

African Union, African Regional Bodies

Agreement Establishing the African Continental Free Trade Area

## Protocol on Rules and Procedures on the Settlement of Disputes

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African Union

## Agreement Establishing the African Continental Free Trade Area

# Protocol on Rules and Procedures on the Settlement of Disputes

Published

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**We Member States of the African Union,**

**Have agreed as follows:**

### Article 1 – Definitions

- (a) "AB" means the Appellate Body established under Article 20 of this Protocol;
- (b) "**Complaining Party**" means a State Party that has initiated a dispute settlement procedure under the Agreement;
- (c) "**Consensus**" means if no State Party present at the meeting of the DSB when a decision is taken, formally objects to the decision;
- (d) "**Days**" means working days save for cases involving perishable goods where Days shall mean calendar days;
- (e) "**Dispute**" means a disagreement between State Parties regarding the interpretation and/or application of the Agreement in relation to their rights and obligations;
- (f) "**DSB**" means the Dispute Settlement Body established under Article 5 of this Protocol;
- (g) "**Panel**" means a Dispute Settlement Panel established under Article 9 of this Protocol;
- (h) "**Party to a dispute or proceedings**" means a State Party to a dispute or proceedings;
- (i) "**State Party concerned**" is a State Party to which rulings and recommendations of the DSB are directed; and
- (j) "**Third Party**" means a State Party with a substantial interest in a dispute.

### Article 2 – Objective

This Protocol provides for the administration of the Dispute Settlement Mechanism established in accordance with Article 20 of the Agreement and aims at ensuring that the dispute settlement process is transparent, accountable, fair, predictable and consistent with the provisions of the Agreement.

### Article 3 – Scope of application

1. This Protocol shall apply to disputes arising between State Parties concerning their rights and obligations under the provisions of the Agreement.
2. This Protocol shall apply subject to such special and additional rules and procedures on dispute settlement contained in the Agreement. To the extent that there is a difference between the rules and procedures of

this Protocol and the special or additional rules and procedures in the Agreement, the special or additional rules and procedures shall prevail.

3. For the purposes of this Article, a dispute settlement proceeding shall be considered to have been initiated in accordance with this Protocol when the Complaining Party requests consultations pursuant to Article 7 of this Protocol.
4. A State Party which has invoked the rules and procedures of this Protocol with regards to a specific matter, shall not invoke another forum for dispute settlement on the same matter.

#### **Article 4 – General provisions**

1. The dispute settlement mechanism of the AfCFTA is a central element in providing security and predictability to the regional trading system. The dispute settlement mechanism shall preserve the rights and obligations of State Parties under the Agreement and clarify the existing provisions of the Agreement in accordance with customary rules of interpretation of public international law.
2. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of a dispute in accordance with rights and obligations under the Agreement.
3. Mutually agreed solutions to matters formally raised in accordance with the consultation and dispute settlement provisions of this Protocol shall be notified to the DSB, where any State Party may raise any point relating thereto.
4. All resolutions to matters formally raised in accordance with the consultations and dispute settlement provisions of this Protocol, including arbitration awards, shall be consistent with the Agreement.
5. Requests for conciliation, good offices, mediation and the use of dispute settlement procedures should not be intended or considered as contentious acts. If a dispute arises, State Parties will engage in these procedures in good faith in an effort to resolve the dispute. Further, complaints and counter-complaints in regard to separate matters should not be linked.
6. In their findings and recommendations, the Panel and AB shall not add to or diminish the rights and obligations of State Parties pursuant to the Agreement.

#### **Article 5 – Dispute Settlement Body**

1. The Dispute Settlement Body is hereby established in accordance with Article 20 of the Agreement to administer the provisions of this Protocol except as otherwise provided for in the Agreement.
2. The DSB shall be composed of representatives of the State Parties.
3. The DSB shall have the authority to:
  - (a) establish Dispute Settlement Panels and an Appellate Body;
  - (b) adopt Panel and Appellate Body reports;
  - (c) maintain surveillance of implementation of rulings and recommendations of the Panels and Appellate Body; and
  - (d) authorise the suspension of concessions and other obligations under the Agreement.
4. The DSB shall have its own Chairperson and shall establish such rules of procedure as it deems necessary for the fulfilment of its responsibilities. The DSB Chairperson shall be elected by the State Parties.
5. The DSB shall meet as often as necessary to discharge its functions as provided for in this Protocol.
6. Where the rules and procedures of this Protocol provide for the DSB to take a decision, it shall do so by consensus.

7. The DSB shall inform the Secretariat of any dispute related to the provisions of the Agreement.

### **Article 6 – Procedures under the Dispute Settlement Mechanism**

1. Where a dispute arises between or among the State Parties, in the first instance, recourse shall be had to consultations, with a view to finding an amicable resolution to the dispute.
2. Where an amicable resolution is not achieved, any party to the dispute shall, after notifying the other parties to the dispute, refer the matter to the DSB, through the Chairperson and request for the establishment of a Dispute Settlement Panel, (hereinafter referred to as the "Panel") for purposes of settling the dispute.
3. The DSB shall adopt Rules of Procedure for the selection of the Panel, including the issues of conduct, to ensure impartiality.
4. The panel shall set in motion the process of a formal resolution of the dispute as provided for in this Protocol and the parties to the dispute shall, in good faith, observe in a timely manner, any directions, rulings and stipulations that may be given to them by the Panel in relation to procedural matters and shall make their submissions, arguments and rebuttals in a format prescribed by the Panel.
5. The DSB shall make its determination of the matter and its decision shall be final and binding on the parties to a dispute.
6. Where the parties to a dispute consider it expedient to have recourse to arbitration as the first dispute settlement avenue, the parties to a dispute may proceed with arbitration as provided for in Article 27 of this Protocol.

### **Article 7 – Consultations**

1. State Parties with a view to encouraging amicable resolution of disputes, affirm their resolve to strengthen and improve the effectiveness of consultation procedures employed by State Parties.
2. Each State Party undertakes to accord consideration to, and afford adequate opportunity for consultations regarding any representation made by another State Party concerning measures affecting the operation of the Agreement.
3. Requests for consultations shall be notified to the DSB through the Secretariat in writing, giving the reasons for the request, including identification of the issues and an indication of the legal basis for the complaint.
4. Where a request for consultations is made pursuant to this protocol, the State Party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten (10) days after the date of its receipt and shall enter into consultations in good faith within a period not exceeding thirty (30) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.
5. Where a State Party to which the request is made does not respond within ten (10) days after the date of receipt of the request, or does not enter into consultations within a period of thirty (30) days, or a period otherwise mutually agreed, after the date of receipt of the request, the State Party that requested for the consultations may refer the matter to the DSB requesting for the establishment of a Panel.
6. In the course of consultations and before resorting to further action under this Protocol, State Parties shall attempt to obtain satisfactory settlement of the dispute.
7. Consultations shall be:
  - (a) confidential; and
  - (b) without prejudice to the rights of any State Party in any further proceedings.

8. Where State Parties to a dispute fail to settle a dispute through consultations within sixty (60) days after the date of receipt of the request for consultations, the complaining party may refer the matter to the DSB, for establishment of a Panel. Consultations may be held in the territory of the party complained against unless the Parties agree otherwise. Unless State Parties to a dispute agree to continue or suspend consultations, consultations shall be deemed concluded within the sixty (60) days.
9. In cases of urgency, including cases of perishable goods:
  - (a) the State Party shall within ten (10) days after the date of receipt of the request enter into consultations;
  - (b) where the parties fail to settle the dispute through consultations within twenty (20) days after the date of receipt of the request, the complaining party may refer the matter to the DSB for establishment of a Panel;
  - (c) pursuant to the provisions of Annex 5 on Non-Tariff Barriers (Appendix 2: Procedures for Elimination and Cooperation in the Elimination of Non-Tariff Barriers), where a State Party fails to resolve an NTB after a mutually agreed solution was reached and after issuing the factual report, the requesting State Party shall resort to the dispute settlement panel stage. Notwithstanding the provisions herein, the above Parties to a dispute may agree to submit the matter to arbitration in accordance with the provisions of Article 27 of this Protocol; and
  - (d) the parties to the dispute, the DSB and the Panel and Appellate Body shall make every effort to expedite the proceedings to the greatest extent possible.
10. Where a State Party that is not party to a dispute considers that it has substantial trade interest in consultations, that State Party may, within ten (10) days of the circulation of the request for consultations, request the Parties to a dispute to be joined in the consultations.
11. Where the Parties to the dispute agree that the claim of substantial interest is well founded, the Third Party shall be so joined to the consultations. If the request to join the consultations is not accepted, the disputing State Party shall inform the DSB and in this event the applicant State Party shall be free to request consultation.

## **Article 8 – Good offices, conciliation and mediation**

1. State Parties to a dispute may at any time voluntarily undertake good offices, conciliation, or mediation. Proceedings that involve good offices, conciliation, or mediation shall be confidential and be without prejudice to the rights of the State Parties in any other proceedings.
2. Good offices, conciliation or mediation may be requested at any time by any State Party to a dispute. They may begin at any time and be terminated at any time by any of the State Parties to the dispute. Once procedures for good offices, conciliation or mediation are terminated, a Complaining Party may then proceed with a request for the establishment of a panel.
3. When good offices, conciliation or mediation are entered into after the date of receipt of a request for consultations, the Complaining Party must allow for a period of sixty (60) days after the date of receipt of the request for consultations before requesting the establishment of a panel. The Complaining Party may request for the establishment of a Panel during the sixty (60) day period, if the State Parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.
4. State Parties participating in proceedings under this Article may suspend or terminate those proceedings, at any time, if they consider that the good offices, conciliation or mediation process has failed to settle the dispute.
5. If the State Parties to a dispute agree, the procedures for good offices, conciliation or mediation may continue while the Panel process proceeds.

6. The Head of the Secretariat may be requested by any State Party to a dispute to facilitate the process of good offices, conciliation or mediation, including offering the same. Such a request shall be notified to the DSB and the Secretariat.

### **Article 9 – Establishment of Panels**

1. Where an amicable resolution is not achieved through consultations, the Complaining Party shall, in writing refer the matter to the DSB and request for the establishment of a Panel. Parties to a dispute shall be informed promptly of the composition of the Panel.
2. The request referred to in paragraph 1 of this Article shall indicate whether consultations were held, identify the specific measures at issue and provide a summary of the legal basis of the complaint sufficient to present the problem clearly.
3. In case the applicant requests the establishment of a Panel with terms of reference other than the standard terms, the written request shall include the proposed text of special terms of reference.
4. A meeting of the DSB shall be convened within fifteen (15) days of the request to establish a Panel, provided that at least ten (10) days advance notice of the meeting is given to the DSB.
5. The Panel shall be constituted within ten (10) days of the meeting of the DSB referred to in paragraph 4 of this Article.

### **Article 10 – Composition of the Panel**

1. The Secretariat shall, upon entry into force of the Agreement, establish and maintain an indicative list or roster of individuals who are willing and able to serve as Panellists.
2. Each State Party may annually nominate two (2) individuals to the Secretariat for the inclusion in the indicative list or roster, indicating their area (s) of expertise related to the Agreement. The indicative list or roster of individuals shall be submitted by the Secretariat for consideration and approval by the DSB.
3. Individuals listed on the indicative list or roster shall:
  - (a) have expertise or experience in law, international trade, other matters covered by the Agreement or the resolution of disputes arising under international trade agreements;
  - (b) be chosen strictly on the basis of objectivity, reliability and sound judgment;
  - (c) be impartial, independent of, and not be affiliated to or take instructions from, any Party; and
  - (d) comply with a code of conduct to be developed by the DSB and adopted by Council of Ministers.
4. The Panellists shall be selected with a view to ensuring their independence and integrity and shall have a sufficiently diverse background and a wide spectrum of experience in the subject matter of the dispute, unless the Parties to the dispute agree otherwise.
5. In order to ensure and preserve the impartiality and independence of the Panellists, nationals of the disputing State Parties shall not serve on a Panel concerned with that dispute, unless the Parties to the dispute agree otherwise.
6. The Secretariat, shall propose nominations for the Panel to the Parties to the dispute. The Parties to the dispute shall not oppose nominations except for compelling reasons.
7. If no agreement is reached on the composition of a Panel within thirty (30) days after the date of the establishment of a Panel, at the request of either Party, the Head of the Secretariat, in consultation with the Chairperson of the DSB and with the consent of the disputing State Parties, shall determine the composition of the Panel by appointing the Panellists considered to be most appropriate.

8. The Chairperson of the DSB shall inform the State Parties of the composition of the Panel no later than ten (10) days after the date the Chairperson receives such a request.
9. Where there are two (2) disputing State Parties, the Panel shall comprise three (3) members. Where there are more than two (2) disputing State Parties, the Panel shall comprise five (5) members.
10. Panellists shall serve in their individual capacities and not as Government representatives, nor as representatives of any organisation.
11. Panellists shall not receive instructions or be influenced by any State Party when considering matters before them.

### **Article 11 – Terms of reference of the Panel**

1. Panellists shall have the following terms of reference unless the Parties to a dispute agree otherwise, within twenty (20) days from the establishment of the Panel:
  - (a) to examine, in the light of the relevant provisions in the Agreement, cited by the Parties to the dispute, the matter referred to the DSB by the Complaining Party; and
  - (b) to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the Agreement.
2. Panels shall address the relevant provisions in the Agreement cited by the Parties to the dispute.
3. In establishing a Panel, the DSB may authorise its Chairperson to draw up the terms of reference of the Panel in consultation with the State Parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all State Parties. If other than standard terms of reference are agreed upon, any State Party may raise any point relating thereto in the DSB.

### **Article 12 – Functions of a Panel**

1. The principal function of a Panel is to assist the DSB in discharging its responsibilities under the Agreement.
2. In performing this function, a Panel shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant provisions of the Agreement and make findings to assist the DSB in making recommendations and rulings.
3. The Panel shall consult widely and regularly with the Parties to a dispute and give them an adequate opportunity to develop a mutually satisfactory solution.

### **Article 13 – Third Parties**

1. The interests of all Parties to a dispute including Third Parties shall be taken into account during the Panel process.
2. A Third Party shall, after notification of its substantial interests to the Panel through the DSB, provided that disputing parties agree that the claim of substantial interest is well founded, have an opportunity to be heard and to make written submissions to the Panel.
3. Copies of the submissions shall be served on the Parties to the dispute and shall be reflected in the report of the Panel.
4. If a Third Party considers that a measure already the subject of a Panel proceeding impairs or nullifies benefits accruing to it under the Agreement, that Third Party may have recourse to normal dispute settlement procedures under this Protocol. Such a dispute shall be referred to the original Panel wherever possible.

5. Third Parties shall receive the submissions of the Parties to a dispute at the first meeting of the Panel.

### **Article 14 – Procedures for multiple complaints**

1. Where more than one (1) State Party requests for the establishment of a Panel related to the same matter, a single Panel may be established to examine these complaints, taking into account the rights of all State Parties concerned. A single Panel shall be established to examine such complaints whenever feasible.
2. The single Panel shall organise its examination and present its findings to the DSB in such a manner that the rights, which the Parties to the dispute would have enjoyed had separate Panels examined the complaints, are in no way impaired. If one of the Parties to the dispute so requests, the Panel shall submit separate reports on the dispute concerned. The written submissions by each of the Complaining Parties shall be made available to the other Complaining Parties, and each Complaining party shall have the right to be present when any one of the other Complaining Party presents its views to the Panel.
3. If more than one Panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as Panellists on each of the separate Panels and the timetable for the Panel process in such disputes shall be harmonised.

### **Article 15 – Procedures for the Panel**

1. The procedures of the Panel shall provide sufficient flexibility to ensure an effective and timely resolution of disputes by the Panels.
2. After consulting the Parties to a dispute, the Panellists shall, within seven (7) days after the composition of the Panel and the determination of its terms of reference, fix the timetable for the proceedings of the Panel. The timetable thus drawn up shall be circulated to all State Parties.
3. In determining the timetable for the proceedings of the Panel, the Panel shall, within ten (10) working days, upon the expiry of the seven (7) days referred to in paragraph 2, set precise time limits for written submissions by the Parties to a dispute. Parties to a dispute shall comply with the set time limits.
4. The period in which the panel shall conduct its business, from the date of establishment of the Panel to the date of issuance of the final report to the Parties to a dispute, shall not exceed five (5) months and in cases of urgency, including cases of perishable goods, the period shall not exceed one and a half (1½) months.
5. Where the Parties to the dispute have failed to develop a mutually satisfactory solution, the Panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of the Panel shall set out the findings of the fact, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes.
6. Where a settlement of the matter among the Parties to the dispute has been found, the report of the Panel shall be confined to a brief description of the case and to reporting that a solution has been reached.
7. Where a Panel determines that it cannot issue its report within five (5) months, or within one and a half (1½) months in cases of urgency, the Panel shall immediately inform the DSB in writing of the reasons for the delay together with an estimation of the period within which the Panel shall be ready to issue its report. Where a Panel cannot issue a report within the period specified in paragraph 4 of this Article, the Panel shall issue the report within nine (9) months from the date of its composition.
8. The reports of the Panel shall be drafted in the absence of the Parties to the dispute and shall be based on information and evidence provided by the parties and any other person, expert or institution in accordance with this Protocol.
9. The Panel shall produce a single report reflecting the views of the majority of the Panellists.



10. Without prejudice to the provisions of this Article, the Panel shall follow the working procedures specified in the Annex on Working Procedures of the Panel unless the Panel decides otherwise after consulting the Parties to the dispute.
11. The Panel shall, at the request of both Parties to a dispute, suspend its work at any time for a period agreed by the Parties not exceeding twelve (12) months and shall resume its work at the end of this agreed period at the request of the Complaining Party. If the Complaining Party does not request the resumption of the Panel's work before the expiry of the agreed suspension period, the procedure shall be terminated. The suspension and termination of the Panel's work are without prejudice to the rights of either Party to a dispute in another proceeding on the same matter.

### **Article 16 – Right to seek information**

1. The Panel shall have the right to seek information and technical advice from any source that it deems appropriate, after informing the relevant authorities of State Parties to the dispute.
2. The Panel shall have the right to seek information and technical advice from any State Party provided that the State Party is not a Party to the dispute.
3. Where a Panel seeks information or technical advice from a State Party, such State Party shall, within the time set by the Panel, respond to the request made for such information.
4. Confidential information that is provided shall not be disclosed without formal authorisation from the source providing the information.
5. Where a Party to a dispute raises a factual issue concerning a scientific or other technical matter, the Panel may request for an advisory report in writing from an expert review group with relevant qualifications and experience on the issue.
6. Rules for the establishment of the expert review group and its procedures are set forth in the Annex on Expert Review.
7. The Panel may seek information from any relevant source and may consult experts to obtain their opinion on any matter that may be brought before it.

### **Article 17 – Confidentiality**

1. The deliberations of the Panels shall be confidential.
2. A Party to a dispute shall treat as confidential any information submitted to a Panel and designated as such, by another Party to a dispute.
3. Nothing in this Protocol shall preclude a Party to a dispute from disclosing statements of its own positions to the public.
4. The reports of the Panels shall be drafted without the presence of the parties to the dispute in light of the information provided and the statements made.
5. Opinions expressed in the Panel report by the individual panellists shall be anonymous.

### **Article 18 – Reports of a Panel**

1. A Panel shall consider the rebuttal submissions and arguments of the Parties to a dispute and issue a draft report containing descriptive sections of the facts and arguments of the dispute, to the Parties to a dispute.
2. The Parties to a dispute shall submit their comments on the draft report in writing to the Panel, within a period set by the Panel.



3. Taking into account any comments received under paragraph 2 of this Article, or on the expiration of the time set for the receipt of comments from the Parties to a dispute, the Panel shall issue an interim report to the Parties to a dispute, containing descriptive sections and its findings and conclusions.
4. Within a period set by a Panel, any Party to a dispute may submit a written request for review of specific aspects of the interim report prior to the issuance and circulation of the final report to the Parties to a dispute.
5. At the request of any Party to a dispute, the Panel shall hold a meeting with the Parties to a dispute on the review of specific aspects of the interim report.
6. Where no comments are received by the Panel within the period set for the receipt of comments on the interim report, the interim report shall be deemed to be the Panel's final report and it shall be promptly circulated to the Parties to a dispute and any interested parties and shall be forwarded to the DSB for consideration.
7. The final report of the Panel shall include a discussion of the arguments made at the interim review stage.

### **Article 19 – Adoption of report of a Panel**

1. In order to provide sufficient time for the State Parties to consider the reports of the Panel, the reports shall not be brought up for consideration by the DSB before the expiration of twenty (20) days from the date on which the Panel circulated the report.
2. State Parties having objections to a Panel report shall give written reasons to the DSB, explaining their objections, which may include discovery of new facts, which by their nature have decisive influence on the decision provided that:
  - (a) such objections must be notified to the DSB within ten (10) days prior to a meeting of the DSB at which the Panel report will be considered; and
  - (b) the objecting party shall serve a copy of the objection with the other parties to the dispute and to the Panel that made the report.
3. Parties to a dispute shall have the right to participate fully in the consideration of the Panel reports by the DSB and their views shall be fully recorded.
4. Within sixty (60) days from the date the final Panel report is circulated to the State Parties, the report shall be considered, adopted and signed at a meeting of the DSB convened for that purpose, unless a Party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a Party to a dispute has notified its decision to appeal, the report by the Panel shall not be considered for adoption by the DSB until after completion of the appeal. The decision of the DSB shall be final except as otherwise provided for in this Article.
5. The Parties to the dispute shall be entitled to a signed copy of the adopted report within seven (7) days of its adoption.
6. An appeal on the report of the Panel shall be lodged with the DSB within thirty (30) days from the date of communication of the decision to appeal by the State Party to the DSB.

### **Article 20 – Appellate Body**

1. A standing Appellate Body (AB) shall be established by the DSB. The AB shall hear appeals from panel cases.
2. The AB shall be composed of seven (7) persons, three (3) of whom shall serve on any one case.
3. Persons serving on the AB shall serve in rotation. Such rotation shall be determined in the working procedures of the AB.

4. The DSB shall appoint persons to serve on the AB for a four-year term, and each person may be reappointed once. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.
5. The DSB shall appoint a person to fill the vacancy within two (2) months from the date the vacancy arose.
6. Where the DSB fails to appoint a person to fill the vacancy within two (2) months, the Chairperson of the DSB in consultations with the Secretariat shall within a period of one (1) month fill the vacancy.
7. The AB shall comprise of persons of recognised authority, with demonstrated expertise in law, international trade and the subject matter of the Agreement generally.
8. Members of the AB shall not be affiliated to any government. The AB shall broadly represent the membership within the AfCFTA. All persons serving on the AB shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the AfCFTA. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

### **Article 21 – Appeals**

1. Only Parties to the dispute, may appeal a Panel report. Third Parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 13 of this Protocol, may make written submissions to, and be given an opportunity to be heard by, the AB.
2. As a general rule, the proceedings shall not exceed sixty (60) days from the date a party to the dispute formally notifies its decision to appeal, to the date the AB circulates its report. In fixing its timetable the AB shall take into account the provisions of paragraph 9 (d) of Article 7 of this Protocol if relevant. Where the AB considers that it cannot provide its report within sixty (60) days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed ninety (90) days.
3. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the Panel.
4. The AB shall be provided with appropriate administrative and legal support as it requires.
5. The expenses of persons serving on the AB, including travel and subsistence allowance, shall be met from the AfCFTA budget in accordance with the financial rules and regulations of the AU.

### **Article 22 – Procedures for appellate review**

1. Working procedures shall be drawn up by the AB in consultation with the Chairperson of the DSB and communicated to the State Parties for their information.
2. The proceedings of the AB shall be confidential.
3. The conduct of an appeal under this Article shall not exceed ninety (90) days.
4. The reports of the AB shall be drafted without the presence of the Parties to the dispute and in the light of the information provided and the statements made.
5. Opinions expressed in the AB report by individuals serving on the AB shall be anonymous.
6. The AB shall address each of the issues raised in accordance with paragraph 3 of Article 21 of this Protocol, during the appellate proceeding.
7. The AB may uphold, modify or reverse the legal findings and conclusions of the Panel.
8. The AB shall produce a single report reflecting the views of the majority of its members.

9. An AB report shall be adopted by the DSB and unconditionally accepted by the Parties to the dispute unless the DSB decides by consensus not to adopt the AB report within thirty (30) days following its circulation to the State Parties. This adoption procedure is without prejudice to the right of State Parties to express their views on an AB report.

### **Article 23 – Panel and Appellate Body recommendations**

Where the Panel or the AB concludes that a measure is inconsistent with the Agreement, it shall recommend that the State Party concerned bring the measure into conformity with the Agreement. In addition to its recommendations, the Panel or the AB may suggest ways in which the State Party concerned could implement the recommendations.

### **Article 24 – Surveillance of implementation of recommendations and rulings**

1. State Parties shall promptly comply with recommendations and rulings of the DSB.
2. A State Party concerned shall inform the DSB of its intentions in respect of the implementation of the recommendations and rulings of the DSB, at a meeting of the DSB which shall be held within thirty (30) days after the date of adoption of the report by the Panel or the AB.
3. Where a State Party concerned finds it impracticable to comply immediately with the recommendations and rulings of the DSB, the State Party concerned shall be granted a reasonable period in which to comply on the following basis:
  - (a) period of time proposed by the State Party concerned provided that the DSB approves the proposal; or
  - (b) in the absence of such approval a period mutually agreed by the Parties to a dispute within forty-five (45) days of the date of adoption of the report of the Panel and the AB and recommendations and rulings of the DSB; or
  - (c) in the absence of such agreement, a period of time determined through binding arbitration within ninety (90) days after the date of adoption of the recommendations and rulings. In such arbitration, a guideline for the arbitrator should be that the reasonable period of time to implement Panel or AB recommendations should not exceed fifteen (15) months from the date of adoption of a Panel or AB report. However, that time may be shorter or longer, depending upon the particular circumstances.
4. If the Parties cannot agree on an arbitrator within ten (10) days after referring the matter to arbitration, the arbitrator shall be appointed by the Secretariat in consultation with the DSB within ten (10) days, after consulting the Parties.
5. The Secretariat shall keep the DSB informed of the status of the implementation of decisions made under this Protocol.
6. Except where the Panel or the AB has extended, pursuant to Paragraph 7 of Article 15 or Paragraph 2 of Article 21 of this Protocol, the time of providing its report, the period from the date of establishment of the Panel by the DSB until the date of determination of the reasonable period of time shall not exceed fifteen (15) months unless the Parties to the dispute agree otherwise. Where either the Panel or the AB has extended the time of providing its report, the additional time taken shall be added to the fifteen (15) month period; provided that unless the Parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed eighteen (18) months.
7. Where there is disagreement as to the existence or consistency with the agreement of measures taken to comply with the recommendations and rulings, such disagreement shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original Panel. The Panel shall circulate its report within ninety (90) days after the date of its establishment. Where the Panel considers that it cannot circulate its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will circulate its report.

8. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any State Party at any time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six (6) months following the date of establishment of the reasonable period of time pursuant to paragraph 3 of this Article, and shall remain on the DSB's agenda until the issue is resolved.
9. At least ten (10) days prior to each such DSB meeting, the State Party concerned shall provide the DSB with a detailed status report which shall contain among others:
  - (a) the extent of the implementation of the ruling(s) and recommendation(s);
  - (b) issues if any, affecting the implementation of the rulings and recommendations;
  - (c) the period of time required by the State Party concerned to fully comply with implementation of the ruling(s) and recommendation(s).

### **Article 25 – Compensation and the suspension of concessions or any other obligations**

1. It is the duty of the State Parties to fully implement the recommendations and rulings of the DSB. Compensation and the suspension of concessions or other obligations are temporary measures available to the aggrieved Party in the event that the accepted recommendations and rulings of the DSB are not implemented within a reasonable period of time. Provided that neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of the accepted recommendations. However, compensation is voluntary and, if granted, shall be consistent with the Agreement.
2. The suspension of concessions or other obligations shall be temporary and shall only be applied in as far as it is consistent with this Agreement and shall subsist until such a time as the inconsistency with the Agreement, or any other determined breach is removed, or that the State Party implements recommendations, or provides a solution to the injury caused, or occasioned by the non-compliance, or that a mutual satisfactory solution is reached.
3. In the event that the rulings and recommendations of the DSB are not implemented within a reasonable period of time, the aggrieved Party may request the DSB to impose temporary measures which include compensation and the suspension of concessions.
4. If the State Party concerned fails to bring the measure found to be inconsistent with the Agreement into compliance therewith or otherwise comply with the decisions and rulings within the reasonable period of time determined pursuant to Paragraph 3 of Article 24 of this Protocol, such State Party shall, if so requested, enter into negotiations with a Complaining Party, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed upon within twenty (20) days, a Complaining Party may request authorisation from the DSB to suspend the application to the State Party concerned of concessions or other obligations under the Agreement.
5. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles and procedures:
  - (a) the general principle is that the Complaining Party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the Panel or AB has found a violation or other nullification or impairment;
  - (b) if that Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the Agreement;
  - (c) if that Party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under this agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under the Agreement; and

- (d) if that Party to a dispute decides to request authorisation to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons thereof in its request to the DSB.
6. In applying the above principles that party shall take into account:
  - (a) the trade in the sector under which the Panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party; and
  - (b) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations.
7. The level of the suspension of concessions or other obligations authorised by the DSB shall be equivalent to the level of the nullification or impairment.
8. When the situation described in paragraph 4 of this Article occurs, the DSB, shall grant authorisation to suspend concessions or other obligations within thirty (30) days from the date of request unless the DSB decides by consensus to reject the request. However, if the State Party concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 5 have not been followed where a complaining party has requested authorisation to suspend concessions or other obligations pursuant to paragraph 5(b) or (c) of this Article, the matter shall be referred to arbitration. Such arbitration shall be carried out by the original Panel, if Panellists are available, or by an arbitrator appointed by the chairperson of the DSB and shall be completed within sixty (60) days from the date of appointment of the arbitrator. Concessions or other obligations shall not be suspended during the course of the arbitration.
9. The arbitrator acting pursuant to paragraph 7 of this Article, shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the Agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 of this Article, have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 5 of this Article. The Parties to a dispute shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorisation to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

### **Article 26 – Costs**

1. The DSB shall determine the remuneration and expenses of the Panellists, arbitrators and experts in accordance with the financial rules and regulations of the AU.
2. The remuneration of the Panellists, arbitrators and experts, their travel and lodging expenses, shall be borne in equal parts by the Parties to a dispute, or in proportions determined by the DSB.
3. A Party to a dispute shall bear all other costs of the process as determined by the DSB.
4. Parties to the dispute shall be required to deposit their share of the Panellists' expenses with the Secretariat at the time of establishment, or composition of the Panel.

### **Article 27 – Arbitration**

1. Parties to a dispute may resort to arbitration subject to their mutual agreement and shall agree on the procedures to be used in the arbitration proceedings.

2. Parties to a dispute who may have referred a dispute for arbitration pursuant to this Article shall not simultaneously refer the same matter to the DSB.
3. Agreement by the Parties to resort to arbitration shall be notified to the DSB.
4. Third Parties shall be joined to an arbitration proceeding only upon the agreement of the Parties to the arbitration proceedings.
5. The Parties to an arbitration proceeding shall abide by the arbitration award and the award shall be notified to the DSB for enforcement.
6. In the event of a Party to a dispute refusing to cooperate, the Complaining Party shall refer the matter to the DSB for determination.
7. Arbitration awards shall be enforced in accordance with the provisions of Articles 24 and 25 of this Protocol *mutatis mutandis*.

### **Article 28 – Technical co-operation**

1. Upon request from a State Party, the Secretariat may provide additional legal advice and assistance in respect of dispute settlement, provided that this shall be done in a manner that ensures the continued impartiality of the Secretariat.
2. The Secretariat may organise special training courses for interested State Parties concerning dispute settlement procedures and practices to enable State Parties to develop expert capacity on the Dispute Settlement Mechanism.

### **Article 29 – Responsibilities of the Secretariat**

1. The Secretariat shall have the responsibility of assisting Panels, especially on legal, historical and procedural aspects of the matter dealt with and of providing Secretarial support.
2. The Secretariat shall facilitate the constitution of Panels in accordance with this Protocol.
3. In order to accomplish the functions under Article 28 of this Protocol, the Secretariat shall avail experts with extensive experience in international trade law to assist the Panellists.
4. The Secretariat shall undertake such other functions and duties as may be required under the Agreement and in support of this Protocol.
5. The Secretariat shall be responsible for all relevant notifications to and from the DSB and State Parties.

### **Article 30 – Rules of interpretation**

The Panel and the AB shall interpret the provisions of the Agreement in accordance with the customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties, 1969.

### **Article 31 – Amendment**

This Protocol shall be amended in accordance with Article 29 of the Agreement.

**IN WITNESS WHEREOF, WE** the Heads of State and Government or duly authorised representatives of the Member States of the African Union have signed and sealed this Agreement in four original texts in Arabic, English, French, and Portuguese languages, all texts being equally authentic.

**SIGNED** at Kigali, on this 21<sup>st</sup> day of March in the year 2018.