

Annex 14

Annex on Non-Tariff Barriers

Under Article 10(2) of the Agreement

Article 1 Definition

In this Annex, as provided for under Article 10(2) of the Tripartite Free Trade Area (TFTA) Agreement, except where the context otherwise requires:

“Agreement” refers to the Tripartite Free Trade Area Agreement;

“Customs duties” means duties laid down in the Customs tariff to which goods are liable on entering or leaving the Customs territories of the Tripartite Member States

“Export” with its grammatical variations and cognate expressions, means to take or cause goods to be taken out of the customs territory;

“FTA” refers to Free Trade Area;

“Goods” includes all wares, articles, merchandise, animals, matter, baggage, stores, materials, currency and includes postal items other than personal correspondence, and where any such goods are sold under the auspices of this Annex the proceeds of sale;

“Import” with its grammatical variations and cognate expressions, means to bring or cause goods to be brought into the customs territory;

“Person” means natural and legal persons

“Publications” means printed material in hard or soft form;

“Safeguard measures” means protective measures taken by a Tripartite Member State to prevent serious injury to her economy as provided under this Annex; or an emergency action on unexpected build-up of imports of particular products causing or threatening to cause serious injury to industries of importing country;

“Tripartite Member States” means the Member States of COMESA or EAC or SADC under the respective provisions of the COMESA or EAC or SADC Treaty;

“Tariff” means any customs duty on imports or exports;

“Tripartite Task Force” means the Secretary General of COMESA, the Secretary General of the EAC and the Executive Secretary of SADC acting collectively;

Article 2 Objectives

This Annex provides for a Mechanism for the Elimination of Non-Tariff Barriers based on a common systematic elimination of Non-Tariff Barriers within the tripartite FTA arrangements. The Mechanism provides for the following:

- (a) Institutional structures for the elimination of NTBs;
- (b) General Classification of Non-Tariff Barriers in EAC, COMESA and SADC;
- (c) Reporting and Monitoring tools;
- (d) Facilitation of Solutions to identified Non-Tariff Barriers Penalty system.

Article 3 General Categorisation of Non-Tariff Barriers

The WTO has categorised Non-Tariff Barriers into seven categories, namely:

- (a) Government Participation in Trade and Restrictive Practices Tolerated by Government:-
Export subsidies, government monopoly in Export/Import, state trading, and preference given to domestic bidders/suppliers, requirement for counter trade, domestic assistance programmes for companies, discriminatory or flawed Government Procurement policies.
- (b) Customs and Administrative Entry Procedures:-
Governments imposing anti-dumping duties, arbitrary customs classification, misinterpretation of rules of origin, import licensing, decreed customs surcharges, additional customs and other charges, international taxes and charges levied on imports and other tariff measures.
- (c) Technical Barriers to Trade:-
Restrictive technical regulations and standards not based on international standards, inadequate or unreasonable testing and certification arrangements, standards disparities, Inter governmental acceptance of testing methods and standards, packaging, labeling and marking.
- (d) Sanitary and Phytosanitary Measures:-
Sanitary and phytosanitary measures, conformity assessment related to SPS/TBT, special customs formalities not related to SPS/TBT, other technical measures.
- (e) Specific Limitations:-
Quantitative restrictions, exchange controls, export taxes, quotas, import licensing requirements, proportion restrictions of foreign to domestic goods (local content requirement), minimum import price limits, embargoes, - non automatic licensing, quotas, prohibitions, quantitative safeguard measures, export restraint arrangements, other quantity control measures.
- (f) Charges on Imports:-
Prior import deposits and subsidies, administrative fees, special supplementary duties, import credit discriminations, variable levies, border taxes.

- (g) Other (Procedural Problems)
Arbitrariness, discrimination, costly, lengthy procedures, lack of information on procedures (or charges thereof), complexity and wide variety of charges and documentation requirements.

Article 4
Reporting Procedures

1. The Tripartite Member States shall establish National Monitoring Committees and National Enquiry Points/National Focal Points on NTBs which shall work closely with the Unit located in REC Secretariats.
2. The National Monitoring Committees and the National Enquiry Points/ National Focal Points together form part of the Institutional Structures at the National level for the Elimination of NTBs.

Article 5
National Monitoring Committee

1. The main function of the National Monitoring Committee is to coordinate the elimination of reported NTBs through;
 - (a) defining the process of elimination;
 - (b) confirming deadlines for action; and
 - (c) agreeing on recourse to non-action.
 - (d) Resolving NTBs
2. The structure of the National Monitoring Committee shall comprise of relevant stakeholders representing the private and public sectors.

Article 6
National Focal Point

1. The National Enquiry Point/ National Focal Point on Non-Tariff Barriers will be appointed from the Ministries responsible for commerce and external trade.
2. The main functions of the National Enquiry Point/ National Focal Point on Non-Tariff Barriers shall include;
 - (a) Implementing Tripartite framework for the removal or elimination of NTBS;
 - (b) Providing secretariat services to the National Monitoring Committee (NMC), facilitating the immediate removal of NTBs and reporting on their elimination;
 - (c) Tracking and monitoring NTBs through utilization of the reporting tools;

- (d) Providing clear guidelines to the business community on the areas identified as NTBs;
- (e) Sensitizing stakeholders on the monitoring and evaluation mechanism and NTBS reporting tools;
- (f) Providing assistance to the Tripartite Secretariat (NTBs Unit) /Facilitator in the process of resolving NTBs as necessary; and
- (g) Providing the Tripartite Secretariat (NTBs Unit) with trade regulatory requirements for all traded products for dissemination to the business community of the Tripartite Region.

Article 7
NTB Monitoring Units

The Tripartite Secretariat shall establish a Tripartite NTB Monitoring Unit (comprising of NTB Monitoring Units from each REC) whose main function will be to coordinate the elimination of NTBs through;

- (a) Tracking and monitoring NTBs affecting intra-Tripartite trade and updating regional and national plans for elimination of NTBs.
- (b) Providing clear guidelines to the Tripartite business community on resolution of identified NTBs;
- (c) Capacity building and sensitizing stakeholders on the reporting, monitoring and evaluation tools such as the web based system; and
- (d) Working closely with national focal points to ensure timely and effective resolution of identified NTBs.

Article 8

Mechanism for Identifying, Reporting and Monitoring of Non-Tariff Barriers

1. The mechanism for identifying, reporting and monitoring NTBs will facilitate the elimination of current and future NTBs within the Tripartite Region in order to consolidate the economic integration process.
2. The reporting and monitoring tools for Non-Tariff Barriers consist of a form for reporting NTBs and the public Web-based NTBs Monitoring Mechanism. These tools are subject to periodic review.

Article 9

Online NTBs Reporting and Monitoring Mechanism

1. The web based NTBs Reporting and Monitoring Mechanism will be available on websites as designated by the Tripartite Task Force.
2. The web based NTB mechanism shall enhance transparency and easy follow-up of reported and identified NTBs and Non-Tariff Measures (NTMs). The mechanism

shall be accessible to economic operators, government functionaries, secretariat experts, academic researchers and other interested parties.

Article 10

Non-Tariff Barriers Elimination Plans (Matrices)

1. Tripartite Member States shall prepare time bound NTBs Elimination Plans which are in the form of a matrix based on the WTO categorisation of NTBs.
2. Tripartite Member States shall draw up NTBs elimination plan based on the NTBs level of significance and impact on inter and intra-regional trade.
3. All outstanding NTB elimination cases shall be submitted to the Tripartite Committee on Trade and Customs for its consideration.
4. A penalty system shall be employed after all attempts have been made to find a resolution to the elimination of an NTB.

Article 11

Co-operation in the Elimination of Non-Tariff Barriers

1. The following provisions in two stages shall apply to activities undertaken by the Tripartite Member States in resolving a Non-Tariff Barrier. The provisions are flexible, expeditious, conciliatory and non-adjudicatory in nature and involve a facilitator. They promote mutually acceptable solutions to Tripartite Member States concerns regarding non-tariff barriers, while respecting the legitimate objectives of the Tripartite Member States maintaining the measures.

Stage I: Request and Response on a Specific NTB

- (a) Any Tripartite Member State (the 'requesting Member') may, individually or through the Tripartite Secretariat, initiate Stage I by submitting in writing to another Tripartite Member (the 'responding Member') a request for information regarding a non-tariff barrier. The request shall identify and describe the specific measure at issue and provide a detailed description of its concerns regarding the NTB's impact on trade. The requesting Tripartite Member shall notify its request to the Tripartite Secretariat, which shall it circulate to all Tripartite Member States.
- (b) The responding Tripartite Member State shall provide, within ten [10] days, a written response containing all the information and clarification requested. Where the responding Member considers that a response within this period is not practicable, it shall inform the requesting Member of the reasons for the delay, together with an estimate of the period within which it will provide its response.
- (c) Upon submission of the response, the responding Tripartite Member State shall notify its response directly to the requesting Tripartite Member State and the Tripartite Secretariat, which shall circulate it to all Tripartite Member States. Following the receipt of these notifications, upon the request of either the requesting or the responding Member (hereinafter referred to as "the parties"), the Tripartite Secretariat shall convene a meeting with the parties

within a specified period to *inter alia* address any outstanding issues and explore possible next steps.

Stage II: Resolution Procedures

- (a) In case the matter is not satisfactorily resolved in Stage 1, both parties shall proceed to Stage II.
- (b) Any other Tripartite Member State may submit a written request to the Tripartite Secretariat, within ten (10) days of notification that it be permitted to participate in these procedures as an interested party.

Appointment of a Facilitator

2. Upon their agreement to initiate Stage II of these procedures, the Tripartite Secretariat will serve as facilitator. Alternatively, the parties may request that an independent person agreed upon by the parties in writing serve as facilitator.

Seeking Mutually Agreed Solutions

3. The facilitator, in consultation with the parties, shall have full flexibility in organizing and conducting the deliberations under these procedures which normally should take place at the Tripartite Secretariat headquarters, unless the parties agree on any other place of mutual convenience, taking into account possible capacity constraints. The Tripartite Secretariat will develop relevant working procedures; to the extent they are relevant for the prompt resolution of the NTB in question.
 - (a) Either party may present to the facilitator and the other party any information that it deems relevant.
 - (b) The facilitator may call upon the Tripartite Secretariat to provide information or expert opinion on the matter.
4. In assisting the parties, in an impartial and transparent manner, and in bringing clarity to the NTB concerned and its possible trade-related impact, the facilitator may:
 - a) meet individually or jointly with, the parties, in order to facilitate discussions on the NTB and to assist in reaching mutually agreed solutions;
 - b) seek assistance where necessary, of relevant experts and stakeholders, after consulting with the parties; Provide any additional support requested by the parties; and
 - c) offer advice and propose possible solutions (technical opinion) for the parties provided any such opinion shall not pertain to any possible legitimate objectives for the maintenance of the measure;.
5. All meetings and information (whether provided in oral or written form) acquired pursuant to paragraphs 1, 2, 3 and 4 of these procedures shall be confidential and without prejudice to the rights of any party or other Tripartite Member States.

6. The parties shall endeavour to reach a mutually agreed solution within thirty (30) days from the commencement of the proceedings.

Outcome and Implementation

7. Upon termination of Stage II of these procedures by a party or in the event that the parties reach a mutually agreed solution, the facilitator shall issue to the parties, in writing, a draft factual report, providing a brief summary of:
 - (a) the NTB at issue in these procedures;
 - (b) the procedures followed; and
 - (c) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.
8. The facilitator shall provide the parties five (5) days within which to comment on the draft report. After considering the comments of the parties, the facilitator shall submit, in writing, a final factual report to both parties and the Tripartite Secretariat
9. If the parties reach a mutually agreed solution, such solution shall be implemented immediately and also circulated to all Tripartite Member States.
10. Pending final resolution of the NTB, the parties may consider possible interim solutions, especially if the NTB relates to perishable goods.
11. If no amicable solution is found, the parties shall resort to the Dispute Settlement Procedures of the Agreement.

Article 12 Transparency

For the purpose of transparency, the Tripartite Secretariat shall provide to Tripartite Member States, on a regular basis, a status report of notified requests and responses and of on-going and completed procedures, together with a list of any reports from facilitators.

Article 13 Technical Assistance

Tripartite Member States may request assistance from the Tripartite Secretariat and or the Secretariat of COMESA, EAC and SADC to promote their understanding of the use and functioning of these procedures or the resolution of an NTB.

Article 14 Penalty System: Compensation and Suspension of Concessions.

1. The Penalty System is a last resort mechanism and will be applied following the non-compliance of a Tripartite Member State to the outcome and implementation of the procedures in Article 11 of this Annex.
2. An affected Tripartite Member State may suspend agreed concessions (preferences) with another Tripartite Member State that violates the provisions of this Annex subject to approval by the Tripartite Council.
3. When the preferences are suspended the goods of selected sectors of the violating Tripartite Member State shall be subjected to tariff applicable to third countries.
4. The suspension of preferences shall be subjected to principles that shall be set out in the rules of procedure for the settlement of disputes as provided in Annex 13.
5. Key considerations in determining the level of suspension of preferences shall include:
 - (a) Volume and value of trade affected by the non-tariff barrier;
 - (b) Number of sectors affected by the barrier;
 - (c) Number of trading partners affected by the barrier;
 - (d) Level of preferences to be withdrawn;

Article 15 Application and Review

1. The Tripartite Council may decide to modify certain procedural aspects of the Mechanism for the Elimination of Non-Tariff Barriers.
2. The Tripartite Council shall undertake a review of the effectiveness of the Mechanism no later than 3 years after its adoption.

Article 16 Dispute settlement

1. Each Tripartite Member State shall affirm adherence to the principles for the administration and management of disputes and shall in particular:
 - (a) accord due consideration to the other Tripartite Member States' presentation or complaints;
 - (b) accord adequate opportunity for consultation on representations made by other Tripartite Member States; and
 - (c) implement in good faith any decisions made pursuant to the Tripartite dispute settlement mechanisms.

2. The implementation of this Article shall be in accordance with the Tripartite Dispute Settlement Procedures as outlined in Annex 13, which will also incorporate appropriate provisions for appeals made by any Tripartite Member State.

Article 17

Amendment of the Annex on the Elimination of Non-Tariff Barriers

1. Tripartite Member States, in accordance with the provisions of the Tripartite FTA Agreement, may amend the Annex on the Elimination of Non-Tariff Barriers.
2. The Tripartite Council may:
 - (a) with the recommendations of the Tripartite Committee on Trade and Customs, review the Mechanism for the Elimination of Non-Tariff Barriers and make such modifications as deemed necessary; and
 - (b) Approve Tripartite Member States' proposals for the amendment of the provisions of this Annex.