

## ANNEX 9 TRADE REMEDIES

### Article 1 Definitions

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

- (a) **“AfCFTA Guidelines”** means the Guidelines on Implementation of Trade Remedies;
- (b) **“Domestic Industry”** means the producers of the like product, (or directly competitive products in safeguards) in the importing State Party whose collective output represents a major portion of the total domestic production of that product;
- (c) **“Dumping”** is when a product is introduced into the commerce of another State Party at less than normal value; if the export price of the product exported from one State Party to another is less than the comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting State Party;
- (d) **“Injury”** means material injury or threat of material injury to a domestic industry or material retardation of the establishment of an industry;
- (e) **“Serious Injury”** in relation to safeguards means significant overall impairment in the position of a domestic industry;
- (f) **“Interested Parties”** shall include:
  - (i) an exporter or foreign producer or the importer of a product subject to investigation or a trade or business association a majority of the members of which are producers, exporters or importers of such product;
  - (ii) a producer of the like product in the importing State Party or a trade and business association a majority of the State Parties of which produce the like product in the territory of the importing State Party;
  - (iii) the government of the third country of origin and of the exporting State Party of the product under investigation; and
  - (iv) any other domestic or foreign party determined by the investigating authority;
- (g) **“Investigating Authority”** means the authority charged with the responsibility of conducting trade remedies investigations in a State Party;
- (h) **“Properly Documented Application”** means a written complaint made by or on behalf of the domestic industry in the required format;

- (i) **“Safeguards”** means a measure adopted by a State Party where a product is being imported into its territory in such increased quantities, absolute or relative to its domestic production, and under such conditions as to cause or threaten to cause serious injury to its domestic industry that produces like or directly competitive products; and
- (j) **“Threat of Serious Injury”** shall be understood to be serious injury that is clearly imminent. A determination of the existence of a threat of serious injury shall be based on facts not merely on allegation, conjecture or remote possibility.

## **Article 2**

### **Application of Anti-dumping, Countervailing and Safeguard Measures**

State Parties may, with respect to goods traded under the provisions of this Annex, apply anti-dumping, countervailing and safeguard measures as provided for in Articles –17 - 19 of the Protocol on Trade in Goods, this Annex and the AfCFTA Guidelines in accordance with relevant WTO Agreements.

## **Article 3**

### **Application of Global Safeguard Measures**

State Parties confirm their rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

## **Article 4**

### **Application of Preferential Safeguard Measures**

1. Where, as a result of implementing the Agreement, any product originating in a State Party is being imported into the territory of another State Party in such increased quantities, absolute or relative to domestic production, and under such conditions so as to cause or threaten to cause Serious Injury to the Domestic Industry of like or directly competitive products, such a State Party may apply preferential safeguard measures under the conditions and in accordance with the procedures laid down in this Annex and the AfCFTA Guidelines.
2. A State Party intending to apply definitive preferential safeguard measures shall, before applying such measures, supply the other State Parties concerned with all relevant information, with a view to seek a solution acceptable to all State Parties concerned.
3. The State Party shall examine the information provided in paragraph 2 of this Article in order to facilitate a mutually acceptable resolution of the matter.
4. Where no resolution is reached, the importing State Party may apply preferential safeguard measures as provided for by this Article.
5. The preferential safeguards measures referred to in paragraph 4 of this Article shall immediately be notified to the Secretariat which shall notify all other State Parties.

6. The preferential safeguard measure shall be applied only to the extent necessary to prevent or remedy Serious Injury or threat thereof and to facilitate adjustment following an investigation by the importing State Party under the procedures established in this Annex and the AfCFTA Guidelines.
7. Preferential safeguard measures shall not exceed a period of four (4) years and shall contain clear indications of their progressive elimination at the end of the determined period. The preferential safeguard measure may be extended for another period not exceeding four (4) years, subject to justification by the Investigating Authority.
8. A State Party shall not apply a global safeguard measure simultaneously with the preferential safeguard measure on the same product within the AfCFTA.

### **Article 5 Provisional Safeguard Measures**

1. In critical circumstances where delay would cause damage which would be difficult to repair, the State Party concerned may take a provisional preferential safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused, or are threatening to cause Serious Injury.
2. The State Party intending to apply such a provisional safeguard measure shall, prior to such application, immediately notify the Secretariat and State Parties concerned.
3. The duration of the provisional safeguard measure shall not exceed two hundred (200) days, during which period the pertinent requirements of this Annex and the AfCFTA Guidelines shall be met. The duration of such provisional safeguard measures shall be counted as part of the initial period and any extension referred to in this Annex and the AfCFTA Guidelines.
4. Such measures shall take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in this Annex and the AfCFTA Guidelines does not determine that increased imports have caused or threatened to cause Serious Injury to a Domestic Industry.

### **Article 6 Notification**

1. In anti-dumping investigations, the Investigating Authority shall avoid, unless a decision has been made to initiate an investigation, any publicising of the application of initiation of any investigation according to the Anti-dumping Agreement, this Annex and the AfCFTA Guidelines. However, after receipt of a properly documented application, and before proceeding to initiate an investigation, the Investigating Authority shall notify the State Party concerned.
2. In subsidies and countervailing investigations, where the Investigating Authority is satisfied that there is sufficient evidence to justify the initiation of an investigation, the State Parties shall be notified.

3. In global safeguard investigations, a State Party shall immediately notify all State Parties of such initiation of the global safeguard investigations according to the WTO Agreement on Safeguards.
4. In preferential safeguard investigations, a State Party shall immediately notify such initiation of the preferential safeguard investigations according to this Annex and the AfCFTA Guidelines.

### **Article 7 Consultation**

1. Once an Investigating Authority of a State Party has received a properly documented application in subsidies and countervailing cases, from its representative Domestic Industry, or upon its own initiative and upon establishment of a prima facie case, such State Party shall hold consultations as provided for in the AfCFTA Guidelines.
2. In preferential safeguard investigations an Investigating Authority of the State Party shall initiate consultations immediately after the provisional safeguard measure is taken.
3. An Investigating Authority intending to apply or extend the period of a safeguard measure shall provide adequate opportunity for prior consultations with the State Parties with substantial interest.
4. Where a mutually agreed solution is reached following consultation, a written agreement on the terms agreed upon shall be produced and the State Party concerned shall notify the Secretariat.
5. The written agreement referred to in paragraph 4 of this Article shall bind the State Parties involved and shall be implemented as provided for in the AfCFTA Guidelines.
6. If no agreed solution is reached, the State Party requesting the consultations shall proceed to initiate and complete its investigation and to implement appropriate measures in accordance with the provisions of the relevant WTO Agreements, this Annex and the AfCFTA Guidelines.

### **Article 8 Confidentiality**

Information which is by nature confidential, or which is provided on a confidential basis by State Parties to an investigation, shall be treated as such by the Investigating Authorities and shall not be disclosed without specific permission of the parties submitting it.

## **Article 9 Transparency**

1. All Interested Parties shall have an opportunity to defend their interests.
2. Notwithstanding paragraph 1 of this Article, there shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case.
3. Interested Parties shall have the right, on justification, to present information orally.
4. Oral information referred to in paragraph 3 of this Article shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other Interested Parties.

## **Article 10 Technical Assistance**

Technical Assistance to State Parties shall be provided by the Secretariat in collaboration with partners, on request by such State Parties, in order to enhance the capacities of State Parties in the application of trade remedies measures in accordance with the provisions of this Annex and the AfCFTA Guidelines.

## **Article 11 Capacity Building and Cooperation**

1. The Secretariat shall in collaboration with partners facilitate training and capacity building programmes in order to assist State Parties with the implementation of trade remedies as provided for in this Annex and the AfCFTA Guidelines, in the adoption of the necessary national legislation, the establishment of national investigating authorities and other required institutions, the training of officials and other stakeholders involved in the implementation of this Annex and the AfCFTA Guidelines.
2. State Parties are encouraged to cooperate in the area of trade remedies specifically in the dissemination of information to all relevant AfCFTA stakeholders and private parties.

## **Article 12 Sub-Committee on Trade Remedies**

1. The Committee for Trade in Goods shall, in accordance with Article 31 of the Protocol on Trade in Goods, establish a Sub-Committee on Trade Remedies.
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 13**  
**AfCFTA Guidelines on Implementation of Trade Remedies**

1. The AfCFTA Guidelines on the Implementation of Trade Remedies shall, upon adoption, form an integral part of this Annex.
2. Pending the adoption of the AfCFTA Guidelines, the relevant provisions of the WTO Agreements, national legislation and regional economic communities agreements relating to trade remedies may apply, where applicable.

**Article 14**  
**Dispute Settlement**

Any dispute between the State Parties arising out of or relating to the interpretation or application of any provision of this Annex and its Guidelines, shall be settled in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes taking into account the special nature of trade remedies.

**Article 15**  
**Review and Amendment**

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



# **ANNEXES TO THE PROTOCOL ON RULES AND PROCEDURES ON THE SETTLEMENT OF DISPUTES**

## **Annex 1**

### **WORKING PROCEDURES OF THE PANEL**

#### **Under Article 15 (10)**

1. The Panel shall meet in closed session. Any other party shall be present at the meetings only when invited by the Panel to appear before it.
2. The deliberations of the Panel and the documents submitted to it shall be kept confidential. Nothing in this Protocol shall preclude a Party to a Dispute from disclosing statements of its own position to the public.
3. Parties to a Dispute and any other party shall treat as confidential all information presented by another Party to a Dispute to the Panel which that Party to a Dispute has designated as confidential.
4. Where a Party to a Dispute or a Third Party submits a confidential version of its written submissions to the Panel, it shall also, upon request by a Party to a dispute, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.
5. Before the first substantive meeting of a Panel with the Parties to a Dispute, the Panel shall request the Parties to a Dispute to submit written submissions presenting the facts of the case and arguments of the parties to the Dispute.
6. At the first substantive meeting of the Panel, the Complaining Party shall present its case and immediately thereafter the Party against whom the complaint is brought shall present its case.
7. Third Parties who notify their interest in a dispute to the DSB shall be invited in writing to present their views at a session of the first substantive meeting set aside for that purpose and may be present during the entire session.
8. The Parties to a dispute shall submit their written rebuttals to the Panel prior to the second substantive meeting. Formal rebuttals shall be made at the second substantive meeting of the Panel and the Party against whom a complaint is brought shall have the right to be heard first.
9. The Panel may at any time request the Parties to a Dispute for written or oral explanations at a meeting in which the Parties to the Dispute are present. Oral explanations shall be taken into account by the Panel only in so far as it is subsequently reproduced in writing and made available to other Parties. The Parties to the Dispute and any Third Party invited to present its views in accordance



with Article 13 of the Protocol on Rules and Procedures on the Settlement of Disputes, shall make available to the Panel a written version of their oral statements.

10. In the interest of transparency, presentations, rebuttals and statements including the submissions of the Parties to a Dispute shall be made available to the other Party or Parties without undue delay.

11. Each Party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the Panel, shall be made available to the Party to the dispute or Third parties.

12. The Panel shall adopt a time table in accordance with Article 15 (2) and 15 (3) of the Protocol, taking into account the timetable proposed hereunder:

a) receipt of first written submissions of the parties:

(i) Complaining Party: 3-6 weeks

(ii) Party complained against: 2-3 weeks

b) date, time and place of first substantive meeting with the Parties:

(i) Third Party sessions: 2 weeks

(ii) Receipt of written rebuttals of the Parties: 2-3 weeks

c) date, time and place of second substantive meeting with the Parties: 1-2 weeks

d) Issuance of descriptive part of the report to the Parties: 2-4 weeks

e) receipt of comments from the Parties on the descriptive part of the report: 2 weeks

f) issuance of the interim report, including the findings and conclusions, to the parties: 2-4 weeks

g) deadline for party to request review of part(s) of report: 1 week

h) period of review by Panel, including

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| possible additional meeting with parties:                | 2 weeks |
| i) issuance of final report to parties to the dispute:   | 2 weeks |
| j) circulation of the final report to the State Parties: | 3 weeks |

## **Annex 2**

### **Expert Review Groups**

The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 6 of Article 16 of the Protocol on the Rules and Procedures on the Settlement of Disputes:

- (a) experts shall be under the Panel's authority. Their terms of reference and detailed working procedures shall be decided by the Panel, and they shall report to the Panel;
- (b) participation as experts shall be restricted to persons of professional standing and experience in the field in question;
- (c) citizens of Parties to the Dispute shall not serve as experts without the joint agreement of the Parties to the Dispute, except in exceptional circumstances where the Panel considers that the need for specialised scientific expertise cannot be fulfilled otherwise;
- (d) government officials of Parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve as experts in their individual capacities and not as government representatives, nor as representatives of any organisation. Governments or organisations shall therefore not give them instructions with regard to matters before them;
- (e) experts may consult and seek information and technical advice from any source they deem appropriate. Before an expert seeks information or advice from a source within the jurisdiction of a State Party, that expert shall inform the government of that State Party. Any State Party shall respond promptly and fully to any request by an expert for such information as the expert considers necessary and appropriate;
- (f) the Parties to a Dispute shall have access to all relevant information provided to an expert, unless it is of a confidential nature. Confidential information provided to the expert shall not be disclosed without formal authorisation from the government, organisation or person providing the information. Where such information is requested from the expert but release of such information by the expert is not authorised, a non-confidential summary of the information will be provided by the government, organization or person supplying the information; and
- (g) the expert shall submit a draft report to the Parties to the Dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the Dispute when it is submitted to the Panel. The final report of the expert shall be advisory only.

## **Annex 3**

### **CODE OF CONDUCT FOR ARBITRATORS AND PANELISTS**

#### **Article 1**

##### **Commitment to the Process**

1. The arbitrators and Panelists shall abide by the terms of the Agreement.
2. The arbitrators and Panelists shall be independent and impartial, shall avoid direct or indirect conflict of interest and shall respect the confidentiality of the proceedings as provided in the Protocol on Rules and Procedures on the Settlement of Disputes so as to preserve the integrity and impartiality of the dispute settlement mechanism.

#### **Article 2**

##### **Disclosure Obligations**

1. To ensure the observance of this Code, each arbitrator and Panelist shall prior to the acceptance of their selection disclose the existence of any interest, relationship or matter that they could reasonably be expected to know and that is likely to affect or could raise justifiable doubt as to the arbitrator or Panelist's independence or impartiality, including public statements of personal opinion on issues relevant to the Dispute and any professional relationship with any person or organisation with an interest in the case.
2. The disclosure obligation referred to in paragraph 1 of this Article shall be a continuing duty which requires an arbitrator or Panelist to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The arbitrator or Panelist shall disclose such interests, relationships or matters to the DSB in writing, for consideration by the Parties.

#### **Article 3**

##### **Duties of Arbitrators and Panelists**

1. Upon selection, an arbitrator or a Panelist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceedings, with fairness and diligence.
2. An arbitrator or Panelist shall consider only those issues raised in the proceedings and necessary for an award. They shall not delegate this duty to any other person.

3. An arbitrator or Panelist shall not engage in *ex parte* contact concerning the proceedings.
4. Experts shall notify the Panel of arbitrators about any attempt to interfere in the proceedings or in the missions that are entrusted to them by any Party

#### **Article 4**

##### **Independence and Impartiality of Arbitrators and Panelists**

5. An arbitrator or Panelist shall exercise his or her position without accepting or seeking instruction from any government, inter-governmental, or non-governmental organisation or any private source.
6. An arbitrator or Panelists shall not have intervened in any previous stage of the dispute assigned to him or her.
7. An arbitrator or Panelist shall be independent and impartial and shall not be influenced by self-interest, political considerations or public opinion.
8. An arbitrator or Panelist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere with, or which could give rise to justifiable doubts as to, the proper performance of his/her duties.
9. An arbitrator or Panelist may not use his/her position on any Panel to advance any personal or private interests.
10. An arbitrator or Panelist shall not allow financial, business, professional, family or social relationships, to influence his or her conduct, judgment or impartiality.

#### **Article 5**

##### **Confidentiality**

1. Any current or former arbitrator or Panelist shall not at any time, disclose or use any confidential information concerning a proceeding or acquired during proceedings except for the purposes of those proceedings and shall not disclose or use any such confidential information to gain personal advantage or advantage for others or to adversely affect the interest of others.
2. An arbitrator shall not disclose the contents of an award prior to its publication.
3. A Panelist shall not disclose the contents of a Panel report prior to its circulation to the State Parties.

4. Any current or former arbitrator or Panelist shall not at any time disclose the deliberations of a Panel, arbitration proceedings or any Panelist's view.
5. Any current or former arbitrator or Panelist that breaches or discloses any confidential information concerning the proceedings shall be subject to sanctions as shall be deemed fit by the DSB.