International Trade and Investment Practicum

EAST AFRICAN COMMUNITY: NON-TARIFF BARRIERS & TRADE FACILITATION
Final Report

18 April 2018

Kingston, Ontario, Canada

Submitted by

Blake Van Santen, Isabella Mira & Tristan McLeod

To :   Geoffrey Osoro,
       East African Community Secretariat, Customs & Trade Directorate
       Afrika Mashariki Road
       P.O. Box 1096
       Arusha, United Republic of Tanzania

FOREWORD

TRADELAB

International rules on cross-border trade and investment are increasingly complex. There is the WTO, World Bank and UNCTAD, but also hundreds of bilateral investment treaties (BITs) and free trade arrangements ranging from GSP, EU EPAs and COMESA to ASEAN, CAFTA and TPP. Each has its own negotiation, implementation and dispute settlement system. Everyone is affected but few have the time and resources to fully engage. TradeLab aims to empower countries and smaller stakeholders to reap the full development benefits of global trade and investment rules. Through pro bono legal clinics and practica, TradeLab connects students and experienced legal professionals to public officials especially in developing countries, small and medium-sized enterprises and civil society to build lasting legal capacity. Through 'learning by doing' we want to train and promote the next generation of trade and investment lawyers. By providing information and support on negotiations, compliance and litigation, we strive to make WTO, preferential trade and bilateral investment treaties work for everyone.

More at: https://www.tradelab.org

WHAT ARE LEGAL PRACTICA

Legal practica are composed of small groups of highly qualified and carefully selected students. Faculty and other professionals with longstanding experience in the field act as Academic Supervisors and Mentors for the Practica and closely supervise the work. Practica are win-win for all involved: beneficiaries get expert work done for free and build capacity; students learn by doing, obtain academic credits and expand their network; faculty and expert mentors share their knowledge on cutting-edge issues and are able to attract or hire top students with proven skills. Practicum projects are selected on the basis of need, available resources and practical relevance. Two to four students are assigned to each project. Students are teamed up with expert mentors from law firms or other organizations and carefully prepped and supervised by Academic Supervisors and Teaching Assistants. Students benefit from skills and expert sessions, do detailed legal research and work on several drafts shared with supervisors, mentors and the beneficiary for comments and feedback. The Practicum culminates in a polished legal memorandum, brief, draft law or treaty text or other output tailored to the project's needs. Practica deliver in three to four months. Work and output can be public or fully confidential, for example, when preparing legislative or treaty proposals or briefs in actual disputes.

THE JOINT INTERNATIONAL ECONOMIC LAW CLINIC AT THE UNIVERSITY OF OTTAWA AND QUEEN'S UNIVERSITY

The University of Ottawa and Queen's University offer legal practica within the framework of a Joint International Economic Law Clinic that was established in 2017 by agreement between the law faculties of the two universities. The University of Ottawa's bijural, bilingual Faculty of Law, situated in Canada's capital, has one of the richest selections of international law courses in the world. It offers specialized LLMs in international trade and investment law, global sustainability and environmental law, international humanitarian and security law, technology law, and health law. It has student clinics with real clients in these fields and is home to the internationally renowned Human Rights Research and Education Centre. Queen's University Faculty of Law provides students with a unique curriculum in international law. The International Law Programs at Herstmonceux Castle in Southern England offer summer courses in public international law and international business law. In their upper years, students can pursue further studies in a wide range of international law subjects and participate in moots on international trade law, public international law and commercial arbitration.

ABOUT THE AUTHORS

BLAKE VAN SANTEN

Blake Van Santen was born and raised in Guelph, Ontario. He completed a Bachelor of Management and Organizational Studies at the University of Western Ontario, where he also completed a Master of Arts degree in History. Over the course of his law school career, Blake has developed a decided interest in international law, completing an International Law program at the Bader International Study Centre in southern England and competing in the Jessup Public International Law Moot Competition. He is very excited to direct his energies toward helping promote trade in the East African Community.

ISABELLA MIRA

Isabella Mira was originally born in São Paulo, Brazil and moved to Canada with her family in 2006. She completed both a Bachelor of Arts in Economics and a Master of Arts in Economics at Queen's University before starting law school. Her interests in economics focused on trade, immigration, competition and public policy, which she now continues to explore in her legal career. With the Trade Law Practicum, she looks forward to working with the East African Community to achieve their trade goals, implement better trade practices, and learn from their experiences.

TRISTAN MCLEOD

Tristan McLeod was born in Edmonton, Alberta, but was raised in the suburbs of Toronto, Ontario. The son of French-Canadian parents, he is fluent in both French and English. Tristan completed a Bachelor of Commerce at McMaster University, in Hamilton, Ontario, where he focused in organizational behaviour and strategic planning. He also completed a study exchange to Singapore, where he learned about local business, as well as South-East Asian cultures. Tristan started law school in September of 2016 and has since developed an interest in trade law.

EXECUTIVE SUMMARY

Trade facilitation, or the simplification and harmonization of trade processes, has emerged as a vital element in the effort to stimulate global economic development. Simplification and harmonization of trade processes play a key role in the elimination of Non-Tariff Barriers (NTBs), reducing the cost of cross-border activities and helping states reap the benefits of international trade. NTBs have a particularly significant impact on Small and Medium-Sized Enterprises (SMEs), especially those in developing and least-developed countries (LDCs). The limited resources of these organizations mean they are more vulnerable than larger businesses to the added costs and administrative burdens that arise from NTBs. In recognition of these issues, World Trade Organization (WTO) Members negotiated the Trade Facilitation Agreement, the purpose of which is to "promote the simplification, modernization and harmonization of export and import processes." This Agreement entered into force in February 2017 following its ratification by two-thirds of the WTO membership. In essence, the Agreement aims to cut, in its various forms the "red tape" that hampers the movement of goods across borders and thereby reduce the time and costs associated with the exporting and importing of goods. It is estimated that the implementation of the TFA will reduce trade costs by an average of 14.3% and boost global trade by up to $1 trillion per year, with the biggest gains accruing to the LDCs. The Agreement was also ground-breaking due to the innovative way it permits developing countries and LDCs the freedom to determine the timing for the coming into force of their commitments under the Agreement.

 It is within the context of these global trade issues and developments that the University of Ottawa and Queen's Trade Law Practicum Team (the Team) undertook this project to assist the East African Community (EAC), the Team's beneficiary, in its efforts to eliminate regional NTBs and simultaneously assist states in the Tripartite Free Trade Area (TFTA) in meeting their obligations under the Trade Facilitation Agreement (TFA). The Team was keen to ensure that it would deliver an excellent end product capable of providing practical value to the EAC in achieving its goals. We therefore devoted our time at the outset of the project to understanding the cross-border trade issues facing TFTA traders. Once we had satisfied ourselves that we were sufficiently well versed about this aspect of the project, we turned our efforts to determining the form and attributes of a suitable deliverable for the EAC. This report and the accompanying documents comprise that deliverable and represent the culmination of our work.

The project focuses on tradebarriers.org (the Website), an online reporting tool used by the EAC and its trade partners[1] to identify and address NTBs encountered by traders in the TFTA. After thoroughly reviewing the Website's content and functionality, consulting with trade facilitation experts at the WTO and elsewhere, and discussing our findings with the EAC Secretariat, the Team identified several ways in which the tool could be improved and devised a three-part project directed at addressing these shortcomings. Specifically, the project seeks to expand the scope and utility of the Website by making it a "one-stop-shop" for trade-related information, and by linking the resolution of NTB complaints to legal obligations under the TFA. The components of the project are as follows:

- Complaint Management Framework**:** The Team created a two-part framework that (i) facilitates the accurate and consistent categorization of traders' complaints within the Website's NTB Classification System (NCS), and (ii) identifies which TFA obligations, if any, are implicated by each complaint. The former ensures that NTB information is accurately reported so that it can be more readily addressed by relevant authorities, while the latter links complaint resolution to legal obligations under the TFA and assists government agencies in fulfilling their mandates under that agreement. As a necessary first step, the Team created descriptions and objective criteria for the NTB subcategories found on the website, so that website users will be able to determine under which NTB they should log their complaint. (Currently, NTB subcategories are not described or defined, which las led to inaccurate filing of complaints under incorrect NTB subcategories.) This will enable more efficient resolution of NTB-related trading problems. Ultimately, this part of the project should create the most value for the EAC because it emphasizes the importance and relevance of trade facilitation to states in the TFTA, and grounds the resolution of complaints in binding legal obligations.

  Given the significant amount of work required for this part of the project (i.e. a two-part framework for each of the 81 categories of NTBs found in the website), it was not possible to complete this component of the project during the single academic semester available to TradeLab students. (The Team designed and then completed the framework for 23 subcategories.) Therefore, the EAC may wish to engage another researcher or another TradeLab team to complete the framework for the remainder of the NTB subcategories. Recognizing that TFA obligations will only arise in a subset of NTB complaints, the EAC

---

[1] The trade partners of the EAC and contributors to the website are the Southern Africa Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA)

may wish to consider asking future researchers or TradeLab teams to go further and associate the Website's NTB categories with other WTO agreements (e.g. the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures) in addition to the TFA.

- Website Index: The Team created an index of hyperlinks (the Index) for the Website that directs users to the websites of relevant government agencies of states in the TFTA. These links will enable users to have access to trade information, such as tariff rates, prohibited goods, document requirements and licensing procedures. In the time available, the Team was able to index the agency websites of five TFTA states, namely: Botswana, Kenya, Lesotho, Rwanda and Uganda. If this component is found useful, the EAC may wish to have the Indexing of the remaining TFTA states taken up by other researchers or future TradeLab teams. This aspect of the project will improve users' access to information and furthers the purpose of the TFA's publication obligations.

- Transition Package: As the scope of the project expanded, it became clear that the Team did not have the resources to complete each component of the project in the two remaining months of its academic year. The Team developed a guide for future research teams highlighting its methodology, strategies and suggestions, to facilitate seamless transitions between future teams.

To implement the recommendations of this report, the EAC will need to engage someone familiar with website development to input the new information provided herein (e.g. add links, NTB descriptions, adjust information) as well as a data scientist to develop and program the Complaint Management Framework. We understand, based on consultations with an expert, that this would not be overly complicated or costly. It would also be useful to conduct an awareness campaign to inform users and relevant government officials about the changes made to the Website, the reasons for making them, and the benefits anticipated in using the revised system. It may be possible to obtain assistance from the WTO or Non-Governmental Organizations (NGOs) to fund and/or undertake these activities.

CONTENTS

TABLE OF FIGURES

TABLE OF ACRONYMS AND SHORT FORMS

- **Attribute String**: Unique string of attributes associated to each NTB subcategory

- **CMS**: Complaint Management System

- **EAC**: East African Community

- **GR Class**: Class of NTB subcategories that relate to a "Decision of a Government Entity or Financial Institution."

- **LDCs**: Least-Developed Countries

- **COMESA**: Common Market for Eastern and Southern Africa

- **NTB**: Non-Tariff Barrier

- **NCF**: NTB Classification Framework

- **OEC**: The Observatory of Economic Complexity

- **Relevant Agencies**: Government agencies of TFTA states whose activities affect trade.

- **SADC**: Southern African Development Community

- **SPS Agreement**: Agreement on Sanitary & Phytosanitary Measures

- **TBT Agreement**: Agreement on Technical Barriers to Trade

- **The Team**: University of Ottawa and Queen's Trade Law Practicum Team

- **TFA**: Trade Facilitation Agreement

- **TFTA**: Tripartite Free Trade Area

- **TRALAC**: Trade Law Centre

- **Website Monitors**: Monitors

- **WTO**: World Trade Organization

1 INTRODUCTION

The Team was initially requested by the Trade Law Centre (TRALAC) to work with the East African Community (EAC) Secretariat (the Beneficiary) to "correlate information" from Tradebarriers.org and its database of complaints with obligations under the TFA". Specifically, TRALAC indicated that:

> [t]he [Tradebarriers.org] database provides a very good overview of NTBs in east and southern Africa (many of which relate to customs and border/trade facilitation issues). It would be very useful to correlate this, with what member states have committed to, in the TFA. Since the TFA brings trade facilitation into the ambit of rules-based governance, a particular shortcoming of the tradebarriers.org facility, is potentially addressed."[2]

The EAC Secretariat agreed to participate, observing that the project was "quite appropriate."[3]

After initial discussions with the EAC Secretariat, the Team began by reviewing the various components of the Website and developing a deeper understanding of the TFA to identify potential connections between the two, with a view to meeting the objective identified by TRALAC. The Team's initial proposal sought to identify which TFA provisions were already satisfied by the Website and suggest modifications that would allow it to satisfy additional TFA obligations. However, it quickly became apparent, after some study of the Website and the information it contained, that this approach was limited in scope and there was concern on the Team's part that it would create minimal value for the EAC. The Team conferred with the Beneficiary to address this concern. Resolved to maximize value for the Beneficiary, the Team refocused its attention on

---

[2] E-mail exchange between Trudi Hartzenberg, Executive Director, TRALAC, and Valerie Hughes, Adjunct Professor, Queen's University dated December 8, 2017,

[3] E-mail exchange between Trudi Hartzenberg, Executive Director, TRALAC, and Geoffrey Osoro, Trade Coordinator, dated December 14 and 15, 2017.

the Website's primary purpose: the identification, monitoring, and resolution of NTBs. The result of this refocusing process was the creation of a three-part project aimed at improving access to information and making complaint resolution faster, more effective and legally binding, while at the same time ensuring correlation with TFA obligations.

This report will begin by presenting the observations made during the Team's review of the Website. These observations identify the issues at which the Team's proposed solutions are directed. The report will then provide an in-depth analysis of these three solutions, first discussing the Complaint Management System, followed by the Website Index and the Transition Package. Finally, the paper will explicitly highlight how the solutions resolve the issues identified, and create value not only for the EAC, but for governments and traders as well. The substantive work completed by the Team (NTB subcategory descriptions, TFA links, Website Index and Transition Package, etc.) is presented in the appendices provided in the Master Folder containing this report.

2 OBSERVATIONS: IDENTIFYING THE ISSUES

The Website provides a forum for exporters and importers (henceforth referred to as traders, users or complainants) to register complaints about NTBs they encounter in the course of trade. It classifies these complaints under one of 81 NTB subcategories negotiated by the 26 members of the TFTA. The Website also allows users to review the substance of past complaints and ascertain the number of complaints by type. The inherent value of the tool was evident to the Team and we observed that it is used regularly by large numbers of traders. However, the Team's review of the Website identified a number of shortcomings that its use has made apparent. (We note that it is not unusual to require adjustments to tools such as the Website once they have been in use for a time. Issues that could not have been anticipated during the development of the tool come to light only with use, and it is therefore important to be prepared to make adjustments to such tools after they have been tested by end users.) This section identifies the Team's

observations about the Website following its analysis of the tool and specifies the suspected root cause of each issue. These observations are based on a two-month review of the Website, which included an in-depth investigation of 150 complaints, reviewing each individually.

2.1 SOME COMPLAINTS ARE MISCLASSIFIED

Suspected Cause: The NTB subcategory list is not user-friendly.

The Website requires users to self-classify their complaints under one of its 81 NTB subcategories. While simple in theory, the sheer number of subcategories from which to choose makes this a daunting task for users. The technical language of the subcategories, their apparent overlap with regards to scope and coverage, as well as the lack of descriptions or qualifying criteria for each subcategory further exacerbate this problem. The result is that some complaints are misclassified. The following examples found on the Website are illustrative:

Figure 1 – Examples of Misclassified Complaints

NTB-000-766: **In Progress**

- **Classification**: 5.13 – Other Quantity Control Measures
- **Complaint**: "Intellectual property infringement. Tanzania Food and Drugs Authority requires manufactures to disclose recipe or formulae which is an intellectual property so as to approve or register products."
- **Error**: This complaint does not fit well within this category of complaint. It would be better classified under Category _3 – Technical Barriers to Trade_ (i.e. _3.2 – Inadequate/Unreasonable Testing & Certification Arrangements_) or under another Category 5 – _Specific Limitations_ subheading (i.e. 5.5 – _Import Licensing Requirements_).

NTB-000-702: **In Progress**

- **Classification**: 2.3 – Issues Related to the Rules of Origin
- **Complaint**: "Delays in issuance of certificates by Tanzania's NEMA (National Environmental Management Authority) which has the validity for three months. It also takes three months to renew the certificate that allows Bralirwa Ltd to export broken glasses and bottles to Dar es Salaam to be recycled by KIOO Ltd. Reported in 2015."
- **Error**: Rules of origin have no apparent connection to this complaint. It would be better classified under 2.4 – _Import Licensing_ or 7.5 – _Lengthy Procedures_.

These are but two examples of misclassified complaints. In total, the Team reviewed nearly 150 of the nearly 600 complaints, identifying enough misclassified complaints to warrant addressing this issue. If the EAC requires more concrete evidence of this issue, the Team recommends that it review all 600 complaints. Please note, the NTB subcategory descriptions must be completed to clearly determine whether a complaint is misclassified or not. Nonetheless, some complaints are clearly misclassified, as the examples illustrate.

2.2 SOME COMPLAINTS ARE DUPLICATED

Suspected Cause: There may be a belief among users that complaints will only be addressed and rectified by submitting a complaint twice, thereby escalating the problem. Alternatively, there may be uncertainty as to the subcategory under which complaints should be filed.

Some complaints are submitted more than once, resulting in identical complaints under multiple NTB control numbers. This has the effect of skewing the complaint data on the Website, and unnecessarily increasing the volume of complaints submitted. It is not clear whether such complaints are duplicated accidentally or intentionally to draw added attention to the complaint. The issue could also be that users are uncertain as to the appropriate NTB subcategory for their complaint. The Team is confident, however, that the duplicated complaints are submitted by the same person or organization because they: (1) are submitted on the same date (or within a few days of each other), and (2) have NTB control numbers nearing each other in sequence. It is important to note that the issue is not that there are multiple complaints about a single NTB; rather, it is that there are identical complaints submitted more than once. Figure 2 is illustrative:

Figure 2 - Example of Duplicated Complaint

NTB-000-731: **Resolved**

- **Classification**: 6.6 – Border Taxes
- **Date Submitted**: 2017/01/01
- **Complaints**: "Introduction of fees on all motor vehicles exiting and entering Zambia. This measure will effectively increase transportation costs for both businesses and individuals. As a landlocked country which is primarily reliant on road transport, this will have major cost repercussions for all industry sectors and increase the cost of doing business, making Zambia less competitive. The Minister proposes to increase various user fees and charges to recover costs. This would include statutory fees and charges for services provided by government institutions. Unless the fee increases are matched by an increase in efficiency, this measure will have an overall detrimental effect. Effective date. All of the above measures will take effect from 1 January 2017."
- **Error**: The complaints under NTB-000-731 and NTB-000-729 are identical. The description of their resolutions is also identical.

NTB-000-729: **Resolved**

- **Classification**: 6.6 – Border Taxes
- **Date Submitted**: 2017/01/01
- **Complaints**: "Introduction of fees on all motor vehicles exiting and entering Zambia. This measure will effectively increase transportation costs for both businesses and individuals. As a landlocked country which is primarily reliant on road transport, this will have major cost repercussions for all industry sectors and increase the cost of doing business, making Zambia less competitive. The Minister proposes to increase various user fees and charges to recover costs. This would include statutory fees and charges for services provided by government institutions. Unless the fee increases are matched by an increase in efficiency, this measure will have an overall detrimental effect. Effective date. All of the above measures will take effect from 1 January 2017."
- **Error**: The complaints under NTB-000-731 and NTB-000-729 are identical. The description of their resolutions is also identical.

2.3 REJECTED COMPLAINTS ARE FILED AS RESOLVED

Suspected Cause: _System does not automatically remove rejected complaints from the database of publicly available complaints._

Some complaints are submitted about non-existent NTBs. The substance of these complaints is usually objectively inaccurate and reflects a lack of information about trade practices. As the Team understands it, when these complaints are rejected by the Focal Points, they should be filed as "rejected" and removed from the database of publicly available complaints. [4] As Figure 3 illustrates, two such rejected complaints are filed under the publicly-available "resolved" category.

**Figure 3 - Examples of Rejected Complaints Filed as Resolved**

NTB-000-259: **Resolved**

- **Classification**: 7.6 – Lack of Information on Procedures (or Changes Thereof)
- **Complaints**: "Angola effects random increases in excise duties without notifying traders in advance."
- **Resolution**: "During the NTBs national workshop held in Angola on 30 November 2011, it was reported that all tariffs and other related fees and charges are gazetted and therefore not charged in ad hoc manner. The Angola Tariff Book is published and available on Angola Customs website (www.alfandegas.gv.ao)."
- **Error**: According to Angola, it administers no random increases in duties, and publishes all fees. This resolution provided a link to Angola's Tariff Book.

NTB-000-348: **Resolved**

- **Classification**: 5.1 – Quantitative Restrictions
- **Complaints**: "Botswana regulates importation and pricing of petroleum products."
- **Resolution**: "On 22 July 2011, Botswana reported that petroleum products are not regulated."
- **Error**: According to Botswana, this complaint is false.

---

[4] Focal Points are the national organizations tasked with reviewing complaints and working with governments to develop and implement solutions.

2.4 SUMMARY

In summary, the Website is a valuable tool that provides traders with a forum for reporting NTBs. However, because of the observations above and their respective root causes, the Website is not presently reaching its full potential. The remainder of this report is dedicated to reviewing the solutions that the Team has developed to address this issue, which in turn will permit effective linking of complaints to TFA obligations.[5]

---

[5] The Beneficiary can be confident that the Team devoted considerable time and effort to arrive at its conclusions and develop solutions. Specifically, the Team spent some 50 hours reviewing NTB complaints, 10 hours conferring with TFA experts and data scientists, 39 hours in-class discussing the project and receiving feedback from supervisors and mentors, 15 hours studying the TFA and identifying obligations that might be implicated by an NTB complaint, 100 hours researching government websites, and 20 hours communicating with the EAC via Skype and email.

3 THE COMPLAINT MANAGEMENT SYSTEM

The proposed Complaint Management System (CMS) is a two-part mechanism aimed at grounding the resolution of NTB complaints in legal obligations, thereby directly addressing the initial task of *correlating* (in other words, tying or linking) Website NTB subcategories with TFA obligations. The first part of the system is the NTB Classification Framework (NCF), which plays the vital role of ensuring that complaints are filed under the correct NTB subcategories, based on objective criteria assigned to each of the 81 NTB subcategories. On its own, the NCF improves the effectiveness of the categorization system negotiated by the TFTA countries. The second part of the system connects NTB subcategories to obligations under the TFA. Together, the NCF sorts the complaints into the appropriate TFA-linked NTB subcategories, thereby identifying the TFA obligations that are implicated by the complaint. Before addressing each of these components, this section will outline the preliminary work completed by the Team in describing and assigning objective criteria to the NTB subcategories, which is essential to the operation of the CMS as a whole. For clarity, this section of the report adopts the following order:

1. NTB Subcategory Descriptions;
2. NTB Classification Framework (NCF);
3. Grounding Complaint Resolution in Legal Obligations.

3.1 NTB SUBCATEGORY DESCRIPTIONS

The proper functioning of the proposed CMS depends on having clearly defined NTB subcategories, because these will ensure accurate correlation of complaints with the relevant TFA obligations. As will be discussed, the CMS relies on questions and responses to properly categorize complaints before linking them to the TFA. To ensure questions are answered accurately, the proposed system requires that the NTB subcategories under which traders will

classify their complaints be objectively defined.[6] Upon clarifying with the EAC Secretariat that no formal definitions of the NTB subcategories existed at the time we began our work, the Team undertook to develop such definitions.[7]

It was clear that, in the time we had available, we would not be able to develop a suitable approach for categorizing the NTBs as well as develop definitions for all 81 NTB subcategories. Therefore, in consultation with the Beneficiary, we determined to complete descriptions for 25% of the subcategories. In fact, we were able to exceed these expectations. We have proposed one-sentence descriptions and key features for 23 of the 81 NTB subcategories. These descriptions clearly delimit the scope of each subcategory and objectively identify the subject-matter that is intended to fall within each of them. Further, where subcategories were very vague or overlapped significantly, the Team suggested modifications to the subcategories. Appendix I contains the NTB subcategory descriptions, attached in a separate file in the Master Folder.[8] It is intended to be a working document that could be utilized by future research teams to complete NTB subcategory descriptions.

---

[6] By "objectively defined" we mean that the language used in the description reflects common terms from the English language that would be readily understood.

[7] The Team was informed that descriptions were available to TFTA members when they were negotiating the 81 subcategories but that these are not publicly available.

[8] File: *Appendix I – NTBsc Definitions & TFA Links*.

3.2 NTB CLASSIFICATION FRAMEWORK

The NTB Classification Framework is the heart of the CMS and facilitates the accurate and consistent categorization of complaints. This component of the CMS is the linchpin to grounding the resolution of complaints in states' legal obligations under the TFA. As noted above, users presently classify their complaints by selecting from a list of 81 NTB subcategories the one that they believe best describes their complaint.[9] Figure 4 presents a screenshot of this process.

Figure 4 - Visual representation of the drop-down list of NTB subcategories on the "Register a Complaint" page of the Website
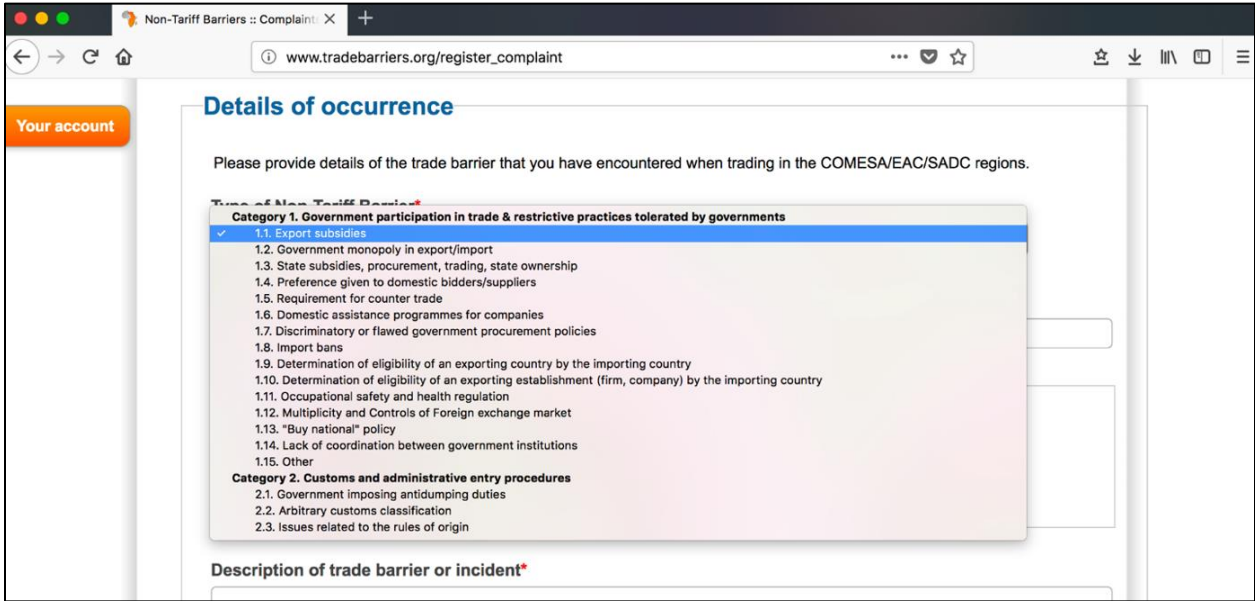
While this method of complaint classification has its merits, the extensive list of subcategories is daunting to Website users. The Team thought it would be useful to look for more effective and efficient alternatives. Accordingly, the Team developed two possible methods for the NCF: (i) the "Drive-Down" method; and (ii) the "Add-Up" method. Either NCF model would be located on the "Register a Complaint" page of the Website and would replace the drop-down list depicted above in Figure 4.

---

[9] Incorrect classifications can be corrected by system administrators. However, this has not eliminated the incidence of misclassified complaints.

The following section of the report will describe each model, then compare them to highlight the pros and cons of each, including general comments with respect to complexity and cost to implement. Subsequently, other more technical alternatives will be briefly discussed. In making these recommendations, the Team does not profess to have expertise in data science or website design. The Team's faith in the feasibility of these options reflects consultations with Professor Wolfgang Alschner, an expert in this area.[10] The Team's suggestions merely conceptualize the proposed NCF models and provide some of the substantive content for the framework. Actual implementation of the NCF, however, will require assistance from data scientists and website developers.

3.2.1 "Drive-Down" Method

The first model the team developed is called the "Drive-Down" method. This approach guides users through a series of questions that narrows down the list of NTB subcategories to a shortlist of two or three options from which the user selects the one that best describes their complaint. The process begins with a general question asking users what their complaint involves, and presents five possible responses, as shown in Figure 5 on the next page.

---

[10] Professor Wolfgang Alschner is an Assistant Professor at the University of Ottawa's Faculty of Law with a cross-appointment to the Faculty of Engineering, School of Electrical Engineering and Computer Science. He is also a faculty member of the Centre for Law, Technology and Society at the University of Ottawa. His research focuses on using social and computer science methods to empirically investigate international law. (see https://commonlaw.uottawa.ca/en/people/alschner-wolfgang) He is also the co-founder of the investment treaty analytics portal www.mappinginvestmenttreaties.com and is an academic supervisor with the University of Ottawa and Queen's University Joint International Economic Law TradeLab Clinic.

Figure 5 - Visual representation of initial guiding question under the "Drive-Down" method

Each response is linked to a fixed number of NTB subcategories grouped together based on five general characteristics, namely: (i) charges/fees/duties imposed; (ii) decisions in response to a request; (iii) trade policies; (iv) requirements or regulations; and (v) government procedures or infrastructure. Collectively, all 81 NTB subcategories are covered. Where a subcategory shares characteristics with more than one grouping (henceforth referred to as a class), it is filed under each one to ensure that complaints are properly classified.[11] By selecting a response, the subcategories not associated with it are disqualified, and the process continues.

After the initial question has been answered, the response field reloads to display a second question. The substance of this follow-up question depends upon the response to the first question. Figures 6 below contrasts the responses to the follow-up questions that result from selecting (a) and (e) in the first question.

---

[11] For example, the NTB subcategory *2.10 Unreasonable Customs Procedures and Charges* is associated with both the fees and charges class (response (a)) and the government coordination and procedures class (response (e)). This overlap is one reason why the Team has recommended that this NTB subcategory be modified (see *2.10 Unreasonable Customs Procedures and Charges* in Appendix I).

Figure 6 - Comparison of follow-up questions and responses that result dependent upon a user's answer to question 1. (Left: response (a) to Q1; Right: response (e) to Q1)

After selecting a response to the second question, the user will once again be presented with another set of responses from which to choose. Each of these responses is associated with a fixed number of NTB subcategories from the list of subcategories that were not disqualified at the previous stage. In other words, after every response, NTB subcategories that are not relevant to the complaint are filtered out and the Website's 81 NTB subcategories are progressively narrowed down to a manageable shortlist of one to three subcategories.

If the process narrows down the possible NTB subcategories for a complaint to two or three NTB subcategories, the user is asked to select the one that best describes their complaint. To facilitate the user's selection of the most accurate subcategory, each is accompanied by a brief description and key features. This information is accessed by hovering the user's cursor over the selection's corresponding question mark icon, as shown in Figure 7.[12] In contrast, if a single subcategory is identified, the complainant need only select that subcategory, and then proceed to the next steps of the submission (e.g. personal information).

---

[12] These are the NTB subcategory descriptions discussed above in Section 3.1 and listed in Appendix I.

Figure 7 - Visual representation of the NTB subcategory description and key features pop-up box
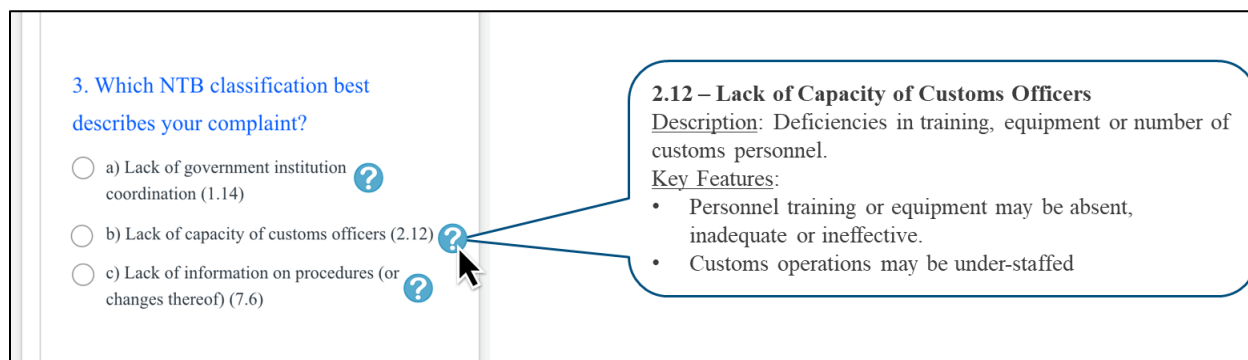
Overall, the Team has designed this question and response function to be as simple, efficient, and user-friendly as possible. With regards to accuracy of classification, provided users' responses accurately reflect the substance of their complaints, the shortlisted NTB subcategories should properly correspond to the complaint. However, if a user believes the NTB subcategories identified do not accurately reflect their complaint, they may repeat the process and change any responses they were unsure of, or that were given incorrectly. The full mapping of NTB subcategories to responses is found in Appendix II.[13] The Drive-Down model questions and responses are found in Appendix III, attached as a separate Excel file.[14]

3.2.2 "Add-Up" Method

The second method the Team developed for classifying NTB complaints is called the "Add-Up" method. Unlike the previous approach, which guides users through a series of sequential questions, this method directs complainants to respond to a comprehensive set of questions, presented simultaneously. Once the complaint is submitted, these responses are compiled to create a unique string of attributes (Attribute String). This string is cross-referenced with the NTB

---

[13] File: *Appendix II – NTB Classes & Mapping*; The information is presented using a software called XMind ZEN, which uses a proprietary ".xmind" filetype. Accessing the full mapping will thus require downloading XMind ZEN, available at http://www.xmind.net/. XMind offers a free trial. For the purpose of accessing this information without the program, the Team has also provided a PDF of this file. However, the PDF file is less user-friendly in working with the information.

[14] File: *Appendix III – NCF – Drive-Down Method*.

subcategories, each of which has one or more similar Attribute Strings attached to it. Ultimately, the subcategory under which the complaint should be classified is the one whose associated Attribute String matches the Attribute String determined by the complainant's responses.[15] Significantly, this method removes user self-selection of NTB subcategories altogether. Whereas the "Drive-Down" method narrows down the list of NTB subcategories and directs complainants to select from that shortlist, the "Add-Up" approach automatically identifies the appropriate NTB subcategory upon responding to all questions. In other words, the system, rather than the user, controls the classification of a complaint.

The process begins with the same initial guiding question used in the "Drive-Down" method, as illustrated by Figure 8. In this case, however, it is presented in a different way. Selecting a response expands a field to reveal a set of comprehensive questions unique to that response. Figure 9 illustrates the question set for answer (b).[16]

Figure 8 - Visual representation of the first question field under the "Add-Up" method

---

[15] To ensure the proper functioning of this approach, no two NTB subcategories may be associated with the same sequence of possible answers. If this were permitted, it would be necessary to have a system for dealing with competing subcategories. Thus, questions and answers must be strategically designed to avoid duplicating sequences of answers.

[16] Please note that the Team has only created the question set for answer (b). Those for answers (a) and (c) through (e) have not been created at this time. If the Beneficiary wishes to use this NCF model specifically, future research teams could resume work on this aspect of the project.

Figure 9 - Visual representation of the question set associated with answer (b) of question 1

b) A decision by a government entity or financial institution in response to a specific application or request?

1. Does the ruling relate to:
   (a) A company (b) A good (c) An individual (d) None of the above

2. If the ruling relates to a good, does it concern (if not a good, click "not applicable"):
   (a) Rules of Origin (b) Tariff classification (c) Amount of domestic value added (d) Not applicable

3. Does the ruling involve unfair, arbitrary or discriminatory practices?
   (a) Yes (b) No

4. Does the ruling relate to:
   (a) Customs (b) Immigration (c) Financing (d) Import Licensing

5. Was the ruling an abuse of power or reflect corrupt practices?
   (a) Yes (b) No

Subsequently, the user selects one answer for each of the five questions. The user is then free to proceed to the next stages of the form (e.g. personal information) and submit the complaint. Once submitted, the system compiles the responses and cross-references this sequence of answers with all the NTB subcategories falling within the "Decision of a Government Entity or Financial Institution" class (GR Class), as highlighted in Appendix IV.[17]

The following example illustrates how the Add-Up method functions in practice, using an actual complaint found on the Website. The complaint states that the Tanzania Revenue Authority is rejecting the certificate of origin of the user's product.

NTB-000-522: "Non recognition of EAC certificate of origin by Tanzania Revenue Authority for furniture products manufactured in Kenya"

Using this information to respond to the question set for answer (b), the user would respond to question 1 by choosing "(b) a good" and to question 2 by choosing "(a) Rules of Origin". Without further details provided in the complaint registered on the Website, it is unclear whether the ruling

---

[17] File: *Appendix IV – NCF – Add Up Method.*

involves unfair, arbitrary or discriminatory practices. For the purposes of this example, it will be assumed that the decision was unfair (such that for question three, the user will choose "(a) Yes". As rules of origin are a customs matter, the user would choose "(a) Customs" in responding to question 4. Finally, as there is no evidence of corruption from the complaint description, we assume the user would choose "(b) No" in answering question 5. Accordingly, these responses would automatically generate the following string of attributes:

NTB-000-522 = Good + Origin + Yes + Customs + No

In comparing the complaint's Attribute String with those from Figure 10, it is evident that the complaint should be classified under subcategory *2.3 Issues of Rules of Origin*.[18]

Figure 10 - Attribute Strings of three NTB subcategories within the GR Class

Subcategory (Government Rulings)	Q1	Q2	Q3	Q4	Q5
2.3 – Issues of Rule of Origin	Good	Origin	Yes No	Customs	No
6.4 – Import Credit Discrimination	Company	Not Applicable	Yes	Financing	No
7.3 - Corruption	Company Good Individual N/A	Origin Tariff Classification Domestic Value Not Applicable	Yes No	Customs Immigration Financing Import Licensing	Yes

---

[18] As mentioned above, whether the user had responded "Yes" or "No" to question three does not affect the outcome. This is an example of a subcategory that has multiple combinations of Attribute Strings, in recognition of the fact that circumstances may differ between complaints with similar subject-matter. Another example of a category with multiple corresponding Attribute Strings is subcategory *7.3 Corruption.* For the working file on NTB subcategory answer-sequences, refer to Appendix II, attached as a separate excel file in the Master Folder.

3.2.3 Comparing the Methods / Pros & Cons

One advantage of the "Drive-Down" method is that less information is displayed on the screen at any single time. This is due to the fact that this method presents a single question at a time. This may be less intimidating to users, thereby increasing user-friendliness. It may also be easier to implement this method in a smartphone-based application. A second advantage to the "Drive-Down" method is that it may be easier and less expensive to design and implement than the "Add-Up" method. This is because the concept underlying the "Drive-Down" method is a simple process of elimination. The cross-referencing of unique answer-sequences required by the "Add-Up" method adds a layer of complexity that could translate into greater costs and difficulty in design.

The main advantage of the "Add-Up" method is that it always produces a single NTB subcategory for the user's complaint and thus takes final categorization completely out of the user's hands, thereby reducing the chance of user error. Conversely, the "Drive-Down" method often presents users with two or three possible NTB subcategories, leaving a greater margin of error. A second advantage of the "Add-Up" method is that it allows users to correct or reconsider responses to questions as they continue reading through questions. Occasionally, as one proceeds through a survey, ambiguities from prior questions are clarified, requiring corrections to previous responses. The "Add-Up" method facilitates such self-correction by placing all questions before the user on a single screen.

3.2.4 "Back-End" Intensive Alternatives

The "Drive-Down" and "Add-Up" methods described above may be viewed as front-end intensive systems. The front-end of a system is its interface – what the user sees, touches and experiences.[19] Thus, these two methods are front-end intensive systems in the sense that they

---

[19] https://www.upwork.com/hiring/for-clients/frontend-vs-backend-web-development/.

require complainants to do a considerable amount of work to submit complaints (e.g. respond to questions, describe their complaints, etc.).

The Team was directed to two alternative back-end intensive systems by Prof. Wolfgang Alschner, mentioned above.[20] Before reviewing these two options, it must be reiterated that the Team does not have technical or data science expertise, and the following suggestions are merely intended to highlight other possible alternatives. If the Beneficiary has further interest in these options, the Team would be pleased to connect the Beneficiary with Professor Alschner, unless the Beneficiary wishes to consult with other data scientists and technical experts in this field.

The alternative to a front-end intensive system is a back-end intensive system. The back-end of a system is what drives and enables the front-end, and is "responsible for calculations, business logic, database interactions, and performance."[21] Consequently, a back-end intensive system would reduce the burden on users submitting complaints. Specifically, the system would read and interpret the text of complaint descriptions and classify the complaint according to the system's programming or training, depending on the type of system used (discussed below). Unlike the "Add-Up" and "Drive-Down" methods, such a system would eliminate the need to question users about their complaints, limiting a complaint submission to a written description of the NTB.

There are two possible approaches to such back-end systems, a Rules-Based system or a Machine Learning system.[22] The former is the traditional approach to data collection. It would require programmers to predict and/or define keywords and word syntaxes for each NTB subcategory. For those subcategories that already have complaints filed under them, such as *2.3 Issues of Rules of Origin*, this task would be simple as existing complaints could provide many

---

[20] Prof. Alschner's research focuses "on using social and computer science methods in order to empirically investigate international law." For further description of Prof. Alschner, see note 4.

[21] *Supra* note 10.

[22] https://www.forbes.com/sites/teradata/2015/12/15/data-science-machine-learning-vs-rules-based-systems/#24108dbd2119.

relevant keywords (being cautious not to include keywords from miscategorized complaints). However, for those subcategories that have never been used, such as *6.4 Import Credit Discrimination*, a comprehensive list of keywords would need to be compiled based on words complainants are *likely* to use in describing their complaints. The disadvantage of this approach is that it depends on the accurate prediction of all potential scenarios that give rise to NTBs. This is an extremely challenging task and makes proper classification of complaints nearly impossible unless the rules are constantly updated. Consequently, Rules-Based systems are less practical.

The second option for a back-end system, a Machine Learning system, solves the prediction problems encountered with Rules-Based systems. As the name suggests, a Machine Learning system learns from itself and builds new rules over time, without the need to manually add more. There are two approaches to such systems: supervised or unsupervised, described below.

3.2.4.1   Supervised

Under the supervised method, the system is taught the classifications it should make based on the text of existing complaints. Once trained, the system classifies new complaints by comparing them to existing ones and determining, on a probabilistic basis, the NTB subcategory with the greatest amount of similar complaints. This approach requires that (1) all possible conclusions are already known, and (2) that the data used to train the system are correctly labeled. Since a closed list of NTB subcategories already exists, the first requirement is satisfied. (Of course, the system would need to be trained on any amendments to the NTB subcategory list, such as those recommended by the Team in Appendix I.) With regards to the second requirement, however, data scientists would need to navigate previously submitted complaints and correct those that are misclassified. Failure to do so would result in the compounding of the misclassification problem. If these corrections are made, the supervised method provides a good option for complaint categorization that reduces the amount of work needed to submit a complaint.

3.2.4.2 *Unsupervised*

The second approach to Machine Learning systems is the unsupervised system, which more closely aligns with what some call true artificial intelligence: "the idea that a computer can learn to identify complex processes and patterns without a human to provide guidance."[23] Unlike a supervised system, an unsupervised system does not need to be taught, and simply looks for similarities between new and existing complaints and groups them accordingly, creating its own subcategories based on its assessment. One the one hand, this system could be an invaluable tool for reclassifying existing complaints into similar groups and assigning the most appropriate heading to the new category. However, since the NTB subcategories were negotiated by the TFTA as a closed list, this system may overstep its authority.

In sum, the purpose of this section was to highlight other available alternatives for addressing the problems identified in Section 1. These back-end intensive systems reduce the amount of work that complainants must do to submit complaints, while simultaneously ensuring that complaints are properly classified. It is reasonable to assume that complaints are less likely to be misclassified if there are fewer options for complainants to choose from – too many questions may be overly burdensome or complicated, leading to errors. With back-end intensive systems, there are no questions for users to answer beyond providing a description of their complaint. If such alternatives are of interest to the Beneficiary, the Team recommends it consult with data scientists to review the feasibility of each method along with their respective advantages and disadvantages.

---

[23] https://www.datascience.com/blog/supervised-and-unsupervised-machine-learning-algorithms.

3.3 GROUNDING COMPLAINT RESOLUTION IN LEGAL OBLIGATIONS

The final component of the CMS links the NTB subcategories to multilateral agreements under the WTO, which grounds the resolution of complaints by governments in binding legal obligations. In other words, the matter complained of is linked to a provision of a WTO agreement where a specific obligation undertaken by WTO Members is set out. This allows users of the Website to know that the subject-matter of their complaint (in many cases) is covered under a WTO Members' international treaty obligations and *must* be remedied; if it is not, the state in question will be in contravention of its binding legal obligations. Further, this function assists governments in fulfilling their mandates under various World Trade Organization (WTO) agreements, as they will know specifically how they are failing to meet their WTO obligations. Since the Team was directed to conduct its work with in connection with the TFA, this section will focus primarily on that agreement. However, since the Team has determined that other WTO agreements may also be implicated by complaints falling under the NTB subcategories, this section will also briefly discuss how future research teams may establish links to those agreements. Obligations identified are only binding on WTO Members that have signed and ratified the TFA. Appendix I contains a breakdown of the WTO and TFA accessions of all TFTA member states.

3.3.1 Link to TFA

The links identified by the Team between NTB subcategories and TFA obligations can be found in Appendix I, the same document containing the NTB subcategory descriptions. As detailed in the Appendix, the Team linked 23 of the 81 subcategories to such obligations, which amounts to 28.4% of the NTB subcategories. These are the same 23 subcategories that the Team defined and assigned key features to, as described in Section 3.1. For each category, the Team combed through the TFA, and identified the provisions that addressed issues that formed the basis for

NTB subcategories. The Team's methodology in identifying TFA obligations implicated by NTB subcategories is discussed in the transition package provided in Appendix VII.[24]

In practice, these links would need to be programmed on the back-end into a database for the system to make the connection with TFA obligations. With regards to communicating the existence of relevant TFA obligations back to users, there are two options: (1) through the Focal Points and (2) through the Website.[25] Each is discussed in turn.

3.3.1.1   Option 1 – Focal Points Relay TFA Information to Users

The first option places this function in the hands of Website Monitors (Monitors) – Focal Point employees tasked with reviewing registered complaints. Based on the NTB subcategory under which the complaint is filed, the database directs Monitors to the TFA obligations associated with that subcategory. The Monitors, based on the facts of the complaints, identify which, if any, of these TFA obligations are implicated, and communicate this information both to the user and to the relevant government agency for resolution of the issues underlying the complaint. The Monitors will also notify if no TFA obligations are engaged.

3.3.1.2   Option 2 – TFA Information Relayed Directly to Complainants Through the Website

The second option incorporates this function into the Website as a final stage of the complaint submission process. In this case, the TFA obligations that are potentially implicated by a complaint, if any, would be displayed on the page confirming the successful submission of the complaint. Alternatively, this information could be communicated to the user in an automatically-generated confirmation email. Unlike the previous approach, which relies on Monitors to relay the specific obligations engaged to the complainant, this approach is entirely computer-based. In this case, identifying the relevant TFA obligations based on the specific facts of a complaint can either

---

[24] File: *Appendix VII – Transition Package*; submitted by 24 April 2018.

[25] *Supra,* note 2.

be done (i) manually by users themselves, who make the determination once presented with a list of the TFA obligations that are potentially implicated, or (ii) automatically through additional programming on the back-end of the system.

If the manual identification option is chosen, *all* TFA provisions tied to the NTB subcategory identified through the NCF process would be listed on the confirmation page or sent via email. The provisions listed would be accompanied by descriptions of the circumstances under which each TFA provision would apply. Users can then compare the facts of their complaint against these descriptions to determine if any of the legal obligations are implicated. While this method requires less back-end programming, it also requires more effort from users.

The second option is to use an automated system to identify the specific TFA provisions implicated by the subcategory and complaint. A Rules-Based or Machine Learning system, as discussed in the previous section, would interpret the words of the complaint description, identify the obligations that arise, and return the specific TFA obligation immediately on the confirmation page or via email. While this method has a greater set-up cost, it reduces the work required of Monitors or users to identify relevant TFA obligations, and it ensures accuracy of the link. Once again, the Team recommends consulting with data scientists and technical experts for more information on how a Rules-Based and Machine Learning system can satisfy the Beneficiary's needs.

If there are no TFA obligations relevant to the NTB subcategory a complaint has been categorized under, the page confirming the successful submission of a complaint would display a message along the lines of the following: "This complaint category does not appear to link to any TFA obligations."

3.3.2 Link to Other WTO Obligations

The process of linking complaints to TFA obligations could be extended in due course to obligations under other WTO agreements, if the EAC Secretariat were interested in broadening the scope of the Website. Through discussions with Rob McDougal, an expert on the TFA, the Team discovered that only a subset of NTB subcategories included in the Website had ties to the TFA. [26] However, other WTO obligations could be implicated by complaints registered on the Website, including those falling under the Agreement on Technical Barriers to Trade (TBT Agreement) or the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement). Accordingly, we see this as a potential area for further development of this project by future research teams. Indeed, the more obligations identified and linked to complaints about NTBs, the greater the impetus on governments to remedy the underlying issues.

4 WEBSITE INDEX

The multinational nature of the Website and the considerable online traffic it draws make it an ideal forum for conveying trade-related information to users. Currently, the Website contains a large amount of information. However, the Team is of the view that the content could usefully be expanded as well as adjusted to eliminate the need for regular in-house updating of certain information. The Website has the potential to offer access to a broad range of vital information that users need to complete cross-border transactions and to become a "one-stop-shop" for traders to access required forms, regulations, restrictions, and other materials from a variety of relevant government agencies. The second major aspect of our project, the Website Index, addresses these considerations.

---

[26] Robert McDougall is an international trade lawyer and consultant. He was with Global Affairs Canada for 15 years, five of which were spent as a Canadian delegate to the WTO.

The Team has created a Website Index, a comprehensive list of Uniform Resource Locators (URLs or Hyperlinks) that directs users to the websites of all government agencies of TFTA states that are responsible for activities affecting trade (Relevant Agencies). On those websites, users may access any trade-related information they may need or find helpful. The Index points traders to the specific information they seek, saving them the trouble of scouring the internet for that information. Appendix V, attached as a separate excel file in the Master Folder. It is intended to be a working document that could be utilized by future research teams to complete the indexing of government trade information.

Turning first to the scope of the Index, the Team initially proposed to index nine of the 22 TFTA countries – three from each of the three regional trading blocs.[27] However, largely due to the subsequent expansion of the project to include the NCF, the Team had time to index only five countries: Botswana, Kenya, Lesotho, Rwanda, and Uganda. (The 17 remaining countries can be completed by future teams)

Please refer to Figure 11 below for an illustration of the Index's format, using Rwanda as an example. This format is modeled after the TFA Facility's database found on the WTO website.[28] Accordingly, the Index groups URLs first by country, and then by subject matter, which includes tariff rates, quotas, restricted and prohibited goods, import and export customs procedures, applications and forms, and so forth. Links are provided to the homepage of every Relevant Agency website and to the specific pages within that website where the trade information is stored. This saves users from having to navigate the entire website in search of information. This will be particularly helpful for users dealing with government websites that are not very user-friendly.

---

[27] The list was approved by the EAC on 9 February 2018 via email. This list included EAC: Kenya, Rwanda, Uganda; SADC: Botswana, Lesotho, South Africa; COMESA: Egypt, Malawi, and Mauritius.

[28] The TFA Facility is a WTO body created to ensure developing countries and LDCs receive the assistance necessary to reap the full benefits of the TFA and to support the ultimate goal of full implementation of the Agreement.

Figure 11 - Visualization of Website Index

Contact Information of the Enquiry Points		
	Rwanda Revenue Agency Contact information for Rwanda Revenue Agency	http://www.rra.gov.rw/index.php?id=8
	Rwanda Revenue Agency Locations and directions to customs offices and broder posts	http://www.rra.gov.rw/index.php?id=222
	National Agricultural Export Development Board The Board provides services from OCIR CAFE, OCIR THE and RHODA, with information on Agriculture to help improve Agricultural Exports	http://www.naeb.gov.rw/index.php?id=1
	Rwanda Trade Portal Information on major commodity import, export, transit. The category menu on the top of the page is particularly helpful	https://rwanda.tradeportal.org/
	Ministry of Agriculture and Animal Resources Policies , documents, programmes and statistics on promotion of agriculture and livestock to ensure food security	http://www.minagri.gov.rw/index.php?id=678

As a brief example of the Index's utility, if a user wished to locate information on Rwanda's preferential tariff agreements, they have two methods of finding that information. First, they can follow the link to the Rwanda Revenue Authority's homepage, listed under the "Contact Information of the Enquiry Points" heading on the "Uganda" page of the Website Index, as depicted above. Alternatively, they can follow the URL to the direct page within the Kenya Revenue Authority's website, which is listed under the "Tariffs and Quotas" heading on the "Kenya" page of the Website Index.

The Website Index also includes the names and contact information of government agencies responsible for activities affecting trade, along with brief descriptions of those agencies. The purpose of listing this information is to facilitate communication between traders and governments.

Finally, the Index provides industry-specific trade information based on each country's popular export and import goods (where such information is available online). This includes, for example, the rules governing the importation or exportation of livestock, seed, or dairy products.[29] As the Index expands, the range of information available on the Website can be increased to provide additional types of information of use to traders.

5 TRANSITION PACKAGE

As mentioned above, the scope of the project undertaken by the Team expanded considerably once the Team delved into the Website and discussed potential benefits to traders with the Beneficiary as well as with WTO practitioners and technical experts. Once the Team, together with the Beneficiary, had identified all of the components that could be included in the project, it became clear that the project had become too large for the Team to complete before the end of the semester. Accordingly, the Team concluded that the unfinished elements could form the basis of a multi-year venture. In anticipation of this possibility, the Team developed a Transition Package for use by future research teams. The Transition Package can be accessed in the Master Folder as a separate attachment.

Specifically, the Transition Package includes a description of the project's goals and components as well as a list of the work that remains to be completed. Further, to help future teams focus on the substantive work rather than reconceptualizing the problem, the package will highlight the Team's methodology, strategies and recommendations. Finally, a list of possible organizations that could continue the work and support the completion of this project will be provided.

---

[29] Information on import and export patterns for the countries was obtained from the World Integrated Trade Solution, website: https://wits.worldbank.org/CountryProfile/en/KEN; and The Observatory of Economic Complexity (OEC), website: https://atlas.media.mit.edu/en/profile/country/ken/.

6 CREATING VALUE

Having reviewed the three major components of the project and explained the Team's approach and rationale in developing each of them, we turn to an assessment of the project's value for the Beneficiary and, it is hoped, for traders, governments, and others involved in trade with TFTA countries. The Team is hopeful that the Beneficiary will agree with its assessment.

6.1 COMPLAINT MANAGEMENT SYSTEM

6.1.1 Ensures Accurate Categorization of Complaints

The NCF ensures that complaints are properly classified within the Website's NTB classification system by eliminating (under the "Add-Up" method) or significantly restricting (under the "Drive-Down" method) the users' ability to self-select NTB subcategories during complaint submission. As noted above, we suspect the primary source of misclassified, duplicated and groundless complaints is user error in selection of NTB subcategories; under the NCF devised by the Team, this element would largely be removed. The rules-based approach of these methods creates a system of questions and answers that will consistently lead to proper complaint classification.

Accurate categorization of complaints will benefit the Beneficiary because it will enhance the utility of the Website. This will, in turn, benefit the Beneficiary's trading constituency that relies on the Website because it will be easier to use. Accurate categorization will also bring value to TFTA government authorities mandated to resolve complaints registered on the Website by making it easier for them to determine what a trader's NTB problem is and how to resolve it. Accurate complaint classification also provides value to governments in the context of facilitating links between NTBs and TFA obligations. Without accurate and consistent complaint classification, the goal of grounding the resolution of NTBs in a country's legal obligations under the TFA would be

difficult if not unachievable. Finally, accurate categorization creates value from a data analytics standpoint as well because complainants and researchers accessing the database of submitted complaints can be confident that, when searching by NTB subcategory, all relevant, and only relevant, complaints will be displayed.

6.1.2 Reduces the Time and Effort Required to Submit a Complaint

The Team believes that the NCF will reduce the time and eliminate the confusion associated with registering complaints under the current system. Presently, complainants select from a lengthy list of NTB subcategories, without any contextual aids or descriptions, the NTB subcategory that best describes their complaint. Scrolling through this list and choosing between subcategories that often overlap creates uncertainty that can make submitting a complaint a long and arduous process and may even dissuade traders from submitting complaints altogether. In contrast, the NCF merely requires users to respond to up to five simple questions, each typically having fewer than five responses from which to choose. As a result, while there is technically more required of the user (in terms of selecting answers to questions), adding structure and clarity to the process nevertheless makes it faster and easier for traders to submit complaints. The Team considers that this represents a significant benefit to traders as well as to the Beneficiary whose Website will better serve its constituency.

6.1.3 Grounds Complaint Resolution in Legal Obligations

The most significant way that the CMS creates value, both for traders and governments, is by linking complaint resolution to binding legal obligations in the TFA. Establishing clear links between complaints and TFA obligations enables governments to become aware of deficiencies in their TFA compliance of which they may not have been fully cognizant. It also increases the impetus on governments to eliminate their trade-restrictive policies and practices because there is public notice that they are in violation of a treaty obligation. Complaint resolution thus goes

beyond merely the aspirational and becomes mandatory. This provides complainants with greater confidence that the NTBs they face will be eliminated in a timely and effective manner. Moreover, by bringing legal obligations to their attention, the system helps government agencies develop a greater understanding of how their actions intersect with international trade law.

Linking NTB complaint resolution to TFA obligations is also beneficial to WTO Members more broadly because it enhances the impact of the TFA itself. Alerting WTO Members to links between specific trade practices and TFA obligations will enhance WTO Members' understanding of their TFA obligations. As noted above, not all of the NTBs listed in the Website necessarily contravene TFA obligations; however, they may be inconsistent with other WTO obligations. The project's value could be significantly increased if NTB complaint resolution were similarly linked to obligations under other WTO agreements. This is a potent argument for continuation and expansion of the project beyond the current phase.

6.2 WEBSITE INDEX

The Website Index is designed to improve the Website's diffusion of trade-related information. This component of the project brings four main benefits to multiple stakeholders, including the Website's administrators, traders, government agencies and other actors in international trade.

6.2.1 Increases Access to Information

First, the Website Index consolidates valuable trade-related information in one location, facilitating access to a vast array of information. There are a multitude of factors traders must consider and procedures they must familiarize themselves with when engaging in international trade. Often, the information necessary to facilitate this engagement is not provided by a single government agency. Rather, the information is found in a number of different websites or is contained in

websites of agencies whose activities do not solely or overtly affect trade, increasing the difficulty of locating such information.

The compilation of names of relevant government agencies and links to relevant forms and procedures facilitates the diffusion of trade information. Traders will save time obtaining relevant information, will be able to minimize errors when preparing necessary documentation, will encourage pre-customs documentation preparation, and will eliminate duplication of effort because documentation is less likely to be submitted incorrectly. Access to information on relevant government agencies and required forms can also help reduce delays at the border caused by the lack of required forms or licences. The result is lower costs for traders. This will be particularly helpful in mitigating the competitive advantage of large-scale traders over smaller enterprises resulting from the extensive resources and networks of the former, which allows them to obtain necessary trade-related information more easily. The Index can thus help lower the cost of information procurement and simplify the information-gathering process, thereby helping to provide more opportunities for SMEs in the international market.

By consolidating information, the Index also provides a simple starting point for traders and researchers to gain more insight into the trade practices generally in the TFTA. The database introduces such individuals to the different agencies, policies and regulations that affect trade, as well as to information on potential sources of NTBs. With a wealth of trade-related information clearly indexed and easily accessible, traders and researchers can tailor their information-seeking mission to their needs and can more easily compare policies and procedures between countries to determine the most cost-effective methods of trading. In this manner, compiling trade-related information in one location can facilitate the growth of trade.

6.2.2 Promotes Timely Publication and Updating of Information

Second, the Index helps each country fulfil its publication obligations under Articles 1 and 2 of the TFA. The importance of availability of information for growth in international trade is demonstrated through the first article of the TFA, which calls on WTO Members that have ratified the TFA to increase access to and transparency of information in a number of trade-related areas. [30] The compilation of links in one location can contribute to these objectives. The database of links consolidates diffuse information and creates a direct path to information.

Furthermore, the website index could serve as a model for WTO Members who are not currently meeting their publication obligations under the TFA. Exposure to a template displaying simplified, organized trade-related information related to certain counties in the region will allow other countries to identify gaps in their own publicly-available information. This may encourage such states to emulate the Index in order to fill those gaps and thereby fulfill their publication obligations under the TFA.

6.2.3 Designed to Minimize Maintenance and Costs

Finally, the Website Index is designed to minimize maintenance costs that can be associated with storing the substantial amount of information to which the Index provides access. The Website currently stores detailed surveys containing information on NTBs specific to each country. Unfortunately, the most recent of these surveys was published in 2007. To avoid similar obsolescence issues with the trade-related information provided, lists of URLs link users to websites where the information is initially published and, in most cases, regularly updated. The method of listing URLs on the Website was preferred to the alternative of directly publishing trade-related information on the Website because the information itself may quickly become out of date

---

[30] File: Appendix VI – Text of the Trade Facilitation Agreement. Refer to Articles 1 and 2 for publication obligations.

and much of the information would require frequent updating. The Index therefore capitalizes on the fact that other actors are already responsible for publishing such information in a timely manner and monitoring it for accuracy. Publishing links to these government agency websites may also increase the traffic on those websites and thereby encourage them to maintain user-friendly websites with up-to-date information.

6.3 TRANSITION PACKAGE

6.3.1 Facilitates the Seamless Completion of the Project

Our Team dedicated many weeks to understanding the workings of the Website, including its strengths and weaknesses, as well as identifying how to provide the best value for the Beneficiary and designing a project that would help address those needs. It was only after completing these conceptual steps that the Team was able to embark on the substantive phase of our work. As noted above, given that the scope of the project expanded considerably as time went on, it was not possible to complete all of the components of the project in the time available. Having confirmed that the EAC wishes to continue this project with future research teams, the Team has developed a Transition Package to facilitate this further work and to ensure that subsequent teams do not needlessly repeat the initial conceptual part of the work.

The Team's Transition Package outlines all the details necessary to promote a seamless transition between groups. For example, the Package includes the Team's methodology on how each component of the project was completed, a list of contact people that may provide useful guidance, and a detailed outline of the substantive work that remains to be completed. Further, it provides a list of possible organizations that could continue the work and support this project.

In addition to promoting the efficient use of future teams' time and resources, the Transition Package also provides a detailed model for the implementation of similar future projects addressing, for example, obligations under WTO agreements other than the TFA. The Transition Package details how our Team underwent each stage of the project development and will enable those with access to the document to create and implement this (or a similar) project quickly and efficiently.

7 LIMITATIONS & FINAL COMMENTS

Before concluding, some comments and limitations must be highlighted. First of all, these recommendations are made mindful of the fact that, according to the EAC, the Website is not a fully-fledged trade facilitation tool. Rather, it is merely an NTB complaint reporting mechanism. Thus, implementation of these recommendations should be viewed as upgrades to the Website, rather than improvements. Second of all, as previously mentioned, the Team was limited to the four-month academic semester at Queen's University. Roughly one half of this period was dedicated to identifying the issues, researching the Website, and conceptualizing a proposal. The second half was used to conceptualize the solutions and set the foundation for this multi-year project. While the Team was unable to fully implement its solutions, it has developed a transition package to assist in the implementation of the project.

8 NEXT STEPS

It goes without saying that the Team consulted with the Beneficiary as it progressed with the project and received useful guidance in directing its efforts to preparing a final product that would have practical value to the Beneficiary. This report and the Appendices contained in the Master Folder are the result of this collaboration. However, the Team understands that this report is not

an end in itself. The Beneficiary will need to take additional steps to convert our work into actual upgrades to the Website itself. This work is beyond the skills and knowledge of the Team, which is composed of three law students. Accordingly, the Beneficiary may need to engage the services of website developers, technical experts, and possibly data scientists, as discussed above. It may be that this work could be funded by the WTO TFA Facility or by other organisations interested in promoting compliance with the TFA. We would be pleased to put the Beneficiary in touch with the experts (WTO and technical experts) we spoke to in conducting our research.

9 CONCLUSION

The Team is very grateful to have had the opportunity to work with the EAC Secretariat in pursuing the improvement of the TradeBarriers.org online tool in line with the mandate originally provided by TRALAC and adjusted as necessary in consultation with the EAC Secretariat during the course of our research. We appreciate the time the EAC Secretariat team devoted to our project, especially in speaking with us on a number of occasions through Skype, responding to our numerous questions, and reviewing and commenting on our documents. The Team sincerely hopes this project will come to fruition. Contact information for our Team members will be included in the Transition Package, and members of future research teams are welcome to contact us should they have any questions

10 DISCLAIMER

All projects prepared and published by TradeLab law clinics and practica are done on a pro bono basis by students for research purposes only. The projects are pedagogical exercises to train students in the practice of international economic and investment law, and they do not reflect the opinions of TradeLab, Queen's University and/or the academic institutions affiliated to TradeLab. The projects do not in any way constitute legal advice and do not, in any manner, create an attorney-client relationship. The project cannot, in any way, and at any time, bind, or lead to any form of liability or responsibility for the clinic participants, participating academic institutions, or TradeLab.

11 TABLE OF INDICES

Annex III Non-Tariff Barriers

Under Article 10(2) of the Agreement

Article 1
Definitions

For the purposes of this Annex, the definitions set out in the Agreement Member/Partner States shall apply. The following definitions and abbreviations shall have the meanings set forth herein:

"Facilitator" means independent Expert and/or Person agreed upon by concerned parties for purposes of Article 10 of this Annex.

"National Focal Point" means Ministries/Government Departments or any other authorised body as appointed under Article 6 of this Annex.

"**National Monitoring Committee"** means committee of relevant stakeholders from private and public sectors as established under Article 5 of this Annex.

"Non-Tariff Barrier Sub Committee" means committee responsible for the implementation of this annex which comprises nominated representatives from Tripartite Member/Partner States

Article 2
Scope and Objectives

1. Without prejudice to the rights and obligations under the WTO Agreements, this Annex provides for a mechanism for the identification, categorisation, and elimination of NTBs within the Agreement. The mechanism provides for the following:

   a) institutional structures for the elimination of NTBs;
   b) general categorisation of NTBs in COMESA, EAC and SADC;
   c) reporting and monitoring tools; and
   d) facilitation of solutions to identified NTBs.

Article 3
General Categorisation

1. The Tripartite Member/Partner States may for guiding purposes adopt the general Tripartite 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;
   f) charges on imports; and
   g) others

2. The categorisation 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 the Tripartite Member/Partner States under the WTO Agreements.

3. In order to ensure that this general categorisation, subcategories and sub classifications evolve and adapt to the changing reality of international trade and data collection needs, the Tripartite Member/Partner States, through the Tripartite Task Force, may propose changes for consideration and concurrence by other Tripartite Member/Partner States in accordance with Articles 15 and 16 of this Annex.

4. The descriptions to these categories and sub-categories form Appendix I to this Annex.

Article 4
Institutional Arrangements

1. There is hereby established a Tripartite Non-Tariff Barriers Sub Committee under the Tripartite Customs and Trade Committee of Experts, which shall oversee implementation of this Annex.

Revised by 2nd TTCLA, 27 August 2015, Nairobi, 1815hrs

2. The Tripartite Non-Tariff Barriers Sub-Committee shall develop working procedures for the implementation of this Annex.

3. The Tripartite Member/Partner States shall:

   a) establish National Monitoring Committees and National Focal Points on Non-Tariff Barriers; and

   b) provide names and addresses of designated National Focal Points to the Tripartite Task Force for circulation to Tripartite Member/Partner States.

4. 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 5
Functions of National Monitoring Committees

1. The main functions of the National Monitoring Committees shall include *inter alia*:

   a) identifying and monitoring NTBs;

   b) defining the process of elimination of NTBs;

   c) confirming deadlines for action;

   d) deciding on recourse for non-action; and

   e) defining the mandate and responsibilities of NTB institutional structures.

2. Where a reported measure has been identified as an NTB, but has not been resolved, the National Monitoring Committee shall proceed to include such measure in the time bound elimination matrix for further action or resolution as provided for under Article 9 of this Annex.

3. The National Monitoring Committee shall consist of relevant stakeholders representing the private and public sectors.

Article 6
Functions of National Focal Points

The main functions of the National Focal Points on Non-Tariff Barriers shall include *inter alia*:

a) coordinating the implementation of the Tripartite mechanism for the elimination of NTBs;

b) providing secretariat services to the National Monitoring Committee;

c) facilitating the removal of NTBs and report 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 copies of the forms reporting NTBs to the Tripartite Task Force; and

h) providing assistance to the Facilitator in the process of resolving NTBs where necessary.

Article 7
Non- Tariff Barrier Monitoring Units

1. The Tripartite Task Force shall establish a Tripartite Non-Tariff Barriers Monitoring Unit whose main function will be to coordinate the elimination of NTBs.

2. Each REC shall establish a Tripartite Non-Tariff Barriers Monitoring Unit responsible for:

4

a) tracking and monitoring NTBs affecting intra-Tripartite trade and updating regional and national plans for the elimination of NTBs;

b) providing clear guidelines to the business community in the Region for the resolution of identified NTBs;

c) capacity building and sensitisation of 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. Any Tripartite Member/Partner State or economic operator may register a complaint or trade concern through the mechanisms provided for in this Article.

2. The mechanism for identifying, reporting and monitoring NTBs will facilitate the elimination of current and future NTBs within the Tripartite Region.

3. The reporting and monitoring tools for NTBs shall consist of a prescribed form, online and other information, communication and technology mechanisms which are subject to periodic review.

4. The mechanism for identifying, reporting and monitoring NTBs will be available on websites as designated by the Tripartite Non-Tariff Barriers Sub-Committee.

5. The NTB mechanism shall enhance transparency and provide for an easy follow-up of reported and identified NTBs.

6. The NTB mechanism shall be accessible to economic operators, government functionaries, Tripartite Task Force experts, academic researchers and other interested parties.

Article 9
Non-Tariff Barriers Elimination Plans

1. Tripartite Member/Partner States shall prepare time bound NTB elimination plans which shall be in the form of a matrix based on the Tripartite categorisation of NTBs.

2. Tripartite Member/Partner States shall draw up NTB elimination plans based on the NTB's level of impact on intra-regional trade.

Article 10
Procedures for Elimination and Co-operation in the Elimination of Non-Tariff Barriers

In the elimination of NTBs, Tripartite Member/Partners States shall resort to procedures set out in Appendix II to this Annex.

Article 11
Transparency and Exchange of Information

The Tripartite Task Force shall circulate to Tripartite Member/Partner States biannually, a status report consisting of:

a) notified requests and responses;

b) on-going and recently resolved NTBs; and

c) reports from Facilitators.

Article 12
Technical Assistance

Tripartite Member/Partner States may request for assistance from the Tripartite Task Force and/or the Secretariats of COMESA, EAC and SADC, to promote their understanding of the use and functioning of these procedures, or the resolution of a NTB.

Article 13
Conflict of Provisions

In the event of a conflict between this Annex and the Agreement, the latter shall prevail.

Revised by 2nd TTCLA, 27 August 2015, Nairobi, 1815hrs

Article 14
Dispute Settlement

Where any Tripartite Member/Partner State fails to agree on implementation of any provisions of this Annex, and a dispute arises, the matter shall be addressed in accordance with Article 30 of the Agreement and **Annex X** on Dispute Settlement Mechanism.

Article 15
Review

1. The Tripartite Council of Ministers may decide to modify certain procedural aspects of the mechanism for identifying, reporting and monitoring of NTBs.

2. The Tripartite Council of Ministers shall undertake a review of the effectiveness of the Mechanism not later than 3 years after its adoption.

3. Based on the outcomes of the review, the Tripartite Council of Ministers may undertake amendment as provided for under Article 37 of the Agreement.

Article 16
Amendment
This Annex may be amended in accordance with Article 37 of the Agreement

General Tripartite Categorization of potential sources of Non-Tariff Barriers

Parts and Sections	Description
Part I	**Government Participation in Trade and Restrictive Practices Tolerated by Governments** • Government aids, including subsidies and tax benefits • Restrictive practices tolerated by governments • Other
Part II	**Customs and Administrative Entry Procedures** • Customs valuation • Customs classification • Consular formalities and documentation • Samples • Rules of origin • Customs formalities • Import licensing • Pre-shipment inspection and other formalities related to pre-shipment inspection. • Other
Part III	**Technical Barriers to Trade** • Technical regulations, and standards including packaging, labelling and marking requirements • Conformity assessments • Other
Part IV	**Sanitary and Phytosanitary Measures** • SPS measures including chemical residue limits, disease freedom, specified product treatment, etc. • Conformity assessments • Other
Part V	**Specific Limitations** • Embargoes and other restrictions of similar effect • Quantitative imports and export restrictions or prohibitions • Tariff quotas • Other
Part VI	**Charges on Imports** • Prior import deposits • Surcharges, port taxes, statistical taxes, etc. • Credit restrictions • Border tax adjustments • Other
Part VII	**Other** • Transport, Clearing and Forwarding • Other

Appendix II
Procedures for Elimination and Co-operation in the Elimination of
Non-Tariff Barriers

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

a) Any Tripartite Member/Partner State (the 'requesting Tripartite Member/Partner State') may, individually or jointly with other Tripartite Member/Partner States, through the Tripartite Task Force, initiate Stage I by submitting in writing to another Tripartite Member/Partner State (the 'responding Tripartite Member/Partner State) a request for information regarding a NTB as identified and reported by the requesting Tripartite Member/Partner State.

b) The request shall identify and describe the specific NTB as identified and reported by the requesting Tripartite Member/Partner State and provide a detailed description of its concerns regarding the NTB's impact on trade.

c) The requesting Tripartite Member/Partner State shall notify its request to the Tripartite Task Force, which shall circulate it to the affected Tripartite Member/Partner States.

d) The responding Tripartite Member/Partner State shall provide, within twenty (20) days, a written response containing all the information and clarification requested. Where the responding Tripartite Member/Partner State considers that a response within this period is not practicable, it shall, inform the requesting Tripartite Member/Partner State 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.

e) The responding Tripartite Member/Partner State shall notify its response directly to the requesting Tripartite Member/Partner State and the Tripartite Task Force.

f) Where the response is acceptable to the requesting Tripartite Member/Partner State, the requesting Tripartite Member/Partner State shall notify the responding Tripartite Member/Partner State and the Tripartite

Task Force, and the complaint shall be considered resolved. Where the parties mutually agree on a complaint as being an NTB, the National Monitoring Committee shall develop an elimination plan as provided for under Article 9 of this Annex.

g) Where the response does not resolve the complaint, the requesting Tripartite Member/Partner States shall notify the responding Tripartite Member/Partner State and the Tripartite Task Force. The Tripartite Task Force 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.

h) In case the matter is not satisfactorily resolved in Stage I both parties shall by mutual consent and agreement proceed to Stage II.

i) The parties shall notify any decision to proceed to Stage II to the Tripartite Task Force which shall circulate it to all Tripartite Member/Partner States.

j) Any other Tripartite Member/Partner State may submit a written request to the Tripartite Task Force 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.

k) Pending the final resolution of the NTB, the parties may consider possible interim solutions, especially if the NTB relates to perishable goods.

l) In case of perishable goods, all the periods specified in this Stage shall be reduced by half

m) Once initiated, Stage II shall be terminated upon request of either party.

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

2. Stage II: Resolution Procedures

2.1 Appointment of a Facilitator

1. Upon initiation of Stage II of these procedures, the Tripartite Task Force shall coordinate the appointment of an independent expert/person acceptable to the parties to serve as Facilitator.

2. Facilitators shall be drawn from a pool of experts whose selection and appointment shall be in accordance with criteria and procedures to be developed by the Tripartite Non-Tariff Barriers Sub-Committee.

3. The procedures to be developed by the Tripartite Non-Tariff Barriers Sub-Committee shall be within the framework provided for in 2.1(4) to 2.1(9).

4. The parties shall select and appoint a Facilitator within a period not exceeding (10) days from the initiation of this Stage.

5. In assisting the selection of the Facilitator, the Tripartite Non-Tariff Barriers Sub-Committee shall maintain an indicative list of experts possessing the required qualifications to serve as a Facilitator.

6. Each Tripartite Member /Partner State may nominate experts for inclusion in the list.

7. Concerned parties may mutually agree on a Facilitator not included in the indicative list.

8. The Facilitator agreed upon by the parties shall:

    (a)   be governmental or non-governmental individuals appropriately qualified for the task;

    (b)   serve in their individual capacity and not as government representatives, nor as representatives of any organization; and

     (c)   not be citizens of Tripartite Member/Partner States whose governments are parties to these proceedings, unless the parties agree otherwise.

9. Facilitator's expenses, including travel and subsistence allowance, shall be met from the Tripartite Task Force budget.

10. The parties shall jointly agree on the terms of reference for Facilitator.

2.2   Seeking Mutually Agreed Solutions

1. Either party may present to the Facilitator and the other party any information that it deems relevant.

2. 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 Task Force Headquarters, unless the parties agree on any other place of mutual convenience, taking into account possible capacity constraints.

3. 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:

   a) with the support of the Tripartite Non-Tariff Barriers Sub-Committee, call upon the Tripartite Task Force or any other relevant resource to provide information;

   b) meet individually or jointly with, the parties, in order to facilitate discussions on the NTB and to assist in reaching mutually agreed solutions;

   c) seek assistance where necessary, of relevant experts and stakeholders, after consulting with the parties;

   d) provide any additional support requested by the parties; and

e) offer technical opinion and propose possible solutions for the parties, provided that any such opinion shall not pertain to any possible legitimate objectives for the maintenance of the measure.

4. 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.

2.3 Confidentiality

1. All meetings held and information, whether provided in oral or written form, acquired pursuant to Stages I and II of this Appendix, shall be confidential and without prejudice to the rights of any party or other Tripartite Member/Partner State in any dispute settlement proceeding as provided for in Annex X on Dispute Settlement Mechanism.

2. The obligation of confidentiality shall not extend to factual information already existing in the public domain.

3. Nothing in this Appendix shall require a Tripartite Member/Partner State 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.

4. Any third party admitted to the procedures shall be bound by the confidentiality requirements pursuant to these procedures.

2.4 Outcome and Implementation

1. 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 a draft factual report in writing to the parties, providing a brief summary of the following:

    (a) the NTB at issue in these procedures;

    (b) any areas of disagreement;

    (c) the procedures followed; and

(d) any mutually agreed solution as the final outcome of these procedures, including possible interim solutions.

2. The Facilitator shall give the parties ten (10) days within which to comment on the draft factual report. After receipt of the comments by the parties, and within ten (10) days thereof, the Facilitator shall furnish the parties and Tripartite Task Force with the final factual report in writing.

3. If the parties reach a mutually agreed solution, that solution shall be implemented and also circulated to all Tripartite Member/Partner States through the Tripartite Task Force. Such solution shall be implemented in accordance with an elimination plan as provided for under Article 9 of this Annex.

4. Where a Tripartite Member/Partner State fails to resolve an NTB after reaching a mutually agreed solution or after issuance of the final factual report by the Facilitator, the requesting Tripartite Member/Partner State shall resort to the dispute settlement panel stage in accordance with the provisions of Article 8 of Annex X on Dispute Settlement Mechanism. Notwithstanding the provisions therein parties may agree to submit the matter to arbitration in accordance with Article 24 of Annex X on Dispute Settlement Mechanism.