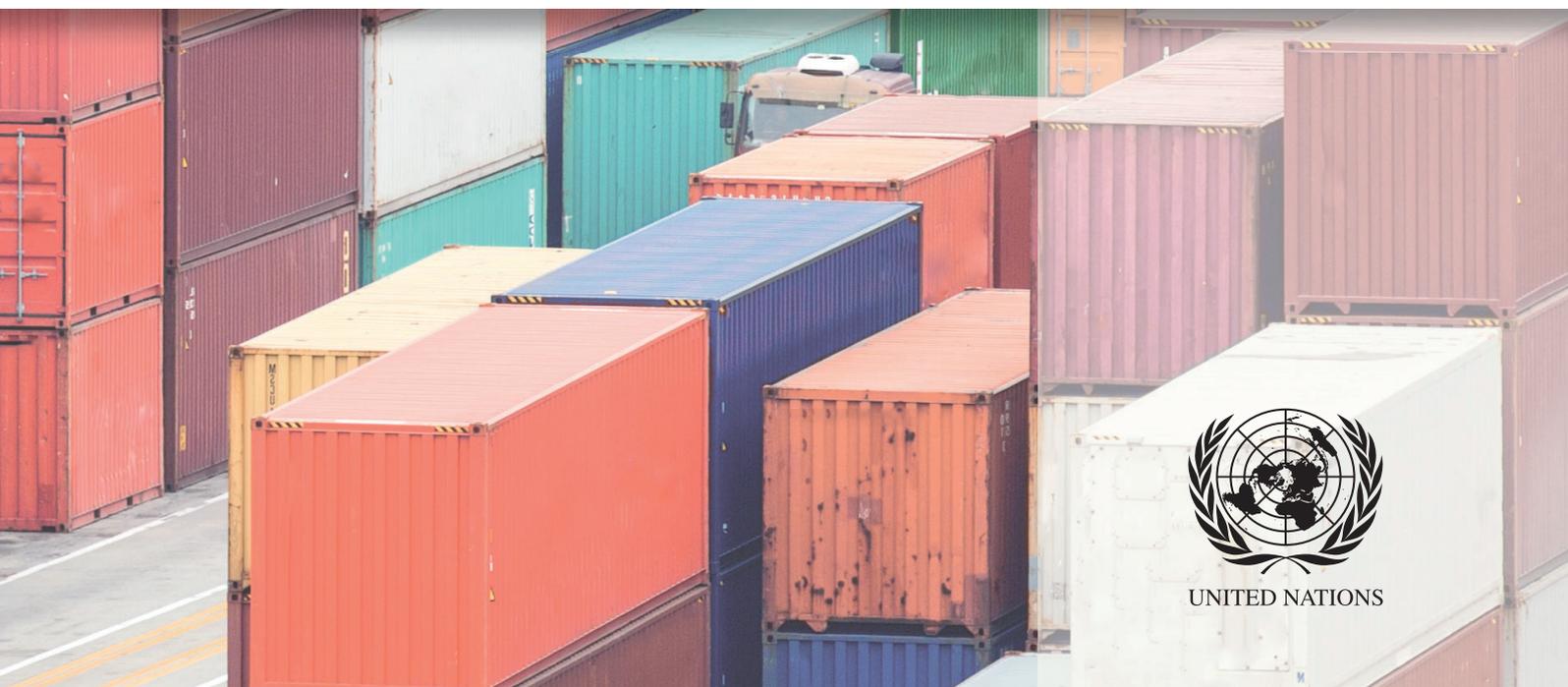
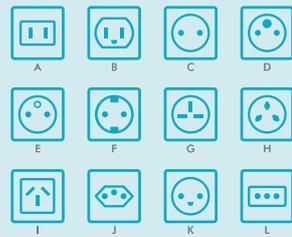


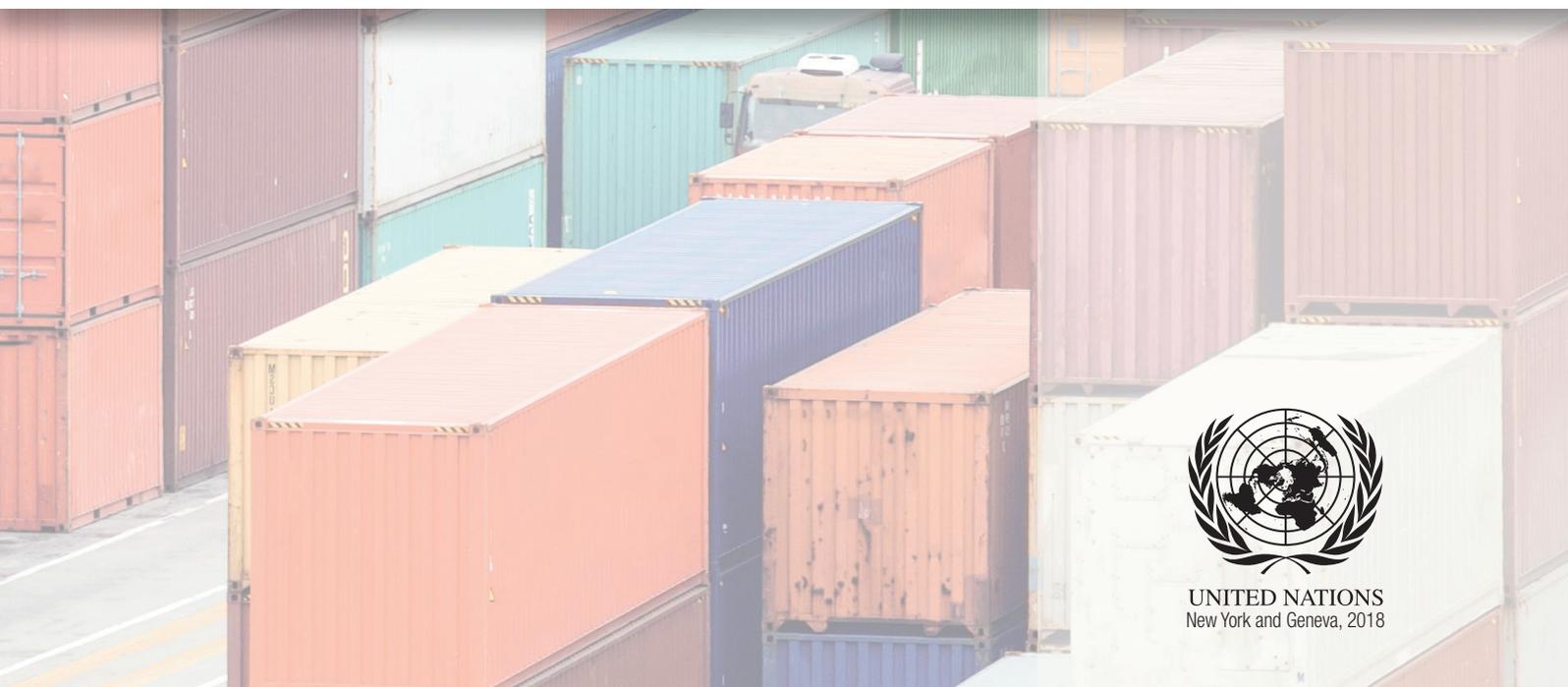
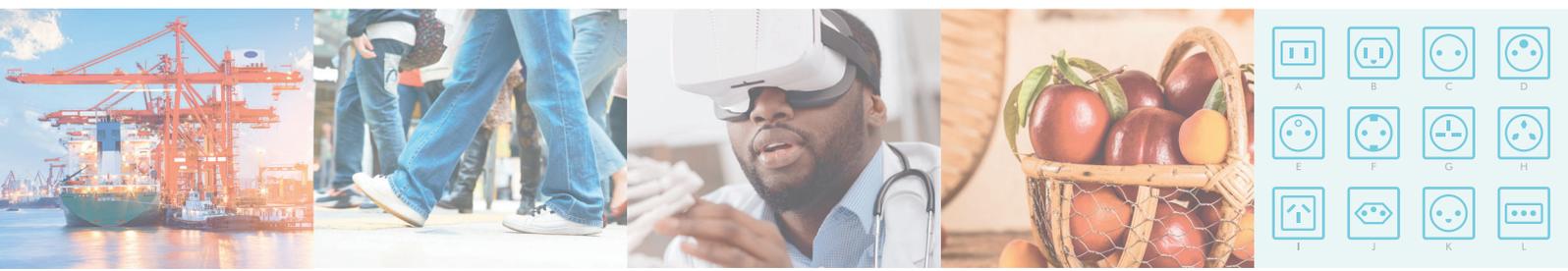


Regional Integration and Non-Tariff Measures in the Economic Community of West African States (ECOWAS)





Regional Integration and Non-Tariff Measures in the Economic Community of West African States (ECOWAS)



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FOREWORD

Regional integration presents unique opportunities to drive Africa's transformation and development. The Economic Community of West African States (ECOWAS) is among the major African Regional Economic Communities that has been shaping the evolution of regional integration in Western Africa. From better crisis prevention and management, financial and macroeconomic integration, to free movement of people, the list of achievements by ECOWAS is long since its formation in 1975.

Today, the establishment of a functioning common market is among ECOWAS' top priorities. The ECOWAS Treaty states that the common market should be ensured through "... liberalization of trade among Member States by [...] removing non-tariff barriers to establish a free trade area at the community level [...] and] the removal, among Member States, of obstacles to the free movement of [...] goods".

Although tariffs have been widely reduced, effective market access and integration also requires addressing non-tariff measures (NTMs). NTMs are policy measures other than tariffs that can potentially hinder trade. They refer to regulations whose primary objective is to protect health and the environment such as Sanitary and Phytosanitary (SPS) measures or Technical Barriers to Trade (TBTs) but which directly or indirectly distort trade.

This study provides an institutional overview of NTMs and an assessment of its impacts on regional integration in West Africa. It is part of a global initiative titled the "Global Transparency in Trade Initiative" jointly implemented by the Bank, UNCTAD, ITC and the World Bank to improve transparency in and access to trade data. ECOWAS was the first region in Africa in which the partners systematically mapped, collected, organized and analyzed all NTM data, including non-tariff barriers and behind-the-border regulations such as SPS measures and TBTs. The report utilizes innovative methods to assess regulatory convergence and evaluate the impact of NTMs from an economic, legal and institutional perspective. From the analysis, clear policy recommendations are identified for policy makers in ECOWAS and their development partners.

Today, diverse stakeholders use the database for various reasons. For example, traders use it to identify the import and export regulations that they must comply with. Policymakers and negotiators use it to streamline and negotiate NTMs while researchers make use of the data to assess the impact of NTMs on trade and sustainable development. It is the expectation of the Bank and UNCTAD that by facilitating access to information on NTMs, the report shall assist ECOWAS member States in their efforts to boost trade and economic integration.



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AFRICAN DEVELOPMENT BANK GROUP

CONTENTS

FOREWORD	iii
ACKNOWLEDGEMENTS	iv
EXECUTIVE SUMMARY	vii
1. INTRODUCTION	1
2. TRADE AND NON-TARIFF MEASURES IN ECOWAS: INCIDENCE, IMPACT AND WELFARE POTENTIAL	2
2.1. Trade structure and performance	2
2.1.1. Background.	2
2.1.2. ECOWAS trade performance	2
2.2. Non-tariff measures data classification and collection	5
2.2.1. Understanding the UNCTAD-MAST NTMs classification.....	5
2.2.2. Collected data in ECOWAS and the rest of the world	6
2.3. Descriptive analysis of NTMs in ECOWAS	7
2.3.1. Non-tariff “barriers” in ECOWAS.....	7
2.3.2. Prevalence of SPS measures and TBT in ECOWAS	7
2.4. Measuring the impact of NTBs, NTMs and regulatory convergence.....	9
2.4.1. Introducing the concept and measurement of “regulatory overlap”	9
2.4.2. Estimation results: the impact of NTBs and technical measures	9
2.4.3. The potential price-reducing effect of regulatory reform to increase “regulatory overlap”	11
2.5. Welfare analysis	11
2.5.1. Methodology.....	11
2.5.2. Scenarios of liberalization and regulatory convergence.....	11
2.5.3. Results: Trade and Welfare.....	12
3. WEST AFRICA'S APPROACH TO NTMS	14
3.1. State of regional integration process in West Africa	14
3.2. Coexistence of two regional integration processes	15
3.2.1. Key features of regional integration mechanism within the ECOWAS	16
3.2.1.1. Establishing a Common Market.....	16
3.2.1.2. Harmonizing / coordinating national policies.....	17
3.2.2. Key features of the regional integration mechanism within the WAEMU	18
3.2.2.1. Establishing a Common Market.....	18
3.2.2.2. Harmonization, coordination and common trade policy	18
3.2.2.3. Assessment of ECOWAS and WAEMU integration processes	18
3.3. NTMs regulation under ECOWAS/WAEMU auspices.....	19
3.3.1. Regulatory framework for NTMs in the region.....	19
3.3.1.1. The Treaties	19
3.3.1.2. Community Acts	20
3.3.2. Overview of regional NTMs.....	21
3.3.2.1. SPS measures	21
3.3.2.2. TBT measures.....	23
3.3.2.3. Rules of origin	24
3.3.2.4. Other non-tariff measures.....	25

4.	ADDRESSING NTMS UNDER THE WEST AFRICAN INSTITUTIONAL FRAMEWORK	26
4.1.	Strengthening the institutional mechanisms to address NTMs	26
4.1.1.	Regional legal framework and existing (enforcement) mechanisms	26
4.1.1.1.	The Court of Justice.....	26
4.1.1.2.	Alternative mechanisms	28
4.1.2.	Reporting, monitoring and NTB elimination mechanisms.....	28
4.1.3.	Capacity building and coordination between institutions.....	30
4.2.	Harmonizing ECOWAS/WAEMU regulatory frameworks	30
5.	CONCLUSIONS AND POLICY RECOMMENDATIONS.....	32
	REFERENCES	34
	ANNEX	36
FIGURES		
	Figure 1: Share of intraregional trade in ECOWAS and selected RECs (2015, in per cent)	3
	Figure 2: Share of ECOWAS members in intraregional trade (2015, in per cent)	3
	Figure 3: Quantitative restrictions in ECOWAS.....	8
	Figure 4: ECOWAS average number of distinct SPS and TBT measures by sector.....	8
	Figure 5: Ad valorem equivalents of non-tariff measures and barriers	10
	Figure 6: Change in exports of ECOWAS countries, per cent	13
	Figure 7: Welfare impacts of three scenarios, US\$ millions	13
	Figure 8: GDP increases by country, International Standard scenario, in per cent.....	13
	Figure 9: The index of regional integration	14
TABLES		
	Table 1: Key Products of intra-ECOWAS trade, million US\$ and per cent share in total (2015).....	4
	Table 2: Exports of ECOWAS by country	4
	Table 3: Imports of ECOWAS by Country	5
	Table 4: UNCTAD-MAST classification of Non-Tariff Measures	6
	Table 5: Alternative integration scenarios	12
	Table 6: Example of NTM data mapping with respect to “regulatory overlap”	36
	Table 7: Regression results.....	37

EXECUTIVE SUMMARY

This report examines non-tariff measures (NTMs) from an economic and an institutional perspective in the context of the regional integration process in West Africa driven simultaneously by ECOWAS and WAEMU. NTMs are policy measures other than tariffs that can potentially have an economic effect on international trade. NTMs refer to both regulations whose primary objective is to protect health and the environment such as Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT) and NTBs with an intent to distort trade such as quotas. The report is based on the analysis of NTMs data that were collected by the United Nations Conference on Trade and Development (UNCTAD) and the African Development Bank (AfDB) in 13 ECOWAS countries as well as an institutional analysis. The purpose of this report is to provide policy options to national and regional policy makers from the ECOWAS region to support deep regional integration based on the reduction of non-tariff barriers (NTBs) and regulatory cooperation.

Both ECOWAS and WAEMU aim for regional economic integration and the elimination of tariffs and non-tariff barriers (NTBs) as well as regulatory cooperation. While tariffs have gone down, NTMs are becoming the main instrument of trade regulation.

The incidence of quantitative restrictions in ECOWAS is low on average but these restrictions tend to be concentrated in some countries and important sectors and have significant impacts where they appear, increasing product prices by almost 50 per cent. The number of technical measures (including SPS and TBT) varies as well across countries, being relatively high in the economically more developed countries and low in most of the least developed countries in ECOWAS. Each single measure tends to increase product prices by about 1.5 per cent. Regulatory convergence is beneficial for ECOWAS countries and can reduce trade restrictions by over 25 per cent only by aligning existing measures. This could increase intra-ECOWAS trade by 15 per cent and increase income in ECOWAS countries by US\$300 million annually. A higher reduction of trade costs can be achieved through further regulatory convergence. Regulatory convergence towards international standards has the highest benefits for ECOWAS for both intraregional trade and export competitiveness. Converging towards international standards increases intraregional trade by 14 per cent and income in ECOWAS by US\$1.57 billion annually.

ECOWAS and WAEMU realize the importance and potential of addressing NTMs. NTMs are supposed to be tackled mainly through the elimination of NTBs including quantitative restrictions and the harmonization of some national trade policies such as certain technical NTMs (SPS, TBT), rules of origin, some trade facilitation measures, contingent measures and government procurement.

So far, the adoption of the regional NTMs agenda appears to have had a limited impact on the regional integration process as highlighted in the 2016 Africa Regional Integration Index report ranking ECOWAS as second last out of the eight Regional Economic Communities with respect to trade integration and regional infrastructure.

ECOWAS and WAEMU face challenges in addressing NTMs effectively despite explicit prohibition of certain NTBs and existence of certain regionally harmonized NTMs regulated by the Community acts. Monitoring the implementation and the resolution of problems arising from regional NTBs/NTMs as well as enforcement mechanisms are important and may require strengthening regional and national judicial mechanisms. Some alternative enforcement mechanisms (formal and informal) have been developed but with a very limited impact on the monitoring of compliance with NTBs/NTMs obligations by member States so far.

Accordingly, a main challenge is to adopt an effective enforcement and compliance mechanism dealing specifically with NTBs and NTMs. In that context, the Borderless Alliance, a non-governmental organization dedicated to increasing intraregional trade in West Africa is currently developing and testing an e-platform for reporting and monitoring NTBs in West Africa. The e-platform is built on the model of the Tripartite Free Trade Agreement NTBs mechanism which is consistent with the AfDB - UNCTAD NTMs data collection approach. The e-platform is primarily considered as an advocacy tool for lobbying the West African governments to remove

NTBs. This means that there is no legally binding mechanism with sanctions to resolve NTBs and currently NTMs are not addressed. By lack of financial resources, the pilot-phase is limited to two member States (Ghana and Burkina Faso) before being rolled-out to the rest of the member States.

Addressing regional NTMs involves as well the harmonization of ECOWAS and WAEMU regulatory frameworks. This is indeed necessary to limit the proliferation of procedural obstacles generated by overlapping regulations (e.g. certificates of origin, SPS certificates). In addition to that, harmonization is also important to achieve regulatory convergence. Speedier harmonization of the regulatory frameworks could serve as a catalyst for the reform process. Moreover, the harmonization of regulations and activities are also relevant to have a uniform and efficient trade regime across the region.

In light of the above, the effectiveness of the NTMs implementation process relies on a sound legal and institutional framework. Concretely, this also means that the ECOWAS and WAEMU Commissions as well as relevant national agencies have adequate human and financial resources thus enabling them to effectively monitor and support member States in the implementation and application of their regional commitments in their domestic laws.

To accelerate sustainable development in West Africa it is recommended to:

1. Enhance transparency about NTMs
 2. NTBs could mostly be eliminated. Removing NTBs on intra-ECOWAS trade requires the political process of negotiating their elimination
 3. Removing NTBs on intra-ECOWAS trade requires also a functioning reporting mechanism to allow the private sector to raise problems and to detect NTBs. The TFTA NTB reporting mechanism can serve as a benchmark for the ECOWAS region.
 4. Regulatory convergence of technical NTMs (SPS measures and TBT) should be pursued by ECOWAS policymakers - ideally towards international standards.
 5. Technical assistance including conducting capacity-building activities in the area of NTMs is important.
 6. Accelerate the formulation of a common trade policy of the ECOWAS community and harmonization of ECOWAS/WAEMU regulatory legal frameworks.
-

1. INTRODUCTION

This report presents the current state of non-tariff measures (NTMs) in the Economic Community of West African States (ECOWAS).¹ It embodies an economic analysis of how NTMs impact intra-ECOWAS trade as well as a detailed analysis of the West African regional institutional framework, such as ECOWAS and the West African Economic and Monetary Union (WAEMU-UEMOA).²

The regional integration process in West Africa is driven by ECOWAS and WAEMU. The elimination of tariff- and non-tariff barriers to trade is at the core of their respective programs with the aim of fostering freer trade and the free movement of the factors of production. However, as for most of Africa's regional integration arrangements, the focus of ECOWAS and WAEMU has primarily been on border measures and tariffs. Originally, more concern was given to the prominence of tariff barriers which dramatically hindered all integration efforts. While tariffs were undeniably an important barrier, economic analysis indicates that tariffs have gone down. NTMs, including behind-the-border measures, are more important than tariffs in inhibiting intraregional trade as they substantially raise the costs of doing business (WTO, 2011). Intra-ECOWAS trade is further undermined by the persistence of non-tariff barriers (NTBs), particularly quantitative restrictions.

NTMs are neutrally defined as policy measures, other than ordinary customs tariffs, that can have an economic effect on international trade (UNCTAD, 2013). NTMs thus include a wide array of policies. On the one hand, they comprise traditional instruments of trade policy, such as quotas or price controls, which are often termed NTBs. On the other hand, NTMs also comprise Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT) that stem from important non-trade objectives related to health and

environmental protection. Due to their increasing number and importance, provisions on NTMs and NTBs have become a mainstay in many “deeper” regional trade agreements (RTAs).

NTMs, including those that have non-trade objectives, are thought to have important restrictive and distorting effects on international trade. For example, exports from small and vulnerable countries incur on average less than 5 per cent tariffs but trade restrictions related to NTMs that are 4 times as high (UNCTAD, 2013). Furthermore, NTMs disproportionately and negatively affect smaller countries and producers. Eliminating unnecessary NTBs and addressing technical NTMs in a smart way can contribute significantly to regional integration and enhancing the competitiveness.

Therefore, addressing NTMs is fundamental for all regional trade agreements, and all the more for ECOWAS which is gradually evolving from its current status as a free trade area (FTA) towards the status of a customs union since the entry into force on 1 January 2015 of the ECOWAS Common External Tariff (CET). Historically, ECOWAS has grappled with the challenges of coordination of national non-tariff policy regimes. Nowadays, NTBs as well as the coordinated implementation of “behind the border” SPS measures and TBT moved to the forefront of regional integration policy making.

The present report is based on NTMs data collection and analysis conducted jointly by the United Nations Conference on Trade and Development (UNCTAD) and the African Development Bank (AfDB) in 13 member countries of ECOWAS over the period 2013-2014.³ It also includes insights from meetings held in 2016 with regional stakeholders, such as representatives of the ECOWAS and WAEMU Commissions and of the Borderless Alliance Secretariat.

The report is divided into five sections, which together address the challenges of NTMs in ECOWAS.

In Section 2, the report looks at NTMs in ECOWAS from an economic point of view. The section presents a descriptive analysis of the main features of NTMs in ECOWAS and highlights the importance of NTMs in intraregional trade through

¹ ECOWAS is a 15-member regional group with a mandate of promoting economic integration in all fields of activity. The members are Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. See Section 3.1.1.

² WAEMU-UEMOA is a customs and currency union of eight countries that are all members of ECOWAS, promoting economic integration among members. The member States are Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal and Togo. See Section 3.1.1.

³ Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Liberia, Mali, Niger, Nigeria, Senegal and Togo.

the measurement of the impact of NTBs, NTMs and regulatory convergence on trade. The section concludes by carrying out a welfare analysis on the potential impact of removing NTBs and increasing regulatory convergence within ECOWAS.

Sections 3 and 4 constitute the institutional part of the analysis about NTMs in ECOWAS, assessing their regulation under the West Africa institutional framework. Section 3 analyses the regional institutional mechanisms together with the legal tools implemented by the West African organizations (ECOWAS and WAEMU) with respect to NTMs. The section further highlights the key challenges faced by these institutions in harmonizing NTMs among member States. Section 4 presents policy options with a view to making the harmonization and enforcement of NTMs work better in West Africa through a sound legal and institutional framework. The discussion is followed by a focus on the establishment of an effective monitoring mechanism on NTMs.

Section 5 concludes with policy recommendations.

2. TRADE AND NON-TARIFF MEASURES IN ECOWAS: INCIDENCE, IMPACT AND WELFARE POTENTIAL

2.1. TRADE STRUCTURE AND PERFORMANCE

2.1.1. Background

The Economic Community of West African States (ECOWAS) is made up of 15 African countries in Western Africa (Benin, Burkina Faso, Cape Verde, the Gambia, Ghana, Guinea, Guinea-Bissau, Côte d'Ivoire, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo). Combined, the community reached US\$664 billion GDP in 2015⁴ and achieved 6.4 per cent real GDP growth rate over the 2000-2015 period, making it the second fastest growing community in the region after Economic Community of Central African States (ECCAS) by surpassing growth rates of East African Community (EAC), Southern African

Development Community (SADC) and Common Market for Eastern and Southern Africa (COMESA).

The economic growth of ECOWAS is primarily driven by Nigeria, the community's largest economy, which in 2014 accounted for nearly 79.1 per cent of the combined GDP, followed by Ghana (5.3 per cent) and Côte d'Ivoire (4.7 per cent). There are also differences in terms of the level of development among the member States as per capita income ranged between US\$358 in Niger and US\$3,035 in Cape Verde.

The community's exports stand at US\$87.9 billion as of 2015 which is 0.53 per cent of the world total. Nevertheless, this figure is almost half of its exports in 2012 partly due to the decline in Nigeria's exports (the biggest exporter in the community) as a result of falling global fuel prices. The imports amount to US\$98.1 billion and about 0.59 per cent of the world total.

Agricultural and extractive industries remain the mainstay of economic and social development in ECOWAS. Agriculture accounts for 21.8 per cent of GDP in 2014 about 2.5 times greater than the developing countries average. Mining and utilities capture 10.9 per cent of national income while manufacturing accounts for 9.7 per cent. Heavy reliance on extractive industries in export revenues shows little diversity in economies of ECOWAS countries. Primary commodities account for 83.6 per cent of exports in 2015 while manufactured goods captured 6.7 per cent of the total. Fuel itself accounts for 60.6 per cent of the exports.

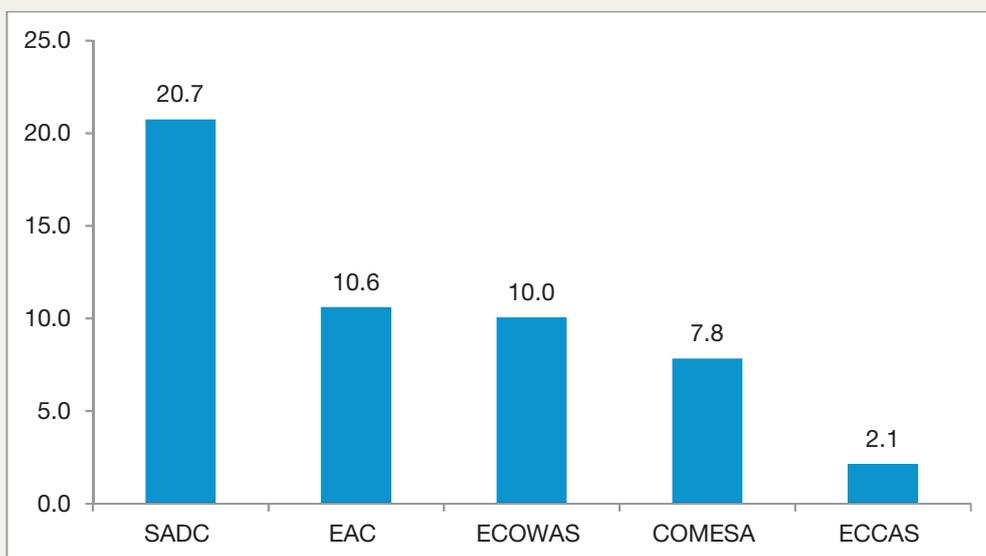
2.1.2. ECOWAS trade performance

The total value of ECOWAS trade in goods (sum of exports and imports) is estimated at US\$ 190 billion in 2015 whilst the regional trade represented only US\$ 19.1 billion, i.e., about 10.0 per cent of total trade (Figure 1). When compared with the other regional economic communities in Africa, ECOWAS ranks third behind SADC and EAC.

Out of 15 member States four countries, Nigeria, Côte d'Ivoire, Ghana and Senegal, capture the significant share of the intra-group trade (Figure 2). Combined, these four countries account for 83.3 per cent and 63.6 per cent of intra-group exports and imports respectively.

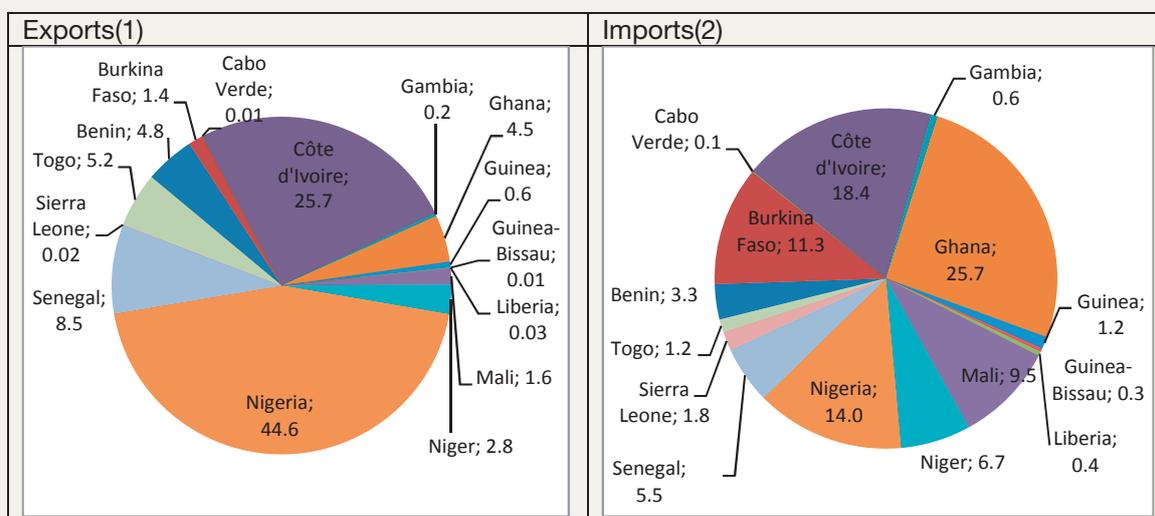
⁴ All data in section 2.1, unless indicated otherwise, are from UNCTADstat. They are partly estimates.

Figure 1: Share of intraregional trade in ECOWAS and selected RECs (2015, in per cent)



Source: UNCTADstat.

Figure 2: Share of ECOWAS members in intraregional trade (2015, in per cent)



Source: UNCTADstat.

(1) Exports of an ECOWAS member (reporting country) to ECOWAS (trade partner).

(2) Imports of an ECOWAS member (reporting country) from ECOWAS (trade partner).

As in the case of total ECOWAS trade, intra-group trade includes limited range of products such as fuels, tobacco, sea and river navigation equipment and cement (Table 1). Petroleum products alone account for 48.4 per cent of intra-ECOWAS trade in 2015. In addition, there are other products, including live cattle, cereals, tubers, roots and their derivatives, vegetable oils, etc. which are mainly traded informally, and are therefore poorly documented (CACID, 2012). In that respect, the recent January 2016 World Bank Global Economic Prospects report has highlighted the existence of strong informal cross-border trade links between Nigeria and neighbouring countries that are only partially captured in official statistics.

Thus, estimates of informal cross-border trade in West Africa show that it could represent 20 per cent of GDP in Nigeria and 75 per cent of GDP in Benin.

The structure of ECOWAS trade with the rest of the world is dominated by exports destined mainly for the European Union, China, India and the United States of America. India is the leading destination for ECOWAS exports as of 2015 with 14.8 per cent share (Table 2). India is followed by Netherlands and Brazil. On the imports side, China is the leading country of ECOWAS imports by capturing a 25 per cent share in 2015 (Table 3).

Table 1: Key Products of Intra-ECOWAS trade, million US\$ and per cent share in total (2015)

	US\$ million	share (per cent)
Petroleum oils, oils from bitumin. materials, crude	3140	31.3
Petroleum oils or bituminous minerals > 70 % oil	1707	17.0
Lime, cement, fabrica. constr. mat. (excluding glass, clay)	342	3.4
Tobacco, manufactured	250	2.5
Edible products and preparations, n.e.s.	242	2.4
Perfumery, cosmetics or toilet prepar. (excluding soaps)	234	2.3
Fixed vegetable fats & oils, crude, refined, fract.	225	2.2
Articles, n.e.s., of plastics	216	2.2
Electric current	182	1.8
Footwear	148	1.5

Source: UNCTADstat.

Note: Merchandise trade matrix export figures are used.

Table 2: Exports of ECOWAS by country

		2013	2014	2015		2013	2014	2015
		<i>Value (US\$ billion)</i>				<i>Share (per cent)</i>		
1	India	14.7	18.6	13.7		10.2	12.7	14.8
2	Netherlands	9.2	10.8	6.8		6.4	7.4	7.3
3	Spain	8.2	9.7	5.6		5.7	6.6	6.0
4	France	8.1	8.6	5.4		5.6	5.9	5.8
5	Brazil	10.3	10.4	5.0		7.1	7.1	5.4
6	South Africa	5.7	7.9	4.5		4.0	5.4	4.9
7	Switzerland	5.7	5.7	4.4		4.0	3.9	4.7
8	United States	13.1	5.7	4.0		9.1	3.9	4.3
9	China	5.3	6.5	3.9		3.7	4.4	4.2
10	Germany	6.6	6.1	3.2		4.6	4.2	3.5

Source: UNCTADstat.

Table 3: Imports of ECOWAS by Country

		2013	2014	2015		2013	2014	2015
		<i>Value (US\$ billion)</i>				<i>Share (per cent)</i>		
1	China	22.4	25.7	24.4		19.5	22.4	25.0
2	Netherlands	7.2	7.3	6.4		6.3	6.3	6.6
3	United States	9.2	9.0	6.3		8.0	7.8	6.4
4	France	6.7	6.6	5.9		5.8	5.7	6.0
5	India	5.7	5.9	4.9		5.0	5.1	5.0
6	Belgium	5.4	4.8	4.0		4.7	4.2	4.1
7	Nigeria	5.3	5.4	3.7		4.6	4.7	3.8
8	United Kingdom	4.2	3.8	3.0		3.6	3.3	3.1
9	Côte d'Ivoire	3.8	2.7	2.7		3.3	2.3	2.8
10	Germany	3.3	3.4	2.4		2.9	3.0	2.5

Source: UNCTADstat.

2.2. NON-TARIFF MEASURES DATA CLASSIFICATION AND COLLECTION

2.2.1. Understanding the UNCTAD-MAST NTMs classification

Relatively low trade, and in particular intraregional trade, by ECOWAS member States may be partly explained by the incidence of non-tariff measures.

Recognizing the proliferation and increasing importance of NTMs, UNCTAD has actively worked on the topic since the early 1980s. Given the scarcity of available information, UNCTAD began to identify and classify NTMs in 1994. In 2006, UNCTAD established a Group of Eminent Persons and a Multi-Agency Support Team (MAST).⁵ An essential step was the development of an internationally agreed classification for NTMs. This “common language” facilitates collection, analysis and dissemination of data on NTMs, with the final objective to increase transparency and understanding about NTMs (UNCTAD, 2014).

⁵ Multi-Agency Support Team: Food and Agriculture Organization (FAO), International Monetary Fund (IMF), International Trade Centre (ITC), Organization of Economic Cooperation and Development (OECD), UNCTAD, United Nations Industrial Development Organization (UNIDO), the World Bank and World Trade Organization (WTO).

The UNCTAD-MAST (2013) classification of NTMs has 16 chapters of different measure categories (left side of Table 4). An essential distinction is between technical measures (chapters A, B and C) and non-technical measures (chapters D to O).

Technical measures comprise SPS and TBT measures and related pre-shipment requirements. These measures are imposed for objectives that are not primarily trade-related: for example, human, plant and animal health, and the protection of the environment. Even if equally applied to domestic producers, they nevertheless regulate international trade and are thus considered NTMs. This does not, however, imply any a priori judgement about their impact and legitimacy.

Non-technical measures cover a wide array of policies, including “traditional” trade policies such as quotas, licences (chapter E), price controls and para-tariff measures (chapter F). The full list is presented in Table 4. As most non-technical measures have objectives and mechanisms that discriminate against foreign producers, this report refers to them as non-tariff barriers (NTBs).

Each chapter is further broken down into more detailed measures types (example of SPS measures on the right side of Table 4). The “tree structure” allows for a rather fine-grained classification of measures. For example, the SPS chapter (A) consists of 34 NTM codes at the finest level of detail. In total, the UNCTAD-MAST classification has 177 disaggregated codes.

Table 4. UNCTAD–MAST classification of non-tariff measures

		Table 4. UNCTAD–MAST classification of non-tariff measures	
Import-related measures	Technical measures	A	Sanitary and phytosanitary (SPS) measures
		B	Technical barriers to trade (TBT)
		C	Pre-shipment inspections and other formalities
	Non-technical measures	D	Contingent trade-protective measures
		E	Non-automatic licensing, quotas, prohibitions and quantity-control measures
		F	Price-control measures, including additional taxes and charges
		G	Finance measures
		H	Measures affecting competition
		I	Trade-related investment measures
		J	Distribution restrictions
		K	Restrictions on post-sales services
		L	Subsidies (excluding export subsidies)
		M	Government procurement restrictions
		N	Intellectual property
		O	Rules of origin
Export-related measures	P	Export-related measures	

Tree structure, for example:

- A Sanitary and phytosanitary (SPS) measures
 - A1 Prohibitions/restrictions of imports for SPS reasons
 - A11 Temporary geographic prohibition (...)
 - A2 Tolerance limits for residues and restricted use of substances (...)
 - A3 Labelling, marking, packaging requirements (...)
 - A4 Hygienic requirements (...)
 - A5 Treatment for the elimination of pests and diseases
 - A51 Cold/heat treatment
 - A52 Irradiation (...)
 - A6 Requirements on production/post-production processes (...)
 - A8 Conformity assessment
 - A81 Product registration
 - A82 Testing requirement
 - A83 Certification requirement
 - A84 Inspection requirement
 - A85 Traceability requirement
 - A851 Origin of materials and parts
 - A852 Processing history (...)
 - A86 Quarantine requirement
 - A89 Other conformity assessments

Source: Authors' illustration based on UNCTAD–MAST (2013).

2.2.2. Collected data in ECOWAS and the rest of the world

On the basis of this classification, UNCTAD leads an international effort to collect comprehensive data on NTMs. Country coverage and data quality are rapidly increasing, particularly after further improving the data collection approach in 2011/2012 and expanding collaboration with many international, regional and national partners.

With the objective to support policymakers and the regional integration process in the region, UNCTAD and the African Development Bank have collected NTMs in the following 13 member countries of ECOWAS: Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Liberia, Mali, Niger, Nigeria, Senegal and Togo.

In all countries the data collection was done by national consultants who were previously trained by UNCTAD experts. Three training workshops took place between December 2012 and June 2014 and were held in Abuja, Accra and Tunis respectively. The data collection took place in 2013 and 2014 under the supervision of UNCTAD and the AfDB. Collected data were subsequently quality-checked and processed for dissemination by UNCTAD staff.

Data about "official" NTMs is collected by extensively reading and analysing national legislative documents, such as laws, decrees or directives. As mentioned before, this even includes "behind the border" technical regulations that apply to domestic as well as foreign products. Once a relevant regulation is identified, each specific provision is classified into one of the 177 detailed NTM codes. One regulation can bear several different measures; for example a

required maximum residual limit of pesticides as well as a respective inspection requirement. For each measure, the affected products are also classified in detail.⁶

The created NTM database for ECOWAS is now available and freely accessible in the UNCTAD TRAINS database through two dissemination tools namely TRAINS Web Application (<http://trains.unctad.org>) and WITS (<http://wits.worldbank.org/>). Data in the dissemination tools also already exists for a number of developed and other developing countries. Available data now covers over 80 per cent of world trade.

2.3. DESCRIPTIVE ANALYSIS OF NTMS IN ECOWAS

2.3.1. Non-tariff “barriers” in ECOWAS

The following subsections provide a short overview of the prevalence of NTMs in ECOWAS based on the data collection discussed in 1.2.2.⁷

We previously introduced the UNCTAD-MAST classification and pointed out the key difference between technical measures (SPS measures and TBT) and non-technical measures (or “barriers”). Since the main objectives and mechanisms of these wider groups of measures are fundamentally different, the following discussion clearly separates the two. This first subsection elaborates on non-technical “barriers”, whereas the second looks at technical measures.

Even within the group of barriers there is a variety of measure types. Quantitative restrictions in particular, such as non-automatic licences and quotas, are important trade restrictions in ECOWAS. Figure 3 illustrates the prevalence of quantity controls with respect to the share of affected product lines across all products. Overall, the incidence of such barriers is low, ranging between 0 and about 6 per cent of product lines. However, these restrictions tend to be concentrated in important sectors and have significant impacts where they appear.

⁶ Product classification is done at the national tariff line level or at 6-digits of the Harmonized System, which distinguishes about 5'200 different products

⁷ NTMs data collection is a very complex exercise. A lot of emphasize is put on the comprehensiveness and quality of the data but due to the complexity of the collection the database can have errors. Reference is made to the disclaimer on trains.unctad.org.

It is noticeable that Nigeria applies most quantity controls compared to other ECOWAS members. Import prohibitions and non-automatic licenses are applied across many sectors, including agro-food and manufacturing sectors. In Benin, licensing requirements apply to a number of chemicals and minerals. The Gambia requires non-automatic licensing for the import of goods that are subject to excise taxes. For most other ECOWAS members, the incidence of quantitative restrictions is negligible.

2.3.2. Prevalence of SPS measures and TBT in ECOWAS

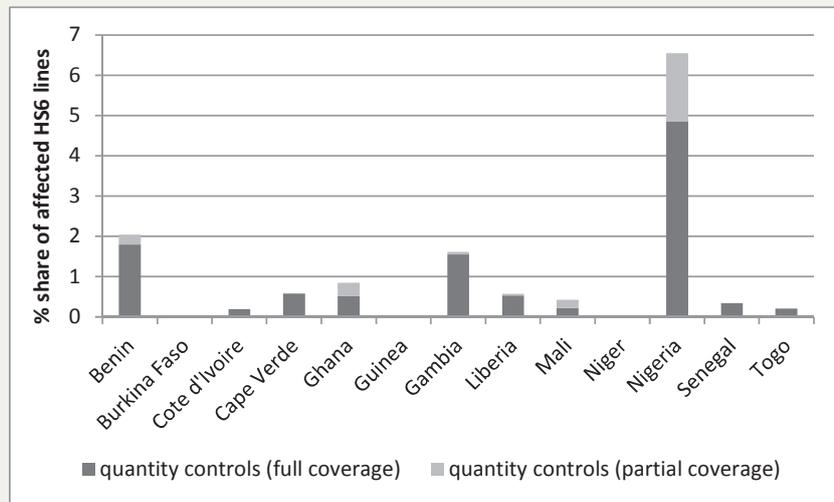
When turning to technical measures, we must first acknowledge that their primary objectives are meant to be the protection of human, animal and plant health, safety and the environment. These measures regulate issues related to the sustainable development goals (SDGs): food security and safety (SDG 2), nutrition and health (SDG 3), protect endangered species and the environment (SDGs 14&15), ensure sustainable production, consumption (SDG 12) and energy (SDG 7), and combat climate change (SDG 13). Most developed and developing countries therefore apply such important regulations to a wide range of products.

Following WTO agreements, these measures should be science-based and not restrict trade more than necessary. Most technical measures are also applied non-discriminatorily to both domestic and foreign producers. Nevertheless, research shows that, on aggregate, SPS measures and TBT are reducing trade and increasing prices more than any other group of NTMs. Since their objectives make them indispensable, elimination is not an option. Regulatory convergence is an essential way to reduce costs, as the following section will illustrate and quantify.

Figure 4 shows the average number of different SPS measures and TBT in ECOWAS across sectors. SPS requirements and TBT comprise many different subtypes, as briefly outlined above. We distinguish 34 different SPS measures and 24 distinct TBT measures in our classification and in the data. This allows us to get a grasp of the intensity of regulation by counting the number of distinct technical measures types per product.

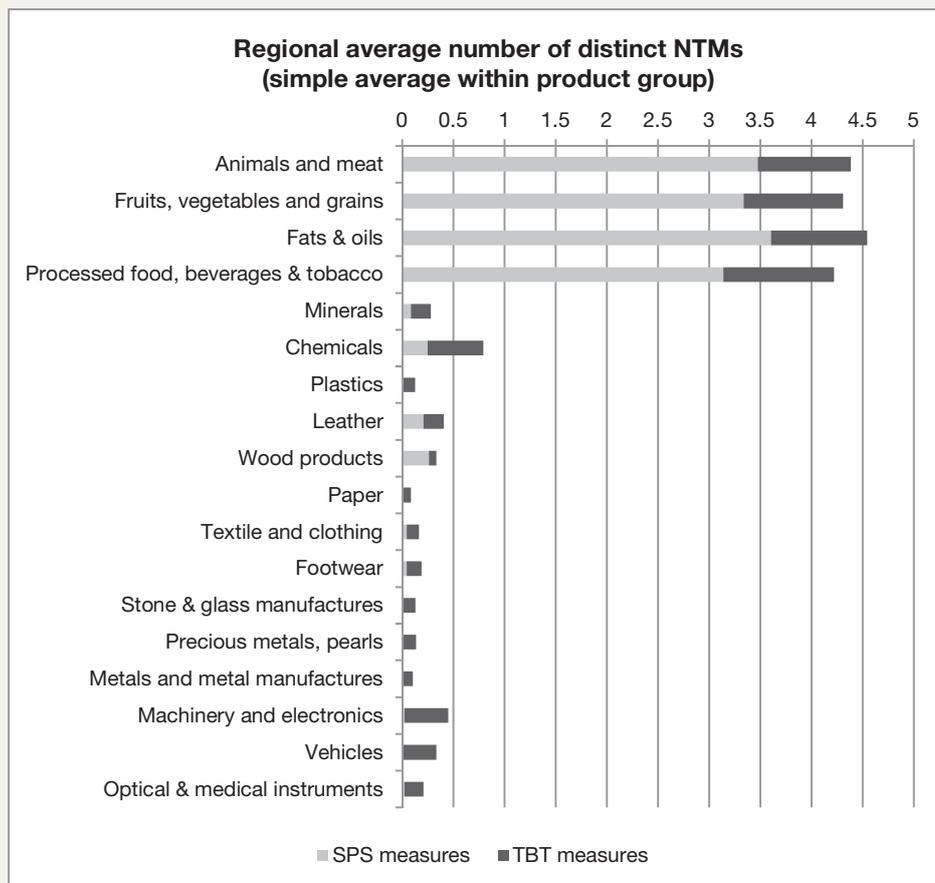
Most technical measures are applied in agriculture- and food-related sectors, where SPS measures are naturally dominant. In manufacturing

Figure 3: Quantitative restrictions in ECOWAS



Source: Author's calculations based on UNCTAD-NTM data

Figure 4: ECOWAS average number of distinct SPS and TBT measures by sector



Source: Author's calculations based on UNCTAD-NTM data

sectors, where TBT are in general applied, technical NTMs are much less frequent.

The number of technical measures (including SPS and TBT requirements) varies across countries in ECOWAS. The number of NTMs tends to be highest in the economically more developed countries such as Ghana, Cabo Verde or Nigeria, where 6-10 measures are applied to the average agro-food product. By contrast, only 1-3 measures apply to those products in most of the least developed countries, such as Niger, Togo, Guinea, Burkina Faso and Mali.

2.4. MEASURING THE IMPACT OF NTBS, NTMS AND REGULATORY CONVERGENCE

2.4.1. Introducing the concept and measurement of “regulatory overlap”

SPS measures and TBT cannot be eliminated, as they are crucial for sustainable development by protecting health, safety and the environment. However, costs can be reduced through regulatory convergence. Trade costs are reduced by increasing the size of the market that can be accessed with one set of technical market access requirements. If two countries impose the same set of SPS and TBT requirements, which hold for foreign and domestic producers, trade costs are minimal. Importantly, regulatory convergence can reduce trade costs while maintaining the positive regulatory effects of NTMs on sustainable development.

Such convergence can take place according to three broad approaches: harmonization, equivalence, and mutual recognition. Harmonization refers to a joint definition of a measure’s objective and the requirements on how to achieve it. Mutual recognition means that one country accepts another country’s conformity assessment procedures as sufficient to comply with the same standard. Equivalence implies that one country recognizes another country’s standards as equivalent to its own standards in achieving a policy objective.

Many researchers have investigated the impact of very specific requirements applied to specific products. However, even for a single product there are usually many more requirements. Thus, while very useful, such detailed studies do not allow an

assessment of wider economic impacts across sectors and many countries. We therefore use a concept that can be applied across measure types, products and countries.⁸

Using the comprehensive and very detailed NTM data that UNCTAD is collecting globally and in collaboration with AfDB in ECOWAS, a structural comparison between regulatory structures is possible. This perspective is only feasible thanks to a key feature of the international NTM data collection effort led by UNCTAD: “boxing” the almost limitless variations of requirements into the 58 distinct SPS and TBT measure types according to the UNCTAD-MAST classification. The measure types are classified for over 5’000 different products in 12 ECOWAS countries and beyond.

For each product and country-pair, the regulatory pattern of technical NTMs is compared. NTMs are divided into two groups: 1. overlapping measures, which are applied by the importing as well as the exporting country; 2. non-overlapping measures (further divided into those measures that are only applied by the importer or only applied by the exporter). We then estimate whether overlapping measures have a lesser cost impact than non-overlapping measures, and examine the potential for further regulatory convergence. The results are presented in the following subsections. Further details about the calculation of regulatory overlap the can be found in the Annex.

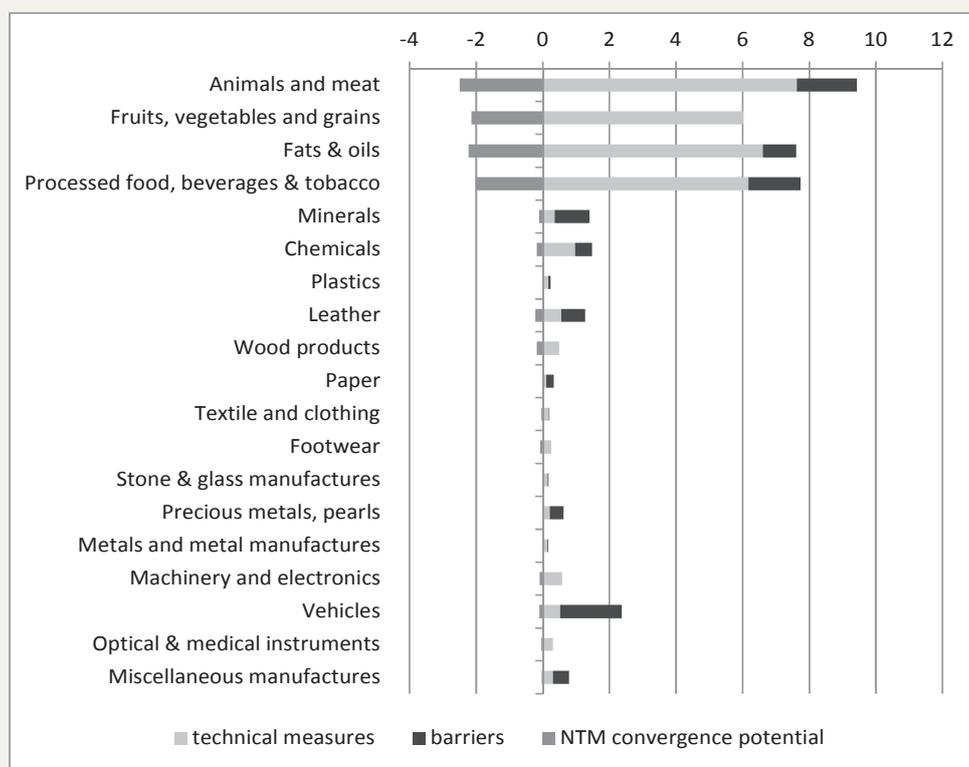
2.4.2. Estimation results: the impact of NTBs and technical measures

In the following, we show estimates of the actual average price effects of non-tariff “barriers”, technical measures and regulatory overlap. We refer to these price effects as “ad valorem equivalents” (AVEs).

When imposing a regulation, the price of the affected product will rise. When SPS or TBT measures are non-discriminatory as mandated by WTO rules, imported and domestically-produced products both increase in price. Higher prices reduce demand and therefore also imported quantities. There are, thus, two common ways of estimating AVEs: through prices

⁸ The general concept of assessing structural similarities and dissimilarities using UNCTAD NTM data was first introduced by us in Cadot, Gourdon, Asprilla, Knebel and Peters (2015). The method was further refined in UNCTAD (2016).

Figure 5: Ad valorem equivalents of non-tariff measures and barriers



Source: Author's calculations.

or through quantities.⁹ In the following, a simple price-based method is used. It builds upon the approaches of Cadot et al. (2015) and Reyes & Kelleher (2015). However, we further develop these approaches to include a measure of regulatory convergence that turns out to reduce trade costs without the elimination of SPS or TBT measure.

The basic intuition of the estimation is that cost-insurance-freight (c.i.f.) product prices at the border are “treated” by different types of NTMs as well as the regulatory overlap. The estimation is based on a worldwide cross-section of 47 countries, including 12 ECOWAS members, at a disaggregated product-level (HS 6-digits). The annex of this report provides further details about the estimation.

It turns out that NTBs in the form of quantitative restrictions in ECOWAS dramatically increase product prices by almost 50 per cent where they occur. However, such measures are only applied to a few

product lines and in a few countries, as previously shown in Figure 3. The average extrapolated¹⁰ impact across different sectors in ECOWAS is shown as black bars in Figure 5.

On average, each single technical NTM tends to increase product prices by 1.2 to 1.7 per cent. While this effect is much smaller than that of quantitative restrictions, technical NTMs are much more frequent (as shown in Figure 4). The total effect across sectors is therefore substantial. The average across sectors in ECOWAS is shown as light grey bars in Figure 5. It stands out that agro-food sectors are particularly affected by total price increases of 6-7 per cent. Manufacturing sectors are much less regulated.

⁹ See, for example, UNCTAD (2013) for an overview of the existing literature.

¹⁰ The estimated parameters from the regression are then multiplied by the actual incidence and number of respective measure types in all countries and across products. This yields an extrapolated total impact of NTBs and technical measures.

2.4.3. The potential price-reducing effect of regulatory reform to increase “regulatory overlap”

Increasing the number of overlapping NTMs as opposed to non-overlapping NTMs can significantly reduce the impact of technical NTMs. The dark grey bars in Figure 5 show the potential price-reducing impact of a basic regulatory reform to increase regulatory overlap (NTM convergence potential). If realized, the price-increasing effect of technical measures (light grey) would be reduced respectively.

The suggested regulatory reform would only realign measures in a way that regulatory overlap is maximized. No country would increase the number of applied measures. For a simplified example of such regulatory reform, please refer to the Annex.

Each non-overlapping NTM in the importing country will increase traded prices by 1.2 per cent. If the exporting country realigns its policy to create regulatory overlap with the importer’s measure, the price-increasing effect of the importer’s measure would be reduced to practically zero.

While the impact of increasing regulatory overlap may appear small in the above example of realigning a single measure for a single product, the overall effect of a systematic reform across measures and sectors is large. Costs associated with SPS measures and TBT can be reduced by 25 to 30 per cent. In fact, this effect of increased regulatory convergence exceeds the impact of eliminating all quantitative restrictions in ECOWAS.

The above intra-ECOWAS policy reform would require all countries to work together closely to achieve maximum regulatory overlap, while still allowing for different levels of regulatory intensity according to the countries’ respective stages of development.

When jointly converging towards international standards, the price-reductions of traded goods will also positively impact exports and imports with the rest of the world outside ECOWAS. Since intra-ECOWAS trade is relatively low, a convergence scenario towards international standards promises to have much larger effects. The following subsection will further assess the potential benefits of different types of policy reforms in ECOWAS.

2.5. WELFARE ANALYSIS

2.5.1. Methodology

To estimate the potential impact of removing NTBs and increasing the regulatory overlap of technical measures in ECOWAS we use the well-known general equilibrium model Global Trade Analysis Project (GTAP) model.¹¹ The model allows assessing the effects on national income, trade flows, wages and employment. GTAP is ideally suited for analysis of regional trade agreements, involving the preferential reduction of barriers or regulatory harmonization within a region, which are likely to have international and intersectoral effects. Removing barriers to trade and changing regulations in one market changes production and trade flows in that market, which often has a knock-on effect in other markets because each sector competes for factor inputs, capital, labour and land. CGE models attempt to capture these effects.¹²

2.5.2. Scenarios of liberalization and regulatory convergence

We analyse three scenarios illustrating the potential impacts of eliminating NTBs and regulatory convergence within ECOWAS (see overview in Table 5). The first scenario, labelled NTB, relates to the elimination of all NTBs on trade between ECOWAS countries. These are modelled as tariff equivalents. The second, NTM, refers to the elimination of NTBs and regulatory convergence among ECOWAS members. Regulatory convergence is modelled as the maximization of regulatory overlap without increasing or decreasing the number of NTMs (see section 2.4 for more details). The GTAP, regulatory convergence is implemented as a productivity increase indicating a trade cost reduction when domestic and foreign regulations are the same. The third scenario, International Standard, refers to the elimination of NTBs between ECOWAS countries and joint regulatory convergence towards international standards, thus also partially facilitating trade with the rest of the world.¹³

¹¹ The GTAP model is documented in Hertel (1997). See Chapter 2 in particular for a description of the structure of the model. <http://www.gtap.agecon.purdue.edu>

¹² Technical details and limitations of using GTAP for NTMs analysis are discussed in Vanzetti, Peters and Knebel (2016).

¹³ ECOWAS members jointly converge towards international standards, thus creating the same intraregional effect as

Table 5: Alternative integration scenarios

Scenario	Description
NTB	Elimination of NTBs within ECOWAS
NTM	Elimination of NTBs and increase of regulatory convergence within ECOWAS
International Standard	Elimination of NTBs and increase regulatory convergence within ECOWAS; adoption of international standards

Source: UNCTADstat.

GTAP has detailed data for 140 countries/regions and 57 sectors. For ECOWAS, data for Benin, Burkina Faso, Ghana, Guinea, Nigeria, Senegal, Togo and “Rest of West Africa” is available.¹⁴

2.5.3. Results: Trade and Welfare

All three scenarios lead to increased trade by ECOWAS countries. The major effect in all three scenarios is a rise of trade within ECOWAS and a decrease of imports from non-member countries. Trade diversion occurs, but this is outweighed by the beneficial effects of greater intraregional trade. Total exports of ECOWAS countries increase in the three scenarios between 1.4 and 1.8 per cent. This modest change hides a significant increase in intra-ECOWAS trade. Figure 6 shows the average effect for the ECOWAS region on intra-ECOWAS trade and on exports to all other regions. Exports to other ECOWAS countries increase on average between 13.7 per cent and 15.0 per cent. Intraregional trade increases slightly more in the NTM scenario than in the other two scenarios because it addresses both NTBs and regulatory convergence (compared to the NTB scenario) and it reduces imports from outside of ECOWAS more than if international standards are used (International Standard scenario). For example, in scenario NTM, Nigeria increases its imports by US\$110 million. The increase from intra-ECOWAS countries is US\$268 million but the reduction in imports from external sources is US\$158 million. The bulk of this is from Asia.

The estimated trade gains from barrier reduction within ECOWAS can be interpreted as conservative

in the second scenario. With extraregional partners, the convergence effect is smaller (assumed to be half the size), as it is a unilateral policy reform without a respective policy alignment in the rest of the world.

¹⁴ Rest of West Africa, includes Cape Verde, the Gambia, Guinea-Bissau, Côte d’Ivoire, Liberia, Mali, Mauritania, Niger, Saint Helena and Sierra Leone.

and may actually be larger. One reason is the current trade pattern between ECOWAS countries: Trade is relatively low where the most significant restrictions occur. This may mean the barriers are prohibitive or that ECOWAS members have similar resource endowments, so there is little trade between them. The estimated impacts of removing these restrictions on trade and welfare are modest because baseline trade is low. CGE models generally do not assess the positive and potentially large impact of reducing prohibitive barriers where there is no initial trade.

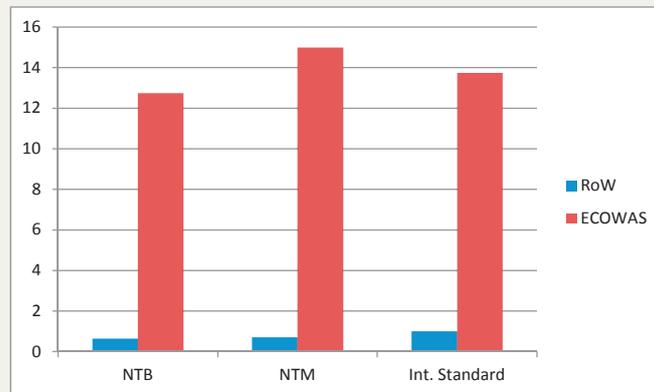
The impacts of a policy change to the economy as a whole are best measured by welfare, a proxy for national income that reflects consumption rather than output as does GDP.¹⁵ Welfare gains are positive in absolute terms for most countries in most scenarios. As a group, ECOWAS countries gain US\$157 million, US\$309 million and US\$1’572 million in the three respective scenarios (Figure 7). The International Standard scenario generates most gains because it removes trade barriers between ECOWAS countries and limits the trade diversion due to the use of international standards. This is not evenly shared. Benin, Ghana and Guinea gain most as a share of their GDP (Figure 8). The Rest of West Africa loses from the NTB and the NTM scenario modestly as a group (-0.2 and -0.1 per cent of GDP) but gains from the International Standard scenario where all countries have the highest benefits.

Real wages increase in all scenarios in all ECOWAS countries. The assumption here was a fixed labour endowment. Relaxing this assumption leads to employment gains of a similar magnitude as shown in Vanzetti and Peters (2013). Wages increase between 0.1 per cent and 1.6 per cent in ECOWAS countries.

Global welfare gains are far below the ECOWAS estimates because many countries outside the

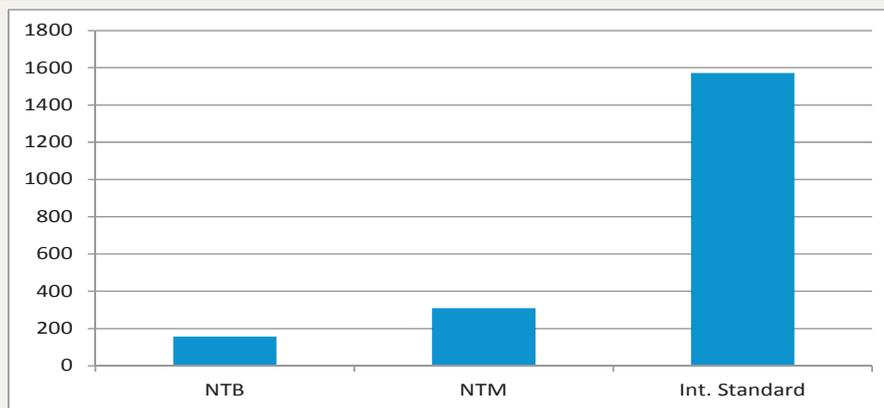
¹⁵ The welfare measure used here is “equivalent variation”, a measure of wealth that takes account of changes in prices.

Figure 6: Change in exports of ECOWAS countries, per cent



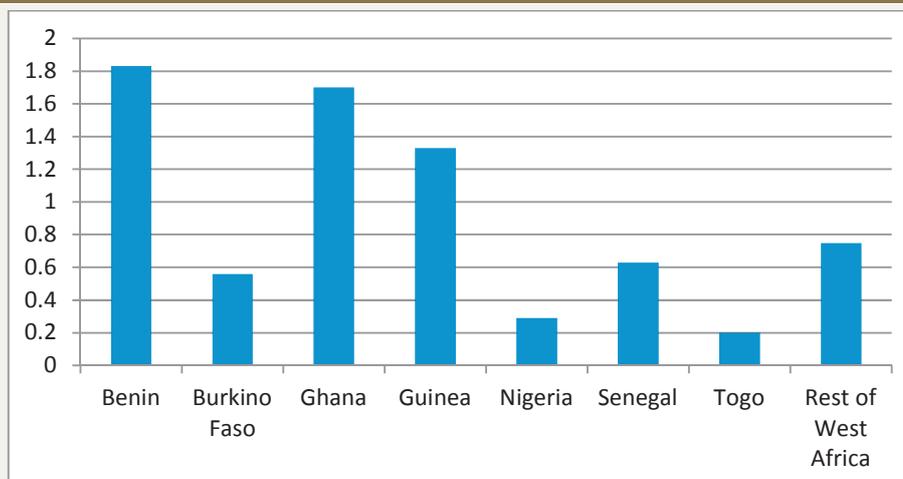
Source: Authors' estimates.

Figure 7: Welfare impacts of three scenarios, US\$ millions



Source: Authors' estimates.

Figure 8: GDP increases by country, International Standard scenario, in per cent



Source: Authors' estimates.

ECOWAS region experience a welfare loss, of about US\$300 million in the first scenario and US\$550 million in the second. Global gains are negative in the two intra-ECOWAS scenarios and barely positive in the third, International Standard, scenario. This is because elimination of NTBs and regulatory convergence occurs on a partial basis. It would be better for all countries to move to similar standards simultaneously, under a multilateral framework, or, for Africa under a continental approach.

3. WEST AFRICA'S APPROACH TO NTMS

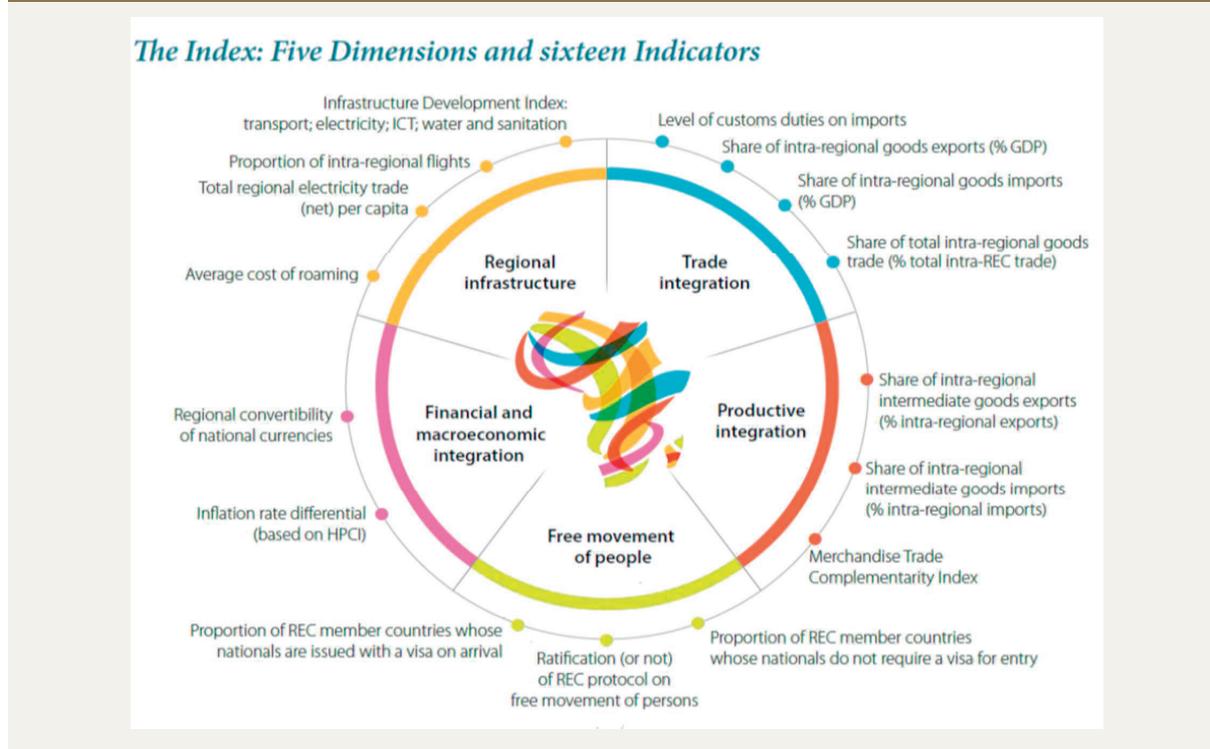
In line with the regional integration process, this chapter analyses the regional institutional mechanisms together with the legal tools implemented by the West African organizations ECOWAS and WAEMU to regulate NTMs. The chapter further highlights the key challenges faced by these institutions in strengthening regulatory collaboration among member States.

3.1. STATE OF REGIONAL INTEGRATION PROCESS IN WEST AFRICA

The Africa Regional Integration Index Report (2016) seeks to measure the level of regional integration for every African Regional Economic Community (REC) based on five dimensions. The dimensions are key socioeconomic categories seen as fundamental to Africa's integration: (i) trade integration, (ii) productive integration, (iii) free movement of people, (iv) financial and macroeconomic integration, and (v) regional infrastructure (see Figure 9). Sixteen indicators cutting across the five dimensions are used to calculate the index.

Concerning the trade integration dimension, the Report suggests that it includes trade facilitation measures as reflected in the African Union decision on Boosting Intra-African Trade and the WTO Trade Facilitation Agreement.¹⁶ Such measures support efficient and cost-effective trade flows across the region. The Report states that intraregional trade in

Figure 9: The index of regional integration



Source: African Regional Integration Index Report 2016

¹⁶ African Union, Boosting Intra-African Trade, 29-30 January 2012.

Africa is often hampered by infrastructure gaps, capital costs and NTBs. In that regard, along with streamlined customs procedures, the Report indicates that trade integration should also embody liberalization of tariffs as well as lowering non-tariff barriers. Thus, the trade integration dimension is mainly viewed from the perspective of trade facilitation and due to a lack of data availability not yet encompassing regulatory convergence.¹⁷

The report identifies the East African Community (EAC) countries as the most regionally integrated REC in Africa with highest average scores in all dimensions except for financial and macroeconomic integration and free movement of people. ECOWAS on the other hand, is the highest performing REC on free movement of people and financial and macroeconomic integration. It ranks second last (before Community of Sahel-Saharan States-CEN-SAD) on trade integration and regional infrastructure. The relatively weak performance of the ECOWAS on trade integration highlights the underlying trade obstacles which are still persistent in the region. This also shows that there is still a long way to go to achieve full implementation of the ECOWAS objective of free movement of goods. Trade integration remains a longstanding priority highlighted in the ECOWAS regional integration agenda.

The regional integration process in West Africa is driven by two major regional organizations; the ECOWAS and the WAEMU-UEMOA. Both institutions share the same objectives of increasing trade integration and policy harmonization/coordination to create a common market among the member States. The elimination of trade barriers, both tariff and non-tariff, is at the core of their respective programs with the aim of fostering freer trade and the free movement of factors of production.

The free movement of people within the region is a major achievement and has become a reality for a decade now, thanks to the abolition of visa and entry permits and the adoption of the uniform ECOWAS passport.¹⁸ The good performance recorded by the

ECOWAS in financial and macroeconomic integration, is mainly attributed to the relative stability of the WAEMU common monetary area achieved since 1996. The ECOWAS itself continues its efforts to establish a single currency within the region for more than a decade (Bakoup and Ndoye, 2016).

Overall, the ECOWAS and WAEMU are strongly interlinked despite regional integration matters progressing at a different pace in certain areas. Against this background, advancing regional integration in West Africa relies on the soundness of this institutional framework established particularly for that purpose.

3.2. COEXISTENCE OF TWO REGIONAL INTEGRATION PROCESSES

The ECOWAS and WAEMU are two separate entities that work in synergy by addressing trade integration matters with a goal of convergence towards establishing a common market. Thus the two institutions share the same goal - which is the elimination of tariffs and non-tariff barriers and fostering regulatory cooperation.

The ECOWAS Treaty was revised in July 1993 to give a new impetus to the community's economic integration projects through the establishment of an economic and monetary union, and strengthening the political cooperation within the region.¹⁹ Accordingly, the treaty envisages the achievement of this goal notably by the establishment of a common market and a free trade area primarily through the abolition of NTBs among the member States.²⁰ In that respect, with its current status as a free trade area, the ECOWAS has been gradually evolving since 1 January 2015 towards a customs union with the entry into force of the ECOWAS Common External Tariff (CET). The underlying objective is to deepen regional integration and economic development.

http://documentation.ecowas.int/download/en/legal_documents/protocols/PROTOCOL%20RELATING%20TO%20%20FREE%20MOVEMENT%20OF%20PERSONS.pdf.

¹⁹ Article 4 of the ECOWAS, Revised Treaty, 1993. Available at http://www.courtecowas.org/site2012/pdf_files/revised_treaty.pdf

²⁰ Article 3d of the Revised Treaty.

¹⁷ The Report team stated their interest in including NTMs data as collected by African Development Bank and UNCTAD in the Africa Regional Integration Index during the respective session at the Africa Trade Week, 30 November 2016.

¹⁸ 1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment. Accessed from

The WAEMU-UEMOA was founded on 10 January 1994 by eight member States who shared a common currency (CFA franc), a common colonial history and the French language.²¹ As a subregional organization, the main goal of the WAEMU is to promote economic integration among its member States through the construction of a common market based on the free movement of persons, goods, services, capital, right of establishment, a common external tariff for goods and a harmonized commercial policy.²² Furthermore, the treaty suggests that the regional policy could only be stimulated through the intensification of the competitiveness of economic and financial activities of WAEMU economies by relying on an open and competitive market with a harmonized legal environment. Thus, in order to achieve its ultimate goal, the WAEMU treaty lays down a progressive liberalization initiative based on the elimination of duties, quantitative restrictions and all measures having an equivalent effect among the member States. Overall, the provisions of the Treaty prohibit the member States from adopting and maintaining unjustified restrictions on intra-WAEMU trade.²³

3.2.1. Key features of regional integration mechanism within the ECOWAS

3.2.1.1. Establishing a Common Market

Among the top priorities of the ECOWAS regional integration agenda is the establishment of a common market which is seen as a means to promote economic integration in the region. This is highlighted in Article 3 of the revised ECOWAS Treaty which states that “the Community shall ensure the establishment of the common market through:

a) The liberalization of trade among member States by abolishing customs duties on imports and exports and removing non-tariff barriers to establish a free trade area at the community level;

b) The adoption of a common external tariff and a common trade policy for third countries; and,

c) The removal, among member States, of obstacles to the free movement of people, goods, services and capital, and to the right of residence and establishment.”

Accordingly, the first stage of integration is built on the implementation of a free trade area (FTA). Until 1 January 2015, when the ECOWAS CET came into force, the regional organization had the status of a FTA. The FTA materialized through the implementation of the ECOWAS Trade Liberalization Scheme (ETLS) which provides a gradual dismantling of tariffs and non-tariff barriers (such as quotas and prohibitions) in order to encourage intra-community trade in goods originating or produced in the member States. Thus, the ETLS is considered as the main operational tool for achieving the common market agenda.²⁴ However, since its launch in 1990, the ETLS has not yet fully produced the expected outcomes on the liberalization of intraregional trade through the elimination of trade barriers, in particular the removal of NTBs (Ackah et al., 2012). In their evaluative analysis of the ETLS, it was found that the performance towards dismantling the NTBs has been slower as NTBs, such as seasonal import and export bans, still persisted in the region in strict contravention of the protocol of free movement of goods (Ackah et al., 2012). This demonstrates that the ETLS needs to be revisited in its conception: it should not only target the elimination of NTBs but also cover a wider monitoring of trade-related regulations. Indeed, this would ensure that those regulations (NTMs) are reviewed and undergo prior assessment to prevent them systematically from becoming NTB issues. This subject raises a number of issues with respect to the implementation of NTMs which will be addressed later in this chapter in more detail.

Whilst the full implementation of an FTA in the ECOWAS is still ongoing, the ECOWAS Heads of States have decided to fast-track the regional integration process through the recent implementation of the ECOWAS CET from January 1, 2015. This is indeed a significant development towards laying the ground for the establishment of an effective Customs Union. However, ECOWAS has not yet completed the design for its common trade policy which is the second precondition for customs union enforcement.²⁵ In

²¹ The WAEMU member countries include Benin, Burkina Faso, Côte d’Ivoire, Mali, Niger, Senegal, Togo and Guinea Bissau (which joined in 1997).

²² See Article 4 of WAEMU Treaty.

²³ See *Traité de l’UEMOA*, Articles 76 and 77

²⁴ www.etls.ecowas.int

²⁵ According to the 2014 ECOWAS Annual Report, the Commission is in a process of a trade policy harmonization. The Commission, with assistance from the *Gesellschaft für Internationale Zusammenarbeit GIZ* (German development

general, a common trade policy does not only define the trade relations with the third-parties but also with the member States within the internal market. Overall, the effective establishment of the ECOWAS Customs Union could stimulate the harmonization process of NTMs.

3.2.1.2. Harmonizing / coordinating national policies

Under the ECOWAS framework, adoption of regional NTMs is the result of a long legislative process based on the harmonization and coordination of national policies in a wide range of areas including food, agriculture, natural resources, industry, transport, communications, trade and services, among others.²⁶ The purpose is to deepen and strengthen the regional integration processes.

Harmonization and coordination approaches are among the traditional policy means used to increase the level and depth of regional cooperation. According to some authors, while coordination is a process maintaining a greater degree of autonomy, harmonization tends to lead to a full unification or centralization of particular policies (Kouba et al., 2015).

Accordingly, the ECOWAS legal system is based on the harmonization of existing national policies by the adoption of community acts (i.e. supplementary acts/protocols, regulations, directives, decisions and recommendations).²⁷ The harmonization process could be initiated at the request of a Member State or by the ECOWAS Council of Ministers. The harmonization of a sector in a specific area has to go through a long legislative process with various stages estimated at 4 to 5 years by the Commission. First, the Commission undertakes a detailed study of the targeted sector. Then, a draft harmonized regulation is presented during a meeting of experts from government ministries (e.g. trade, agriculture, tourism) as well as representatives from private sector and civil society to discuss the content of the draft regulation. The decision is reached through a consensus. Based on the outcome, the Commission convenes a sectoral ministerial meeting to examine the draft regulation and

cooperation), concluded the recruitment process for the selection of consultants to undertake the study on harmonization of trade policies of member States.

²⁶ See Article 3.2 of the Revised Treaty.

²⁷ See Supplementary Protocol A/SP.1/06/06 amending the Revised ECOWAS Treaty, 2006

other related issues. Pursuant to that, the Ministers concerned with this sectoral issue validate and recommend the regulation for adoption by the Council of Ministers.²⁸ In addition, the ECOWAS Parliament must receive it before its adoption.²⁹

With a view to stimulating the lengthy harmonization process, ECOWAS has adopted a new regime for Community acts which allows acceleration of entry into force of the legal texts.³⁰ The regional legal framework encompasses supplementary acts, protocols, regulations, directives, decisions, recommendations and opinions. At the highest level is the ECOWAS treaty which can be complemented by supplementary acts. Equally important is a protocol which is an instrument of implementation of the Treaty and contains the same legal status.³¹ These instruments are binding on the member States and the institutions of the Community. In a secondary position are regulations, directives, decisions and recommendations enacted by the Council of Ministers. The legal status of these instruments differs. Regulations have general application and all their provisions are enforceable and directly applicable in the member States. Decisions, on the other hand, though enforceable and also directly applicable in member States are binding only on those whom it is addressed to (e.g., a member States or an individual economic operator). Finally, directives and their objectives are binding on all member States. The modalities for attaining the objectives of directives are left to the discretion of member States.

In the framework of the harmonization process, ECOWAS has harmonized some trade policy instruments including Rules of Origin (RoO), anti-dumping measures, countervailing measures, safeguard measures, SPS regulations, technical and sanitary standards, the ECOWAS community levy, and the Inter-State Road Transit (TRIE) regime.³² In light of the above, it is important to underline that the

²⁸ Pursuant to Article 10 para.2 (New) of Supplementary Protocol A/SP.1/06/06 amending the Revised ECOWAS Treaty, "The Council shall comprise the Minister in charge of ECOWAS Affairs, the Minister in charge of Finance and any other Minister where necessary".

²⁹ All this information has been provided by the Commission.

³⁰ Supplementary Protocol.

³¹ Article 1 ECOWAS Treaty.

³² <http://www.ecowas.int/ecowas-law/regulations-directives-and-other-acts/>

implementation of these instruments is primarily the responsibility of member States.

3.2.2. Key features of the regional integration mechanism within the WAEMU

3.2.2.1. Establishing a Common Market

In line with the ECOWAS, the establishment of a common market is at the core of the regional integration agenda of the WAEMU. The Treaty specifies the objectives of the WAEMU which includes establishing a common market based on the free movement of people, goods, services, capital, and the right of establishment, a common external tariff for goods and a harmonized commercial policy.³³ More precisely, the common market rests on four main pillars: (1) establishment of a free trade area and a customs union; (2) free movement of people; (3) free movement of services; and (4) free movement of capital. Since its creation in 1994, WAEMU has advanced a long way in establishing its economic space including monetary policy, myriad trade policy instruments, and sectoral policies. Against this background, foundations of the common market have been rapidly laid, notably through the implementation of the free trade area and the customs union (and its Common External Tariff) since 1 January 2000. However, the establishment of the common market is still in progress.

Indeed, the Union is facing several challenges to safeguard and strengthen the community interest, i.e. "acquis communautaire", as well as moving towards a deeper integration process. Concerning the current situation of the intra-community trade with regard to the common market's objectives, some reports on the Union's trade policy have shown that community trade faces multifaceted obstacles. These essentially include quantitative restrictions, import and export prohibitions and tariff barriers (abusive or illicit taxation) (WTO, 2010). Therefore, one of the Union's objectives is to eliminate all these barriers to intra-WAEMU trade and gain a greater commitment from member States to the community legal instruments.

3.2.2.2. Harmonization, coordination and common trade policy

The WAEMU has extensively used the harmonization approach to attempt to meet the

Union's objectives.³⁴ As a result, a set of NTMs has been adopted in application of the common trade policy. In that context, member States' trade policy instruments, in particular import measures, have been substantially harmonized by the Commission in a number of fields inter alia, customs valuation (guiding principles); contingency measures; bank domiciliation of trade transactions; Rules of Origin (RoO); competition policy; and control of veterinary medicines. In parallel, the development of the Community frameworks aims to ensure some degree of convergence of national regimes on internal taxation (value added tax); excise duties; prohibitions and licensing; standards, technical regulations and accreditation procedures; SPS safety; and government procurement. In addition, WAEMU has adopted a common framework for agricultural and mining policy for certain services categories.

Fostering the harmonization of the national legislation of different member States with a view to achieving regional integration involves the implementation of community legal instruments. The harmonization process is estimated by the Commission to take about six months for each new legislation. In that regard, Article 42 of the Treaty lays down the various community acts which can be adopted by the Council of Ministers. These are regulations, directives, decisions, recommendations and opinions. Their legal significance as defined under Article 43 is similar to that of ECOWAS instruments.

3.2.2.3. Assessment of ECOWAS and WAEMU integration processes

Both integration processes use the same approach based on the harmonization of national policy frameworks to adopt regional NTMs. As mentioned above, this implies a lengthy legislative process for each of these organizations. However, differential progress has been made by the two organizations and they are perceived to have different strengths reflecting both capacity gaps and a number of political economic factors. WAEMU appears to have made greater progress in economic integration than ECOWAS by achieving a monetary integration as well as a common market which is improving. As a result, the majority of trade policy instruments have been harmonized at WAEMU level. However, despite the efforts of integration on both sides, the West African

³³ Article 4 and 76 WAEMU treaty.

³⁴ Article 4, WAEMU treaty.

regional integration is still challenged by the continued existence of tariffs and the prominence of NTBs.

3.3. NTMS REGULATION UNDER ECOWAS/WAEMU AUSPICES

It is important to recall that NTMs are mandatory measures either intended to regulate imports and exports or policies that have a non-trade objective such as protection of health that can potentially have an effect on trade. Thus, there are the two broad categories of non-technical and technical measures. In that context, the NTM data collection carried out in 13 ECOWAS countries has highlighted that the measures stem from both ministries involved in trade policy making and ministries not primarily focusing on trade including inter alia agriculture, fisheries, trade and industry, health, environment, administrative bodies such as customs authorities, port authorities or chamber of commerce. In addition, national trade-related agencies (e.g., export/import promotion, control/inspection activities) and organizations for products certification and conformity assessment have also been identified as playing an active role in trade regulation at the national level.

In a regional context, NTMs can be enacted or proposed by regional bodies. Those measures can for example be the result of the harmonization of national NTMs that are then implemented across the community. Thus, a key issue is to examine the governance of NTMs under ECOWAS/WAEMU auspices. This involves analysing the regional regulatory framework with respect to NTMs, i.e. the ECOWAS and WAEMU Treaties and Community acts.

3.3.1. Regulatory framework for NTMs in the region

3.3.1.1 The Treaties

Within the ECOWAS and WAEMU treaties, NTMs are partially tackled through the elimination of NTBs including quantitative restrictions and harmonization of standards across the West African region.³⁵ These provisions are envisaged as part of

the key measures undertaken with the intention of achieving the establishment of a common market.

NTBs are defined in the ECOWAS treaty as “barriers which hamper trade and ... are caused by obstacles other than fiscal obstacles”. On the other hand, the WAEMU treaty provides no definition whatsoever of NTBs. Despite their differences, both treaties target specifically the elimination of quantitative restrictions which can be categorized as NTBs if they are not linked to certain health or safety objectives.³⁶ In that respect, it is clearly stated that the member States refrain from imposing any further restrictions or prohibitions on the free movement of goods upon the entry into force of both treaties. Keeping that in mind, the ECOWAS and WAEMU treaties recognize the right of member States to impose trade-restricting regulations for health or environmental reasons among others. Moreover, the WAEMU provisions underline that the restrictive measure at issue shall not be arbitrary or entail a disguised restriction on trade among the member States.³⁷ These restrictive measures should not have the intent of protectionism but have legitimate objectives and should be applied

Community shall by stages ensure the establishment of a common market through (...) the liberalization of trade (...) by the abolition, among member States, of non-tariff barriers in order to establish a free trade area at the Community level; (...) [and] the harmonization of standards and measures.”

³⁶ See Article 77, *Traité de l'UEMOA*: « les Etats membres s'abstiennent, dès l'entrée en vigueur du présent Traité : (...) b) d'introduire entre eux de nouvelles restrictions quantitatives à l'exportation ou à l'importation ou des mesures d'effet équivalent, ainsi que de rendre plus restrictifs les contingents, normes et toutes autres dispositions d'effet équivalent. »

See ECOWAS revised Treaty, Article 41 on Quantitative Restrictions on Community Goods: “member States undertake to relax gradually and to remove over a maximum period of four (4) years after the launching of the trade liberalization scheme referred to in Article 54, all the then existing quota, quantitative or like restrictions or prohibitions which apply to the import into that State of goods originating in the other member States and there after refrain from imposing any further restrictions or prohibitions.”

³⁷ ECOWAS revised Treaty, Article 41.3: “A member State may (...) introduce or continue to execute restrictions or prohibitions affecting: (...) c) the protection of human, animal or plant health or life, or the protection of public morality.”

See *Traité de l'UEMOA*, Article 79 : « Les interdictions ou restrictions appliquées en vertu de l'alinéa précédent ne doivent constituer ni un moyen de discrimination arbitraire ni une restriction déguisée dans le commerce entre les Etats membres »

³⁵ See Revised ECOWAS Treaty, 1993. Available at: http://www.courtecowas.org/site2012/pdf_files/revised_treaty.pdf Article 3.2 of the ECOWAS Treaty provides that: “The

in the least trade restrictive manner. Hence, there is a general prohibition of quantitative restrictions that the member States could only waive for public policy objectives.

Furthermore, Member States are required to notify the commission of their restrictive measures.³⁸ The WAEMU treaty provides that the Commission has to conduct an annual review of such restrictions with a view to proposing harmonization or a progressive elimination.³⁹ However, the ECOWAS Commission and the WAEMU Commission have recently recognized that the member States have never notified their restrictive measures so far since the entry into force of the treaties.⁴⁰ In fact, they confirmed that the notification obligations as stated in the treaties have not been translated into community acts. This current situation attests to the absence of a robust enforcement mechanism, which leads to the result that in practice there is no effective regulation of quantitative restrictions to prevent the existence and introduction of NTBs.

With regards to standards, both treaties call for the harmonization of national standards. In the WAEMU treaty, members are encouraged to harmonize their technical regulations, standards and conformity assessment procedures.⁴¹ As for the ECOWAS Agreement, three main provisions state that (i) “the Community shall ensure the harmonization and coordination of policies for the protection of the environment;⁴² (ii) “ensure harmonization of standards and measures”⁴³ and (iii) “in order to create a solid basis for industrialization and promote collective self-reliance, member States shall (...) adopt common

standards and appropriate quality control system”.⁴⁴ Accordingly, these provisions give the mandate to regulate SPS measures and TBT in order to adopt common standards.

It should be noted that under the two treaties, the regulatory framework on NTMs is partial due to the fact that at the time of drafting the treaties, the founding fathers were more concerned with the prominence of tariffs which at the time hindered all integrational efforts. Since then, international trade issues have evolved and NTMs have become a more predominant concern for trade policymakers due to the general reduction of tariffs. Accordingly, NTMs are regulated through the Community acts.

3.3.1.2. Community Acts

The goals set out in the ECOWAS and WAEMU treaties are supposed to be achieved by different legal acts, some of which are binding and apply to all member States, whereas others apply to individual member States, and some are not binding at all.⁴⁵

Regional NTMs are specified either by a regulation, a directive or a protocol, and they are binding for member States as a result of harmonization. These regional harmonized regulations can be SPS measures, TBT, RoO, contingency measures (ECOWAS only), competition (WAEMU; ongoing process at ECOWAS), government procurement (WAEMU only) and some trade facilitation measures.⁴⁶

It is important to underline that the adoption of regional NTMs through a Community act may not always immediately be sufficient for a full implementation. As such, SPS measures and TBT are examples demonstrating that enforcing some technical measures could need the establishment of regional bodies of certification and conformity assessment with quality infrastructures. In the same vein, implementation of competition measures requires inevitably the establishment of a regional competition authority.

³⁸ See ECOWAS Treaty, Article 42.3 c) states that : “ A member State may, after having given notice to the Executive Secretary and the other member States of its intention to do so, introduce or continue to execute restrictions or prohibitions affecting: (...) c) the protection of human, animal or plant health or life, or the protection of public morality.” See *Traité de l’UEMOA*, Article 79: « Les Etats membres notifient à la Commission toutes les restrictions maintenues en vertu de l’alinéa premier du présent article (...) »

³⁹ See *Traité de l’UEMOA*, *ibid*.

⁴⁰ Field mission held at ECOWAS Commission and WAEMU Commission from 6-12 April 2016

⁴¹ Article 76 of WAEMU Treaty calls for “the realization of harmonization and mutual recognition of technical standards and procedures for approval and certification”

⁴² Article 3.2 b of the ECOWAS Agreement.

⁴³ *Ibid* Article 3.2 j

⁴⁴ *Ibid* Article 26.6.

⁴⁵ Supplementary Protocol A/SP.1/06/06 amending the Revised ECOWAS Treaty, See New Article 9 on Legal regime of the Community; *Traité de l’UEMOA*, See Chapitre III sur le Régime juridique des actes pris par l’Union.

⁴⁶ WTO, Trade Policy Review , Report by the Secretariat, Côte d’Ivoire, Guinea Bissau, Togo, 2012; Benin, Burkina Faso, Mali, 2010; Ghana, 2014.

The following section will elaborate in greater detail how regional NTMs are regulated and administered by ECOWAS/WAEMU bodies.

3.3.2. Overview of regional NTMs

This section focuses on the main regional NTMs existing at both national and regional levels. It explores the complexities encountered at the administrative level and their implementation, in particular for SPS measures, TBT and RoO.

With respect to the regional trade agenda, addressing SPS measures and TBT is of particular importance for a common market which requires the free movement of goods without obstacles. Harmonization of rules on how governments can apply food safety and animal and plant health measures and technical barriers to trade (SPS and TBT) has been achieved within ECOWAS and WAEMU territories, respectively, through the adoption of separate community regulations frameworks.

3.3.2.1. SPS measures

According to the WTO, SPS measures are defined as including those laws, decrees, regulations, requirements, and procedures that governments apply to protect human, animal, or plant life or health from risks arising from the entry of pests spread by plant- or animal-borne pests or diseases, or disease-causing organisms; or from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or foodstuffs.⁴⁷

SPS measures may affect international trade directly or indirectly. The Agreement on the Application of Sanitary and Phytosanitary Measures is binding for all WTO Members and thus for all ECOWAS Members.

The SPS Agreement recognizes the right of Members to regulate the protection of human, animal, or plant life and to establish the levels of protection from risks they deem appropriate, provided that those regulations are based on science and do not constitute disguised protectionist barriers to trade.

As such, the SPS Agreement establishes a number of general requirements and procedures to ensure that governments adopt and apply SPS measures to protect legitimate health and safety risks rather than to protect local products from foreign competition. In this context, the SPS Agreement encourages harmonization of SPS measures among WTO Members when it is appropriate, on the basis of international standards, guidelines and recommendations developed by the Food and Agriculture Organization ('FAO') / World Health Organization ('WHO'), Codex Alimentarius Commission (Codex), the World Organization for Animal Health (OIE) and the International Plant Protection Convention (IPPC). These bodies are commonly referred to as "The Three Sisters". Besides, the SPS Agreement imposes an obligation of transparency on Members to publish and notify all adopted SPS measures prior to their entry into force if they differ from international standards and if they may affect trade. The Agreement further requires Members to establish a national SPS Enquiry Point.

Hence, SPS measures imposed by a government with no demonstrable scientific evidence and risk assessment analysis would be considered unwarranted and thus creating unnecessary obstacles to trade. As a result, the national SPS measure at issue would be described as an NTB. For example, the 2014 United States of America Trade Representative report ('USTR report') on SPS measures, stated that Senegal has maintained a ban on imports of poultry products from all countries since 2005 purportedly to prevent the introduction of Highly Pathogenic Avian Influenza ('HPAI'). However, the country did not notify the ban to the WTO and has not provided a scientific justification for the measure, despite numerous requests by the United States of America. Likewise, Nigeria has also been highlighted in this report for an unjustified import ban on all bovine animal meat and edible offal (fresh, chilled, frozen), pork, sheep, goats and edible offal of horses, asses and mules.

Being WTO Members, all ECOWAS countries set their SPS legislation on the basis of the framework of the WTO SPS Agreement. However, there is no uniformity among ECOWAS countries in their application of the SPS Agreement as highlighted in ECDPM (2012) on food security in ECOWAS. Every Member State has the discretion to determine its own SPS standards. The fact is that the application of this Agreement incurs significant compliance costs for developing countries, especially for African countries (Shafaeddin, 2007). Indeed, compliance

⁴⁷ See WTO website at the following address: https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm
See USTR, 2014 Report on Sanitary and Phytosanitary measure. Available at: https://ustr.gov/sites/default/files/FINAL-2014-SPS-Report-Compiled_0.pdf

See Andrew L. Stoler, TBT and SPS measures in practice, World Bank, June 2011

with the technical regulations set by the “three sisters Organizations” requires not only various scientific, technical and infrastructural capacities but also human and financial resources. In that context, ECDPM (2012) highlights that the level of implementation across countries depends not only on the above factors but also on the context of domestic policy and regulations, the level of development and the organization of the production. Therefore, the standardization and implementation of SPS measures throughout the region is inevitably affected by all the above mentioned factors.

It is important to note that WAEMU was the first to embark on a harmonization process of SPS measures. In 2007 it adopted an SPS regulation which lays the groundwork of SPS policy framework in the Union. The 2007 regulation was further developed in 2009.⁴⁸ A Regional Committee for Sanitary Safety was created to assist the WAEMU Commission in the implementation of the SPS regional framework among the eight member States. Generally speaking, this SPS policy framework mirrors the SPS Agreement requirements and procedures (Magalhães, 2010). The first objective of this regional regulation is to establish mutual recognition and mechanisms for cooperation subject to the precautionary principle. In addition, it designates the competent national authorities responsible for official controls and defines their scope of action and prerogatives. Most importantly, the regulation also specifies the type of documents required for the import and export of plant products, animals and animal products and food in WAEMU territory. Thus, one of the main outcomes of this regulation was the adoption of a single WAEMU SPS import permit that would facilitate trade in these products.

However, according to WTO (2012), the SPS regulation has a limited impact on trade facilitation in the WAEMU area. The report states that this can be explained by non-application of the mutual recognition

⁴⁸ See Règlement N°07/2007/CM/UEMOA du 06 avril 2007 relatif à la sécurité sanitaire des végétaux, des animaux et des aliments dans l'UEMOA. In 2009, the WAEMU published two additional regulations: «Règlement N°3/2009/CM/UEMOA Portant sur L'Harmonisation des Règles Régissant le Contrôle de Qualité, la Certification et la Commercialisation des Semences Végétales et Plants dans l'UEMOA» ; «Règlement N°4/2009/CM/UEMOA Relatif à l'Harmonisation des Règles Régissant l'Homologation, la Commercialisation et le Contrôle des Pesticides au sein de l'UEMOA».

principle as set by the regulation and the absence of an effective coordination at the regional level. SPS controls carried out in one Member State were not recognized by the other WAEMU countries. Hence, the implementation of the WAEMU SPS import permit would face administrative obstacles resulting in lengthy delays in clearance. Moreover, the fact that sanitary and phytosanitary safety is often the responsibility of several bodies at the national level (e.g., agriculture, customs, police) would contribute to the challenges of harmonization. Given the administrative cost of control, inspection and testing of agri-food products, some member States have recognized that they were not in a position to carry out adequate controls (WTO, 2012).

In addition to the WAEMU SPS Regulation, ECOWAS adopted its SPS regulation related to the harmonization of the structural framework and operational rules pertaining to the health and safety of plants, animals and foods in the ECOWAS Region.⁴⁹ As a matter of fact, this regulation is very similar to the WAEMU SPS regulation which is by and large a translation of WAEMU's framework. ECOWAS has also established an advisory committee to assist in implementing the policy within all fifteen member States. ECOWAS' strategy entails harmonizing the SPS regulations of the eight French-speaking ECOWAS member States with the rest of the ECOWAS membership. This corresponds with efforts to harmonize regulations between the two regions and to encourage their cooperation for that purpose.

The import bans by Nigeria and Senegal mentioned above reflect the difficulties encountered by ECOWAS and WAEMU in their efforts to implement a harmonized policy on SPS measures among their member States. The key role of both regional organizations is to provide technical support to their Members in order to foster the implementation of regional SPS measures as well as strengthen their SPS national institutional framework (i.e., national SPS enquiry point, national food safety and Codex committees).

However, both organizations have limited human capacities and resources to effectively assist member States in this. In this regard, ECOWAS and

⁴⁹ Regulation C/REG. 21/11/10 on the Harmonization of the structural framework and operational rules pertaining to the health safety of plants, animals and food in the ECOWAS region.

WAEMU have benefited from the support of the West Africa Quality Programme ('WAQP'), which was implemented by United Nations Industrial Development Organization (UNIDO). The program's overall objective was to "strengthen regional economic integration and trade by creating an environment that facilitates compliance with international trade rules and technical regulations." Although the program's scope initially covered the support of SPS systems, activities have instead focused on technical regulations as a strategic emphasis on agro-industrial products. However, a recent World Bank (2015) report states that members of WAEMU and ECOWAS still apply import prohibitions on food staples without notifying other Members of their SPS policies. Thus the import regime is not yet fully transparent.

3.3.2.2. TBT measures

Broadly speaking, TBT refer to technical regulations and standards that define specific product characteristics, such as size, shape, design, functions, and performance, or the way it is labelled or packaged before it is put on sale. Technical regulations and standards are usually introduced by government authorities with the public policy objectives to protect human life and health, animal, plant life and health or the environment, or to safeguard consumers from deceptive practices.

However, because of the potential negative impact of TBT on trade and exporters' competitiveness, these measures are regulated by WTO under the Technical Barriers to Trade (TBT) Agreement.⁵⁰ This Agreement ensures that technical regulations, standards and procedures for assessing conformity do not hinder trade by setting disciplines for the elaboration, application, notification and review of such measures by WTO Members. It requires inter alia that applicable regulations are transparent, justifiable, non-discriminatory and based on international standards whenever possible. The Agreement recognizes that countries have the right to establish appropriate levels of protection to achieve legitimate policy objectives.

As a result, TBT requirements and procedures were translated into concrete action at the regional level jointly by WAEMU and ECOWAS through the implementation of the West African Quality Program

(WAQP) covering also SPS measures. Support of developing partners is essential as SPS and TBT standards are costly. In relation to the case of TBT measures, the assistance programme should have contributed to the convergence and mutual recognition of standards and practices in the sub-region, and, in so doing, laying the groundwork for setting up a regional sound framework for quality management. This program was implemented in two phases: during 2001-2005 it was implemented in the eight WAEMU member States, while the second phase (2007-2013) included all the ECOWAS member States as well as Mauritania.

The first phase resulted in the implementation of a scheme for the harmonization of accreditation, certification, standardization and metrological activities across the WAEMU member States.⁵¹ Moreover, it led to the creation of four regional entities in charge of quality management namely: the Comité Régional de Coordination de la Qualité (CRECQ) for coordination, the Organisme Régional de Normalisation, de Certification et de Promotion de la Qualité (NORMCERQ) for the harmonization of standards and testing procedures, the Secrétariat Ouest Africain de Métrologie (SOAMET) for increasing calibration capacity and the Système Ouest Africain d'Accréditation (SOAC) for delivering accreditation to laboratories. Overall, these regional quality structures are supposed to support harmonization and mutual recognition of the current technical standards, approval procedures and certification systems in the member States according to the WAEMU Treaty. To date, 42 standards have been harmonized within the WAEMU.⁵²

The second phase further strengthened the capacity of the WAEMU's regional institutions and allowed for conducting capacity-building activities among all 16 countries' national standardization bodies (WTO, 2012).

All in all, the WAEMU framework is based on the principle of mutual recognition at three levels: recognition of technical regulations, standards and specifications; recognition of conformity assessment procedures; and recognition of the results of conformity

⁵⁰ See WTO website: https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

⁵¹ Regulation No. 01/2005/CM/UEMOA of 4 July 2005, replaced by Regulation No. 03/2010/CM/UEMOA of 21 June 2010

⁵² Information obtained from Directorate of private sector, normalization and quality (DDET) of WAEMU Commission

assessment procedures. In that context, member States are required to notify the WAEMU Commission of their TBT regimes and to eliminate any unjustified obstacles to the free movement of goods. However, as reflected in the WTO Trade Policy Reports, the fact is that the mutual recognition for standards is not yet operational within the WAEMU space.

One of the program's key outcomes in 2013, was the adoption of the ECOWAS regional quality policy as embodied in ECOWAS Quality Policy (ECOQUAL).⁵³ The ECOQUAL aims at providing a crucial basis for the harmonization and development of national quality policies, which will guide the establishment of quality infrastructure in the member States that are suitable, efficient and of internationally accepted standards. Along with ECOQUAL, a regional infrastructure scheme was established together with the document on the Model and Principles of Harmonization of Standards (ECOSHAM).⁵⁴ Indeed, this document lays down the basic principles, procedures and mechanisms by which the ECOWAS Technical Harmonization Committees (THCS), ECOWAS Commission and the ECOWAS member States are to harmonize and maintain standards within the ECOWAS. Based on this model, 27 standards in the area of food and agriculture have been approved and adopted as regional standards.⁵⁵ However, despite this encouraging progress, some member States continue to face challenges in fully implementing common standards by simply not applying the mutual recognition and/or equivalence principles inherent to the TBT Agreement. All ECOWAS Members set up their national standard body which has to comply with a Code in the TBT Agreement.⁵⁶ Accordingly, ECOWAS and WAEMU also continue to face challenges in the administration of their regional quality

policy. In this regard, the coexistence of two regional policies involving two sets of regional standards may not contribute to improving efficiency and uniformity across the West African territory.

3.3.2.3. Rules of origin

Rules of Origin (RoO) determine which products can benefit from preferential access and are deemed necessary for enforcing preferential schemes. The RoO governing the eligibility of products for preferential treatment within the WAEMU⁵⁷ and the ECOWAS have largely been harmonized since 2003 in the ECOWAS Trade Liberalization Scheme (ETLS).⁵⁸

Under the current framework, community origin is conferred upon unprocessed products (local or handmade products) and on processed products (industrial products). For the latter, the applicable criteria are: either a change of tariff classification affecting one of the first four digits of the tariff nomenclature, with exceptions; or a community value added of at least 30 per cent of the price of the goods.

According to the common provisions of the two regional groupings, the community origin of industrial goods coming from another Member State must be certified by a certificate of origin, even if the production of the exporting enterprise has already been certified for an earlier shipment. As of 1 January 2006, member States have exclusive powers over the approval of goods produced or processed within their national territory.⁵⁹

Despite the regional RoO policy, difficulties at the border crossings have been reported in the 2016 NTM business survey held in the ECOWAS, as a result of different RoO and the related certificate of

⁵³ ECOWAS, 42nd Ordinary Session of the Authority of Heads of State and Government, Supplementary Act A1SA.1/02/13 adopting the ECOWAS Quality Policy (ECOQUAL) and its implementation framework, February 2013.

See ECOWAS Quality Policy (ECOQUAL), November 2012. Information available at: https://www.unido.org/fileadmin/media/documents/pdf/TCB/WAPQ_EN.pdf

⁵⁴ Document was adopted by the Council of Ministers in 2012. Available at: http://www.acp-eu-tbt.org/imcustom/doc/ECOWAS%20ECOSHAM_Engl.pdf

⁵⁵ See European Union Website: http://eeas.europa.eu/archives/delegations/ghana/documents/press_corner/2015/20150625_waqp3_background_paper.pdf

⁵⁶ See Annex 3 of TBT Agreement, Code for the Preparation Adoption and Application Standards.

⁵⁷ Additional Protocol No. III/2001 establishing the WAEMU Rules of Origin (applicable as of 1 January 2003) replaces Additional Act No. 4/96 of 10 May 1996 establishing a preferential tariff regime for trade within WAEMU, as amended by Additional Act No. 4/98. Additional Protocol No. III/2001 was revised by Additional Protocol No. 01/2009/CCEG/WAEMU

⁵⁸ The ECOWAS Trade Liberalization Scheme has been in force since 1 January 2004; its Rules of Origin are defined by Protocol A/P/01/03 of 31 January 2003.

⁵⁹ Additional Protocol No. III of 19 December 2001, establishing rules of origin for WAEMU products. Regulation No. C/REG.3/4/02 of 23 April 2002 on the approval procedure for originating products under the ECOWAS Trade Liberalization Scheme.

origin being applied within the region (ITC, 2016). The process to receive the certificate of origin is perceived as lengthy and burdensome causing excessive delays. Furthermore, the ECOWAS certificate is only 6 month valid. Economic operators must submit separate applications for approval for the scheme concerned (i.e., ECOWAS or WAEMU). In addition, under the ECOWAS scheme, they have to get a consecutive approval by the National Approvals Committee (NAC) and the ECOWAS Commission. As a result, the standardization of the origin certificate issued within the ECOWAS space is not yet a reality. However, the ECOWAS Commission has been carrying out a pilot project for one year on the replacement of certificates of origin through the implementation of an e-certificate of origin between Côte d'Ivoire and Senegal. If the experience is positive, this may be extended to other countries.

Regarding the criteria to determine product origin, the outstanding disagreement among the ECOWAS and the WAEMU is about the determination of the value addition. Both organizations have adopted their own definition of value addition based on different approaches.⁶⁰ This leads to a lack of symmetry which carries over into the approval of industrial products. An application for approval may be rejected by the WAEMU but accepted for the ECOWAS Liberalization Scheme. Some officials from the WAEMU Commission think that the difficult determination of the value addition is a major obstacle to the full implementation of the RoO regime (ITC, 2016). Some plead in favour of a revision of the Protocol to lower the current threshold of 30 per cent of value added embedded in originating products which would be hard to comply with.

In principle, the ECOWAS and WAEMU Commissions may carry out checks on the approval procedures in member States. Disputes related to non-recognition of certificates of origin are settled either bilaterally or with the involvement of the relevant Commission. However, the lack of coordination between the national and supranational administrations continues to hinder the free movement of goods.

⁶⁰ WAEMU - Regulation No. 13/2002/CM/UEMOA of 19 September 2002 and Regulation No. C/REG.5/4/02 of 23 April 2002.

ECOWAS - Regulation C/REG.5/4/02 relating to the assessment of the components making up the ex-factory price of a finished product before tax, and the Value- Added.

3.3.2.4. Other non-tariff measures

Apart from SPS and TBT measures, the NTMs data collected jointly by UNCTAD and the AfDB reveals that the member States made frequent use of some NTMs not yet harmonized at the regional level. This is the case notably for pre-shipment inspections ('PSIs') and export-related measures.

Pre-shipment inspection

PSIs can hinder cross-border trade by requiring imports to be inspected by a private surveillance company at the origin of shipment instead of inspection by customs of the importing country (UNCTAD, 2013). The main purpose of the inspections is to streamline import procedures in countries where the effectiveness of tax and custom is constrained by weak human capacity in order to safeguard national financial interests by preventing capital flight, commercial fraud, and customs duty evasion (ITC, 2016). This practice is commonly used by African countries to regulate their imports (UNCTAD, 2013). The obligations placed on PSIs by the WTO Agreement on Pre-shipment inspection include non-discrimination, transparency, and protection of confidential business information, avoidance of unreasonable delay, the use of specific guidelines for conducting price verification and the avoidance of conflict of interest by the PSI agencies. The application of PSIs by the mandated agencies is viewed by economic operators as causing unnecessary costs and delays as the procedures are often done twice before shipment or at the entry into the destination country (ITC, 2016). Red tape and corruption are often associated with this practice.

Within the ECOWAS region, achieving the harmonization of government practices in PSIs is far from being a settled question given the importance of national interests. This issue is not yet on the agenda of ECOWAS; however, the WAEMU Commission was requested by the Ministers of Trade in 2013 to conduct a study on this issue which led the Commission to make a recommendation to the member States to limit the use of PSIs services for products originating from Members States. Although the application of PSIs related measures is the responsibility of member States, there is a clear need for at least a regional scrutiny through a monitoring mechanism.

Export related measures

Based on the analysis of the export related measures collected at the national level, it appears that the three forms of export measures most often used by the member States are quantitative restrictions, export-license requirements and technical export measures.

Overall, West African countries have made various commitments under Articles 3 and 35 of the ECOWAS treaty to eliminate export restrictions and support free trade in the region. These include “the removal of obstacles to the free movement of persons, goods, services and capital.” As for the WAEMU Treaty, it also envisions the creation of a common market. As a result, in Articles 77 and 78, the signatories state that they will abstain from creating new export restrictions and work together to gradually reduce existing restrictions. Both ECOWAS and WAEMU have trade liberalization programs that will introduce improved laws and regulations in support of free trade (the ECOWAS Trade Liberalization Scheme and the WAEMU Community Preferential Tariff). However, these commitments have not been translated into binding community acts such as a regulation or a directive. In this regard, the WAEMU Commission has not yet adopted any implementing legislation for the phasing out of import and export quantitative restrictions on intra-community trade. Given this legal loophole, member States enjoy considerable autonomy to apply export restriction measures including export-licenses. With respect to technical export measures, the main forms used by the member States, are the certification requirement for exports of animals and animal products, plants and plant products for sanitary and phytosanitary control purposes. These phytosanitary controls on exports are also addressed in the WAEMU SPS Regulation as well as in the ECOWAS SPS Regulation that was examined in the previous section.⁶¹

⁶¹ Règlement N°07/2007/CM/UEMOA du 06 avril 2007 relatif à la sécurité sanitaire des végétaux, des animaux et des aliments dans l'UEMOA. Regulation C/REG. 21/11/10 on the Harmonization of the structural framework and operational rules pertaining to the health safety of plants, animals and foods in the ECOWAS region.

4. ADDRESSING NTMS UNDER THE WEST AFRICAN INSTITUTIONAL FRAMEWORK

The main objectives of ECOWAS and WAEMU are the harmonization of trade policies of their member States and removing unnecessary obstacles to trade, i.e. non-tariff barriers to trade. This requires a solid institutional framework and an effective enforcement mechanism available to support and strengthen West Africa's regional integration agenda by taking action and sanctions against member States for non-compliance with their regional commitments.

The objective of this last chapter is to bring policy options for the effective harmonization and enforcement of NTMs work in West Africa through a sound legal and institutional framework.

4.1. STRENGTHENING THE INSTITUTIONAL MECHANISMS TO ADDRESS NTMS

4.1.1. Regional legal framework and existing (enforcement) mechanisms

As highlighted above, member States have not fully implemented the agreed harmonized NTMs in the areas of SPS, TBT and RoO. This has been stated by several analytical papers and research studies carried out on regional integration in Africa, and in West Africa more specifically.⁶² The findings show limited translation of regional integration commitments into member States' domestic law.⁶³ It has been called for a strengthening of regional institutions which could positively reflect on the enforcement mechanism.

4.1.1.1. The Court of Justice

The following sections examine the available remedies for the ECOWAS and WAEMU Commissions or other operators facing an infringement of the Community legislation.

⁶² See ECOWAS VANGUARD-NANTS/182 (2015). See also Journal of West African Integration, Vol. 1. No.1 January, 2012.

⁶³ Mackie et al., Joining up Africa, Support to regional integration, ECDPM, July 2010

Whilst regional bodies are primarily concerned with policymaking, the implementation of regional policies remains the responsibility of the member States. Though the onus lies on the member States to translate their regional commitments into domestic laws, ECOWAS and WAEMU institutions bear the responsibility for ensuring that the member States “honour their obligations”. Furthermore, the institutions need to ensure the effective functioning of the judicial enforcement mechanism represented by the Court of Justice.

Both organizations have set up a Community Court of Justice as part of their institutional mechanisms - the ECOWAS Court of Justice and the WAEMU Court of Justice.⁶⁴ Accordingly, they are the principal legal/judicial organs empowered to enforce the provisions outlined in the treaties as well as in the associated Protocols, regulations, directives, decisions and other subsidiary legal instruments. Overall, both institutions have a structure and functioning largely inspired by the European Court of Justice which is recognized as a leading actor for shaping the course and patterns of regional integration in Europe (Alabi, 2013).

In the case of the ECOWAS Court of Justice, the Preamble of the 2005 Supplementary Protocol stresses the leading role that the Court of Justice “can play in eliminating obstacles to the realization of Community objectives and accelerating the integration process”.⁶⁵ In this regard, the Supplementary Protocol widens access to the Court for individuals and corporate bodies. Moreover, it expands its jurisdiction limited originally to the sole member States and Community institutions before 2005.⁶⁶ Pursuant to Article 3 of the said Protocol, the Court of Justice has competence to adjudicate on any dispute as submitted by member States, institutions, corporate bodies and individuals.⁶⁷ This includes settling contentious

disputes arising out of interpretation and application of the Community texts, enforcement of Community obligations or issues relating to legality of actions and inactions of the Community, institutions and officials.

To date, however, the reality remains different from the spirit of the Protocol because the Court of Justice continues to have a very minor role in the regional integration process in West Africa. This is typified by the still partial implementation of the ECOWAS ETLs by the member States (with persistence and in some cases proliferation of NTBs) since its launch in 1990. This situation illustrates the absence of an effective judicial framework to enforce member States’ commitments. In that respect, Alabi (2013) examined in a study the role of the ECOWAS court in the regional integration in West Africa and identified the weaknesses of the Court of Justice on a number of issues.

Firstly, the study states that while the Court has an exclusive jurisdiction on Community matters, the jurisdiction is not compulsory. It is thus clear from Article 76 of the Treaty that the dispute resolution mechanism of the ECOWAS subordinates adjudication to diplomatic and other pacific means of settlement.⁶⁸ Any recourse to the ECOWAS Court remains only a measure of last resort, after all the other diplomatic means of dispute settlement have exhausted. Secondly, the author analysed the cases filed before the Court and found that a large majority of cases relates to violations of human rights and fundamental freedoms. Only very few cases relate directly to regional integration through control of Community acts or enforcement actions against the member States. Alabi argues that it is not because there were no cases that should be brought to the Court but the enforcement framework as provided under the 2005 Supplementary Protocol which is considered as inadequate because it depends on the goodwill of the member States, including their national courts. The Court would depend on the support of the political leadership and the national courts for the

⁶⁴ ECOWAS, Protocol A/P.1/7/91 relating to the Community Court of Justice, completed by Supplementary Protocol A/SP.1/01/05 amending the Preamble and Article 1,2,9 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice.

WAEMU, Protocole Additionnel N°1 de 1996 Relatif aux Organes de Contrôle de l’UEMOA.

⁶⁵ Supplementary Protocol A/SP.1/01/05 amending the Preamble and Article 1,2,9 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice

⁶⁶ ECOWAS, Protocol A/P.1/7/91 relating to the Community Court of Justice

⁶⁷ Ibid, Supplementary Protocol

⁶⁸ Article 76 of ECOWAS Treaty: “1.Any dispute regarding the interpretation or-the application of the provisions of this Treaty shall be amicably settled through direct agreement without prejudice to the provisions of this Treaty and relevant Protocols. 2. Failing this, either party or any other member States or the Authority may refer the matter to the Court of the Community whose decision shall be final and shall not be subject to appeal”

enforcement of its decisions discouraging potential private litigants to file a complaint before the court.

A strengthened judicial enforcement mechanism could contribute more effectively to the regional integration process.

Besides the Court of Justice, there are no other official penalties or enforcement mechanisms existing under ECOWAS and WAEMU to deal specifically with NTMs/NTBs. Thus, the ECOWAS and WAEMU Commissions seem to have favoured diplomatic channels for dispute settlement to induce member States to fulfil their commitments.

4.1.1.2. Alternative mechanisms

Given the weaknesses of the regional judicial enforcement mechanism, other alternative solutions have been found to ensure implementation of NTMs provisions. The two Commissions have resorted to mediation and conciliation mechanisms to informally resolve disputes between member States. The solution so far has proved to be partially effective. Another solution used by the ECOWAS Commission is to informally send a letter to a Member State involved in the infringement of a Community provision. The idea behind it is to sensitize the Member State on the importance of implementing the provision. According to the Commission, this approach has proved to have a deterring effect on certain policies or practices.

The disappointment of the Authority of Heads of State and Government ('AHSG') at the ECOWAS Summit in July 2013 with the limited progress of ETLs on intraregional trade, has galvanized the AHSG to fast-track the implementation of integration policies (especially ETLs) in the sub-region.⁶⁹ This led to several initiatives carried out by the ECOWAS Commission including the roadmap on the free movement of persons and goods. This initiative entails inter alia the establishment of a mechanism for arbitration and sanctions of offenders (for member States, legal and natural persons) and a Task Force on the ECOWAS. In line with this, a regulation on the establishment and composition of the Task Force has been adopted by the Council of Ministers in 2015 and the Task Force has been established.⁷⁰ The Task Force is an ad hoc

committee which is mandated to oversee the effective implementation of the ETLs. In this capacity, the Task Force aims to address and resolve difficulties that hinder the proper functioning of the Trade Liberalization Scheme of ECOWAS through arbitration or mediation. The Task Force consists of an ECOWAS Commission representative, a WAEMU Commission representative, a representative of the Executive Secretariat of Inter-State Standing Committee for Drought Control in the Sahel ('CILSS'), a representative of African Center for Trade, Integration, Development (ENDA-CACID), a representative of National Association of Nigerian Traders ('NANTS') and six High Representatives.

Another mechanism which contributes to better implementation of the Community acquis is the WAEMU annual policy review on the integration process. This review consists of monitoring the state of implementation of community legislation in domestic law for all eight member States. A delegation of the commission is sent to the country and meetings with the main stakeholders are organized. The main goal of this process is to foster the acceleration of the implementation of community policies and project reform programs within WAEMU in the context of deepening regional integration. This review mechanism entered into force in 2013,⁷¹ and positive results have since been observed between 2014 and 2015 according to the last commission statistics in terms of transposition and application of common market reforms. While the level of implementation was at 48 per cent for the eight member States in 2014, it has risen to 61 per cent in 2015.⁷²

However, it has to be recognized that the above mentioned alternative mechanisms - formal and informal - have a limited impact on the monitoring of compliance with NTMs/NTBs obligations by member States for the time being. Hence, there are limited options for economic operators affected by the non-application of community regulations.

present report.

⁶⁹ See ECOWAS Vanguard – NANTS/182 (2015).

⁷⁰ ECOWAS, draft implementing regulation on the establishment and composition of the Task Force, 2015 in the process of adoption at the time of the drafting of the

⁷¹ More information available at : <http://mali-web.org/economie/revue-annuelle-de-luemoa-comment-tirer-le-meilleur-parti-des-reformes>

⁷² Information provided by the WAEMU Commission during the field mission.

4.1.2. Reporting, monitoring and NTB elimination mechanisms

As shown above, the legal texts of the ECOWAS and WAEMU require that member States remove all the existing NTBs, identified mainly as quantitative restrictions, while refraining from introducing new ones.⁷³ In parallel, member States have the right to introduce restrictive trade measures provided (a) that they target legitimate policy objectives in the least trade distortive manner and (b) that they are notified to the relevant regional bodies (Hove, 2015). To date, both of the West African regional organizations continue to work towards the elimination of NTBs which will require robust notification mechanism for NTMs.

Drawing from the experience of the three regional economic communities (RECs) of the Common Market for Eastern and Southern African States (COMESA), Southern African Development Community (SADC) and East African Community (EAC) with respect to the operationalization of a joint online NTB reporting, monitoring and eliminating mechanism⁷⁴ or the Tripartite Free Trade Area (TFTA) NTB mechanism (Viljoen, 2015), it is clear that dealing specifically with NTMs/NTBs requires a supplementary (Chikura, 2013) and stand-alone mechanism. Such a mechanism is seen as an important element in the efforts to establish a successful FTA as highlighted in a 2015 research report on the TFTA NTB mechanism (Hove, 2015).

It is against this background that a similar mechanism to the TFTA NTB mechanism is currently being developed and tested in the West African region at the initiative of the Borderless Alliance. This is a private sector-led coalition dedicated to increase intraregional trade in West Africa based primarily on the elimination of barriers to trade and transport by using evidence-based advocacy.⁷⁵ NTB identification and reporting within the ECOWAS region is at the core of the Borderless Alliance's activities through its trade

facilitation infrastructure and networking among its various offices implemented on the ground.⁷⁶ Hence, the Borderless Alliance has decided to overhaul its NTB mechanism by putting in place an e-platform to improve reporting, processing and monitoring of NTBs by the economic operators but also consolidate current NTB data collection and Border Information Centre activities of the Borderless Alliance in the West African region.

The online reporting and monitoring mechanism was introduced in September 2014.⁷⁷ It is currently operating on a pilot basis on the Tema-Ouagadougou corridor which includes two countries, Ghana and Burkina Faso. The pilot phase will cover the period from September 2016 to June 2017,⁷⁸ with plans to roll out to other countries on the Abidjan-Lagos corridor (Côte d'Ivoire, Ghana, Togo, Benin and Nigeria) from January 2017 to December 2017.⁷⁹

More specifically, according to the Borderless Alliance, the e-platform is designed as an interactive real time reporting, monitoring and advocacy tool for the removal of NTBs. This will be supported by system administrators and appointed NTB structures at regional and national levels which are supposed to lead to efficient management of NTBs. This means dealing with concerns of stakeholders including port authorities, freight forwarders, logistics operators, manufacturers, traders and farmers. Hence, these stakeholder will utilize the mechanism, through logging complaints on its website (or via cellular short messaging service). However, unlike in the Tripartite region, in West Africa there is currently no mandate for resolving the identified NTBs. The Borderless Alliance considers that this mechanism acts as an advocacy tool contributing towards streamlining of NTBs in West Africa in order to promote a better business environment. In that regard, this tool was called in a recent research report on the TFTA NTB mechanism a "watch dog and tool for lobbying the West African governments to remove NTBs."⁸⁰ Hove (2015) states that the main difference between the

⁷³ Ibid., Art.41 of ECOWAS treaty and Art.76 and 77 of WAEMU treaty

⁷⁴ See Hove (2015). As indicated by the author, the common NTB mechanism was implemented in 2009 for the first time. In that respect, it is considered as "unique instrument implemented for the first time in the world". The mechanism is now functional in 23 of the 26 countries in the Tripartite. It is hosted in the following website: www.tradebarriers.org

⁷⁵ See Borderless Alliance website: <http://www.borderlesswa.com/>

⁷⁶ This infrastructure includes Borderless Alliance National Committees, Border Information Centres (BICs) and a Secretariat based in Accra.

⁷⁷ www.tradebarrierswa.org

⁷⁸ Information collected from the Borderless Alliance Secretariat

⁷⁹ Ibid, BA Secretariat

⁸⁰ Ibid., Hove (2015).

NTB mechanisms in the TFTA and West Africa is that the former is a public sector initiative with a mandate to remove NTBs, whereas the latter is a private sector initiative with limited effectiveness.⁸¹

However, different analytical papers conducted on the TFTA NTB mechanism have pointed out that this system did not embody a clearly defined enforcement mechanism with a strict time limit for action and sanction for non-compliance.⁸² In other words, the mechanism would not be a legally binding instrument with sanctions to resolve NTBs. It has been considered as “a moral suasion approach to removing NTBs.”⁸³ It is left to the member States to remove or reform their NTBs once they have been notified. The effectiveness of any NTB removal mechanism depends on the incentives as well as on the enforcement possibilities. Another observation raised is that this mechanism operates *ex post facto* in that it is aimed at addressing NTBs as complaints arise, after the measure in question has already taken effect and the trader has already incurred costs (Viljoen, 2015). There is no review process of NTMs before becoming NTB issues which could be done through a notification procedure. However, two other approaches in the Tripartite address this aspect: (a) the TFTA NTB mechanism includes another component that provides access to all currently applied NTMs in the Tripartite region, based on data collected by AfDB and UNCTAD (currently for 13 Tripartite countries; number of covered countries is increasing), and (b) ongoing efforts at the political level aiming at harmonizing NTMs that would reduce the occurrence of NTBs.

It may be considered to engage high level regional stakeholders on the enhancement and strengthening of the pilot West African NTB mechanism by the inclusion of enforcement instruments and NTMs notification procedures. The WTO approach that requires a priori notification of certain new measures can serve as an example⁸⁴ The WTO Glossary defines

⁸¹ Ibid.

⁸² Ibid., Chikura (2013); Ibid., Hove (2015) - See Gilson (I), and Charalambides (N), (2011, January). Addressing Non-Tariff Barriers on Regional Trade in Southern Africa

⁸³ Ibid.

⁸⁴ The Annex 1A of the WTO Multilateral Agreements on Trade in Goods covers 176 notifications requirements of which 42 are recurring requirements (semi-annual, annual, biennial, triennial).

See WTO, Working Group on Notification Obligations and Procedures, Notifications required from WTO Members

a “notification” as “a transparency obligation requiring member governments to report trade measures to the relevant WTO body if the measures might have an effect on other members”.

4.1.3. Capacity building and coordination between institutions

Along with setting-up of a robust NTBs/NTMs notification and compliance mechanism, there are two other important factors contributing to the streamlining of NTMs. First, having strong capacities on regional integration matters in both the ECOWAS/WAEMU Commissions and member States is important. For the Commissions, this would mean that the relevant departments are well-staffed with knowledgeable and experienced officials to adequately assist the member States in the implementation and application of their regional commitments in their domestic law. In the case of the member States, they should dedicate human resources to specifically deal with the implementation of domestic reforms in order to comply with regional obligations. It appears that in some cases lack of human and financial resources undermines effective monitoring of compliance and provision of support for the national implementation of regional commitments. Consequently, the implementation of SPS/TBT regional frameworks inevitably requires the support from development partners and donors.

The second decisive factor in the streamlining of NTMs is the necessity to increase the coordination between national and regional institutions in the enactment of national trade policy instruments in line with the regional integration objectives. In fact, effective coordination is essential to support any NTMs streamlining and NTBs elimination mechanism and to contribute to increasing transparency.

4.2. HARMONIZING ECOWAS/WAEMU REGULATORY FRAMEWORKS

As noted, regional trade in West Africa is regulated by the ECOWAS and WAEMU, based on a similar mandate. More specifically, this shared

under Agreements in Annex 1A of the WTO Agreement, Note by the Secretariat, G/NOP/W/2/Rev.1, 25 September 1995.

mandate materialized through the adoption of separate harmonized regulations in the same areas discussed above (i.e., SPS/TBT and RoO). The impact of these overlapping regulations on the entire regional integration process is important, since both organizations have overlapping memberships. Such a situation increases not only the burden of Members' commitments but creates another hindrance to intraregional trade. This is the case with regard to phytosanitary and veterinary certificate requirements for regional trade of food staples set out respectively in the ECOWAS and WAEMU SPS regulations.⁸⁵ Similarly, certificates of origin are not yet harmonized among ECOWAS and WAEMU, though there is a harmonization of the two RoO Protocols since 2003. The examples above show that the absence of harmonization between ECOWAS and WAEMU regulatory frameworks generates additional obstacles and costs.

Harmonization of regulatory frameworks between the two organizations is important for achieving regional NTMs convergence. Speedier harmonization of the WAEMU and ECOWAS regulatory frameworks could serve as a catalyst for the reform process. Moreover, the harmonization of regulations and activities is also relevant for a uniform and efficient trade regime across the region. This is relevant in the global context where other important issues for the regional integration process are raised by the implementation of the Trade Facilitation Agreement (TFA) as well as the West Africa-Economic Partnership Agreement (EPA) and the African Continental Free Trade Area (CFTA). In light of this, the current regional institutional framework needs to be reformed and adjusted to address both technical and institutional challenges raised by NTMs.

To overcome difficulties linked to an overlapping membership, the ECOWAS and WAEMU signed a general cooperation agreement in 2004 to enhance the coordination and harmonization of their programmes. This cooperation was formalized by the establishment of a Joint Technical Secretariat (JTS) with the objective of facilitating dialogue and cooperation on trade related issues and regional integration. As such, a high level dialogue between both commissions ensures the exchange of information between them about their respective activities. This increases the efficiency of the

commissions by avoiding duplication of other support measures. In addition, another stated objective of the JTS is to oversee the implementation of trade-related regulations through the establishment of a monitoring mechanism.

In fact, the JTS meets twice a year to discuss various programs run by the two institutions, the prominent issues discussed being trade-related regulations. The representatives of both commissions discuss their points of divergence and convergence with regard to the application of harmonized common regulations (e.g. RoO) or draft regulations that one or the other organization intends to adopt. It is important to highlight that both institutions have to adopt their regulations separately even if it is a harmonized regulation.

In order to strengthen the mechanism of cooperation, a Memorandum of Understanding was concluded in 2012 by the ECOWAS and WAEMU.⁸⁶ Both organizations are aware of the importance of strengthening bilateral cooperation in order to enhance the regional integration process underway in West Africa. In this context, the ECOWAS and WAEMU are actively cooperating in different areas (e.g. agriculture, energy, and transport). It is extremely important to achieve harmonization between the two regulatory frameworks in the interest of fast-tracking the regional integration process.

⁸⁵ See World Bank (2015), Chapter 3 for reference of the regulations.

⁸⁶ CEDEAO/UEMOA, Protocole d'accord sur le dispositif institutionnel de l'Accord de Coopération et de Partenariat entre la CEDEAO et l'UEMOA, 23 novembre 2012.

5. CONCLUSIONS AND POLICY RECOMMENDATIONS

Regional integration and economic cooperation in West Africa is important to support sustainable development and as a building block for Africa's continental integration efforts. The regional integration process in West Africa is driven by ECOWAS and WAEMU. The elimination of trade barriers, both tariff and non-tariff is at the core of their respective programs with the aim of free movement of goods and factors of production.

This study confirms this emphasis and shows the beneficial effects of addressing non-tariff measures in West Africa for industrialization and sustainable development. It also analyses the institutional and political status quo and requirements to achieve the objective.

The analysis of the current institutional regulatory framework of NTMs in ECOWAS/WAEMU identified some institutional gaps and legal loopholes generating obstacles to address NTMs and to some extent creating implicitly non-tariff barriers. A strong political will is essential to address NTMs. It would require enhanced transparency, undertaking institutional reforms, policy reforms, human and institutional capacity building and securing resources to support the reform process.

Accordingly, the following recommendations aim at guiding policy makers in the decision-making process to support policy reforms of regional NTMs to accelerate sustainable development in West Africa.

1. Enhance transparency about NTMs

- Systematic, comprehensive and comparable data help policy makers, trade negotiators and exporters to cope with complex barriers and regulations. Data collection effort by AfDB and UNCTAD is a good starting point.

2. NTBs could mostly be eliminated. Removing NTBs on intra-ECOWAS trade requires (a) the political process of negotiating their elimination

- It should be considered that ECOWAS and WAEMU Commissions remedy a legal loophole on quantitative restrictions. NTBs in the

form of quantitative restrictions in ECOWAS dramatically increase product prices by almost 50 per cent where they occur. Although, there is a general prohibition on quantitative restrictions provided by ECOWAS and WAEMU treaties on intracommunity trade, this prohibition has never been translated into Community acts by the Commissions to ensure the implementation of this provision among the member States.

- The Commissions should start engaging their member States in discussions on the way to limit pre-shipment inspections to third party products. Pre-shipment inspection does not yet fall within the ambit of regional regulation and remains exclusively regulated at national level. PSIs may constitute a NTB within intracommunity trade.

3. Removing NTBs on intra-ECOWAS trade requires (b) a functioning reporting mechanism to allow the private sector to raise problems and to detect NTBs. The TFTA NTB reporting mechanism can serve as a benchmark for the ECOWAS region.

- Important lessons can be learnt and the regional platforms could be merged as a stepping stone for an Africa-wide mechanism in accordance with the Ministerial decisions for the CFTA. Another advantage is the link between the NTBs complaint component and the NTMs transparency component (NTMs data collected by AfDB and UNCTAD can be uploaded into the online tool, as currently ongoing for the TFTA).
- A pilot West African e-platform for reporting and monitoring NTBs using the TFTA mechanism has been developed by the Borderless Alliance. ECOWAS and WAEMU Commissions should engage in short-term discussions with the Borderless Alliance, UNCTAD and AfDB on the enhancement and strengthening of the pilot NTBs mechanism. First, the mechanism should remedy the shortcomings of the judicial mechanism enforcement embodied by the Court of Justice of ECOWAS and WAEMU. The mechanism should incorporate an enforcement mechanism that deals specifically with NTBs including remedies for affected economic operators. Secondly, it should not be limited to NTBs and it should cover all NTMs through

setting-up an NTM notification procedure as initially required by ECOWAS and WAEMU provisions.

4. Regulatory convergence of technical NTMs (SPS measures and TBT) should be pursued by ECOWAS policymakers - ideally towards international standards.

- Regulatory convergence is beneficial for ECOWAS members and can be achieved by efforts to harmonize as well as mutual recognition agreements. With respect to SPS requirements and TBT, each single measure tends to increase product prices by 1.2 to 1.7 per cent in ECOWAS. Existing trade restrictions stemming from technical measures in ECOWAS can be reduced by over 25 per cent only by aligning the existing measures that each ECOWAS member has. This could increase intra-ECOWAS trade by 15 per cent and increase income in ECOWAS countries by US\$300 million annually.
- A higher reduction of trade costs can be achieved through further regulatory convergence though this may require some countries to introduce some new measures in order to align themselves to the more regulated markets in ECOWAS. A coordination mechanism for new regulations would be beneficial to allow countries to determine their own level of consumer and environment protection while maximizing the economic regional integration potential. Regulatory convergence towards international standards has the highest benefits for ECOWAS. It is beneficial not only for intraregional trade but also for better meeting the requirements for exports to the world, i.e. increasing competitiveness of ECOWAS firms. Converging towards international standards increases intraregional trade by 14 per cent and income in ECOWAS by US\$1.57 billion annually. The estimates are conservative lower bound estimates as they do not take into account the potentially large benefits from newly traded products that were not traded before due to high trade barriers.

5. Technical assistance including conducting capacity-building activities in the area of NTMs is important.

- The two ECOWAS/WAEMU Commissions face limited capacities in terms of human, institutional and financial resources to monitor and support member States in the national implementation of regional commitments. This serves to illustrate that monitoring the implementation of SPS/TBT regional frameworks by member States requires technical assistance that the two Commissions are not in a position to provide.

6. Accelerate the formulation of a common trade policy of the ECOWAS community and harmonization of ECOWAS/WAEMU regulatory legal frameworks.

- The authors of this report recommend that the ECOWAS community explores adopting a common trade policy. A common trade policy is essential in the context of any customs union as a second pillar determining its enforcement. Despite the entry into force of ECOWAS GET on 1 January 2015, ECOWAS has not yet completed the design for its common trade policy.
- The co-existence of two separate ECOWAS/WAEMU regulatory legal frameworks addressing the same issues generates overlapping regulations (SPS/TBT and RoO). This constitutes an additional burden on members' commitments and creates another obstacle to the intraregional trade. Therefore, harmonization is important in the perspective of achieving regional NTMs convergence and more broadly in the perspective of the implementation of the TFA, the West Africa-Economic Partnership Agreement ('EPA') and the African Continental Free Trade Area. In that context, there is an urgent need for the ECOWAS Commission and the WAEMU Commission to strengthen their cooperation and intervention through the harmonization of their regulatory frameworks which is crucial to develop regional policy coherence on NTMs.

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ANNEX

Using disaggregated NTM data to assess “regulatory overlap”

Using the NTM data collected by UNCTAD and AfDB, it is possible to compare the regulatory structure across countries and across over 5’000 disaggregated products. Table 6 illustrates the method using an example of a few NTMs applied to a specific product in two countries.

The left pane of 6 shows four different types of technical NTMs. As indicated by a ‘1’ in the respective fields, importer X applies three of these measure types. Exporter Y applies two. Both importer and exporter require an SPS inspection for the given product. This can be considered a regulatory overlap from the perspective of exporter Y (as indicated by the arrow in the second row).⁸⁷ It can be assumed that a producer in country Y is used to domestic SPS inspections and therefore finds it less difficult to also comply with the inspection of importer X. However, there is no overlap regarding the other two measures that importer X applies (as indicated by the crossed arrows in the other rows). The special authorization (A14) applied by exporter Y (first row of the table) does not create additional regulatory overlap because this type of NTM is not applied by importer X. In summary, we see that in the baseline scenario, there is one overlapping NTM between the two trading partners, two additional (non-overlapping) measures applied

by the importer, and one non-overlapping measure applied by the exporter.

If exporter Y wanted to increase the regulatory overlap through domestic reform (exporter Y*), a simple scenario could be imagined. Exporter Y could replace the discretionary “A14: special authorization” by an SPS certificate. The total number of NTMs in exporter Y remains the same. However, all two measures applied by the exporter Y* now overlap with importer X. This minimal policy reform should decrease the costs of trading the product from exporter Y* to importer X.

Certainly, details are particularly crucial with complex technical measures. SPS certificates, inspections and maximum residue limits may vary substantially between two countries. The proposed regulatory overlap only delivers an approximation with respect to the similarity of regulatory structures and mechanisms. With thousands of products and many countries to compare, a more detailed comparison is not feasible.

The estimation approach to assess the price-raising effects of non-tariff measures

The basic intuition of the estimation is that cost-insurance-freight (c.i.f.) product prices at the border are “treated” by different types of NTMs, taking into account regulatory overlap. The estimation is based on a worldwide cross-section of 47 countries,

Table 6: Example of NTM data mapping with respect to “regulatory overlap”

NTM types and codes for a specific product at HS-6 level: e.g. rice	Importer X	Exporter Y	Exporter Y* after reform
A14: Special authorization	0	1	0
A81: SPS inspection	1	1	1
A83: SPS certificate	1	0	1
A61 Plant growth processes	1	0	0
Total number of NTMs	3	2	2
Number of overlapping NTMs		1	1+1=2
Number of non-overlapping NTMs in Importer X	2		2-1=1
Number of non-overlapping NTMs in Exporter Y	1		1-1=0

Source: African Regional Integration Index Report 2016

⁸⁷ Following WTO principles of non-discrimination between domestic and foreign products, most measures applied as import-related NTMs should also be applied domestically for domestic producers.

including 12 ECOWAS members, at a disaggregated product-level (HS 6-digits, more than 5'000 products).

Cost-insurance-freight (c.i.f.) unit values are used instead of free-on-board (f.o.b.) as they are likely to capture more of the NTM-related costs. While unit values at the bilateral- and product-level are known to be statistically noisy, we use the dataset provided by Berthou & Emlinger (2011) which improves data quality significantly. The estimated effects are therefore ad valorem equivalents (AVEs) in terms of the impact on the final c.i.f. unit value goods price.

Barriers as well as technical measures are expected to raise prices. The global average impact of quantitative restrictions is complemented by an ECOWAS-specific interaction term that exposes a much stronger effect of these barriers for intra-regional trade.

Regarding technical measures (SPS and TBT) we distinguish between those measures that are overlapping between importer and exporter, and those that are non-overlapping (separating the additional measures by importer and exporter).

Furthermore, control variables are included to capture overall price levels (the logarithm of exporter's and importer's per capita GDP) and transport costs (distance, landlockedness and common borders). Product-specific effects are absorbed through product-level fixed effects.

The simple log-linear estimation equation reads as follows with sub-indices for product k, importer i, exporter j and year t:

The regression results are presented in Table 7.

$$\ln(p_{ijkt}) = \alpha + \beta_1 QR_{ijkt} + \beta_2 QR-ECOWAS_{ijkt} + \beta_3 sameNTM_{ijkt} + \beta_4 ImpDiffNTM_{ijkt} + \beta_5 ExpDiffNTM_{ijkt} + \beta_6 \ln(GDPpc_i) + \beta_7 \ln(GDPpc_j) + \beta_8 landlocked_i + \beta_9 landlocked_j + \beta_{10} \ln(distance_{ij}) + \beta_{11} contig_{ij} + \beta_{12} intraECOWAS_{ij} + FE_k + \varepsilon_{ijkt}$$

Table 7: Regression results

Dependent variable: log (c.i.f. trade unit value)		
Main variables	Importer quantitative restrictions (dummy)	0.045*** (0.01)
	ECOWAS-specific effect of quantitative restrictions (interaction term)	0.45** (0.23)
	Importer's number of non-overlapping technical measures	0.012*** (0.00)
	Exporter's number of non-overlapping technical measures	0.017*** (0.00)
	Number of overlapping technical measures	0.015*** (0.00)
Control variables	Importer's log(per capita GDP)	0.17*** (0.00)
	Exporter's log(per capita GDP)	0.20*** (0.00)
	Importer landlocked	0.11*** (0.01)
	Exporter landlocked	0.25*** (0.02)
	log(distance)	0.20*** (0.00)
	1 if common border	-0.031*** (0.01)
	Intra-ECOWAS trade price level (dummy)	-0.34*** (0.02)
Observations	451'282	
Adjusted R²	0.714	

Clustered standard errors in parentheses; * p < 0.10, ** p < 0.05, *** p < 0.01.
Fixed effects regression HS6 product-level fixed effects.

