
THE EAST AFRICAN COMMUNITY

ACT SUPPLEMENT

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THE EAST AFRICAN COMMUNITY ELIMINATION OF NON-TARIFF
BARRIERS ACT, 2017

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SCHEDULE

**THE EAST AFRICAN COMMUNITY ELIMINATION
OF NON-TARIFF BARRIERS ACT, 2017.**

An Act of the Community to provide for the elimination of non-tariff barriers in the Community and to provide for other related matters.

Date of assent 22nd April, 2017.

Date of commencement 27th October, 2017.

ENACTED by the East African Community and assented to by the Heads of State.

PART I—PRELIMINARY PROVISIONS

1. (1) This Act may be cited as the East African Community Elimination of Non-Tariff Barriers Act, 2017. Short title.

2. In this Act, unless the context otherwise requires— Inter-pretation.

“affected party” means a person who is adversely affected by the imposition of or continued application of a non-tariff barrier;

- “Community” means the East African Community established by Article 2 of the Treaty;
- “Council” means the Council of Ministers of the Community established by Article 9 of the Treaty;
- “East African Community Committee on Trade Remedies” means the Committee established by Article 24 of the Protocol for the Establishment of the East African Community Customs Union;
- “East African Community Time-Bound Programme for Elimination of Identified Non-Tariff Barriers” means the time-bound programme, approved by the Council, which is for the elimination of identified and future non-tariff barriers;
- “institution” means a Ministry, department or agency of a Partner State;
- “National Focal Point” means the Ministry of a Partner State designated as such under section 8;
- “National Monitoring Committee” means the committee established by a Partner State under section 7;
- “non-tariff barriers” means laws, regulations, administrative and technical requirements other than tariffs imposed by a Partner State, whose effect is to impede trade;
- “Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania and the Republic of Uganda and any other country granted membership to the Community under Article 3 of the Treaty’

“Secretariat” means the Secretariat of the Community established by Article 9 of the Treaty;

“Treaty” means the Treaty for the Establishment of the East African Community and any annexes and protocols thereto.

3. The objective of this Act is to enhance and facilitate trade by— Objective of Act.

(a) providing a legal framework for the removal of non tariff barriers in the Community;

(b) providing for a mechanism for identifying and monitoring the removal of non tariff barriers within the Community; and

(c) removing restrictions that make importation or exportation within and outside the Community difficult or costly.

4. For the purposes of this Act, non-tariff barriers shall be categorized into— Categorisation of non-tariff barriers.

(a) the World Trade Organisation categories set out in the Schedule, which are applicable to the Partner States; and

(b) the activities specified in section 6 and any other activities as may be determined by the Council.

PART II—PROHIBITION OF ACTIVITIES THAT CREATE NON TARIFF BARRIERS

5. (1) A Partner State shall not engage in trade practices, customs procedures or impose any other measures that constitute non- tariff barriers or any other discriminatory practies. Prohibition of activities by Partner States that create non-tariff barriers.

(2) The Partner States shall review their procedures and practices to remove categories of tariff barriers set out in the Schedule, that exist in the Partner States at the commencement of this Act.

Prohibition of certain activities by public officers and institutions of Partner States.

6. (1) A public officer or an institution of a Partner State shall not engage in an activity which is not authorized by the laws of the Community or of the Partner State which—

- (a) causes an additional cost to the business of an affected party including surcharges and customs bonds;
- (b) results in wastage of time or loss of business or market including, delays in clearing imports and lengthy testing and certification procedures;
- (c) leads to ban on market entry and loss of potential markets;
- (d) amounts to a corrupt practice;
- (e) restricts business transactions in the Partner State;
- (f) does not recognize the East African Rules of Origin and which leads to additional cost for verification of the goods and loss of business; and
- (g) causes any other impediment to trade within the Community, as may be determined by the Council.

(2) A Partner State whose public officer or institution engages in any of the activities in subsection (1), shall compensate, the affected party for the loss caused by the public officer or institution, as may be determined by the East African Community Committee on Trade Remedies within thirty days.

(3) Upon failure to resolve the dispute within the time stipulated under subsection (1), the aggrieved party may petition the East African Court of Justice.

PART III—NATIONAL MONITORING COMMITTEES AND
NATIONAL FOCAL POINTS

7. (1) For the purposes of eliminating non-tariff barriers in the Community, each Partner State shall establish a National Monitoring Committee. Establishment of National Monitoring Committees.

(2) The functions of the National Monitoring Committees shall be to—

- (a) outline the process of elimination of non-tariff barriers in the Partner State;
- (b) monitor the process of elimination of the non-tariff barriers in the Partner State;
- (c) receive reports and complaints from affected parties, on the existence of non-tariff barriers in the Partner State;
- (d) identify, on its own initiative, a non-tariff barrier that exists in the Partner State and notify the concerned organ, institution or public authority of the Partner State of the existence of the non-tariff barrier;
- (e) make recommendations to the relevant institutions and public authorities of the Partner State on the removal of a non-tariff barrier;
- (f) refer the report or complaint of an affected party to the National Monitoring Committee of another Partner State, where the report or complaint is with regard to a non tariff barrier that exists in that Partner State;

- (g) advise the Partner State on the policies and laws that contain or lead to non-tariff barriers;
- (h) prepare for the Council, periodic reports on the elimination of non tariff barriers in the Partner State, indicating the proposed action to eliminate the non-tariff barriers in each Partner State; and

(3) The National Monitoring Committee shall consist of such representatives of the relevant Government institutions and the private sector, as a Partner State may consider necessary.

National
Focal
Points.

8. (1) The Ministry responsible for East African Community Affairs in every Partner State shall be the National Focal Point for matters relating to non-tariff barriers in the Partner State.

(2) The functions of the National Focal Point shall be to—

- (a) initiate policies and strategies on the elimination of non-tariff barriers in the Partner State and for approval by the National Monitoring Committee, in accordance with Community laws and laws of the Partner State;
- (b) coordinate the activities of the National Monitoring Committee;
- (c) facilitate the implementation of the East African Community Time Bound Programme for Elimination of Identified Non-Tariff Barriers and monitor its implementation;
- (d) disseminate information to the business community within the Community on the non-tariff barriers identified in the Partner State and the steps to be taken to eliminate the non-tariff barriers;

- (e) collaborate with the National Monitoring Committees and the National Focal Points of the other Partner States to facilitate the implementation of the East African Community Time Bound Programme for Elimination of Identified Non-Tariff Barriers;
- (f) refer the report or complaint of an affected party to the National Focal Point of another Partner State, where the report or complaint is with regard to a non tariff barrier that exists in that Partner State;
- (g) track and monitor any new non-tariff barriers in the Community and notify the National Monitoring Committee of the non-tariff barriers; and
- (h) submit the periodic reports of the National Monitoring Committee to the Council.

(3) The National Focal Point shall be the secretariat of the National Monitoring Committee.

PART IV—PROCEDURE FOR ELIMINATION OF NON-TARIFF
BARRIERS

9. The non-tariff barriers within the Partner States shall be eliminated using the following mechanisms—

Elimination
of non-tariff
barriers.

- (a) mutual agreement of the concerned Partner States;
- (b) implementation of the East African Community Time Bound Programme for Elimination of Identified Non-Tariff Barriers; and

- (c) laws, regulations, directives, decisions or recommendations of the Council.

Elimination of non-tariff barriers by mutual agreement.

10. (1) When a non-tariff barrier is reported to a National Monitoring Committee or to a National Monitoring Focal Point by an affected party, the concerned Partner State or States shall as a first priority, hold discussions for the elimination of the non-tariff barrier.

(2) Where the Partner State or States do not agree on the elimination of a non-tariff barrier, the Partner State from which the affected party originates, shall notify the Secretary General and request the matter be referred to the Council.

(3) If the Partner State from which the affected party originates does not notify the Secretary General in accordance with 10 (2) within 30 days, the affected party shall have the right to notify the Secretary General directly.

(4) The notification to the Secretary General made under 10 (3) shall have the same effect as the notification given under 10 (2).

Implementation of the East African Community Time Bound Programme for Elimination of Identified Non-Tariff Barriers.

11. (1) Without prejudice to section 10, a National Monitoring Committee that receives a report or a complaint on a non-tariff barrier within the Partner State, shall investigate the report or complaint, and prepare a plan for the elimination of the non-tariff barrier, in accordance with the East African Community Time Bound Programme for Elimination of Identified Non-Tariff Barriers.

(2) The plan for elimination of non-tariff barriers, shall include—

- (a) the impact of the non-tariff barrier on the business in the Partner State and the institutions of the Partner State responsible for the non-tariff barrier;

- (b) the timeframe for the elimination of the non-tariff barrier and the performance benchmarks and means to be used to verify the elimination of the non-tariff barrier; and
- (c) the challenges that may be encountered in the process of eliminating the non-tariff barrier and the recommended solution to the challenge.

(3) For the purposes of this section, a Partner State whose affected parties are affected by a non-tariff barrier in another Partner State, may initiate the process of elimination in accordance with the East African Community Time Bound Programme for Elimination of Identified Non-Tariff Barriers by submitting to the Partner State where the non-tariff barrier exists, a notification, in writing.

(4) The notification in subsection (3) shall—

- (a) have a description of the non-tariff barrier; and
- (b) request for information regarding the non-tariff barrier.

(5) The Partner State that issues a notification shall submit a copy of the notification to the Secretary General.

(6) The Partner State that receives the notification referred to in subsection (3) shall, within ten days of receiving the notification, provide a written response to the requesting Partner State on the issues specified in the notification.

(7) Where the responding Partner State is not able to respond to a notification within ten days, the Partner State shall inform the requesting Partner State of the reasons for the delay in responding and shall submit its response within twenty-five days of receipt of the notification.

(8) The Partner State that issues a response to a notification shall submit a copy of the response to the Secretary General.

(9) Where a Partner State fails to resolve a matter relating to a non-tariff barrier, the Secretary General shall, within fifteen days of receipt of the response, convene a meeting of the concerned Partner States, to resolve a matter relating to the non-tariff barrier.

Reference
to the
Council.

12. (1) Where the concerned Partner States fail to eliminate a non-tariff barrier under sections 10 or 11, the Secretary General shall refer any matter that is not resolved, to the Council.

(2) The Council shall consider the matter referred to it under subsection (1) and shall issue a directive, decision or recommendation with regard to the elimination of the non-tariff barrier in question or refer the matter to the East African Community Committee on Trade Remedies.

(3) Where the Council refers a matter to the East African Community Committee on Trade Remedies, the Committee shall submit a copy of its decision to the Council.

(4) Any person aggrieved by a directive, decision or recommendation of the Council under subsection (2), or a decision of the East African Community Committee on Trade Remedies under subsection (3), may refer such matter to the East African Court of Justice.

PART V—GENERAL PROVISIONS

Temporary
measures by
Partner
States.

13. (1) This Act shall not affect the rights of a Partner State to take temporary measures, that would otherwise amount to a non-tariff barrier, where the temporary measures are in the interest of defense and security, public safety or public health.

(2) Prior to the introduction of a temporary measure, the Partner State shall inform the other Partner States of the temporary measure and where notification is not possible prior to the measures being taken, the measures and the notification shall be taken and done simultaneously.

(3) The Partner State shall inform the other Partner States of the temporary measure, the date of imposition of the measure and the period of existence of the measure which measures shall not exceeds 12 months.

(4) A process for the review of temporary measures by the Partner States shall be provided for under Regulations made under this Act.

14. (1) The Partner States shall take all the necessary steps to protect, preserve and promote the rights of persons with disabilities engaged in crossborder trade or any other commercial activity.

Protection of rights and affirmative action.

(2) The Partner States shall ensure that in the identification and elimination of non-tariff barriers under this Act gender sensitive solutions shall be preserved.

(3) Affirmative action and other measures under taken to address issues of equality and equity in the Community shall not be construed to constitute a non-tariff barrier.

15. The National Focal Points of the Partner States shall furnish each other with information, official reports and documents on matters relating to the non-tariff barriers in their respective Partner States.

Exchange of information.

16. (1) The Council shall, in addition to the functions in section 12, generally coordinate and monitor the elimination of non-tariff barriers in the Partner States.

Role of the Council in the elimination of non-tariff barriers.

(2) For the purposes of subsection (1), the Council shall at least annually—

- (a) receive reports of the non-tariff barriers that exist in the Partner States which reports shall be tabled in the Assembly for consideration;
- (b) cause the Secretariat to compile and disseminate information on the non-tariff barriers existing in the Partner States;
- (c) advise the Partner States on the elimination of non-tariff barriers; and
- (d) cause the East African Community Time Bound Programme for Elimination of Identified Non-Tariff Barriers to be updated, as may be necessary.

Sanctions.

17. The Council may recommend to the Summit to impose, as may be appropriate, any sanction against a Partner State that fails to comply with any directive, decision or recommendation of the Council.

Regulations.

18. The Council may make Regulations generally for giving effect to the provisions of this Act.

Act to take precedence.

19. This Act shall take precedence over the laws of the Partner States with respect to any matter to which its provisions relate.

SCHEDULE

section 4

**World Trade Organization Categories of Non-Tariff Barriers
Which Are Applicable To The Partner States**

- | | |
|--|--|
| <p>1. Export subsidies, government monopoly in export and import, state trading and preference given to domestic bidders or suppliers, requirement for counter trade, domestic assistance programmes for companies, discriminatory or flawed Government procurement policies.</p> | <p>Government participation in trade and restrictive practices tolerated by Government</p> |
| <p>2. 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.</p> | <p>Customs and administrative entry procedures</p> |
| <p>3. Restrictive technical regulations and standards not based on international standards, inadequate or unreasonable testing and certification arrangements, disparities in standards, inter governmental acceptance of testing methods and standards, packaging, labeling and marking.</p> | <p>Technical barriers to trade</p> |
| <p>4. Sanitary and Phyto sanitary Measures, conformity assessment related to SPS/TBT, special customs formalities not related to SPS/TBT, other technical measures.</p> | <p>Sanitary and Phyto-sanitary Measures</p> |
| <p>5. Quantitative restrictions, exchange control, 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.</p> | <p>Specific limitations</p> |
| <p>6. Prior import deposits and subsidies, administrative fees, special supplementary duties, import credit discriminations, variable levies, border taxes.</p> | <p>Charges on imports</p> |

*East African Community
Elimination of Non-Tariff Barriers Act, 2017*

Other
(procedural
problems)

7. Arbitrariness, discrimination, costly procedures, lack of information on procedures or on charges, requirement for complex or a wide variety of charges and documentation.