



Creating One African Market

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**AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA
KIGALI DRAFT TEXT
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AGREEMENT ESTABLISHING THE AFRICAN CONTINENTAL FREE TRADE AREA

PREAMBLE

We, Member States of the African Union,

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 *Treaty Establishing the African Economic Community* 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 *Treaty Establishing the African Economic Community of 1991* and, where applicable, the *Marrakesh Agreement Establishing the World Trade Organisation* 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 multiple and overlapping trade regimes to achieve policy coherence, including in 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 the State Parties to regulate within their territories and the State Parties' flexibility to achieve legitimate policy objectives, 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;

ACKNOWLEDGING the Regional Economic Communities (RECs), that is, 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); as building blocs towards the establishment of the African Continental Free Trade Area;

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 the Agreement Establishing the African Continental Free Trade Area and its protocols, annexes and appendices which shall form an integral part of it;
- c) **“Annex”** means an instrument attached to the Protocols, which forms an integral part of this Agreement;
- d) **“Appendix”** means an instrument attached to the annexes which form an integral part of this Agreement;
- e) **“Assembly”** means the Assembly of Heads of State and Government of the African Union;
- f) **“AU”** or **“Union”** means the African Union;
- g) **“AfCFTA”** means the African Continental Free Trade Area established by the present Agreement;
- 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) **“Depositary”** has the same meaning as defined in the Vienna Convention on the Law of Treaties;
- l) **“Dispute Settlement Body”** means the body established pursuant to Article 5 of the the Protocol on Rules and Procedures on the Settlement of Disputes;
- m) **“Executive Council”** means the Executive Council of Ministers of the African Union;

- n) **“GATS”** means the *General Agreement on Trade in Services of 1994*;
- o) **“GATT”** means the *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 the barriers that impede trade through mechanisms other than the imposition of tariffs;
- s) **“Protocol”** means a protocol attached to this Agreement, which forms an integral part of the Agreement
- t) **“RECs”** means the Regional Economic Communities recognized by the African Union;
- u) **“Secretariat”** means the AfCFTA Secretariat established by this Agreement;
- v) **“State Party”** means a Member State that has ratified or acceded to this Agreement;
- w) **“Third Party”** means a State / States that is / are not a party to this Agreement except as otherwise defined in this Agreement;
- x) **“WTO”** means the World Trade Organization, as established by the Agreement of Marrakech of 1994.

PART II ESTABLISHMENT, OBJECTIVES, PRINCIPLES AND SCOPE

Article 2 Establishment of the African Continental Free Trade Area

This Agreement hereby establishes the African Continental Free Trade Area hereinafter referred to as “the AfCFTA”

Article 3 General Objectives

Taking note, and in the broader context of the Treaty Establishing the African Economic Community, the objectives of the AfCFTA are to:

- a. create a single Market for Goods, Services, and 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 liberalized market for goods and services through successive rounds of negotiations, contribute to the movement of capital and natural persons and facilitate investments building on the initiatives and developments in the State Parties and RECs;
- c. lay the foundations for the establishment, at a later stage, a Continental Customs Union;

- d. promote and attain sustainable and inclusive social and economic development, and gender equality and structural transformation of the State Parties;
- e. enhance the competitiveness of the economies of State Parties within the continent and at the global market;
- f. promote industrial development through diversification and regional value chain development, Agricultural Development and Food Security; and
- g. 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 realizing the objectives set out in Article 3 of this Agreement, State Parties shall:

- a. progressively eliminate tariffs and non-tariff barriers to trade in goods;
- b. progressively liberalize trade in services;
- c. cooperate on investment, intellectual property rights and competition policies;
- d. cooperate on all trade-related areas between State Parties;
- e. cooperate on customs matters and the implementation of trade facilitation measures;
- f. design 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 Continental Free Trade Area.

Article 5 Principles

The AfCFTA shall be governed by the following specific trade-related 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;
- f. Preservation of the acquis;
- g. Most Favoured Nation (MFN) Treatment;
- h. National Treatment;
- i. Reciprocity;
- j. Substantial liberalisation;
- k. Consensus in decision-making;
- 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

Rendez-vous clause

1. In pursuance of the objectives of this Agreement, Member States shall enter into negotiations in the following areas:
 - a. Intellectual Property Rights;
 - b. Investment;
 - c. Competition Policy.
2. The negotiations referred to in Article 7.1 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, and Rules and Procedures for the Settlement of Disputes, their associated annexes and appendices shall, upon adoption, form an integral part of this Agreement.
2. In line with the Assembly Decision, Assembly/AU/Dec. 569(XXV), the Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, and Rules and Procedures for the Settlement of Disputes, 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 the AfCFTA 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 of Heads of State and Government;
- b) The Council of African Ministers responsible for Trade;
- c) The Committee of Senior Trade Officials; and
- d) The Secretariat.

Article 10

The Assembly of Heads of State and Government

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 Africa Trade (BIAT).
2. The Assembly shall establish the Council of African Ministers responsible for Trade.

Article 11

Rules of Interpretation

The Assembly shall have the exclusive authority to adopt interpretations of this Agreement. In the case of interpretation of the Agreement, the Assembly shall exercise its authority on the basis of recommendation from the Council of Ministers. The decision to adopt an interpretation shall be taken by consensus.

Article 12

The Composition and Functions of the Council of Ministers

1. The Council of African Ministers responsible for Trade (hereinafter referred to as the Council of Ministers) shall consist of the Ministers responsible for Trade or such other Ministers, authorities, or officials duly designated by the Governments of State Parties.
2. The Council of Ministers shall report to the Assembly.
3. The Council of Ministers shall within its mandate:
 - a) have the authority to take decisions in accordance with this Agreement;
 - b) ensure effective implementation and enforcement of the Agreement;
 - c) take all measures it deems 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 harmonization of appropriate policies, strategies and measures for the effective implementation of the Agreement;
 - f) establish and delegate responsibilities to *ad hoc* or standing committees, working groups or expert groups;

- g) develop and adopt rules of procedure for itself and subsidiary bodies created for the implementation of the AfCFTA;
 - h) supervise the work of all committees and working groups it may establish pursuant to this Agreement;
 - i) consider the reports and activities of the Secretariat and take appropriate actions in regard thereto;
 - j) make regulations, issue directives, take decisions, and make recommendations in accordance with the provisions of this Agreement;
 - k) consider and adopt the staff and Financial Regulations of the Secretariat;
 - l) approve the organisational structure of the Secretariat;
 - m) approve the work programs and budgets of the AfCFTA and its institutions;
 - n) make recommendations to the Assembly for the adoption of authoritative interpretation of the Agreement;
 - o) perform any other function consistent with this Agreement or as may be requested by the Assembly; and
 - p) meet at least twice a year in ordinary session, and may meet as necessary in extraordinary sessions.
4. Decisions taken by the Council of Ministers within its mandate shall be binding on the State Parties, who shall take such measures as are necessary to implement the decisions. Decisions that have structural or financial implications shall be binding on State Parties upon their adoption by the Assembly.

Article 13

Committee of Senior Trade Officials

1. The Committee of Senior Trade Officials shall consist of such Permanent/ 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. For the purposes of sub-paragraph (a) of this paragraph, direct the Director/Secretary General of the AfCFTA Secretariat to undertake specific assignments;
 - g. Have such other functions as are conferred upon it by or under this Agreement.
3. Subject to any directions which may be 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 report periodically, either on its own initiative or upon the request of the Council of Ministers and make recommendations to the Council of Ministers.
5. The RECs shall be represented on the Committee of Senior Trade Officials in an advisory capacity.

Article 14 **The AfCFTA Secretariat**

1. The Assembly of AU Heads of State and Government shall establish the AfCFTA Secretariat (hereinafter referred to as “the Secretariat”), decide the headquarters and shall approve its structure and budget.
2. The Secretariat shall be a functionally autonomous institutional body within the AU system with an independent legal personality.
3. The Secretariat shall be autonomous of the AUC and its departments with which it shall work closely.
4. The funds of the Secretariat shall come from the overall budget of the AU.
5. The roles and responsibilities of the Secretariat shall be determined by the Council of Ministers.
6. The AUC shall provide the necessary transitional support until the Secretariat is fully operational.
7. The Secretariat shall work in close and continuing coordination with the RECs.

Article 15 **Decision-Making**

1. Decisions of the AfCFTA institutions¹ 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 a consensus.
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 16

Waiver of Obligations

1. In exceptional circumstances, the Council of Ministers may waive an obligation imposed on a State Party to this Agreement or its Protocols and/or associated annexes, provided that any such decision shall be taken by three fourths² of the States Parties, in the absence of consensus.
2. A request for a waiver 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 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 States Party.
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 year shall be reviewed by the Council of Ministers not later than one 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 to the waiver have been met. The Council of Ministers, on the basis of the annual review, may extend, modify or terminate the waiver.

¹ The Assembly, the Council of Ministers responsible for Trade, the Committee of Senior Trade Officials and their standing committees.

² 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.

PART IV TRANSPARENCY

Article 17 Publication

1. Each State Party shall promptly publish or make publicly available through accessible media ³ 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 18 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 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

³ *"For example through Gazette, newsletter, Hansard, or websites in one of the African Union languages."*

Article 19

Continental Preferences

1. Following the entry into force of this Agreement, State Parties shall accord each other preferences, on a reciprocal basis, that are not less favourable than those given to third parties when implementing this Agreement.
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 reasonable to other State Parties to negotiate on a reciprocal basis, taking into account the levels of development of State Parties.
3. This Agreement shall not nullify, modify or revoke rights and obligations under preexisting trade agreements that State Parties have with third parties.

Article 20

Conflict and Inconsistency with Regional Agreements

1. In the event of any 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 21

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 for 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 22 Exceptions

No provision in 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 23 Adoption, Signature, Ratification and Accession

1. This Agreement, shall be adopted by the Assembly and submitted for signature and ratification or accession by the Member States as the case may be, in accordance with their national laws.
2. This Agreement shall be open to all Member States of the African Union for signature, ratification or accession.

Article 24 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 (22nd) instrument of ratification.
2. 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 (22nd) instrument of ratification.
3. For any State Party 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 come into force in respect of that State Party on the date of the deposit of its instrument of accession.
4. For State Parties acceding to the Protocols on Investment, Intellectual Property Rights, Competition Policy, and any other Instrument within the scope of this Agreement deemed necessary, shall come 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 25 Depositary

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

Article 26 Reservation

No reservations may be made to this Agreement.

Article 27 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, where applicable, shall notify the Agreement to the WTO individually or collectively.

Article 28 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 29 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 30 of this Agreement taking into account experience acquired and progress achieved during the implementation of this Agreement.

Article 30 Amendments

1. Any State Party may submit proposal(s) for amendment to this Agreement to the Secretariat.
2. The Secretariat shall within thirty (30) days of receipt of the proposal, circulate the proposal to State Parties.
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 Secretariat.
4. The Secretariat shall circulate the proposal and comments received to members of the appropriate AfCFTA committees and sub-committees for consideration at their next meetings.
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.
6. Amendments to the Agreement shall be adopted by the Assembly by consensus.
7. The amendments to this Agreement shall enter into force in accordance with Article 24 of this Agreement.

Article 31 Authentic Texts

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

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 21st day of March in the year 2018.

.....
**People's Democratic Republic of
Algeria**

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Republic of Angola

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Republic of Benin

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Republic of Botswana

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Burkina Faso

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Republic of Burundi

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Republic of Cabo Verde

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Republic of the Cameroon

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Central African Republic

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Republic of Chad

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Union of the Comoros

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Republic of Congo

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Republic of Cote d'Ivoire

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Democratic Republic of Congo

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Republic of Djibouti

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Republic of Equatorial Guinea

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**Federal Democratic Republic of
Ethiopia**

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State of Eritrea

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Arab Republic of Egypt

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Republic of Gabon

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Republic of The Gambia

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Republic of Ghana

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Republic of Guinea

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Republic of Guinea-Bissau

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Republic of Kenya

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Kingdom of Lesotho

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Republic of Liberia

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State of Libya

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Republic of Madagascar

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Republic of Malawi

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Republic of Mali

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Islamic Republic of Mauritania

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Republic of Mauritius

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Kingdom of Morocco

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Republic of Mozambique

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Republic of Namibia

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Republic of Niger

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Federal Republic of Nigeria

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Republic of Rwanda

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Sahrawi Arab Democratic Republic

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Republic of Sao Tome & Principe

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Republic of Senegal

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Republic of Seychelles

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Republic of Sierra Leone

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Federal Republic of Somalia

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Republic of South Africa

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Republic of South Sudan

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Republic of the Sudan

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Kingdom of Swaziland

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United Republic of Tanzania

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Republic of Togo

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Republic of Tunisia

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Republic of Uganda

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Republic of Zambia

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Republic of Zimbabwe

PROTOCOL ON TRADE IN GOODS

PREAMBLE

We, Member States of the African Union,

DESIROUS to implement the Assembly of Heads of State and Government Decision 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;

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

RESOLVED to enhance competitiveness at the industry and enterprise level through exploiting opportunities for scale production, continental market access and an improved 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) and 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 29 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, in accordance with Article VII of GATT 1994;
- d) **“Non-tariff barriers”** means the barriers that impede trade through mechanisms other than the imposition of tariffs;
- e) **“Originating products”** means goods that qualify as originating products under the rules of origin set out in Annex 2 on Rules of Origin;
- f) **“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 other non-reciprocal preferential scheme granted by way of waiver.
- g) **“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.
- h) **“Safeguards Agreement”** means the WTO Agreement on Safeguards;
- i) **“SCM Agreement”** means the WTO Agreement on Subsidies and Countervailing Measures;
- j) **“SPS”** means sanitary and phytosanitary;
- k) **“SPS Agreement”** means the WTO Agreement on the Application of Sanitary and Phytosanitary Measures;
- l) **“TBT”** means Technical Barriers to trade;

- m) **“TBT Agreement”** means the WTO Agreement on Technical Barriers to Trade; and
- n) **“Harmonised System”** means the Harmonised Commodity Description and Coding System established by the International Convention on the Harmonised Commodity Description and Coding System.

Article 2 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 form an integral part of this Protocol.

Article 3 Objectives

1. The principal objective of this Protocol is to support the objectives of the AfCFTA, as set out in Article 3 of the Agreement, particularly to create a liberalised market for trade in goods.
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.

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 19 of the Agreement on Continental Preferences.

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 the level of development.

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.

PART III

LIBERALISATION OF TRADE

Article 6

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 16 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 17 and 18 of this Protocol; and

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

Article 7

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 Regional Economic Communities, 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 8

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 9

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 10

Modification of Schedules of 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 State Party requesting modification, it should communicate in writing, with supporting evidence, to the State Party requesting modification through the Secretariat within thirty (30) days. The Secretariat shall 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.
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 11

Elimination of Non-Tariff Barriers

Except as may be provided for in this Protocol, the identification, categorization, 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 12

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 13

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 14

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 15

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 16

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 17
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.

Article 18
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 19
Cooperation relating to Antidumping, 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 20
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 21
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 22
Special Economic Arrangements/Zones

1. State Parties may support the establishment and operation of special economic arrangements/zones for the purpose of accelerating development.
2. Products benefiting from special economic arrangements/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/zones within the AfCFTA shall be subject to the provisions of Annex 2 on Rules of Origin.

Article 23
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.

Article 24
Transparency and Notification requirements for State Trading Enterprises

1. In order to ensure the transparency of the activities of State Trading Enterprises, State Parties shall notify such enterprises to the Secretariat for transmission to other State Parties.
2. For the purpose of this Article, a State Trading Enterprise shall be defined as 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 25
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 stabilization 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.

Article 26

Security Exceptions

Nothing in this Protocol shall be construed to:

- a. require any State Party to furnish any information for which it considers the disclosure of to be 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 27

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 28
Technical Assistance, Capacity Building and Cooperation

1. The Secretariat, working with States 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 the Protocol on Trade in Goods.
3. The Secretariat shall explore avenues to secure resources required for these programmes.

PART X
INSTITUTIONAL PROVISIONS

Article 29
Consultation and Dispute Settlement

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

Article 30
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 State Parties at different levels of economic development or that have individual specificities as recognized by other State Parties. These flexibilities shall include among others special consideration and additional transition period in the implementation of this agreement, on a case by case basis.

Article 31

Implementation, Monitoring and Evaluation

1. The Committee for Trade in Goods 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. The Committee and, unless the Committee decides otherwise, its subsidiary bodies shall be open to participation by representatives of all State Parties.
3. The Chairperson of the Committee shall be elected by the State Parties.
4. The Secretariat shall prepare annual reports for the State Parties to facilitate the process of implementation, monitoring and evaluation of this Protocol.
5. The report should be tabled and adopted by the Council of Ministers.

Article 32

Amendment

Amendment to this Protocol shall be in accordance with Article 30 of the Agreement.

ANNEX 2 on RULES OF ORIGIN

SECTION I

DEFINITIONS

Article 1 Definitions

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

- a) **"Agreement"** refers to the Agreement establishing the AfCFTA;
- b) **"Classified"** refers to the classification of a product or material under a particular heading or sub-heading of the HS;
- c) **"Consignment"** means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;
- d) **"Generally Accepted Accounting Principles (GAAPs)"** means a framework of accounting standards, rules and procedures defined by the accounting professional bodies and recognised by States Parties with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. Generally Accepted Accounting Principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;
- e) **"Manufacture"** means any kind of working or processing including assembly or specific operations;
- f) **"c.i.f value"** means the price paid by the importer that includes the costs, insurance and freight needed to transport goods to a port of destination;
- g) **"Certificate of Origin"** means the documentary proof of origin issued by a designated competent authority, confirming that a particular product complies with the origin criteria applying to preferential trade under the Annex Protocol on Trade in Goods and in accordance with Article 16 of this Annex [Proof of Origin];
- h) **"Chapter"** means the two-digit Chapters code used in the nomenclature which makes up the HS;

- i) “**Country of origin**” means the States Party in which the goods have been produced or manufactured, according to criteria laid down in this Annex;
- j) “**Customs value**” means the value as determined in accordance with the WTO Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (WTO Agreement on customs valuation);
- k) “**designated competent authority**” means a body or organisation designated by a States Party to issue Certificates of Origin;
- l) “**Exporter**” means any natural or legal person who exports goods to the territory of another States Party, who is able to prove the origin of the good, whether or not that person is the manufacturer and whether or not that person carries out the export formalities;
- m) “**Ex-works price**” means the price paid for the product ex-works to the manufacturer in the States Party in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used minus any internal taxes paid which are, or may be, repaid when the product obtained is exported;
- n) “**Free Trade Area**” means the territories of the States Parties of the African Continental Free Trade Area;
- o) “**Goods**” means both materials and products;
- p) “**Harmonized System**” means the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Commodity Description and Coding System.
- q) “**Heading**” means the four-digit headings used in the nomenclature which makes up the Harmonized System (HS);
- r) “**Material**” means any ingredient, raw material, component or part used in the manufacture of a product;
- s) “**Origin declaration**” means an appropriate statement as to the origin of the goods made, in connection with their exportation by the manufacturer, producer, supplier,

exporter or any other competent person on the commercial invoice or any other document relating to the goods;

- t) “**Producer**” includes a mining, manufacturing or agricultural enterprise or any other individual grower or craftsman who supplies goods for export;
- u) “**Product**” means the output of a manufacturing process, even if it is intended for later use in another manufacturing operation;
- v) “**Secretariat**” means Secretariat established under Article 9 of the Agreement Establishing the African Continental Free Trade Area;
- w) “**Special Economic Arrangements / Zones**” means special regulatory provisions applicable in a geographical demarcation within a States Party’s territory where the legal, regulatory and fiscal and Customs schemes, applicable to business differ, generally in a more liberal way, from those in application in the rest of that States Party’s territory.
- x) “**Sub-heading**” means the six-digit code used in the nomenclature which makes up the Harmonized System;
- y) “**Territory**” the State Party’s territory includes including the territorial sea and the Exclusive Economic Zone as defined under the UN Convention on the Laws of the Sea.
- z) “**Value added**” means the difference between the ex-works [price] of a finished product and the Customs Value of the material imported from outside the State parties and used in the production;
- aa) “**Value of materials**” means the customs value at the time of importation of the non-originating materials used, or if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in any States Party;
- bb) “**Sub-Committee**” means a Sub-Committee established under Article 40 of this Annex.

SECTION II

PURPOSE, PRINCIPLES, OBJECTIVES, AND ORIGIN CONFERRING CRITERIA

Article 2 Purpose

The purpose of this Annex is to implement provisions of Article 12 of the Protocol on Trade in Goods concerning Rules of Origin.

Article 3 Principles

Rules of Origin in this Annex shall provide transparent, clear and predictable criteria for determining whether or not the traded products are eligible for preferential treatment under the AfCFTA.

Article 4 Objectives

The provisions of this Annex shall be interpreted and applied in accordance with the following objectives:

- a) Deepening market integration at regional and continental levels;
- b) Boosting Intra African Trade;
- c) Promoting regional and continental value chains; and
- d) Fostering economic transformation of the continent through industrialization.

Article 5 Origin conferring criteria

1. A product shall be considered as originating from a States Party if it:
 - a) Has been wholly obtained in that States Party within the meaning of Article 6; or
 - b) Has undergone substantial transformation in that States Party within the meaning of Article 7.

Article 6 Wholly obtained products

1. The following products shall be considered as wholly obtained in a States Party when exported to another State Party:

- a) Mineral products and other non-living natural resources extracted from the ground, sea bed, below sea bed and in the territory of a States Party in accordance with the provisions of the UN Convention on the Law of the Sea.
 - b) Plants including aquatic plants, and plant products, vegetables and fruits, grown or harvested therein;
 - c) Live animals born and raised therein;
 - d) Products obtained from live animals raised therein;
 - e) Products from slaughtered animals born and raised therein;
 - f) Products obtained by hunting and fishing conducted therein;
 - g) Products of aquaculture including mariculture, where the fish, crustaceans, molluscs and other aquatic invertebrates are born and or raised therein from eggs, larvae, fry or fingerlings born or raised therein;
 - h) Products of sea fishing and other products taken from the sea outside the territory of a States Party by their vessels;
 - i) Products made aboard their factory ships exclusively from products referred to in subparagraph (h);
 - j) Used articles fit only for the recovery of materials, provided that such articles have been collected there;
 - k) Scrap and waste resulting from manufacturing operations therein;
 - l) Products extracted from marine soil or sub-soil outside their territorial waters provided that they have sole rights to work that soil or sub-soil.
 - m) Goods produced there exclusively from products specified in subparagraphs (a) through (l);
 - n) Electric energy produced there.
2. The terms "their vessels" and "their factory ships" in paragraph 1(h) and 1(i) shall apply only to vessels, leased vessels, bare boat and factory ships which are registered in a States Party in accordance with the national laws of a States Party and meet one of the following conditions:
- a) the vessel sails under the flag of a States Party; or
 - b) at least, 50 per centum of the officers of the vessel or factory ship are nationals of the States Party or States Parties; or
 - c) at least, 50 per centum of the crew of the vessel or factory ship are nationals of the States Party or States Parties; or
 - d) at least, [50/51] per centum of the equity holding in respect of the vessel or factory ship are held by nationals of the States Party or States Parties or institutions, agency, enterprise or corporation of the government of the States Party or States Parties.

Article 7

Sufficiently worked or processed products

1. For the purposes of Article 5(b), products which are not wholly obtained are considered to be sufficiently worked or processed when they fulfil one of the following criteria:

- a) value addition;
 - b) non-originating material content;
 - c) change in tariff heading; or
 - d) specific processes.
2. Notwithstanding paragraph 1 of this Article, goods listed in Appendix IV shall qualify as originating goods if they satisfy the specific rules set out therein.

Article 8

Transitional Arrangements

1. The States Parties agree that the following provisions of this Annex are outstanding :
 - a) Article 1 on the definitions of “value addition”;
 - b) Appendix IV on the Rules of Origin to be applied in the African Continental Free Trade Area; and
 - c) Article 6.2 on the requirements for “vessels and their factory ships”.
2. Pending the conclusion of negotiations on the provisions stated in paragraph 1 of this Article, the States Parties agree that the rules of origin in the existing trade regimes shall be applicable.

Article 9

Working or processing not conferring origin

1. The following operations are insufficient to confer origin on a product, whether or not the requirements of Article 5 are satisfied:
 - a) Operations exclusively intended to preserve products in good condition during storage and transport;
 - b) Breaking-up or assembly of packages;
 - c) Washing, cleaning, or operations to remove dust, oxide, oil, paint, or other coverings from a product;
 - d) Simple ironing or pressing operations;
 - e) Simple painting or polishing operations;
 - f) Husking, partial or total bleaching, polishing, or glazing of cereals and rice;
 - g) Operations to colour sugar or form sugar lumps, partial or total milling of crystal sugar;
 - h) Peeling, stoning, or shelling of vegetables of Chapter 7, fruits of Chapter 8, nuts of heading 08.01 or 08.02 or groundnuts of heading 12.02, fruits, nuts or vegetables.

- i) Sharpening, simple grinding, or simple cutting;
- j) Simple sifting, screening, sorting, classifying, grading, or matching;
- k) Simple packaging operations, such as placing in bottles, cans, flasks, bags, cases, boxes, or fixing on cards or boards;
- l) Affixing or printing marks, labels, logos, and other like distinguishing signs on the products or their packaging;
- m) Simple mixing of materials, whether or not of different kinds; simple mixing does not include an operation that causes a chemical reaction;
- n) Simple assembling of parts of articles to constitute a complete article;
- o) A combination of two or more operations specified in subparagraphs (a) to (o); and
- p) Slaughter of animals.

Provided that, notwithstanding any provision in this Annex, agricultural products whether or not processed in any way, obtained or partially obtained from Food Aid or monetization or similar assistance measures, including arrangements based on non-commercial terms, shall not be considered as originating in a States Party.

2. For the purpose of paragraph 1, an operation shall be considered simple when neither special skills, nor machines, apparatus, nor tools especially produced or installed for those operations are required for their performance or when those skills, machines, apparatus, or tools do not contribute to the product's essential characteristics or properties.

Article 10

Cumulation of Origin within the Continent

1. For the purposes of implementing this Article, all States Parties shall be considered as a single territory.
2. Raw materials or semi-finished goods originating in any of the States Parties and undergoing working or processing in another States Party shall, be deemed to have originated in the States Party where the final processing or manufacturing takes place.
3. Working or processing carried out in any of the States Parties shall be considered as having been carried out in the States Parties when the materials undergo further working or processing in a States Party.
4. Notwithstanding paragraph 1 and 2, products further manufactured in a States Party shall be considered as originating in a States Party where the last manufacturing process takes place provided that the last working or processing operations exceed those operations under Article 9 of this Annex.

Article 11
Goods produced under Special Economic Arrangements / Zones

1. States Parties shall take all necessary measures to ensure that products which are traded undercover of proof of origin, and which during their transportation use a special economic arrangement / zone situated in their territory shall remain under the control of the customs authority and are not substituted by other goods.
2. Notwithstanding paragraph 1, where products originating in a States Party which are imported into a special economic arrangement / zone under a proof of origin undergo processing or transformation, the competent customs authorities shall issue a new movement certificate at the request of the exporter, if the processing or transformation carried out is in accordance with this Annex.
3. Goods produced in special economic arrangements / zones shall be treated as originating goods provided that they satisfy the rules in this Annex and in accordance with the provisions of Article 22.2 of the Protocol on Trade in Goods.

Article 12
Unit of qualification

The unit of qualification for the application of the provisions of this Annex shall be the particular product which is considered as a basic unit when determining classification. Therefore for the purpose of this Annex:

- a) The tariff classification of a particular product or material shall be determined according to the HS Nomenclature;
- b) A product composed of a group or assembly of articles or components is classified pursuant to the terms of the HS under a single heading or subheading, the whole shall constitute a unit of qualification; and
- c) where a shipment consists of a number of identical products classified under the same heading or subheading of the HS, each product shall be considered separately.

Article 13
Treatment of Packing

1. Where for purposes of assessing customs duties, a States Party treats goods separately from their packing, it may also, in respect of its imports consigned from another States Party, determine separately the origin of such packing.
2. Where paragraph 1 of this Rule is not applicable, packing shall be considered as forming a whole with the goods and no part of any packing required for their

transport or storage shall be considered as having been imported from outside the States Party when determining the origin of the goods as a whole.

3. For the purpose of paragraph 2 of this Rule, packing with which goods are ordinarily sold at retail shall not be regarded as packing required for the transport or storage of goods.
4. Containers which are used purely for the transport and temporary storage of goods and are to be returned shall not be subject to customs duties and other charges of equivalent effect. Where containers are not to be returned, they shall be treated separately from the goods contained in them and be subject to import duties and other charges of equivalent effect.

Article 14 **Separation of materials**

1. For those products or industries where it would be impracticable for the producers to separate physically materials of similar character but different origin used in the production of goods, such separation may be replaced by an appropriate accounting system which ensures that no more goods are deemed to originate in the States Party than would have been the case if the producer had been able to physically separate the materials.
2. Any accounting system shall conform to such conditions as may be agreed upon by the Sub-Committee on Rules of Origin, provided for under Article 40 of this Annex in order to ensure that adequate control measures shall be applied.

Article 15 **Accessories, spare parts and tools**

Accessories, spare parts and tools despatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

Article 16 **Sets**

1. Sets as defined in General Rule 3 of the HS shall be regarded as originating when all components products are originating.
2. Nevertheless, when a set is composed of originating and non-originating products a set as a whole shall be regarded as originating provided that the value of non-originating products does not exceed 15% of the ex-works price of the set.

3. The value of non-originating component products is calculated in the same manner as the value of non-originating materials.

Article 17 **Neutral elements**

For the purpose of determining whether a product is originating, it is not necessary to determine the origin of the following which might be used in its production:

- a) Energy and fuel;
- b) Plant and equipment;
- c) Machines and tools; or
- d) Materials which do not enter and which are not intended to enter into the final composition of the product.

Article 18 **Principle of Territoriality**

1. A product that has undergone production that satisfies the requirements of Article 7 shall be considered originating only if, subsequent to that production, the product:
 - a) Does not undergo further production or any other operation outside the territories of the States Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition, to transport the product to the territory of a States Party; and
 - b) Remains under customs control while outside the territories of the States Parties.
2. The storage of products and shipments or the splitting of shipments that take place under the responsibility of the exporter or of a subsequent holder of the products while the products remain under customs control in the country or countries of transit shall not affect the originating status of the product.
3. If an originating product exported from a States Party to a third country returns, it shall be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that the returning product:
 - a) Is the same as that exported; and
 - b) Has not undergone any operation beyond that necessary to preserve it in good condition.

SECTION III

PROOF OF ORIGIN

Article 19 **Proof of Origin**

1. Products originating in a States Party shall, on importation into another States Party, benefit from the provisions of the Annex upon submission of either:

- a) a certificate of origin, whether in hard copy or electronic, a specimen of which appears in Appendix I. Issuance and acceptance of electronic certificate of origin would be in accordance with each States Party's national legislation; or
 - b) in the cases specified in Article 21, a declaration, subsequently referred to as the 'Origin Declaration', given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified.
2. The text of the Origin Declaration and supplier or producer's declaration appears in Appendices II.
3. Notwithstanding paragraph 1, originating products within the meaning of this Annex shall, in the cases specified in Article 30 concerning exemption from proof of origin, benefit from the Protocol on Trade in Goods without it being necessary to submit any proof of origin.
4. A proof of origin shall be valid for twelve months from the date of issue in the exporting country, and must be submitted within the said period to the customs authorities of the importing country.
5. Proofs of origin which are submitted to the customs authorities of the importing country after the final date for presentation specified in paragraph 3 may be accepted for the purpose of applying preferential treatment, where the failure to submit these documents by the final date set is due to exceptional circumstances duly justified .

Article 20

Submission of Proof of Origin

Proof of origin shall be prepared and submitted to the customs authorities of the importing country in any of the AU official languages and in accordance with the procedures applicable in that country. The said authorities may require a translation of a proof of origin.

Article 21

Origin Declarations

1. An Origin Declaration as referred to in Article 19 may be made out by:
- a) an approved exporter within the meaning of Article 22; or
 - b) any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed five thousand US dollars.

2. An Origin Declaration may be made out if the products concerned can be considered as products originating in the States Party and fulfil the other requirements of this Annex.
3. The exporter making out an Origin Declaration shall be prepared to submit at any time, at the request of the designated Competent Authority of the exporting States Party, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Annex.
4. An Origin Declaration shall be made out by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document using one of the AU official languages and in accordance with the provisions of the national legislation of the exporting States Party. If the Origin Declaration is handwritten, it shall be written in ink in printed characters. Origin Declarations shall bear the original signature of the exporter.
5. An Origin Declaration may be made out by the exporter when the products to which it relates are exported, or after exportation on condition that it is presented in the importing country no longer than twelve months after the importation of the products to which it relates as provided for under national legislation.

Article 22

Approved Exporter

1. The designated competent authorities of the exporting States Party may authorize any exporter, hereinafter referred to as “approved exporter”, who frequently exports products covered by this Annex and provides, to the satisfaction of the customs authorities, all the guarantees for verifying the originating status of products as well as compliance with all other requirements of this Annex, to make out origin declarations regardless of the value of the products concerned.
2. Designated competent authorities may grant the status of approved exporter subject to any conditions which they consider appropriate.
3. Designated competent authorities shall issue to the approved exporter an authorization number, which must appear on the origin declaration.
4. Designated competent authorities shall monitor the use made of the authorization by the approved exporter.

5. Designated competent authorities may withdraw the authorization at any time. They must do so when the approved exporter no longer provides the guarantees referred to in paragraph 1, no longer fulfils the conditions referred to in paragraph 2 or otherwise makes improper use of the authorization.

Article 23

Issuance of Certificate of Origin

1. A Certificate of origin shall be issued by the designated competent authority of the exporting country on application having been made in writing by the exporter or, under the exporter's responsibility, by his authorized representative.
2. For this purpose, the exporter or his authorized representative shall fill out the Certificate as an application form, a specimen of which appears in Appendix I. These form shall be completed in accordance with the provisions of this Annex. Where it is handwritten, it shall be completed in ink in printed characters. The description of the products must be given in the box reserved for this purpose without leaving any blank lines. Where the box is not completely filled, a horizontal line must be drawn below the last line of the description, the empty space being crossed through.
3. The exporter applying for the issue of a Certificate of origin shall be prepared to submit, at any time, at the request of the designated competent authority of the exporting country where the Certificate is issued, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Annex.
4. The designated competent authority shall take any steps necessary to verify the originating status of the products and the fulfilment of the other requirements of this Annex.
5. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other verification considered appropriate. The customs or designated competent authority shall also ensure that the form referred to in paragraph 1 is duly completed. In particular, they shall check whether the space reserved for the description of the products has been completed in such a manner as to exclude all possibility of fraudulent additions.
6. The date of issue of the Certificate of Origin shall be indicated in the relevant box of the Certificate.
7. A Certificate of Origin shall be issued by the designated competent authority and made available to the exporter, to the best possible extent, before actual exportation has been effected.

Article 24

Supporting documents

The documents, referred to in paragraph 3 of Article 23, to be submitted to the designated competent authority of the exporting country may include documents relating to the following:

- a) the production processes carried out on the originating product or on materials used in the production of that product;
- b) the purchase, cost, value of and payment for the product;
- c) the origin, purchase, cost, value of and payment for all materials, including neutral elements, used in the production of the product; and
- d) the shipment of the product.
- e) any other documents that the designated competent authority may consider necessary.

Article 25

Certificate of Origin Issued Retrospectively

1. Notwithstanding paragraph 7 of Article 23, a Certificate of Origin may exceptionally be issued after exportation of the products to which it relates if:
 - a) It was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or
 - b) It is demonstrated to the satisfaction of the designated competent authority that a Certificate of Origin was issued but was not accepted at importation for technical reasons.
2. For the implementation of paragraph 1, the exporter must indicate in his application the place and date of exportation of the products to which the Certificate of Origin relates, and state the reasons for his request.
3. The designated competent authority may issue a Certificate of Origin retrospectively only after verifying that the information supplied in the exporter's application agrees with that in the corresponding file.
4. Certificates of Origin issued retrospectively must be endorsed with the following phrase:
"ISSUED RETROSPECTIVELY"
5. The endorsement referred to in paragraph 4 shall be inserted in the Box 3 of the Certificate of Origin.

Article 26

Transitional Provision for Goods in Transit or Storage

Goods which comply with the provisions of this Annex and which, on the date of entry into force of the Agreement, are either in transit or temporary storage under customs warehouses or free zones of one of the States Parties, may be eligible for the provisions of this Annex subject to submission, within six months of the said date, to the customs authorities of the importing States Party, of a Certificate of Origin issued retrospectively by the competent authorities of the exporting States Party together with documents showing that the goods have been transported directly in accordance with the provisions of Article 32.

Article 27

Issuance of a Duplicate Certificate of Origin

1. In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply to the designated competent authority which issued it for a duplicate made out on the basis of the export documents in their possession.
2. The duplicate issued in this way must be endorsed with the following word:
“DUPLICATE”
3. The endorsement referred to in paragraph 2 shall be inserted in the Box 3 of the duplicate Certificate of Origin.
4. The duplicate, which must bear the date of issue of the original Certificate of Origin, shall take effect as from that date.

Article 28

Issuance of a Replacement Certificate of Origin

When originating goods are placed under the control of a customs in one of the States Parties it may be possible to replace the Certificate of Origin by one or several certificate of movement of goods in order to allow for the said goods or part thereof to be sent elsewhere in the other States Parties. A replacement Certificate of Origin shall be delivered to the customs authority under whose control the goods were placed.

Article 29

Importation by Instalments

Where, at the request of the importer and on the conditions laid down by the customs authorities or competent authorities of the importing country, dismantled or non-assembled products within the meaning of General Interpretative Rules of the Harmonized System are imported by instalments, a single proof of origin for such

products shall be submitted to the customs authorities or competent authorities upon importation of the first instalment.

Article 30

Exemption from Proof of Origin

1. The following goods shall be admitted as originating products without requiring submission of a proof of origin:
 - a) Originating products sent as small packages from private persons in a States Party to private persons in another States Party or forming part of traveller's personal luggage; and
 - b) Imports which are occasional and consist of originating products for the personal use of the recipient or travellers or their families shall not be considered as commercial imports by way of trade.
2. The total value of these products shall not exceed the value of five hundred US Dollars in the case of small packages or one thousand two hundred US Dollars in the case of products forming part of traveller's personal luggage as the case may be.

Article 31

Fairs and Exhibitions

1. Originating products sent for fairs and exhibitions in a country and sold, at the end of the fair or exhibition, for the purpose of importation into one of the States Parties shall, at the time of importation, benefit from the provisions of the Agreement, provided that there is satisfactory proof to the customs authorities that:
 - a) an exporter has shipped these products from the State Party to the country of the fair or exhibition and has exhibited same therein;
 - b) the products have been sold or otherwise disposed of by that exporter to a person in the State Party;
 - c) the products have been consigned during the exhibition or immediately thereafter in the State in which they were sent for fairs and exhibitions; and
 - d) that from the time they were shipped for fairs and exhibitions, the products were not used for purposes other than for display at that fair or exhibition.
2. Proof of origin must be issued or made out in accordance with the provisions of Section II and submitted under normal conditions to the customs authorities of the importing country. The name and address of the fair or exhibition must be indicated. If necessary, additional documentary evidence of the conditions under which they had been exhibited may be required.
3. Paragraph 1 shall apply to all exhibitions, fairs or similar public events of a commercial, industrial, agricultural or handicraft nature, other than those organized for private

purposes in commercial premises or shops and for the purpose of selling foreign products, during which the products remain under customs control.

Article 32

Direct Transportation

1. The preferential treatment provided for in this Annex applies only to products meeting the requirements of this Annex, which are transported directly between the territories of the States Parties or through those territories. However, the transportation of products constituting a single consignment may take place through other States Parties' territories, where appropriate, with transshipment or temporary storage in those territories, provided that the products remain under the supervision of the customs authorities of the country of transit or storage and that they are not subject to other operations other than unloading or reloading or any other operation intended to ensure their preservation as such.
2. Originating products may be transported by pipeline across territories other than those of the States Parties acting as exporting and importing parties.
3. Proof that the conditions referred to in paragraph 1 have been fulfilled shall be by providing the customs authorities of the importing States Party with:
 - a) Either a single transport document covering the passage through the country of transit;
 - b) or a certificate issued by the customs authorities of the country of transit, containing:
 - i) an accurate description of the products;
 - ii) date of unloading and reloading of the products, with, where applicable, the names of the ships or other means of transport used; and
 - iii) certifying the conditions under which the products remained in the transit country;
 - c) Or, failing that, of any other relevant document.

Article 33

Information and procedure for cumulation purposes

1. For the application of paragraph 2 of Article 10 of this Annex, the proof of origin of the materials coming from a States Party shall be given by a Certificate of Origin or an origin declaration specimen of which appear in Appendices I and II of this Annex.
2. For the application of paragraph 3 of Article 10 the evidence of the working or processing shall be given by the supplier or producer's declaration, a specimen of which appears in Appendix III of this Annex, given by the supplier or producer in the States Party in which the materials are exported.

3. When Article 10 is applied, the Certificate of Origin issued in this way must be endorsed with the following phrase:
“CUMULATION”
4. The endorsement referred to in paragraphs 2 of this Article shall be inserted in the Box 3 of the Certificate of Origin.
5. In addition to the supporting documents referred to in paragraph 2, the bill of lading, together with the catch certificates shall be accompanying the Certificate of Origin.

Article 34

Preservation of records

1. An exporter who has applied for the issuance of a Certificate of Origin shall keep a copy of the application, as well as the supporting documents referred to in Article 24, for at least five (5) years after the completion of the application.
2. An importer that has been granted preferential tariff treatment shall keep documentation relating to the importation of the product, including a copy of the Certificate of Origin, for at five (5) years after the date on which preferential treatment was granted.
3. A States Party may deny preferential tariff treatment to a product that is the subject of an origin verification when the importer, exporter, or producer of the product that is required to maintain records or documentation under this Article:
 - a) Fails to maintain records or documentation relevant to determining the origin of the product in accordance with the requirements of this Annex;
or
 - b) Denies access to those records or documentation.
4. The designated competent authority of the exporting country issuing a Certificate of Origin shall keep for a minimum of five (5) years the copy of the issued Certificate.
5. The designated competent authority of the importing country shall keep for a minimum of five (5) years the Certificate of Origin submitted to them.

Article 35

Discrepancies and formal errors

1. The discovery of slight discrepancies between the Statements made in the Certificate of Origin and those made in the documents submitted to the customs or other designated competent authority for the purpose of carrying out the formalities for importing the products shall not, because of that fact, render the

Certificate of Origin null and void if it is established that the Certificate of Origin corresponds to the products submitted.

2. Obvious formal errors such as typing errors on a Certificate of Origin shall not cause the Certificate of Origin to be rejected if these errors do not create doubts concerning the correctness of the statements made in the document.

SECTION IV

ADMINISTRATIVE COOPERATION

Article 36 Notifications

1. The States Parties shall cooperate in the uniform administration and interpretation of this Annex and, through their designated competent authorities, assist each other in verifying the originating status of the products on which a Certificate of Origin is based.
2. For the purposes of facilitating the verifications or assistance referred to in paragraph 1, the designated competent authorities of the States Parties shall, through the Secretariat, exchange their respective addresses and the specimen of the stamps and signatures used in their offices for the issuance of the Certificates of Origin.
3. It is understood that the designated competent authority of the States Party of export assumes all expenses in carrying out the obligations provided for in paragraph 1.
4. It is further understood that the designated competent authorities of the States Parties shall, from time to time, consider the overall operation and administration of the verification process, including forecasting of workload and setting priorities. If there is an unusual increase in the number of requests, the designated competent authorities of the States Parties shall establish priorities and take the necessary steps to manage the workload, taking into account operational requirements.
5. States Parties shall notify each other immediately, through the Secretariat, with respect to any changes in requirements stated in paragraph 2.
6. States Parties shall notify each other immediately, through the Secretariat, of the approved exporters as provided in Article 22.

Article 37
Mutual Assistance

1. In order to ensure the proper application of this Annex, the States Parties shall assist each other, through the competent customs authorities or designated competent authorities, in checking the authenticity of the Certificate of Origin, the origin declarations or the supplier's declarations and the correctness of the information given in these documents.
2. The States Parties' authorities consulted shall furnish the relevant information concerning the conditions under which the product has been made, indicating especially the conditions in which the rules of origin have been respected in the various States Parties.

Article 38
Verification of proof of origin

1. Subsequent verifications of proof of origin shall be carried out at random or based on risk analysis or whenever the customs authorities of the importing country have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Annex.
2. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the importing country shall return the Certificate of Origin and the invoices, if they have been submitted, or a copy of these documents, to the customs authorities of the exporting country giving, where appropriate, the reasons for the request for verification. Any documents and information obtained suggesting that the information given on the proof of origin is incorrect shall be forwarded in support of the request for verification.
3. The verification shall be carried out by the customs authorities of the exporting country and the results of such verification shall be communicated to the requesting authority or country as soon as possible and in any case no later than six months. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in a States Party. For this purpose, the customs authorities of the exporting country shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check the authorities may consider appropriate.
4. If the customs authorities of the importing country decide to suspend the granting of preferential treatment to the products concerned while awaiting the results of the verification, release of the products shall be offered to the importer subject to any precautionary measures judged necessary.

5. In cases of reasonable doubt, or where there is no reply within six months of the date of the verification request or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, the requesting customs authorities may, except in exceptional circumstances, refuse entitlement to the preferences.
6. Where the verification procedure or any other available information appears to indicate that the provisions of this Annex are being contravened, the exporting country on its own initiative or at the request of the importing country shall carry out appropriate enquiries or arrange for such enquiries to be carried out with due urgency to identify and prevent such contraventions and for this purpose the exporting country concerned may invite the participation of the importing country in these enquiries.

Article 39 Penalties

States Parties shall impose penalties, through national legislation, on any person who draws up, or causes to be drawn up, or uses, a document which contains information which the person knows to be false for the purpose of obtaining a preferential treatment for products.

SECTION V FINAL PROVISIONS

Article 40 Sub-Committee on Rules of Origin

1. It is hereby established a Sub-Committee on Rules of Origin. This Sub-Committee shall be composed of representatives from a States Party's Customs, Trade and Industry and any other relevant agencies designated by a States Party, charged with monitoring and facilitating the implementation of the Annex on Rules of Origin.
2. The functions of the Sub-Committee shall be to oversee the implementation of this Annex.

Article 41 Review

This Annex shall be subject to review and possible amendment every three years or as may be deemed necessary by the States Parties.

Article 42 Appendices

The Appendices annexed to this Annex form an integral part thereof.

Article 43
Dispute Settlement

1. The provisions of the Protocol on Rules and Procedures Governing Dispute Settlement shall apply to disputes arising in the implementation of this Annex.
2. In all cases the dispute settlement between an importer and the customs authority of the importing country shall be settled as provided in the legislation of the importing country.

APPENDIX I: AfCFTA CERTIFICATE OF ORIGIN

(Article 19(1)(a))

Notes for Completing the AfCFTA Certificate of Origin

The numbered boxes of the certificate must be completed as follows:

Box 1

The exporter must be a natural or legal person ordinarily resident in a States Party or a person whose place of business is in a States Party.

In addition, the registration number should be inserted, where applicable.

Box 2

Insert the name and office address of the consignee in the States Party of destination.

Box 3

To be completed by the issuing authority inserting one or more of the following endorsements where necessary:

- a) "Duplicate" (where application is made for a Duplicate AfCFTA Certificate of Origin)
- b) "Issued Retrospectively" (where the goods have been exported before application is made for a certificate and application is made for the retrospective issue thereof)
- c) "Replacement" (where application is made for a Replacement AfCFTA Certificate of Origin)
- d) "Cumulation"

Box 4

Insert particulars of transport details for the vehicle, train, ship, aircraft or other vessel used in removing goods from the last port in the exporting States Party.

Box 5

- a) Enter identifying marks and numbers on the packages against each good being exported.
- b) If the packages are not marked, States "No Marks and Numbers" or "As Addressed".
- c) For goods in bulk that are not packed, insert "In Bulk".
- d) The quantity stated must agree with the quantities on the invoice.
- e) Where both originating and non-originating goods are packed together, describe only the originating goods and add at the end "Part Contents Only".

Box 6

Insert serial numbers of invoices, their dates, values and Incoterms, issued for the goods.

Box 7

States the number of type of packaging containing the goods.

Box 8

The goods must be identified by giving a reasonably full commercial description in order for the appropriate HS Code to be determined.

Box 9

Insert the gross weight of the goods that should correspond with the transporters' documents.

Box 10

States an additional statistical measure as may be applicable under the chosen HS Code

Box 11

Enter the six-digit HS Code in respect of each line of goods described in Box 8.

Box 12

Insert the appropriate Origin Criteria Code applicable to the goods being exported.

Origin Criteria Code	Origin Criteria Description
WP	Wholly produced (Article 6)
SM	Substantial transformation – Material Content (Article 7)
SV	Substantial transformation – Value Added Content (Article 7)
SX	Substantial transformation – Change of Tariff Heading (Article 7)
SC	Substantial transformation – Cumulation and state the States Parties with which Cumulation was used. (Article 10)

Box 13

- a) The exporter, or the authorized representative, must complete all details required for a complete declaration of the correctness of the application for a Certificate of origin.
- b) The signature must not be mechanically reproduced or made with a rubber stamp but can be electronically inserted or replaced with an electronic identifying code in accordance with the national laws of each States Party.

Box 14

This must be filled by the Designated Competent Authority in the country of export.

An officer of the authority must print all the details required and date-stamp the certificate in the space provided by imprinting thereon the special stamp issued to him / her for this purpose and has been circulated to the Customs Administration in all States Parties except where the Certificate is being validated electronically.

Box 15

The Customs Officer at the port of clearance or exit must insert the export document number, date and office of clearance as provided.

General

- a) The AfCFTA Certificate of Origin shall be rendered invalid if:
 - (i) (any entered particulars are incorrect and not in accordance with the rules of this Annex;
 - (ii) it contains any erasures or words written over one another;
 - (iii) altered, unless any alterations are made by deleting the incorrect particulars, by adding any necessary corrections and such alterations are initialled by the person who completed the certificate and endorsed by the officer who signs the certificate.
- b) Where applicable quote the designated competent authority's file registration / reference number at the top of the Certificate.

- c) Draw a horizontal line under the only or final item in Boxes 5 – 12 and rule through the unused space with a Z-shaped line or otherwise cross it through.
- d) Where the space provided is inadequate please attach an additional page to provide the required details.

Form for a AfCFTA Certificate of Origin

AfCFTA Certificate of Origin		Competent Authority Ref		Country Code		Serial No.	
1. Exporter (Name & Address)		2. Consignee (Name & Address)		3. For Official Use Only			
4. Particulars of Transport							
5. Marks & No.s	6. Invoice No. & Date	7. No. & Kind of Package	8. Description of Goods	9. Gross Weight	10. Suppl. Quantity	11. HS Code	12. Origin Criterion
13. Declaration By The Exporter or Authorized Representative I, the undersigned, declare that the goods described above meet the conditions required for the issue of this certificate, and are originating in <hr/> (Country) Place and date: <hr/> <hr/> (Full Names and Designation) <hr/> (Signature)			14. Certification of Origin Origin Stamp <hr/> (Designated Authority) <hr/> (Full Names) <hr/> (Signature)		15. For Customs purposes Export Document No.: <hr/> <hr/> Customs Office & Date <hr/> (Full Names) <hr/> (Signature)		

AfCFTA CERTIFICATE OF ORIGIN (PAGE 2 – BACK PART)

A. REQUEST FOR VERIFICATION BY IMPORTING STATES PARTY

Verification of the authenticity and accuracy of this certificate is requested for the following reasons:

(Place and Date)

(Signature and Stamp)

B. RESULT OF VERIFICATION BY EXPORTING STATES PARTY

Verification carried out shows that this certificate was issued by the Designated Competent Authority indicated and that the information contained therein:

☐

Is accurate

☐

Does not meet the requirement as to the authenticity / accuracy in Box _____
(insert the appropriate box number)

(Place and Date)

(Signature and Stamp)

Appendix II
AFRICAN CONTINENTAL FREE TRADE AREA
ORIGIN DECLARATION
(Article 19(1)(b))

The text of the origin declaration must be made as given below:

I / We, _____, being the exporter of the
(Approved Exporter's Name and Registration Number)
goods covered by this document declare(s) that, the goods are of
_____ origin
(indicate the African Continental Free Trade Area States Party)
and the origin criterion applicable to these goods
is _____
(insert wholly obtained or substantially transformed, as may be applicable.)

Place and Date of Declaration

Authorised Exporter's Signature

Appendix III

AFRICAN CONTINENTAL FREE TRADE AREA SUPPLIER OR PRODUCER'S DECLARATION (Article 33(2))

A. SUPPLIER OR PRODUCER'S DECLARATION FOR PRODUCTS HAVING PREFERENTIAL ORIGIN STATUS

I, the undersigned, declare that the goods listed on invoice _____ (1)

were produced in _____ (2)
and satisfy the rules of origin governing preferential trade between the African Continental
Free Trade Area States Parties.

I undertake to make available to the Designated Competent Authority, if required,
evidence in support of this declaration.

_____ (3)

_____ (4)

_____ (5)

Note

The abovementioned text, suitably completed in conformity with the footnotes below,
constitutes a supplier's declaration.

The footnotes do not have to be reproduced.

(1) - If only some of the goods listed on the invoice are concerned they should be clearly
indicated or marked and this marking entered on the declaration as follows:

" _____ listed on this invoice and marked
_____ were produced in _____".

- If a document other than an invoice or an annex to the invoice is used, the name of
the document concerned shall be mentioned instead of the word "invoice".

(2) African Continental Free Trade Area States Party.

(3) Place and Date.

(4) Name and Designation in the Company.

(5) Signature.

**B. SUPPLIER OR PRODUCER'S DECLARATION FOR PRODUCTS NOT HAVING
PREFERENTIAL AFRICAN CONTINENTAL FREE TRADE AREA ORIGIN
STATUS**

I, the undersigned, declare that the goods listed on this invoice
_____ (1)

were produced in _____ (2)
and incorporate the following components or materials which do not have an African
Continental Free Trade Area origin for preferential trade:

_____ (3)

_____ (4)

_____ (5)

_____ (6)

I undertake to make available to the Designated Competent Authority, if required,
evidence in support of this declaration.

_____ (7)

_____ (8)

_____ (9)

Note

The abovementioned text, suitably completed in conformity with the footnotes below,
constitutes a supplier's declaration.

The footnotes do not have to be reproduced.

(1) If only some of the goods listed on the invoice are concerned they should be clearly indicated or marked and this marking entered on the declaration as follows:

"_____ listed on this invoice and marked
_____ were produced in

____". If a document other than an invoice or an annex to the invoice is used, the name of the document concerned shall be mentioned instead of the word "invoice".

(2) African Continental Free Trade Area States Party.

(3) Description is to be given in all cases. The description must be adequate and should be sufficiently detailed to allow the tariff classification of the goods concerned to be determined.

(4) Customs values to be given only if required.

(5) Country of origin to be given only if required. The origin to be given must be a preferential origin, all other origins to be given as "third country".

(6) "and have undergone the following processing in African Continental Free Trade Area States Party _____, to be added with a description of the processing carried out if this information is required.

(7) Place and Date

(8) Name and Designation in the Company

(9) Signature

ANNEX3 on CUSTOMS CO-OPERATION AND MUTUAL ADMINISTRATIVE ASSISTANCE

Article 1

Definitions

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

- a) **‘Customs’** means the Government service responsible for the administration of the customs law and the collection of duties and taxes and which also has the responsibility for the application of other laws and regulations relating to the importation, exportation, movement or storage of goods;
- b) **"Customs Authorities"** means the administrative authority responsible for administering Customs Laws in a State Party;
- c) **"Customs Cooperation"** means collaboration among customs authorities aimed at the simplification of procedures and the improvement of trade facilitation, with the intention to enhance regulation of trade flows and enforcement of applicable laws in the State Parties by establishing international customs standards and harmonized customs procedures as outlined in this Annex;
- d) **"Customs Law"** means the statutory and regulatory provisions related to importation, exportation and movement or storage of goods, the administration and enforcement of which are specifically charged to the Customs Authorities and any regulations made by the Customs Authorities under their statutory powers;
- e) **"Customs offence"** means any breach or attempted breach of Customs Laws of a State Party;
- f) **"Harmonized System"** means the Nomenclature comprising the headings and subheadings and their related numerical codes, the Section, Chapter and Subheading Notes and the General Rules for the interpretation of the Harmonized System;
- g) **"Mutual Administrative Assistance"** means actions of a Customs Authority on behalf of or in collaboration with another Customs Authority for the proper application of customs laws and for the prevention, investigation and repression of customs offences;
- h) **"Sub-Committee"** means the African Union Sub-Committee of Directors General of Customs established by the Executive Council of the African Union.

Article 2

Objectives and Scope

1. The State Parties, through their customs authorities, and in accordance with the provisions set out in this Annex, shall afford each other:
 - a. Cooperation in all areas of Customs administration aimed at improving the regulation of trade flows and the enforcement of applicable laws within the States Parties, by:
 - i. Providing for common measures for which State Parties are encouraged to comply with in the formulation of their Customs laws and procedures;
 - ii. Establishing appropriate institutional arrangements at continental, regional and national levels.
 - b. Mutual Administrative Assistance within the scope of this Annex to:
 - i. Ensure that the customs laws in their territories are observed;
 - ii. Prevent, investigate and combat customs offences;
 - iii. Make available documents necessary for the application of customs laws;
 - iv. Facilitate the simplification and harmonization of their customs procedures; and
 - v. Ensure the smooth flow of trade and the integrity of the international supply chain.
2. State Parties shall cooperate in the form of Mutual Administrative Assistance within the framework of the Agreement within their competence and available resources of their customs authorities.
3. Cooperation in Customs matters shall apply to any administrative authority of State Parties that is competent in matters covered by Customs legislation. This co-operation shall be channelled through the Customs Authorities of the State Parties.
4. The provisions of the Agreement shall not provide a right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

Article 3

Harmonization of Customs Tariff Nomenclatures and Statistical Nomenclatures

1. Subject to the exceptions enumerated in paragraph 4:
 - a. Each State Party undertakes to adopt customs tariffs nomenclatures and statistical nomenclatures which are in conformity with the applicable version of the Harmonized System (HS). Accordingly, in respect of its nomenclatures, each State Party shall:
 - i. Use all the headings and sub-headings of the HS without addition or modification, together with their related numerical codes;
 - ii. Apply the general rule for the interpretation of the HS;
 - iii. Follow the numerical sequence of the HS; and
 - b. Each State Party shall regularly publish, in a format that is easily accessible, its import and export trade statistics in conformity with the six-digit codes of the HS, or at the initiative of the State Party, beyond that level, unless publication is precluded for exceptional reasons such as commercial confidentiality or national security.
2. In complying with the undertakings in paragraph 1(a) of this Article, each State Party may make such textual adaptations as may be necessary to give effect to the HS in its domestic law.
3. Nothing in this Article shall prevent a State Party from establishing, in its customs tariff or statistical nomenclatures, sub-divisions classifying goods beyond the six-digit level of the HS, provided that any such sub-divisions are as set out in the HS.
4. The African Union Ministers of Trade (AMOT) may allow exceptions in the application of the provisions of this Article as would be allowed in the application of the provisions of the HS convention, provided that the African Union Ministers of Trade are satisfied that they will not hinder the comparison of customs tariffs and trade statistics among State Parties.

Article 4

Harmonization of Valuation Laws and Practices

State Parties undertake to adopt a system of valuing goods for customs purposes based on the principles of non-discrimination, transparency and uniform application of such a system in accordance with Article 7 of GATT on Customs Valuation

Article 5

Simplification and Harmonization of Customs Procedures

1. States Parties are encouraged to cooperate on the use relevant international standards or parts thereof as a basis for their import, export or transit formalities and procedures except as otherwise provided for in this Annex.
 - a. Pursuant to paragraph 1, State Parties undertake to agree: That their respective customs laws and procedures shall be based on internationally accepted instruments and standards, practices and guidelines applicable in the field of customs and trade such as the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures and World Trade Organization(WTO) Trade Facilitation Agreement;
 - b. To use internationally accepted standards, practices and guidelines, as a basis for designing and standardising their trade documents and the information required to be contained in such documents.
 - c. The principles of promotion and facilitation of legitimate trade through effective enforcement of commitments contained in this Annex;

Article 6

Automation of Customs Operations

1. States Parties undertake to establish, use and continually upgrade modern data processing systems to facilitate effective and efficient Customs operations and transmission of trade data amongst themselves.
2. States Parties are encouraged further to undertake to ensure that their respective Customs Authorities shall :
 - a. Use internationally accepted standards, especially those adopted by the World Customs Organization (WCO);
 - b. Develop or adopt interconnectivity of computerised Customs clearance and information systems in collaboration with stakeholders; and
 - c. Facilitate the exchange of data with stakeholders.

Article 7

Advance Exchange of Information

States Parties shall endeavour to exchange information covered by this Annex in advance of the arrival of persons, goods and means of transport in their respective territories, which may be done manually or electronically on an automatic basis.

States Parties may, electronically on an automatic basis underset terms and conditions consistent with any CFTA arrangement, exchange any information covered by this Annex in advance of the arrival of persons, goods and means of transport in the territory of another State Party

Article 8

Prevention, Investigation and Suppression of Customs Offences

1. State Parties undertake to co-operate in the prevention, investigation and suppression of Customs offences. In this regard, each State Party shall designate and communicate to the other State Parties its Customs contact point.
2. For purposes of paragraph 1 of this Article, State Parties undertake to:
 - a. Exchange lists of goods the importation of which is prohibited in their respective territories;
 - b. Prohibit the exportation of goods referred to in sub-paragraph (a) of this paragraph to the relevant territories;
 - c. In cases where they share a common frontier,
 - i. Exchange lists of Customs offices located along the common border together with details of their powers, working hours, and any changes thereto;
 - ii. Consult each other on the establishment of border posts in close proximity to each other and take such steps as may be appropriate to ensure goods pass through those offices and along jointly approved routes;
 - iii. Endeavour to align the capabilities and harmonise the working hours of their corresponding Customs offices; and
 - d. Maintain special surveillance over the following:
 - i. Entry into, sojourn in, and exit from their territories of persons reasonably suspected of involvement in activities that are contrary to the Customs laws of any State Party;
 - ii. Movement of goods reasonably suspected of being the subject of illegal traffic;

- iii. Places in proximity to the border where stocks of goods have been built up causing reasonable suspicion of being used for illegal cross-border trade; and
 - iv. Vehicles, ships, aircraft, or other means of transport under reasonable suspicion of being used to commit Customs offences in any State Party.
- 3. State Parties shall provide, upon request, and without delay, all available information regarding:
 - a. Operations which cause reasonable suspicion of the commission of Customs offences in any State Party;
 - b. Persons, vehicles, ships, aircraft and other means of transport reasonably suspected of involvement in activities that may violate the Customs laws of any State Party;
 - c. Goods known to be the subject of illegal traffic;
 - d. Customs documents relating to importation and exportation of goods which are reasonably suspected of being in violation of customs laws of requesting State Party;
 - e. Contained in Customs documents relating to such exchange of goods between countries as are suspected of being in violation of the Customs Law of the requesting State Party; and
 - f. Certificates of origin, invoices or any other documents, that are or reasonably suspected to be forged or otherwise fraudulently produced.

Article 9

Request, Exchange and Provision of Information

1. In case of reasonable doubt as to the truthfulness or accuracy of an import or export declaration, States Parties shall, upon request, and subject to the provisions of this Article promptly provide all necessary information orally, in writing, or other appropriate means including specific information as set out in, but not limited to the import or export declaration, commercial invoice, packing list, certificate of origin and bill of lading; this shall not affect the right of the economic operators to confidentiality and privacy under the relevant national law.
2. In order to ensure the effective implementation of paragraph 1 of this Article and upon the entry into force of this Annex, each State Party shall notify the details of the responsible national contact points to the Secretariat.

3. Before submitting a request for information, a State Party shall undertake all necessary verifications relating to the relevant import or export declaration.
4. Each State Party undertakes, whenever expressly requested by another State Party, to:
 - a. Make enquiries, record statements and obtain evidence concerning a Customs offence under investigation in the requesting State Party and transmit the results of the enquiry and any documents or other evidence, to the State Party; and
 - b. Notify the competent authorities of the requesting State Party of actions and decisions taken by the competent authorities of the State Party where the alleged Customs offence took place in accordance with the law in force in that State Party.
5. The requesting State Party shall take into account the associated resource and cost implications for the requested State Party in responding to requests for information. The requesting State Party shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested State Party in providing the information
6. Modalities for the implementation of this Article shall be subject to arrangements to be made on a case by case basis between the requesting and the requested States Parties.

Article 10

Protection and Confidentiality

The requesting State Party shall:

- a) Grant the information requested the same level of confidentiality as that provided under the domestic law of the requested State Party;
- b) Use the information solely for the purpose stated in the request;
- c) Not disclose the information to a third State Party without the written consent of the requested State Party;
- d) Not use any unverified information as the deciding factor towards alleviating the doubt in any given circumstance;
- e) Respect any case-specific conditions set out by the requested State Party regarding retention and disposal of confidential information and personal data; and
- f) Upon request, inform the requested State Party of any decisions and actions taken on the matter as a result of the information provided.

Article 11
Technical Cooperation

1. In order to continue to enhance their capacities in Customs matters, State Parties shall endeavour to:
 - a. Develop joint training programmes;
 - b. Exchange staff and share training facilities and resources;
 - c. Exchange professional, scientific and technical data relating to customs laws and procedures;
 - d. Support each other in the modernisation of customs procedures including e-customs and electronic data interchange applications;
 - e. Support each other in the implementation of trade facilitation measures and simplification of customs procedures; and
 - f. Exchange any other data that can assist customs authorities with risk management for control and facilitation purposes.
2. States Parties shall notify the African Union Commission of all activities undertaken pursuant to paragraph 1 of this Article.

Article 12
Communication of Customs Information

1. State Parties shall exchange information on matters relating to Customs particularly on the following:
 - a. Changes in Customs legislation or any other relevant domestic legislation, procedures and duties and commodities subject to import or export restrictions;
 - b. Information relating to the prevention, investigation and suppression of Customs offences;
 - c. Information required to implement and administer customs laws and regulations; and
 - d. Any other information deemed necessary by the Sub-Committee.
2. For the purposes of paragraph 1 of this Article, State Parties may adopt loose-leaf editions of national customs tariff schedules.

Article 13

Implementation

A Sub-Committee on Trade Facilitation, Customs Cooperation and Transit shall be established. The Sub-Committee shall be responsible for the implementation of the provisions of this Annex .

ANNEX 4 on TRADE FACILITATION

Article 1

Definitions

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

- i) **“Advance Ruling”** means a written decision provided by a State Party to an applicant prior to the importation of goods covered by the application that sets forth the treatment that the State Party shall provide to the good at the time of importation;
- j) **“Applicant”** in relation to advance rulings means the exporter, importer, producer or any person with justifiable cause or a representative thereof;
- k) **“Customs Law”** means the statutory and regulatory provisions related to importation, exportation and movement or storage of goods, the administration and enforcement of which are specifically charged to the Customs Authorities and any regulations made by the Customs Authorities under their statutory powers;
- l) **“Expedited shipments”** means those goods which require rapid clearance as a matter of priority due to their nature or because they are meant to meet a justified urgent need;
- m) **“Low value shipments”** means goods of a value threshold determined under national legislation which are granted simplified documentation and clearance procedures;
- n) **“Perishable goods”** means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions;
- o) **“Release of Goods”** means the action by Customs to permit goods undergoing clearance to be placed at the disposal of the persons concerned;
- p) **“Risk management”** means the systematic identification of risk and implementation of all measures necessary for limiting exposure to risk;
- q) **“Single window”** means a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfil all import, export and transit-related regulatory requirements, and in the case of electronic information, the single submission of individual data elements;
- r) **“Trade Facilitation”** means the simplification and harmonization of international trade procedures, including activities, practices, and formalities involved in collecting, presenting, communicating, and processing data required for the movement of goods in international trade;

- s) “**Transit**” means the Customs procedure under which goods are transported under Customs control from one Customs office to another;

Article 2

Objective and Scope

1. This Annex aims at simplifying and harmonizing international trade procedures and logistics to expedite the processes of importation and exportation and transit.
2. The objective of this Annex on Trade Facilitation and Transit is to expedite the movement, clearance and release of goods including goods in transit across borders within States Parties.

Article 3

General Principle

The provisions of this Annex shall be interpreted and applied in accordance with the principles of transparency, simplification, harmonization and standardization of Customs Laws, procedures and requirements.

Article 4

Publication

1. Each State Party shall, to the extent possible, promptly publish on the internet the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested State Parties to become acquainted with them:
 - a. A description of procedures and practical steps needed for importation, exportation, and transit, including port, airport, and other entry-point procedures, and required forms and documents;
 - b. The documentation and data it requires, and the form that needs to be completed for import into, export from, or transit through its territory;
 - c. Its laws, regulations, and procedures for import into, export from or transit through its territory;
 - d. Applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
 - e. Fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

- f. Rules for the classification or valuation of products for customs purposes;
 - g. Laws, regulations, and administrative rulings of general application relating to rules of origin;
 - h. Import, export or transit restrictions or prohibitions;
 - i. Penalty provisions for breaches of import, export, or transit formalities;
 - j. Procedures for appeal or review;
 - k. Agreements or parts thereof with any country or countries relating to importation, exportation, or transit;
 - l. Procedures relating to the administration of tariff quotas; and
 - m. Contact information for its inquiry point or points designated or maintained pursuant to Article 5 of this Annex.
 - n. Import and Export Guidelines
2. States Parties shall be free to make this information available by any other means.

Article 5

Enquiry Points

1. Each State Party shall establish and maintain one or more enquiry points to answer reasonable enquiries of governments, traders, and other interested States Parties on matters covered in Article 4 (1) of this Annex.
2. Each State Party shall ensure that its enquiry points respond to enquiries within reasonable period of time,
3. States parties shall notify the African Union Commission the content information of the enquiry points referred to in paragraph 1 of this Article

Article 6

Advance Rulings

1. Each State Party shall issue, prior to the importation of a good into its territory, a written advance ruling within a reasonable period of time to an applicant that has submitted a written application. The application shall contain all information necessary for the State Party to issue the advance ruling.
2. The application referred to in paragraph 1 of this Article relate to (a) and (b)
 - a. The good's tariff classification;
 - b. The origin of the good;

3. In addition, State Parties are encouraged to issue advance rulings on the following:
 - a. Application of criteria it uses to determine the customs value of the good in accordance with the agreement on implementation of Article VII of GATT;
 - b. Application of duty drawback, deferral, or other schemes of relief that reduce, reimburse, or waive customs duties;
 - c. The preferential treatment for which the good qualifies;
 - d. Country of origin labelling requirements, including placement and method of marking;
 - e. Whether the good is subject to a quota or tariff-rate quota; and
 - f. Such other matters as the State Party may decide.
4. Notwithstanding paragraph 1, a State Party may decline to issue an advance ruling where the question or facts and circumstances raised are the subject of administrative or judicial review, or where the application does not relate to any intended use of the advance ruling.
5. If a State Party declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.
6. The advance ruling shall be valid for at least six (6) months from the day of its issuance unless the law, facts, or circumstances supporting that ruling have changed.
7. Each State Party shall publish:
 - a. The requirements for the application for an advance ruling, including the information to be provided and the format;
 - b. The time period by which it will issue an advance ruling; and
 - c. The length of time for which the advance ruling is valid.
8. Where a State Party revokes, modifies, or invalidates an advance ruling, it shall provide written notice to the applicant, setting out the relevant facts and the basis for its decision. Where the State Party revokes, modifies, or invalidates an advance ruling with retroactive effect, it may only do so where the ruling was based on false or misleading information.
9. Each State Party shall provide, upon written request of an applicant, an administrative review of the advance ruling or of the decision to revoke, modify, or invalidate it.
10. An advance ruling issued by a State Party shall be binding throughout its territory.

11. Each State Party shall endeavour to make its advance rulings publicly available on the Internet, taking into account the need to protect commercially confidential information. A State Party may redact portions of an advance ruling for reasons of confidentiality in accordance with its laws, regulations, and procedures

Article 7

Pre-arrival Processing

1. Each State Party shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.
2. Each State Party shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

Article 8

Electronic Payment

Each State Party shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.

Article 9

Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

1. Each State Party shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.
2. As a condition for such release, a State Party may require:
 - (a) Payment of customs duties, taxes, fees, and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations; or
 - (b) A guarantee in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations.
3. Such guarantee shall not be greater than the amount the State Party requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

4. In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

5. The guarantee as set out in paragraphs 2 and 4 in this article shall be discharged when it is no longer required.

6. Nothing in these provisions shall affect the right of a State Party to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the State Party's rights and obligations under the Continental Free Trade Agreement.

Article 10

Risk Management

1. Each State Party shall, to the extent possible, adopt or maintain a risk management system for customs control.

2. Each State Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

3. Each State Party shall concentrate customs control and, to the extent possible other relevant border controls, on high-risk consignments and expedite the release of low-risk consignments.

A State Party also may select, on a random basis, consignments for such controls as part of its risk management.

4. Each State Party shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

Article 11

Post-clearance Audit

1. With a view to expediting the release of goods, each State Party shall adopt or maintain post clearance audit to ensure compliance with customs and other related laws and regulations.

2. Each State Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved

the State Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations, and the reasons for the results.

3. The information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

4. State Parties shall, wherever practicable, use the result of post-clearance audit in applying risk management.

Article 12

Establishment and Publication of Average Release Times

1. State Parties are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, inter alia, the Time Release Study of the World Customs Organization (referred to in this Annex as the "WCO")⁴

2. State Parties are encouraged to share with the Sub-Committee on Trade Facilitation their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

Article 13

Trade Facilitation Measures for Authorized Operators

1. Each State Party shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 3 of this Article, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a State Party may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

2. The specified criteria to qualify as an authorized operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures.

(a) Such criteria, which shall be published, may include:

(i) An appropriate record of compliance with customs and other related laws and regulations;

(ii) A system of managing records to allow for necessary internal controls;

⁴ Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity

(iii) Financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and

(iv) Supply chain security.

(b) Such criteria shall not:

(i) Be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

(ii) To the extent possible, restrict the participation of small and medium-sized enterprises.

3. The trade facilitation measures provided pursuant to paragraph 1 of this Article shall include at least three of the following measures⁵:

(a) Low documentary and data requirements, as appropriate;

(b) Low rate of physical inspections and examinations, as appropriate;

(c) Rapid release time, as appropriate;

(D) Deferred payment of duties, taxes, fees, and charges;

(e) Use of comprehensive guarantees or reduced guarantees;

(f) A single customs declaration for all imports or exports in a given period; and

(g) Clearance of goods at the premises of the authorized operator or another place authorized by customs.

4. State Parties are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

5. In order to enhance the trade facilitation measures provided to operators, State Parties shall afford to other State Parties the possibility of negotiating mutual recognition of authorized operator schemes.

6. State Parties shall exchange relevant information within the Sub- Committee about authorized operator schemes in force.

⁵ A measure listed in paragraphs 3 of this article from (a) to (g) will be deemed to be provided to authorized operators if it is generally available to all operators

Article 14

Expedited Shipments

1. Each State Party shall adopt or maintain procedures allowing for the expedited release of at least those goods entered through air cargo facilities to persons who apply for such treatment, while maintaining customs control.⁶ If a Member employs criteria⁷ limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraph 2 in this article to its expedited shipments:

(a) Provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments in cases where the applicant fulfils the State Parties' requirements for such processing to be performed at a dedicated facility;

(b) Submit in advance of the arrival of an expedited shipment the information necessary for the release;

(c) Be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 2 in this article;

(d) Maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;

(e) Provide expedited shipment from pick-up to delivery;

(f) Assume liability for payment of all customs duties, taxes, fees, and charges to the customs authority for the goods;

(g) Have a good record of compliance with customs and other related laws and regulations;

(h) Comply with other conditions directly related to the effective enforcement of the State Parties' laws, regulations, and procedural requirements that specifically relate to providing the treatment described in paragraph 2 in this article.

2. Subject to paragraphs 1 and 3 of this Article, State Parties shall:

(a) Minimize the documentation required for the release of expedited shipments in accordance with paragraph 1 of Article 10 and, to the extent possible, provide for release based on a single submission of information on certain shipments;

⁶ In cases where a Member has an existing procedure that provides the treatment in paragraph 2 in this article, this provision does not require that Member to introduce separate expedited release procedures.

⁷ Such application criteria, if any, shall be in addition to the Member's requirements for operating with respect to all goods or shipments entered through air cargo facilities.

(b) Provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;

(c) Endeavour to apply the treatment in subparagraphs (a) and (b) to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods such as documents; and

(d) Provide, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.

3. Nothing in paragraphs 1 and 2 of this article shall affect the right of a State Party to examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 1 and 2 shall prevent a State Party from requiring, as a condition for release, the submission of additional\ information and the fulfilment of non-automatic licensing requirements.

Article 15

Perishable Goods

1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods:

(a) Under normal circumstances within the shortest possible time; and

(b) In exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

2. Each State Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

3. Each State Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The State Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The

State Party shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 16

Use of International Standards

1. Each State Party shall endeavour to use international standards and elements for import, export and transit data maintenance and reporting consistent with international best practice.
2. Each State Party shall share, through the African Union Commission , relevant information and best practices, on the implementation of international standards for import, export, or transit procedures as appropriate. The States Parties shall, as appropriate, discuss specific standards for import, export, or transit procedures whether and/or how they contribute to trade facilitation.

Article 17

Use of Information Technology

1. Each State Party shall, to the extent practicable, use the most modern information and communications technology to expedite procedures for the release of goods, including those in transit.
2. In fulfilment of obligations in paragraph 1, each State Party shall endeavour to:
 - a. Make available by electronic means any declaration or other form that is required for the import, export, or transit of goods;
 - b. Allow documentation for import, export, or transit to be submitted in electronic format;
 - c. Establish an electronic system for data exchange ~~related~~ relating to trade information which is accessible and continuously promoting data exchange by the importers, exporters and persons engaged in transit of goods
 - d. Collaborate with other states parties for the implementation of mutually compatible electronic systems that enable the intergovernmental exchange of trade data amongst the states parties.

Article 18

Single Window

1. States Parties shall endeavour to establish and maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating

national authorities. After the examination by the national authorities of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

2. In cases where documentation and/or data requirements have already been fulfilled through the single window, the same documentation and/or data requirements shall not be requested by national authorities except in urgent circumstances and other limited exceptions which are made public.
3. States Parties shall notify the African Union Commission of the details of operation of the single window.
4. States Parties shall, to the extent practicable, use information technology to support the single window.

Article 19

Freedom of Transit

Each State Party shall ensure the freedom of transit through its territories in accordance with Article V of GATT 1994 and Article 11 of the WTO Trade Facilitation Agreement.

Article 20

Documentation

1. Each State Party shall, subject to paragraph 2, apply uniform import, export, and transit procedures and uniform documentation requirements for release of goods throughout its territory.
2. Nothing in this Article shall prevent a State Party from differentiating its import, export, and transit procedures and documentation requirements:
 - a. Based on the nature and type of goods, or their means of transport;
 - b. For goods, based on risk management; and
3. Each State Party shall periodically review, and based on the results of the review, ensure, as appropriate, that import, export, and transit procedures and documentation requirements are:
 - a. Adopted and applied with a view to prompt release of goods;
 - b. Adopted and applied in a manner that reduces the time and cost of compliance with such procedures;
 - c. The least trade-restrictive measure available to the State Party, taking into account its financial capabilities, in order to achieve its policy objectives; and

- d. Are removed forthwith if no longer required to fulfil the State Party's policy objectives in question.
- 4. Each State Party shall, to the extent possible, accept paper or electronic copies of documents required for importation, exportation or transit of goods through its territory.

Article 21

Fees, Charges and Penalties

1. Each State Party shall ensure, in accordance with Articles II, V and VIII of the GATT, that all fees and charges of whatever character other than customs duties imposed on or in connection with importation, exportation or transit shall be limited in amount to the approximate cost of services rendered, which shall not be calculated on an ad valorem basis, and shall not represent an indirect protection to domestic goods or a taxation of imports, exports or goods in transit for fiscal purposes.
2. Each State Party shall publish a list of fees and charges referred to in paragraph 1 of this Article as well as any amendments thereto. Such fees and charges shall not be applied until information on them has been published.
3. Each State Party shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.
4. Each State Party shall ensure that the penalty for the breach of a customs law, regulation, or procedural requirement is imposed only on the person or persons responsible for the breach under its laws.
5. The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.
6. Each State Party shall ensure that it maintains measures to avoid:
 - a. Conflicts of interest in the assessment and collection of penalties and duties; and
 - b. Creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 5 of this Article.
7. Each State Party shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person or persons upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.
8. When a person voluntarily discloses to a State Party's customs authority the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs authority, the State Party is

encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

9. The provisions of this Article shall apply to the penalties on traffic in transit.
10. For purposes of this Article, the term "penalties" shall mean those imposed by a State Party's customs authority for a breach of the State Party's customs laws, regulations, or procedural requirements.

Article 22

Review and Appeal

1. Each State Party shall provide that any person to whom customs issues an administrative decision has the right, within its territory, to:
 - a. An administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and/ or
 - b. A judicial appeal or review of the decision.
2. Each State Party shall ensure that an authority conducting a review under paragraph 1 promptly notifies the person affected of its decision and the reasons thereof in writing.
3. Where a person receives a decision on administrative or judicial review as provided under paragraph 1, that decision shall be applicable in the same manner throughout the territory of the State Party with respect to the same goods.

Article 23

Use of Customs Brokers

1. Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this Agreement Members shall not introduce the mandatory use of customs brokers.
2. Each Member shall notify the African Union Commission and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.
3. With regard to the licensing of customs brokers, State Parties shall apply rules that are transparent and objective.

Article 24

Pre-shipment Inspection

A State Party shall not require the use of pre-shipment inspection entities in relation to tariff classification or customs valuation.

Article 25

Border Agency Cooperation

1. A State Party shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.
2. State Parties shall, to the extent possible and practicable, cooperate on mutually agreed terms with other State Parties with whom they share a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:
 - a. alignment of working days and hours;
 - b. alignment of procedures and formalities;
 - c. development and sharing of common facilities;
 - d. joint controls;
 - e. establishment of one stop border post control

Article 26

Other Measures to Facilitate Trade

1. The State Parties recognise the importance of cooperation in order to expedite the movement of goods and reduce the cost of doing business and the volume of paper work in respect of trade within the continental free trade area
2. The African Union Commission shall keep Member States informed regarding trade facilitation activities, instruments, recommendations and guidelines of other international organisations, particularly of:
 - a. The UN Economic Commission for Africa (ECA);
 - b. The United Nations Conference on Trade and Development (UNCTAD);
 - c. The World Customs Organisation (WCO);
 - d. The International Maritime Organisation (IMO);
 - e. The International Civil Aviation Organisation (ICAO);
 - f. The International Standards Organisation (ISO);

- g. The International Chamber of Commerce (ICC) and the International Bureau of Chamber of Commerce (IBCC);
- h. The International Air Transport Association (IATA);
- i. The International Chamber of Shipping (ICS);
- j. The World Trade Organisation (WTO)

Article 27

Sub-Committee on Trade Facilitation, Customs Cooperation and Transit

A Sub-Committee on Trade Facilitation, Customs Cooperation and Transit shall be established. The Sub-Committee shall be responsible for the implementation of the provisions of this Annex

Article 28

National Committee on Trade Facilitation

State Party shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Annex.

Article 29

Implementation

1. State Parties shall accord each other expedited implementation of this Annex.
2. The extent and the timing of implementation of the provisions of this Annex shall be related to the implementation capacities of State Parties the AfCFTA Sub-Committee for Trade Facilitation, or as notified under the WTO TFA.

ANNEX 5 on NON-TARIFF BARRIERS

Article 1 Definitions

1. For the purposes of this Annex, the definitions set out in the Agreement Establishing the African Continental Free Trade Area and the Protocol on Trade in Goods shall apply. The following definitions and abbreviations shall have the meanings set forth herein:
 - a. **Facilitator:** means an independent expert and/or person agreed upon by concerned parties under Article 12 of this Annex;
 - b. **Interested Party:** means a Party that is directly affected by the NTB under discussion;
 - c. **National Focal Point:** means Ministries/Government Departments or any other authorised body as appointed under Article 4 of this Annex.
 - d. **National Monitoring Committee:** means committee of relevant stakeholders from private and public sectors as established under Article 7 of this Annex;
 - e. **NTB Coordination Unit:** means a unit created in the AUC/AfCFTA Secretariat to coordinate the elimination of NTBs in the AfCFTA;
 - f. **NTB Sub Committee:** means committee responsible for the implementation of this Annex which comprises nominated representatives from State Parties;
 - g. **Perishable Goods:** means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

Article 2 Scope and Objectives

The purpose of this Annex is to implement the provisions of Article 11 (Non-Tariff Barriers to Trade) of the Protocol on Trade in Goods.

Without prejudice to the rights and obligations under the World Trade Organization (WTO) Agreements, this Annex provides for a mechanism for the identification, categorisation, and elimination of non-tariff barriers within the Continental Free Trade Area (AfCFTA). The mechanism provides for the following:

- a. institutional structures for the elimination of Non-Tariff Barriers (NTBs);
- b. general categorisation of non-tariff barriers in the African Continental Free Trade Area;
- c. reporting and monitoring tools; and
- d. facilitation of resolutions to identified non-tariff barriers.

Article 3

General Categorisation

1. This categorization does not judge the legitimacy, adequacy, necessity or discrimination of any form of policy intervention used in international trade and it does not prejudice the rights and obligations of the States Parties under the WTO Agreements,
2. The States Parties may for guiding purposes adopt the general categorization of potential non-tariff barriers as indicated below:
 - a. Government Participation in Trade and Restrictive Practices Tolerated by Governments
 - b. Customs and administrative entry procedures;
 - c. Technical Barriers to Trade;
 - d. Sanitary and Phytosanitary Measures;
 - e. Specific limitations;
 - f. Charges on imports; and
 - g. Others
3. In order to ensure that this general categorization, sub-categories and sub-classifications evolve and adapt to the changing reality of international trade and data collection needs, the States Parties, through the AUC/AfCFTA Secretariat, may propose changes for consideration and concurrence by other State Parties in accordance with Article 16 of this Annex.
4. The descriptions to these categories and sub-categories form an attachment to this Annex on NTBs.

Article 4

Institutional Framework

1. States Parties shall establish a Sub-Committee on Non-Tariff Barriers in accordance with Article 12 of the Agreement Establishing the AfCFTA which shall oversee the implementation of this Annex;
2. AUC shall establish a Coordination Unit for coordination of NTB elimination in liaison with NTB Sub-Committee;

3. The States Parties shall:
 - a. Establish National Monitoring Committees and National Focal Points on NTBs;
 - b. Provide names and addresses of designated National Focal Points to the AUC/AfCFTA Secretariat for circulation to States Parties; and
 - c. The National Monitoring Committees and the National Focal Points together form part of the Institutional Structures at the National level for the Elimination of NTBs.

Article 5

Functions of the AfCFTA NTB Sub-Committee

The main functions of the NTB Sub-Committee shall include:

- a. Development of working procedures for the implementation of this Annex with a view to monitor and facilitate the periodic review of the Annex and the NTBs mechanism to enhance the elimination of NTBs in the continent; and
- b. Any other NTBs related activities

Article 6

AfCFTA NTB Coordination Unit

The AUC/AfCFTA Secretariat shall establish a Coordination Unit whose main function will be to coordinate the elimination of NTBs working together with the NTB Sub-Committee, National Focal Points and Regional Economic Communities (RECs) NTB Units and any other *fora* working in the same area.

Article 7

Establishment and Functions of the National Monitoring Committees (NMCs)

1. Each State Party shall establish a National Monitoring Committee
2. The main functions of the National Monitoring Committees shall include:
 - a. identifying, resolving and monitoring NTBs;
 - b. defining the process of elimination;
 - c. confirming deadlines for action;
 - d. agreeing on recourse due to non-action;
 - e. defining the mandate and responsibilities of NTB institutional structures, and
 - f. providing clear guidelines to the business community for the resolution of identified NTBs ; and
 - g. any other related activities
3. Where a reported measure has been identified as an NTB, but has not been resolved, the NMC shall proceed to include it in the Time Bound Elimination Matrix for further action/resolution as provided for under Article 11 of this Annex.

4. The National Monitoring Committee shall comprise of relevant stakeholders representing the private and public sectors.

Article 8

National Focal Points

The main functions of the National Focal Points on NTBs shall include:

- a. coordinating the implementation of the AfCFTA mechanism for the elimination of NTBs;
- b. providing secretariat services to the National Monitoring Committees (NMC);
- c. facilitating the removal of NTBs and reporting on their elimination;
- d. tracking and monitoring NTBs through utilization of the reporting tools;
- e. providing clear guidelines to the business community on the areas identified as NTBs;
- f. sensitizing stakeholders on the monitoring and evaluation mechanism and NTBs reporting tools;
- g. submitting to the AUC/AfCFTA Secretariat reports on identified and/or resolved NTBs for record purposes; and
- h. providing assistance to the Facilitator in the process of resolving NTBs as necessary ;and
- i. any other related activities

Article 9

RECs NTB Monitoring Mechanisms

1. RECs shall establish and/or strengthen NTBs monitoring mechanisms responsible for:
 - a. tracking and monitoring NTBs affecting intra-African trade and updating regional and national plans for the elimination of NTBs; and
 - b. capacity building and sensitization of stakeholders on the reporting, monitoring and evaluation tools such as the web based system.
2. Working closely with the NTB Sub-Committee, RECs NTB Units and National Focal Points to ensure timely and effective resolution of identified NTBs. RECs shall cooperate in resolving identified NTBs with a view to facilitating trade;
3. RECs' NTB Monitoring mechanisms shall support the Coordination Unit at the AUC/AfCFTA Secretariat in the resolution of inter-REC NTBs.

Article 10

Mechanism for Identifying, Reporting, Monitoring and Elimination of Non-Tariff Barriers

1. Articles 4 to 9 detail the institutional arrangements in place for the implementation of REC level and continental NTB reporting, resolution and monitoring mechanisms;

2. Any State Party or economic operator may register a complaint or trade concern through the mechanisms as provided for in this article;
3. States Parties are encouraged to resolve NTBs raised at intra-REC level using the resolution mechanisms in place in each REC;
4. The AfCFTA mechanism for identifying, reporting and monitoring NTBs will be a system put in place to facilitate the elimination of NTBs within the Continental Free Trade Area;
5. The AfCFTA mechanism will address NTBs that have not been resolved at REC level, are inter-REC in nature, or are arising from State Parties that are not members of any REC;
6. The NTB mechanisms shall enhance transparency and provide for easy follow-up on resolution progress of reported and identified NTBs;
7. The reporting and monitoring tools for NTBs shall consist of a prescribed format, forms, online or any other information, communication and technology tools which will be subject to periodic review and shall be available on websites as designated by the NTB Sub Committee;
8. The NTB mechanism shall be accessible to States Parties' economic operators, national focal points, REC Secretariats, academic researchers and other interested parties.

Article 11

Non-Tariff Barriers Elimination Plans (Matrices)

1. State Parties shall prepare time bound NTBs Elimination Plans which are in the form of a matrix based on the agreed categorisation of NTBs;
2. State Parties shall draw up NTBs elimination plans based on the NTBs level of impact on intra-African trade.

Article 12

Procedure for Elimination and Co-operation in the Elimination of Non-Tariff Barriers

In the elimination of NTBs, the AfCFTA States Parties shall resort to the procedures set out in Appendix 2 of this Annex.

Article 13

Transparency and Exchange of Information

The AfCFTA NTB Coordination Unit shall circulate to State Parties quarterly, a status report of notified requests and responses and of ongoing and recently completed NTB resolution together with reports from Facilitators.

Article 14

Technical Assistance

State Parties may request for assistance from the AUC/AfCFTA Secretariat, or the Secretariats of the RECs to promote their understanding of the use and functioning of these procedures, or the resolution of a NTB.

Article 15

Dispute Settlement

Where States Parties disregard the implementation of any of the provisions of this Annex, and a dispute arises, the matter shall be addressed in accordance with provisions of the Protocol on Rules and Procedures for the Settlement of Disputes.

Article 16

Review and Amendment

1. The Council of Ministers responsible for Trade may decide to modify where necessary certain procedural aspects of the Mechanism for the Elimination of NTBs,
2. The Council of Ministers responsible for Trade shall undertake a review of the effectiveness of the Mechanism every 3 years or whenever needed,
3. Based on the outcomes of the reviews, the Council of Ministers responsible for Trade may amend this Annex as provided for under Article 29 of the Agreement Establishing the African Continental Free Trade Area.

APPENDIX 1: General Categorization of Potential Sources of Non-Tariff Barriers

Parts and Sections	Description
Part I	Government Participation in Trade and Restrictive Practices Tolerated by Governments <ul style="list-style-type: none"> • Government aids, including subsidies and tax benefits • Restrictive practices tolerated by governments • Other
Part II	Customs and Administrative Entry Procedures <ul style="list-style-type: none"> • Customs valuation • Customs classification • Consular formalities and documentation • Samples • Rules of origin • Customs formalities • Import licensing • Pre-shipment inspection and other formalities related to pre- shipment inspection. • Other
Part III	Technical Barriers to Trade <ul style="list-style-type: none"> • Technical regulations, and standards including packaging, labelling and marking requirements • Conformity assessments • Certificate of Free Sale • Other
Part IV	Sanitary and Phytosanitary Measures <ul style="list-style-type: none"> • SPS measures including chemical residue limits, disease freedom, specified product treatment, etc. • Conformity assessments • Other
Part V	Specific Limitations <ul style="list-style-type: none"> • Embargoes and other restrictions of similar effect • Quantitative imports and export restrictions or prohibitions • Tariff quotas • Other
Part VI	Charges on Imports <ul style="list-style-type: none"> • Prior import deposits • Surcharges, port taxes, statistical taxes, etc. • Credit restrictions • Border tax adjustments • Other

Part VII	Other <ul style="list-style-type: none"> • Transport, Clearing and Forwarding • Other
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APPENDIX 2: Procedure for Elimination and Co-operation in the Elimination of Non-Tariff Barriers

In the elimination of NTBs, the AfCFTA States Parties shall resort to the following procedures:

- i. States Parties shall, in line with Article 10 above, exhaust existing NTB elimination channels at REC level before escalating a complaint or trade concern to the AfCFTA level.
- ii. Where State Parties fail to reach agreement on the resolution of a complaint using REC based NTB mechanism, or the complaint has arisen from inter-REC trade, the State Parties shall proceed as follows:

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

- a. Any State Party (the 'requesting State Party') may, individually or jointly with other States Parties, initiate Stage I by submitting in writing or through an agreed online/ICT method or any other method, in accordance with Article 10.7; to another State Party (the 'responding State Party') and the AUC/AfCFTA Secretariat a request for information regarding a NTB as identified and reported by the requesting State Party;
- b. The request shall identify and describe the specific NTB as identified and reported by the requesting State Party and provide a detailed description of its concerns regarding the NTB's impact on trade;
- c. The responding State Party shall acknowledge and provide to the requesting State Party, within twenty (20) days following receipt of the request, a written response containing all the information and clarification requested. Where the responding State Party considers that a response within this period is not practicable, it shall inform the requesting State Party of the reasons for the delay, together with an estimate of the period within which it will provide its response. In all cases it shall not exceed thirty (30) days from the date of receiving the request for information unless the parties mutually agree to extend the days;
- d. The responding State Party shall notify its response directly to the requesting State Party and the AUC/AfCFTA Secretariat for recording purposes;
- e. The AUC/AfCFTA Secretariat shall undertake to ensure that the responding and the requesting States Parties adhere to the provisions indicated in (a) to (d) in Stage I above;
- f. Where the response is acceptable to the requesting State Party, the requesting State Party shall notify the responding State Party and the AUC/AfCFTA Secretariat, and the complaint shall be considered resolved. Where the parties mutually agree on a complaint as being an NTB, the National Monitoring Committee of the responding

State Party shall develop an elimination plan as provided for under Article 11 of this Annex;

- g. Where the response does not resolve the complaint, the requesting State Party shall notify the responding State Party and the AUC/AfCFTA Secretariat. The AUC/AfCFTA Secretariat shall convene a meeting with the parties within twenty (20) days from the date of receiving the notification to, inter alia, address the outstanding complaint;
- h. In case the matter is not satisfactorily resolved in Stage I, both parties shall by mutual consent and through a written and signed agreement proceed to Stage II;
- i. Any other State Party may submit a written request to the AUC/AfCFTA Secretariat to participate in these procedures as an interested party within ten (10) days from the date of circulation of the decision to proceed to Stage II;
- j. Pending final resolution of the NTB, the parties may consider possible interim solutions, especially if the NTB relates to perishable goods;
- k. In case of perishable goods, the issue shall be dealt with within 10 days;
- l. Once initiated, Stage I shall be terminated upon request of either party;
- m. Stage I proceedings shall not exceed a total of sixty (60) days unless otherwise mutually agreed by the parties.

2. Stage II: Use of a Facilitator to Resolve Complaints

2.1 Appointment of a Facilitator

- a. Upon initiation of Stage II of these procedures, the AUC/AfCFTA Secretariat shall coordinate the appointment of an independent expert/person acceptable to the parties to serve as Facilitator;
- b. Facilitators shall be drawn from a pool of experts whose selection and appointment shall be in accordance with agreed criteria and procedures to be developed by the NTBs Sub- Committee;
- c. The parties shall jointly agree on the terms of reference for Facilitator;
- d. Upon initiation of this Stage II, the parties shall agree upon the Facilitator within ten (10) days;

2.2 Seeking Mutually Agreed Solutions

- a. Either party shall present to the Facilitator and the other party any information that it deems relevant.

- b. The Facilitator, in consultation with the parties, shall have full flexibility in organizing and conducting the deliberations under these procedures which normally should take place at the AUC/AfCFTA Secretariat Headquarters, unless the parties agree on any other place of mutual convenience, taking into account possible capacity constraints;
- c. In assisting the parties, in an impartial and transparent manner with a view to bringing clarity on the NTB concerned and its possible trade-related impact, the Facilitator may:
 - 1) with the support of the NTB Sub Committee, call upon the AUC/AfCFTA Secretariat or any other relevant resource to provide the Facilitator with any requested information;
 - 2) meet individually or jointly with, the parties, in order to facilitate discussions on the NTB and to assist in reaching mutually agreed solutions;
 - 3) seek assistance where necessary, of relevant experts and stakeholders, after consulting with the parties;
 - 4) provide any additional support requested by the parties; and
 - 5) offer advice and propose possible solutions (technical opinion) for the parties provided any such opinion shall not pertain to any possible legitimate objectives for the maintenance of the measure.
- d. The parties shall engage each other with a view to reaching a mutually agreed solution within forty five (45) days from the commencement of the proceedings in Stage II.

2.3 Outcome and Implementation

- a. Upon termination of Stage II of these procedures by a party, or in the event that the parties reach a mutually agreed solution, the Facilitator shall, within 10 days, issue to the parties in writing, a draft factual report providing a brief summary of the following:
 - 1) the NTB at issue in these procedures;
 - 2) the procedures followed;
 - 3) any mutually agreed solution as the final outcome of these procedures, including possible interim solutions; and
 - 4) any areas of disagreement shall be recorded.
- b. The Facilitator shall provide the parties ten (10) days within which to comment on the draft report after considering the comments of the parties, the Facilitator shall submit, in writing, a final factual report to both parties and the AUC/AfCFTA Secretariat within ten (10) days of receiving the comments.
- c. If the parties reach a mutually agreed solution, such solution shall be implemented and also circulated to all State Parties through the AUC/AfCFTA Secretariat. Such

solution shall be implemented in accordance with an elimination plan as provided for under Article 11 of this Appendix;

- d. Where a State Party fails to resolve an NTB after a factual report has been issued and a mutually agreed solution has been reached, the requesting State Party shall resort to the dispute settlement stage;
- e. Notwithstanding the provisions herein parties may agree to submit the matter to arbitration in accordance with the provisions of the Protocol on Dispute Settlement.

2.4 Confidentiality

- a. All meetings and information (whether provided in oral or written form) acquired pursuant to Stages I & II of this Appendix of these procedures shall be confidential and without prejudice to the rights of any party or other State Party in any dispute settlement proceeding under the Dispute Settlement procedures. The obligation of confidentiality does not extend to factual information already existing in the public domain;
- b. Nothing in this Appendix shall require State Parties to disclose confidential information, which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private;
- c. Any third party admitted to the procedures shall be bound by the confidentiality requirements pursuant to these procedures.

ANNEX 6 ON TECHNICAL BARRIERS TO TRADE

Article 1 Definitions

1. Except where this Annex gives a specific meaning to a term, the general terms for standardisation, technical regulations, conformity assessment procedures and related activities shall have the meaning given to them by the definitions adopted within the WTO Agreement on Technical Barriers to Trade and by other international bodies dealing with Technical Barriers to Trade (TBT) related issues,
2. References in this Annex to standards, technical regulations, and conformity assessment procedures include amendments thereto, and additions to the rules or the product coverage thereof.

For purposes of this Appendix, the following shall apply:

- a) **“AFRAC”** means the African Accreditation Cooperation;
- b) **“AFRIMETS”** means the Intra-Africa Metrology System;
- c) **“AFSEC”** means the African Electro-technical Standardization Commission;
- d) **“ARSO”** means the African Organization for Standardization;
- e) **“BIPM”** means the International Bureau of Weights and Measures;
- f) **“CGPM”** means the General Conference on Weights and Measures;
- g) **“IAF”** means the International Accreditation Forum;
- h) **“IEC”** means the International Electro-technical Commission;
- i) **“ILAC”** means the International Laboratory Accreditation Cooperation;
- j) **“ISO”** means the International Organization for Standardization;
- k) **“OIML”** means the International Organization for Legal Metrology;
- l) **“PAQI”** means the Pan-African Quality Infrastructure;
- m) **“SI”** means the International System of Units; and
- n) **“WTO TBT Agreement”** means the World Trade Organization Agreement on Technical Barriers to Trade⁸.

Article 2 Scope

The purpose of this Annex is to implement the provisions of Article 20 (Technical Barriers to Trade) of the Protocol on Trade in Goods. The Annex shall apply to standards, technical regulations, conformity assessment procedures, accreditation, and metrology in the States Parties.

⁸ This shall include the decisions and recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995.

Article 3

Guiding Principles

1. States Parties confirm that the WTO Agreement on Technical Barriers to Trade shall form the basis of this Annex,
2. States Parties reaffirm their rights and obligations under the WTO Agreement on Technical Barriers to Trade in respect of the preparation, adoption, and application of standards, technical regulations, conformity assessment procedures and related activities.

Article 4

Objectives

The objectives of this Annex are:

1. To facilitate trade through cooperation in the areas of standards, technical regulation, conformity assessment, accreditation and metrology,
2. To facilitate trade by the elimination of unnecessary and/or unjustifiable technical barriers to trade through:
 - a) Reinforcing international best practices in regulation and standards setting;
 - b) Promoting the use of relevant international standards as a basis for technical regulations; and
 - c) Identifying and assessing instruments for trade facilitation such as harmonization of standards, equivalence of technical regulations, metrology, accreditation and conformity assessment.
3. To strengthen cooperation and agree on priority areas,
4. To develop and implement capacity building programmes to support the implementation of this Annex,
5. To establish mechanisms and structures to enhance transparency in the development and implementation of standards, technical regulations, metrology, accreditation and conformity assessment procedures; and
6. To promote mutual recognition of results of conformity assessment.

Article 5

Fields of Cooperation

States Parties shall cooperate in the development and implementation of standards, technical regulations, conformity assessment procedures, accreditation, metrology, capacity building and enforcement activities in order to facilitate trade within the African Continental Free Trade Area (AfCFTA).

Article 6

Cooperation in Standardisation

1. States Parties shall promote cooperation between their respective standardisation bodies with a view to facilitating trade,
2. States Parties shall therefore:
 - a) Develop and promote the adoption and/or adaption of international standards;
 - b) Promote the adoption of standards developed by ARSO and AFSEC;
 - c) Where a relevant international standard required to facilitate trade does not exist, request ARSO and/or AFSEC to develop the required standard to facilitate trade between States Parties;
 - d) Designate liaison focal points to ensure that all States Parties are well informed of the standards developed or to be developed by ARSO and AFSEC;
 - e) Apply harmonized rules and procedures for the development and publication of national standards in accordance with international requirements and best practices; and
 - f) Promote membership, liaison and participation in the work of ISO, IEC, ARSO, AFSEC and similar international and regional standardisation organizations.

Article 7

Cooperation in Technical Regulations

In the development and implementation of technical regulations States Parties shall aim to promote:

- a) Compliance with the WTO TBT Agreement,
- b) The use of international standards and/or parts thereof as a basis for technical regulations, and
- c) The application of Good Regulatory Practices.

Article 8

Cooperation in Conformity Assessment

States Parties shall:

- a) Promote compliance with the WTO TBT Agreement;

- b) Make use of relevant international standards and conformity assessment procedures ;
- c) Facilitate the development of conformity assessment capacity and technical competence that can support trade;
- d) Facilitate the use of accredited conformity assessment bodies as a tool to facilitate trade amongst the States Parties;
- e) Promote mutual acceptance of conformity assessment results of conformity assessment bodies which have been recognised under appropriate multilateral agreements between their respective accreditation bodies and the relevant mutual recognition arrangements of the AFRAC, ILAC and IAF; and
- f) Enhance confidence in the continued reliability of each other's conformity assessment results through, among others, peer reviews where appropriate.

Article 9

Cooperation in Accreditation

States Parties shall:

- a) Promote utilisation of existing accreditation structures for cooperation at the African level;
- b) Encourage and support African accreditation bodies operating in Africa to achieve international recognition;
- c) Allow for the recognition and support of national, regional and multi-economy accreditation bodies operating within the African Union Member States that provide accreditation services to those countries that do not have national accreditation bodies;
- d) Provide for a national accreditation focal point for accreditation services if a State Party does not have a national accreditation body;
- e) Cooperate in the area of accreditation by participating in the work of AFRAC;
- f) Promote participation in the AFRAC mutual recognition arrangements;
- g) Promote and facilitate the use of accredited conformity assessment bodies as a tool to facilitate trade within the continent; and
- h) Coordinate inputs for liaison with the ILAC and the IAF.

Article 10

Cooperation in Metrology

1. States Parties shall:

- a) Adopt and implement the SI as the basis for a harmonised system for legal, industrial and scientific metrology activities;
- b) Cooperate in all the areas of metrology by participating in the work of the AFRIMETS;
- c) Facilitate movement and proper handling of metrology artefacts, test samples, test equipment and reference materials sent for calibration, testing or inter-laboratory comparisons within and outside Africa; and

- d) Promote coordination of the use of existing metrology facilities with a view to making them accessible to one another.

2. In Legal Metrology, States Parties shall:

- a) Promote the establishment of national legal metrology systems and adoption of OIML recommendations;
- b) Formulate modalities for the mutual recognition of inspection and test certificates and approvals relating to Legal Metrology issued by national Legal Metrology departments/institutions;
- c) Endeavour to obtain full or corresponding membership to the OIML;
- d) Liaise with OIML and other regional organizations on matters concerning Legal Metrology; and
- e) Cooperate in the area of Legal Metrology by participating in the work of AFRIMETS.

3. In Scientific and Industrial Metrology, States Parties shall:

- a) Provide for national measurement standards that are traceable to the SI and with a level of measurement uncertainty that is commensurate with the needs of the States Parties;
- b) Contribute to the formulation of and participation in continental and Regional Economic Communities (REC) Metrology organisations to maintain the continued competence of national measurement standards of the States Parties; and
- c) Promote membership of the BIPM and associate membership of the CGPM.

Article 11

Transparency

In order to enhance transparency:

- a) States Parties reaffirm that transparency is essential in ensuring clarity, predictability and trust within the AfCFTA framework and shall comply with the transparency obligations of the WTO TBT Agreement including notification procedures and notification systems developed from time to time;
- b) States Parties shall notify to the AUC/AfCFTA Secretariat and the AUC/AfCFTA Secretariat shall publish and timeously circulate notifications made by States Parties to all other States Parties of the CFTA agreement;
- c) The AUC/AfCFTA Secretariat shall subscribe to the WTO electronic circulation of TBT notifications, or the SPS and TBT E-PING alert notification system, or make use of the WTO TBT information management system, and/or any other electronic

notification system to receive or download WTO TBT notifications submitted to the WTO by AU Member States⁹;

- d) States Parties shall use the existing WTO TBT national notification authorities or, where they do not exist, designate central government authorities for fulfilling the notification obligations established under the relevant articles of the WTO TBT agreement and the AfCFTA agreement. Such national notification authorities shall be notified to the AUC/AfCFTA Secretariat;
- e) The AUC/AfCFTA Secretariat shall timeously circulate to the WTO TBT Enquiry points of States Parties the notifications submitted to the WTO by the AU States Parties. Non WTO Member States shall inform the AUC/AfCFTA Secretariat of their draft technical regulations and conformity assessment procedures before adoption which shall be circulated to other AU State Parties, to enable other AU State Parties to provide comments, if any, and submit them to the AUC/AfCFTA Secretariat before their adoption and entry into force, and
- f) State Parties which have not established TBT Enquiry points shall appoint a Government authority to provide a TBT transparency function.

Article 12

Technical Assistance and Capacity Building

1. The States Parties shall cooperate in seeking and providing technical assistance and capacity building to address standards, technical regulation, conformity assessment, accreditation, metrology, and issues of mutual interest;
2. The AUC/AfCFTA Secretariat in collaboration with States Parties shall develop mechanisms for cooperation in technical assistance and capacity building to address standards, technical regulation, conformity assessment, accreditation and metrology; and
3. The AUC/AfCFTA Secretariat in collaboration with States Parties shall implement a joint work program to enhance capacities for the effective implementation of obligations under this Annex.

⁹ https://www.wto.org/english/tratop_e/tbt_e/tbt_mailing_list_e.htm
<http://www.epingalert.org/en>
<http://tbtims.wto.org/>

Article 13
Committee for Technical Barriers to Trade

1. A Committee for Technical Barriers to Trade (hereafter referred to as the “TBT Sub-Committee”) is hereby established;
2. The responsibilities of the TBT Sub-Committee include *inter alia* to:
 - a) Cooperate and consult on standards, technical regulations, metrology, accreditation and conformity assessment matters of interest and/or concern to the States Parties;
 - b) Develop procedures for the implementation of provisions of this Annex;
 - c) Identify areas for collaboration in relevant infrastructure that supports standards, technical regulations, metrology, accreditation and conformity assessment;
 - d) Promote agreement between the States Parties on the implementation of this Appendix;
 - e) Identify, draw up and implement a capacity building programme to address agreed areas;
 - f) Promote cooperation in the utilisation of existing human, scientific and technical resources, and the exchange of expertise in standards, technical regulations, metrology, accreditation and conformity assessment in areas of mutual interest;
 - g) Coordinate, where appropriate, adoption of common positions among States Parties to the WTO TBT Committee and other relevant international organisations;
 - h) Promptly address any issue that a State Party raises related to the development, adoption or application of standards, technical regulations or conformity assessment procedures;
 - i) Report to the *Council of Ministers responsible for Trade* on the implementation of this Annex, as appropriate;
 - j) Track amendment made to the WTO TBT Agreement, and, if necessary, develop proposals to amend this Annex in order for it to remain aligned to the WTO TBT Agreement;
 - k) Receive and share information on the activities of the PAQI institutions with all State Parties,
 - l) Collaborate with other Committees/Sub-Committees with a view to facilitating intra-African trade; and
 - m) Any other TBT related tasks as may be assigned by the *Council of Ministers responsible for Trade*

ANNEX 7 on SANITARY AND PHYTOSANITARY MEASURES

Article 1 Definitions

1. For purposes of this Annex, the definitions set out in the following instruments shall apply:
 - a) The Agreement Establishing the African Continental Free Trade Area;
 - b) The Protocol on Trade in Goods;
 - c) Annex A of the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary (SPS) measures, and
 - d) International Standards Setting bodies.

2. The following terms shall have the meanings set out below:
 - a) **“CAC”** means Codex Alimentarius Commission
 - b) **“IPPC”** means the International Plant Protection Convention; and
 - c) **“OIE”** means the World Organization for Animal Health.

Article 2 Scope

The purpose of this Annex is to implement the provisions of Article 21 (Sanitary and Phytosanitary Measures) of the Protocol on Trade in Goods. The Annex shall apply to SPS measures that, directly or indirectly, affect trade between the States Parties.

Article 3 Guiding Principle

In the preparation, adoption, and application of SPS measures, States Parties shall be guided by the provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

Article 4 Objectives

The objectives of this Appendix shall be to:

- a) Facilitate trade whilst safeguarding human, animal and plant life, and health in the territory of the States Parties;

- b) Enhance cooperation and transparency in the development and implementation of SPS measures to ensure that they do not become unjustifiable barriers to trade; and

- c) Enhance technical capacity of States Parties for the implementation and monitoring, of SPS measures while encouraging the use of international standards in the elimination of barriers to trade.

Article 5

Assessment of Risk to Determine Appropriate Level of Sanitary or Phytosanitary Protection

1. The States Parties shall, in responding to market access requests, ensure that their sanitary or phytosanitary measures are based on an assessment as appropriate to the circumstances of the risks to human, animal and plant life or health taking into account risk assessment techniques developed by the relevant international organisations;
2. The States Parties shall, in assessing risk and determining the sanitary or phytosanitary measures to be applied to achieve the appropriate level of protection, take into account available scientific evidence, relevant processes and production methods, relevant inspection, sampling and testing methods, prevalence of specific diseases or pests, existence of disease or pest free areas, relevant ecological and environmental conditions and quarantine, or other treatments;
3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risks, the States Parties shall take into account as relevant economic factors; the potential damage in terms of loss of production or sales in the event of entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing State Party; and the relative cost effectiveness of alternative approaches to limiting risks;
4. In cases where relevant scientific evidence is insufficient, a State Party may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information including that from relevant international organisations as well as from sanitary or phytosanitary measures applied by other States Parties. In such circumstances, the States Parties shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly, within reasonable time frames agreed by the concerned States Parties;
5. When a State Party has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by other States Parties is constraining, or has the potential to constrain its exports, and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the State Party maintaining the measure and if the aggrieved State Party is not satisfied, request for the review of the measure in accordance with the provisions of this Annex.

Article 6

Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

With a view to boosting intra-African trade in animals, animal products, animal by-products, plants, plant products and plant by-products:

- a) States Parties undertake to recognise the concept, principles and guidelines of regionalization and zoning as outlined in the Terrestrial and Aquatic Animal Health Codes of the OIE, and agree to apply this concept to prescribed diseases to be determined by consensus;
- b) States Parties in implementing sub-paragraph (a), shall base their respective sanitary measures applicable to the exporting State Party whose territory is affected by a disease on the zoning decision made by the exporting State Party, provided that the importing State Party is satisfied that the exporting State Party's zoning decision is in accordance with the principles and guidelines that the States Parties have agreed upon, and is based on relevant international standards, guidelines, and recommendations. The importing State Party may apply any additional measure supported by science based evidence to achieve its appropriate level of sanitary protection;
- c) States Parties may request recognition of a special status with respect to a disease not subject to zoning under sub-paragraph (a). The importing State Party may request additional guarantees for imports of live animals, animal products, and animal by-products appropriate to the agreed status recognised by the importing State Party, including conditions deemed necessary by the importing State Party to achieve an appropriate level of sanitary protection;
- d) States Parties recognise the concept of compartmentalization and agree to cooperate on this matter;
- e) States Parties endeavour to recognize regional conditions;
- f) When establishing or maintaining its phytosanitary measures; the importing, State Party shall take into account, among other things, the pest status of an area, such as a pest-free area, pest-free place of production, pest-free production site, an area of low pest prevalence and a protected zone that the exporting State Party has established;
- g) The exporting, State Party claiming that areas within its territory are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary scientific evidence in order to demonstrate that such areas are, and are likely to remain pest- or disease-free areas or areas of low pest and or disease prevalence. For this purpose, each exporting State Party shall provide reasonable access to its territory to the importing State Party for inspection, testing and other relevant procedures.

Article 7

Equivalence

1. The importing State Party shall accept the SPS measures of the exporting State Party as equivalent to its own if the exporting State Party objectively demonstrates, through science based and technical information including inter alia, reference to relevant international standards, or relevant risk assessment, that the measure would achieve the importing State Party's appropriate level of sanitary or phytosanitary protection;
2. States Parties shall upon request enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures;
3. States Parties shall follow the procedures for determining the equivalence of SPS measures developed by the WTO SPS Committee, the CAC, the OIE and the IPPC.

Article 8

Harmonization

1. States Parties shall cooperate in the development and harmonisation of sanitary or phytosanitary measures based on international standards, guidelines and recommendations taking into account the harmonization of SPS measures at the regional level;
2. States Parties may introduce or maintain SPS measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a State Party determines to be appropriate in accordance with the relevant provisions of Article 5 of this Annex;
3. States Parties shall play a full part in the relevant international organizations and their subsidiary bodies, in particular the CAC, the OIE and the IPPC to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of SPS measures;
4. If States Parties jointly identify a commodity as a priority, the States Parties shall establish harmonised SPS import requirements for that commodity.

Article 9

Audit and Verification

1. For the purpose of maintaining confidence in the implementation of this Annex an importing State Party may carry out an audit or verification, or both, of all or part of the control programme of the competent authority of the exporting State Party. An importing State Party shall bear its own costs associated with the audit or verification;
2. For purposes of paragraph 1, the States Parties shall abide by principles and guidelines established by international standards bodies in conducting audits or verifications as agreed between the States Parties.

Article 10
Import/Export Inspections and Fees

1. States Parties reaffirm their rights and obligations to undertake import or export inspections while abiding by principles and guidelines established by international standard bodies in conducting inspections;
2. The importing or exporting State Party may collect fees for inspections which should not exceed the recovery of the costs reasonably incurred in the conduct of the inspection;
3. When import inspections reveal non-compliance with the relevant import requirements, the action taken by the importing State Party must be based on relevant international standards or an assessment of the risk involved and not be more trade-restrictive than required to achieve the State Party's appropriate level of sanitary or phytosanitary protection;
4. The importing State Party shall notify the importer and the competent authority of the exporting State Party of a non-compliant consignment and the reason for non-compliance and action to be taken. The importing party may provide the exporter with an opportunity for a review of the decision. The importing State Party shall consider any relevant information submitted to assist in the review.

Article 11
Transparency

1. The States Parties reaffirm that transparency is essential in ensuring clarity, predictability and trust in order to foster intra African-trade;
2. States Parties shall:
 - a) Comply with transparency obligations in accordance with the procedures developed by the SPS Sub-Committee;
 - b) Designate a National Focal point for fulfilling the notification obligations established under this article; and
 - c) Notify the AfCFTA Secretariat of any draft, revised or adopted SPS measures for further distribution to States Parties.
3. The States Parties shall endeavour to exchange information on other SPS issues including:
 - a) Significant change to the structure or organisation of a State Party's competent authority;
 - b) Upon request, the results of a State Party's official controls and a report on the implementation of the controls carried out with respect to the provisions of this Annex;

- c) The results of an import inspection provided for in Article 10 of this Annex in case of a rejected or a non-compliant consignment;
- d) Upon request, a risk analysis or scientific opinion that a State Party has produced in relation to Article 5 of this Annex;
- e) Pest or disease status, including the evolution of a new disease or new pest;
- f) Food safety issue related to a product traded between the States Parties, that poses a food safety risk; and
- g) Import requirements including quarantine restrictions.

Article 12

Technical Consultations

When a State Party has a significant concern with respect to food safety, plant health or animal health, or any other SPS measure that another State Party has proposed or implemented; the State Party may request technical consultations with the other State Party. The State Party so requested shall respond to the request within thirty (30) days. Each State Party shall provide the information necessary to avoid a disruption to trade and, as the case may be, to reach a mutually acceptable solution. Where agreement is not reached, the matter may be referred to the SPS Sub-committee for their consideration.

Article 13

Emergency SPS Measures

1. State Parties shall notify emergency SPS measures within forty eight (48) hours of their decision to implement the measure. If a State Party requests technical consultations to address the emergency SPS measure, the technical consultations must be held within ten (10) working days of the notification of the emergency SPS measure. The States Parties shall consider any information provided through the technical consultations.
2. The importing State Party shall consider the information that was provided in a timely manner by the exporting State Party when it makes its decision with respect to a consignment that at the time of adoption and implementation of the emergency SPS measure is in transit between the States Parties. State Parties shall base their decision on the principles of risk assessment in line with the provisions of Article 5 of this Annex.

Article 14

Cooperation and Technical Assistance

1. States Parties agree to cooperate with a view to the implementation of obligations arising out of this Annex, including on technical assistance, in particular in the following areas:
 - a. Exchange of information and sharing of expertise and experience among States Parties;

- b. Having harmonized common positions while participating in international SPS fora relevant to the AfCFTA;
 - c. Development and harmonization of sanitary and phytosanitary measures at the regional and continental levels, on the basis of established scientific data or relevant international standards;
 - d. Development of infrastructure such as testing laboratories;
 - e. Capacity building for public and private actors in States Parties, including through information sharing and training; and
 - f. Identification and/or establishment of SPS centres of excellence.
2. States Parties may collaborate with regional and international SPS bodies.

Article 15

Sub-Committee for Sanitary and Phytosanitary Measures

1. A Sub-Committee for Sanitary and Phytosanitary Measures (the “SPS Sub-Committee”) is hereby established pursuant to Article 12 of the Agreement Establishing the African Continental Free Trade Area. The SPS Sub-Committee shall comprise of experts responsible for animal health, plant health, food safety and trade within the State Parties. It may establish ad-hoc expert working groups as appropriate,
2. The functions of the SPS Sub-Committee shall be to:
 - a) Monitor and review the implementation of this Annex;
 - b) Provide direction for the identification, prioritisation, management and resolution of arising SPS issues;
 - c) Provide a regular forum to exchange information that relates to each State Party’s regulatory system, including the scientific and risk assessment basis for SPS measures;
 - d) Prepare and maintain a document that details the state of discussions between the States Parties on their work on recognition of the equivalence of specific SPS measures;
 - e) Develop procedures for the implementation of provisions of this Annex;
 - f) Identify, establish, and monitor the implementation of a capacity building programme to support implementation of the provisions of this Annex, in conjunction with the AfCFTA Secretariat;
 - g) Identify opportunities for greater bilateral engagement, including enhanced relationships, which may include an exchange of officials;

- h) Consider SPS issues referred to it by States Parties as expeditiously as possible;
 - i) Facilitate improved understanding between the States Parties on the implementation of the SPS provisions of this Appendix, and promote cooperation between the States Parties on SPS issues under discussion in multilateral fora, including the WTO Committee on Sanitary and Phytosanitary Measures and international standard-setting bodies, as appropriate;
 - j) Identify and discuss, at an early stage, initiatives that have an SPS component, and that would benefit from cooperation;
 - k) Collaborate with other Committees/Sub-Committees with a view to facilitating intra-African trade; and
 - l) Undertake any other tasks as may be assigned by the *Council of Ministers responsible for Trade*.
3. For the purposes of paragraph 2, States Parties shall regularly provide information as may be required,
 4. A State Party may refer any SPS issue to the SPS Sub-Committee:
 If the SPS Sub-Committee is unable to resolve an issue, the matter shall be referred to the *Council of Ministers responsible for Trade* for arbitration;
 Where a State Party is not satisfied with the decision of the Sub-Committee, the State Party shall refer the matter to the *Council of Ministers responsible for Trade*
 5. The SPS Sub-Committee shall meet and establish its work programme no later than sixty (60) days following the entry into force of the Agreement,
 6. Following its initial meeting, the SPS Sub-Committee shall meet as required, at least twice a year. The SPS Sub-Committee may decide to meet by videoconference or teleconference, and it may also address issues out of session by correspondence,
 7. The SPS Sub-Committee shall report twice a year on its activities and work programme to the *Council of Ministers responsible for Trade* and
 8. Following periodic review of the implementation of the Annex, the SPS Sub-Committee may propose, to the *Council of Ministers responsible for Trade* to amend the provisions developed pursuant to this Annex.

Article 16

Dispute Settlement

Where Parties fail to agree on the implementation of any of the provisions of this Annex and a dispute arises, the matter shall be addressed in accordance with the provisions of the Protocol on Rules and Procedures for the Settlement of Disputes.

ANNEX 8 on TRANSIT

Article 1 Definitions

For the purposes of this Annex, the definitions set out in the Agreement shall apply. The following definitions and abbreviations shall have the meanings set forth here in:

"African Continental Free Area Transit Document" means a Customs Document for transit declaration approved by the African Union Ministers of Trade and to be utilized within the African Continental Free Trade Area;

"Carrier" means the person actually transporting transit goods or in charge of or responsible for the operation of the respective means of transport;

"Container" means an article of transport equipment (lift-van, moveable tank or other similar structure):

- (a) fully or partially enclosed to constitute a compartment intended for containing goods;
- (b) of a permanent character and accordingly strong enough to be suitable for repeated use;
- (c) specifically designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;
- (d) designed for ready handling, particularly when being transferred from one mode of transport to another;
- (e) designed as to be easy to fill and empty; and
- (f) having an internal volume of one cubic metre or more;

"Container" shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container.

The term "container" shall not include vehicles, accessories or spare parts of vehicles, or packaging or pallets. "Demountable bodies" shall be regarded as containers.

"Customs office of departure" means any customs office of a State Party where a transit operation commences;

"Customs office of destination" means any Customs office of a State Party where a Customs transit operation is terminated;

"Customs office en-route" means any Customs office where goods are imported or exported in the course of a Customs transit operation;

"Customs office of entry" means an office of a second or other subsequent State Party where, in relation to that State, the provisions of this Annex begin to apply and includes any Customs office which, even when not situated on the frontier, is the first point of Customs control after crossing the border;

"Customs transit" means the Customs procedure under which goods are transported under Customs control from one Customs office to another; (Annex A of Istanbul Convention and Specifically Annex E to the Revised Kyoto Convention);

"Customs office of exit" means any Customs office which, even when not situated on the frontier, is the last point of Customs control before crossing the border;

"Goods" includes all kinds of articles, wares, merchandise, animals, plants and currency, whether prohibited or not, whether meant for sale or not, and where any such goods are sold, the proceeds of such sale;

"Means of transport" include:

(a) any vessel (including lighters and barges, whether or not ship borne, and hydrofoils), hovercraft, aircraft, motor road vehicles including cycles with engines, trailers, semi-trailers and combination of vehicles) and railway rolling stock; together with their normal spare parts, accessories and equipment carried on board means of transport (including special equipment for the loading, unloading, handling and protection of cargo and

(b) where the local situation so requires, porters and pack animals;

"Security" means that which ensures to the satisfaction of the Customs Authority that an obligation to the Customs will be fulfilled. Security is defined as "general when it ensures that the obligations arising from several operations will be fulfilled; (General annex Chapter 2 to the Revised Kyoto Convention);

"Surety" means an undertaking made by any person to the Customs Authorities of a State Party to answer for, or be collaterally responsible for the debt, obligation, default or miscarriage of the transit or and for the payment to transit State Parties of import duties and any other sums of money due and payable to them in the event of non-compliance with the terms and conditions of transit relating to transit traffic introduced into the transit State Party by carriers of such goods;

"Transit traffic" means the passage of goods including unaccompanied baggage, mail, persons and their means of transport through the territories of the State Parties in accordance with the itineraries set out in Article 2(1) of this Annex;

"Transitor" means the legal entity responsible for the conveyance of goods through the Customs operations;

"Vessel" means any mechanically propelled ship, boat or craft with inboard engine power or any other craft moving through water carrying passengers or cargo.

Article 2

General Provisions

1. The State Parties undertake to grant all transit traffic freedom to traverse their respective territories by any means of transport suitable for that purpose when coming from:
 - (a) a State Party or bound to one; or
 - (b) third countries and bound to other State Parties ; or
 - (c) other State Parties and bound to third countries; or
 - (d) third countries and bound to third countries.
2. State Parties undertake not to levy any import or export duties on the transit traffic referred to in Article 2(1). However, in accordance with Article 8 (1) of this Annex, a State Party may levy administrative or service charges **equivalent to services rendered**.
3. For the purpose of this Annex, State Parties undertake to ensure that there shall be no discrimination in the treatment of persons, goods and means of transport coming from, or bound to State Parties, and that rates and tariffs for the use of their facilities by other State Parties shall not be less favourable than those accorded to their own traffic.
4. **Notwithstanding the provisions of Article 2(1) of this Annex, a State Party may not take measures that are applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination in accordance with Articles 25 and 26 of the Protocol of Trade in Goods.**

Article 3

Scope of Application

1. The provisions of this Annex shall apply to any transitor, mail, means of transport, or any shipment of bonded Goods in transit between two points either in two different State Parties or between a State Party and a third country.
2. The provisions of this Annex shall only apply to transit traffic if it is:
 - (a) operated by a carrier licensed under the provisions of Article 5 of this Appendix;

- (b) performed under the conditions set out in Article 4 of this Annex by means of transport approved by the Customs office of departure and issued with certificates which shall be in the form set out in Schedule III of this Annex;
 - (c) guaranteed by a surety in accordance with the provisions of Article 6 of this Annex ; and
 - (d) Undertaken under cover of an African Continental Free Trade Area Transit Document.
3. The provisions of this Annex shall apply to transit goods being carried by road. .

Article 4

Approval of Means of Transport

1. The Means of transport used in transit trade shall be licensed by the appropriate licensing authorities of the State Parties in accordance with their national laws and regulations.
2. For the purpose of Article 3(2) (b) of this Annex means of transport, together with their cargo, shall be presented at the Customs offices of departure for examination to ensure that they comply with the technical conditions stipulated in Schedule II of this Annex before each transit traffic operation is undertaken.

Article 5

Licensing of Transitors and Carriers

1. Any person intending to be engaged in the operation of transit traffic under the provisions of this Annex shall be licensed for that purpose by the competent authorities of the State Party in whose territory he is normally resident, or established and the competent authority shall inform all the other State Parties of all the persons so licensed.
2. The conditions for the issuance of the licences referred to in Article 5(1) to persons resident, or established in a State Party shall be the following:
 - (a) requirements of Article 4 of this Annex have been satisfied, in accordance to national laws; and
 - (b) applicant has not during the previous three years been convicted of a serious offence including accepting, receiving or offering bribes, smuggling, theft, destroying documents of evidence, and failing or refusing to give information relating to interstate transportation of goods.
3. The conditions for issuance of the licences referred to in Article 5(1) to applicants who are not resident or established in a State Party shall be determined by each State

Party in consultation with other State Parties provided that such conditions shall not be more favourable than conditions accorded to persons resident or established in that State Party.

4. Licensed carriers and transistors, who are convicted of customs offences referred to in Article (5)(2)(b), or who conceal their record of having been convicted of such offenses in order to obtain a licence, or who commit such offenses after they have been licensed to operate transit traffic, shall have their licences suspended automatically or withdrawn by the issuing authorities who shall thereupon notify the Customs Authorities of the other State Parties and the respective sureties of the action taken.

Article 6

Bonds and Sureties

All transit traffic operations carried under the cover of a Continental Free Trade Area Transit Document shall be covered by customs bond and sureties arrangements.

Article 7

African Continental Free Trade Area Transit Document

1. Subject to conditions and regulations as the African Union Ministers of Trade may deem necessary, each State Party undertakes to authorise a transitor, or his authorised agent, to prepare in respect of each consignment of transit goods a Continental Free Trade Area Transit Document in accordance with the notes set out in Schedule I of this Annex.
2. Continental Free Trade Area Transit Documents shall conform to the standard form approved by the African Union Ministers of Trade. Continental Free Trade Area Transit Documents shall be valid for only transit operation and shall contain a sufficient number of copies for customs control and discharge required for the transport operation concerned.
3. All means of transport covered by the provisions of this Annex shall be accompanied by relevant Continental Free Trade Area Transit Documents and such documents shall, on demand, be presented by the carriers, together with the respective means of transport and certificates to the customs offices en-route and the customs offices of destination for their appropriate actions.

Article 8

Exemption from Customs Examinations and Charges

1. Provided that the provisions of Articles 4 and 5 of this Annex are satisfied, goods carried in approved sealed means of transport, sealed packages, or accepted by

Customs office of departure as goods not susceptible to tampering substitution or manipulation, and permitted to be carried unsealed shall not be subject to:

- (a) customs duties and all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
 - (b) customs examination at such offices, as a general rule.
2. However, in order to prevent abuse, the Customs Authorities may, where they suspect an irregularity, carry out at such offices, a partial or full examination of the goods.

Article 9

Transit Procedures

1. All transit goods and means of transport shall be presented to the Customs office of departure together with duly completed African Continental Free Trade Area Transit Documents supported by appropriate bonds as necessary for examination and affixing of customs seals. The office of commencement shall decide whether the means of transport to be used provides enough safeguards to ensure customs security and whether the shipment may be made under cover of a relevant African Continental Free Trade Area Transit Document.
2. Where it is not possible for Goods to be transported in sealed means of transport compartments, the Customs Authorities at the Customs office of commencement may authorise the transportation in such unsealed means of transport, or compartments and under such conditions as they may deem necessary and endorse the relevant African Continental Free Trade Area Transit Document accordingly.
3. Means of transport engaged in the transport of goods under the provisions of this Annex shall not at the same time be used to transport passengers unless such passengers and their personal effects are carried in a part of the means of transport which is adequately sealed off to the satisfaction of the Customs Authorities of commencement.
4. Nothing may be added, or taken from, or substituted for goods consigned under cover of an African Continental Free Trade Area Transit Document at times of off-loading, trans-shipment or collecting.
5. The means of transport together with the respective African Continental Free Trade Area Transit Document shall be presented to the Customs Authorities at customs offices en-route and at customs offices of destination for such administrative action as may be required under the provisions of this Annex.

6. Except where irregularities are suspected, the customs offices en-route within a State Party shall respect the seals affixed by the Customs Authorities of other State Parties. Such Customs Authorities may, however, affix additional seals of their own.
7. In order to prevent abuse, the Customs Authorities shall publish in legislation the specific consignments, that:
 - (a) require the means of transport to be escorted through the territory of their country, at the transitor's expense; or
 - (b) require that examination of the means of transport and their loads be carried out en-route in the territory of their country.
8. An unsealed shipment covered by an appropriate African Continental Free Trade Area Transit Document shall have only one Customs office of destination.
9. If the goods in a means of transport are examined at a Customs office en-route or anywhere in the course of transportation, the Customs Authorities concerned shall affix new seals and make a certified declaration in conformity with Schedule IV of Annex including updating of any electronic management system of the particulars of irregularities, if any, and of the new seals affixed by them.
10. In the event of an accident or imminent danger necessitating the immediate unloading in whole or part of a means of transport, the carrier:
 - (a) may on his own initiative take such steps as may be necessary to ensure the safety of the goods being transported, or the means of transport in which they are being transported;
 - (b) shall, as soon as possible thereafter, inform the Customs office of departure thereof; and
 - (c) shall arrange, where appropriate, for the goods to be transferred to other means of transport in the presence of Customs Authorities concerned or any other accredited authority in national law which shall endorse the African Continental Free Trade Area Transit Document with the particulars of the goods transferred to the other means of transport and where possible, apply its customs seal.
11. On arrival at the Customs office of destination, the African Continental Free Trade Area Transit Document shall be discharged without delay. If, however, the goods cannot be immediately entered under that Customs regime, the Customs authorities may reserve the right to discharge the document conditionally upon a new liability being substituted for that of the surety guaranteeing the said document.
12. If the seals affixed by Customs Authorities are broken en-route otherwise than in the circumstance set out in Article 9(10), or if goods are destroyed or damaged without breaking such seals, the procedure laid down in Article 9(11) shall, without prejudice

to the application of the provisions of national laws, be followed and a certified report drawn up in the form set out in **Schedule IV** of this Annex

13. When the Customs Authorities are satisfied that the goods covered by an African Continental Free Trade Area Transit Document have been destroyed by *force majeure*, an exemption from payment of the duties shall be granted.

Article 10 **Obligation of State Parties and Liabilities of Sureties**

Subject to the provisions of Article 6 of this Annex, the obligations of State Parties and liabilities of sureties are as follows:

- (a) each State Party undertakes to facilitate the transfer to the other State Party of the funds necessary for payment of premiums or other charges claimed from sureties under the provisions of this Annex, or for payments of any penalties which the transitor may incur in the event of an offence being committed in the course of transit transport operations;
- (b) State Parties agree to ensure that the liabilities undertaken by sureties cover import and export duties incurred by the holder of an African Continental Free Trade Area Transit Document and other persons involved in the transit transport operation under the Customs law and regulations of the State Party in which an offence has been committed;
- (c) for the purpose of determining the duties referred to in Article 10(b), the particulars of the goods as entered in the African Continental Free Trade Area Transit Document shall, unless the contrary is proved, be regarded as correct;
- (d) State Parties shall, where feasible, use the services available in other State Parties in all transit traffic operations provided such services are competitive and efficient than those offered by other parties;
- (e) where an African Continental Free Trade Area Transit Document has not been discharged, or has been discharged conditionally, the competent authority of a State Party shall not claim from the surety the payment referred to in Article 10(b) unless such authority has, within a period of one year from the date on which the Continental Free Trade Area Transit Document was taken on charge, notified the surety of the non-discharge or conditional discharge of the document. In situations where the certificate of discharge was obtained erroneously or fraudulently, Article 10(e) shall not prevent the authorities of a State Party from taking the necessary action against the person or persons concerned at any time thereafter in accordance with their national laws;
- (f) the surety and the persons charged with the offence shall be jointly and severally liable for payment of such sums. The fact that Customs Authorities

might have authorised the examination of goods elsewhere than at a place where the business of the Customs office of departure or destination is usually conducted shall not affect the liability of the surety;

- (g) the liability of the surety to the authorities of any State Party shall commence from the time when the African Continental Free Trade Area Transit Documents are accepted by the Customs Authorities of that State Party, and shall cover only the goods enumerated in the document;
- (h) when Customs Authorities of a State Party have unconditionally discharged a African Continental Free Trade Area Transit Document, they may not subsequently claim from the Surety payment in respect of the duties referred to in Article 10 (b) unless the certificate of discharge was issued erroneously or fraudulently;
- (i) the transitor and Surety shall be released from their undertaking to the Customs Authorities of each State Party entered when goods carried have been duly exported or have otherwise been accounted for satisfactorily to the Customs Authorities of the State Party concerned;
- (j) the claim for payment referred to in Article 10(b) shall be made within three years from the date when the surety was notified that the relevant African Continental Free Trade Area Transit Document had not been discharged or had been discharged conditionally, or that the certificate of discharge had been obtained erroneously or fraudulently.

However, the period of three years referred to in this Article includes a period of legal proceedings. Any claim for payment under the provisions of this Article shall be made within one year from the date when the decision of the court becomes enforceable; and

Article 11

Other Provisions

1. State Parties shall endeavour to establish, or facilitate the establishment of transit or customs areas for the temporary storage of transit goods where the direct trans-shipment of goods from one means of transport to another is not possible.
2. The management and operation of such transit or customs areas shall be in accordance with the customs rules and regulations of the State Party concerned.
3. State Parties undertake to permit and facilitate the establishment of cargo, clearing and forwarding offices in their territories by persons, organisations or associations of other State Parties or their authorised agents, for the purpose of facilitating transit traffic in accordance with their national laws and regulations.

4. Each means of transport engaged in international transit traffic operations under cover of African Continental Free Trade Area Transit Document shall have affixed to its front and rear, a plate bearing the letters "AfCFTA TRANSIT", the specifications of which are set out in Schedule V of this Annex. These plates shall be so placed as to be clearly visible, removable and capable of being sealed. The seals to such plates shall be affixed by the Customs offices of departure and shall be removed by the authorities of the Customs offices of destination.
5. State Parties shall communicate to each other through the African Union Commission the specimen of seals, stamps and date stamps they use.
6. Each State Party shall send to the other State Parties through the African Union Commission, a list of its customs offices and stations, for the African Continental Free Trade Area Document covered traffic and normal working hours of such offices.
7. Neighbouring State Parties shall consult each other in determining the frontier customs offices to be included in such lists and where possible such office shall be juxtaposed.
8. In all customs operations referred to in this Annex, no charges shall be levied for customs attendance, save where it is provided on days or at times or places other than those appointed for such operations.
9. Whenever possible, customs frontier offices shall remain open for business for twenty-four hours a day or shall allow execution of customs formalities relating to the transportation of goods under the provisions of this Annex outside the normal working hours.
10. Any breach of the provisions of this Annex by a Carrier shall render the Carrier liable to the penalties prescribed by law in the State Party where the offence is committed.
11. Nothing contained in this Annex shall prevent State Parties from enacting special legislation in respect of transport operations commencing or terminating in or passing through their territories provided that the provisions of such legislation shall not conflict with the provisions of this Annex, are extended to other State Parties or do not confer benefits on third countries that are more favourable than those enjoyed by the State Parties.
12. All the African Continental Free Trade Area Transit Documents may have a note explaining how that particular document should be used.

Article 12

AfCFTA Sub-Committee on Trade Facilitation, Customs Cooperation and Transit

A Sub-Committee on Trade facilitation, Customs cooperation and Transit shall be established. The Sub-Committee shall be responsible for the implementation of the provisions of this Annex

Articles 13 Implementation

1. State Parties shall accord each other expedited implementation of this Annex.
2. The extent and the timing of implementation of the provisions of this Annex shall be related to the implementation capacities of State Parties as notified to the AfCFTA Sub-Committee on Trade Facilitation or under the WTO TFA.

Article 14 Regulations

The African Union Ministers of Trade shall adopt regulations to facilitate the implementation of this Annex.

Article 15 Conflict of Provisions

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

Article 16 Dispute Settlement

Where any parties to this Agreement fail to agree on implementation of any of the provisions of this Annex and a dispute arises, the matter shall be addressed in accordance with the Protocol on Rules and Procedures on the Settlement of Disputes.

Article 17 Amendment

This Annex may be amended in accordance with Article 25 of the Agreement.

Schedule I
Notes for the Use of the African Continental Free Trade Area Transit Document

1. The African Continental Free Trade Area Transit Document herein after referred to as “ AfCFTA TD” shall be prepared in the country of commencement where the goods are first declared to be in transit.
2. The AfCFTA TD shall be printed in the Arabic, English, French and Portuguese languages, but completed in the language of the country of commencement. The Customs Authorities of the other countries traversed reserve the right to require their translation into their own language.

In order to avoid unnecessary delays which might arise from this requirement, carriers are advised to supply the operator of the means of transport with the requisite translations.

3. The AfCFTA TD remains valid until completion of the transit operation at a customs office of destination, provided that it has been taken under customs control at the customs office of commencement within the time limit given by issuing authorities and meets the following requirements:
 - (a) The AfCFTA TD must be typed or multi-graphed or printed legibly;
 - (b) When there is not enough space on the manifest to enter all the goods carried, separate sheets to the same model as the manifest may be attached to the latter but all copies of the manifests must contain the following particulars:
 - (i) a reference to the sheets;
 - (ii) the number, type of packages and goods in bulk be enumerated on the separate sheets; and
 - (iii) the total value and total gross weight of the goods appearing on the said sheets.
4. Weights, volume and other measurements shall be expressed in units of the metric system and values in the currency of the country of commencement, or in the currency determined by the African Union Ministers of Trade.
5. No erasures or over-writing shall be allowed on the AfCFTA TD. Any correction shall be made by deleting the incorrect particulars and adding, if necessary, the required particulars.
6. Any correction, addition or other amendment shall be acknowledged by the person making it and countersigned by the Customs Authorities.

7. When the AfCFTA TD covers coupled means of transport, or several containers, the contents of each means of transport shall be indicated separately on the manifest. This information shall be preceded by the registration of identification number of the means of transport or container.
8. If there is more than one customs office of destination, the entries concerning the goods taken under customs control at, or intended for, each office shall be clearly separated from each other on the manifest.
9. In the event of customs seals being broken or goods being destroyed or damaged accidentally en-route, the operator of the means of transport shall ensure that a certified report is drawn up as quickly as possible by the authorities of the country in which the vehicle is located.
10. The operator shall approach the Customs Authorities, if there are any near at hand, or if not, any other competent authorities. Operators shall accordingly provide themselves with copies of the certified report form laid down in Schedule IV of this Annex on Transit Facilities within the African Continental Free Trade Area.

Schedule II
Regulations Relating to Technical Conditions Applicable to means of
transport of Goods within the African Continental Free Trade Area Under
Customs Seal

1. Approval for the intra- African Continental Free Trade Area transport of goods by means of transport under Customs seal may be granted only for means of transport constructed and equipped in such a manner that:
 - (a) customs seals can be simply and effectively affixed thereto;
 - (b) no goods can be removed from, or introduced into the sealed part of the means of transport without obvious damage to it or without breaking the seals; and
 - (c) they contain no concealed spaces where goods may be hidden.
2. The means of transportation shall be so constructed that spaces in the form of compartments, receptacles or other recesses which are capable of holding goods are readily accessible for customs inspection.
3. Should any empty spaces be formed by the different layers of the sides, floor and roof of the means of transport, the inside surface shall be firmly fixed, solid unbroken and incapable of being dismantled without leaving obvious traces.
4. Openings made in the floor for technical purpose, such as lubrication, maintenance and filing of the sand-box, shall be allowed only on condition that they are fitted with a cover capable of being fixed in such a way as to render the loading compartment inaccessible from the outside.
5. Doors and all other closing systems of means of transport shall be fitted with a device which shall permit simple and effective customs sealing. This device shall either be secured by at least two bolts, riveted or welded to the nuts on the inside.
6. Hinges shall be so made and fitted that doors and other closing systems cannot be lifted off the hinge-pins, once shut; the screws, bolts, hinge-pins and other fasteners shall be welded to the outer parts of the hinges. These requirements shall be waived, however, where the doors and other closing systems have a locking device inaccessible from the outside which, once it is applied, prevents the doors from being lifted off the hinge-pins.
7. Doors shall be so constructed as to cover all interstices and ensure complete and effective closure.
8. The means of transport shall be provided with a satisfactory device for protecting the Customs seal, or shall be so constructed that the customs seal is adequately protected.

9. The foregoing conditions shall also apply to insulated vehicles, refrigerator vehicles, tank vehicles and furniture vehicles in so far as they are not incompatible in accordance with their use.
10. The flanges (filler caps), drain cocks and manholes of tank wagons shall be so conducted as to allow simple and effective customs sealing.
11. Folding, or collapsible containers are subject to the same conditions as non-folding or non-collapsible containers, provided that the locking device enabling them to be folded or collapsed allows customs sealing and that no part of such container can be moved without breaking the seals.

Schedule III
Certificate of Approval of Means of transport

1. Certificate No..... Country of
Commencement.....
Date of Expiry.....
2. Attesting that the means of transport specified below fulfils the conditions
required for admission to intra- African Continental Free Trade Area transport of
goods under Customs seals.
3. Name and address of holder (Owner of Carrier)
4. Make
5. Type.....
6. Engine No. Chassis No.....
7. Registration No.
8. Other particulars
9. Issued at (Place and Country) on
(Date)
10. Signature and stamp of issuing office at
.....

NOTE. This licence shall be framed and exhibited in the cab of the means of
transport if not in use, or on a change of owner or carrier, or on expiry of the period
of validity of the certificate, or if there is any material change in any essential
particulars of the means of transport.

Schedule IV

Certified Declaration Form for Examination of Contents of Means of Transport

1. African Continental Free Trade Area Transit Document No
Issued at.....
2. No. of the Certificate of Approval of means of transport.
.....

3. Information concerning the means of transport examined:
- Means of transport
 - Registration No

4. Reasons for making the examination (check where appropriate)

<input type="checkbox"/>	Seals broken or missing
<input type="checkbox"/>	Evidence of break-in
<input type="checkbox"/>	Vehicle involved in an accident
<input type="checkbox"/>	Other

5. Results of examination (Check where appropriate)

<input type="checkbox"/>	All packages were intact and none of their contents were missing
--------------------------	--

The following Goods/packages were missing / damaged

Serial No.	Consignment and identification	Number and kind of packages	Description of goods	Remarks

6. Comments.....

7. Name of Officer.....Signature.....Stamp.....

Schedule V
African Continental Free Trade Area Transit Plates

1. The words " AfCFTA TRANSIT" shall be 70 millimetres high.
2. Roman letters shall be used.
3. The letters shall be white on a blue background.
4. The letters shall be arranged as follows:

AfCFTA TRANSIT

ANNEX 9 on TRADE REMEDIES

Article 1 Definitions

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

- a) **“AfCFTA Agreement”** means the Agreement establishing the African Continental Free Trade Area;
- b) **“AfCFTA Guidelines”** means the AfCFTA Guidelines on Implementation of Trade Remedies;
- c) **“Domestic Industry”** means the producers of the like product, (or directly competitive products in safeguards) in the importing CFTA State Party whose collective output represents a major portion of the total domestic production of that product;
- d) **“Dumping”** means a product that is introduced into the commerce of another State Party at less than normal value, if the export price of the product exported from one State Party to another is less than the comparable price in the ordinary course of trade for the like product when destined for consumption in the exporting State Party;
- e) **“Injury”** means material injury or threat of material injury to a domestic industry or material retardation of the establishment of an industry;
- f) **“Serious injury”** in relation to safeguards means significant overall impairment in the position of a domestic industry;
- g) **“Interested parties”** shall include:
 - i) an exporter or foreign producer or the importer of a product subject to investigation or a trade or business association a majority of the members of which are producers, exporters or importers of such product;
 - ii) a producer of the like product in the importing State Party or a trade and business association a majority of the State Parties of which produce the like product in the territory of the importing State Party;
 - iii) the government of the third country of origin and of the exporting State Party of the product under investigation; and
 - iv) any other domestic or foreign party determined by the investigating authority;
- h) **“Investigating Authority”** means the authority charged with the responsibility of conducting trade remedies investigations in a CFTA State Party;
- i) **“Properly documented application”** means a written complaint made by or on behalf of the domestic industry in the required format;
- j) **“Safeguards”** means a measure adopted by a CFTA State Party where a product is being imported into its territory in such increased quantities, absolute or relative to its domestic production, and under such conditions as to cause or threaten to

cause serious injury to its domestic industry that produces like or directly competitive products;

- k) **“Threat of serious injury”** shall be understood to be serious injury that is clearly imminent. A determination of the existence of a threat of serious injury shall be based on facts not merely on allegation, conjecture or remote possibility.

Article 2

Application of Anti-dumping, Countervailing and Safeguard Measures

The State Parties may, with respect to goods traded under the provisions of this Annex, apply anti-dumping, countervailing and safeguard measures as provided for in Article 16 - 19 of the Protocol on Trade in Goods, this Annex and the AfCFTA Guidelines on the Implementation of Trade Remedies in accordance with relevant WTO Agreements .

Article 3

Application of Global Safeguard Measures

The State Parties confirm their rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

Article 4

Application of Preferential Safeguard Measures

1. Where, as a result of implementing this Agreement, any product originating in a State Party is being imported into the territory of another State Party in such increased quantities, absolute or relative to domestic production of the importing AfCFTA State Party, and under such conditions so as to cause or threaten to cause serious injury to the domestic industry of like or directly competitive products into the territory of that State Party, such State Party may take preferential safeguard measures under the conditions and in accordance with the procedures laid down in this Annex and AfCFTA Guidelines.
2. A State Party intending to apply definitive preferential safeguard measures, shall, before applying such measures, supply the other State Parties concerned and the AfCFTA Secretariat/Sub Committee on Trade Remedies with all relevant information, with a view to seek a solution acceptable to all State Parties concerned.
3. The State party shall examine the information provided in terms of paragraph 2 within a period of notification in order to facilitate a mutually acceptable resolution of the matter. If no resolution is reached, the importing State Party may adopt preferential safeguard measures as provided for by this Article. Such measures shall immediately be notified to the AfCFTA Secretariat/Sub Committee on Trade Remedies which shall inform all other State Parties

4. The preferential safeguard measure shall be applied only to the extent necessary to prevent or remedy serious injury or threat thereof and to facilitate adjustment following an investigation by the importing State Party under the procedures established in this Annex and the AfCFTA Guidelines.

5. Preferential safeguard measures shall not exceed a period of four years and shall contain clear indications of their progressive elimination at the end of the determined period. The preferential safeguard measure may be extended for another period not exceeding 4 years, subject to the justification by the Investigating Authority.

6. A State Party shall not apply a global safeguard measure simultaneously with the preferential safeguard measure on the same product within the AfCFTA.

Article 5

Provisional Safeguard Measures

1. In critical circumstances where delay would cause damage which would be difficult to repair, the State Party concerned may take a provisional preferential safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused, or are threatening to cause, serious injury.
2. The State Party intending to apply such a provisional safeguard measure shall before applying such provisional measure, immediately notify the AfCFTA Secretariat/Sub Committee on Trade Remedies and concerned State Parties. The duration of the preferential provisional safeguard measure shall not exceed 200 days, during which period the pertinent requirements of this Annex and the Guidelines shall be met. The duration of such provisional measures shall be counted as part of the initial period and any extension referred to in this Annex and the Guidelines.
3. Such measures shall take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in this Annex and the Guidelines does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry.

Article 6

Notification

1. In anti-dumping investigations, the Investigating Authority shall avoid, unless a decision has been made to initiate an investigation, any publicising of the application of initiation of any investigations according to the WTO Agreement on Anti-dumping, this Annex and the AfCFTA Guidelines. However, after receipt of a properly documented application, and before proceeding to initiate an investigation, the investigating authority shall notify the government of the exporting State Party concerned.

2. In subsidies and countervailing investigations, there shall be an invitation to consultations prior to initiation and notification according to the WTO Agreement on Subsidies and Countervailing Measures, this Annex and the AfCFTA Guidelines
3. In global safeguard investigations, a State Party shall immediately notify such initiation of the global safeguard investigations according to the WTO Agreement on Safeguards.
4. In preferential safeguard investigations, a State Party shall immediately notify such initiation of the preferential safeguard investigations according to this Annex and the AfCFTA Guidelines.

Article 7 Consultation

1. Once an investigating authority of a State Party has received a properly documented application in subsidies and countervailing cases, and safeguard cases, from its representative domestic industry, or upon its own initiative and upon establishment of a prima facie case, such State Party shall hold consultations as provided for in the AfCFTA Guidelines.
2. If a mutually agreed solution is reached, a written agreement on the terms agreed upon is produced. The concerned State Party shall notify the AfCFTA Secretariat/Sub Committee on Trade Remedies. This agreement shall bind the State Parties involved and shall be implemented as provided for in the AfCFTA Guidelines.
3. If no agreed solution is reached, the State Party requesting the consultations shall proceed to initiate and complete its investigation and to implement appropriate measures in accordance with the provisions of the relevant WTO Agreements, this Annex and the CFTA Guidelines.

Article 8 Confidentiality

Information which is by nature confidential, or which is provided on a confidential basis by parties to an investigation, shall be treated as such by the investigating authorities and shall not be disclosed without specific permission of the parties submitting it

Article 9 Transparency

1. All interested parties within the AfCFTA shall have an opportunity for the defence of their interests.
2. Notwithstanding paragraph 1 of this Article, there shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case.

3. Any interested parties shall have the right, on justification, to present other information orally.
4. Oral information provided under paragraph 3 of this Article shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties.

Article 10 **Dispute Settlement**

1. Disputes arising from the application or interpretation of this Annex and the AfCFTA Guidelines shall be governed by the Agreement establishing the AfCFTA and the Protocol on Dispute Settlement taking into account the special nature of trade remedies disputes.
2. In accordance with Article 3.2 of the Protocol on Dispute Settlement special rules and procedures for the settlement of trade remedies disputes shall be developed.

Article 11 **Technical Assistance**

Technical Assistance to State Parties shall be provided by the AfCFTA Secretariat/AU Commission in collaboration with partners, on request by such State Parties, in order to enhance the capacities of State Parties in the application of trade remedies measures in accordance with the provisions of this Annex and the AfCFTA Guidelines.

Article 12 **Capacity Building and Cooperation**

1. The AfCFTA Secretariat/AU Commission shall in collaboration with partners facilitate training and capacity building programmes in order to assist State Parties with the implementation of trade remedies as provided for in this Annex and the AfCFTA Guidelines , in the adoption of the necessary national legislation, the establishment of national investigating authorities and other required institutions, the training of officials and other stakeholders involved in the implementation of this Annex and the AfCFTA Guidelines;
2. State Parties are encouraged to cooperate in the area of trade remedies specifically in the dissemination of information to all relevant AfCFTA stakeholders and private parties.

Article 13
Sub-Committee on Trade Remedies

1. There is hereby established a Sub-Committee on Trade Remedies.
2. The Sub-Committee, composed of States Parties, shall be responsible for monitoring the implementation of the provisions of this Annex and the Guidelines.

Article 14
AfCFTA Guidelines on Implementation of Trade Remedies

The AfCFTA Guidelines on the Implementation of Trade Remedies shall form an integral part of this Annex.

Article 15
Amendment

This Annex and the Guidelines may be amended in accordance with the provisions of the Agreement establishing the AfCFTA.

AfCFTA GUIDELINES ON IMPLEMENTATION OF TRADE REMEDIES

PART I: INTRODUCTION

Guideline 1 Purpose

1. These Guidelines establish rules for the conduct of trade remedy investigations and the application of trade remedy measures in CFTA State Parties (**“Party”**).
2. The purpose of these Guidelines is to ensure that there is consistency among Parties in the conduct of trade remedy investigations.

Guideline 2 Definitions

In these Guidelines, unless the context otherwise requires:

“Days” means calendar days;

“Guidelines” means the CFTA Guidelines on Implementation of Trade Remedies;

“Injury” in relation to anti-dumping and countervailing means material injury or threat of material injury to a domestic industry or material retardation of the establishment of an industry;

“Investigating Authority” means the institution designated with the responsibility of conducting trade remedies investigations in a Party;

“Interested Parties” shall include:

- (a) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;
- (b) a producer of the like product in the importing Party or a trade and business association a majority of the Parties of which produce the like product in the territory of the importing Party;
- (c) the governments of the third countries of origin and of the exporting Parties of the product under investigation; and

(d) Any other domestic or foreign parties determined by the Investigating Authority.

“Independent buyers” means individuals or companies that are not associated/ related or have a compensatory arrangement with either the importer, the exporter or a third party in a Party of the product under investigation;

“Like product” means a product, which is identical, i.e. alike in all respects to the product under consideration or in the absence of such a product, another product, which, although not alike in all respects, has characteristics closely resembling those of the product under consideration;

“National Legislation” means the legislation of a Party which establishes and empowers the Investigating Authority to conduct trade remedies investigations;

“Party” means a State Party to the Agreement Establishing the African Continental Free Trade Area; and **“Parties”** shall have the equivalent meaning.

“Price Depression” takes place where, with regard to the like product, the ex-factory selling price of the Party conducting the investigation decreases during the period of investigation;

“Price Suppression” takes place where, with regard to the like product, the cost-to-price-ratio of the Party conducting the investigation increases;

“Price Undercutting” means the extent to which the price of the product under investigation is lower than the price of the like product produced by the CFTA State Party conducting the investigation, as measured at the appropriate point of comparison;

“The Product under investigation” means the exported product under investigation to the importing Party;

“Trade remedy measures” means a safeguard measure, countervailing duty or anti-dumping duty, as the case may be;

“Properly documented application” means a written complaint made by or on behalf of the domestic industry in the required format.

Guideline 3 Interim Provisions

Parties without existing national legislation for the conduct of preferential safeguards, dumping and subsidy investigations, undertake to enact enabling national legislation leading to formation of an Investigating Authority for the conduct of such investigations which reflects the provisions of Annex 9 on Trade Remedies and these Guidelines, as soon as practicable. In the interim, they may take Trade Remedy measures in accordance to and in compliance with the provisions of these Guidelines.

Guideline 4 Application

1. The Guidelines are to be applied in conjunction with the existing national legislation for conducting trade remedy investigations and reviews in the individual Parties.
2. The Parties recognise that most of the Parties are WTO members who are bound by the provisions of the WTO trade remedy Agreements and may have national legislation, which is consistent with these Agreements. All Parties recognize that these Parties have the right to apply their national legislation.

If an investigation initiated by a Party finds that the product under investigation is exported from both WTO Parties and non-WTO Parties, the provisions to be applied are the national legislation.

Guideline 5

Transitional Arrangements

Any provisional or definitive trade remedy measure taken in accordance with the relevant legislation under the Regional Economic Communities (RECs) before the entry into force of these Guidelines shall remain in force for the duration of the measure, unless there is an application for review.

Guideline 6 Confidentiality

1. Any information which is by nature confidential and the disclosure of which would be of significant competitive advantage to a competitor or where the disclosure would have a significant adverse effect upon a person supplying the information or upon a person from whom that person acquired the information, or which is provided on a confidential basis by parties to an Investigating Authority, shall upon good cause shown, be treated as such by the Investigating Authorities. Such information shall not be disclosed without specific permission of the party submitting it.
2. The Investigating Authority shall require Interested Parties providing confidential information to furnish non-confidential summaries of the information. The summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, the Interested Parties may indicate that the information is not capable of summary. In

such circumstances, a statement of the reasons why summarisation is not possible shall be provided.

3. Where the Investigating Authority finds that a request for confidentiality is not warranted and where the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalised or summary form, the Investigating Authority may disregard such information unless it can be demonstrated to the satisfaction of the Investigating Authority from appropriate sources that the information is correct.
4. Investigating Authorities shall not arbitrarily reject requests for confidentiality.
5. Nothing in this Guideline shall require the Investigating Authority to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.
6. Any Interested Party shall be bound by the confidentiality requirements pursuant to this Guideline.

Guideline 7 Like Products

In determining whether a product has characteristics closely resembling those of the product under investigation, the Investigating Authority may consider any or all of the following factors, with no one or several of these factors necessarily giving decisive guidance:

- (a) raw materials and other inputs used in producing the product;
- (b) the production process;
- (c) physical characteristics and appearance of the products;
- (d) the end use of the product;
- (e) substitutability of the product with the product under investigation;
- (f) tariff classification; or
- (g) any other factors proven to the satisfaction of the Investigating Authority to be relevant.

PART II: PREFERENTIAL SAFEGUARD MEASURES

Guideline 8

Properly Documented Application

1. In determining whether a complaint submitted constitutes a properly documented application, the Investigating Authority shall determine whether:
 - (a) the application includes such information as is reasonably available to the applicant on the issues contemplated therein; and
 - (b) proper confidential and non-confidential versions have been submitted.
2. The application shall contain inter alia, the following information:
 - (a) Complete description of the imported product, including the volumes;
 - (b) complete description of the applicant's like or directly competitive product;
 - (c) industry standing;
 - (d) the factors on which the allegation of serious injury or threat thereof is based;
 - (e) the unforeseen circumstances that led to the increased imports;
 - (f) remedy sought;
 - (g) efforts made or planned to compete with the imports;
 - (h) to the extent possible, information on the exporters of the product or foreign producers of the product;
 - (i) to the extent possible, information on the importers of the product and the representatives of the producers associations; and
 - (j) any other information required by the Investigating Authority.
3. The Investigating Authority shall examine the information provided in terms of this Guideline to determine whether there is a prima facie case.
4. The Investigating Authority will return applications that do not contain sufficient information as required, unless such deficiencies are properly addressed. This shall, in no way prejudice the right of the domestic industry to submit a new application.

Guideline 9

Public Notice

1. Where the Investigating Authority is satisfied that there is sufficient evidence to justify the initiation of a preferential safeguard investigation, the Parties, whose products are subject to such Investigation and other Interested Parties known to the Investigating Authority to have an interest therein shall be notified and a public notice shall be given.

2. A public notice of the initiation of an investigation shall contain adequate information on the following:

- (a) a precise description of the product involved;
- (b) the date of initiation of the investigation;
- (c) a summary of the factors on which the allegation of serious injury is based;
- (d) the address to which representations by Interested Parties should be directed;
- (e) the time-limits allowed to Interested Parties for making their views known; and
- (f) the address to which the Interested Parties will send their replies to.

Guideline 10 **Conditions**

1. A Party may apply a preferential safeguard measure to a product only if that Party has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
2. Preferential safeguard measures shall be applied by a Party to all imports of the product under investigation in the African Continental Free Trade Area.

Guideline 11

Investigation

1. An importing Party may apply a preferential safeguard measure following an investigation pursuant to the procedures provided under this Guideline.
2. The investigation shall include a public notice and public hearings for Interested Parties.
3. Where the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the Investigating Authority may disregard the information or rely on facts available or use verifiable sources to make a determination.
4. The Investigating Authority shall publish a report setting out its findings and conclusions reached on all pertinent issues of fact and law and giving a detailed analysis of the case under investigation and a demonstration of the relevance of the factors examined. The publication shall also include information required in Guideline 14 paragraph 1.

Guideline 12

Determination of Serious Injury or Threat of Serious Injury

1. For the purposes of this Guideline:
 - a. **"Serious Injury"** means a significant overall impairment in the position of a domestic industry;
 - b. **"Threat of serious injury"** shall be understood to mean serious injury that is clearly imminent. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility;
 - c. **Domestic industry"** means the producers as a whole of the like or directly competitive products operating within the importing Party, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.
2. In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under this Guideline, the Investigating Authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation and level of development of that

industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

3. The determination referred to in paragraph 1 shall not be made by an Investigating Authority unless it can be demonstrated by such Investigating Authority, on the basis of objective evidence, that the increased imports of the product concerned are causing serious injury or threat thereof.
4. In considering whether there is a causal link between the imports of the product concerned and the serious injury or threat thereof, the Investigating Authority shall consider all known relevant factors including factors other than the imports of the product concerned that may have contributed to the serious injury or threat thereof of the domestic industry, provided that an Interested Party has submitted, or the Investigating Authority has, information on such factors. The serious injury or threat thereof to the domestic industry shall not be attributed to increased imports.

Guideline 13

Application of Preferential Safeguard Measures

1. A Party shall apply preferential safeguard measures only to the extent necessary to prevent or remedy Serious Injury and to facilitate adjustment.
2. A preferential safeguard measure adopted under this Guideline may take the form of either:
 - (a) establishment of a quota on the imports of the product concerned from the other Party (ies) ;
 - (b) increase in the customs duties, on the product concerned up to a level which does not exceed the MFN applied rate at the time of taking the measure;
 - (c) a combination of quotas and increase in customs duties.
3. If a quota is used, it shall not be less than the average imports of that product in the thirty six (36) months period previous to the period of which serious injury was determined, unless clear justification is given that a different level is necessary to prevent or remedy serious injury or threat thereof. The s Parties conducting the investigation shall choose measures most suitable for the achievement of these objectives.

4. In cases in which a quota is allocated among supplying s Parties, the Party applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Parties having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Party concerned shall allot to Parties having a substantial interest in supplying the product, shares based upon the proportions, supplied by such Parties during a previous representative period, of the total quantity or value of imports of the product from Parties, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

Guideline 14 **Provisional Safeguard Measures**

1. In critical circumstances where delay would cause damage which would be difficult to remedy, a Party may take provisional safeguard measures pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry of that Party.
2. The duration of any provisional safeguard measure shall not exceed two hundred (200) days.
3. The requirements for determination of serious injury and threat of serious injury under Guideline 12 shall be complied with, during the duration of application of provisional safeguard measures.
4. The provisional safeguard measures shall take the form of tariff increases.
5. Where the subsequent investigation referred to in Guideline 12 paragraph 2 does not determine that increased imports have caused or threaten to cause serious injury to the domestic industry the tariff increases shall be promptly refunded.
6. The duration of such provisional safeguard measure shall be counted as a part of the initial period and any extension referred to in Guideline 15 paragraph 3.

Guideline 15 **Duration and Review of Safeguard Measures**

1. A Party shall apply safeguard measures only as may be necessary to prevent or remedy serious injury and to facilitate adjustment.
2. The safeguard measures taken under paragraph 1 of this Guideline shall not exceed a period of four (4) years but may be extended for another period not exceeding four (4) years provided the Party concerned proves that the safeguard measures continue to be necessary to prevent or remedy Serious Injury in conformity with Guidelines 10, 11 and 12 and that there is evidence that the industry is adjusting.
3. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight (8) years.
4. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one (1) year, the Party applying the measure shall progressively liberalise the measure at regular intervals during the period of application. If the duration of the measure exceeds three (3) years, the Party applying such a measure shall review the situation no later than the mid-term of the measure and, if appropriate, withdraw the measure or increase the pace of liberalisation.
5. No safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of these Guidelines, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two (2) years.

Guideline 16

Notification and Consultation

1. A Party shall immediately notify the Sub Committee on Trade Remedies upon:
 - (a) initiating an investigation relating to serious injury or threat of serious injury and the reasons for the investigation;
 - (b) making a finding of serious injury or threat of serious injury caused by increased imports; and
 - (c) taking a decision to apply or need to extend the period of the safeguard measures.

2. In making the notifications referred to in paragraph 1 (b) and 1(c) of this Guideline, the Party intending to apply or extend a safeguard measure shall provide the CFTA Sub Committee on TR with all relevant information, which shall include:
 - (a) evidence of serious injury or threat of serious injury caused by increased imports,
 - (b) a precise description of the product involved and the proposed safeguard measure,
 - (c) the proposed date of introduction,
 - (d) the expected duration; and the timetable for progressive liberalization.
3. In the case of an extension of a safeguard measure, evidence that the industry concerned is adjusting shall also be provided.
4. A Party intending to apply or extend the period of a safeguard measure shall provide adequate opportunity for prior consultations with the Parties with substantial interest as exporters of the product concerned, with a view to reviewing the information provided under paragraph 2, exchanging views on the safeguard measure and reaching an understanding on ways to achieve the objectives of the safeguard measure.
5. A Party shall notify the CFTA Sub Committee on TR before taking a provisional safeguard measure referred to in Guideline 14. Consultations shall be initiated immediately after the provisional safeguard measure is taken.
6. The results of the consultations referred to in this Guideline shall be notified immediately to the CFTA Sub Committee on TR by the Party concerned.
7. The Parties shall promptly notify the CFTA Sub Committee on TR of their laws, regulations and administrative procedures relating to safeguard measures as well as any modification made on the laws, regulations and administrative procedures.
8. Any Party may notify the CFTA Sub Committee on TR of all laws, regulations, administrative procedures and any safeguard measure or actions dealt with under this Guideline that have not been notified by the concerned Party where it is required by this Guideline to make such notifications.

9. All notifications to the CFTA Sub Committee on TR referred to in this Guideline shall be made through the Chairperson of the CFTA Sub Committee on TR.

PART III: ANTI-DUMPING

Guideline 17 Determination of Dumping

1. For the purpose of this Guideline, a product is to be considered as being dumped where it is introduced into the commerce of another Party at less than its normal value, where the export price of the product exported from one Party to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting Party.
2. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting Party or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting Party, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the Party of origin plus a reasonable amount for administrative, selling and general costs and for profits.
3. Sales of the like product destined for consumption in the domestic market of the exporting Party shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 percent or more of the sales of the product under consideration to the importing Party, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.
4. Sales of the like product in the domestic market of the exporting Party or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the Investigating Authority determine that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are

below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

5. For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting Party and reasonably reflect the costs associated with the production and sale of the product under consideration. The Investigating Authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular, in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.
6. For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:
 - (a) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the Party of origin of the same general category of products;
 - (b) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the Party of origin; and
 - (c) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the Party of origin.
7. In cases where there is no export price or where it appears to the Investigating Authority concerned that the export price is unreliable because of association or a

compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer less the sum of the following amounts:

- (a) the amount of any duties and taxes imposed on the importation of the goods;
- (b) the amount of any costs, charges, or expenses arising in relation to the goods after exportation; and
- (c) the amount of the profit, if any, on the sale by the independent buyer or, an amount calculated based on the rate of profit that would normally be realized by the independent buyer on sales of goods of the same category.

8. If the products are not resold to an independent buyer, or not resold in the condition as imported, the export price may be constructed on such reasonable basis as the Investigating Authority may determine.
9. A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. Where the export price has been constructed as in paragraph 7, the Investigating Authority shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The Investigating Authority shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.
10. When the comparison under paragraph 9 above requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale. Fluctuations in exchange rates shall be ignored and in an investigation the Investigating Authority

shall allow exporters at least sixty (60) days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

11. Subject to the provisions governing fair comparison in paragraph 9, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the Investigating Authority find a pattern of export prices which differ significantly among different purchasers, different places within the exporting Party or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.
12. In the case where products are not imported directly from the Party of origin but are exported to the importing Party from an intermediate country, the price at which the products are sold from the Party of export to the importing Party shall normally be compared with the comparable price in the Party of export. However, comparison may be made with the price in the Party of origin, if, for example, the products are merely transshipped through the Party of export, or such products are not produced in the Party of export, or there is no comparable price for them in the Party of export.
13. The period of data collection for an investigation into dumping normally should be twelve (12) months, and in any case no less than six (6) months, ending as close to the date of initiation as possible (prior to the date of initiation). The period of data collection for investigating sales below cost under paragraph 4, and the period of data collection for an investigation into dumping, normally should coincide in a particular investigation. In all cases the Investigating Authority should set and make known in advance to interested parties, the periods of time covered by the data collection, and may also set certain dates for completing collection and/or submission of data. If such dates are set, they should also be made known to interested parties.
14. In establishing the specific periods of data collection in a particular investigation, the Investigating Authority may, if possible, consider practices of firms from which data will be sought concerning financial reporting and the effect this may have on the availability of accounting data. Other factors that may be considered include the

characteristics of the product in question, including seasonality and cyclicity, and the existence of special order or customized sales.

Guideline 18

Determination of Injury

1. A determination of injury for purposes of this Guideline shall be based on positive evidence and involve an objective examination of both:
 - (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and
 - (b) the consequent impact of these imports on domestic producers of such products.
2. With regard to the volume of the dumped imports, the Investigating Authority shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Party. With regard to the effect of the dumped imports on prices, the Investigating Authority shall consider whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the importing Party, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.
3. Where imports of a product from more than one Party are simultaneously subject to anti-dumping investigations, the Investigating Authority may cumulatively assess the effects of such imports only if they determine that:
 - (a) the margin of dumping established in relation to the imports from each Party is more than *de minimis* as defined in Guideline 20, paragraph 10 and the volume of imports from each Party is not negligible, and;
 - (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.
4. The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the State of the industry, including actual and potential decline in

sales, profits, output, market share, productivity, return on investments, or utilization of capacity, factors affecting domestic prices, the magnitude of the margin of dumping, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

5. It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this Guideline. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Investigating Authority. Where appropriate, the Investigating Authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.
6. The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.
7. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the products at dumped prices. In making a determination regarding the existence of a threat of material injury, the Investigating Authority should consider, *inter alia*, such factors as:
 - (a) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

- (b) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Party's market, taking into account the availability of other export markets to absorb any additional exports;
 - (c) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
 - (d) inventories of the product being investigated;
8. No one of the factors listed in paragraph 7 can by itself necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.
9. The data collected for injury investigations shall be at least for three (3) years, unless a party from whom data is being gathered has existed for a lesser period, and shall include the entirety of the period of data collection for the investigation into dumping. In all cases the Investigating Authority shall set and make known in advance to interested parties, the periods of time covered by the data collection, and may also set certain dates for completing collection and/or submission of data. If such dates are set, they shall also be made known to interested parties.
10. In establishing the specific periods of data collection in a particular investigation, the Investigating Authority may, on a case by case basis, consider practices of firms from which data will be sought concerning financial reporting and the effect this may have on the availability of accounting data. Other factors that may be considered include the characteristics of the product in question, including seasonality and cyclicity, and the existence of special order or customized sales.

Guideline 19

Domestic Industry

1. For the purposes of anti-dumping, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

- (a) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers; and
 - (b) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry where:
 - (i) the producers within such market sell all or almost all of their production of the product in question in that market; and
 - (ii) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.
2. When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(b) of this Guideline, anti-dumping duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Party does not permit the levying of anti-dumping duties on such a basis, the importing Party may levy the anti-dumping duties without limitation only where:
- (i) the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to [Guideline 23 *Price Undertakings*] and adequate assurances in this regard have not been promptly given; and
 - (ii) such duties cannot be levied only on products of specific producers which supply the area in question.
3. Where two or more Parties have reached a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraphs 1 and 2 of this Guideline.

Guideline 20

Initiation and Subsequent Investigation

1. Except as provided for in Guideline 17 paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

2. An application under paragraph 1 of this Guideline shall include evidence of dumping, injury and a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:
 - (a) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;
 - (b) a complete description of the allegedly dumped product, the names of the Party or States Parties of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
 - (c) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the Party or States of origin or export (or, where appropriate, information on the prices at which the product is sold from the Party or States of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Party; and
 - (d) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market of the importing Party and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the State of the domestic industry, such as those listed in Guideline18 paragraphs 2 and 4.
3. The Investigating Authority shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

4. An investigation shall not be initiated unless the Investigating Authority has determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.
5. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 percent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 percent of total production of the like product produced by the domestic industry.
6. In the case of fragmented industries involving an exceptionally large number of producers, the Investigating Authority may determine support by using statistically valid sampling techniques.
7. The Investigating Authority shall avoid, any publicizing of the application for the initiation of an investigation unless a decision has been made to initiate an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the Investigating Authority shall notify the government of the exporting Party concerned.
8. If, in special circumstances, the Investigating Authority concerned decides to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such an investigation, it shall proceed only if it has sufficient evidence of dumping, injury and a causal link to justify the initiation of an investigation.
9. The evidence of both dumping and injury shall be considered simultaneously in the decision whether or not to initiate an investigation and thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Guideline provisional measures may be applied.
10. An application under Paragraph 1 of this Guideline shall be rejected and an investigation shall be terminated promptly as soon as the Investigating Authority concerned is satisfied that there is not sufficient evidence of either dumping or of injury

to justify proceeding with the case. There shall be immediate termination in cases where the Investigating Authority determines that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if it is less than 2 percent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular Party is found to account for less than 3 percent of imports of the like product in the importing Party, unless Parties which individually account for less than 3 percent of the imports of the like product in the importing Party collectively account for more than 7 percent of imports of the like product in the importing Party.

11. An anti-dumping proceeding shall not hinder the procedures of customs clearance.

12. Investigations shall, except in special circumstances, be concluded within one (1) year, and in no case last for more than eighteen (18) months, after their initiation.

Guideline 21 Evidence

1. All Interested Parties in an anti-dumping investigation shall be given notice of the information which the Investigating Authority requires and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.
2. Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given thirty (30) days to reply, after receipt of the questionnaires. Due consideration shall be given to any request for an extension of the thirty (30) days period and, upon cause shown, the extension may be granted:
 - (a) subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation; and
 - (b) as soon as an investigation has been initiated, the Investigating Authority shall provide the full text of the written application received under Guideline 17 paragraph 1 to the known exporters and to the Investigating Authority of the exporting Party and shall make it available, upon request, to other interested parties involved. Where the number of exporters involved is particularly high, the full text of the written application shall instead be provided only to the Investigating Authority of the exporting Party or to the relevant trade association.

3. Due regard shall be given to the requirement for the protection of confidential information, as provided in paragraph 6 of this Guideline.
4. All Interested Parties shall have opportunity to defend their interests throughout the anti-dumping investigations and the Investigating Authority shall, on request, provide opportunities to all interested parties to meet and present their views to each other taking into account the need to preserve confidentiality and the convenience of the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested Parties shall have the right, upon good cause determined by the Investigating Authority, to present other information orally.
5. Oral information provided under paragraph 4 of this Guideline shall be taken into account by the Investigating Authority only where it is subsequently reproduced in writing and made available to other Interested Parties, as provided for in subparagraph 2(a) of this Guideline.
6. The Investigating Authority shall whenever practicable provide timely opportunities for all Interested Parties to access all information that is relevant to the presentation of their cases, which is not confidential, and which is used by the Investigating Authority in an anti-dumping investigation, and shall give the Interested Parties opportunity to prepare presentations on the basis of this information.
7. Except in circumstances provided for in paragraph 9 of this Guideline, the Investigating Authority shall during the course of an investigation satisfy itself to the accuracy of the information supplied by Interested Parties upon which findings are based.
8. In order to verify information provided or to obtain further details, the Investigating Authority:
 - (a) may carry out investigations in the territory of other Parties as required, provided prior consent of the firms concerned is obtained and representatives of the government of the Parties in question, do not object to the investigations, using the procedures set out in Appendix I to these Guidelines; and

(b) shall subject to the requirement to protect confidential information, make the findings of the investigations in sub-paragraph (a) available or shall disclose the information pursuant to paragraph 10 of this Guideline, to the firms to which they pertain and may make the results available to the applicants.

9. Where an Interested Party refuses access to, or does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of the Appendix II to these Guidelines shall apply to this paragraph.
10. The Investigating Authority shall, before a final determination is made, inform all Interested Parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. The disclosure shall be made in sufficient time for the parties to defend their interests.
11. The Investigating Authority shall determine the individual margin of dumping for each known exporter or producer of the product under investigation. Where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the Investigating Authority may limit the examination either to a reasonable number of Interested Parties or products by using samples which are statistically valid on the basis of information available to the Investigating Authority at the time of the selection, or to the largest percentage of the volume of the exports from the Party in question which can reasonably be investigated.
12. Any selection of exporters, producers, importers or types of products made under paragraph 11 of this Guideline shall be made in consultation with the exporters, producers or importers concerned. Where the Investigating Authority has limited its examination, as provided for in paragraph 11 the Investigating Authority shall nevertheless determine the individual margin of dumping for any exporter or producer not initially selected, who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the Investigating Authority and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.
13. The Investigating Authority shall provide an opportunity for industrial users of the product under investigation, and for representative consumer organisations in cases

where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.

14. The Investigating Authority shall take due account of any difficulties experienced by Interested Parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.
15. The procedures set out in this Guideline shall not prevent the Investigating Authority from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of these Guidelines.

Guideline 22

Provisional Measures

1. Provisional measures may be applied only where:
 - (a) an investigation is initiated in accordance with the provisions of Guideline 20 and a public notice to that effect is given and Interested Parties are given adequate opportunities to submit information and make comments;
 - (b) a preliminary affirmative determination of dumping and consequent injury to a domestic industry is made; and
 - (c) the Investigating Authority has determined that the provisional measures are necessary to prevent injury from being caused during the investigation.
2. Provisional measures may take the form of:
 - (a) a provisional duty;
 - (b) an estimated security by cash deposit or bond, equal to the amount of the anti-dumping duty which shall not be greater than the provisionally estimated margin of dumping; or
 - (c) withholding of appraisement where the normal duty

and the estimated amount of the anti-dumping duty shall be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

3. Provisional measures shall not be applied before the expiry of sixty (60) days from the date of initiation of an investigation.

4. The application of provisional measures shall be limited to a period not exceeding four (4) months or, on decision of the Investigating Authority, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six (6) months. Where the Investigating Authority, in the course of an investigation, determines that a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six (6) and nine (9) months, respectively.
5. The relevant provisions of Guideline 24 shall apply in the application of provisional measures.

Guideline 23 Undertakings

1. Proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise the prices of the product or to cease exports to the area in question at dumped prices to the satisfaction of the Investigating Authority that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping and shall be less than the margin of dumping where the increases would be adequate to remove the injury to the domestic industry.
2. Price undertakings shall not be sought or accepted from exporters except where the Investigating Authority makes preliminary affirmative determination of dumping and injury caused by the dumping.
3. Undertakings offered need not be accepted where the Investigating Authority considers its acceptance impracticable, for example, where the number of actual or potential exporters is high or for other reasons, including reasons of general policy. In any such event, the Investigating Authority shall give to the exporter the reasons which lead the Investigating Authority to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments on these reasons.
4. Where an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed where the exporter so desires or the Investigating Authority so decides. Where a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination

is due to a large extent, to the existence of a price undertaking. The Investigating Authority may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Guideline. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Guideline.

5. Price undertakings may be suggested by the Investigating Authority of the importing Party, but no exporter shall be forced to enter into such undertakings. The fact that the exporters do not offer such undertakings, or do not accept an invitation to do so, shall not in any way prejudice the consideration of the case. However, the Investigating Authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.
6. The Investigating Authority may require an exporter from whom an undertaking has been accepted to periodically provide information relevant for the fulfillment of such an undertaking and to permit verification of pertinent data.
7. Where there is a violation of an undertaking, the Investigating Authority may take expeditious actions which may include the immediate application of provisional measures, using the best information available. In such cases, definitive duties may be levied on products imported for consumption, not more than ninety (90) days before the application of such provisional measures. However, no such retroactive assessment shall apply to imports entered into a Party before the violation of the undertaking.

Guideline 24

Imposition and Collection of Anti-Dumping Duties

1. The decision to impose anti-dumping duties in cases where all requirements for the imposition have been fulfilled and the amount of the anti-dumping duties to be imposed shall be made by the Investigating Authority.
2. Where an anti-dumping duty is imposed in respect of any product, the anti-dumping duty shall be collected in the appropriate amount in each case, on a non-discriminatory basis on imports of the product from all sources found to be dumped and causing injury, except imports from those sources from which price undertakings under the terms of this Guideline are accepted. The Investigating Authority shall name the supplier or suppliers of the product concerned and where several suppliers from the same Party are involved, and it is impracticable to name all these suppliers, the Investigating Authority may name the supplying Party concerned. Where several

suppliers from more than one Party are involved, the Investigating Authority may name either all the suppliers involved, or, where this is impracticable, all the supplying Parties involved.

3. The amount of the anti-dumping duty shall not exceed the margin of dumping as provided for under Guideline 17.
4. The anti-dumping duties may be assessed using one of the following ways:
 - (a) where the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of the anti-dumping duty shall take place as soon as possible, within twelve (12) months, and in any case shall not exceed eighteen (18) months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made. Any refund shall be made ninety (90) days following the determination of final liability, pursuant to this sub-paragraph and where a refund is not made within ninety (90) days, the Investigating Authority shall provide an explanation where requested;
 - (b) where the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any duty paid in excess of the actual margin of dumping shall be made within twelve (12) months, and in any case not later than eighteen (18) months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorised shall be made within ninety(90) days of the decision; or
 - (c) in determining the reimbursement to be made where the export price is constructed in accordance with this paragraph, the Investigating Authority shall take into account any change in normal value, costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and shall calculate the export price with no deduction for the amount of anti-dumping duties paid.
5. Where the Investigating Authority limits its examination in accordance with the provisions of Guideline 20 paragraph 10, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:
 - (a) the weighted average margin of dumping established with respect to the selected exporters or producers; or
 - (b) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined.

6. The Investigating Authority shall disregard for purposes of paragraph 4, any zero and *de minimis* margins and margins established under the circumstances referred to in Guideline 20 paragraph 10. The Investigating Authority shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who provides the necessary information during the course of investigations, as provided for in Guideline 21 paragraph 12.
7. Where a product is subject to anti-dumping duties in an importing Party, the Investigating Authority shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting Party in question who have not exported the product to the importing Party during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting Party who are subject to the anti-dumping duties on the product. The review shall be initiated and carried out expeditiously in the importing Party. No anti-dumping duties shall be levied on imports from the exporters or producers while the review is being carried out. The Investigating Authority may, however, withhold appraisement or request guarantees to ensure that, where the review would result in a determination of dumping in respect of the producers or exporters, anti-dumping duties are levied retroactively to the date of the initiation of the review.

Guideline 25 **Retroactivity**

1. Provisional measures and anti-dumping duties shall only be applied to products imported for consumption after decisions taken under Guideline 22 paragraph 2 and Guideline 24 paragraph 1, respectively, are effected, subject to the exceptions set out in this Guideline.
2. Where a final determination of injury other than a threat of injury or a material retardation of the establishment of an industry is made or, in the case of a final determination of a threat of material injury, where the effect of the dumped imports in the absence of the provisional measures, lead to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, are applied.
3. Where the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected and where the definitive anti-dumping duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

4. Except as provided in paragraph 2 of this Guideline, where a determination of threat of injury or material retardation is made but no injury has occurred, a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.
5. Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.
6. A definitive anti-dumping duty may be levied on products imported for consumption within ninety (90) days prior to the date of application of provisional measures where the Investigating Authority determines in the case of the dumped product that:
 - (a) there is a history of dumping which caused injury or that the importer was, or should have been aware that the exporter practices dumping and that, that dumping would cause injury; and
 - (b) the injury is caused by massively dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances such as a rapid build-up of inventories of the imported product is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned are given an opportunity to comment.
7. The Investigating Authority may, after initiating an investigation, take measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6 of this Guideline, once they have sufficient evidence that the conditions in that paragraph are satisfied.
8. No duties shall be levied retroactively pursuant to paragraph 6 of this Guideline on products imported for consumption prior to the date of initiation of an investigation.

Guideline 26

Duration and Review of Anti-Dumping Duties and Price Undertakings

1. An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which causes injury.
2. The Investigating Authority shall review the need for the continued imposition of an anti-dumping duty, where warranted, on its own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-

dumping duty, upon request by any Interested Party which submits positive information substantiating the need for a review. A determination of final liability for payment of antidumping duties, as provided for in Guideline 24 paragraph 3 does not by itself constitute a review within the meaning of this Guideline. Interested parties shall have the right to request the Investigating Authority to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury is likely to continue or recur where the duty is removed or varied, or both. Where, as a result of the review under this paragraph, the Investigating Authority determines that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Guideline, any definitive anti-dumping duty shall be terminated within five years from the date of imposition, or from the date of the most recent review under paragraph 2 of this Guideline, where that review covers both dumping and injury, or is made under this paragraph unless the Investigating Authority determines, in a review initiated before that date on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. Where the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under Guideline 24 paragraph 4(a) that no duty is to be levied shall not by itself require the Investigating Authority to terminate the definitive duty. The duty may remain in force pending the outcome of the review.
4. The provisions of Guideline 21 regarding evidence and procedure shall apply to any review carried out under this Guideline. The review shall be carried out expeditiously and shall normally be concluded within twelve months (12) of the date of initiation of that review.
5. The provisions of this Guideline shall apply *mutatis mutandis* to price undertakings accepted under Guideline 23.

Guideline 27

Public Notice and Explanation of Determinations

1. Where the Investigating Authority is satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation, the Party whose products are subject to such investigation and other Interested Parties known to the Investigating Authority to have an interest therein shall be notified and a public notice shall be given.
2. A public notice of the initiation of an investigation shall contain adequate information on the following:
 - (a) the name of the exporting Party or States and the product involved;

- (b) the date of initiation of the investigation;
 - (c) the basis on which dumping is alleged in the application;
 - (d) a summary of the factors on which the allegation of injury is based;
 - (e) the address to which representations by Interested Parties are to be directed; and
 - (f) the time-limits within which Interested Parties may present their views.
3. A public notice shall be given of:
- (a) any preliminary or final determination, whether affirmative or negative;
 - (b) any decision to accept a price undertaking pursuant to Guideline 23;
 - (c) the termination of a price undertaking; and
 - (d) the termination of a definitive anti-dumping duty.
4. Each public notice shall set out in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the Investigating Authority. All public notices shall be forwarded to the Sub Committee on Trade Remedies, the AfCFTA Secretariat, the Party whose products are subject to such determination or undertaking and to other Interested Parties.
5. A public notice of the imposition of provisional measures shall set out, sufficiently detailed explanations for the preliminary determinations on dumping and injury and shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:
- (a) the names of the suppliers, or where this is impracticable, the supplying Parties involved;
 - (b) a description of the product which is sufficient for customs purposes;
 - (c) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Guideline 17;
 - (d) considerations relevant to the determination of the injury asset out in Guideline 18; and
 - (e) the main reasons leading to the determination.
6. A public notice of the conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of a price undertaking shall contain, all relevant information and reasons which lead to the imposition of final measures or the acceptance of a price undertaking, due regard being had to the requirement for the protection of confidential information. The public notice shall contain the information required under paragraph 4 of this Guideline, the reasons for the acceptance or rejection of relevant arguments

or claims made by the exporters and importers and the basis for any decision made under Guideline 18 paragraph 3.

7. A public notice of the termination or suspension of an investigation following the acceptance of a price undertaking pursuant to Guideline 23 shall include the non-confidential part of the price undertaking.
8. The provisions of this Guideline shall apply *mutatis mutandis* to decisions made under Guideline 23 to apply anti-dumping duties retroactively and to the initiation and completion of reviews pursuant to Guideline 24.

PART IV: SUBSIDIES AND COUNTERVAILING MEASURES

Guideline 28 Existence of a Subsidy

1. For the purpose of this Guideline, a subsidy shall be deemed to exist if:
 - (a) there is a financial contribution by a government or any public body within the territory of a government of a Party, where:
 - i. a government or public body provides a direct transfer of funds;
 - ii. government revenue that is otherwise due is foregone or not collected;
 - iii. a government provides goods or services other than general infrastructure, or purchases goods;
 - iv. a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (ii) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by government;
 - (b) there is any form of income or price support; and
 - (c) a benefit is thereby conferred.

Guideline 29

Specificity

1. In order to determine whether a subsidy, as defined in Guideline 28, is specific to an enterprise or industry or group of enterprises or industries, referred to in this Guideline as “certain enterprises”, within the jurisdiction of the granting authority, the following principles shall apply:
 - (a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;
 - (b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official documents, so as to be capable of verification;
 - (c) If notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy, programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation; and
 - (d) A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Guideline.
2. Subsidies shall be deemed to be prohibited and specific where it is contingent in law or in fact, whether solely or as one of several other conditions, upon export performance, it is contingent, whether solely or as one of several conditions, upon the use of domestic over imported goods.
3. Any determination of specificity under the provisions of this Guideline shall be clearly substantiated on the basis of positive evidence.

Guideline 30

Initiation and subsequent Investigation

1. Except as provided in paragraph 6 of this Guideline, an investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated upon a written application by or behalf of the domestic industry.
2. An application under paragraph 1 of this Guideline shall include sufficient evidence of existence of a subsidy and, if possible, its amount, injury within the meaning of these Guidelines, causal link between the subsidised imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:
 - (a) the identity of the applicant and a description of the volume and value of the domestic production of the like product by applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;
 - (b) a complete description of the allegedly subsidised product, the names of the Party or States Parties of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
 - (c) evidence with regard to the existence, amount and nature of the subsidy in question; and
 - (d) evidence that alleged injury to a domestic industry is caused by subsidised imports through the effects of the subsidies; this evidence includes information on the evolution of the volume of the allegedly subsidised imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry.
3. The Investigating Authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.
4. An investigation shall not be initiated pursuant to paragraph 1 of this Guideline unless the Investigating Authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic

producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 percent of the total production of the like product produced by the portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 percent of total production of the like product produced by the domestic industry.

5. The Investigating Authorities shall avoid any publicizing of the application for the initiation of an investigation, unless a decision has been made to initiate an investigation.
6. If, in special circumstances, the Investigating Authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of the existence of a subsidy, injury and causal link, as described in paragraph 2 of this Guideline, to justify the initiation of an investigation
7. The evidence of both subsidy and injury shall be considered simultaneously in the decision whether or not to initiate an investigation, and thereafter, during the course of the investigation starting on a date not later than the earliest date on which in accordance with the provisions of this Guideline provisional measures may be applied.
8. In cases where products are not imported directly from the Party of origin but are exported to the importing Party from an intermediate country, the provisions of this Guideline shall be fully applicable and the transaction or transactions shall, for the purposes of this Guideline, be regarded as having taken place between the Party of origin and the importing Party.
9. An application under paragraph 1 of this Guideline shall be rejected and an investigation shall be terminated promptly as soon as the Investigating Authority concerned is satisfied that there is not sufficient evidence of either subsidisation or of injury to justify proceeding with the case.
10. There shall be immediate termination of investigations where the amount of a subsidy is *de minimis*, or where the volume of subsidised imports, actual or potential, or the injury, is negligible. For purposes of this paragraph, the amount of the subsidy shall be considered to be *de minimis* where the subsidy is less than one (1) percent ad valorem.

11. An investigation shall not hinder the procedures of customs clearance,
12. Investigation shall, except in special circumstances, be concluded within one (1) year, and in no case last more than eighteen (18) months, after their initiation.

Guideline 31

Evidence

1. Interested Parties and all Interested Parties in a countervailing duty investigation shall be given notice of the information which the Investigating Authorities require ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.
2. Exporters, foreign producers or interested Parties receiving questionnaires used in a countervailing duty investigation shall be given at least thirty (30) days for reply. Due consideration should be given to any request for an extension of the thirty (30) day period and, upon cause shown, such an extension may be granted:
 - (a) subject to the requirement to protect confidential information, evidence presented in writing by one interested Party or Interested Party shall be made available promptly to other interested Parties or Interested Parties participating in the investigation; and
 - (b) as soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under Guideline 30 paragraph 1 to the known exporters and to the authorities of the exporting Party and shall make it available, upon request, to other Interested Parties involved. Due regard shall be paid to the protection of confidential information.
3. Interested Parties and Interested Parties also shall have the right, upon justification, to present information orally. Where such information is provided orally, the interested Parties and Interested Parties subsequently shall be required to reduce such submissions to writing. Any decision of the Investigating Authorities can only be based on such information and argument as were on the written record of this Investigating Authority and which were available to interested Parties and Interested Parties participation in the investigation, due account having been given to the need to protect confidential information.
4. The Investigating Authorities shall, whenever practicable, provide timely opportunities for all interested Parties and Interested Parties to see all information that is relevant to the presentation of their cases, that is not confidential and that is used by the Investigating Authorities in a countervailing duty investigation, and to prepare presentations on the basis of this information.

5. Except in circumstances provided for in paragraph 9 of this Guideline, the Investigating Authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested Parties or Interested Parties upon which their findings are based.
6. The Investigating Authorities may carry out investigations in the territory of other Parties as required, provided that they have notified in good time the Party in question and unless that Party objects to the investigation. Further, the Investigating Authorities may carry out investigations on the premises of a firm and may examine the records of a firm if:
 - (a) the firm so agrees;
 - (b) the Party in question is notified and does not object; and
 - (c) The procedures set forth in Appendix I shall apply to investigations on the premises of a firm. Subject to the requirement to protect confidential information, the Investigating Authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 8, to the firms to which they pertain and may make such results available to the applicants.
7. In cases in which any interested Party or Interested Party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.
8. The Investigating Authorities shall, before a final determination is made, inform all interested Parties and Interested Parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures such disclosure should take place in sufficient time for the parties to defend their interests.
9. The Investigating Authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding subsidization, injury and causality.
10. The Investigating Authorities shall take due account of any difficulties experienced by Interested Parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.
11. The procedures set out above are not intended to prevent the Investigating Authorities of a Party from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from

applying provisional or final measures, in accordance with relevant provisions of this Guideline.

Guideline 32

Consultations on Countervailing Measures

1. As soon as possible after an application under Guideline 30 is accepted, and in any event before the initiation of any investigation, a Party the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in Guideline 30 paragraph 2 and arriving at a mutually agreed solution.
2. Throughout the period of investigation, a Party whose products are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.
3. Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a Party from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Guideline.
4. The Party which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the Party the products of which are subject to such investigation access to non-confidential evidence, including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

Guideline 33

Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient

1. For the purpose of Part IV of these Guidelines, any method used by the Investigating Authority to calculate the benefit to the recipient conferred pursuant to Guideline 28 shall be provided for in the national legislation or implementing regulations of the Party concerned and its application to each particular case shall be transparent and adequately explained. Any such method shall be consistent with the following:
 - (a) government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that Party;

- (b) a loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between these two amounts;
- (c) a loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any difference in fees; and
- (d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the Party of provision or purchase (including price, quality, availability, marketability, transportation and other condition of purchase or sale).

Guideline 34 **Determination of Injury**

1. For purposes of Part IV of these Guidelines a determination of injury shall be based on positive evidence and shall involve an objective examination of both:
 - (a) the volume of the subsidised imports and the effect of the subsidised imports on prices in the domestic market of the Party for like products; and
 - (b) the consequent impact of the subsidised imports on domestic producers of the Party of like products.
2. With regard to the volume of the subsidised imports, the Investigating Authority shall consider whether there has been a significant increase in subsidised imports, either in absolute terms or relative to production or consumption in the importing Party. With regard to the effect of the subsidised imports on prices, the Investigating Authority shall consider whether there has been a significant price undercutting by the subsidised imports as compared with the price of a like product of the importing Party, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.
3. Where imports of a product from more than one Party are simultaneously subject to countervailing duty investigations, the Investigating Authority may cumulatively assess the effects of such imports only if they determine that:

- (a) the amount of subsidisation established in relation to the imports from each Party is more than *de minimis* as defined in Guideline 30 paragraph 10 and the volume of imports from each Party is not negligible; and
 - (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the like domestic products.
- 4. The examination of the impact of the subsidised imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices with a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity, factors affecting domestic prices, actual and potential negative effects on cash flow, inventories, employment, wages, growth and the ability to raise capital or investments. This list is not exhaustive, and no individual or several of these factors may necessarily give decisive guidance on the determination of injury.
- 5. It must be demonstrated that the subsidised imports are, through the effects of subsidies, causing injury within the meaning of this Guideline. The demonstration of a causal relationship between the subsidised imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The Investigating Authorities shall also examine any known factors other than the subsidised imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidised imports. Factors which may be relevant in this respect include, inter alia the volumes and prices of non-subsidised imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.
- 6. The effect of the subsidised imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the subsidised imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.
- 7. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Investigating Authorities should consider, inter alia, such factors as:

- (a) nature of the subsidy or subsidies in question and the trade effects likely to arise there from;
 - (b) a significant rate of increase of subsidised imports into the domestic market indicating the likelihood of substantially increased importation;
 - (c) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidised exports to the importing Party's market, taking into account the availability of other export markets to absorb any additional exports;
 - (d) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
 - (e) inventories of the product being investigated.
8. None of the factors in paragraph 7 of this Guideline may individually give decisive guidance to the determination of injury and the totality of the factors considered shall lead to the conclusion that further subsidised exports are imminent and that, unless protective action is taken, material injury shall occur.
9. With respect to cases where injury is threatened by subsidised imports, the application of countervailing measures shall be considered and decided with special care.

Guideline 35

Domestic Industry

1. For purposes of subsidies and countervailing measures, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of like products or to domestic producers whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:
- (a) where producers are related to the exporters or importers or are themselves importers of the allegedly subsidised product, the term "domestic industry" may be interpreted as referring to the rest of the producers; and
 - (b) in exceptional circumstances the territory of the Parties may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry where:
 - (i) the producers within a competitive market sell all or almost all of their production of the product in question in that market; and
 - (ii) the demand in a competitive market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even

where a major portion of the total domestic industry is not injured, provided there is a concentration of subsidised imports into such an isolated market and provided further that the subsidised imports are causing injury to the producers of all or almost all of the production within the competitive market.

2. Where the domestic industry has been interpreted as referring to the producers in a competitive market as defined in paragraph 1(b) of this Guideline, countervailing duties shall be levied only on the products in question consigned for final consumption to that competitive market. Where the law of the importing Party does not permit the levying of countervailing duties on such a basis, the importing Party may levy the countervailing duties without limitation only where:
 - (a) the exporters are given an opportunity to cease exporting at subsidised prices to the area concerned; and
 - (b) the countervailing duties cannot be levied only on products of specific producers which supply the competitive market in question.
3. The provisions of Guideline 34 paragraph 7 shall apply to this Guideline.
4. Where two or more Parties have reached a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraphs 1 and 2 of this Guideline.

Guideline 36 **Provisional Measures**

1. Provisional measures may be applied only where:
 - (a) an investigation has been initiated in accordance with the provisions of Guideline 30, a public notice has been given to that effect and the interested Parties and interested parties have been given adequate opportunities to submit information and make comments;
 - (b) a preliminary affirmative determination has been made that a subsidy exists and that there is injury to a domestic industry caused by subsidised imports; and
 - (c) the Investigating Authority, has determined that such measures are necessary to prevent injury being caused during the investigation.

2. Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidisation.
3. Provisional measures shall not be applied sooner than sixty (60) days from the date of initiation of the investigation.
4. An application of provisional measures shall be limited to as short a period as possible and in any case shall not exceed four (4) months.
5. The relevant provisions of Guideline 38 shall be followed in the application of provisional measures.

Guideline 37 Undertaking

1. Subject to the provisions of paragraph 4 of this Guideline, proceedings may be suspended or terminated without the imposition of provisional measures or countervailing duties, upon receipt of satisfactory voluntary undertakings under which:
 - (a) the government of the exporting Party agrees to eliminate or limit the subsidy or take other measures concerning its effects; or
 - (b) the exporter agrees to revise its prices so that the Investigating Authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the amount of the subsidy. It is desirable that the price increases be less than the amount of the subsidy where such increases would be adequate to remove the injury to a domestic industry.
2. Undertakings shall not be sought or accepted unless the Investigating Authority has made a preliminary affirmative determination of subsidization and injury caused by such subsidization and, in case of undertakings from exporters, has obtained the consent of the exporting Party.
3. Price undertakings offered need not be accepted where the Investigating Authority considers their acceptance impractical, for example where the number of actual or potential exporters is very high, or for other reasons, including reasons of general policy. In such cases and where practicable, the Investigating Authority shall give the exporter the reasons which have led the Investigating Authority to consider acceptance of a price undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments on these reasons.

4. If an undertaking is accepted, the investigation of subsidization and injury shall nevertheless be completed where the exporting Party so desires or the importing Party so decides. In such a case, if a negative determination of subsidization or injury is made, the price undertaking shall automatically lapse, except in cases where such a determination is due to a large extent to the existence of the price undertaking. In such a case, the Investigating Authority concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of Part IV of these Guidelines. In the event that an affirmative determination of subsidization and injury is made, the undertaking shall continue consistent with its terms and the provisions of Part IV of these Guidelines.
5. Price undertakings may be suggested by the Investigating Authority but no exporter shall be forced to enter into such undertakings. The fact that governments or exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the Investigating Authority shall be free to determine that a threat of injury is more likely to be realized where the subsidized imports continue.
6. The Investigating Authority may require any government or exporter from whom an undertaking is accepted to provide periodically information relevant to the fulfillment of such undertaking, and to permit verification of pertinent data. In case of violation of an undertaking, the Investigating Authority may take, under Part IV of these Guidelines in conformity with its provisions, expeditious actions that may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with Part IV of these Guidelines on products entered for consumption not more than ninety (90) days before the application of the provisional measures, except that any retroactive assessment shall not apply to imports entered before the violation of an undertaking.

Guideline 38

Imposition and Collection of Countervailing Duties

1. Where, after reasonable efforts have been made to complete consultations, a Party makes a final determination of the existence and amount of a subsidy or subsidies and that, through the effects of the subsidy or subsidies, the subsidised imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this Guideline unless the subsidy or subsidies are withdrawn.

2. The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less, shall be made by the Investigating Authority. It is desirable that the imposition shall be permissive in the territory of all Parties, that the duty shall be less than the total amount of the subsidy where such lesser duty would be adequate to remove the injury to the domestic industry, and that procedures shall be established which would allow the Investigating Authority concerned to take due account of representations made by domestic interested parties whose interests may be adversely affected by the imposition of a countervailing duty.
3. When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be subsidised and causing injury, except as to imports from those sources which have renounced any subsidies in question or from which price undertakings under these Guidelines have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to co-operate, shall be entitled to an expedited review in order that the Investigating Authority promptly establish an individual countervailing duty rate for that exporter.
4. Countervailing duty shall not be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidised and exported product.

Guideline 39

Retroactivity

1. Provisional measures and countervailing duties shall only be applied to products which are entered for consumption after a decision under Guideline 36 and Guideline 38, respectively, comes into force, subject to the exceptions set out in this Guideline.
2. Where a final determination of injury, but not of a threat of injury or of a material retardation of the establishment of an industry, is made, or, in the case of a final determination of a threat of injury, where the effect of the subsidised imports would, in the absence of the provisional measures, have led to a determination of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.
3. Where the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected and where the definitive

duty is less than the amount guaranteed by the cash deposit or bond, the excess amount shall be reimbursed or the bond released in an expeditious manner.

4. Except as provided in paragraph 2 of this Guideline, where a determination of threat of injury or material retardation is made, but no injury has yet occurred, a definitive countervailing duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.
5. Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.
6. In critical circumstances where, for the subsidised product in question, the Investigating Authority finds that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from subsidies paid or bestowed inconsistently with the provisions of these Guidelines, and where necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports, the definitive countervailing duties may be assessed on imports which were entered for consumption not more than ninety days prior to the date of application of provisional measures.

Guideline 40

Duration and Review of Countervailing Duties and Undertakings

1. A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidisation which causes injury.
2. The Investigating Authority shall review the need for the continued imposition of a countervailing duty, where warranted, on its own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive countervailing duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the Investigating Authority to examine whether the continued imposition of the duties is necessary to offset subsidies, whether injury is likely to continue or recur where the duty is removed or varied, or both. Where, as a result of the review under this paragraph, the Investigating Authority determines that the countervailing duty is no longer warranted, it shall be terminated immediately.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Guideline, any definitive countervailing duty shall be terminated not later than five (5) years from the date of imposition, or from the date of the most recent review under paragraph 2 of this

Guideline where that review has covered both subsidisation and injury, or is made under this paragraph unless the Investigating Authority determines, in a review initiated before that date on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of subsidisation and injury. Where the amount of the countervailing duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under Guideline 37 that no duty is to be levied shall not by itself require the Investigating Authority to terminate the definitive duty. The duty may remain in force pending the outcome of such a review.

4. The provisions of Guideline 31 regarding evidence and procedure shall apply to any review carried out under this Guideline. Any such review shall be carried out expeditiously and shall normally be concluded within twelve (12) months of the date of initiation of the review.
5. The provisions of this Guideline shall apply *mutatis mutandis* to undertakings accepted under Guideline 37.

Guideline 41

Public Notice and Explanation of Determinations

1. Where the Investigating Authority is satisfied that there is sufficient evidence to justify the initiation of a countervailing duty investigation, the Party the products of which are subject to such investigation and other interested parties known to the Investigating Authority to have an interest in the investigation, shall be notified and a public notice shall be given.
2. A public notice in the official gazette and any publication of wide circulation of the initiation of an investigation shall contain, or otherwise make available through a separate report, adequate information on the following:
 - (a) the name of the exporting Party or States and the product involved;
 - (b) the date of initiation of the investigation;
 - (c) a description of the subsidy practices to be investigated;
 - (d) a summary of the factors on which the allegation of injury is based;
 - (e) the address to which representations by interested parties should be directed; and
 - (f) the time-limits within which Parties and interested parties may present their views.

3. A public notice shall be given of:
 - (a) any preliminary or final determination, whether affirmative or negative;
 - (b) any decision to accept an undertaking pursuant to Guideline 37;
 - (c) the termination of such an undertaking; and
 - (d) the termination of a definitive countervailing duty.
4. Each public notice shall set out in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the Investigating Authority. All public notices shall be forwarded to the Party whose products are subject to such determination or undertaking and to other interested parties.
5. A public notice of the imposition of provisional measures shall set out, sufficiently detailed explanations for the preliminary determinations on the existence of a subsidy and injury and shall make reference to matters of fact and law which lead to the acceptance or rejection of arguments raised, due regard being paid to the requirement for the protection of confidential information, contain in particular:
 - (a) the names of the suppliers, or when this is impracticable, the supplying Parties involved;
 - (b) a description of the product which is sufficient for customs purposes;
 - (c) the amount of subsidy established and the basis on which the existence of the subsidy has been raised;
 - (d) considerations relevant to the determination of the injury as set out in Guideline 34; and
 - (e) the main reasons leading to the determination.
6. A public notice of the conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of an undertaking shall contain, all relevant information and reasons which lead to the imposition of final measures or the acceptance of an undertaking, due regard being had to the requirement for the protection of confidential information. The public notice shall contain the information required under paragraph 4 of this Guideline, the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers.
7. A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Guideline 37 shall include a non-confidential part of the undertaking.

8. The provisions of this Guideline shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Guideline 39 and to decisions under Guideline 38 to apply countervailing duties retroactively.

Guideline 42
Concurrent Anti-dumping and Subsidy Investigations

In cases of concurrent anti-dumping and subsidy investigations, no product under investigation shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping and export subsidization.

Appendix 1: On the Spot Investigations

1. Upon initiation of an investigation in terms of Parts III and IV of these Guidelines, the government of the exporting Party and the producers and exporters concerned shall be informed of the intention to carry out on-the-spot investigations.
2. Where in exceptional circumstances it is intended to include non-governmental experts on the investigating team, the producers and exporters and the authorities of the exporting Party shall be informed.
3. Non-governmental experts on investigating teams shall be subject to effective sanctions in cases of breach of confidentiality.
4. It shall be standard practice to obtain explicit consent of the producers and exporters concerned in the exporting Party before the visit for on the spot investigation is finally scheduled.
5. As soon as the consent of the producers and exports concerned is obtained, the Investigating Authority shall notify the government of the exporting Party of the names and addresses of the producers and exporters to be visited and the dates agreed for the visit.
6. Sufficient advance notice shall be given to the producers and exporters in question before the visit is made.
7. Visits to explain the questionnaire shall only be made at the request of producers or exporters of the exporting Party and shall be made where the Investigating Authority or foreign country notifies the representatives of the Party in question and where the representatives of the Party do not object to the visit.
8. As the main purpose of the on the spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire is received except where the producers or exporters of the foreign country agrees to the contrary and where the government of the exporting Party is informed by the Investigating Authority of the anticipated visit and does not object to it. Prior to the visit the producers or exporters concerned shall be advised of the general nature of the information to be verified and of any further information which needs to be provided and the advice so given shall not preclude requests to be made on the spot for further details.

9. Enquiries or questions by an Investigating Authority or producers or exporters of the exporting Party which are essential to a successful on the spot investigation shall, whenever possible, be answered before a visit is made.

Appendix II: Best Information Available

1. Within thirty (30) days after the initiation of an investigation in terms of Part III of these Guidelines, the Investigating Authority shall specify in detail the information required from any interested party, and the manner in which that information shall be structured by the interested party in its response. The Investigating Authority shall also ensure that the interested party is informed of the consequences of not supplying information within the stipulated time. The Investigating Authority may make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.
2. The Investigating Authority may request an interested party to provide a response in both soft and hard copies. Where such a request is made, the Investigating Authority shall consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and shall not request the interested party to use for its response a computer system other than that used by the interested party. The Investigating Authority shall not maintain a request for a computerised response where the interested party does not maintain computerised accounts or where presenting the response as requested would result in an unreasonable extra burden on the interested party, for example where the computerised response would entail unreasonable additional cost and trouble.
3. (a) All information which is verifiable, appropriately submitted to be used in the investigation without undue difficulties, supplied in a timely manner and where applicable, supplied in a medium or computer language requested by the investigating authority shall be taken into account in making determinations; and
(b) Where an interested party does not respond in the preferred medium or computer language but the Investigating Authority finds that the other circumstances set out in paragraph 3(a) of this Appendix have been satisfied, failure to respond in the preferred medium or computer language shall not be considered to significantly impede an investigation.
4. Where the Investigating Authority does not have the ability to process information provided in a particular medium soft or hard copy, the information shall be supplied in any other form acceptable to the Investigating Authority.
5. The Investigating Authority shall not disregard information provided by any interested party even where such information may not be ideal in all respects, provided that the Investigating Authority is satisfied that the interested party acted to the best of its ability.

6. Where the Investigating Authority does not accept the evidence or information, it shall inform the supplying party immediately of the reasons for not accepting, and shall give the supplying party an opportunity to provide further explanations within a reasonable period, taking due account of the time limits of the investigation. Where the Investigating Authority deems the explanations unsatisfactory, it shall in the determination, state reasons for rejecting such evidence or information.
7. Where the Investigating Authority bases its findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, it shall do so with special circumspection. In such cases the Investigating Authority shall, where practicable, check the information from other independent sources at its disposal, for example published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the Investigating Authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.

Appendix III: Composition and Functions of the Sub Committee on Trade Remedies

1. The Sub-Committee on Trade Remedies shall be composed of representatives of States Parties to the AfCFTA.
2. The Sub-Committee may elect a Bureau composed of one (1) Chair, two (2) Vice-Chairs, and two (2) Rapporteurs constituting the five AU regions for a term of one (1) year.
3. The Sub Committee shall meet at least twice a year, and otherwise at the request of any State Party.
4. The AfCFTA Secretariat shall act as the Secretariat to the Sub-Committee.
5. The Sub-Committee may set up subsidiary bodies as appropriate.
6. The Sub-Committee shall have the following functions:
 - a. To monitor and report annually to the Committee on Trade in Goods on the general implementation of this Annex and its Guidelines and make recommendations towards their amendment;
 - b. To find upon request of an affected State Party, whether or not the procedural requirements of this Annex and its Guidelines have been complied with in connection with a trade remedy measure and report its findings to the Committee on Trade in Goods ;
 - c. To assist States Parties, if they so request, in their consultations under the provisions of this Annex and its Guidelines;
 - d. To receive and review all notifications provided for in this Annex and its Guidelines, and report as appropriate to the Committee on Trade in Goods;
 - e. To receive reports in an agreed format, on a semi-annual and annual basis on any trade remedies actions taken by the States Parties;
 - f. To perform any other functions connected with this Annex and its Guidelines as the Committee on Trade in Goods may determine.
7. The Sub-Committee may seek information from any source it deems appropriate. Prior to seeking such information from a State Party, it shall inform the State Party involved and obtain the consent of the State Party to be consulted.
8. The Sub-Committee assisted by the AfCFTA Secretariat may meet to discuss investigations.

End of Document

PROTOCOL ON TRADE IN SERVICES

PREAMBLE

WE, Member States of the African Union,

WISHING to establish a continental framework of principles and rules for trade in services with a view to boosting intra-African trade in line with the objectives of the African Continental Free Trade Area (AfCFTA) and promoting economic growth and development within the continent;

DESIROUS to create, on the basis of progressive liberalisation of trade in services, an open, rules based, transparent, inclusive and integrated single services market which provides economic, social and welfare-enhancing opportunities across all sectors for the African people;

MINDFUL of the urgent need to consolidate and build on achievements in services liberalisation and regulatory harmonization at the Regional Economic Community (REC) and continental levels;

DESIRING to harness the potential and capacities of African services suppliers, in particular at the micro, small and medium levels, to engage in regional and global value chains;

RECOGNISING the right of State Parties to regulate in pursuit of national policy objectives, and to introduce new regulations, on the supply of services, within their territories, in order to meet legitimate national policy objectives, including competitiveness, consumer protection and overall sustainable development with respect to the degree of the development of services regulations in different countries, the particular need for State Parties to exercise this right, without compromising consumer protection, environmental protection and overall sustainable development;

COGNIZANT of the serious difficulty of the least developed, land locked, island states and vulnerable economies in view of their special economic situation and their development, trade and financial needs;

ACKNOWLEDGING the African Union Assembly Decision Assembly/AU/666 (XXX) adopted at the 30th Ordinary Session of the Assembly of Heads of State and Government of the AU, in Addis Ababa, Ethiopia on 28 January 2018 on the Establishment of a Single African Air Transport Market through the Implementation of the Yamoussoukro Decision;

FURTHER RECOGNISING the potentially significant contribution of air transport services and, in particular, the Single African Air Transport Market to boost intra-Africa trade and fast track the African Continental Free Trade Area (AfCFTA);

HAVE AGREED AS FOLLOWS:

PART I
DEFINITIONS

Article 1

Definitions

For the purposes of this Protocol:

- a. **"Measure"** means any measure by a State Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- b. **"Supply of a service"** includes the production, distribution, marketing, sale and delivery of a service;
- c. **"Measures by State Parties affecting trade in services"** include measures in respect of:
 - i. The purchase, payment or use of a service;
 - ii. The access to and use of, in connection with the supply of a service, services which are required by those State Parties to be offered to the public generally;
 - iii. The presence, including commercial presence, of persons of a State Party for the supply of a service in the territory of another State Party;
- d. **"Commercial presence"** means any type of business or professional establishment, including through:
 - i. The constitution, acquisition or maintenance of a juridical person, or
 - ii. The creation or maintenance of a branch or a representative office, within the territory of a State Party for the purpose of supplying a service;
- e. **"Sector"** of a service means:
 - i. With reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a State Party's schedule of specific commitments;
 - ii. Otherwise, the whole of that service sector, including all of its subsectors;
- f. **"Trade in services"** means the supply of service:

- i. From the territory of one State Party into the territory of any other State Party;
 - ii. In the territory of one State Party to the service consumer of any other State Party;
 - iii. By a service supplier of one State Party, through commercial presence in the territory of any other State Party;
 - iv. By a service supplier of one State Party, through presence of natural persons of a State Party in the territory of any other State Party.
- g. **"Service of another State Party"** means a service which is supplied:
 - i. From or in the territory of that other State Party, or in the case of maritime transport, by a vessel registered under the laws of that other State Party, or by a person of that other State Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - ii. In the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other State Party;
- h. **"Service supplier"** means any person that supplies a service¹⁰;
- i. **"Monopoly supplier of a service"** means any person, public or private, which in the relevant market of the territory of a State Party operates as or is authorized or established formally or in effect by that State Party as the sole supplier of that service;
- j. **"Service consumer"** means any person that receives or uses a service;
- k. **"Person"** means either a natural person or a juridical person;
- l. **"Natural person of another State Party"** means a natural person who resides in the territory of that other State Party or any other State Party and who under the law of that other State Party:
 - i. Is a national; or
 - ii. Has the right of permanent residence;
- m. **"Juridical person"** means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

¹⁰ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside of the territory where the service is supplied.

- n. **"Juridical person of another State Party"** means a juridical person which is either:
- i. Constituted or otherwise organized under the law of that other State Party, and is engaged in substantive business operations in the territory of that State Party or any other State Party; or
 - ii. In the case of the supply of a service through commercial presence, owned or controlled by:
 1. Natural persons of that State Party; or
 2. Juridical persons of that other State Party identified under subparagraph (i);
- o. **A juridical person is:**
- i. **"Owned"** by persons of a State Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that State Party;
 - ii. **"Controlled"** by persons of a State Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - iii. **"Affiliated"** with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- p. **"Direct taxes"** comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

PART II

SCOPE OF APPLICATION

Article 2

Scope of Application

1. This Protocol applies to measures by State Parties affecting trade in services.
2. For the purposes of this Protocol, trade in services is based on the four modes of supply of a service as defined in Article 1 (g) of this Protocol.
3. For the purposes of this Protocol:
 - a) **"Measures by State Parties"** means measures taken by:
 - i. State Parties' central, regional or local governments and authorities; and
 - ii. Non-governmental bodies in the exercise of powers delegated by State Parties' central, regional or local governments or authorities.

In fulfilling its obligations and commitments under the Protocol, each State Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

- b) **"Services"** includes any service in any sector except services supplied in the exercise of governmental authority;
 - c) **"A service supplied in the exercise of governmental authority"** means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.
4. Procurement by governmental agencies purchased for governmental purposes and not with a view to commercial re-sale are excluded from the scope of this Protocol.
5. This Protocol shall not apply to measures affecting:
- (a) Air traffic rights, however granted;
 - (b) services directly related to the exercise of air traffic rights;
6. This Protocol shall apply to measures affecting:
- (a) aircraft repair and maintenance services;
 - (b) the selling and marketing of air transport services; and
 - (c) computer reservation system (CRS) services.

PART III

OBJECTIVES

Article 3 Objectives

- 1. The principal objective of this Protocol is to support the objectives of the AfCFTA, as set out in Article 3 of the Agreement establishing the AfCFTA, particularly to create a single liberalised market for trade in services.
- 2. The specific objectives of this Protocol are to:
 - a. enhance competitiveness of services through: economies of scale, reduced business costs, enhanced continental market access, and an improved allocation of resources including the development of trade-related infrastructure;

- b. promote sustainable development in accordance with the Sustainable Development Goals (SDGs);
- c. foster domestic and foreign investment;
- d. accelerate efforts on industrial development to promote the development of regional value chains;
- e. progressively liberalise trade in services across the African continent on the basis of equity, balance and mutual benefit, by eliminating barriers to trade in services;
- f. ensure consistency and complementarity between liberalisation of trade in services and the various Annexes in specific services sectors;
- g. pursue services trade liberalisation in line with Article V of the GATS by expanding the depth and scope of liberalisation and increasing, improving and developing the export of services, while fully preserving the right to regulate and to introduce new regulations;
- h. promote and enhance common understanding and cooperation in trade in services amongst State Parties in order to improve the capacity, efficiency and competitiveness of their services markets; and
- i. promote research and technological advancement in the field of services to accelerate economic and social development.

PART IV

GENERAL OBLIGATIONS AND DISCIPLINES

Article 4

Most Favoured Nation

1. With respect to any measure covered by this Protocol, each State Party shall, upon entry into force, accord immediately and unconditionally to services and service suppliers of any other State Party treatment no less favourable than that it accords to like services and service suppliers of any Third Party.
2. Nothing in this Protocol shall prevent a State Party from entering into a new preferential agreement with a Third Party, in accordance with Article V of the GATS provided such agreements do not impede or frustrate the objectives of this Protocol. Such preferential treatment shall be extended to all State Parties on a reciprocal and non-discriminatory basis.
3. Notwithstanding paragraph 1, two or more State Parties may conduct negotiations and agree to liberalize trade in services for specific sectors or sub-sectors in accordance

with the objectives in this Protocol. Other State Parties shall be afforded reasonable opportunity to negotiate the preferences granted therein on a reciprocal basis.

4. Notwithstanding the provisions of paragraph 2 of this Article, a State Party shall not be obliged to extend preferences agreed with any Third Party prior to the entry into force of this Protocol, of which that State Party was a member or a beneficiary. A State Party may afford reasonable opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis.
5. The provisions of this Protocol shall not be so construed as to prevent any State Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.
6. A State Party may maintain a measure which is inconsistent with paragraph 1, provided it is listed in the Most Favoured Nation (MFN) exemption list. The agreed list of MFN exemptions shall be annexed to this Protocol. States Parties shall regularly review MFN exemptions, with a view to determining which MFN exemptions can be eliminated.

Article 5

Transparency

1. Each State Party shall, in a medium¹¹ that is accessible, publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Protocol. International and regional agreements pertaining to or affecting trade in services to which a State Party is a signatory shall also be published.
2. Each State Party shall notify the Secretariat of any international and regional agreements pertaining to or affecting trade in services with Third Parties to which they are signatory prior to or after entry into force of this Protocol.
3. Each State Party shall promptly and at least annually notify the Secretariat of the introduction of any new, or any changes to, existing laws, regulations or administrative guidelines which significantly affect trade in services under this Protocol.
4. Where a State Party submits a notification to the Secretariat, the latter shall promptly circulate the said notification to all State Parties.
5. Each State Party shall respond promptly to all requests by any other State Party for specific information on any of its measures of general application or international and/or regional agreements within the meaning of paragraph 1. State Parties shall

¹¹ For example through Gazette, newsletter, Hansard, or websites in one of the African Union languages.

also reply to any question from any other State Party relating to an actual or proposed measure that might substantially affect the operation of this Protocol.

6. Each State Party shall designate the relevant enquiry points to provide State Parties with specific information, upon request, on all such matters related to trade in services as well as those subject to the notification requirement above.

Article 6

Disclosure of Confidential Information

Nothing in this Protocol shall require any State Party to disclose confidential information and data, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 7

Special and Differential Treatment

In order to ensure increased and beneficial participation in trade in services by all parties to the Protocol, State Parties shall:

- a. provide special consideration to the progressive liberalization of service sectors commitments and modes of supply which will promote critical sectors of growth, social and sustainable economic development;
- b. take into account the challenges that may be encountered by State Parties, and may grant flexibilities such as transitional periods, within the framework of action plans, on a case-by-case basis, to accommodate special economic situations and development, trade and financial needs in implementing this Protocol for the establishment of an integrated and liberalized single market for trade in services;
- c. accord special consideration to the provision of technical assistance and capacity-building through continental support programmes.

Article 8

Right to Regulate

Each State Party may regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives, in so far as such regulations do not impair any rights and obligations arising under this Protocol.

Article 9

Domestic Regulation

1. In sectors where specific commitments are undertaken, each State Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, transparent and impartial manner.
2. Each State Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the State Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. Where authorisation is required for the supply of a service liberalised under this Protocol, the competent authorities of a State Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the State Party shall provide, without undue delay, information concerning the status of the application.

Article 10

Mutual Recognition

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a State Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another State Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the State Party concerned or may be accorded autonomously.
2. A State Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested State Parties to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a State Party accords recognition autonomously, it shall afford adequate opportunity for any other State Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other State Party's territory should be recognized.
3. A State Party shall not accord recognition in a manner which would constitute a means of discrimination between State Parties in the application of its standards or criteria for the authorization, licensing or certification of service suppliers, or a disguised restriction on trade in services.

4. Each State Party shall:

(a) within 12 months from the date on which the Agreement enters into force for it, inform the Secretariat of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;

(b) promptly inform the State Parties through the Secretariat as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other State Party to indicate their interest in participating in the negotiations before they enter a substantive phase;

(c) promptly inform the States Parties through the Secretariat when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on AfCFTA agreed criteria by State Parties. In appropriate cases, State Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common continental standards and criteria for recognition and common continental standards for the practice of relevant services trades and professions.

Article 11

Monopolies and Exclusive Service Suppliers

1. Each State Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that State Party's obligations and specific commitments under this Protocol.
2. Where a State Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that State Party's specific commitments, the State Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. A State Party which has a reason to believe that a monopoly supplier of a service of any other State Party is acting in a manner inconsistent with paragraphs 1 and 2 may request the State Party establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.
4. If, after the date of entry into force of this Protocol, a State Party grants monopoly rights regarding the supply of a service covered by its specific commitments, that State Party shall notify the Secretariat no later than three months before the intended

implementation of the grant of monopoly rights and the provisions concerning modification of specific commitments will apply.

5. The provisions of this Article shall also apply to cases of exclusive service suppliers where a State Party, formally or in effect:
 - a. authorises or establishes a small number of service suppliers; and
 - b. substantially prevents competition among those suppliers in its territory.

Article 12

Anti-competitive Business Practices

1. State Parties recognise that certain business practices of service suppliers, other than those concerning monopolies and exclusive service suppliers, may restrain competition and thereby restrict trade in services.
2. Each State Party shall, at the request of any other State Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The State Party addressed shall respond to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The State Party addressed shall also provide other information available to the requesting State Party, subject to its domestic law and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting State Party.

Article 13

Payments and Transfers

1. Except under the circumstances envisaged in Article 14, a State Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.
2. Nothing in this Protocol shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a State Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 13 or at the request of the Fund.

Article 14

Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a State Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance of payments of a State Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1 shall:
 - (a) not discriminate among State Parties;
 - (b) be consistent with the Articles of Agreement of the International Monetary Fund;
 - (c) avoid unnecessary damage to the commercial, economic and financial interests of any other State Party;
 - (d) not exceed those necessary to deal with the circumstances described in paragraph 1;
 - (e) be temporary and be phased out progressively as the situation specified in paragraph 1 improves.
3. In determining the incidence of such restrictions, State Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.
4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the Secretariat.
5. State Parties applying the provisions of this Article shall consult promptly within the Committee on Trade in Services on restrictions adopted under this Article.
6. The Committee on Trade in Services shall establish procedures for periodic consultations with the objective of enabling such recommendations to be made to the State Party concerned as it may deem appropriate.
7. Such consultations shall assess the balance-of-payment situation of the State Party concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:
 - (a) the nature and extent of the balance-of-payments and the external financial difficulties;

- (b) the external economic and trading environment of the consulting State Party;
- (c) alternative corrective measures which may be available.

8. The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phase-out of restrictions in accordance with paragraph 2(e).

9. In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting State Party.

10. If a State Party which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Council of Ministers shall establish a review procedure and any other procedures necessary.

Article 15

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 like conditions prevail, or a disguised restriction on trade in services, nothing in this Protocol shall be construed to prevent the adoption or enforcement by any State Party of measures:

- a. Necessary to protect public morals or to maintain public order¹²;
- b. Necessary to protect human, animal or plant life or health;
- c. Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol including those relating to:
 - i. The prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - ii. The protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - iii. Safety;

¹² The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- d. Inconsistent with National Treatment, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other States Parties.¹³
- e. Inconsistent with the Most Favoured Nation obligation provided that the difference in treatment is the result of an agreement on avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the State Party is bound.

Article 16

Security Exceptions

1. Nothing in this Protocol shall be construed:
 - a. To require any State Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - b. To prevent any State Party from taking any action which it considers necessary for the protection of its essential security interests:
 - i. Relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - ii. Relating to fissionable and fusionable materials or the materials from which they are derived;
 - iii. Taken in time of war or other emergency in international relations; or

¹³Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a State Party under its taxation system which:

- a. Apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the State Party's territory; or
- b. Apply to non-residents in order to ensure the imposition or collection of taxes in the State Party's territory; or
- c. Apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- d. Apply to consumers of services supplied in or from the territory of another State Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the State Party's territory; or
- e. Distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- f. Determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the State Party's tax base.

Tax terms or concepts in paragraph (d) of Article 15 and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the State Party taking the measure.

- c. To 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.
2. The Secretariat shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and 1(c) and of their termination.

Article 17

Subsidies

1. Nothing in this Protocol shall be construed to prevent State Parties from using subsidies in relation to their development programmes.
2. State Parties shall decide on mechanisms for information exchange and review of all subsidies related to trade in services that State Parties provide to their domestic service suppliers.
3. Any State Party which considers that it is adversely affected by a subsidy of another State Party may request consultations with that State Party on such matters. Such requests shall be accorded sympathetic consideration.

PART V

PROGRESSIVE LIBERALISATION

Article 18

Progressive Liberalisation

1. State Parties shall undertake successive rounds of negotiations based on the principle of progressive liberalisation accompanied by the development of regulatory cooperation, and sectoral disciplines, taking into account the objectives of the 1991 Abuja Treaty that aim to strengthen integration at the regional and continental levels in all fields of trade, and in line with the general principle of progressivity towards achievement of the ultimate goal of the African Economic Community.
2. State Parties shall negotiate sector specific obligations through the development of regulatory frameworks for each of the sectors, as necessary, taking account of the best practices and *acquis* from the RECs, as well as the negotiated agreement on sectors for regulatory cooperation. State Parties agree that negotiations for continuing the process shall commence following the establishment of the AfCFTA, based on the work programme to be agreed by the Committee on Trade in Services.
3. The liberalisation process shall focus on the progressive elimination of the adverse effects of measures on trade in services as a means of providing effective market access with a view to boosting intra-African services trade. The Annexes that shall form an integral part of this Protocol are set out in Article 28.

4. The Priority Sectors, the Modalities on Trade in Services as well as the Transitional Implementation Work Programme shall be annexed to this Protocol and shall form an integral part hereof.

Article 19

Market Access

1. With respect to market access through the modes of supply defined in Article 1(g), each State Party shall accord services and service suppliers of any other State Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.¹⁴
2. In sectors where market-access commitments are undertaken, the measures which a State Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:
 - (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;¹⁵
 - (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
 - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
 - (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

¹⁴If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply defined in Article 1(g) and if the cross-border movement of capital is an essential part of the service itself, that State Party is thereby committed to allow such movement of capital. If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(g) (iii), it is thereby committed to allow related transfers of capital into its territory.

¹⁵ Article 1(g) (iii) does not cover measures of a State Party which limit inputs for the supply of services.

Article 20

National Treatment

1. In all sectors inscribed in the schedule, and subject to any conditions and qualifications set out therein, each State Party shall accord to services and service suppliers of any other State Party treatment no less favourable than that it accords to its own like services and service suppliers, subject to the conditions and qualifications agreed and specified in its Schedule of Specific Commitments.
2. A State Party may meet the requirement of paragraph 1 by according to services and service suppliers of any other State Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the State Party compared to like services or service suppliers of any other State Party.

Article 21

Additional Commitments

The State Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 19 or 20, including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in a State Party's Schedule of Specific Commitments.

Article 22

Schedules of Specific Commitments

1. Each State Party shall set out in a schedule, the specific commitments that it undertakes under Articles 19, 20 and 21.
2. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:
 - a. Terms, limitations and conditions on market access;
 - b. Conditions and qualifications on national treatment;
 - c. Undertakings relating to additional commitments;
 - d. Where appropriate the time-frame for implementation of such commitments, including their date of entry into force.
3. Measures inconsistent with both Articles 19 and 20 shall be inscribed in the column relating to Article 19. In this case the inscription will be considered to provide a condition or qualification to Article 20 as well.

4. The Schedules of Specific Commitments, the Modalities for Trade in Services, the Priority Sectors as well as the AfCFTA Transitional Implementation Work Programme shall be annexed to this Protocol and shall form an integral part hereof.

Article 23

Modification of Schedules of Specific Commitments

1. A State Party (referred to in this Article as the "modifying State Party") may modify or withdraw any commitment in its schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.
2. A modifying State Party shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Secretariat no later than three (3) months before the intended date of implementation of the modification or withdrawal. The Secretariat shall promptly circulate this information to State Parties.
3. At the request of any State Party the benefits of which under this Protocol may be affected (referred to in this Article as an "affected State Party"), by a proposed modification or withdrawal notified under paragraph 2, the modifying State Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the State Parties concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in commitments prior to such negotiations.
4. Compensatory adjustments shall be made on a most-favoured-nation basis.
5. If agreement is not reached between the modifying State Party and any affected State Party before the end of the period provided for negotiations, such affected State Party may refer the matter to dispute settlement. Any affected State Party that wishes to enforce a right that it may have to compensation must participate in the dispute process.
6. If no affected State Party has requested dispute settlement, the modifying State Party shall be free to implement the proposed modification or withdrawal, within a reasonable period of time.
7. The modifying State Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the dispute settlement.
8. If the modifying State Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected State Party that participated in the dispute settlement may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding the obligations under Article 4, such a modification or withdrawal may be implemented solely with respect to the modifying State Party.

9. The Committee on Trade in Services shall facilitate such negotiations and establish related appropriate procedures.

Article 24

Denial of Benefits

Subject to prior notification and consultation, a State Party may deny the benefits of this Protocol to service suppliers of another State Party where the service is being supplied by a juridical person of a non-State Party, without real and continuous link with the economy of the State Party or with negligible or no business operations in the territory of the other State Party or any other State Party.

PART VI

INSTITUTIONAL PROVISIONS

Article 25

Consultation and Dispute Settlement

The provisions of the Protocol on the Rules and Procedures on the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Protocol.

Article 26

Implementation, Monitoring and Evaluation

1. The Committee on Trade in Services shall carry out such functions as may be assigned to it by the Council 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. The Chairman of the Committee shall be elected by the State Parties.
3. The Committee shall prepare annual reports for State Parties to facilitate the process of implementation, monitoring and evaluation of this Protocol.

Article 27

Technical Assistance, Capacity Building and Cooperation

1. State Parties recognise the importance of technical assistance, capacity building and cooperation in order to complement the liberalisation of services, to support State Parties' efforts to strengthen their capacity in the supply of services and to facilitate implementation and attainment of the objectives of this Protocol.

2. State Parties agree, where possible, to mobilize resources, in collaboration with development partners, and implement measures, in support of the domestic efforts of State Parties, with a view to, *inter alia*:
 - a. Building capacity and training for trade in services;
 - b. Improving the ability of service suppliers to gather information on and to meet regulations and standards at international, continental, regional and national levels;
 - c. Supporting the collection and management of statistical data on trade in services;
 - d. Improving the export capacity of both formal and informal service suppliers, with particular attention to micro, small and medium size; women and youth service suppliers;
 - e. Supporting the negotiation of mutual recognition agreements;
 - f. Facilitating interaction and dialogue between service suppliers of State Parties with a view to promotion of information sharing with respect to market access opportunities, peer learning and the sharing of best practices;
 - g. Addressing quality and standards needs in those sectors where State Parties have undertaken commitments under this Protocol with a view to supporting the development and adoption of standards;
 - h. Developing and implementing regulatory regimes for specific services sectors at continental, regional and national levels, in particular in those sectors in which State Parties have undertaken specific commitments.
3. The Secretariat, working with State Parties, RECs and partners, shall coordinate the provision of technical assistance.

PART VII

Final Provisions

Article 28

Annexes to this Protocol

1. The Annexes to this Protocol form an integral part, as hereunder:
 - a) Schedules of Specific Commitments;
 - b) MFN Exemption(s);
 - c) Air Transport Services;
 - d) AfCFTA Transition and Implementation Work Programme;

- e) List of Priority Sectors; and
- f) A framework document on Regulatory Cooperation.

2. State Parties may develop annexes for the implementation of this Protocol for adoption by the Council of Ministers. Upon adoption by the Council of Ministers, such annexes shall form an integral part of this Protocol.

Article 29

Amendment

This Protocol shall be amended in accordance with the provisions of Article 30 of the Agreement.

PROTOCOL ON RULES AND PROCEDURES ON THE SETTLEMENT OF DISPUTES

Article 1

Definitions

"Agreement" means the Agreement establishing the African Continental Free Trade Area;

"Consensus" means if no State Party present at the meeting of the DSB when a decision is taken, formally objects to the decision;

"Days" means working days save for cases involving perishable goods where Days shall mean calendar days;

"Dispute" means a disagreement between State Parties regarding the interpretation and/or application of the Agreement in relation to their rights and obligations;

"DSB" means the Dispute Settlement Body established under Article 5 of the Protocol;

"Panel" means a Dispute Settlement Panel established under Article 9 of this Protocol;

"Party to a dispute or proceedings" means a State Party that is a party to the Agreement and to a dispute or proceedings; and

"Third Party" means a State Party with a substantial interest in a dispute.

"Complaining Party" means a state Party who has initiated a dispute settlement procedure under the Agreement

"AfCFTA" means the Africa Continental Free Trade Area

"State Party concerned" is a State Party to which rulings and recommendations of the DSB are directed.

Article 2

Objective

This Protocol provides for the Dispute Settlement Mechanism pursuant to Article 22 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 the rights and obligations in accordance with 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 22 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 fulfillment of those 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 relevant AfCFTA institutions 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 including, but not limited to, the use of good offices, conciliation and mediation.
2. Where an amicable resolution is not achieved, any party to the dispute shall after notifying the other parties to a dispute, refer the matter to the DSB, through the Chairperson of the DSB, requesting 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 encourage 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 sympathetic 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. A State Party may at any time voluntarily undertake good office, conciliation, or mediation. Proceedings that involve good offices, conciliation, or mediation will be confidential and shall 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 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 Director General 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 requesting 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. A 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 Panelists.
2. Each State Party may annually nominate two (2) individuals for the inclusion in the 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 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 Panelists 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 Panel members, 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 Director General, in consultation with the Chairperson of the DSB and with the consent of the involved State Parties, shall determine the composition of the Panel by appointing the Panelists 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. Panelists shall serve in their individual capacities and not as Government representatives, nor as representatives of any organisation.
 11. Panelists 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. Panelists 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 authorize 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 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 State Party request 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 organize 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 Panelists 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 Panelists 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 (1 ½) 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 (1 ½) 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 Panelists.

10. Without prejudice to the provisions of this Article, the Panel shall follow the working procedures specified in Annex 1 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 revealed 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 Annex 2 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 panelists 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 recognized 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 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 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 AU financial rules and regulations..

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 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 Appellate Body 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. 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, 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 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, 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;

- 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 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), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original Panel, if Panelists are available, or by an arbitrator appointed by the chairperson of the DSB and shall be completed within 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 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 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. 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 Panelists, arbitrators and experts in accordance with AU financial rules and regulations.
2. The remuneration of the Panelists, 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 Panelists' 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 proceeding.
5. The Parties to an arbitration proceeding shall abide by an arbitration award and the award shall be notified to the DSB for enforcement
5. In the event of a Party to a dispute refusing to cooperate, the complaining Party shall refer the matter to the DSB for determination.
6. 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 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 all matters dealt with in accordance with this Protocol.
3. In order to accomplish the functions under Article 28, the Secretariat shall avail experts with extensive experience in international trade law to assist the Panelists.
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 30 of the Agreement.

ANNEXES TO THE PROTOCOL ON RULES AND PROCEDURES FOR THE SETTLEMENT OF DISPUTES

25TH FEBRUARY 2018

Annex 1

SCHEDULE

WORKING PROCEDURES OF THE PANEL

Under Article 15 (10)

1. The Panel shall meet in closed session. The Parties to the dispute and any other party shall be present at the meetings only when invited by the Panel to appear before it.
2. The deliberations of the Panel and the documents submitted to it shall be kept confidential. Nothing in this understanding shall preclude a Party to a dispute from disclosing statements of its own position to the public.
3. Parties to a dispute shall treat as confidential information presented by another Party to a dispute to the Panel which that Party to a dispute has designated as confidential.
4. {Where a Party to a dispute submits a confidential version of its written submissions to the Panel, it shall also, upon request to a Party to a dispute, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public. }
5. Before the first substantive meeting of a Panel with the Parties to a dispute, the Panel shall ask the Parties to a dispute to submit written submissions presenting the facts of the case and arguments of the parties to the dispute.
6. At the first substantive meeting of the Panel, the complaining party shall present its case and immediately thereafter, the party against whom the complaint is brought shall present its case.
7. Third parties who notify their interest in a dispute to the DSB, shall be invited in writing to present their views at a session of the first substantive meeting set aside for that purpose and may be present during the entire session.
8. The Parties to a dispute shall submit their written rebuttals to the Panel prior to the second substantive meeting.

Formal rebuttals shall be made at the second substantive meeting of the Panel the Party against whom a complaint is brought shall have the right to be heard first.

9. The Panel may at any time request the parties to a dispute for explanations, at a meeting, in which the parties to the dispute are present either in writing or orally. The parties to the dispute and any Third Party invited to present its views in

accordance with Article 13, shall make available to the Panel a written version of their oral statements.

10. In the interest of transparency, presentations, rebuttals and statements including the submissions of the Parties to a dispute shall be made available to the other party or the Third Party without undue delay. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the Panel, shall be made available to the Party to the dispute or Third parties.

11. The Panel shall adopt a time table for its proceedings in accordance with Article 15 (2) of the protocol, taking into account the proposed timetable herein below:

- a. Receipt of first written submissions of the parties:
 - I. complaining Party: 3-6 weeks
 - II. Party complained against: 2-3 weeks
- b. Date, time and place of first substantive meeting with the Parties;
 - I. Third Party sessions: 2 weeks
 - II. Receipt of written rebuttals of the Parties: 2-3 weeks
- c. Date, time and place of second substantive meeting with the Parties: 1-2 weeks
- d. Issuance of descriptive part of the report to the Parties: 2-4 weeks
- e. Receipt of comments from the Parties on the descriptive part of the report: 2 weeks
- f. Issuance of the interim report, including the findings and conclusions, to the parties: 2-4 weeks
- g. Deadline for party to request review of part(s) of report: 1 week
- h. Period of review by Panel, including possible additional meeting with parties: 2 weeks
- i. Issuance of final report to parties to the dispute: 2 weeks
- j. Circulation of the final report to the State Parties: 3 weeks

Annex 2

EXPERT REVIEW

1. The following rules and procedures shall apply to expert review established in accordance with the provisions of Article 16 paragraph 5:
 - a. Experts are under the Panel's authority. Their terms of reference and detailed working procedures shall be decided by the Panel, and they shall report to the Panel.
 - b. Participation as experts shall be restricted to persons of professional standing and experience in the field in question.
 - c. Citizens of Parties to the dispute shall not serve as experts without the joint agreement of the Parties to the dispute, except in exceptional circumstances when the Panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise.
 - d. Government officials of Parties to the dispute shall not serve as experts in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before them.
 - e. Experts may consult and seek information and technical advice from any source they deem appropriate. Before an expert seeks such information or advice from a source within the jurisdiction of a State Party, it shall inform the government of that Tripartite Member/Partner State. Any State Party shall respond promptly and fully to any request by an expert for such information as the expert considers necessary and appropriate.
 - f. The Parties to a dispute shall have access to all relevant information provided to an expert, unless it is of a confidential nature. Confidential information provided to the expert shall not be released without formal authorisation from the government, organization or person providing the information. Where such information is requested from the expert but release of such information by the expert is not

authorised, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

- g. The expert shall submit a draft report to the parties to the dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the Panel. The final report of the expert shall be advisory only.

Annex 3

CODE OF CONDUCT FOR ARBITRATORS AND PANELISTS

A. Commitment to the Process

1. The arbitrators and Panelists shall abide by the terms of this Protocol of the Agreement, the rules set out in this Code of Conduct and the Working Procedures.
2. The arbitrators and Panelists shall be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of the proceedings established in this Protocol on Dispute Settlement Mechanism so as to preserve the integrity and impartiality of the dispute settlement mechanism.

B. Disclosure Obligations

1. To ensure the observance of this Code, each arbitrator and Panelist shall prior to the acceptance of his/her selection disclose the existence of any interest, relationship or matter that he/she could reasonably be expected to know and that is likely to affect or could raise justifiable doubt as to the arbitrator or Panelist's independence or impartiality, including public statements of personal opinion on issues relevant to the dispute and any professional relationship with any person or organization with interest in the case.
2. The disclosure obligation referred to in paragraph 1 above is a continuing duty which requires an arbitrator or Panelist to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The arbitrator or Panelist shall disclose such interests, relationships or matters by informing the DSB, in writing, for consideration by the parties.

C. Duties of Arbitrators and Panelists

1. Upon selection, a Panelist shall perform his/her duties thoroughly and expeditiously throughout the course of the proceedings, with fairness and diligence.
2. An arbitrator or Panelist shall consider only those issues raised in the proceedings and necessary for an award and shall not delegate this duty to any other person.
3. An arbitrator or Panelist shall not engage in "ex parte" contacts concerning the proceedings.

D. Independence and Impartiality of Arbitrators and Panelists

1. An arbitrator or Panelist shall exercise his/her position with due diligence and shall not engage in any activity that may create a conflict of interest or compromise his/her impartiality.
2. An arbitrator or Panelist shall be independent and impartial and shall not be influenced by self-interest, political considerations or public opinion.

3. An arbitrator or Panelist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere with, or which could give rise to justifiable doubts as to, the proper performance of his/her duties.
4. An arbitrator or Panelist may not use his/her position on any Panel to advance any personal or private interests.
5. An arbitrator or Panelist may not allow financial, business, professional, family or social relationships, acquire any financial interest or responsibilities that is likely to influence his or her conduct, judgment or impartiality.

E. Confidentiality

1. Any current or former arbitrator or Panelist shall not at any time, disclose or use any confidential information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such confidential information to gain personal advantage or advantage for others or to adversely affect the interest of others.
2. An arbitrator shall not disclose the contents of an award prior to its publication.
3. A Panelist shall not disclose the content of a Panel report prior to its circulation to the State Parties.
4. Any current or former arbitrator or Panelist shall not at any time disclose the deliberations of a Panel or arbitration proceeding or any Panelist's view.
5. Any current or former arbitrator or Panelist that breaches or discloses any confidential information from the proceedings shall be subject to sanctions as shall be deemed fit by the DSB.

AfCFTA TRANSITION IMPLEMENTATION WORK PROGRAMME

No.	Dates	Activity	Objectives	Responsible
1.	March – April, 2018	Stakeholders Consultation on AfCFTA	<ol style="list-style-type: none"> 1. Sensitize the business community on benefits of the AfCFTA. 2. Coordinate the ratification of AfCFTA Agreement. 	Member States (MS)
2.	April 2018	Dedicated Session of NF with Legal Experts on Legal Scrubbing	Legal Scrubbing of the Annexes and Appendices to the Protocols	AUC/MS/NF
3.	1 st – 10 th May 2018	11 th Meeting of the African Continental Free Trade Area-Negotiating Forum (AfCFTA -NF)	<ol style="list-style-type: none"> 1. Implementation and practical application of the tariff liberalization modality on the designation of Sensitive Products and Exclusion List; 2. Implementation and practical application of Services modality on choice of priority sectors and next steps for TIS. 	AUC/MS/NF
3.	1 st – 10 th May 2018	Meetings of the TWGs (Parallel Sessions) <ul style="list-style-type: none"> ▪ TWG on RoO ▪ TWG on TIS ▪ Joint TWG on TR/LIA 	To undertake assigned tasks as per Terms of Reference and AfCFTA-NF directives (including RoO issues related to ‘vessels, special economic zones and value addition’)	AUC/ TWG (ROO, TIS, TR/LIA)
4.	15 th – 20 th	Meeting of the Continental Task Force (CTF)	To undertake preliminary assessment on Phase 2 negotiations and prepare a	AUC/NF

No.	Dates	Activity	Objectives	Responsible
	May 2018		calendar of Meetings for consideration by the AfCFTA-NF	
5.	25 th - 26 th May, 2018	Trade in Services (TiS) Signaling Conference	Explore, identify and bank market opportunities	AUC/MS/NF
6.	27 th – 30 th May 2018	12 th Meeting of the African Continental Free Trade Area-Negotiation Forum (AfCFTA-NF)	Workshop on the Schedule of Tariff Concessions and Schedule of Specific Commitments on Trade in Services	AUC/NF/TWG on TIS
7.	1 st – 24 th June, 2018	National consultations and preparation of schedules of specific commitments and tariff concessions	Sensitize stakeholders on TIS specific commitments and tariff concession schedules	Member States
8.	18 th – 20 th June 2018	6 th Meeting of the African Union Senior Trade Officials	To consider the Reports of the 11 th and 12 th Meetings of the AfCFTA-NF	AUC/STO/NF
9.	21 st – 22 nd June 2018	6 th Meeting of the African Union Ministers of Trade (AMOT)	To consider the Report of the 6 th STO	AUC/AMOT/STO/NF
10.	29 th June- 1 st July	Organize a specific/specialized AU business council for Private Sector Operators and other stakeholders (goods and Services)	To ensure Business community involvement and ownership of the AfCFTA programs towards 2063 Agenda	AUC/NF/MS

No.	Dates	Activity	Objectives	Responsible
11.	1 st – 2 nd July 2018	Presentation of the progress report to the July 2018 Summit by the Champion, H.E. Issoufou Mahamadou, President of the Republic of Niger	Submit Progress Report to the Assembly	AU/AUC/MS
12.	August, 2018	Start of Phase 2 Negotiations on Competition, investment and intellectual Property Rights	To engage in Phase 2 negotiations	AUC/NF/ MS (MS : Investment Agencies, Competition Authorities & IP)
13.	January 2019	Establishment of the relevant AfCFTA Committees	Monitoring the implementation of the AfCFTA	AUC/AMOT/STO/NF