

## **ANNEX 5 NON-TARIFF BARRIERS**

### **Article 1 Definitions**

For purposes of this Annex, the following definitions shall apply:

- (a) **“Facilitator”** means an independent expert or person agreed upon by Interested Parties in accordance with paragraph 2.2 of Appendix 2 of this Annex;
- (b) **“Interested Party”** means a Party that is directly affected by the Non-Tariff Barriers (hereinafter referred to as NTBs) under discussion;
- (c) **“National Focal Point”** means Ministry, government department or any other authorised body as designated pursuant to Article 5 of this Annex;
- (d) **“National Monitoring Committee”** means committee of relevant stakeholders from private and public sectors as established under Article 5 of this Annex;
- (e) **“NTB Coordination Unit”** means a unit created in the Secretariat to coordinate the elimination of NTBs pursuant to Article 5 of this Annex;
- (f) **“Perishable Goods”** means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage condition; and
- (g) **“Time Bound Elimination Matrix”** means the Non-Tariff Barriers elimination plan for the removal of identified NTBs that is based on the NTBs level of impact on intra-regional trade.

### **Article 2 Objective and Scope**

1. The objective of this Annex is to implement the provisions of the Protocol on Trade in Goods concerning the elimination of NTBs.
2. Without prejudice to the rights and obligations under the World Trade Organization (WTO) Agreements, this Annex provides a mechanism for the identification, categorization and progressive elimination of NTBs within the AfCFTA.
3. This Annex provides for the following:

- (a) institutional structures for the elimination of NTBs;
- (b) general categorisation of NTBs in the AfCFTA;
- (c) reporting and monitoring tools; and
- (d) facilitation of resolution of identified NTBs.

### **Article 3** **General Categorisation**

1. State Parties may, for guiding purposes, adopt inter alia the general categorisation of potential NTBs as indicated below:
  - (a) government participation in trade and restrictive practices tolerated by Governments;
  - (b) customs and administrative entry procedures;
  - (c) technical Barriers to Trade;
  - (d) sanitary and Phytosanitary Measures;
  - (e) specific limitations; and
  - (f) charges on imports.
2. The general categorisation in paragraph 1 of this Article does not determine the legitimacy, adequacy, necessity or discrimination of any form of policy intervention used in international trade and it does not prejudice the rights and obligations of State Parties under the WTO Agreements.
3. In order to ensure that this general categorisation, sub-categories and sub-classifications evolve and adapt to the changing reality of international trade and data collection needs, the State Parties, through the Secretariat, may propose changes for consideration and concurrence by other State Parties in accordance with Article 17 of this Annex.
4. The descriptions of these categories and sub-categories form Appendix 1 of this Annex.

**Article 4**  
**Sub-Committee on Non-Tariff Barriers**

1. The Committee on Trade in Goods shall, in accordance with Article 31 of the Protocol on Trade in Goods, establish a Sub-Committee on Non-Tariff Barriers.
2. The Sub-Committee shall be composed of duly designated representatives from State Parties and shall carry out the responsibilities assigned to it under this Annex or by the Committee on Trade in Goods

**Article 5**  
**Functions of the NTB Sub-Committee**

The main functions of the NTB Sub-Committee shall be:

- (a) the development of working procedures for the implementation of this Annex;
- (b) monitoring the implementation of this Annex with a view to facilitating periodic review of the Annex and the NTBs mechanism to enhance the elimination of NTBs in the AfCFTA; and
- (c) any other NTB -related activities.

**Article 6**  
**Establishment of NTB Coordination Unit, National Monitoring Committees and the National Focal Points**

1. The Secretariat in liaison with the NTB Sub-Committee shall establish a Unit for the coordination of NTBs elimination;
2. The State Parties shall:
  - (a) Establish National Monitoring Committees and National Focal Points on NTBs;
  - (b) Provide names and addresses of designated National Focal Points to the Secretariat for circulation to States Parties; and
  - (c) The National Monitoring Committees and the National Focal Points together form part of the Institutional Structures at the National level for the Elimination of NTBs.

**Article 7**  
**Functions of the NTB Coordination Unit**

The main function of the NTB Coordination Unit, will be to coordinate the elimination of NTBs working together with the NTB Sub-Committee, National Focal Points and Regional Economic Communities (RECs) NTB Units and any other *forum* working in the same area.

**Article 8**  
**National Monitoring Committees (NMCs)**

1. Each State Party shall establish a National Monitoring Committee
2. The functions of the National Monitoring Committees shall include:
  - (a) identifying, resolving and monitoring NTBs;
  - (b) defining the process of elimination;
  - (c) confirming deadlines for action;
  - (d) agreeing on recourse due to non-action;
  - (e) defining the mandate and responsibilities of NTB institutional structures, and
  - (f) providing clear guidelines to the business community for the resolution of identified NTBs ; and
  - (g) any other related activities .
3. The National Monitoring Committee shall comprise of relevant stakeholders representing the private and public sectors.
4. Where a reported measure has been identified as an NTB, but has not been resolved, the NMC shall proceed to include it in the Time Bound Elimination Matrix for further action or resolution as provided for under Article 13 of this Annex.

**Article 9**  
**Functions of the National Focal Points**

The functions of the National Focal Points on NTBs shall include:

- (a) coordinating the implementation of the AfCFTA mechanism for the elimination of NTBs;
- (b) providing secretariat services to the National Monitoring Committees (NMC);

- (c) facilitating the removal of NTBs and reporting on their elimination;
- (d) tracking and monitoring NTBs through utilization of the reporting tools;
- (e) providing clear guidelines to the business community on the areas identified as NTBs;
- (f) sensitizing stakeholders on the monitoring and evaluation mechanism and NTBs reporting tools;
- (g) submitting reports to the Secretariat, on identified and/or resolved NTBs, for record purposes;
- (h) providing assistance to the Facilitator in the process of resolving NTBs as necessary; and
- (i) any other related activities.

**Article 10**  
**RECs NTB Monitoring Mechanisms**

1. The RECs shall establish or strengthen NTBs monitoring mechanisms responsible for:
  - (a) tracking and monitoring NTBs affecting intra-African trade and updating regional and national plans for the elimination of NTBs; and
  - (b) capacity building and sensitisation of stakeholders on the reporting, monitoring and evaluation tools such as the web based system.
2. Working closely with the NTB Sub-Committee, RECs NTB Units and National Focal Points shall ensure timely and effective resolution of identified NTBs. RECs shall cooperate in resolving identified NTBs with a view to facilitating trade.
3. RECs NTB Monitoring mechanisms shall support the NTB Coordination Unit at the Secretariat in the resolution of inter-REC NTBs.

**Article 11**  
**Procedure for Elimination and Co-operation in the Elimination of Non-Tariff Barriers**

In the elimination of NTBs, State Parties shall apply the procedures set out in Appendix 2 of this Annex.

**Article 12**  
**Mechanism for Identifying, Reporting, Resolving, Monitoring and Elimination of Non-Tariff Barriers**

1. The mechanism for identifying, reporting and monitoring NTBs will be put in place to facilitate the elimination of NTBs within the AfCFTA.
2. Any State Party or Economic Operator may register a complaint or trade concern through the mechanism provided for in Appendix 2 of this Annex.
3. State Parties are encouraged to resolve NTBs raised at intra-REC level using the resolution mechanisms in place in each REC.
4. The mechanism will address NTBs that have not been resolved at REC level, are inter-REC in nature, or are arising from State Parties that are not members of any REC.
5. The NTBs mechanism shall enhance transparency and provide for easy follow-up on progress in the resolution of reported and identified NTBs
6. The reporting and monitoring tools for NTBs shall consist of a prescribed format, forms, online or any other information, communication and technology tools which will be subject to periodic review and shall be available on websites as designated by the NTBs Sub Committee.
7. The mechanism shall be accessible to State Parties' Economic Operators, National Focal Points, REC Secretariats, academic researchers and other Interested Parties.

**Article 13**  
**Non-Tariff Barriers Elimination Matrices**

Each State Party shall prepare a Time Bound Elimination Matrix, based on the agreed categorisation of NTBs and their level of impact on intra-Africa trade.

**Article 14**  
**Transparency and Exchange of Information**

The NTB Coordination Unit shall circulate to the State Parties on a quarterly basis, a status report of notified requests and responses and of ongoing and recently resolved NTBs, together with reports from Facilitators.

**Article 15**  
**Technical Assistance**

State Parties may request for technical assistance from the Secretariat or where necessary the Secretariats of the RECs to promote their understanding of the use and functioning of procedures set out in Appendix 2 of this Annex, and the resolution of an NTB.

**Article 16**  
**Dispute Settlement**

Any dispute between the State Parties arising out of or relating to the interpretation or application of any provision of this Annex shall be settled in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes.

**Article 17**  
**Review and Amendment**

This Annex shall be subject to review and amendments in accordance with Articles 28 and 29 of the Agreement.

**APPENDIX 1**  
**General Categorization of Potential Sources of Non-Tariff Barriers**

Parts and Sections	Description
<b>Part I</b>	<p><b>Government Participation in Trade and Restrictive Practices Tolerated by Governments</b></p> <ul style="list-style-type: none"> <li>• Government aids, including subsidies and tax benefits</li> <li>• Restrictive practices tolerated by governments</li> <li>• Other</li> </ul>
<b>Part II</b>	<p><b>Customs and Administrative Entry Procedures</b></p> <ul style="list-style-type: none"> <li>• Customs valuation</li> <li>• Customs classification</li> <li>• Consular formalities and documentation</li> <li>• Samples</li> <li>• Rules of origin</li> <li>• Customs formalities</li> <li>• Import licensing</li> <li>• Pre-shipment inspection and other formalities related to pre-shipment inspection.</li> <li>• Other</li> </ul>
<b>Part III</b>	<p><b>Technical Barriers to Trade</b></p> <ul style="list-style-type: none"> <li>• Technical regulations, and standards including packaging, labelling and marking requirements</li> <li>• Conformity assessments</li> <li>• Certificate of Free Sale</li> <li>• Other</li> </ul>
<b>Part IV</b>	<p><b>Sanitary and Phytosanitary Measures</b></p> <ul style="list-style-type: none"> <li>• SPS measures including chemical residue limits, disease freedom, specified product treatment, etc.</li> <li>• Conformity assessments</li> <li>• Other</li> </ul>



<b>Part V</b>	<b>Specific Limitations</b> <ul style="list-style-type: none"> <li>• Embargoes and other restrictions of similar effect</li> <li>• Quantitative imports and export restrictions or prohibitions</li> <li>• Tariff quotas</li> <li>• Other</li> </ul>
<b>Part VI</b>	<b>Charges on Imports</b> <ul style="list-style-type: none"> <li>• Prior import deposits</li> <li>• Surcharges, port taxes, statistical taxes, etc.</li> <li>• Credit restrictions</li> <li>• Border tax adjustments</li> <li>• Other</li> </ul>
<b>Part VII</b>	<b>Other</b> <ul style="list-style-type: none"> <li>• Transport, Clearing and Forwarding</li> </ul>

## **APPENDIX 2**

### **Procedure for Elimination and Co-operation in the Elimination of Non-Tariff Barriers**

In the elimination of NTBs, the AfCFTA State Parties shall resort to the following procedures:

1. State Parties shall, in line with Article 10 above, exhaust existing NTB elimination channels at REC level before escalating a complaint or trade concern to the AfCFTA level.
2. Where State Parties fail to reach agreement on the resolution of a complaint using REC based NTB mechanism, or the complaint has arisen from inter-REC trade, the State Parties shall proceed as follows:

#### **2.1. Stage I: Request and Response on a Specific NTB**

2.1.1 Any State Party (the 'requesting State Party') may, individually or jointly with other States Parties, initiate Stage I by submitting in writing or through an agreed online information and communication technology method or any other method, in accordance with Article 12.6; to another State Party (the 'responding State Party') and the Secretariat a request for information regarding a NTB as identified and reported by the requesting State Party;

2.1.2 The request shall identify and describe the specific NTB as identified and reported by the requesting State Party and provide a detailed description of its concerns regarding the NTB's impact on trade;

2.1.3 The responding State Party shall acknowledge and provide to the requesting State Party, within twenty (20) days following receipt of the request, a written response containing all the information and clarification requested. Where the responding State Party considers that a response within this period is not practicable, it shall inform the requesting State Party of the reasons for the delay, together with an estimate of the period within which it will provide its response. In all cases it shall not exceed thirty (30) days from the date of receiving the request for information unless the parties mutually agree to extend the days;

2.1.4 The responding State Party shall notify its response directly to the requesting State Party and the Secretariat for recording purposes;

2.1.5 The Secretariat shall undertake to ensure that the responding and the requesting State Parties adhere to the provisions indicated in 2.1.1 to 2.1.4 in Stage I above;

2.1.6 Where the response is acceptable to the requesting State Party, the requesting State Party shall notify the responding State Party and the Secretariat, and the

complaint shall be considered resolved. Where the parties mutually agree on a complaint as being an NTB, the National Monitoring Committee of the responding State Party shall develop an elimination plan as provided for under Article 13 of this Annex;

2.1.7 Where the response does not resolve the complaint, the requesting State Party shall notify the responding State Party and the Secretariat. The Secretariat shall convene a meeting with the parties within twenty (20) days from the date of receiving the notification to, inter alia, address the outstanding complaint;

2.1.8 In case the matter is not satisfactorily resolved in Stage I, both parties shall by mutual consent and through a written and signed agreement proceed to Stage II;

2.1.9 Any other State Party may submit a written request to the Secretariat to participate in these procedures as an interested party within ten (10) days from the date of circulation of the decision to proceed to Stage II;

2.1.10 Pending final resolution of the NTB, the parties may consider possible interim solutions, especially if the NTB relates to perishable goods;

2.1.11 In case of perishable goods, the issue shall be dealt with within ten (10) days;

2.1.12 Once initiated, Stage I shall be terminated upon request of either party; and

2.1.13 Stage I proceedings shall not exceed a total of sixty (60) days unless otherwise mutually agreed by the parties.

## **2.2 Stage II: Use of a Facilitator to Resolve Complaints**

### **2.2.1 Appointment of a Facilitator**

- a) Upon initiation of Stage II of these procedures, the Secretariat shall coordinate the appointment of an independent expert/person acceptable to the parties to serve as Facilitator;
- b) Facilitators shall be drawn from a pool of experts whose selection and appointment shall be in accordance with agreed criteria and procedures to be developed by the NTBs Sub-Committee;
- c) The parties shall jointly agree on the terms of reference for Facilitator; and
- d) Upon initiation of this Stage II, the parties shall agree upon the Facilitator within ten (10) days.

## **2.2.2 Seeking Mutually Agreed Solutions**

- a) Either party shall present to the Facilitator and the other party any information that it deems relevant.
- b) 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 Secretariat Headquarters, unless the parties agree on any other place of mutual convenience, taking into account possible capacity constraints;
- c) In assisting the parties, in an impartial and transparent manner with a view to bringing clarity on the NTB concerned and its possible trade-related impact, the Facilitator may:
  - i. with the support of the NTB Sub Committee, call upon the Secretariat or any other relevant resource to provide the Facilitator with any requested information;
  - ii. meet individually or jointly with, the parties, in order to facilitate discussions on the NTB and to assist in reaching mutually agreed solutions;
  - iii. seek assistance where necessary, of relevant experts and stakeholders, after consulting with the parties;
  - iv. provide any additional support requested by the parties; and
  - v. 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.
- d) The parties shall engage each other with a view to reaching a mutually agreed solution within forty-five (45) days from the commencement of the proceedings in Stage II.

## **2.2.3 Outcome and Implementation**

- a) 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, within ten (10) days, issue to the parties in writing, a draft factual report providing a brief summary of the following:
  - i) the NTB at issue in these procedures;
  - ii) the procedures followed;
  - iii) any mutually agreed solution as the final outcome of these procedures, including possible interim solutions; and
  - iv) any areas of disagreement shall be recorded by the parties.
- b) The Facilitator shall provide the parties ten (10) 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 Secretariat within ten (10) days of receiving the comments.

- c) If the parties reach a mutually agreed solution, such solution shall be implemented and also circulated to all State Parties through the Secretariat. Such solution shall be implemented in accordance with an elimination plan as provided for under Article 13 of this Annex;
- d) Where a State Party fails to resolve an NTB after a factual report has been issued and a mutually agreed solution has been reached, the requesting State Party may resort to the dispute settlement stage;
- e) Notwithstanding the provisions herein parties may agree to submit the matter to arbitration in accordance with the provisions of the Protocol on the Rules and Procedures on the Settlement of Disputes.

#### **2.2.4 Confidentiality**

- a) All meetings and information whether provided in oral or written form acquired pursuant to Stages I and II of the procedures set out in this Appendix shall be confidential and without prejudice to the rights of any party or other State Party in any dispute settlement proceeding under the Dispute Settlement procedures. The obligation of confidentiality does not extend to factual information already existing in the public domain;
- b) Nothing in this Appendix shall require State Parties to disclose confidential information, which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private; and
- c) Any third party admitted to the procedures shall be bound by the confidentiality requirements pursuant to these procedures.