

Annex 6

Annex on Trade Remedies

Under Article 18 of the Agreement

Article 1 Interpretation

Unless the context requires otherwise, in this Annex:

“Dumping” means the introduction into the commerce of a Tripartite Member State of products at less than their normal value and shall have the same meaning as in the WTO Agreement on Antidumping Measures;

“Injury” and **“threat of injury”** refer to economic circumstances resulting from dumping, subsidies or an unforeseen upsurge in imports that negatively affect the performance of an industry;

“Regional industry” refers to an industry covering the region of the Common Market for Eastern and Southern Africa, East African Community, the Southern African Development Community and any other regional organisations that join the Tripartite Agreement;

“Representative period” means, for purposes of allocating out quotas, a period of not less than three months preceding the events causing or threatening the injury, or causing the retardation of the establishment of the industry, provided that in the case of threat of injury or retardation any reasonable period may be used where the three month period is inappropriate;

“Subsidies” means financial contributions by government to specific enterprises where the contributions confer benefits on the enterprises, and shall have the same meaning as in the WTO Agreement on Subsidies and Countervailing Measures;

“Trade remedies” means measures recommended by the Sub-Committee on Trade Remedies to protect domestic industries in accordance with this Annex;

“Trade Remedies Sub-Committee” refers to the Sub-Committee established under Article 8 of this Annex;

“WTO Agreement” means the Agreement Establishing the World Trade Organisation done at Marrakesh in Morocco on 15 April 1994;

“World Trade Organisation” refers to the organisation established under Article I of the WTO Agreement.

Article 2
Adoption of Trade Remedies

1. Trade remedies relating to the trade of the Tripartite Member States with third countries and within the Free Trade Area may only be adopted after an investigation in accordance with the rules of natural justice and with this Annex.
2. The Trade Remedies Sub-Committee shall have the authority to initiate and conduct the investigations and to recommend the adoption of trade remedies, which shall be applied in accordance with the mechanisms on border measures relating to the imports.
3. Notwithstanding paragraph (1) of this Article and paragraph (2) of Article 4, where a Tripartite Member State has entered other trade arrangements, the Sub-Committee on Trade Remedies may recommend the trade remedies provided for in the instruments regulating those arrangements.

Article 3
Initiation of investigations

1. Applications seeking trade remedies shall be made to the Sub-Committee on Trade Remedies.
2. Applications under this Article may be made by:
 - (a) an industry or a national or regional business association;
 - (b) a Tripartite Member State on behalf of a domestic or regional industry,
 - (c) or a consumer organisation registered in a Tripartite Member State.
3. When the Sub-Committee on Trade Remedies is satisfied that investigations are necessary for the application of trade remedies, it may direct the initiation of the investigations and adopt the modalities, including constitution of a panel from among its members to undertake the designated tasks.

Article 4
Trade Remedy Measures

1. When it is established after an investigation that domestic or regional industries producing like or directly competitive products have suffered injury or are threatened with injury or establishment of a domestic industry has been curtailed within the meaning of this Annex, the Sub-Committee on Trade Remedies may recommend a measure in accordance with sub-paragraph (2) of this Article.
2. Provided the measures shall be necessary and appropriate to deal with the injury to the domestic or regional industries, the measures may include:
 - (a) Safeguard action in the form of higher than otherwise applicable customs duties, or imposition of quotas allocated out among suppliers or exporters to

the Tripartite Member States on the basis of performance for a representative period;

- (b) Anti-dumping duties not exceeding the margin of dumping;
- (c) Countervailing duties to offset the subsidies;
- (d) Price undertakings to appropriately raise the price of imported products, undertaken by the exporters and suppliers to the Tripartite Member States if accepted by the Sub-Committee on Trade Remedies;
- (e) Orders to enterprises doing business or having a presence in, or directly affecting the trade and industries in the Tripartite region, to ensure and maintain conditions for fair competition and for sustainable human development; or
- (f) Any other measures in the public interest, consistent with the appropriate protection of a domestic or regional industry.

Article 5 Provisional Measures

Whenever the Sub-Committee on Trade Remedies is satisfied that damage which in the Tripartite Member States would be difficult to repair may result, it may adopt provisional measures after initiating the investigations and pending the conclusion of the investigations. Provisional measures may take the form of higher than the otherwise applicable customs duties, which shall be promptly refunded if the application fails.

Article 6 Studies and Inquiries

The Sub-Committee Trade Remedies may periodically undertake studies and inquiries into domestic and regional industries and whenever it may seem appropriate.

Article 7 Prohibitions and Quantitative Restrictions

Notwithstanding anything in this Annex, when necessary, the Sub-Committee on Trade Remedies may recommend the prohibition or restriction of the import of products to safeguard the external financial position or the balance of payments position of the Tripartite Member States, and may recommend the restriction of the export of products to prevent or relief critical shortages of foodstuffs or other essential products.

Article 8 Establishment of the Sub-Committee on Trade Remedies

With respect to Tripartite Member States that are members of the World Trade Organisation, the notification of the Sub-Committee on Trade Remedies as the Investigating Authority or competent authority to the WTO is hereby authorised, as well as any other notifications that may be made as and when may be necessary or required.

Article 9
Proceedings

1. Unless otherwise provided, the Sub-Committee on Trade Remedies shall, for purposes of proceedings during the investigations, have the full powers required to undertake the investigations and for this purpose may exercise powers conferred under commissions of enquiry in the Tripartite Member States.
2. The Sub-Committee on Trade Remedies may conduct investigations and reach its determinations in accordance with agreements of the WTO governing trade remedies.