African Union, African Regional Bodies

Agreement Establishing the African Continental Free Trade Area

Protocol on Trade in Goods

Legislation as at 21 March 2018

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African Union

Agreement Establishing the African Continental Free Trade Area

Protocol on Trade in Goods

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We, Member States of the African Union,

DESIROUS to implement the Decision of the Assembly of Heads of State and Government during its Eighteenth Ordinary Session held in Addis Ababa, Ethiopia from 29th-30th January, 2012 (Assembly/AU/Dec. 394(XVIII) of the Framework, Road Map and Architecture for Fast Tracking the establishment of the African Continental Free Trade Area and the Action Plan for Boosting Intra-African Trade;

COGNISANT of the launch of negotiations for the establishment of the Continental Free Trade Area aimed at integrating Africa's markets in line with the objectives and principles enunciated in the *Abuja Treaty* during the Twenty-Fifth Ordinary Session of the Assembly of Heads of State and Government of the African Union held in Johannesburg, South Africa from 14-15 June 2015 (Assembly/AU/Dec. 569(XXV);

DETERMINED to take the necessary measures for reducing the cost of doing business and creating a conducive environment for private sector development and thereby boosting intra-African trade;

RESOLVED to enhance competitiveness at the industry and enterprise level through exploiting opportunities for economies of scale, continental market access and an efficient allocation of resources;

CONFIDENT that a comprehensive Protocol on Trade in Goods will deepen economic efficiency and linkages, improve social welfare, progressively eliminate trade barriers, increase trade and investment with greater opportunities for economies of scale for the businesses of State Parties;

COMMITTED to expanding intra-African trade through the harmonisation, coordination of trade liberalisation and implementation of trade facilitation instruments across Africa, and cooperation in the area of quality infrastructure, science and technology, the development and implementation of trade related measures; and

RECOGNISING the different levels of development among the State Parties and the need to provide flexibilities, special and differential treatment and technical assistance to State Parties with special needs,

HAVE AGREED AS FOLLOWS:

Part I – Definitions, objectives and scope

Article 1 – Definitions

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

(a) "**Anti-dumping Agreement**" means the WTO Agreement on the implementation of Article VI of the GATT 1994;

(b) "**Committee**" means the Committee for Trade in Goods established in Article 31 of this Protocol;

(c) "**Customs duty**" means a duty or charge of any kind imposed on or in connection with the importation or exportation of a good, including any form of surtax or surcharge imposed on or in connection with such importation or exportation;

(d) "**Harmonised System**" means the Harmonised Commodity Description and Coding System established by the International Convention on the Harmonised Commodity Description and Coding System;

(e) "**Non-Tariff Barriers**" means barriers that impede trade through mechanisms other than the imposition of tariffs;

(f) "**Originating products**" means goods that qualify as originating products under the rules of origin set out in Annex 2 on Rules of Origin;

(g) "**Preferential Trade Arrangements**" means any trade arrangement by which a State Party grants preferences to imports from another State Party or a Third Party and includes non--reciprocal preferential scheme granted by way of waiver;

(h) "**Safeguards Agreement**" means the WTO Agreement on Safeguards;

(i) "**Schedule of tariff concessions**" means a list of negotiated specific tariff concessions and commitments by each State Party. It sets out, transparently, the terms, conditions and qualifications under which goods may be imported under the AfCFTA;

(j) "**TBT**" means Technical Barriers to Trade; and

(k) "**TBT Agreement**" means the WTO Agreement on Technical Barriers to Trade.

Article 2 – Objectives

1. The principal objective of this Protocol is to create a liberalised market for trade in goods in accordance with Article 3 of the Agreement.
2. The specific objective of this Protocol is to boost intra-African trade in goods through:
    (a) progressive elimination of tariffs;
    (b) progressive elimination of non-tariff barriers;
    (c) enhanced efficiency of customs procedures, trade facilitation and transit;
    (d) enhanced cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures;
    (e) development and promotion of regional and continental value chains; and
    (f) enhanced socio-economic development, diversification and industrialisation across Africa.

Article 3 – Scope

1. The provisions of this Protocol shall apply to trade in goods between the State Parties.
2. Annex 1 on Schedules of Tariff Concessions, Annex 2 on Rules of Origin, Annex 3 on Customs Cooperation and Mutual Administrative Assistance, Annex 4 on Trade Facilitation, Annex 5 on Non-Tariff Barriers, Annex 6 on Technical Barriers to Trade, Annex 7 Sanitary and Phytosanitary Measures, Annex 8 on Transit and Annex 9 on Trade Remedies shall, upon adoption form an integral part of this Protocol.

Part II – Non-discrimination

Article 4 – Most-Favoured-Nation Treatment

1. State Parties shall accord Most-Favoured-Nation Treatment to one another in accordance with Article 18 of the Agreement.
2. Nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, provided that such trade arrangements do not impede or frustrate the

objectives of this Protocol, and that any advantage, concession or privilege granted to a Third Party under such arrangements is extended to other State Parties on a reciprocal basis.

3. Nothing in this Protocol shall prevent two or more State Parties from extending to one another preferences which aim at achieving the objectives of this Protocol among themselves, provided that such preferences are extended to the other State Parties on a reciprocal basis.

4. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, a State Party shall not be obliged to extend to another State Party, trade preferences extended to other State Parties or Third Parties before the entry into force of the Agreement. A State Party shall afford opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis, taking into account levels of development of State Parties.

Article 5 – National treatment

A State Party shall accord to products imported from other State Parties treatment no less favourable than that accorded to like domestic products of national origin, after the imported products have been cleared by customs. This treatment covers all measures affecting the sale and conditions for sale of such products in accordance with Article III of GATT 1994.

Article 6 – Special and differential treatment

In conformity with the objective of the AfCFTA in ensuring comprehensive and mutually beneficial trade in goods, State Parties shall, provide flexibilities to other State Parties at different levels of economic development or that have individual specificities as recognised by other State Parties. These flexibilities shall include, among others, special consideration and an additional transition period in the implementation of this Agreement, on a case by case basis.

Part III – Liberalisation of trade

Article 7 – Import duties

1. State Parties shall progressively eliminate import duties or charges having equivalent effect on goods originating from the territory of any other State Party in accordance with their Schedules of Tariff Concessions contained in Annex 1 to this Protocol.

2. For products subject to liberalisation, State Parties shall not impose any new import duties or charges having equivalent effect on goods originating from the territory of any other State Party, except as provided for under this Protocol.

3. An import duty shall include any duty or charge of any kind imposed on or in connection with the importation of goods consigned from any State Party to a consignee in another State Party, including any form of surtax or surcharge, but shall not include any:

   (a) charges equivalent to internal taxes imposed consistently with Article III(2) of GATT 1994 and its interpretative notes in respect of like or directly competitive or substitutable goods of the State Party or in respect of goods from which imported goods have been manufactured or produced in whole or in part;

   (b) antidumping or countervailing duties imposed in accordance with Articles VI, and XVI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures and Article 17 of this Protocol;

   (c) duties or levies imposed in relation to safeguards, in accordance with Articles XIX of GATT 1994, the WTO Agreement on Safeguards and Articles 18 and 19 of this Protocol; and

   (d) other fees or charges imposed consistently with Article VIII of GATT 1994.

Article 8 – Schedules of Tariff Concessions

1. Each State Party shall apply preferential tariffs to imports from other State Parties in accordance with its Schedule of Tariff Concessions contained in Annex 1 to this Protocol and in conformity with the adopted tariff modalities. The Schedules of Tariff Concessions, the adopted tariff modalities and outstanding work on tariff modalities to be negotiated and adopted, shall be an integral part of this Protocol.
2. Notwithstanding the provisions of this Protocol, State Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for in this Protocol, shall maintain, and where possible improve upon, those higher levels of trade liberalisation among themselves.

Article 9 – General elimination of quantitative restrictions

The State Parties shall not impose quantitative restrictions on imports from or exports to other State Parties except as otherwise provided for in this Protocol, its Annexes and Article XI of GATT 1994 and other relevant WTO Agreements.

Article 10 – Export duties

1. State Parties may regulate export duties or charges having equivalent effect on goods originating from their territories.
2. Any export duties or taxes, imposed on or in connection with, the exportation of goods, applied pursuant to this Article shall be applied to goods exported to all destinations on a non-discriminatory basis.
3. A State Party that introduces export duties or taxes on, or in connection with, the exportation of goods in accordance with paragraph 2 of this Article, shall notify the Secretariat ninety (90) days from the introduction of the said export duties or taxes.

Article 11 – Modification of Schedules of Tariff Concessions

1. In exceptional circumstances, a State Party may request for modification of its Schedules of Tariff Concessions.
2. In such exceptional circumstances, a State Party (hereinafter referred to as the "modifying State Party") shall submit to the Secretariat, a written request, together with evidence of the exceptional circumstances for such a request.
3. Upon receipt of the request, the Secretariat shall immediately circulate the request to all State Parties.
4. Where a State Party considers that it has a substantial interest (hereinafter referred to as the "State Party with substantial interest") in the tariff schedule of the modifying State Party, it should communicate in writing, with supporting evidence, to the modifying State Party through the Secretariat within thirty (30) days. The Secretariat shall immediately circulate all such requests to all State Parties.
5. The modifying State Party and any State Party with substantial interest, as determined under paragraph 3, shall enter into negotiations to be coordinated by the Secretariat with a view to reaching an agreement on any necessary compensatory adjustment. In such negotiations and agreement, the State Parties shall maintain a general level of commitments not less favourable than the initial commitments.
6. The outcome of the negotiations and the subsequent modification of the tariff schedule and any compensation thereof, shall only be effected upon approval by State Parties with substantial interest and notification to the Secretariat which shall transmit to other State Parties. The compensatory adjustments shall be made in accordance with Article 4 of this Protocol.

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7. The modifying State Party shall not modify its commitment until it has made compensatory adjustments as provided for in paragraph 6 and endorsed by the Council of Ministers. The outcome of the compensatory adjustment shall be notified to State Parties.

Article 12 – Elimination of Non-Tariff Barriers

Except as may be provided for in this Protocol, the identification, categorisation, monitoring and elimination of Non-Tariff Barriers by State Parties shall be in accordance with the provisions of Annex 5 on Non-Tariff Barriers.

Article 13 – Rules of origin

Goods shall be eligible for preferential treatment under this Protocol, if they are originating in any of the State Parties in accordance with the criteria and conditions set out in Annex 2 on Rules of Origin, and in accordance with the Appendix to be developed on General and Product Specific Rules.

Part IV – Customs cooperation, trade facilitation and transit

Article 14 – Customs Cooperation and Mutual Administrative Assistance

State Parties shall take appropriate measures including arrangements regarding customs cooperation and mutual administrative assistance in accordance with the provisions of Annex 3 on Customs Cooperation and Mutual Administrative Assistance.

Article 15 – Trade Facilitation

State Parties shall take appropriate measures including arrangements regarding trade facilitation in accordance with the provisions of Annex 4 on Trade Facilitation.

Article 16 – Transit

State Parties shall take appropriate measures including arrangements regarding transit in accordance with the provisions of Annex 8 on Transit.

Part V – Trade remedies

Article 17 – Anti-dumping and countervailing measures

1. Subject to the provisions of this Protocol, nothing in this Protocol shall prevent State Parties from applying anti-dumping and countervailing measures.
2. In applying this Article, State Parties shall be guided by the provisions of Annex 9 on Trade Remedies and the AfCFTA Guidelines on Implementation of Trade Remedies in accordance with relevant WTO Agreements.

Article 18 – Global safeguard measures

The implementation of this Article shall be in accordance with Annex 9 on Trade Remedies and Guidelines on Implementation of Trade Remedies, Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

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Article 19 – Preferential safeguards

1. State Parties may apply safeguard measures to situations where there is a sudden surge of a product imported into a State Party, under conditions which cause or threaten to cause serious injury to domestic producers of like or directly competing products within the territory.
2. The implementation of this Article shall be in accordance with the provisions of Annex 9 on Trade Remedies and AfCFTA Guidelines on Implementation of Trade Remedies.

Article 20 – Cooperation relating to anti-dumping, countervailing and safeguards investigations

State Parties shall cooperate in the area of trade remedies in accordance with the provisions of Annex 9 on Trade Remedies and AfCFTA Guidelines on Implementation of Trade Remedies.

Part VI – Product standards and regulations

Article 21 – Technical Barriers to Trade

The implementation of this Article shall be in accordance with the provisions of Annex 6 on Technical Barriers to Trade.

Article 22 – Sanitary and Phytosanitary Measures

The implementation of this Article shall be in accordance with the provisions of Annex 7 on Sanitary and Phytosanitary Measures.

Part VII – Complementary policies

Article 23 – Special economic arrangements/zones

1. State Parties may support the establishment and operation of special economic arrangements or zones for the purpose of accelerating development.
2. Products benefiting from special economic arrangements or zones shall be subject to any regulations that shall be developed by the Council of Ministers. Regulations under this paragraph shall be in support of the continental industrialisation programmes.
3. The trade of products manufactured in special economic arrangements or zones within the AfCFTA shall be subject to the provisions of Annex 2 on Rules of Origin.

Article 24 – Infant industries

1. For the purposes of protecting an infant industry having strategic importance at the national level, a State Party may, provided that it has taken reasonable steps to overcome the difficulties related to such infant industry, impose measures for protecting such an industry. Such measures shall be applied on a non-discriminatory basis and for a specified period of time.
2. Council of Ministers shall adopt guidelines for implementation of this Article as an integral part of this Protocol.

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Article 25 – Transparency and notification requirements for State Trading Enterprises

1. In order to ensure the transparency of the activities of State Trading Enterprises (STE), State Parties shall notify such enterprises to the Secretariat for transmission to other State Parties.
2. For the purpose of this Article, STE refers to governmental, non governmental enterprises, including Marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports with reference to provisions of Article XVII of GATT 1994.

Part VIII – Exceptions

Article 26 – General exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between State Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Protocol shall be construed as preventing the adoption or enforcement of measures by any State Party that are:

(a) necessary to protect public morals or to maintain public order;

(b) necessary to protect human, animal or plant life or health;

(c) relating to the importations and exportations of gold or silver;

(d) relating to the products of prison labour;

(e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol, including those relating to customs enforcement, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;

(f) imposed for the protection of national treasures of artistic, historic or archaeological value;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement approved by the State Parties;

(i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan, provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Protocol relating to non-discrimination; and

(j) essential to the acquisition or distribution of foodstuffs or any other products in general or local short supply, provided that any such measures shall be consistent with the principle that all State Parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Protocol shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

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Article 27 – Security exceptions

Nothing in this Protocol shall be construed to:

(a) require any State Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) prevent any State Party from taking any action which it considers necessary for the protection of its essential security interests:

i. relating to fissionable materials or the materials from which they are derived;

ii. relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials taking place either directly or indirectly for the purpose of supplying a military establishment; and

iii. taken in time of war or other emergency in international relations; or

(c) prevent any State Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 28 – Balance of payments

1. Where a State Party is in critical balance of payments difficulties, or under imminent threat thereof, or has the need to safeguard its external financial position difficulties and that has taken all reasonable steps to overcome the difficulties, may adopt appropriate restrictive measures in accordance with international rights and obligations of the State Party concerned, including those under the WTO Agreement, the Articles of Agreement of the International Monetary Fund and the African Development Bank respectively. Such measures shall be equitable, non-discriminatory, in good faith, of limited duration and may not go beyond what is necessary to remedy the balance of payments situation.
2. The State Party concerned, having adopted or maintained such measures shall inform the other State Parties forthwith and submit, as soon as possible, a time schedule for their removal.

Part IX – Technical assistance, capacity building and cooperation

Article 29 – Technical assistance, capacity building and cooperation

1. The Secretariat, working with State Parties, RECs and partners, shall coordinate and provide technical assistance and capacity building in trade and trade related issues for the implementation of this Protocol.
2. State Parties agree to enhance cooperation for the implementation of this Protocol.
3. The Secretariat shall explore avenues to secure resources required for these programmes.

Part X – Institutional provisions

Article 30 – Consultation and dispute settlement

Except as otherwise provided in this Protocol, the relevant provisions of the Protocol on Rules and Procedures on the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Protocol.

Article 31 – Implementation, monitoring and evaluation

1. The Council of Ministers in accordance with Article 11 of the Agreement shall establish the Committee on Trade in Goods, which shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the operation of this Protocol and further its objectives. The Committee may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.
2. This Committee and its subsidiary bodies, shall be open to participation by representatives of all State Parties unless otherwise decided.
3. The Chairperson of the Committee shall be elected by the State Parties.
4. In accordance with Article 13(5) of the Agreement, the Secretariat shall, in consultation with State Parties, prepare annual factual reports to facilitate the process of implementation, monitoring and evaluation of this Protocol.
5. These reports should be considered and adopted by the Council of Ministers.

Article 32 – Amendment

Amendment to this Protocol shall be in accordance with Article 29 of the Agreement.

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