

African Union, African Regional Bodies

## Agreement Establishing the African Continental Free Trade Area

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African Union

# Agreement Establishing the African Continental Free Trade Area

Published

**Commenced on 30 May 2019**

*[This is the version of this document at 21 March 2018.]*

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 strengthen our economic relationship and build upon our respective rights and obligations under the Constitutive Act of the African Union of 2000, the Abuja Treaty and, where applicable, the Marrakesh Agreement Establishing the World Trade Organization of 1994;

**HAVING REGARD** to the aspirations of Agenda 2063 for a continental market with the free movement of persons, capital, goods and services, which are crucial for deepening economic integration, and promoting agricultural development, food security, industrialisation and structural economic transformation;

**CONSCIOUS** of the need to create an expanded and secure market for the goods and services of State Parties through adequate infrastructure and the reduction or progressive elimination of tariffs and elimination of non-tariff barriers to trade and investment;

**ALSO CONSCIOUS** of the need to establish clear, transparent, predictable and mutually-advantageous rules to govern Trade in Goods and Services, Competition Policy, Investment and Intellectual Property among State Parties, by resolving the challenges of multiple and overlapping trade regimes to achieve policy coherence, including relations with third parties;

**RECOGNISING** the importance of international security, democracy, human rights, gender equality and the rule of law, for the development of international trade and economic cooperation;

**REAFFIRMING** the right of State Parties to regulate within their territories and the State Parties' flexibility to achieve legitimate policy objectives in areas including public health, safety, environment, public morals and the promotion and protection of cultural diversity;

**FURTHER REAFFIRMING** our existing rights and obligations with respect to each other under other agreements to which we are parties; and

**ACKNOWLEDGING** the Regional Economic Communities (RECs) Free Trade Areas as building blocs towards the establishment of the African Continental Free Trade Area (AfCFTA),

**HAVE AGREED AS FOLLOWS:**

## Part I – Definitions

### Article 1 – Definitions

For the purpose of this Agreement,

- (a) "**Abuja Treaty**" means the *Treaty Establishing the African Economic Community of 1991*;
- (b) "**Agreement**" means this Agreement Establishing the African Continental Free Trade Area and its Protocols, Annexes and Appendices which shall form an integral part thereof;
- (c) "**Annex**" means an instrument attached to a Protocol, which forms an integral part of this Agreement;
- (d) "**Appendix**" means an instrument attached to an Annex which forms an integral part of this Agreement;
- (e) "**Assembly**" means the Assembly of Heads of State and Government of the African Union;
- (f) "**AU**" means the African Union;
- (g) "**AfCFTA**" means the African Continental Free Trade Area;
- (h) "**Commission**" means the African Union Commission;
- (i) "**Constitutive Act**" means the Constitutive Act of the African Union of 2000;
- (j) "**Continental Customs Union**" means the Customs Union at the continental level by means of adopting a common external tariff, as provided by the Treaty Establishing the African Economic Community of 1991;
- (k) "**Council of Ministers**" means the Council of African Ministers of State Parties responsible for Trade;
- (l) "**Dispute Settlement Body**" means the body established to administer the provisions of the Protocol on Rules and Procedures on the Settlement of Disputes except as otherwise provided in this Agreement;
- (m) "**Executive Council**" means the Executive Council of Ministers of the Union;
- (n) "**GATS**" means the WTO General Agreement on Trade in Services of 1994;
- (o) "**GATT**" means the WTO General Agreement on Tariffs and Trade of 1994;
- (p) "**Instrument**" unless otherwise specified in this Agreement refers to Protocol, Annex or Appendix;
- (q) "**Member States**" means the Member States of the African Union;
- (r) "**Non-Tariff Barriers**" means barriers that impede trade through mechanisms other than the imposition of tariffs;
- (s) "**Protocol**" means an instrument attached to this Agreement, which forms an integral part of the Agreement;
- (t) "**RECs**" means the Regional Economic Communities recognised by the African Union, namely, the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD) and the Southern African Development Community (SADC);
- (u) "**Secretariat**" means the Secretariat established pursuant to Article 13 of this Agreement;
- (v) "**State Party**" means a Member State that has ratified or acceded to this Agreement and for which the Agreement is in force;
- (w) "**Third Party**" means a State(s) that is not a party to this Agreement except as otherwise defined in this Agreement; and

- (x) "WTO" means the World Trade Organization, as established in terms of the *Marrakesh Agreement Establishing the World Trade Organization* of 1994.

## **Part II – Establishment, objectives, principles and scope**

### **Article 2 – Establishment of the African Continental Free Trade Area**

The African Continental Free Trade Area (hereinafter referred to as "the AfCFTA") is hereby established.

### **Article 3 – General objectives**

The general objectives of the AfCFTA are to:

- (a) create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of "An integrated, prosperous and peaceful Africa" enshrined in Agenda 2063;
- (b) create a liberalised market for goods and services through successive rounds of negotiations;
- (c) contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs;
- (d) lay the foundation for the establishment of a Continental Customs Union at a later stage;
- (e) promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties;
- (f) enhance the competitiveness of the economies of State Parties within the continent and the global market;
- (g) promote industrial development through diversification and regional value chain development, agricultural development and food security; and
- (h) resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

### **Article 4 – Specific objectives**

For purposes of fulfilling and realising the objectives set out in Article 3, State Parties shall:

- (a) progressively eliminate tariffs and non-tariff barriers to trade in goods;
- (b) progressively liberalise trade in services;
- (c) cooperate on investment, intellectual property rights and competition policy;
- (d) cooperate on all trade-related areas;
- (e) cooperate on customs matters and the implementation of trade facilitation measures;
- (f) establish a mechanism for the settlement of disputes concerning their rights and obligations; and
- (g) establish and maintain an institutional framework for the implementation and administration of the AfCFTA.

### **Article 5 – Principles**

The AfCFTA shall be governed by the following principles:

- (a) driven by Member States of the African Union;

- (b) RECs' Free Trade Areas (FTAs) as building blocs for the AfCFTA;
- (c) variable geometry;
- (d) flexibility and special and differential treatment;
- (e) transparency and disclosure of information;
- (f) preservation of the acquis;
- (g) Most-Favoured-Nation (MFN) Treatment;
- (h) National Treatment;
- (i) reciprocity;
- (j) substantial liberalisation;
- (k) consensus in decision-making; and
- (l) best practices in the RECs, in the State Parties and International Conventions binding the African Union.

### **Article 6 – Scope**

This Agreement shall cover trade in goods, trade in services, investment, intellectual property rights and competition policy.

### **Article 7 – Phase II Negotiations**

1. In pursuance of the objectives of this Agreement, Member States shall enter into Phase II negotiations in the following areas:
  - (a) intellectual property rights;
  - (b) investment; and
  - (c) competition policy.
2. The negotiations referred to in paragraph 1 of this Article shall commence after the adoption of this Agreement by the Assembly and shall be undertaken in successive rounds.

### **Article 8 – Status of the Protocols, Annexes and Appendices**

1. The Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices shall, upon adoption, form an integral part of this Agreement.
2. The Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices shall form part of the single undertaking, subject to entry into force.
3. Any additional instruments, within the scope of this Agreement, deemed necessary, shall be concluded in furtherance of the objectives of the AfCFTA and shall, upon adoption, form an integral part of this Agreement.

### **Part III – Administration and organisation**

#### **Article 9 – Institutional framework for the implementation of the AfCFTA**

The institutional framework for the implementation, administration, facilitation, monitoring and evaluation of the AfCFTA shall consist of the following:

- (a) the Assembly;
- (b) the Council of Ministers;
- (c) the Committee of Senior Trade Officials; and
- (d) the Secretariat.

#### **Article 10 – The Assembly**

1. The Assembly, as the highest decision-making organ of the AU, shall provide oversight and strategic guidance on the AfCFTA, including the Action Plan for Boosting Intra-African Trade (BIAT).
2. The Assembly shall have the exclusive authority to adopt interpretations of this Agreement on the recommendation of the Council of Ministers. The decision to adopt an interpretation shall be taken by consensus.

#### **Article 11 – The composition and functions of the Council of Ministers**

1. The Council of Ministers is hereby established and shall consist of the Ministers responsible for Trade or such other ministers, authorities, or officials duly designated by the State Parties.
2. The Council of Ministers shall report to the Assembly through the Executive Council.
3. The Council of Ministers shall within its mandate:
  - (a) take decisions in accordance with this Agreement;
  - (b) ensure effective implementation and enforcement of the Agreement;
  - (c) take measures necessary for the promotion of the objectives of this Agreement and other instruments relevant to the AfCFTA;
  - (d) work in collaboration with the relevant organs and institutions of the African Union;
  - (e) promote the harmonisation of appropriate policies, strategies and measures for the effective implementation of this Agreement;
  - (f) establish and delegate responsibilities to ad hoc or standing committees, working groups or expert groups;
  - (g) prepare its rules of procedure and those of its subsidiary bodies created for the implementation of the AfCFTA and submit them to the Executive Council for approval;
  - (h) supervise the work of all committees and working groups it may establish pursuant to this Agreement;
  - (i) consider reports and activities of the Secretariat and take appropriate actions;
  - (j) make regulations, issue directives and make recommendations in accordance with the provisions of this Agreement;

- (k) consider and propose for adoption by the Assembly, the staff and financial regulations of the Secretariat;
  - (l) consider the organisational structure of the Secretariat and submit for adoption by the Assembly through the Executive Council;
  - (m) approve the work programs of the AfCFTA and its institutions;
  - (n) consider the budgets of the AfCFTA and its institutions and submit them to the Assembly through the Executive Council;
  - (o) make recommendations to the Assembly for the adoption of authoritative interpretation of this Agreement; and
  - (p) perform any other function consistent with this Agreement or as may be requested by the Assembly.
4. The Council of Ministers shall meet twice a year in ordinary session and may meet as and when necessary in extraordinary sessions.
  5. Decisions taken by the Council of Ministers, while acting within its mandate, shall be binding on State Parties. Decisions that have legal, structural or financial implications shall be binding on State Parties upon their adoption by the Assembly.
  6. The State Parties shall take such measures as are necessary to implement the decisions of the Council of Ministers.

### **Article 12 – Committee of Senior Trade Officials**

1. The Committee of Senior Trade Officials shall consist of Permanent or Principal Secretaries or other officials designated by each State Party.
2. The Committee of Senior Trade Officials shall:
  - (a) implement the decisions of the Council of Ministers as may be directed;
  - (b) be responsible for the development of programmes and action plans for the implementation of the Agreement;
  - (c) monitor and keep under constant review and ensure proper functioning and development of the AfCFTA in accordance with the provisions of this Agreement;
  - (d) establish committees or other working groups as may be required;
  - (e) oversee the implementation of the provisions of this Agreement and for that purpose, may request a Technical Committee to investigate any particular matter;
  - (f) direct the Secretariat to undertake specific assignments; and
  - (g) perform any other function consistent with this Agreement or as may be requested by the Council of Ministers.
3. Subject to directions given by the Council of Ministers, the Committee of Senior Trade Officials shall meet at least twice a year and shall operate in accordance with the rules of procedures as adopted by the Council of Ministers.
4. The Committee shall submit its report, which may include recommendations, to the Council of Ministers following its meetings.
5. The RECs shall be represented in the Committee of Senior Trade Officials, in an advisory capacity.

### Article 13 – The Secretariat

1. The Assembly shall establish the Secretariat, decide on its nature, location and approve its structure and budget.
2. The Commission shall be the interim Secretariat, until it is fully operational;
3. The Secretariat shall be a functionally autonomous institutional body within the African Union system with an independent legal personality;
4. The Secretariat shall be autonomous of the African Union Commission;
5. The Funds of the Secretariat shall come from the overall annual budgets of the African Union;
6. The roles and responsibilities of the Secretariat shall be determined by the Council of Ministers of Trade.

### Article 14 – Decision-making

1. Decisions of the AfCFTA institutions<sup>1</sup> on substantive issues shall be taken by consensus.
2. Notwithstanding paragraph 1, the Committee of Senior Trade Officials shall refer, for consideration by the Council of Ministers, matters on which it has failed to reach consensus. The Council of Ministers shall refer the matters to the Assembly where consensus could not be reached.
3. Decisions on questions of procedure shall be taken by a simple majority of State Parties, eligible to vote.
4. Decisions on whether or not a question is one of procedure shall also be determined by a simple majority of State Parties, eligible to vote.
5. Abstention by a State Party eligible to vote shall not prevent the adoption of decisions.

### Article 15 – Waiver of obligations

1. In exceptional circumstances, the Council of Ministers may waive an obligation imposed on a State Party to this Agreement, upon request by a State Party, provided that any such decision shall be taken by three fourths<sup>2</sup> of the States Parties, in the absence of consensus.
2. A request for a waiver from a State Party concerning this Agreement shall be submitted to the Council of Ministers for consideration pursuant to the practice of decision-making by consensus. The Council of Ministers shall establish a time period, which shall not exceed ninety (90) days, to consider the request. If consensus is not reached during the time period, any decision to grant a waiver shall be taken by three fourths of the State Parties.
3. A decision by the Council of Ministers granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one (1) year shall be reviewed by the Council of Ministers not later than one (1) year after it is granted, and thereafter annually until the waiver terminates. In each review, the Council of Ministers shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached

<sup>1</sup>

The Assembly, the Council of Ministers and the Committee of Senior Trade Officials.

<sup>2</sup>

A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting State Party has not performed by the end of the relevant period shall be taken only by consensus.

to the waiver have been met. The Council of Ministers, on the basis of the annual review, may extend, modify or terminate the waiver.

## **Part IV – Transparency**

### **Article 16 – Publication**

1. Each State Party shall promptly publish or make publicly available through accessible mediums<sup>3</sup> its laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by this Agreement.
2. The provisions of this Agreement shall not require any State Party to disclose confidential information which would impede law enforcement or otherwise be contrary to public interest or will prejudice the legitimate commercial interest of particular enterprises, public or private.

### **Article 17 – Notification**

1. Laws, regulations, procedures and administrative rulings of general application as well as any other commitments under an international agreement relating to any trade matter covered by this Agreement adopted after the entry into force of this Agreement shall be notified by State Parties in one (1) of the African Union working languages to other State Parties through the Secretariat.
2. Each State Party shall notify, through the Secretariat, in accordance with this Agreement, the other State Parties of any actual or proposed measure that the State Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other State Party's interests under this Agreement.
3. At the request of another State Party, a State Party, through the Secretariat, shall promptly provide information and respond to questions pertaining to an actual or proposed measure, irrespective of whether or not the other State Party was previously notified of that measure.
4. Any notification or information provided pursuant to this Article is without prejudice to whether the measure is consistent with this Agreement.

## **Part V – Continental preferences**

### **Article 18 – Continental preferences**

1. Following the entry into force of this Agreement, State Parties shall, when implementing this Agreement, accord each other, on a reciprocal basis, preferences that are no less favourable than those given to Third Parties.
2. A State Party shall afford opportunity to other State Parties to negotiate preferences granted to Third Parties prior to entry into force of this Agreement and such preferences shall be on a reciprocal basis. In the case where a State Party is interested in the preferences in this paragraph, the State Party shall afford opportunity to other State Parties to negotiate on a reciprocal basis, taking into account levels of development of State Parties.
3. This Agreement shall not nullify, modify or revoke rights and obligations under pre-existing trade agreements that State Parties have with Third Parties.

3

<sup>3</sup>For example through Gazette, newsletter, Hansard, or websites in one of the African Union languages."



## **Article 19 – Conflict and inconsistency with regional agreements**

1. In the event of any conflict and inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement.
2. Notwithstanding the provisions of Paragraph 1 of this Article, State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves.

## **Part VI – Dispute settlement**

### **Article 20 – Dispute settlement**

1. A Dispute Settlement Mechanism is hereby established and shall apply to the settlement of disputes arising between State Parties.
2. The Dispute Settlement Mechanism shall be administered in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes.
3. The Protocol on Rules and Procedures on the Settlement of Disputes shall establish, *inter alia*, a Dispute Settlement Body.

## **Part VII – Final provisions**

### **Article 21 – Exceptions**

No provision of this Agreement shall be interpreted as derogating from the principles and values contained in other relevant instruments for the establishment and sustainability of the AfCFTA, except as otherwise provided for in the Protocols to this Agreement.

### **Article 22 – Adoption, signature, ratification and accession**

1. This Agreement shall be adopted by the Assembly.
2. This Agreement shall be open for signature and ratification or accession by the Member States, in accordance with their respective constitutional procedures.

### **Article 23 – Entry into force**

1. This Agreement and the Protocols on Trade in Goods, Trade in Services, and Protocol on Rules and Procedures on the Settlement of Disputes shall enter into force thirty (30) days after the deposit of the twenty second (22<sup>nd</sup>) instrument of ratification.
2. The Protocols on Investment, Intellectual Property Rights, Competition Policy and any other Instrument within the scope of this Agreement deemed necessary, shall enter into force thirty (30) days after the deposit of the twenty second (22<sup>nd</sup>) instrument of ratification.
3. For any Member State acceding to this Agreement, the Protocols on Trade in Goods, Trade in Services, and the Protocol on Rules and Procedures on the Settlement of Disputes shall enter into force in respect of that State Party on the date of the deposit of its instrument of accession.

4. For Member States acceding to the Protocols on Investment, Intellectual Property Rights, Competition Policy, and any other Instrument within the scope of this Agreement deemed necessary, shall enter into force on the date of the deposit of its instrument of accession.
5. The Depositary shall inform all Member States of the entry into force of this Agreement and its Annexes.

### **Article 24 – Depositary**

1. The Depositary of this Agreement shall be the Chairperson of the Commission.
2. This Agreement shall be deposited with the Depositary, who shall transmit a certified true copy of the Agreement to each Member State.
3. A Member State shall deposit an instrument of ratification or accession with the Depositary.
4. The Depositary shall notify Member States of the deposit of the instrument of ratification or accession.

### **Article 25 – Reservation**

No reservations shall be made to this Agreement.

### **Article 26 – Registration and notification**

1. The Depositary shall upon the entry into force of this Agreement, register it with the United Nations Secretary General in conformity with Article 102 of the Charter of the United Nations.
2. State Parties shall, where applicable notify this Agreement to the WTO individually or collectively.

### **Article 27 – Withdrawal**

1. After five (5) years from the date of entry into force in respect of a State Party, a State Party may withdraw from this Agreement by giving written notification to State Parties through the Depositary.
2. Withdrawal shall be effective two (2) years after receipt of notification by the Depositary, or on such later date as may be specified in the notification.
3. Withdrawal shall not affect any pending rights and obligations of the withdrawing State Party prior to the withdrawal.

### **Article 28 – Review**

1. This Agreement shall be subject to review every five (5) years after its entry into force, by State Parties, to ensure effectiveness, achieve deeper integration, and adapt to evolving regional and international developments.
2. Following the process of review, State Parties may make recommendations for amendments, in accordance with Article 29 taking into account experience acquired and progress achieved during the implementation of this Agreement.

### **Article 29 – Amendments**

1. Any State Party may submit proposal(s) for amendment to this Agreement to the Depositary.

2. The Depositary shall within thirty (30) days of receipt of the proposal, circulate the proposal to State Parties and the Secretariat.
3. A State Party that wishes to comment on the proposal may do so within sixty (60) days from the date of circulation and submit the comments to the Depositary and the Secretariat.
4. The Secretariat shall circulate the proposal and comments received to members of the appropriate AfCFTA committees and sub-committees for consideration.
5. The relevant committees and sub-committees shall present, through the Secretariat, recommendations to the Council of Ministers, for consideration, following which a recommendation may be made to the Assembly through the Executive Council.
6. Amendments to the Agreement shall be adopted by the Assembly.
7. The amendments to this Agreement shall enter into force in accordance with Article 23 of this Agreement.

### **Article 30 – Authentic texts**

This Agreement is drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all of which are equally authentic.