional TBT requirements on the importers of cotton lint.

ii. Review of dated NTMs

The majority of import NTMs on cotton lint are phytosanitary in nature and are enforced by KEPHIS. These NTMs are derived from the Kenya Seed and Plant Varieties (Amendment) Act, 2012. Since 2012, these NTMs have not been reviewed. While there is no specific internationally agreed timeline for conducting a full-fledged NTMs review, reviewing NTMs is considered as a “good regulatory practice”. NTM review assesses whether these NTMs have been contributing to the desired policy objectives and if there can now be better ways to address the same problem. The review process also ensures that the private sector can raise compliance-related issues and the agencies can discuss problems with implementation, with the overall objective of improving NTM design as well as implementation.

iii. Cotton lint standard development: specific areas of work

Currently, Kenya does not have its own national standard for cotton lint and has been following international standards. However, recently, a technical committee was set up for developing the national standard. This comes at a point where Kenya is looking to revive its own cotton sector. While this by itself is not problematic, it is important to stress here that the standard development process is an expensive one. In Kenya, this is noted as being highly consultative endeavor and can last up to 18 months. Unfortunately, there is a risk that the development of a new standards may lead to a further divergence in the cotton lint standards across the EAC region, aggravating the existing concerns on conformity assessment procedures.

Box 3. NTM Benefits: Authorization Requirements for Phytosanitary Reasons

Inspections procedures and the need to obtain a phytosanitary certificate are critical NTMs to ensure minimizing the risk of pest in imported plants and plant products. The International Standard for Phytosanitary Measures (ISPM) 12 adopted by the Commission on Phytosanitary Measures (CPM), which is the governing body of the International Plant Protection Convention (IPPC) states that *“Phytosanitary certificates are required for plant products that have been processed where such products, by their nature or that of their processing, have a potential for introducing regulated pests (e.g. wood, cotton)”*. Fumigation is necessary to ensure that such pests are eliminated before the lint goes into further processing. The phytosanitary certificate is issued to indicate that the imported lint is free from pest risks. KEPHIS was aligned with these views. They added that plants like cotton, by the nature of their processing may have a potential for introducing pests which can infest cotton lint, such as seed bugs, cotton aphid or spider mites. While some of these may be crushed in the ginning process, and the risk of pests in lint cotton is low, phytosanitary inspections and other requirements are critical to ensuring that better quality cotton can be offered to the spinning mills.

Figure 6

Cotton lint infested with cotton seed bugs



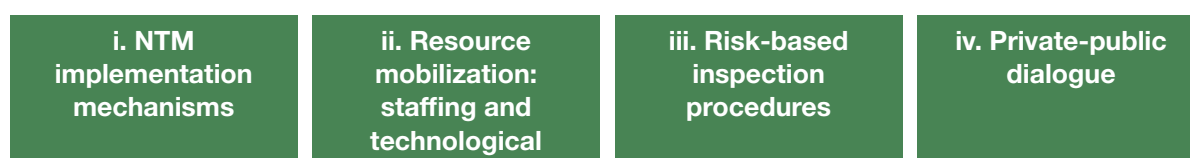
Source: United States Department of Agriculture - Animal and Plant Health Inspection Service.

4.2 IMPLEMENTATION

The interviews with the NTMs implementation agencies revealed that all agencies had clearly defined procedures and requirements for each NTM. Four key areas of improvement were identified based on interactions with the NTM implementing agencies, as summarized below.

Figure 7

NTM Implementation – Summary of Key Areas of Improvement



i. NTM implementation mechanisms

All agencies were aware of their mandates and responsibilities under the respective national law. However, it was not a clear priority consideration how the required paperwork and fees aggravate firms' documentary burden and costs. Now, there do not exist any joint mechanisms for conducting inspections between, platforms for sharing of information, or one-stop solutions where importing firms can complete all necessary paperwork at once. The Fiber Crops Directorate indicated that one of the objectives of the new NTMs was to help maintain a record of volume and value of imports, a task which may be accomplished by collaborating with the Kenya Revenue Authority (KRA). At the same time, communication between KEBS and other agencies was weak, and all responsible parties argued that each had its own mandate.

ii. Resource mobilization: staffing and technological

Technological and human resources are a key to NTM implementation. KEPHIS was concerned about the testing facilities and technologies which required frequent upgrading, adding that this required continued investments. KEBS on the other hand concurred on the need for staff training to make inspections more effective and efficient and boosting KEBS' programs for quality assurance. This seemed reasonable given the firms' complaints about the lack of effective inspections staff.

iii. Risk-based inspection procedures

During the interviews with the agencies, it was noted that the inspections conducted by KEPHIS and KEBS were random rather than being risk-based. In most cases, all consignments were inspected by both agencies. Absence of risk management systems, critical for ensuring that the inspections are based on the proportion of risk the product presents, among other factors, in turn lead to long inspections and clearance times – a key concern raised by the firms.

iv. Private-public dialogue

The firm level interviews had indicated critical issues pertaining to transparency. Firms had complained that available information was unclear on specific requirements, fees and procedures as well as mechanisms for filing complaints. Further, there was uncertainty on the new AFA NTMs on licensing and permits. Firms agreed that they were not aware what these may entail and when they could come into force, despite having participated in the regulatory design process. Agencies, by contrast, stated that online portals existed to convey all essential regulations and procedures to the firms. This points to a much broader issue of a communication gap between the agencies and the private sector, which often led to uncertainty.

4.3 COMPLIANCE

All interviewed firms, despite not seeing any benefits of the identified NTMs for themselves, understood that NTMs served legitimate policy objectives. Still, all firms interviewed expressed concern about the applicable NTMs and their implementation. Indeed, issues faced by firms are more procedural than regulatory i.e. firms did not complain about NTM objectives or design but were distressed about **poor implementation and excessive documentary requirements**. Firms emphasized that NTMs on cotton lint increase their cost of doing business.

A key observation was that challenges faced by firms were both regulatory and procedural in nature, yet procedural issues were more dominant and particularly burdensome. Of the NTMs mentioned in Box 2:

- **Inspections requirements** and the corresponding time and fee at the time of clearance emerged as being most troublesome.
 - On the **regulatory** side, the key issue related to **lack of harmonization and mutual recognition** of conformity assessment procedures and phytosanitary requirements for cotton lint across EAC member
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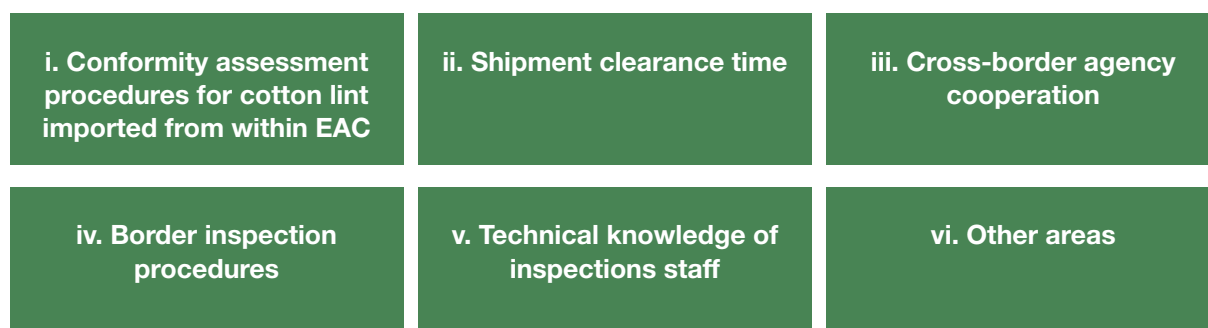
states (Uganda and the United Republic of Tanzania, in this case) – particularly with respect to inspections and certification. Firms argued that this often led to unnecessary complications and delays at the time of import.

On the **procedural** side, the top five problems encountered by importing firms included unusual delays in shipment clearance, lack of cross-border agency cooperation, duplication and overlaps in border procedures, high fee charged for inspections/shipment clearance, and lack of technical knowledge of inspections staff.

Figure 8
Key Challenges in NTM Compliance



Figure 9
NTM Compliance – Summary of key areas for improvement



A descriptive analysis of main problems identified from an assessment of face-to-face interviews is summarized below.

i. Conformity assessment procedures for cotton lint imported from within EAC

Conformity assessment (CA) procedures are activities conducted by government regulators and standard setting bodies to ensure that products and production processes meet minimum health and safety requirements. These procedures may include testing, inspection or certification of products. CA procedures can be burdensome on importers and entail high costs for business in terms of fee and charges. Further, lengthy approval times can imply additional costs associated with revenue foregone due to sales that are lost while the product is under review.

In addition to the inspections, firms indicated that they had to obtain a certificate of conformity (CoC) at the time of import which is issued by KEBS inspectors once they were satisfied that the imported lint conforms

to the applicable Kenyan technical regulations, mandatory standards or other necessary specifications. This a time-consuming process involving long wait times at the border. What the firms found most confusing was why “certified” cotton lint from the neighboring Uganda and the United Republic of Tanzania needed to obtain an additional certificate. In response to this, KEBS indicated that there was no need to obtain a CoC if the lint was being imported from Uganda or the United Republic of Tanzania. This indicates a discrepancy in what regulations require and what happens on the ground. KEBS agreed that there is a lack of knowledge among the inspectors at the border and that awareness should be strengthened.

Box 4. The Issue of Conformity Assessment in the EAC

“A recent study in the EAC region by the Overseas Development Institute on the unresolved Non-tariff barriers (NTBs) showed that 24% of all the unresolved NTBs and complaints reported in the time-bound matrix among EAC Partner States relate to the application of quality and safety standards. A majority (60%) of the standards-related complaints concern country-specific product registration, certification, standardization and testing procedures.”

Source: TradeMark East Africa.

ii. Shipment clearance time

The time taken for the clearance of shipments at the border was a primary concern raised by firms. Three out of three firms pointed out that the inspections procedures at the border were time-consuming. This added to their operational costs. They added that trucks would take as long as three weeks for clearance. Since firms tend to import cotton not once but multiple times during the year, given the unpredictability in demand, this matter was of serious concern to them. Shipments stuck at the border resulted in idle labor and firms had to pay extra to the trucks for waiting at the border. It was also noted that oftentimes, random inspections were carried even after border clearance processes were successfully completed by KEBS inspectors. The time taken to off-load and reload several bales of cotton while in transit was significant, and this further added to the total time taken to receive the final product.

Per the World Bank Doing Business 2018, the time and cost to import in the EAC, is indeed one of the highest across the Africa. Delays at the border result in several negative consequences for traders affecting their operations, diminishing profits and restricting access to potential markets. All firms interviewed echoed the same.

iii. Cross-border agency cooperation

The Kenyan cotton importers agreed that one of the reasons why the process of importing cotton was particularly time-consuming was due to lack of coordination between the Kenyan, Ugandan, and Tanzanian standards bureaus. The lack of familiarity with each other's documents made border inspections rather complicated and the firms had to bear the brunt of this. While this issue is closely interlinked with the lack of harmonization and mutual recognition of procedures and documents, firms added that even when the documents are not mutually recognized and inspections have to be conducted anyway, the inspectors on the Kenyan side should at least have an understanding of the documents of the exporting country. Firms recounted situations where this was not the case.

iv. Border inspection procedures

Another point raised by importers was the duplication in border procedures among border agencies. Several entities are involved in the inspection of the same consignment, each requiring a separate procedure and payment. In this case, for instance firms stated that cotton lint was inspected by officials of the KEBS and

KEPHIS. As such, the same consignment was inspected twice. This indicates a lack of internal border agency cooperation. Firms expressed their concern over the need to prepare so many documents for different agencies. In addition to these, the Fiber Crops Directorate under the Agricultural and Food Authority (AFA) has recently finalized the Fiber (Crops) Regulations, 2019 which are expected to come into force on 2020. These will require firms to obtain a license as well as a permit to import cotton lint. While firms were not fully aware of the specifics of these soon-to-be in force requirements, one firm feared that the new regulations would add to their administrative burdens.

v. Technical knowledge of inspections staff

Not only were the inspections procedures for cotton lint cumbersome and expensive, firms indicated that the inspections were purely physical in nature aiming to check the color and trash content of the cotton lint. This, according to the firms was problematic. Firms recounted instances when imported lint was rejected for trivial reasons which would otherwise not cause a problem. As per them, the inspectors' knowledge of the properties of cotton lint was limited.

vi. Other areas

a. Hidden costs

During the interviews, it was noted that for one of the firms, the issue of "hidden costs" was particularly bothersome. Often, and due to the complexity of procedures, firms import products through an agent who undertakes all clearance procedures for them. All importation and clearance charges are paid by the agent who later charges a lumpsum fee from the firms. This is a bargaining chip for the agent if the individual charges for each license or inspection are unclear or unknown. The firm complained that the lack of transparency on the exact fee and procedures causes their dependency on agents and loss of control over the total expense. For the firm, these were all "hidden" costs. The firm added that it was not aware of any online platforms where it could find out about all costs and procedures in detail.

The other two firms agreed that NTM implementation procedures were common knowledge, and that transparency needed to be strengthened. While the Kenya Trade Network Agency (KenTrade) is one such online platform (www.kentrade.go.ke), the firm was not aware of it. Furthermore, cotton import procedures are not covered in detail on the platform. Transparency is an essential dimension of the NTM cost-effectiveness toolkit, highlighting the need for mechanisms where NTM-related information can be found out, private sector can be kept up-to-date and complaints registered.

b. Value-added tax

The Kenya Revenue Authority (KRA) charges value added tax (VAT) equivalent to 16% of the value of imported cotton lint. While firms are entitled to a VAT refund, the process can take up to six months. Firms argued that this procedure was excessive and added to the overall cost of operations and impacted fabric prices. Firms also added that while exemptions from having to pay VAT in the first place, the procedure was extremely complex and required significant time. In order to obtain the exemption certificate, importers were required to submit a "master list of items" to the State Department of Industrialization who forwarded this to the National Treasury. Once the Treasury approved it, it went back to the Ministry of Industrialization who then issued an exemption certificate and sent to the KRA. This procedure could take up to 4 months and was required for each import consignment. This, firms said, required a lot of pre-planning, a difficult task when demand was uncertain. Further, it led to lost business opportunity and affected their competitiveness and competitive advantage.

5. TOOLKIT STEP 5: POLICY OPTIONS

Based on the findings of the interviews, the following options are recommended to strengthen the three pillars of NTM cost-effectiveness: compliance, design and implementation.

5.1 WORKING TOWARDS MUTUAL RECOGNITION OR HARMONIZATION ARRANGEMENTS WITH UGANDA AND THE UNITED REPUBLIC OF TANZANIA FOR COTTON LINT STANDARDS AND CONFORMITY ASSESSMENT PROCEDURES

Discussions on the issue of mutual recognition of CA procedures among all EAC member states are ongoing and should continue to be encouraged and expedited. Such arrangements would help ease the burden on the private sector, while serving to be mutually beneficial for Kenya and the exporting countries. It will help meet cotton demand in the Kenyan textiles sector especially at a point when Kenya is only at a starting point of reviving its own cotton sector.

The new national standards for cotton lint that Kenya is now in the process of developing. It is important that this is approached with caution to ensure the following:

- a. The new standard shall not impose new burdens on the private sector in terms of costs or administrative requirements, and expenses incurred in the process of standard development are not passed on to the firms. At the same time, the clearance fee payable by firms shall be reviewed and streamlined.
 - b. Effort is made to keep the new standard harmonious with the international standard as well as Ugandan or Tanzanian standards since lint imports from the two countries are critical. While there is a clear benefit to all phytosanitary NTMs on imported cotton lint in Kenya as also argued by the relevant implementation agencies, these requirements should be reviewed in-depth to bring them closely in line with the international standards for all three countries. This harmonization should be based on the International Standard for Phytosanitary Measures (ISPM) and will require a thorough, joint analysis of pest risk for cotton lint, based on the method, degree of processing and the intended use of the commodity (See Annex 1). KEPHIS should be brought on board and all NTMs it is responsible for enforcing should be reviewed in the light of ISPM, the extent to which they are achieving the desired policy objectives, as well as the implementation and compliance related challenges arising therefrom. The ISPM divides plant products into 4 categories to determine whether phytosanitary requirements are needed and to what extent. While these categories are for reference purposes only, cotton lint may fall under category 1, i.e. *“commodities that have been processed to the point where they do not remain capable of being infested with pests. Hence, no phytosanitary measures should be applicable.”* (International Standard for Phytosanitary Measures (ISPM), International Plant Protection Convention (IPPC)). As such, there is a need for the three countries to revisit these requirements and harmonize or eliminate the NTMs to the extent possible. (See Appendix I)
 - c. The technical committee for standard development shall discuss and clearly delineate the implementation of conformity assessment procedures under the new standards to ensure that these are streamlined and simplified.
 - d. Finally, protectionist interests in the process should be seriously questioned. Given the current focus on reviving its cotton sector, it is important to bear in mind that the need to simplify import procedures is not overlooked. The focus on the need to be able to import good quality cotton as the domestic industry takes its time to develop, is crucial. Otherwise, Kenyan textile and apparel producers' survival are threatened. The Ministry of Trade has also echoed this view.
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Trade Marks East Africa (TMEA) has in the past supported standards harmonization for commonly traded products such as sugar, maize, minerals, iron and steel through the implementation of the EAC Procedures for Development of Standards (2012) followed by capacity building to national standards bodies (NSBs) representatives involved in standards harmonization. This was supported by strengthening conformity assessment procedures through the provision of lab testing equipment and capacity building. This led to substantial reduction in time taken for shipment clearance. Such harmonization may be pushed for in case of cotton lint as well.

Table 2

Average Conformity Assessment Clearance Time and Testing Cost in the EAC

Average Conformity Assessment Clearance Time (Days)			Average Testing Cost (US\$)	
2010	2014	2014	2010	2014
	Without Notified Certification Mark	With Notified Certification Mark		
38	10	0.5	500	205

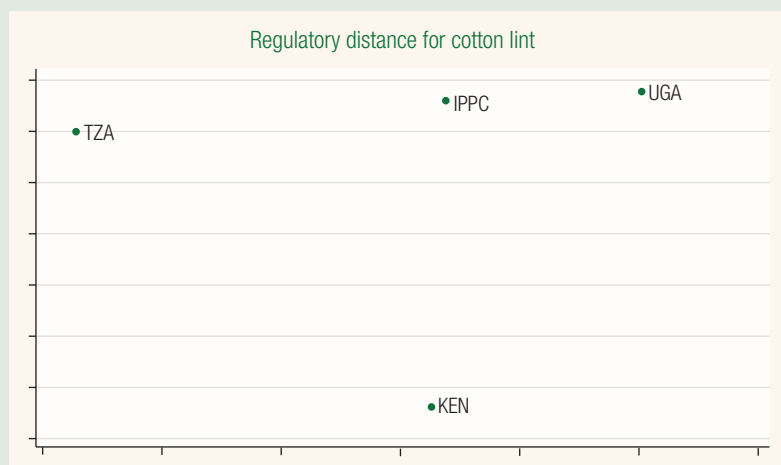
Source: Trademark East Africa.

Box 5. Assessing Differences Between Kenya, Uganda, the United Republic of Tanzania and International Recommendations

Uganda and the United Republic of Tanzania, Kenya's neighbours, and member States of the East African Community (EAC) account for nearly 100% of Kenyan imports of cotton lint. Firm level interviews revealed that differences in standards/technical regulations and lack of mutual recognition of conformity assessment procedures among the three countries, results in high import time and cost. This is in line with what previous studies and empirical research have shown on how differences in technical regulations across countries can contribute to high trade costs.

To verify the divergence, a comparison was made between Kenyan, Ugandan and Tanzanian import NTMs on HS6 product "520100 cotton lint, non-carded or non-combed" and "520300 cotton lint, carded or combed" – the intermediate inputs under study, as well as the standards recommended by the International Plant Protection Convention (IPPC) for these two products. Plotting the three countries' as well as IPPC standards on a graph using UNCTAD's methodology for assessing such differences, referred to as "regulatory distance", showed that NTMs applied by the three countries diverge in three distinct directions from those recommended by the IPPC.

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Note: More regulatory dissimilarity between countries is illustrated by a larger distance between respective points in this graph. Only the relative distance between points matters for the interpretation of the graph, whereas the position of an individual point (up, down, left or right) has no meaning.

Source: author's calculations.

This implies that a unilateral convergence towards IPPC standards by all countries would also imply convergence with other country's standards. Further, if all countries agreed on a common regional standard, IPPC standards could serve as a reasonable "middle ground". This necessitates that countries cooperate to ensure that regulations are harmonized, mutually recognized, or at least treated equivalent with one-another such that regulatory differences do not become barriers to trade and regional integration is strengthened. An emphasis on this in the technical committee set up for cotton lint standards development in Kenya will help ensure that there is harmonization among countries as well as convergence towards IPPC recommended standards.

5.2 STRENGTHENING CAPACITIES OF KEBS STAFF

It is essential that inspectors of KEBS are provided adequate information on the requirements for importers – in terms of who needs a CoC and who does not, and this be closely monitored. At the same time, to further boost the effectiveness of inspections procedures, inspectors should be provided cotton lint-specific training that can enable them to inspect scientifically, in accordance with the standards and regulations.

The international standard ISO/IEC 17020:2012 on conformity assessment provides for requirements for bodies performing inspections. Likewise, ISO 17024 standard on conformity assessment provides standard operating procedures for certification and assessment requirements for personnel responsible for assessment. Awareness trainings with KEBS and encouraging them to prepare manuals/guides for inspections staff will be a useful exercise.

The United Nations Industrial Development Organization (UNIDO) conducts many such training activities. Any training activity should also provide technical assistance on increasing communication with other agencies' staff as well adopting risk-based approaches for conducting border inspections. The trainings may also involve private sector, who may give feedback on standard operating procedures. Having formal training and explicit directives for the inspectors in their performance will make the inspections less arbitrary and/or random. PTB, the National Metrology Institute of Germany, too has substantial experience in this area. In 2012, PTB

conducted various training courses on ISO 17020 with the NSBs and experts from accreditation bodies within the EAC region. KEBS was one of the main partners of PTB in this project. Another PTB project in the region carried out during 2012-2018 focused on harmonization of inspection rules and training of inspectors within the pharmaceuticals sector, using risk-based approaches. Currently, PTB has an ongoing project focusing on leather, fruit and vegetables value chains whereby they work with NSBs within EAC to identify challenges in the field of quality infrastructure, including NTMs.

5.3 PROMOTING MECHANISMS FOR IMPROVED TRANSPARENCY AND PUBLIC-PRIVATE SECTOR DIALOGUE

Transparency is an increasingly important component of policies aimed at mitigating trade distortive effects of NTMs. Encouraging increased transparency of all regulations and standards through internet-based platforms ensures that the private sector is aware of all procedures and requirements for import, as well as the exact fee payable at each stage to each institution. For firms which import through agents, this information becomes essential to avoid getting exploited by the agent.

There is no dearth of such online platforms. For instance, nationally, Kenya Trade Network Agency (KenTrade) under the National Treasury serves as a single-entry point for parties involved in international trade for lodging documents and making electronic payments for any fees or levies due to the Government. However, while cotton export procedures are covered in detail by the KenTrade portal, cotton imports are not – an expansion to also provide information on cotton imports is recommended. Furthermore, Kenya Law maintains an up-to-date database of all Kenyan laws and regulations. Regionally, tradebarriers.africa is a platform that enables businesses to lodge report non-tariff barriers (NTBs) that they encounter in the process of imports from or exports to members of the African Continental Free Trade Agreement (AfCFTA). Tradebarriers.org serves a similar purpose for trade within the EAC and the Tripartite region. Internationally, ePingalert.org enables firms to receive up-to-date information on product requirements and facilitate dialogue amongst the public and private sector in addressing trade problems. On this platform, firms can also register to receive email alerts on new SPS and TBT notifications, and even collaborate with one another. Further, a country's notifications of new draft regulations to the WTO can also be a source of information about regulations for the private sector.

The issue however, as noted during the interviews was the lack of usefulness of these. A proactive approach by the government to make these more accessible to the private sector and encouraging them to make regular use of these, can make a significant difference. For cotton lint, it is important that the agencies ensure that all procedures along with corresponding time and costs are made available to firms on existing platforms. This will also ensure that discrepancies between requirements and actual procedures, as in case of CoC exemptions, are duly reported. The agencies' role will be to ensure that these problems are addressed in time, and dialogue with the private sector can be established.

Often government agencies tend to work in isolation without communicating the many ongoing initiatives to the private sector – the ultimate affected. Better two-way communication would help exporters understand ongoing government negotiations. This also applies to any agreements or harmonization procedures underway.

5.4 SIMPLIFYING PROCEDURES FOR OBTAINING A VAT EXEMPTION

The State Department of Industrialization and the National Treasury could work together to simplify the procedure for obtaining a VAT exemption. Further, they could figure out ways to provide annual exemption to a firm rather than requiring them to struggle to get one each time they import.

5.5 STRENGTHENING INTERNAL-BORDER AGENCIES COOPERATION

Since several agencies are involved in inspecting import consignments at the border and issuing certificates; enhanced coordination among them could serve to reduce time and cost burden for the firms. Article 10.4 of the WTO Trade Facilitation Agreement (TFA) calls Member States to maintain national single windows that enable traders to submit documentation or data for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. Despite the existence of the Single Window System in Kenya – an online cargo clearance platform which brings together 42 stakeholders and includes more than 35 permits/licenses/certificates government issuing agencies⁴, private sector firms still seemed to be concerned about the multiple channels that needed to be accessed to file applications and obtain permits/licenses/certificates. This necessitates that the agencies responsible for cotton lint make a conscious effort to come together and make use of such systems to minimize documentary and procedural requirements and promote its use to the private sector, particularly the smaller scale entities. Further, agencies could also work together on border inspections to the extent possible, by sharing important information and conducting joint risk management. This will help minimize wait time at the border.

5.6 MODERNIZING INSPECTIONS PROCEDURES BY ADOPTING RISK-BASED APPROACHES

While harmonization of procedures and regulations can ease the burden on KEBS and ultimately reduce administrative pressures on the private sector, another means to the same end is to reduce the overall number of inspections by adopting risk-based approaches. These can eliminate multiple, time consuming inspections, making clearance processes simpler and cheaper for the private sector. Article 7.4 of the WTO TFA requires that all border agencies apply risk management and use selectivity criterion that focusses on inspecting high-risk consignments such that the release of low-risk goods can be expedited. Kenya has also requested assistance and support or capacity building under this Article of the TFA, specifically for the formulation of a national strategy for undertaking Post-Clearance Audit by all border agencies and training staff of all border agencies on the same. Getting the KRA on board will add value to such efforts. Technical assistance and agency capacity building as well as training of staff through workshops will strengthen the development of such risk-management systems and approaches. Intra-agency agreements, creation of risk management units and coaching staff on the benefits of such an approach will help drive the agenda forward. Standard operating procedures may be developed as things proceed, based on international best practices.

Box 6. Example: Risk-Based Border Inspections with ASYCUDA: Zambia and Zimbabwe

The Zambia Revenue Authority (ZRA) has been following a risk-based approach to border inspections with ASYCUDA, that determines how much intervention the processing of a given consignment needs. This is achieved by assigning a color code to each shipment: Green implies minimal inspection; blue requires only a post release audit; yellow implies a simple review of documents while red requires a physical inspection. The ZRA adopted this system in 2015. In Zimbabwe, the Zimbabwe Revenue Authority (ZIMRA) migrated to the ASYCUDA World system and benefited significantly through adopting risk-based approaches for border inspections. Controls and payments are now automated. ZIMRA also interfaces with other government agencies through the system. This use of ASUCYDA has resulted in faster clearance of goods and contributed to easy compilation of trade statistics. In 2017-18, the use of ASYCUDA resulted in a 44% increase in ZIMRA revenue.

Source: ASYCUDA.Org

⁴ A permit/license for a given product is issued only by the relevant agency not all 35 agencies.

6. THE WAY FORWARD: POLICY OPTIONS IN ACTION

Table 3 provides a summary overview of each suggested policy options with the objective of defining the next steps in actionable terms. To this end, the table attempts to provide a clear, concise, and concrete description of the following –

- i. What specifically needs to be done?
- ii. How could this be done?
- iii. What is the overall benefit?
- iv. Who needs to be involved in the plan?
- v. What to do next?

Table 3
Policy Options in Action

Policy Option	What specifically needs to be done?	How could this be done?	What is the overall benefit?	Who needs to be involved in the plan?	What to do next?
<p>POLICY OPTION A</p> <p>Working towards mutual recognition arrangements with Uganda and the United Republic of Tanzania for cotton lint standards and conformity assessment procedures</p>	<ul style="list-style-type: none"> Development of a common EAC standard on cotton lint, aligned with the international standard on cotton lint Mutual recognition of CA procedures within the EAC 	<ul style="list-style-type: none"> Reiterating the need for common standards and mutual recognition of CA procedures in the technical committee set up for cotton lint standards development, by emphasizing the challenges faced by cotton lint importers Providing technical assistance to technical committee through relevant international organizations Ensure participation by private sector within the technical committee 	<ul style="list-style-type: none"> Eliminates the need for certificates/licenses as well as inspections of lint imported from EAC neighbours Expedites shipment clearance time and reduces costs for firms Reduces implementation time and costs for NTM implementing agencies 	<p>Leading national institution</p> <ul style="list-style-type: none"> Ministry of EAC Affairs and Regional Development <p>Other key national institutions</p> <ul style="list-style-type: none"> Ministry of Industrialization, Trade and Co-operatives State Law Office Kenya Revenue Authority Pest Control Products Board <p>Potential international development partners</p> <ul style="list-style-type: none"> TradeMark East Africa International Standardization Organization (ISO) Food and Agriculture Organization (FAO) 	<ul style="list-style-type: none"> Outreach to the technical committee on cotton lint standard to raise issues identified Reiterate the need to eliminate inspections and documentary procedures on cotton lint imports Involve international institutions for technical assistance as and where required
<p>POLICY OPTION B</p> <p>Strengthening capacity building of KEBS staff</p>	<ul style="list-style-type: none"> Build understanding and expertise of KEBS inspections staff on cotton lint inspections procedures Increase awareness of inspections staff on requirements/exemptions for importers to ensure there are no discrepancies between written requirements and actual procedure 	<ul style="list-style-type: none"> Capacity building for cotton lint KEBS inspections staff covering pest-risk analysis, as well as on physical/scientific properties of cotton lint through trainings, workshops and the acquisition of needed resources Develop training manuals/establish standard operating procedures (SOP) for inspections staff on quality assurance 	<ul style="list-style-type: none"> Strengthens capacity of KEBS Makes inspections processes more effective and efficient Elimination of unnecessary procedures Expedites shipment clearance time Eliminates rejection of suitable, compliant consignments 	<p>Leading national institution</p> <ul style="list-style-type: none"> State Department of Industrialization <p>Other key national institutions</p> <ul style="list-style-type: none"> State Department of Trade Kenya Bureau of Standards <p>Potential international development partners</p> <ul style="list-style-type: none"> United Nations Industrial Development Organization (UNIDO) 	<ul style="list-style-type: none"> Undertake a needs and gaps assessment, while taking into account, the views and experiences of private sector Involve potential international development partners to plan an intervention strategy

Policy Option	What specifically needs to be done?	How could this be done?	What is the overall benefit?	Who needs to be involved in the plan?	What to do next?
		<ul style="list-style-type: none"> • Frequent and structured performance monitoring of inspections staff by supervisors • Accreditation of inspectors 		<ul style="list-style-type: none"> • PTB • International Standardization Organization • TradeMark East Africa 	
<p>POLICY OPTION C</p> <p>Promoting mechanisms for improved transparency and public-private sector dialogue</p>	<ul style="list-style-type: none"> • Strengthening and promotion of platforms for public-private dialogue on regulatory and procedural requirements for cotton lint imports • Enhancing accessibility of existing platforms to the private sector 	<ul style="list-style-type: none"> • Update existing platforms in line with the issues raised by the firms or build new ones if necessary • Make the private sector aware of available platforms on regulatory and procedural requirements for import of cotton lint, registering complaints, and engaging with the agencies in general • Incorporate frequent dialogue with the private sector with the purpose of identifying compliance issues and strengthening implementation procedures 	<ul style="list-style-type: none"> • Increases awareness and accessibility if all regulatory and procedural requirements pertaining to each NTM alongside specific costs and time related details • Reduces information costs through improved transparency 	<p>Leading national institution</p> <ul style="list-style-type: none"> • State Department of Industrialization <p>Other key national Institutions</p> <ul style="list-style-type: none"> • State Department of Trade • Private Sector • Kenya Bureau of Standards • Kenya Plant Health Inspectorate • Agriculture and Fibre Crops Association – Fibre Crops Directorate <p>Potential international development partners</p> <ul style="list-style-type: none"> • TradeMark East Africa • UNCTAD - Business/Trade Facilitation • Global Alliance for Trade Facilitation 	<ul style="list-style-type: none"> • Bringing all responsible agencies to collaborate, and meet frequently to assess needs and gaps while accounting for private sectors' views • Prepare an up-to-date list of all requirements covering documentary requirements and costs/time to apply for/obtain each, inspections fee/time, exemptions where applicable etc. – all in streamlined and step-wise manner • Organize awareness sessions/meetings to familiarize firms about these platforms
<p>POLICY OPTION D</p> <p>Simplifying procedures for obtaining a VAT exemption</p>	<ul style="list-style-type: none"> • Simplification of procedure for obtaining VAT exemption certificate by cotton lint importers 	<ul style="list-style-type: none"> • Eliminating unnecessary bureaucratic steps in the process for obtaining VAT exemption • Enabling automatic, electronic approval fast approval of VAT exemptions • Based on a pre-determined criteria, allowing frequent and registered importers to obtain a single exemption certificate rather than one per consignment 	<ul style="list-style-type: none"> • Reduction in time taken for obtaining exemption resulting in faster, less cumbersome imports and lower wait time • Enhances private sectors' ability to make last-minute, demand driven imports 	<p>Leading national institution</p> <ul style="list-style-type: none"> • National Treasury <p>Other key national Institutions</p> <ul style="list-style-type: none"> • Kenya Revenue Authority • State Department of Industrialization • State Department of Trade 	<ul style="list-style-type: none"> • Clearly establish private sectors' cause of concern • Consider ways of reducing the exemption approval time

Policy Option	What specifically needs to be done?	How could this be done?	What is the overall benefit?	Who needs to be involved in the plan?	What to do next?
<p>POLICY OPTION E</p> <p>Strengthening internal-border agencies cooperation</p>	<ul style="list-style-type: none"> Increase collaboration and coordination among all agencies regulating cotton lint imports on procedural and regulatory requirements and border control procedures 	<ul style="list-style-type: none"> Encouraging alignment of formalities, sharing of information and common facilities and establishment joint controls Strengthening coordination with the customs 	<ul style="list-style-type: none"> Reduced shipment clearance time and costs resulting in reduced cost burden for private sector Effective utilization of public sector resources 	<p>Leading national institution</p> <ul style="list-style-type: none"> State Department of Industrialization <p>Other key national institutions</p> <ul style="list-style-type: none"> State Department of Trade Kenya Bureau of Standards Kenya Plant Health Inspectorate Agriculture and Fibre Crops Association – Fibre Crops Directorate Kenya Revenue Authority Pest Control Products Board <p>Potential international development partners</p> <ul style="list-style-type: none"> TradeMark East Africa Global Alliance for Trade Facilitation World Customs Organization United Nations Industrial Development Organization (UNIDO) 	<ul style="list-style-type: none"> Strengthen one-stop border posts for cotton lint imports Devise platforms to apply for/file all documents at one place Work together with the customs to devise a plan for joint inspections of imported lint
<p>POLICY OPTION F</p> <p>Modernizing inspections procedures by adopting risk-based approaches</p>	<ul style="list-style-type: none"> Replacement of random cotton lint inspection procedures with risk-based ones 	<ul style="list-style-type: none"> Setting mechanisms allowing traders to supply information on cotton lint electronically to the agencies prior to shipment arrival with the objective of enabling agencies to assess risks and prioritize inspections in advance Implementation of a sampling system Training for all government agencies and their inspectors on cotton risk analysis 	<ul style="list-style-type: none"> Expedite clearance and release of imported lint through elimination of cumbersome inspections on low-risk shipments Effective utilization of public sector resources 	<p>Leading national institution</p> <ul style="list-style-type: none"> State Department of Industrialization <p>Other key national Institutions</p> <ul style="list-style-type: none"> State Department of Trade Kenya Bureau of Standards Kenya Plant Health Inspectorate Pest Control Products Board <p>Potential international development partners</p> <ul style="list-style-type: none"> TradeMark East Africa Global Alliance for Trade Facilitation United Nations Industrial Development Organization (UNIDO) 	<ul style="list-style-type: none"> Draw up a best practices plan for risk-assessment Provide training and capacity building to the staff

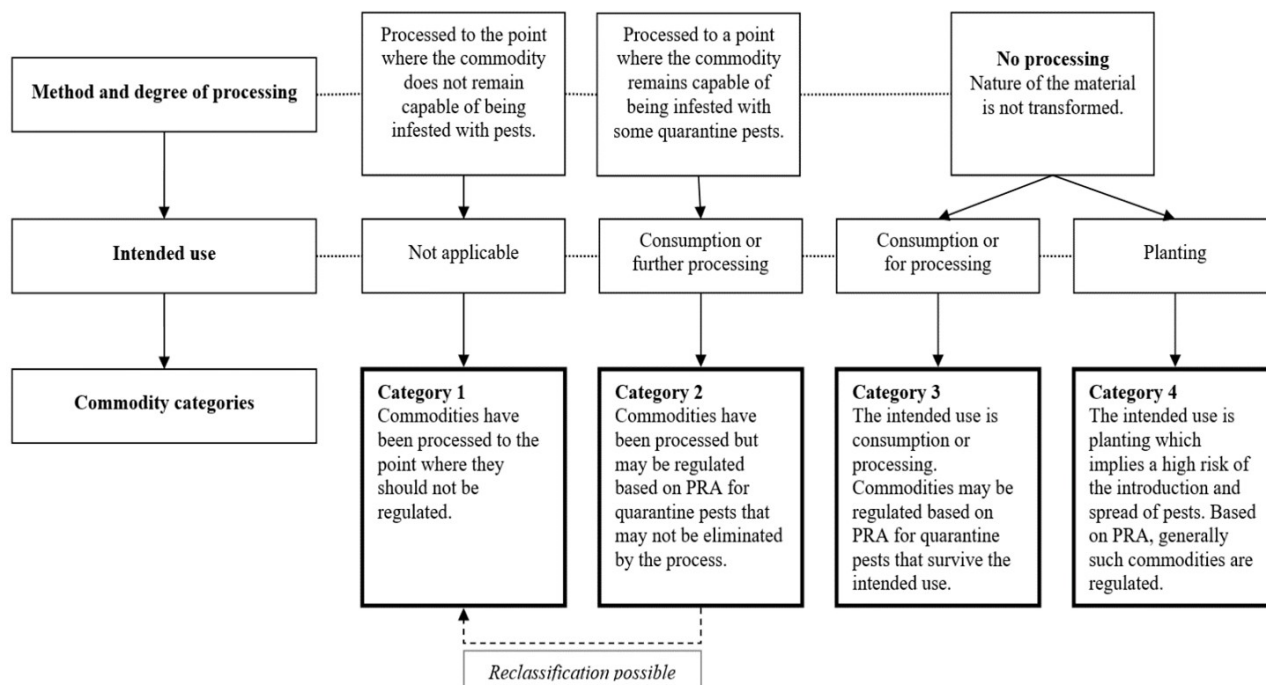
7. CONCLUSION

The deployment of the *Non-Tariff Measures Cost-Effectiveness Toolkit* in the CTA value chain in Kenya, focusing on cotton as an intermediate input has involved the assessment of nine NTMs for their “*Design*”, “*Implementation*” and “*Compliance*”. This has been carried out through a stakeholder engagement process involving focus group discussions and one-on-one interviews. The key findings i.e. areas where there is scope for further improvement and strengthening have been presented. The toolkit has culminated into a set of six policy options. The objective behind each policy option is to identify ways in which the design and implementation of the NTMs can be made more effective as well as efficient, and compliance time reduced such that the burden of these NTMs on the agencies as well as the firms, and the cost of doing business is minimized.

Alongside the policy options, the study has also attempted to provide a “way forward” in more actionable terms such that the policy options can be implemented. This would require buy-in from the leading national agencies, domestic partner institutions and international development partners. Given how the issues raised are cross-cutting, an appropriate result of the toolkit will be to take up some of these options through existing channels such as national government departments, national trade facilitation committees (NTFCs) and the ongoing work of several international organizations in the country to ensure that the interests of cotton lint importers are taken on board.

APPENDIX

Flowchart illustrating categorization of commodities according to pest risk



Source: International Standard for Phytosanitary Measures (ISPM), International Plant Protection Convention (IPPC).

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